

In the matter of  
**DANIEL PAUL HEAZLEWOOD**  
**(Applicant)**

**SECTION 193A CORRECTIVE SERVICES ACT 2006**

PROCEEDING:	An application for parole
DELIVERED ON:	5 November 2020
DELIVERED AT:	Brisbane
HEARING DATES:	11 September 2020 and 4 November 2020
MEETING DATES:	The Board met to consider the matter on 11 September 2020 and 4 November 2020
SENIOR BOARD MEMBERS:	Mr Michael Byrne QC, President, Parole Board Queensland and Ms Julie Sharp, Deputy President, Parole Board Queensland
DECISION:	The Board is satisfied that the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.
COUNSEL:	Mr Neville Weston appeared as counsel assisting the Board
SOLICITORS:	Parole Board Queensland Legal Services The Applicant was self-represented

### **Application for parole where the victim's body or remains have not been located**

- [1] Daniel Paul Heazlewood ("the applicant") has applied for parole pursuant to s180 of the *Corrective Services Act 2006* (Qld) ("the Act").
- [2] The applicant is currently serving a sentence of eight (8) years imprisonment for manslaughter together with two (2) cumulative periods of imprisonment of eighteen (18) months for the offences of misconduct with a corpse and producing a dangerous drug. This term of imprisonment is also being served in conjunction with other concurrent sentences.
- [3] The sentencing Judge set a parole eligibility date of 20 July 2020.
- [4] The body or remains of the victim of the manslaughter offence have not been located.<sup>1</sup>
- [5] As the offence of manslaughter is a homicide offence within the meaning of s192A(8)(a)(iii) of the Act, the Parole Board Queensland ("the Board") must refuse to grant the application of parole unless it is satisfied that the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.<sup>2</sup>

### Application of s193A of the Act

- [6] Section 193A(7)(a) of the Act provides that, in determining whether the applicant has 'cooperated satisfactorily' in the investigation of the offence to identify the victim's location, the Board must have regard to:
  - a) a written report of the Commissioner of Police stating whether the applicant has cooperated in the investigation of the offence to identify the victim's location and, if so, an evaluation of:<sup>3</sup>
    - a) the nature, extent and timeliness of the applicant's cooperation; and
    - b) the truthfulness, completeness and reliability of any information or evidence provided by the applicant in relation to the victim's location; and
    - c) the significance and usefulness of the applicant's cooperation; and

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<sup>1</sup> Corrective Service Act (Qld) s193A(1).

<sup>2</sup> Ibid s193A(2).

<sup>3</sup> Ibid s193A(7)(a) read in conjunction with s193A(6).

- d) any information the Board has about the applicant's capacity to give the cooperation; and
  - e) any relevant remarks made by the sentencing court that sentenced the applicant to the term of imprisonment the applicant is serving for the offence; and
  - f) if the applicant requests the Board to consider a transcript of a proceeding against the applicant for the offence ("the transcript").
- [7] Further, s193A(7)(b) of the Act provides that the Board may have regard to any other information the Board considers relevant.
- [8] When determining whether the applicant has 'cooperated satisfactorily' in the investigation, the Board is to give the phrase 'cooperated satisfactorily', as part of a statutory provision, the meaning that the legislature is taken to have intended it to have -
- 'Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.'*<sup>4</sup>
- [9] The Board formed the view that, in these circumstances, the legal meaning of 'cooperated satisfactorily' corresponds with the grammatical meaning of the phrase.
- [10] The Board determined that the grammatical meaning of 'cooperated satisfactorily' may be derived with reference to the *Short Oxford English Dictionary*, which provides for the following definitions:
- 'satisfactory' – 'sufficient, adequate; convincing'.<sup>5</sup>
- 'cooperate' – act jointly with another (in a task, to the end)'.<sup>6</sup>
- [11] Section 193A(3) of the Act provides that the cooperation may have happened before or after the applicant was sentenced to imprisonment for the offence.

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<sup>4</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* (1998)194 CLR 355, 384 [78].

<sup>5</sup> Oxford University Press, *Shorter Oxford English Dictionary* (5<sup>th</sup> ed, Volume 2), 2674.

<sup>6</sup> Oxford University Press, *Shorter Oxford English Dictionary* (5<sup>th</sup> ed, Volume 1), 513.

