SUPREME COURT OF QUEENSLAND

CITATION:	*Musgrave v The Central and Northern Queensland Regional Parole Board* [2017] QSC 271
PARTIES:	**THOMAS RICHARD MUSGRAVE** (applicant) **v** **THE CENTRAL AND NORTHERN QUEENSLAND REGIONAL PAROLE BOARD** (respondent)
FILE NO:	BS2716 of 2016
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	17 November 2017
DELIVERED AT:	Brisbane
HEARING DATE:	19 July 2017
JUDGE:	Brown J
ORDER:	**The order of the court is that:** **1. The application is dismissed.** **2. If the respondent wishes to pursue an order for its costs to be paid by the applicant it should provide brief submissions of no more than two pages within seven days of the date of this judgment and the applicant should respond to them within seven days after receiving the Board's submissions. The Court will then determine the matter on the papers.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – GENERALLY – where the applicant was refused parole by the respondent (the decision) – where the applicant argued that the decision was vitiated on the grounds that; it took into account irrelevant considerations; it failed to take into account relevant considerations; it was an improper exercise of power; and, it was in bad faith – where the applicant argued that the respondent breached the rules of natural justice and did not accord the applicant procedural fairness – whether the grounds of review argued by the

applicant are established having regard to the relevant factual circumstances

Judicial Review Act 1991 (Qld)
Corrective Services Act 2006 (Qld)
Penalties and Sentences Act 1992 (Qld)

Wotton v Queensland (2012) 246 CLR 1; [2009] HCA 2
Wigginton v Queensland Parole Board & Anor [2010] QSC 59
Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24; [1986] HCA 40
Gough v Southern Queensland Regional Parole Board [2008] QSC 222

COUNSEL: The applicant appeared on his own behalf
M Hickey with S Forder for the respondent

SOLICITORS: The applicant appeared on his own behalf
Crown Law for the respondent

[1] This is an amended application by Thomas Richard Musgrave for a statutory order of review of a decision refusing parole which seeks orders:

(a) Setting aside the Parole Board's decision that refused the applicant's parole application at its meeting on 1 December 2015, further in a show cause letter dated 20 June 2016, its statement of reasons dated 13 October 2016 and its decision refusing parole on 19 July 2016 (recorded in a letter to the applicant of 22 July 2016);
(b) Directing the Parole Board to reconsider the decision within seven days and notify the applicant within the same time frame; and
(c) That the Parole Board pay the applicant's costs of and incidental to his application.

[2] The decision of 1 December 2015 of The Central and Northern Queensland Regional Parole Board ("the Board") refusing parole was in fact revoked by the Board on 19 April 2016, after the applicant had commenced judicial proceedings.

[3] The operative decision for which review is sought is the decision of the Board of 19 July 2016 refusing to grant parole ("the decision"). However, the applicant complains that, as a result of his complaint about the previous decision of the Board of 1 December 2015, the Board sought to "plug holes" that were in the previous decision and contends that this demonstrated that the decision of 19 July 2016 was for an improper purpose and in bad faith.

Person aggrieved

[4] It is uncontentious that the applicant is "a person aggrieved" by the decision for the purposes of s 7 of the *Judicial Review Act* 1991 (Qld).

Grounds of review

[5] The originating application[1] identifies six grounds of application. They are that, in making the decision, there was:

1. An improper exercise of power insofar as irrelevant considerations were taken into account in refusing the application, namely:
   (a) Outstanding treatment needs;
   (b) That a Queensland Corrective Services employee made the decision that the applicant was a moderate-low risk of sexual reoffending if released on parole.

2. Breach of rules of natural justice: that, inter alia, the Board failed to supply the applicant with requested information so that the applicant could respond to statements that the applicant was a moderate-low risk of sexual reoffending if released on parole.

3. An improper exercise of power insofar as it failed to take into account relevant considerations, namely:
   (a) That the applicant is in protective custody;
   (b) His positive attitude with cognitive goals, networks and future plans;
   (c) That the applicant has good family contacts with after care support listed within the application for parole;
   (d) The totality of sentencing remarks;
   (e) That no criminogenic needs were stated by the sentencing court;
   (f) That the sentencing court did not believe the applicant would present an unacceptable risk to society if granted early release and no condition that the applicant had to complete any program was made as part of the sentencing order.

4. An improper exercise of discretionary power in accordance with a rule or policy without regard to the merits of the case insofar as the Board is said to have applied a predetermined policy or rule that the applicant had not completed a course. The Board cannot refuse parole because the applicant has not completed a course or is regarded as an untreated sex offender as no uncomprehensive release or plan was submitted.

