

Parole Board Queensland

**NOTICE – NO BODY-NO PAROLE
NO COOPERATION DECLARATION**

Corrective Services Act 2006 s.175P

In the matter of: RODNEY MICHAEL CHERRY (DOB: 15 April 1959)

TO: RODNEY MICHAEL CHERRY (B96731)
Maryborough Correctional Centre

TAKE NOTICE that on 12 July 2023 the Parole Board Queensland decided that you, being a No Body-No Parole prisoner, have not given satisfactory cooperation in the investigation of the homicide offence to identify the victim's location.

TAKE NOTICE that the Parole Board Queensland makes a no cooperation declaration about you.

The reason for the Board's decision is that you have not given satisfactory cooperation with regard to the timeliness of your information, the nature and extent of your cooperation, the truthfulness, completeness, reliability, significance and usefulness of your cooperation. The details of the Board's decision are set out in the attached document.

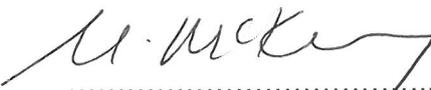
The date of the Board's decision is 12 July 2023.

You may not apply for a parole order under s. 176 or 180 unless you are given a notice under s. 175Q (notice of satisfactory co-operation).

You may, at any time, make a reconsideration application under s. 175R of the *Corrective Services Act*.

Place: Brisbane

Dated: 17 July 2023



Valentina McKenzie
Professional Board Member
Parole Board Queensland

In the matter of
RODNEY MICHAEL CHERRY

(Applicant)

SECTION 193A CORRECTIVE SERVICES ACT 2006

PROCEEDING: An application for parole

HEARING DATES: 22 July 2022 and 25 November 2022

MEETING DATES: The Board met to consider the matter on 25 May 2022, 22 July 2022, 25 November 2022, 24 March 2023, 14 April 2023 and 12 July 2023.

DECISION:

1. The Board has decided the Applicant, being a no body-no parole prisoner, has not given satisfactory cooperation in the investigation of the homicide offence to identify his victim's location.
2. In such circumstances the Board makes a no cooperation declaration about the Applicant.

DELIVERED ON: 17 July 2023

COUNSEL: Mr Tim Ryan KC appeared as Counsel Assisting the Board
The Applicant was self-represented

SOLICITORS: Parole Board Queensland Legal Services

Introduction

[1] The Applicant is a no body-no parole prisoner pursuant to s.175C of the *Corrective Services Act 2006* ('the Act'). He is serving a sentence of life imprisonment¹ for the murder of Kira Guise ('the victim') who at the time of her disappearance, was his stepdaughter.

[2] S. 175C of the Act provides -

175C Meaning of no body-no parole prisoner

A prisoner is a no body-no parole prisoner if—

- (a) the prisoner is serving a period of imprisonment for a homicide offence; and
- (b) either—
 - (i) the body or remains of the victim of the offence have not been located; or
 - (ii) because of an act or omission of the prisoner or another person, part of the body or remains of the victim has not been located.

[3] Under s. 175B of the Act, a "**victim's location**" means-

- (a) the location, or the last known location, of every part of the body or remains of the victim of the offence; and
- (b) the place, where every part of the body or remains of the victim of the offence may be found.

[4] Accordingly, the jurisdiction of the Parole Board Queensland ('the board') in these matters is enlivened under s. 175C upon the failure to locate either every part of the body or remains of the victim. The focus then shifts to the cooperation, given by the person who killed the victim, in locating every part of the body or remains.²

[5] Under s. 175B of the Act, "**cooperation**" in relation to a homicide offence for which a no body-no parole prisoner is serving a sentence of imprisonment, means the cooperation given by the prisoner-

- (a) in the investigation of the homicide offence to identify the victim's location; and
- (b) before or after the prisoner was sentenced to imprisonment for the offence.

Chronology

[6] This Application was heard by the board in public hearings on 22 July 2022 and 25 November 2022. At both hearings, the Applicant was not legally represented. Counsel Assisting appeared for the board.

¹ Verdict and Judgment Record dated 8 November 2002, pg. 5 of board file.

² S.175K of the Act.