### Standard of Proof

- [12] This standard of proof is not that of a criminal nor an adversarial proceeding. Under the relevant provisions of the Act, the Board must refuse parole unless it is satisfied as to the applicants' cooperation as discussed and defined above.
- [13] In approaching its task in this regard, the Board is aware of the serious nature of the consequences to the applicant if an adverse finding is made.

### Circumstances

- [14] The applicant pleaded guilty to the offences including manslaughter and was sentenced by his Honour Justice Boddice on 14 May 2018. A statement of facts was placed before his Honour by the Crown and agreed with by Counsel for the applicant.

- [15] That statement includes the following -

1. *The deceased, Linda Sidon was 46 years of age at the time of her death. She was the mother of the accused. She was killed by him around 21 June 2009. Despite extensive searches her body has never been located. The accused ultimately confessed to killing his mother in an interview with police on 28 October 2015.*
2. *The last confirmed sighting of Ms Sidon was at an appointment with her general practitioner on 19 June 2009. Ms Sidon had been under the care of a psychiatrist for a number of years. She had been diagnosed with Borderline Personality Disorder by him. Features of her condition were: labile mood; poor ability to get on with people; misuse of medication; frequent suicidal ideation and social isolation. To her psychiatrist she spoke about feeling lonely, sad and bitter. She always seemed angry with her son.*
3. *Ms Sidon was of a very slight build. The accused described her as being approximately 5 feet 1 inch in height and weighing between 38 kilograms and 42 kilograms at the time of her death. On the other hand he was 174 centimetres tall, of a solid build weighing 77-80 kilograms. At the time of his mother's death he was training at a gym every day and was using steroids. They were living together in Ms Sidon's rented house.*
4. *The deceased's parents and siblings resided in New Zealand. She had sporadic contact with them. She was reported missing by her now late father in 2010. Police spoke with the accused in December 2010 and advised him that his mother had been reported missing in New*

Zealand. In January 2011 he provided a statement indicating that his mother had said she was travelling to New Zealand to visit her sick father. She left without saying goodbye and did not indicate when she would return. He said that he wouldn't be surprised if she didn't want anyone to know where she was.

5. Police investigations established that Ms Sidon worked as a cleaner. Two of her clients had received text messages in June 2009 which appeared to be from Ms Sidon indicating that she was going to New Zealand and would not be available to clean for them. The accused ultimately admitted to sending those text messages to cover up that he had killed his mother.
6. Ms Sidon rented a house from the Department of Housing and Public Works. A representative from that Department had contact with the accused in 2009 when the rent on the house unusually fell into arrears. In July 2009 Mr Halcro from the Department attended the property and spoke to the accused. The accused said that his mother had gone to New Zealand to visit her father and was due back in a few weeks. In September 2009 Mr Halcro spoke to the accused on the telephone. He said that his mother was due to return to Australia in October. In November 2009 the accused told Mr Halcro that he didn't know where in New Zealand his mother was and did not know how to contact her. In late November 2009 the accused told Mr Halcro that he had spoken to his grandfather in New Zealand who said that his mother was still in New Zealand, that she had found a boyfriend and had gone sailing with him. In December 2009 the accused told Mr Halcro that he had spoken to his mother and that she would not be coming back to Australia. All of these statements were lies. The accused moved out of the residence abandoning all of his mother's property.
7. The accused used his mother's car after her death until such time as it was seized by police in March 2010 when he was driving it unregistered and uninsured. The vehicle was ultimately sold for scrap metal when no claim was made on it.
8. The accused's relationship with his mother is revealed to some extent by the nature of the comments he made to friends about his mother. He said to Emilie Fujiwara that he didn't like his mother both before and after her death. He said that she was stupid, that she didn't do anything or do the world any justice. He told his friend Jason Hoffs that he hated his mother, that he wished she'd get hit by a bus, that she was a waste of space and was taking up other people's oxygen. Even

after killing his mother his attitude towards her remained unchanged. He said to Manu Mehana his gym buddy that his mother was away on holiday. When Manu Mehana saw a photo of Ms Sidon on the fridge and asked the accused whether that was his mother, he said "yeah, she is an ugly bitch, nar for real, serious man if you saw her, she is ugly as hell". He said that "I hate her, I don't understand her, I can't stand the bitch." These comments were made in 2009 in the few months after the accused had killed his mother. When the accused was evicted from his mother's house by the Department of Housing and Public Works he told his friend, Stephanie Dahl that he took some things of his mother's being photographs which were important to her. At a later time he said that he threw them out as they did not hold any value to him. In September 2015 at the height of the police investigation, the accused joked with his friends that if his mother did come back he was going to kill her.

