In the matter of

ANNEMARREE LEE

(Applicant)

SECTION 193 *CORRECTIVE SERVICES ACT 2006*

PROCEEDING:	An application for a parole order
DELIVERED ON:	26 July 2021
DELIVERED AT:	Brisbane
MEETING DATES:	The Board met to consider the application on 10 June 2020, 5 August 2020, 29 January 2021, 7 May 2021, 25 June 2021, 13 July 2021 and 15 July 2021
SENIOR BOARD MEMBER:	Deputy President Peter Shields
DECISION DATE:	25 June 2021
DECISION:	The application for parole is granted and is to commence on 19 July 2021. It is considered that the application for a parole order is of considerable public interest, accordingly, reasons are published.

Application for a parole order

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

[2] The Board must decide the application within strict statutory time limits.[2]

[3] If the Board refuses to grant the application, the Board must give the prisoner written reasons for the refusal and decide a period of time within which a further application for a parole order by the prisoner must not be made without the Board's consent.[3]

[4] Section 188 of the Act mandates that after receiving a prisoner's application for a parole order, the Board must give the Chief Executive[4] written notice of the application. Within seven (7) days after receiving the notice, the Chief Executive must give each eligible person in relation to the prisoner written notice of the application.

[5] The term "eligible person" is defined in the dictionary to the Act contained in Schedule 4 with reference to s.320(1) of the Act. Section 320 identifies various persons who may be interested in a prisoner's application for parole such as the victim of the prisoner's crime, or if the victim is deceased, an immediate family member of the deceased.

The priority of the Board is protection of the community

[6] In *Ripi v Parole Board Queensland*,[5] Davis J stated that s.193 of the Act concerns the process for the making of a decision by the Board but it does not prescribe the considerations relevant to an application. However, s.242E of the Act provides as follows:

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

[7] Guidelines have been made by the Minister. Section 1 of the Guidelines contains the guiding principles for considering parole. Section 1 provides as follows:

> "**SECTION 1 – GUIDING PRINCIPLES FOR PAROLE BOARD QUEENSLAND**
>
> 1.1 Under section 242E of the *Corrective Services Act 2006* (the Act) the Minister may make guidelines about policies to assist Parole Board Queensland in performing its functions. In following these guidelines, care should be taken to ensure that decisions are made with regard to the merits of the particular prisoner's case.
>
> 1.2 When considering whether a prisoner should be granted a parole order, the highest priority for Parole Board Queensland should always be the safety of the community.

1.3 As noted by Mr Walter Sofronoff QC[6] in the Queensland Parole System Review '*the only purpose of parole is to reintegrate a prisoner into the community before the end of a prison sentence to decrease the chance that the prisoner will ever reoffend. The only rationale for parole is to keep the community safe from crime*'. With due regard to this, Parole Board Queensland should consider whether there is an unacceptable risk to the community if the prisoner is released to parole; and whether the risk to the community would be greater if the prisoner does not spend a period of time on parole under supervision prior to the fulltime completion of their prison sentence."

[8] As further stated by Davis J in *Ripi*,[7] the guiding principles articulated in s.1 of the Act are consistent with the purpose of the Act as stated in s.3(1):

> "**3 Purpose**
>
> (1) The purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders."

[9] The Guidelines provided to the Board are no longer expressed in mandatory terms. The Guidelines are not "to be followed" but are "to help the Parole Board".[8]

[10] As prescribed by both the *Corrective Services Act*[9] and the Guidelines,[10] the priority of the corrective services regime, including parole, is protection of the community.[11]

The present application

[11] Annemarree Lee ('the applicant') was charged, together with a co-offender William Andrew O'Sullivan, with one count of unlawfully killing Mason Jet Lee and one count of cruelty to a child by failing to provide him with adequate medical treatment, when it was available to them and when they ought reasonably have known that the failure to provide treatment would cause the child harm. These charges were charged as domestic violence offences as a circumstance of aggravation.

[12] Both the applicant and her co-accused were convicted on their own pleas of guilty but they were sentenced separately.[12]

[13] On 20 February 2019, Justice Dalton in the Supreme Court at Brisbane sentenced the applicant. Her Honour sentenced the applicant to nine years imprisonment for the unlawful killing offence and to a lesser concurrent term of three and a half years for the cruelty charge. Her Honour declared 936 days of pre-sentence custody as time already served. Her Honour imposed a parole eligibility date of 19 July 2019.