- [7] At the hearing on 22 July 2022 written submissions from the Applicant and Counsel Assisting had been exchanged between the parties and provided to the board.
- [8] Following the hearing on 22 July 2022 the Applicant wrote to the board and indicated that he wished for Detective Inspector Knight to be recalled for cross-examination as he had not been informed prior to the hearing that he would be present.³
- [9] A further hearing was held on 25 November 2022.
- [10] The board made a preliminary decision on 14 April 2023 that the Applicant has not given satisfactory cooperation.
- [11] On 18 April 2023 the board provided the Applicant with written reasons for its preliminary decision and informed the Applicant that it was considering making a 'no cooperation declaration' under s. 175L of the Act. The Applicant was invited to make further submissions in response to the board's correspondence within 21 days.
- [12] The reasons given in the preliminary decision ('preliminary reasons') are relied upon by the board and are to be read in conjunction with this decision.
- [13] The Applicant provided a written response to the board's preliminary reasons ('response to preliminary reasons') by way of a 23-page submission, dated 24 May 2023.⁴

Issues

- [14] The issues raised by the Applicant in his latest submission and in all previous submissions primarily relate to:
- his belief that he was wrongly convicted;
 - his belief that he gave satisfactory cooperation to authorities in 1999/2000; and
 - his belief that he did not receive a fair hearing by the board.
- [15] The board has fully considered the Applicant's submissions.
- [16] The board also considered an independent submission from a friend of the Applicant received on 7 February 2023 in support of the Applicant's release to parole. Although the contents of the submission are not relevant to matters for consideration under the no body-no parole provisions, the board noted willingness to support the Applicant by his friend.

Response to board's preliminary view – submission dated 24 May 2023

- [17] The Applicant has provided submissions to the board generally and specifically by reference to numbered paragraphs in the preliminary reasons.
- [18] The references to specific paragraphs relate to the Applicant's views that:
- the victim was sighted after 23 July 1999 by others;
 - the victim sent a letter to him after she disappeared;
 - he is innocent and was wrongfully prosecuted and convicted;

³ Submission by Rodney Cherry dated 11 August 2022, received on 12 August 2022 (pg. 1178 to 1189 of board file).

⁴ Submission by Rodney Cherry dated 24 May 2023, received on 25 May 2023 ('response to preliminary reasons').

- he was not present during searches of his residence;
- he was not given an opportunity to present material at the board's hearings;
- he has cooperated in the police investigations regarding the disappearance of the victim;
- there were failures by police prior to and during the murder investigation; and of his dealings with police regarding the no body-no parole provisions; and
- his human rights have been affected.

- [19] The board fully considered the entirety of the Applicant's response, parts of which pose rhetorical questions to and about those investigating the disappearance of the victim, government departments and those involved in deciding his matters (police, prosecuting authorities, courts, and the board). The Applicant's views have been noted.
- [20] The board noted that the Applicant, despite previously acknowledging that it is not the function of the board to reconsider the merits of his conviction, devoted a significant portion of his submission to this topic.
- [21] The Applicant has raised factual errors in paragraph 9 of the preliminary reasons in that "Cypress Downs West" ('CDW') is identified as Marsden Station; and that this was a 23 000-acre property and not a 750-acre property. The board agrees with the Applicant. The Applicant has also pointed out that the board erroneously considered his human rights under s. 20 instead of s. 21 of the *Human Rights Act 2019* ('HRA'). The board accepts that the reference in the preliminary reasons was erroneous. The Applicant's human rights under s. 21 have been addressed in this decision.
- [22] The Applicant submitted that it is also a factual error that the board states the victim was last seen alive on 23 July 1999. As highlighted previously, in both written and oral submissions to the board, the Applicant's focus has been on persuading the board that the victim was alive and sighted after this time, notably in Rockhampton at around Christmas 1999, and in Yeppoon in March 2000.
- [23] The Applicant was convicted by a jury of the victim's murder committed on or about 23 July 1999. The Court of Appeal upheld the conviction.⁵ The records of proceedings show that the information that the victim was seen by others in 1999 and 2000 was tested during the trial process and on appeal.⁶ The board has no power or authority to consider the Applicant's ongoing assertions that the victim was alive after 23 July 1999.
- [24] It is of little assistance for the board's determination on this Application to address those parts of the Applicant's submission regarding allegations and criticisms of the police investigation and the conduct of the prosecution and various witnesses. For that reason, the board has not engaged in a detailed analysis of that information, however, has considered it in the overall context of the Applicant's submissions and made comments where necessary.
- [25] Of importance to the board is consideration of information received from the Applicant regarding:

⁵ *R v Cherry* [2004] QCA 328.