5. An improper exercise of power insofar as irrelevant considerations were taken into account on the basis that the Board had found that the applicant had

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[1] CFI 7.

provided a relapse prevention plan not within guidelines of the Form 29, s 180(3)(a) of the *Corrective Services Act* 2006.

6. An improper exercise of power, improper purpose and bad faith insofar as the Board exercised its powers acting outside of its preview. The Board informed the applicant that a major factor in its decision making was his inadequate relapse prevention plan which is said to be contrary to s 180(3)(a) of the *Corrective Services Act* 2006. The applicant further says that the Board reached its preliminary decision after taking into account matters which were not before the sentencing court and which were said to be incorrect and challenged by the applicant.

[6] The applicant provided lengthy written submissions which he relied on. A number of the matters canvassed in the submissions did not relate to grounds of review but rather other issues such as questions of breaches of the implied freedom of political communication. They do not constitute a basis for judicial review and will not be considered further.[2]

[7] The Board also provided an outline of submissions.

[8] Both parties made oral submissions at the hearing.

Legislative regime

[9] Pursuant to s 193(1) of the *Corrective Services Act* 2006 ("the Act") the Board may either grant or refuse an application for a parole order.

[10] The Act does not expressly identify matters that must or must not be taken into account when considering an application. The Board's discretion is unfettered.[3] The scope of the Board's powers are determined having regard to the subject matter, scope and purpose of the Act.[4]

[11] It is well established that the relevant and irrelevant consideration grounds of judicial review only apply where the decision maker is bound to take or not take into account a particular matter in making a decision under the statute conferring the decision making power.[5] It is generally for the decision maker to determine the weight of matters which are required to be taken into account. Complaints that some matters have been given excessive or inadequate weight go to the question of the merits of the decision and generally do not provide a basis for judicial review. [6]

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2 See for example applicant's submissions at [21], [51], [59], [72] and [80].

3 *Wigginton v Queensland Parole Board & Anor* [2010] QSC 59 at [26].

4 *Wotton v Queensland* (2012) 246 CLR 1 at [8]-[9] per French CJ, Gummow, Hayne, Crennan & Bell JJ and [84] per Kiefel J (as Her Honour then was).

5 *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24.

6 *Australian Retailers Association v Reserve bank of Australia* [2005] 148 FCR 446 at [525].

[12] Guidelines are issued pursuant to s 227 of the Act, namely the Queensland Parole Board Guidelines to the Queensland Regional Parole Board.

[13] Those Guidelines provide that:

> "1.2 When considering whether a prisoner should be granted a parole order, the highest priority for the Regional Parole Board ('the Regional Board') should always be the safety of the community.
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> 1.3 The Regional Board 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.
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> …
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> 2.1 When deciding the level of risk that a prisoner may pose to the community, the Regional Board should have regard to all relevant factors, including but not limited to, the following –
> a) the prisoner's prior 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;
> d) whether the prisoner has been convicted of a sexual offence listed in Schedule 1 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 corrections system;
> g) any medical, psychological, behavioural or risk assessment report relating to the prisoner;
> h) any submissions made to the Regional Board by an eligible person registered on the victims register;
> i) the prisoner's compliance with any other previous grant of community based release, resettlement leave program, community service or work programs;
> 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." [7]

[14] The role of guidelines within a decision making context are, unsurprisingly, to guide a decision. They should not, however, be so rigidly enforced as to deny a true and honest assessment of the merits of the case.[8]

Lack of completion of the MISOP

[15] A number of the grounds of review complain that the decision-maker wrongly took into account that the applicant has not completed the Medium Intensity Sexual Offending Program (MISOP), asserting that:

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7 Exhibit CL-10, affidavit of C Lindsey, CFI 10.

8 *Wigginton v Queensland Parole Board & Anor* [2010] QSC 59 at [29].

(a) It was an irrelevant consideration;
(b) The Board blindly adhered to guidelines without considering the merits of the case and it was the only basis upon which the applicant was found to be an unacceptable risk;
(c) The Board failed to consider that the sentencing court did not require such a program to be considered.

[16] There is no dispute that the applicant has not completed the MISOP at the time the Board made its decision.