9. In August 2015 a covert surveillance device was installed in the car the accused was then driving. On 19 August 2015, the day after police delivered the accused's witness statement to his friend, Stephanie Dahl asking her to have him contact the police, he drove to a location in Numinbah Valley. During the course of the trip he took between 9.17am and 10.45am he was heard on the surveillance device to say the following things:
  - a. "Gotta remember where I put the bitch" at 9.53am;
  - b. "Yeah I was just checking on the bodies" at 10.21am; and
  - c. "Farcked her up... she just pushed me too far one day...ha...so I killed her" at 10.24am.
10. Extensive investigations were carried out by police in the area of Numinbah Valley where he had driven but unfortunately Ms Sidon's body was not found. This was the same area which the accused ultimately confessed to police as being the place he buried his mother.
11. The accused provided a further written statement to police on 25 August 2015. Again he said that his mother told him that she was going to New Zealand to take care of her sick father. He said that he noticed that her handbag and house keys were gone and he assumed that she was in New Zealand. He said that he didn't think that his mother was dead but he had no idea where she was. He said that if she did show up he didn't want to be told about her or contacted by her.

12. On 21 October 2015 the accused was arrested and charged with the murder of his mother. He initially declined to be interviewed however on 28 October 2015 he requested through his legal representatives to be interviewed and confessed to killing his mother. He said that he was in his room when she came in angry about something. She had a knife in her hand and was yelling. He grabbed her wrist and they struggled. They fell to the floor with his arm around her throat. He had pressure on her throat and after a short time she wasn't moving. He sustained a cut which (sic) described as a papercut at some point in the struggle. He said that he moved her to her bed and around one or two days later he checked on her and discovered that she was dead. He then went to Bunnings and purchased a shovel and a bag of lime. He wrapped her in a blanket, put her in the boot of the car and drove out to Numinbah Valley where he dug a hole approximately 30 centimetres deep and buried her. The hole was full of water when he buried her. He poured the lime into the hole because he believed from having seen it used in a movie that it would help get rid of her body more quickly. (portion of interview to be tendered and played).
13. The accused participated in a re-enactment with police at the residence of his mother on 28 October 2015. Upon further questioning he said that his forearm was pressing against his mother's throat for a time which didn't seem to be more than 20 seconds. He didn't check for any signs of life until a day or two had gone by. After a couple of days he could smell faeces which is what drew him to check on his mother. He panicked and didn't want to get into trouble so he buried his mother's body. He took police to Numinbah Valley on two occasions (on 28 October 2015 and 30 October 2015) but was unable to locate the position where he buried his mother. In the opinion of the investigating police the accused attempted to the best of his ability to locate the deceased."

[16] In the course of his sentencing remarks, Boddice J said –

"Your lies continued even when, many years later in 2015, you became a suspect in the police investigation into your mother's disappearance. Ultimately, you confessed to having killed your mother. Thereafter, you took steps to take police to the site of her burial. Whilst those steps did not result in the recovery of any of your mother's remains, police accept you made genuine efforts to assist in finding those remains.<sup>7</sup>

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<sup>7</sup> Transcript of Proceedings, *The Queen v Daniel Paul Heazlewood* (Supreme Court of Queensland, Boddice J, 14 May 2018) 3 (Boddice J).