⁶ *Ibid* at [97] and [115].

- any cooperation he has given in the investigation to identify the victim's location before or after he was sentenced;⁷ and
- an evaluation of the cooperation which includes timeliness, truthfulness, completeness, reliability, significance, and usefulness.⁸

Submission that the victim was sighted after 23 July 1999 by others

- [26] The Applicant maintains that the victim was seen alive after 23 July 1999 and reiterates that Ken and Madge Mitchell saw her in Yeppoon in March 2000.⁹ He submits he provided this information to the Missing Persons Unit ('MPU') on 5 April 2000 prior to his arrest on 20 May 2001 for the murder of his wife.
- [27] The Applicant submits that evidence exists in a letter he received from the victim prior to his first arrest. He submits the letter was sent from Gladstone and the victim wrote of being recognised at the Yeppoon Sailing Club by Ken and Madge Mitchell and that she had now moved on. Further reference to the Applicant's assertion that he received a letter from the victim is discussed below.
- [28] The Applicant adamantly denies knowing whether the victim is dead. If she is dead, he submits that he does not know where her body is.
- [29] The Applicant submits¹⁰ that he has provided information in a timely, truthful, reliable, and complete manner and is certain that the victim was at the Yeppoon Sailing Club in March 2000 because she was personally known to Ken and Madge Mitchell, and she confirmed as such in her letter to him.

Submission about the letter from the victim

- [30] The Applicant submits that at the hearing on 25 November 2022, when cross-examining Detective Inspector Knight, the 'evidence' he was referring to in relation to the victim being alive was the letter that has "*mysteriously vanished from my filing cabinet along with seven birth certificates*".¹¹ He submits that the board cannot dismiss the existence of this letter as the police running sheets clearly establish that police knew about it on 20 May 2001. An extract from the Police Running Sheets was attached to his submission.¹²
- [31] The Applicant has referred to the letter received from the victim after she disappeared in responses to paragraphs 39, 57, 80, 81, and 84 of the board's preliminary reasons.
- [32] The Applicant has submitted that the missing letter is either with Helen Molinas or police. He believes that if the letter remained with police, then it would have been destroyed as was other evidence in his wife's murder. He believes that "*it is the next best thing so that they can never be sued to establish the truth about my [his] wrongful prosecution.*"¹³

⁷ S.175B of the Act.

⁸ Ibid; Ministerial Guidelines to Parole Board Queensland 7.4.

⁹ Response to preliminary reasons (n4) at paragraphs 9, 39 and 92.

¹⁰ Response to preliminary reasons (n4) at paragraphs 42, 60 and 92.

¹¹ Response to preliminary reasons (n4) at paragraph 39.

¹² Response to preliminary reasons (n4), Exhibit 4.

¹³ Response to preliminary reasons (n4) at paragraph 57.

- [33] The Applicant now states that the letter from the victim can only have gone to police and the board has incorrectly made reference to him believing that Ms Molinas may have possibly been in possession of it.¹⁴ He submits that he asked Ms Molinas to give the folder containing the letter and birth certificates to his sister, however she did not.¹⁵ He submits that as Ms Molinas was in Perth at the time of his arrest, the police took the folder as they searched the premises on two occasions prior to her return from Perth. It is not accepted that the board made incorrect reference to Ms Molinas as suggested. The direct references in the preliminary reasons are extracted from the Applicant's letter to Detective Inspector Knight dated 19 November 2021.¹⁶
- [34] The board has considered the Applicant's submissions regarding the letter and the information recorded by police on 20 May 2001 set out in the Running Sheet that he *"stated he had a letter from her at house."*¹⁷ The board also noted that when the Applicant was in the motel room at Blackall earlier that day with Debbie Guise, she asked him whether he had heard from Kira and he said, *"No mate, I haven't heard jack shit from her mate, I'm, I'm worried that she's in trouble, or she's got herself bloody hurt or some fuckin thing because you know, there was calls early in the piece and they were going to me mobile because she probably didn't know the home number ..."*¹⁸ There was no mention to Debbie Guise that he had received a letter from Kira months after her disappearance which had originated from Gladstone.
- [35] The board noted that this letter has never been produced and its existence was not raised at his trial or on appeal.
- [36] The board noted, on the Applicant's own admission¹⁹ he was present when his house was searched the first time, being 20 May 2001. Yet, in his response to the board's preliminary reasons he disputes the contents of paragraph 11 and denies knowledge of the search on that day or that he was present during searches of his residence. The board does not accept this as a truthful representation by the Applicant, for the reasons given below.
- [37] The board had regard to a transcript of a recording between police and the Applicant on 20 May 2001 at the Blackall Police Station. He was taken there after he was intercepted by police at the Coolibah Motel. It was explained to him that he was at the station due to an investigation into the murder of his wife on 16 June 1997 and the disappearance of Kira Guise on 23 July 1999.²⁰ It was made clear to the Applicant that police had a search warrant to search his house and they would do so that day. The Applicant was present during the search which commenced at 3.25pm and concluded at 5.18pm. At the end of the search, he was shown two property field receipts in relation