[17] The consideration of whether an applicant has completed a particular program or not properly falls within the relevant considerations of the Board in its assessment of the risk that a prisoner may pose to the community. A prisoner's willingness to undertake or not undertake recommended rehabilitation programs is also a relevant consideration. Parole cannot however be simply refused solely upon the basis of non-completion of a recommended program alone. The Board must consider whether the prisoner is an unacceptable risk to the community.[9]

[18] The applicant submitted that the Board relied only on the applicant's failure to participate in a nominated sexual offenders' program as the basis for determining that he posed an unacceptable risk to the community if released on parole.

[19] In its findings of fact set out in its statement of reasons the Board found that:

(a) The applicant had a lengthy criminal history and in particular noted previous sexual offences which he had committed and when they were committed;
(b) The applicant had been assessed as a low-moderate risk of sexual reoffending and completed the Getting Stared Preparatory Program in May 2015. A copy of that report was before the Board;
(c) The applicant had been recommended to undertake the MISOP however he has declined to participate when a place was offered to him in September 2015 citing family reasons;
(d) The applicant is only willing to complete the MISOP at the Maryborough Correctional Centre, or participate in a course provided by a psychologist whilst in the community on parole.
(e) The applicant had submitted a limited relapse prevention plan which does not detail or identify to the Board's satisfaction the applicant's high risk situations, triggers and coping mechanisms to address his sexual offending;
(f) The applicant has an approved home assessment for his proposed home address.

[20] In its statement of reasons, the Board concluded that the applicant posed an unacceptable risk to the community if released on parole. In reaching that conclusion, the reasons set out a number of matters which were considered by the Board. The significance of the lack of completion of the MISOP by the applicant was considered in that context and was not the sole basis for the Board concluding that the prisoner posed an unacceptable risk to the community if released on parole.

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9 *Gough v Southern Queensland Regional Parole Board* [2008] QSC 222 at [51] and [67].

[21] The Board in its statement of reasons considered the applicant's contact with Ms Bardsley, a psychologist who runs a sexual offender's program in the community. It noted that his proposal to undertake the program was positive and in his favour. However the Board found that he was unsuitable to undertake the program in the community due to his failure to demonstrate an appropriate level of insight into his offending. It considered that his completion of the programs in a custodial setting would enable the applicant to develop these insights and assist in developing a robust plan.

[22] The Board found that, in contrast to Ms Bardsley's program, "MISOP is based on the Cognitive Behavioural Therapy Model of interventions. Sexual offending programs that target the cognitive drivers behind sexual offending provide sexual offenders with the cognitive, emotional and behavioural skills to live an offence free lifestyle when released into the community."

[23] The Board also found that the applicant had been unable to verbalise a relapse prevention plan which appropriately detailed how the applicant proposed to manage his behaviour upon release into the community. In that regard, the Board had particular concerns that the applicant did not yet appreciate the challenges that parole may pose and that aspects of his plan relating to identifying high risk situations, triggers and coping mechanisms to address his sexual offending needed to be more fulsomely addressed before the Board could consider the applicant to be an appropriate candidate for parole.

[24] The Board also stated, in the context of the applicant having outstanding treatment needs, that it gave consideration to a treatment program being completed in the community to address its concerns, however, it decided that given the applicant's inadequate relapse prevention plan, it would be too great a risk to release the applicant into the community without his having first successfully completed an appropriate treatment program.

[25] In addition to the inadequate relapse plan, the Board also considered that the contents of the Parole Board's assessment report stated the applicant had demonstrated very little remorse for his victim or the impact that his offence had had on her. It found that that was a further reason why the applicant should complete the identified sexual offenders' treatment program whilst in custody and why he was not a suitable candidate for parole at that time.

[26] The applicant submitted that there was blind adherence to the guidelines by the Board, particularly in taking into account that the applicant had not yet completed a program to address his behaviour and issues that lead to offences, particularly the MISOP. The above analysis of the Board's reasons demonstrate that that was not the case.

[27] The applicant placed particular reliance on the fact that the sentencing court did not order program participation when sentencing the applicant. It is true that the sentencing court did not recommend that the applicant engage in the MISOP or another program. The court's remarks were contained in the updated Parole Board Assessment Report that was before the Board.

[28] The applicant's complaint arises from a misconception insofar as it fails to recognise the separate and unrelated statutory functions of the sentencing court when sentencing

and making an order for a parole eligibility date and the Board in determining an application for parole upon that date having been reached. The court determines sentencing according to the considerations outlined in the *Penalties and Sentences Act* 1992 (Qld) whereas the Board determines whether to grant parole according to the provisions of the *Corrective Services Act* 2006 (Qld). The lack of reference by the sentencing court to the undertaking of such a program does not provide evidence that the court did not consider such a program should be undertaken. Recommending such programs be undertaken is generally not the role of the sentencing court, save that it may do so in particular cases which are not applicable here. There is no proper basis for complaint in terms of judicial review in this respect.