[14] The Attorney-General of the State of Queensland then appealed the applicant's sentence on the ground that the sentence imposed was manifestly inadequate. In the judgment of

the Court delivered on 17 December 2019, the Court of Appeal dismissed the Attorney's appeal against sentence.[13]

[15] The applicant became eligible for parole on 19 July 2019.

[16] On 14 February 2020, the applicant filed an application for parole ('the application'). This application was received by the Board on 17 February 2020.[14]

[17] The applicant's application was first considered by the Board on 10 June 2020. The Board deferred the application to obtain further information.

[18] The application was further considered on the following dates: 05 August 2020, 29 January 2021, 07 May 2021 and 25 June 2021.

[19] At its meeting on 25 June 2021, the Board made a decision to grant the applicant release on a parole order but subject to the applicant securing accommodation at her nominated address. Further, the Board tailored the conditions of the parole order in order to ensure the applicant's good conduct and to stop the applicant committing an offence.

[20] The Board further considered the matter again on 13 July 2021 and 15 July 2021, as a consequence of receiving confidential information from eligible persons. In response to the confidential information, additional conditions were added to the parole order.

The applicant's offending

[21] The Board had regard to the sentencing remarks of Dalton J dated 20 February 2019 when her Honour imposed sentence upon the applicant.[15] The Board also took into account the decision of the Court of Appeal dated 17 December 2019, which dismissed the Attorney-General for the State of Queensland's appeal against the applicant's sentence.[16]

[22] The Court of Appeal set out of the facts of the offending of the applicant and her co-offender in its judgment. Saliently, the Board noted the following facts in relation to the applicant's offending:

> "[2] Most of the facts are common to both appeals. Mason had been punched in the abdomen and the results of that blow were catastrophic. His duodenum was perforated and his proximal jejunal mesentery was torn. The duodenum and the jejunum are the first parts of the small intestine. The mesentery attaches the intestine to the abdominal wall. These ruptures led to chemical and bacterial peritonitis, that is to say, inflammation and septicaemia – or blood poisoning. These consequences would not have been fatal with medical treatment. However, there was no treatment. The medical signs showed that Mason lay untreated for four or five days after being punched. He suffered until he died. Within hours of being hit he was vomiting. He became dehydrated. He was in pain. The peritonitis caused a fever. It should have been obvious to any adult observer that Mason was in urgent need of medical attention. After

a time, Mason descended into a state of shock. His organs began to fail and he lost consciousness and, finally, he died.

[3] Mason was the youngest of five children of one of the respondents, Annemarree Louise Lee. She lived in Caboolture in a house about a kilometre from the house where Mason's body was found. She had been in a relationship with the other respondent, William Andrew O'Sullivan, for about a year and it was in O'Sullivan's house that Mason died."

[23] In its judgment, the Court gave detailed particulars regarding the applicant's prejudicial life leading up and including during the offending. The Board had regard to the Court's judgment regarding the factors in mitigation of her sentence as these factors are relevant to understanding the applicant's likelihood of re-offending and whether her risk can be appropriately managed in the community by way of supports, both prosocial and professional, and by imposing the conditions that the Board is entitled to impose to reduce the applicant's risk to the community. The Board particularly noted the following passages of the Court's judgment:

"[165] The second appeal concerns Mason's mother, Annemarree Lee. The objective circumstances of her offending have already been set out. It remains necessary to consider her personal circumstances, as well as the proceedings at first instance.

[166] This respondent's culpability in the offence of killing Mason lay in her neglect of him. Her circumstances at the time of the offence were, unfortunately, not unusual in such cases. The respondent was the youngest of four children. Her mother left the family when she was aged two. She recalls being the victim of her father's sexual abuse, sometimes of a violent nature, from about the age of five. The abuse was by a range of sexual acts from touching to sexual intercourse. She was also the victim of her father's physical assaults, which included beatings with instruments, burnings and choking. The respondent also saw these things done to her siblings. Later, she was sexually abused by one of her brothers. After she was nine years old, her older siblings reported these matters to police and the children were removed from the father's care. Her father was charged, convicted and imprisoned. This inevitably resulted in a wholly disrupted upbringing, a loss of any chance of education and a turning to drugs and sexual relations as a means of palliation. For a time the respondent was homeless.