¹⁴ Response to preliminary reasons (n4) at paragraph 80.

¹⁵ As noted in paragraph 81 of the board's reasons for preliminary decision, Ms Molinas told Detective Inspector Knight on 3 December 2021 that she was not in possession of any property and she did not have knowledge of the letter in question.

¹⁶ Page 1037 to 1040 of the board file (Letter to Detective Inspector Knight dated 19 November 2021).

¹⁷ Response to preliminary reasons (n4) Exhibit 4.

¹⁸ Page 45 of the board file (Transcript of Electronic Listening Device, Coolibah Motel, Blackall on 20 May 2021, page 4); and referenced in the decision of the Court of Appeal *R v Cherry* (n5) at [71].

¹⁹ Page 1037 to 1040 of the board file (Letter to Detective Inspector Knight dated 19 November 2021).

²⁰ Page 950 of the board file (Transcript of Police Record of Interview dated 20 May 2001, page 2).

to items seized. Sergeant Notaro identified each item of property to the Applicant who signed both receipts.²¹

[38] It is evident to the board that the Applicant had an opportunity at the time of the search to disclose to police the location of the letter. He did not do that, and now suggests that police found the letter at some stage and would have destroyed it.

[39] The board had regard to the events of 20 May 2001, particularly that:

- police advised the Applicant they were investigating the disappearance of the victim;
- police executed a search warrant to enter his property on the same day;
- he received legal advice prior to the search of his house;
- police noted information that the victim had sent him a letter and it was at his house;
- he was present during the search which lasted almost two hours;
- at the end of the search, he made no enquiries of police whether the letter had been found; and
- there is no evidence that the letter was found by police.

[40] The Applicant was in an advantageous position at the time of the search to provide information to police about the location of the letter within his house. Having regard to the above, the board concluded that the Applicant has not given satisfactory cooperation regarding an issue which he claims was critical in the search for the victim. Upon evaluation of the information provided by the Applicant regarding the existence of the letter, the board formed the view that this information has not been given in a timely way and further that doubts exist as to the truthfulness of the information given by him.

Submission that he is innocent

[41] As noted previously, the Applicant has always maintained his innocence and argued he was wrongfully prosecuted and convicted. He claims that the victim may well be still alive and at this point, no one, including him knows where she is.²²

[42] The Applicant submits that the board should not ignore the advice from Counsel Assisting that "*it is not a prerequisite to a finding of "satisfactory co-operation" that the victim's remains, in fact, be found.*" The board is cognisant of this.²³ The Applicant submits that he has told the truth completely and his position will not change through the passage of time, especially if he continues to be incarcerated as there will be no prospect of accessing anything to try and identify why the victim was in Yeppoon and who she may have been with.

²¹ Board file pages 955-957 (Transcript of Police Record of Interview dated 20 May 2001, pages 7-9).

²² Response to preliminary reasons (n4) at paragraph 10.

²³ *Cf.* the matters of Lindy Williams, Klaus Andres and John Bennett – prisoners who were subject to No Body-No Parole legislative provisions and found to have given satisfactory co-operation despite the body or remains of the victims not being found.