## Commissioner's Cooperation Report and Background

[17] The Board must have regard to the report of the Commissioner of Police ("Commissioner's Report") given under s193A(6) of the Act in answering the question of cooperation.<sup>8</sup>

[18] In this matter, the Commissioner's Report included the following statement–

*"By the time HEAZLEWOOD disclosed his involvement in the deceased's death, it was approximately six years after the death and subsequent burial. The versions provided to police from 28 October 2015, deprived police of any meaningful opportunity to recover the human remains of the deceased."*<sup>9</sup>

[19] These passages illuminate a dual difficulty for the applicant. The first is his credibility while the second, if the Board finds his belated accounts are credible, is the timeliness of those accounts.<sup>10</sup>

[20] In relation to the issue of credit, the Court of Appeal<sup>11</sup> has said –

*"...the Board appropriately regarded it as necessary, in considering whether there had been satisfactory cooperation by the appellant, to determine whether the information he provided was credible. In determining his credibility, lies previously told by him were relevant. In that regard, it was evident that he had lied either in the claim that the body was cremated or by the lie by omission of any mention of cremation and, indeed, creation of the impression at sentence that the body had been dumped. The lie by omission and misrepresentation would be material because the information was crucial to any search to be undertaken.*

...

*The difficulty for the appellant was that the Board could not be satisfied that the threshold question of satisfactory cooperation could be met in relation to either of the June 2016 and September 2017 disclosures, because it was unable to be satisfied of the truth of either."*

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<sup>8</sup> Corrective Services Act 2006 (Qld) s193A(7)(a)(i).

<sup>9</sup> Queensland Police Service, Prisoner Cooperation Report dated 25 February 2020 (endorsed 3 March 2020), p12.

<sup>10</sup> Corrective Services Act (2006) (QLS) s193A(6)(a).

<sup>11</sup> *Renwick v Parole Board Queensland* [2019] QCS 269 (per Holmes CJ, Gotterson and McMurdo JJA) p29, 32.



[21] In this application it may be said that the applicant, over the years from 2009 to 2015, undertook a deliberate and planned course of conduct involving non-disclosure, attempts to enact fake impressions, attempts to deflect investigations and a litany of egregious lies.

[22] A condensed chronology can demonstrate that course of conduct:

- a) June 2009 – Linda Sindon ('the victim') killed by applicant;<sup>12</sup>
- b) Immediately after disposal of body, the applicant made phones calls and sent texts between his phone and that of the victim *"to make it seem like she left"*; <sup>13</sup>
- c) 3 September 2010 – Father of the victim makes missing person report;<sup>14</sup>
- d) 14 January 2011 – Police statement taken from the applicant in which he states –

*"It would not shock me if she had just up and left and doesn't want anyone to know where she is."*<sup>15</sup>

- e) 25 August 2015 – A further police statement taken from the applicant in which he makes the following statements:

- 1) *"I know mum used to see a psychiatrist..."*<sup>16</sup>
- 2) *"...we never had any kind of fights or arguments."*<sup>17</sup>
- 3) *"I don't think she is dead..."*<sup>18</sup>
- 4) *"If she ever comes back I don't want to be told about her or contacted by her."*<sup>19</sup>

- f) 27 August 2015 – Telephone call from police to the applicant in which he states –

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<sup>12</sup> Transcript of Proceedings, *The Queen v Daniel Paul Heazlewood* (Supreme Court of Queensland, Boddice J, 14 May 2018) 3 (Boddice J).

<sup>13</sup> Record of Interview with Daniel Heazlewood at Southport Police Station dated 28 October 2015.

<sup>14</sup> Queensland Police Service, Prisoner Cooperation Report dated 25 February 2020 (endorsed 3 March 2020), p1.

<sup>15</sup> Queensland Police Service, Statement of Witness, Daniel Heazlewood dated 14 January 2011, p4[22].

<sup>16</sup> Queensland Police Service, Statement of Witness, Daniel Heazlewood dated 25 August 2015 p3[23].

<sup>17</sup> Ibid p7[53].

<sup>18</sup> Ibid p7[53].

<sup>19</sup> Ibid p7[56].

*"Yeah, as if mate, oh yeah, be all nice and happy, what the fuck is this bullshit man? I am so fuckin' pumped at this, I should sue the fucking police, this is some horseshit... if my mother is dead you would fuckin tell me first... call a fuckin lawyer and sue the shit out of you, this is like, heavy bullshit... she's not fucking dead...and none of my friends killed her."*<sup>20</sup>

- g) Various dates – Covert surveillance devices were placed in the applicant's residence and motor vehicle. The recordings subsequently obtained included the following statements made by the applicant:

- 1) *"Gotta (sic) remember where I put the bitch."*
- 2) *"Yeah I was checking on the bodies."*
- 3) *"Farcked (sic) her up... she just pushed me too far one day... ha...so I killed her."*<sup>21</sup>

- h) Based upon the information from the covert device in the applicant's motor vehicle and his journey to where he "put" the victim's remains, police were able to go to an area of bushland near the intersection of Nerang Murwillumbah Road and Pine Creek Road, Numinbah Valley and conduct an, albeit unsuccessful, search for human remains.