[29] A further complaint by the applicant is that the Board failed to take into account relevant considerations, in particular a program of Ms Bardsley who offers an alternative program "Good Lives Model Sexual Offending Treatment Program" in the community.

[30] That contention, however, is not supported by the statement of reasons provided by the Board, which demonstrates that the Board did consider the program offered by Ms Bardsley as set out above.[10] The material before the Board also included a request for advice from the Offender Intervention Unit as to the suitability of the Good Lives Model Sexual Offending Treatment Program run by Ms Bardsley in the community as against the MISOP in custody.[11] The acting principal advisor of the Offender Intervention Unit wrote to the Board on 18 April 2016 in relation to the program and the differences from MISOP and this correspondence was considered by the Board.[12]

[31] Unlike the case of *Gough v Southern Queensland Regional Parole Board,*[13] the Board in this case did consider the fact that while the applicant did not complete the MISOP he was prepared to engage in an alternative community based program.

[32] The applicant also raised that the Board did not consider the fact that if he serves his full sentence he will be unsupervised on his release. Given the above considerations by the Board and the length of time to be served there was no failure to consider a relevant consideration by the Board in this respect.

[33] The Board's statement of reasons demonstrate that the Board did not blindly adhere to Ministerial Guidelines in determining that the applicant posed an unacceptably high risk to the community. Nor did it simply rely on the fact that the applicant had not completed the MISOP and ignore positive aspects of his behaviour and his willingness to undertake the program offered by Ms Bardsley. It has undertaken a process weighing up the evidence before it, including evidence presented by the applicant.

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[10] Exhibit CL-9, affidavit of C Lindsey, CFI 10.
[11] Exhibit CL-24, affidavit of C Lindsey, CFI 10.
[12] See statement of reasons document 18.
[13] [2008] QSC 222.

[34] Having regard to the above, the grounds of review which complain that the Board took into account irrelevant considerations or failed to take into account relevant considerations in relation to the applicant's engagement in a sexual offenders' program and had made its decision applying a pre-determined policy or rule based on the applicant not having completed the program are not established on the evidence. I find that grounds one, three and four of the amended application are not substantiated in relation to this matter.

Requested information about assessment of risk and denial of natural justice

[35] The applicant contends that the Board failed to supply the applicant with requested information so that the applicant could adequately respond to the statement made that the applicant was a moderate-low risk of sexual reoffending if released on parole, which was accepted by the Board.

[36] This assessment was referred to in a report prepared by Queensland Corrective Services (QCS) in the updated Parole Board Assessment Report which was provided to the Board.[14]

[37] In paragraphs [33]-[34] of his submissions, the applicant stated that "the request for the reporting from QCS stating that he would be a moderate-low risk of sexual reoffending if released has not been provided to the applicant for rebuttal." The applicant also raised the qualification of the 'Queensland employee' to make such an assessment and contended that it was an irrelevant consideration to take into account.[15]

[38] In its letter of 20 June 2016,[16] the Board identified as a preliminary view that it would decline to order parole and identified the adverse factors which had resulted in that opinion and invited the applicant to make submissions in that regard. In particular, it stated:

> "The Board noted you have been assessed as a low to moderate risk of sexual reoffending and you have completed the Getting Started Preparatory Program in May 2015 with a recommendation to complete the Medium Intensity Sexual Offending Program (MISOP). You have declined to participate in the MISOP program which commenced in September 2015 due to family reasons and you have advised you are only willing to participate in MISOP Program at Maryborough Correctional Centre or participate in a course whilst in the community, provided by an external psychologist. (emphasis added)
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> The Board noted all sexual offending interventions are based on the Cognitive Behavioural Therapy Model of interventions. Sexual offending programs target the cognitive drivers behind sexual offending while providing sexual offenders with the cognitive, emotional and behavioural skills to live an offence free lifestyle.

14 Exhibit CL-4, affidavit of C Lindsey.
15 Applicant's submissions at [36].
16 Exhibit CL-5, affidavit of C Lindsey; Exhibit TM-3, affidavit of T Musgrave, CFI 9.

> The Board recommends you participate in the MISOP Program which [sic] in custody to provide you with insight into your sexual offending behaviour and to assist in developing a robust relapse prevention plan."