- [43] The Applicant submits that untruthful information was before the jury at his trial, and because of this he was wrongly convicted, and at the time his case was appealable upon the advice of Byrne KC who is now the President of the Parole Board.
- [44] The Applicant's submissions regarding his conviction and any legal advice he may have received are not relevant to the matters being considered by the board under the no body-no parole provisions.
- [45] The board has fully appraised the Applicant of the nature of his matter and what the board must consider. As previously stated, his refusal to accept or acknowledge his involvement in the victim's death, is not of itself determinative of unsatisfactory or lack of cooperation. However, there is no evidence, regardless of claims that he is innocent, to which the board can point to indicate he has assisted or may assist in identifying the victim's location.

Submission that he was not given a fair hearing by the board

- [46] The Applicant continues to maintain that he was not given an opportunity at the hearings to present information.²⁴
- [47] The Applicant submits that had he not been shut down by the board and given an opportunity to clarify the matter of an Inquest being held, information would have revealed in a document prepared during a Crimes Commission Application that "*an intensive police investigation conducted over a period of almost six months using the full array of powers ordinarily available to police, has failed to gather sufficient evidence to warrant the arrest of any person for the disappearance of Kira. It cannot reasonably be supposed that this situation would change with the passage of time.*"²⁵
- [48] It is noted that the Applicant raised the contents of the above document when cross-examining Detective Inspector Knight on 25 November 2022.²⁶ In any event, despite the conclusions of the Crimes Commission Application the investigation continued for some time.
- [49] The Applicant stands by his resolve that the board did not allow him to properly present his case and to fully cross-examine Detective Inspector Knight. He suggests that the reason for this is because he was exposing the failure of police to investigate the sighting of the victim in Yeppoon. He alleges that no one wants this failure to be placed on record or fully explored in open court. Again, this is a submission not accepted by the board. The Applicant has placed on the record on numerous occasions that he believes police failed in not properly investigating information about a possible alleged sightings of the victim since her disappearance.
- [50] The board reaffirms that the Applicant was given opportunities to cross-examine Detective Inspector Knight at the hearings, particularly at the second hearing which was scheduled for this purpose. At both hearings, the Applicant stated that he understood the nature of the proceedings before the board, yet repeatedly insisted on bringing up matters regarding his conviction and innocence.

²⁴ Response to preliminary reasons (n4) at paragraph 34, 37, 43 and 59.

²⁵ Response to preliminary reasons (n4) at paragraph 37.

²⁶ Transcript of proceedings 25 November 2022, page 14.

- [51] The board formed the view that there is no substance in the Applicant's submission on this point.

Submissions on cooperation

- [52] The Applicant submits he has cooperated in a timely manner and has done this by providing information to police who have failed to act on it.²⁷ He alleges that police have "*gone out of their way to negligently and wilfully not acknowledge this co-operation by way of statement or the Commissioners Report.*"²⁸
- [53] The Applicant submits that he has provided truthful and reliable information and there is no more information that he can give to police and the board.²⁹ He submits that any information he may be able to provide is dependent on material that he does not have access to.
- [54] The Applicant submits that it cannot be suggested that he failed to provide the most up to date information to police regarding the location of the victim's whereabouts when she was sighted at Yeppoon. He submits he provided this information to police prior to receiving the letter from the victim. The Applicant submits that as the credibility of this information has never been properly investigated, then it follows there can be no assumption that it was anything other than true. He submits that had the letter from the victim not vanished, then the truth would have been established.
- [55] The Applicant submits that it is the responsibility of the board to understand the failures made in the investigation of the disappearance of the victim,³⁰ irrespective of who made them. He submits that had those failures not been made, the victim may well have been found as far back as the year 2000.

Submissions on dealings with police

- [56] The board does not propose to address the Applicant's submissions on the failures of the police investigation in great detail. The board noted that the Applicant was critical of comments made in paragraph 40 of the board's preliminary reasons in two respects.
- [57] First, he submits that it is "harsh" of the board to state that he blames police for the victim not being found. Rather, he submits the police failed to act on his request to investigate the sighting of the victim in Yeppoon in a timely manner.³¹
- [58] Second, the Applicant is critical of the quotation used by the board and alleges that the board is trying to manipulate the truth of what was said.³² The board rejects this notion. The Applicant has painstakingly considered the board's preliminary reasons and would

²⁷ Response to preliminary reasons (n4) at paragraph 41 and 52 - relating to the sighting in Yeppoon by Ken and Madge Mitchell.