[167] The respondent became pregnant for the first time when she was 15 years old. Her then partner was violent and controlling. She did not complain to police about him, fearing his retribution. All but one of her ensuing partners was the same kind of man and the respondent's relationship with O'Sullivan continued this pattern. He insisted that she break off relationships that she had with other people. He was frequently violent towards her. She made some ineffectual attempts to protect her young children from O'Sullivan's violence but she always submitted to his will in the end. He

continually told her that she was a failure as a mother and that she was unable to care for her son, and she was too scared and timid to stand up to him. In the months before Mason's death, she was making efforts to leave O'Sullivan with the help of staff from the Department of Child Safety. While doing so, she was still submitting to sexual intercourse with O'Sullivan in order to avoid his suspicions about her intentions.

[168] The respondent says that Mason had been in O'Sullivan's care for most of the time during which his physical condition deteriorated. She denied knowing that O'Sullivan had mistreated Mason. She denied seeing O'Sullivan hit Mason. She used cannabis at O'Sullivan's insistence but denied using other drugs.

[169] A pre-sentence report by Dr Josephine Sundin, a psychiatrist, says that in the period leading to Mason's death the respondent was suffering from post-traumatic stress disorder and an unspecified mood disorder. Her upbringing gave rise to a frame of mind in which she believed that intimate attachments would always be accompanied by fear, apprehension, coercion and exploitation. For Lee, submission to the control inflicted upon her by O'Sullivan was normal.

[170] As Dr Sundin explained, this situation and the respondent's frame of mind meant that her "emotional field of vision narrowed to the point that she did not recognise the threats to Mason's wellbeing and did not register in the last week that he was gravely ill". Her delegation of Mason's care to O'Sullivan was consistent with her subordination of herself, her rights, her interests and her opinions to a dominant and violent man.

[171] Her initial account to police was largely consistent with the history obtained by Dr Sundin.

[172] The case of manslaughter against this respondent was based, in part, upon her knowledge in June 2016 that O'Sullivan's treatment of Mason in the early part of that year had resulted in his hospitalisation. She knew that O'Sullivan was a heavy user of methylamphetamine and that he was given to paranoia and to violent rages against her and against her young children. Nevertheless, she let O'Sullivan keep Mason in his house. In the days after Mason was fatally injured the respondent must have known that he was gravely ill but she did nothing. She was talking to officers of the Department of Child Safety at about that time and she could have asked for their help. Even when she was at O'Sullivan's house on 8 June, at a time when Mason needed urgent medical treatment, she did nothing for him. When someone else repeated this warning on the following day she still did not act. Instead, she left Mason with O'Sullivan."

[24] Further, the Board had regard to the Court's comments regarding the applicant's remorse and her experience of domestic violence as a contributing factor to her son's death:

"[175] In this case, the unchallenged evidence proved that the respondent was simply unable to protect her son against O'Sullivan. While she was sometimes moved to recover her son from O'Sullivan's custody, his dominance over her meant that she could do nothing without his permission and he refused to give her his permission. An appeal by her to police for assistance when she was in constant fear of physical retribution was out of the question for her. Her consultations with Departmental officers were ineffectual even to protect herself. She could change nothing. Dr Sundin's explanation is that the respondent's criminal neglect of Mason was due to the same disabilities that made her incapable of doing anything to get away from the sphere of influence of a violent and controlling man. The genuineness of the respondent's remorse for her role in her son's death and the effect of her guilty plea as evidencing that remorse have not been challenged and rightly so."

[25] The Board took into account the Court's judgment regarding the applicant's culpability for the death of her child in the context of her prejudicial upbringing and circumstances regarding the offending:

"[177] The facts that constitute the circumstances of aggravation are not the same in their implications for the respondent. A mother's grievous neglect of her child leading to the child's death is an affront to community values but an understanding of the reasons for the neglect lessens the sense of indignation that is felt. The respondent's personal circumstances, as O'Sullivan's victim in an oppressive relationship and as the victim of her own upbringing, operate heavily in mitigation of her moral culpability for Mason's death. A severe head sentence was warranted in this case but an early parole eligibility date was apt to give effect to Lee's personal circumstances as well as to her early plea and her true remorse, a remorse which is really the permanent burden she will bear because she caused her son's death. There was no error made by the learned sentencing judge in the weight given to mitigating factors."