[39] The applicant was therefore put on notice as to the assessment made and given the opportunity to respond to the suggestion that he had been assessed as low to moderate risk of sexual reoffending. In his response of 3 July 2016, the applicant referred to the updated Parole Board Assessment report.[17] That report noted a STATIC-99R assessment was completed for Mr Musgrave which resulted in a score of 2 which indicates a moderate-low risk of reoffending. That assessment was also referred to in the Getting Started Preparatory Program in terms of the reference of the score of 2 which was signed by Mr Musgrave as having been received by him or read to him and is annexed to his affidavit as Exhibit TM-8.[18] Such an assessment goes to the risk posed by the applicant and is not an irrelevant consideration and was properly a matter to which the Board could have regard. The applicant's letter of 3 July 2016 did not include a request for any further material.

[40] The applicant was told of the assessment of his moderate-low risk of reoffending and given the opportunity to respond. He appears to have had documents considered by the Board which referred to the assessment, however, in any event the applicant was clearly put on notice of that assessment and given the opportunity to respond. The Board discharged its obligations of procedural fairness in this regard.

[41] The applicant also complained the assessment was made by an unqualified employee. That is not a matter that has been substantiated by any evidence on this application.

[42] A further complaint made by the applicant is that a meeting conducted by officers of QCS at the "Maryborough CC" was outside jurisdiction. This, appears to, *inter alia*, have led to a report prepared for the Board which was an "updated Parole Board Assessment Report".[19] The meeting is referred to in the report. The report and recommendations made are matters to which the Board can properly have regard.

[43] A similar complaint was considered by Applegarth J in *Gough v Southern Qld Regional Parole Board* [2008] QSC 222 at [28] to [30]. His Honour stated:

> "[28] The fact that the CSA does not make specific provision for the communication to a parole board of a PBAR that includes recommendations does not mean that the provision of such a report is unauthorised. It does not mean that the process that was followed in this case was not in accordance with 'procedures that were required by law to be observed in relation to the making of the decision'. (footnote omitted)
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> [29] The fact that the recommendation contained in the PBAR was considered and effectively adopted by the Board does not mean that the

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17 Exhibit CL-4, affidavit of C Lindsey, CFI 10.

18 The applicant provided an article in relation to, *inter alia* STATIC-99 assessments to the Board, which was before the Board: Exhibits CL-30 and CL-31, affidavit of C Lindsey, CFI 10.

19 Exhibit CL-4, affidavit of C Lindsey, CFI 10.

> decision under review was not the Board's decision. The panel did not assume the jurisdiction of the Board, and the Board exercised the jurisdiction conferred upon it.
>
> [30] The grounds of judicial review relating to this area of grievance are not established."

[44] In this case, it is evident from the terms of the Board's decision and the statement of reasons that the recommendations of the updated Parole Board Assessment Report were weighed against other evidence that was before the Board, including from the applicant. There is no evidence to support the suggestion that the decision was not made by the Board but by an "outside jurisdiction" as is submitted by the applicant.[20] The Board did not fail to discharge procedural fairness and did not abdicate its decision-making role.

[45] The applicant has also asserted that the Board failed to take into account the parole eligibility date recommended by the sentencing court and that the reasoning for such a decision is against the rules of natural justice.[21] The parole eligibility date was a matter clearly considered by the Board and is one of the material facts found in its statement of reasons. The giving of such a date provides for the date on which the applicant is eligible to apply for parole but the determination of whether it is given lies with the Board. There is no basis for the complaint of the applicant.

[46] The grounds of review in paragraphs 1(b), 2, 6(a) and 6(c) of the amended application are not established.

Failure to consider relevant considerations

[47] The applicant submits that the Board failed to take into account that "the sentencing court did not believe that the applicant would present an unacceptable risk to society if granted parole".[22] As stated above that is based on a misconception given that the sentencing judge recommended the date for parole eligibility rather than providing an assessment of risk if the applicant is granted parole. It was not a part of a separate function of the court as opposed to the assessment carried out by the Board. That is also the position with respect to the complaint that no criminogenic needs were stated by the sentencing court. The remarks of the sentencing court were referenced in the updated Parole Board Assessment Report considered by the Board. There is no failure by the Board to take into account a relevant consideration in this regard.