²⁸ Response to preliminary reasons (n4) at paragraph 27.

²⁹ Response to preliminary reasons (n4) at paragraph 88 and 93.

³⁰ Response to preliminary reasons (n4) at paragraph 89.

³¹ Response to preliminary reasons (n4) at paragraph 40.

³² Ibid.

have noted that at paragraph 90 of the board's decision, the passage he refers to is fully referenced.

- [59] The Applicant submits that his offer to '*consider*' speaking with Detective Inspector Knight was only in relation to the letter he received from the victim, which he states he now knows police were aware of as of 20 May 2001. He submits that when he made the offer to speak with police (on 12 July 2020 and 9 September 2020), he was not aware that police knew about the letter.³³
- [60] The Applicant submits that in his view, police are in possession of the alleged letter and the seven birth certificates which were stored with the letter.³⁴ It is difficult for the board to reconcile the conflicting information the Applicant has given regarding the letter he claims he received from the victim after her disappearance. This letter has never been found and on the information before the board, the Applicant is the only person who has seen it.
- [61] As noted, the Applicant was present when police searched his house. He had opportunity at that time, to direct police to the letter. If the Applicant is to be believed, he had information on the whereabouts of the victim after she disappeared. It was fully explained to him that police were investigating the victim's disappearance and he had a chance to assist at that time. For reasons that can only be known to the Applicant, he did not produce the letter, nor make any enquiries with police who searched his residence as to whether they had located it.

Submissions on human rights

- [62] The Applicant asserts that his human rights under *Human Rights Act 2019* ('HRA') have been adversely impacted.
- [63] The board has considered the Applicant's submission and the human rights which may be limited by the making of a no cooperation declaration, namely his rights under ss. 15, 21, 30 and 31 of the HRA.
- [64] The board is statutorily required to decide whether to make a no cooperation declaration about the Applicant.³⁵
- [65] The making of a no cooperation declaration about the Applicant would conceivably impose a limit or limits on certain of the Applicant's human rights.³⁶
- [66] The board has throughout these reasons been cognisant of the severity of the limitations which would operate as a consequence of a declaration made under s.175L of the Act. The board understands that such a declaration deprives the Applicant of the opportunity to apply for parole other than in the circumstances identified in sections 175R to 175U of the Act.

³³ Response to preliminary reasons (n4) at paragraph 76.

³⁴ *Ibid.*

³⁵ S. 175K(a) of the Act.

³⁶ *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 at [130].

- [67] The board has considered the Applicant's submission and the human rights which he submits may be limited by the making of a no cooperation declaration, namely his rights under ss. 15, 21, 30 and 31 of the HRA.
- [68] The Applicant submits that the board did not allow him to put his case before it in an open court and the board failed to properly allow him to cross-examine Detective Inspector Knight in breach of s. 15 of the HRA, namely his right to recognition and equality before the law.³⁷ As noted, the board formed the view that the Applicant has been given opportunities to express himself in writing before and after the hearings. He has provided numerous detailed and extensive submissions which have all been carefully considered by the board. During both hearings, he was given an opportunity to provide further information and to cross-examine Detective Inspector Knight.
- [69] The board noted the Applicant's submission regarding his rights under s. 21 of the HRA in relation to freedom of expression, which includes the freedom to seek, receive and impart information and ideas as listed in s. 21 (2) (a)-(e). The applicant appears to refer to the extent to which he has gone to get access to material associated with his prosecution and "*the Board's failure to properly cross-examine Detective Knight*".³⁸
- [70] The Applicant submits that he has been denied access to a complete brief of evidence.³⁹ The board has provided the Applicant with all documents identified in the Index to Brief for the proceedings before the board. Those documents contain complete transcripts of the proceedings from the Applicant's committal (six days), trial (23 days) and Court of Appeal (volumes one to five). He was also provided with statements of witnesses. The board formed the view that the Applicant has been provided with all material in possession of the board.
- [71] The Applicant submits that his right under s. 31 of the HRA, namely his right to a fair hearing, has been affected.⁴⁰ He alleges failures under the Bar Association Rules against those who have appeared at his trial and by the board. The board maintains its view that the Applicant received a fair hearing before the board.
- [72] With respect to the Applicant's submissions regarding ss. 15, 21 and 31, the board is aware that these rights are relevant to the actions of the board and the conduct of this matter.⁴¹ However, as outlined above, the Applicant was entitled throughout these proceedings to express his case through verbal and written submissions. He was encouraged on multiple occasions to seek legal representation. He was provided with a copy of the index to brief, relied upon by the board in the consideration of this matter. The Applicant participated in two open court hearings, during which he was afforded the opportunity to cross-examine Detective Inspector Knight. He had also been granted