- i) 30 August 2015 – A telephone conversation between Senior Constable Tony Eggleton of Queensland Police Service and the applicant in which the following exchange took place<sup>22</sup> -

SCON Eggleton: *"... we've commenced a search today out um, in that Numinbah ar-, ah Numinbah Valley Area, round Pine Creek Road, um, so..."*

The applicant: *"Why are you looking? Is that like a missing persons hotspot or like what, I don't understand."*

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<sup>20</sup> Transcript of call between Senior Constable Tony Eggleton and Daniel Paul Heazlewood, 27 August 2015 [4:53pm to unknown].

<sup>21</sup> Queensland Police Service, Statement of Witness, Detective Sergeant Chad Davis dated 25 February 2020, p2-3[11].

<sup>22</sup> Transcript of call between Senior Constable Tony Eggleton and Daniel Paul Heazlewood, 30 August 2015 [4:23 to unknown].

- j) 1 September 2015 – A further telephone conversation between Senior Constable Tony Eggleton of Queensland Police Service and the applicant, in which the following statement was made by the applicant:<sup>23</sup>

The applicant: "... is it like a legal thing, like you know like truth serum and shit like that? Can't you just like cut all this crap out by doing that to people? You just jab 'em with that stuff and then just ask em' –."

- k) 2 September 2015 – A telephone conversation between Senior Constable Tony Eggleton of Queensland Police Service during which the applicant made the following comments:<sup>24</sup>

1) "She could have seen dozens of people after me that I don't know...I honestly don't think she's actually dead at all";

2) Upon being told the Police had concluded that the victim was likely dead, the applicant stated –

"Why is that though? Is there like other people I don't know that you've—";

3) When asked about the dates around the time of the killing, the applicant said –

"Pretty sure I wasn't even walking properly still at that point...Like I was in Gold Coast Hospital in Southport ... I was in like a wheelchair for a little bit...I couldn't really run or anything...like well over a year.";

4) "...but I do remember fairly a hundred percent... not killing anybody that year."; and

5) "Well, at the end of the day, I've done nothing wrong, so...don't really care...to be honest...everything'll be fine..."

- l) 4 September 2015 – Further in person conversations between officers of Queensland Police Service and the applicant during which the applicant

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<sup>23</sup> Transcript of call between Senior Constable Tony Eggleton and Daniel Paul Heazlewood, 01 September 2015 [6:55 to unknown].

<sup>24</sup> Transcript of call between Senior Constable Tony Eggleton and Daniel Paul Heazlewood, 02 September 2015 [5:07 to unknown].

affirmed that he never drove with the victim to Springbrook and again noted that he did not think the victim was dead.

m) 21 October 2015 - The applicant was arrested and declined, on legal advice, to answer questions.

- [23] On 28 October 2015, the applicant turned from this course of conduct and took part in an interview with officers of Queensland Police Service in the company of his legal representatives. In this interview, the applicant gave an account of the victim passing away in the course of a struggle, and thereafter transporting her remains to the Numinbah Valley where he buried her in a shallow grave, covering her body with lime before filling in the grave.
- [24] Thereafter he undertook a re-enactment of the killing and agreed to accompany police to an area in the Numinbah Valley in an attempt to locate the body.
- [25] Police had previously conducted searches in the area in Numinbah Valley which they had identified by reference to the covert listening device placed in the applicant's car. These searches utilised Queensland Police Service personnel, cadaver dogs, ground penetrating radar, excavations and the assistance of water police.
- [26] These searches took place between 24 August 2015 and 4 September 2015. They failed to locate the remains of the victim.
- [27] The applicant went with police to the same sites on 28 and 30 October 2015. Following the indications given by the applicant, additional searches, utilising the same methods and equipment as detailed above were carried out. Again, no remains were found.
- [28] At the Hearing before the Board on 11 September 2020, the applicant, who was not legally represented, gave the following evidence -