[48] The other matters raised by the applicant as being relevant considerations which the Board failed to take into account were that the applicant was in protective custody, had a positive attitude with cognitive goals, networks and future plans and had good family contacts with after care support listed within the application for parole. These matters were outlined in the applicant's application to the Board which was

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20 Applicant's submissions at [46].
21 Applicant's submissions at [50].
22 Applicant's submissions at [62].

considered by the Board.[23] Paragraph 11 of the statement of reasons of the Board makes reference to some of the positive factors favouring the applicant.

[49] The complaint of the applicant is really in relation to the assessment by the Board of the matters he presented to the Board as compared to other matters before the Board rather than the failure to take those matters into account. That seeks to attack the merits of the Board's review which falls outside the jurisdiction of this Court in considering the present judicial review application.

[50] The applicant also complains about criticisms the Board made about his relapse prevention plan and submits that the Board failed to take into account the plan, which was attached to his application to the Board. The Board in its letter of 20 June 2016 to the applicant stated that the applicant had submitted a limited relapse prevention plan and that he had been unable to reiterate his high risk situations, triggers or coping mechanisms highlighted in his written Relapse Prevention Plan. The applicant's letter in reply[24] did not address that matter further. The Board did not fail to take into account the relapse plan nor did it fail to accord procedural fairness, given that the applicant was notified of its concerns prior to it making the final decision after the applicant was given the opportunity to make submissions.

[51] The Board's finding of the inadequacy of the plan again is a matter that falls within the merits of the decision.

[52] The applicant also submits that the Board failed to consider the fact that the applicant was willing to participate in programs in the community.[25] That submission is not supported by the evidence. In the statement of reasons, as set out above, the Board expressly referred to the willingness of the applicant to participate in a community based program.

[53] None of the grounds of judicial review are made out.

Application of rule of policy

[54] This complaint again appears to be based on the view expressed by the Board that the applicant should undertake the MISOP rather than engage in a community based program as proposed by the applicant. As set out above, the Board did set out its reasons for considering that such a program should be undertaken by the applicant rather than that opinion being the result of a slavish attachment to a policy. This ground is not made out.

Improper purpose/bad faith

[55] The applicant states that it is an improper exercise of power to place so much weight on a relapse prevention plan. He also contends that the Board failed to consider his

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23 Exhibit CL-2, affidavit of C Lindsey at [5], CFI 10, (document 31 listed in the statement of reasons).
24 Exhibit CL-6, affidavit of C Lindsey, CFI 10.
25 Applicant's submissions at [81].

application on its merits in considering the relapse prevention plan and the failure by the applicant to complete the MISOP and acted in bad faith.[26]

[56] The applicant also complained that the Board sought to plug gaps by this decision that had emerged in its previous decision in December 2015, which was subsequently revoked by the Board. The complaint is unparticularised. The December 2015 decision had been the subject of the applicant's original judicial review application and was set aside by the Board. If a decision-maker does seek to address matters previously overlooked in an earlier decision, that does not of itself establish any improper exercise of power or bad faith.

[57] There is no evidence that the Board acted in bad faith or that there was an improper exercise of power. This ground is not made out.

[58] There is a suggestion in the applicant's outline of argument, although not in the grounds of application, that the decision of the Board was unreasonable insofar as it assumed the applicant would reoffend in the same manner as his previous conviction and that there was no evidence that he would reoffend at all, just because he exercised his right to maintain his stance of innocence notwithstanding his plea of guilty. However, in that regard, the Board has identified the various matters upon which it found that the release of the applicant would pose an unacceptable risk to the community at that time. On no reading of the Board's decision can it be said to be so unreasonable that no reasonable person could so exercise the power. There is no error giving rise to a ground of review in that regard.

[59] The applicant also contended that the Board failed to take into account the position of his partner and her vulnerability and her state of health. That is contrary to the matters specifically set out at [18] of the Board's reasons.

[60] The applicant's dissatisfaction with the decision of the Board arises from the Board's assessment of the merits of his application and the weight attached by the Board to various matters. Those are not matters which found a basis for judicial review.

Conclusion

[61] The application of the applicant is dismissed.

Costs

[62] The Board seeks its costs of the application. Mr Musgrave has not addressed the question of costs in his application. Having regard to the matters in s 49 of the *Judicial Review Act* 1991 (Qld) which the court must consider in determining any order as to costs, if the Board wishes to pursue an order for its costs to be paid by the applicant it should provide brief submissions of no more than two pages within seven days of the date of this judgment and Mr Musgrave should respond to them within seven days

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[26] Applicant's submissions at [106]-[107].

after receiving the Board's submissions. The Court will then determine the matter on the papers.