³⁷ This includes ss. 15(1) to (5) of the HRA namely right to enjoy human rights without discrimination, entitlement to equal protection of the law without discrimination and the right to equal and effective protection against discrimination.

³⁸ Response to preliminary reasons (n4) at page 8.

³⁹ Response to preliminary reasons (n4) at paragraph 96.

⁴⁰ Response to preliminary reasons (n4) at paragraph 98 and s. 30 of HRA.

⁴¹ Owen D'Arcy v QCS (n35) at [132].

an extension of time to respond to the board's preliminary reasons. In these circumstances, the board is of the view that these rights have not been limited.⁴²

- [73] The Applicant submits that his rights under s. 30 of the HRA have been affected and that his inherent dignity has been breached and will continue to be breached if he is subjected to a no cooperation declaration, leading to a refusal of a parole order.⁴³ He submits that the no body-no parole process has caused him and his family mental abuse in trying to get people to accept the truth, and due to the efforts he has made to obtain copies of documents he is entitled to. He submits that if the mental abuse continues; it will cost him his life. He submits he is suffering as he has a "*real chance of being able to do the job that police failed to do through their negligence and dishonesty*". Based on the board's preliminary view, he believes he will be denied this opportunity.
- [74] S.30 of the HRA provides the Applicant with the right to humane treatment when deprived of liberty and seeks to protect the Applicant from being subjected to hardship or constraint, other than that which occurs from his incarceration. The board has had regard to Counsel Assisting's submission that the existence of an opportunity to be eligible for release from custody at some future point would ordinarily be considered treating a prisoner in a humane way.⁴⁴ The board accepts that the making of a no cooperation declaration necessarily curtails the Applicant's opportunity to apply to be released from custody⁴⁵ and therefore constitutes a limitation on his right of s. 30(1).
- [75] The board, accordingly, has considered whether making a declaration under s.175L of the Act is supported and objectively justified having regard to the relevant human rights of the Applicant. With respect to s.30 of the HRA, the board notes that the introduction of the no body-no parole legislation was for the purpose of making parole contingent (for particular prisoners) on their satisfactory cooperation in the investigation of a homicide offence to identify a victim's location. This was intended to be achieved by incentivising the provision of cooperation and information and in consequence, provide some comfort and certainty to families of the victims. The board is not unaware of the impact of a no cooperation declaration on the Applicant but is of the view that given the intention of the legislation and in circumstances where the Applicant has not provided satisfactory cooperation, the making of a no cooperation declaration achieves the objective of the legislation. Further, the board has concluded that there is no less restrictive or reasonably available way to achieve this purpose unless a declaration of satisfactory cooperation is made, which is not an available course to the board based on the material before it.
- [76] Further, although the board accepts that the Applicant may be experiencing stress and frustration due to the proceedings, it does not accept the Applicant's assertion that his rights under s. 30 have been affected due to the way that his matter has been considered by the board.

⁴² Ibid.

⁴³ Response to preliminary reasons (n4) at paragraph 99.

⁴⁴ Submissions of Counsel Assisting dated 20 January 2023 at paragraph [56].

⁴⁵ Except for the circumstances prescribed for in s.175R to 175U of the Act.

[77] The board, in reaching a decision, has concluded that the Applicant's rights under the HRA are not absolute and a limitation of human rights by its decision is reasonably and demonstrably justified, in accordance with s. 13 of the HRA. Therefore, pursuant to s.58(1)(a), the board's decision to make a no cooperation declaration about the Applicant is not incompatible with his human rights.