Suitability of the applicant for a parole order

[26] As previously stated, s.242E of the Act states the Minister may make guidelines about policies to help the Board in performing its functions. Section 2 of the Ministerial Guidelines relates to 'Suitability' and states:

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

a) the prisoner's criminal history and any patterns of offending;
b) the likelihood of the prisoner committing further offences;

c) whether there are any other circumstances that are likely to increase the risk the prisoner presents to the community (including any of the factors set out in section 5.1 of these guidelines);
d) whether the prisoner has been convicted of a serious sexual offence or serious volent offence or any of the offences listed in section 234 (7) of the Act;
e) the recommendation for parole, parole eligibility date, or any recommendation or comments of the sentencing court;
f) the prisoner's cooperation with the authorities both in securing the conviction of others and preservation of good order within prison;
g) any medical, psychological, behavioural or risk assessment report relevant to the prisoner's application for parole;
h) any submissions made to Parole Board Queensland by an eligible person registered on the Queensland Corrective Services (QCS) Victims Register;
i) the prisoner's compliance with any other previous grant of parole or leave of absence;
j) whether the prisoner has access to supports or services that may reduce the risk the prisoner presents to the community; and
k) recommended rehabilitation programs or interventions and the prisoner's progress in addressing the recommendations."

[27] The Board has considered each of the relevant factors listed in section 2.1 of the Ministerial Guidelines in making its decision to release the applicant on a parole order.

[28] Further, s.5 of the Ministerial Guidelines relates to parole orders. The wording of s.5.1 of the Ministerial Guidelines is unambiguous and lists relevant factors the Board should have regard to when considering releasing a prisoner to parole:

"**Release to Parole**

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

a) Length of time spent in custody during the current period of imprisonment;
b) Length of time spent in a low security environment or residential accommodation;
c) Any negative institutional behaviour such as assaults and altercations committed against correctional centre staff, and any other behaviour that may pose a risk to the security and good order of a correctional centre or community safety;

d) intelligence information received from State and Commonwealth agencies;
e) length of time spent undertaking a work order or performing community service;
f) any conditions of the parole order intended to enhance supervision of the prisoner and compliance with the order;
g) appropriate transitional, residential and release plans; and
h) genuine efforts to undertake available rehabilitation opportunities."

[29] Relevant to the factors listed in s.5.1 of the Ministerial Guidelines, the applicant has been in custody since 2 August 2016.

[30] The Board noted that applicant will complete her sentence on 28 July 2025.

[31] The applicant's index offences are serious violent offences within the meaning of s.234(7) of the Act. The Board noted that the index offences are the only offences recorded in the applicant's Queensland criminal history. Before the commission of her index offences, the applicant maintained a life free from crime.

[32] During her time in custody, the applicant progressed to Low security classification. She was accommodated in Residential accommodation in custody between 2 April 2021 and 4 May 2021.

[33] The applicant completed numerous Adult Education Vocational Education and Training ('AEVET') courses in custody. In addition to completing numerous AEVET courses, the applicant completed the required custodial programs to address her treatment needs.

[34] The applicant completed the Resilience program on 4 October 2017, which aims to provide resilience skills and coping strategies to deal with stress and anxiety. She also completed the Reflections Group ('DVPC') program on 17 September 2019, which is a program that aims to educate women about safe respectful relationships and seeks to empower women to move on from violent and abusive relationships. These programs were recommended to the applicant due to her traumatic experiences with domestic and family violence, as remarked upon by the Court of Appeal in their judgment.

[35] The Board noted the applicant has completed all recommended programs and she has no outstanding custodial programs to complete in custody to address her treatment needs.

[36] The Board noted the applicant has maintained employment while in custody, with long periods of consistent employment as an industries worker. The Board noted the applicant ceased formal employment when she enrolled as a fulltime student.

[37] The Board noted the applicant provided a clean urine sample for testing on 12 June 2018 in custody.

[38] The Board had regard to the applicant's record of custodial behaviour and has considered the facts of each incident and the circumstances surrounding the incidents. Recently, the applicant was involved in an incident in custody on 4 June 2021, in which she was the perpetrator of an assault on another prisoner. Following the incident, the applicant agreed to participate in a mediation process on 8 June 2021 and no formal complaint is being made to the Queensland Police Service.

[39] In assessing the applicant's custodial behaviour, the Board has taken into account the applicant's significant mental health challenges. The Board also noted that the nature of the applicant's index offences has rendered her time in custody more difficult and has meant the applicant has been often targeted by other prisoners in custody. The Board formed the view that the applicant's custodial behaviour has improved over a long period of time.