*"The only other thing is sort of my own - my own sort of take on the - sort of the no body no parole - like, the nature, extent and timeliness of that.*

*Yes, thank you?---My view from it is, obviously, it is from a - from once I got arrested. So - but obviously the view is from 2009 till now. Unfortunately, I can't do much about that time, but this is from - from when I got arrested, to the best of my ability, I - I - what's this first one - "nature and extent", by taking the police to the burial site on two occasions, the police interview, and also I went to the house in Ashmore and re-enacted, basically, everything that happened that night.*

*....*

*I made sure I left absolutely nothing out, no matter what the legal consequences would be.*

*...*

*I'm not doing all this for the - because of no body no parole. I did all this because - well, because people need to know what happened. I - I was stuck with it for quite a long time, you know, like - yeah, was not very good. And also my last thing to say was after the accident happened in 2009, I went into a state of denial about what had happened. I wasn't just denying it to police and family, obviously, I was denying it to myself. I never really let myself think about it or, you know. It wasn't until I got arrested and interviewed that I started to face the reality of what I had done, and I knew I had to do everything I could to - to make things right."*

### Legal Issues

- [29] It is observed that given the actions and lies of the applicant in this matter, it is a substantial step to accept the somewhat self-serving account given by the applicant to police following his eventual arrest.
- [30] Nevertheless, the Commissioner's Report accepts the truthfulness of these later accounts and the learned sentencing Judge accepted that approach.<sup>25</sup>
- [31] While such acceptance does not amount to issue estoppel<sup>26</sup> given that cooperation was not the "cardinal" matter to be determined by the sentencing Judge, the Act does require the Board to have regard to "any relevant remarks made by the sentencing court that sentenced the prisoner to a term of imprisonment the prisoner is serving for the offence".<sup>27</sup>
- [32] It may fairly be said that without external, objective support it would be extremely difficult to give credence to the applicant's claims of how and where he disposed of the body of the victim, given the barrage of untruths previously told.
- [33] The most important area of this support comes from the meticulous reconstruction by police of the route and ultimate destination of the applicant at a time when he was unaware of the covert listening device. It is significant that the reconstruction identified the same general area to which the applicant took police after his ultimate arrest.

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<sup>25</sup> Transcript of Proceedings, *The Queen v Daniel Paul Heazlewood* (Supreme Court of Queensland, Boddice J, 14 May 2018) 3[1]-[6].

<sup>26</sup> *Blair v Curran* (1939) 62 CLR 464 at 531-33 (per Dixon J); *Sunshine Coast Hospital and Health Service v Webb* [2020] QCA 189 10-12[46]-[58].

<sup>27</sup> *Corrective Services Act 2006* s193A(7)(a)(iii).

[34] That piece of objective evidence together with the statement in the Commissioner's Report that *"it's conceded that the version eventually provided by [the applicant] from 28 October 2015 is believed to be accurate regarding the disposal site of the deceased..."*<sup>28</sup>, leads the Board to concede that there has been cooperation by the applicant.

#### Timeliness

[35] The Board considers this to be a troublesome concept in the context of the legislation.

[36] The context includes-

- a) s193A(6)(a) which requires the Commissioner to evaluate, *inter alia*, the "timeliness of the prisoner's cooperation";
- b) s193A(3) which provides that "cooperation may have happened before or after the prisoner was sentenced to imprisonment for the offence"; and
- c) s193A(7)(a) which requires the Board, in considering the applicant's cooperation, to have regard to the Commissioner's Report (which itself evaluates timeliness).

[37] The issue is highlighted by the passage in the Commissioner's Report in the present matter which relevantly states "(that while the information regarding the disposal site is believed to be accurate) ... *due to [the applicant's] lack of timeliness, environmental factors have made recovery of the deceased's remains impossible. His delay in providing the information in a timely manner during the investigation removed the usefulness of his information.*"<sup>29</sup>

[38] Finally, if resort is made to the report of Parliamentary Committee, Corrective Services (No Body, No Parole) Amendment Bill 2017, Report No.58, 55<sup>th</sup> Parliament Legal Affairs and Community Safety Committee, July 2017, the following passage may be seen as illustrative:

#### **3.1.1 Section 193A(3) – timing of cooperation**

Proposed section 193A(3) provides that the cooperation by the prisoner may have happened before or after the prisoner was sentenced for the homicide offence.