Other information given by the Applicant

[78] The Applicant submits that the option for police to come and speak to him still stands, however it will expire the moment a no cooperation order is made.⁴⁶

[79] The Applicant submits that it would be irresponsible of the board if a no cooperation order was made against him as it would mean his parole would be declined. He submits that pursuant to s. 175C(b)(ii) of the Act, the omission of police to appropriately and efficiently investigate the sighting of the victim in Yeppoon is no less irresponsible than his omission to notify police of the letter he had received from her in a timely manner. He submits that his notification to the MPU was done in a timely manner and this information could have been used to locate the victim if police had correctly acted on it.⁴⁷

[80] The Applicant has made concerning statements that if a no cooperation declaration is made or if he is denied parole, then he will take steps to finalise his life.⁴⁸ He submits there is no prospect of him reversing a no cooperation order as he has disclosed all that he knows. He submits that releasing him on parole will allow him to do the job police found "too difficult to do."⁴⁹

[81] Although noting the Applicant's views that he has disclosed all that he knows about the victim, there may be circumstances for the Applicant to apply for a reconsideration of his application pursuant to s. 175R, if for instance he gives additional information (not previously given to police in relation to the investigation of the homicide offence to identify the victim's location).⁵⁰

Overview of the information and cooperation provided by the Applicant

[82] The board fully considered all information provided by the Applicant and particularly noted his assertions that:

- he did not kill the victim;
- he does not know whether the victim is alive or dead;

⁴⁶ Response to preliminary reasons (n4) at page 11.

⁴⁷ Response to preliminary reasons (n4) at page 12.

⁴⁸ The Applicant's submissions in this regard have been escalated appropriately.

⁴⁹ Ibid; Response to preliminary reasons (n4) at page 13.

⁵⁰ S. 175R (4)(a) of the Act.

- he provided information about the sighting of the victim to the MPU at Yeppoon in March 2000;
- police failed to properly investigate the information he provided to MPU;
- he received a letter from the victim in which she confirmed she was in Yeppoon and that she did not want others to know;
- for the above reason, he did not disclose the existence of the letter to police at the time of his arrest;
- the letter was contained in a folder, together with 7 birth certificates;
- he has not handed the letter over to police;
- he believes that the letter was in possession of police and likely destroyed;
- he has further information about unsolved killings, however at this time it does him no purpose to disclose that information.

[83] The board noted that a crucial part of the Applicant's cooperation lies in his belief that finding the letter is a key to finding the victim or her body or remains.

Legislative Framework under the Act and Ministerial Guidelines

[84] The legislative framework for a no body-no parole prisoner as defined under s. 175C of the Act and the relevance of the Ministerial Guidelines are fully addressed in the board's preliminary reasons. As the board must, it has had regard to all provisions and matters under the Act and all relevant sections under the Ministerial Guidelines.⁵¹

[85] In deciding whether the Applicant has given satisfactory cooperation, the board had regard to matters under s. 175O of the Act which include the commissioner's report. This document extensively outlined the history of the proceedings relating to the Applicant's convictions and the correspondence between the Applicant and police in relation to the no body-no parole provisions. The board had regard to the extent of the contact made with the Applicant and the opportunities given to him to provide cooperation by way of information that is truthful, complete, reliable, and useful towards identifying the victim's location. The board accepts the conclusion in the commissioner's report that the Applicant has not given satisfactory cooperation in the circumstances.

[86] The board formed the view that the Applicant has not provided any information assessed to be reliable, truthful, complete, and relevant to assist police in identifying the victim's location.

[87] There is no evidence that the Applicant has given assistance which would lead to the location of the victim's body or remains, despite maintaining his innocence. It is open to the board to accept that the Applicant has a real capacity to give cooperation over and above making assertions that he was not involved in the murder.

[88] On the whole of the material provided to the board in the no body-no parole proceedings, it is not satisfied that the Applicant has given satisfactory cooperation in

⁵¹ Paragraphs 17-28 of preliminary reasons.

the investigation of the homicide offence to identify the victim's location. In making its decision the board also confirms and relies on the reasons given to the Applicant on 18 April 2023 in its preliminary view.

Findings/decision of the board

- [89] The board has decided the Applicant, being a no body-no parole prisoner, has not given satisfactory cooperation in the investigation of the homicide offence to identify his victim's location.
- [90] In such circumstances the board makes a no cooperation declaration about the Applicant.