



Intermediate sentencing options and parole

Consultation questions

The following questions are posed as part of our public consultation for the Council's review into community-based sentencing options, imprisonment and parole orders. The Council also invites feedback on the options for reform of sentencing orders and parole outlined in the paper.

Question 1: Sentencing principles

What changes (if any) are required to existing sentencing principles under section 9 of the *Penalties and Sentences Act 1992* (Qld) to allow for greater use of community based sentencing orders in appropriate cases (that is, where the safety of victims and other community members will not be compromised)?

Questions 2: Mandatory sentencing provisions

Are current Queensland mandatory sentencing provisions sufficiently clear so as to operate with certainty and consistency? If not, what provisions should be considered for review and how should they be reformed?

Question 3: Legislative guidance on use of community correction orders (CCOs) and imprisonment

3.1 If introduced, what legislative guidance should be given to courts when considering imposing either a CCO or a term of imprisonment (including a suspended term of imprisonment)? For example:

- Should it be a requirement for a court to consider the availability of a CCO prior to considering imprisonment?
- Should there be legislative guidance that provides no more conditions are to be ordered than are necessary to meet the purposes of the order?
- In imposing a CCO and considering appropriate additional conditions, should a court be required to have regard to the vulnerabilities of the defendant in complying with that order, including for example, any geographical constraints in complying and/or limitations on service delivery in that region?

3.2 Should additional legislative guidance be provided that makes clear that the fact a CCO has been imposed previously, including upon a breach, should not inhibit the further imposition of a CCO (taking into account the broad range of conditions that can be attached)?

Question 4: Home detention

4.1 If a new community correction order is introduced in Queensland, should 'home detention' (an extended curfew with electronic monitoring) be excluded from being available as a condition of the order?

4.2 In the alternative, do you support home detention being introduced as a form of sentencing order? How might this be distinguished from court ordered parole with electronic monitoring and curfew conditions?

4.3 If home detention was to be introduced as a sentencing order, what protections would need to be introduced to ensure it is used only in appropriate circumstances? For example, should the availability of home detention be restricted to circumstances where:

- The person is convicted of an offence punishable by imprisonment.
- A conviction is recorded.
- The person consents to the order being made.
- The court would otherwise have imposed a sentence of immediate imprisonment and would not have ordered the sentence to be suspended or the person to be released at the date of sentence or shortly after this on court ordered parole.
- A suitability assessment has been undertaken which takes into account any impact the order is likely to have on any victim of the offence, any spouse or family member of the offender, and anyone living at the residence at which the person would live.
- Any co-resident has consented to the person living at the nominated address?

4.4 Should there be any restrictions on the types of offences, or circumstances, in which home detention is used (e.g. if there are safety concerns for victims or co-residents, or in the case of offences involving the use of violence, there is an unacceptable risk of the person committing a further violent offence)?

4.5 What should the maximum period of home detention be:

- 12 months (Northern Territory and New Zealand model)
- 18 months (Tasmanian model)
- Two years (NSW model)?

4.6 What should be the maximum curfew period in a given day and/or week?

Question 5: Suspended sentences

5.1 Are wholly suspended sentences operating as an effective alternative to actual imprisonment in Queensland?

5.2 Are there cases where suspended sentences could be used, but are not? If so what are the barriers to their use?

5.3 Are there unique factors for offenders in remote and very remote areas of the State, including Aboriginal and Torres Strait Islander offenders, that:

- affect a court's decision to make a suspended sentence order; and
- if imposed, are likely to predispose such offenders breaching the order through commission of a new offence?

Question 6: Guidance on setting operational period

6.1 Is the current guidance under section 144(6) of the *Penalties and Sentences Act 1992*(Qld) about the setting of the operational period for a suspended sentence sufficient?

6.2 If there is a need for additional guidance, what form should this take (e.g. legislative guidance, bench book, professional development sessions for lawyers and/or judicial officers, other)?

6.3 If legislative guidance is provided, should this specify a specific proportion between the term of imprisonment imposed and the operational period? For example, that the operational period set can be no more than two times the period of imprisonment imposed?

Question 7: Power of court dealing with offender on breach of a suspended sentencing (PSA, s 147)

7.1 Are the courts' powers on breach of a suspended sentence, as set out under section 147 of the *Penalties and Sentences Act 1992* (Qld), appropriate? For example:

- should the requirement under section 147(2) that the court activate the whole of the sentence held in suspense unless of the opinion it is 'unjust to do so' be removed in order to promote greater judicial discretion in the sentencing process; and/or
- should the wording of section 147(3)(a) be amended to widen judicial discretion when dealing with a breach of a suspended sentence – for example, to remove the reference to whether the subsequent offence committed during the operational period of the order is 'trivial'?