The submission from Ms Splitt recommended that that this section be amended to require the prisoner to cooperate within two years from sentencing and that for prisoners already in jail, the Bill should provide a period of one year from the date of commencement, within which to

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<sup>28</sup> Queensland Police Service, Prisoner Cooperation Report dated 25 February 2020 (endorsed 3 March 2020), p13.

<sup>29</sup> Queensland Police Service, Prisoner Cooperation Report dated 25 February 2020 (endorsed 3 March 2020), p13.

provide the cooperation.<sup>40</sup> At the public hearing Ms Splitt explained that she made this recommendation on the basis that at the two year mark there is less likelihood for environmental damage to have occurred to the remains, and it would provide earlier closure for families, and would stop the appeal process being dragged out. However, Ms Splitt recognised that if this was introduced there would be no incentive for a prisoner to cooperate at a later date and stated that her proposed amendment may need some clarification.<sup>41</sup>

DJAG responded that the Bill is consistent with the approach recommended in the Parole System Review Report and the approach taken in other jurisdictions, and:

*The fundamental policy underpinning the Bill is that by making parole release for particular prisoners contingent on them satisfactorily cooperating in the investigation of the offence to identify the victim's location, it will encourage and provide incentive for these prisoners to assist in finding and recovering the remains of the victim. This will in turn, it is hoped, offer some comfort and certainty to the families of the victims.*

*For this cohort of prisoners, it may be that the encouragement and incentive to cooperate does not become tangible until their potential release date is upon them; rather than them providing cooperation as a reflection of their remorse and consciousness of guilt.<sup>42</sup>*

In response to a question from the committee at the public briefing, DJAG advised that Ms Splitt's proposal regarding a time limitation on cooperation is not consistent with any of the models in other jurisdictions:

*Essentially, the way it has been framed is that the cooperation can happen at any time, effectively, post conviction up until parole hearing. That in part reflects that some prisoners may not provide any cooperation until they have the pressure of parole and therefore they will receive a tangible benefit to themselves, as opposed to operating to effectively ease the grief of the family.*

*That is really the policy foundation—to locate the body or the remains or, if not, to try to identify the last known place. Whether that is earlier or later in that parole period, that would still be taken into account.*

- [39] As this passage shows, the “fundamental policy” underpinning the legislation appears to be at odds with “timeliness” where, as in the present case, the absence of salient cooperation prior to arrest and not until six (6) years after the killing, has resulted in the “impossibility” of recovering the remains.
- [40] Whilst it may be seen that s193A(2) speaks of cooperation in the investigation of the offence to identify the victim's location, and that, on the facts in the matter, the actual homicide investigation only commenced in 2015, that seems to the Board to be of little assistance in giving meaningful purpose to the word “timeliness” in s193A(6)(a).
- [41] It is observed that Counsel Assisting the Board, in written submissions, has also advanced an alternative submission that “timeliness” commences to run not from the time of the commission of the homicide offence, but from the time of the commencement of the investigation of the homicide offence.<sup>31</sup>
- [42] In the absence of the assistance of argument by the applicant, the Board is not minded to finally determine the question in the present matter.

### Conclusion

- [43] On the factual circumstances in the present case, the Board finds, in accordance with the Commissioner's Report, that the applicant did cooperate (after 28 October 2015) to identify the victim's location.
- [44] In light of this finding the applicant is entitled to be granted parole if he meets the requirements in the Act and having regard to the Ministerial Guidelines.
- [45] The Board will, as soon as practical, reconvene to consider the application for parole.

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<sup>30</sup> Corrective Services (No Body, No Parole) Amendment Bill 2017, Report No.58, 55<sup>th</sup> Parliament Legal Affairs and Community Safety Committee, July 2017 p12-13 (3.1.1).

<sup>31</sup> See *Commissioner of Police v Broederlow* [2020] QCA 161 at [15]; *Corrective Services Act 2006* s193A(2).