[40] Further, in considering this recent custodial incident and her behaviour in custody, the Board has noted the applicant will be released on her parole order in circumstances where she will be supported by external supports. The applicant has provided evidence of her external supports and post-prison release plans, which demonstrates to the Board the applicant has identified supports and has made plans to assist her transition to the community.

[41] The applicant is receiving the support of Sisters Inside. The applicant's access to the support of Sisters Inside is a positive factor in assessing the applicant's risk to the community. There was evidence before the Board that Sisters Inside would support the applicant to meet the financial obligations of residing in her supported accommodation and her living expenses. The Board has taken into account the applicant's approved community accommodation as a factor which reduces the applicant's risk of reoffending to an acceptable level.

[42] The applicant has also identified professional supports in relation to her mental health, evidenced by her obtaining referrals to mental health professionals. Further, the applicant has the ongoing support of her foster parents who have indicated their willingness to support the applicant financially, emotionally and plan on being with the applicant for the first six weeks following her release back into the community. The Board considered the applicant has appropriate transitional, residential and post-prison release plans, which outweigh the applicant's recent incident in custody.

[43] The positive factors of the applicant's application for a parole order, combined with her clearly identified professional and prosocial external supports, render the applicant's risk to the community acceptable.

Parole Conditions

[44] The applicant's parole order is subject to the standard conditions prescribed by s.200 of the Act.

[45] In addition to these standard conditions, the Board has imposed additional conditions the Board reasonably considers necessary to ensure the applicant's good conduct and to stop the applicant committing an offence. The Board imposed the following additional conditions, namely:

- Notifying the chief executive if she is served with an application for a protection order under the *Domestic and Family Violence Protection Act 2012*;
- Curfew conditions for the first three months of her parole order;
- Undergoing psychological assessments if she is directed to do so by an authorised corrective services officer;
- Making appointments with her General Practitioner upon her release, as well as providing information regarding her health conditions and any relevant reports if directed, complying with treatment and medication and nominating a single pharmacy;
- Complying with any Domestic Violence Orders, not committing acts of domestic violence and attending domestic violence programs if directed to do so;
- Restrictions regarding communicating with several named persons;
- Notifying the chief executive if the applicant commences any intimate relationships and advising if they have the care or guardianship of a child;
- Being in the company of children under the age of 16 years;
- Complying with her Child Protection Register conditions and requirements;
- Certain travel conditions; and
- Not possessing weapons.

[1] *Corrective Services Act 2006* (Qld), s.193(1).
[2] Section 193(3).
[3] Section 193(5).
[4] *Public Service Act 2008* (Qld), s 10.
[5] [2018] QSC 205, at [36] – [38].
[6] As his Honour then was.
[7] [2018] QSC 205, at [38].
[8] Before the 2017 amendments to the Act, the Ministerial Guidelines were in quite different terms to s.242E. Section 227 (now repealed) authorised the making of guidelines about policy "to be followed by the Queensland board". The guidelines mandated the express consideration of the factor identified in guideline 1.3. As per Davis J in *Ripi v Parole Board Queensland*, *supra*, at [42] – [44], referencing *Johnston v The Central and Northern Queensland Regional Parole Board* [2018] QSC 54 at [70] and *Maycock v Queensland Parole Board* [2015] 1 Qd R 408. His Honour also referred to the judgments of *Smoker v Pharmacy Restructuring Authority* (1994) 52 FCR 287 and *Minister for Human Services and Health v Haddad* (1995) 58 FCR 378.
[9] Section 3 of the Act.
[10] Guideline 1.2.
[11] *Ripi*, *supra*, at [44].
[12] O'Sullivan was sentenced by Chief Justice Holmes on 28 August 2018.
[13] *R v O'Sullivan; Ex parte Attorney-General (Qld); R v Lee; Ex parte Attorney-General (Qld)* [2019] QCA 300.
[14] The Board accepts that the consideration of the application is outside the strict statutory time limits mandated by s.193(3) of the Act. The applicant waived the statutory timeframes at the Board's meeting on 5 August 2020, in which she appeared before the Board via video-link.
[15] Parole Board Record Book, at page 10 *et seq*.
[16] *R v O'Sullivan; Ex parte Attorney-General (Qld); R v Lee; Ex parte Attorney-General (Qld)* [2019] QCA 300.