7.2 Are there any other changes that should be made to the current powers of a court on breach of a suspended sentence – for example, to introduce an additional power to:

- impose a fine and make no other order (Western Australia and England and Wales); and/or
- make no order (Northern Territory and Tasmania).

Question 8: Breach powers

8.1 Should a court have a discretionary power to deal with a breach of a suspended sentence imposed by a higher court, if that court is dealing with an offence that breaches the higher court's order?

8.2 If so, should there be guidance as to the use of the discretion and what form should this take?

Question 9: Combined suspended sentence/community based order

9.1 Should greater flexibility be introduced to allow a court:

- to make a probation order in addition to a suspended sentence for a single offence, and/or
- to make a community service order in addition to a suspended sentence for a single offence; or
- as an alternative to point 1 and 2, to make a CCO in addition to a suspended sentence for a single offence?

9.2 Under this form of order, should a failure to comply with the conditions of the community based order be dealt with under Part 7, Division 2 of the *Penalties and Sentences Act 1992* (Qld) (Contravention of community based orders) or an equivalent provision?

9.3 Should the maximum period the person is subject to conditions be limited in some way? For example, should the term of the probation order or CCO be required to be no longer than the operational period of the order, provided the operational period does not exceed 3 years?

Question 10: Setting of parole release date

How should the anomaly identified by the Court of Appeal in *R v Sabine* [2019] QCA 36 (18 February 2019) be addressed?

Question 11: Court powers where offence committed while offender on parole (CSA, SS 209, 211, 215 and PSA, S 160B)

11.1 Do the provisions relating to the powers of a court where there is further offending while an offender is on court ordered parole, such as sections 209, 211, 215 of the *Corrective Services Act 2006* (Qld) and section 160B of the *Penalties and Sentences Act 1992*(Qld), require amendment? What changes would you suggest be considered?

11.2 Should section 209 of the *Corrective Services Act 2006* (Qld) be amended so that if a court ordered parole order would, on the current provisions, be cancelled automatically by a new sentence of imprisonment, the sentencing court has a discretion to again set a parole release date if it considers court ordered parole is still appropriate?

Question 12: Sentence calculation

Are there any particular sections of the *Penalties and Sentences Act 1992* (Qld) or *Corrective Services Act 2006* (Qld) that make the sentencing calculation process in Queensland unnecessarily complex? If so, how would you recommend the current level of complexity be remedied?

Question 13: Time in pre-sentence custody which is declarable

13.1 Should section 159A(1) of the *Penalties and Sentences Act 1992* (Qld) be amended to allow the court an ability to declare pre-sentence custody in circumstances where this is currently not permitted (e.g. by removing the words 'for no other reason')?

13.2 Should section 159A(4)(b) be similarly amended, or greater clarity provided as to its application? Are there risks regarding unintended consequences if such an amendment was made?

Question 14: Availability of parole for short sentence of imprisonment

14.1 Should parole for short sentences of imprisonment of six months or less be abolished, meaning the sentence would need to be served in full, unless suspended in whole or in part?

Note: Under the Council's preferred option for reform of suspended sentences, courts would have an ability under the Penalties and Sentences Act 1992 (Qld) to combine a suspended sentence with a community based order when sentencing an offender for a single offence, in addition to their existing power to combine these orders when imposing sentence for two or more offences.

14.2 If a court's ability to set a parole release or eligibility date for short sentences of six months or less is abolished, should there be any recognised exceptions. For example, should this apply:

- to activation of a suspended term of imprisonment on breach by reoffending?
- if an offender has an existing parole date and reoffends while on parole?

14.3 What might some of the risks of the above reforms be?

Question 15: Pre-sentence reports

15.1 Should pre-sentence reports or assessment reports be mandatory for some types of orders or conditions?

15.2 If so, for what conditions or orders should such reports be mandatory, and why?

Question 16: Operation of ss 651 and 561 Criminal Code (Qld) and s189 Penalties and Sentences Act 1992 (Qld)

16.1 Do you agree with the points raised about sections 651 and 561 of the *Criminal Code* (Qld) and section 189 of the *Penalties and Sentences Act* (Qld)?

16.2 What improvements could be made to any of these provisions and their associated systems?

Question 17: Sentencing disposition – convicted, not further punished

17.1 Should the sentencing disposition of convicting and not further punishing an offender for an offence be legislated?

17.2 What aspects of the order would need to be included in a definition?

Question 18: Ability of higher courts to deal with breach of a magistrate’s court community based order (CBO)

Should the *Penalties and Sentences Act 1992* (Qld) expressly permit the District Court and Supreme Court to deal with breach of a community based order imposed by a Magistrates Court?

Question 19: Power of lower courts to deal with higher court CBO breach

19.1 Should Magistrates Courts and the District Court have a discretionary power to deal with breach of a CBO imposed by a higher court?

19.2 If yes, should there be guidance as to the use of the discretion and what form should this take?

Question 20: Magistrates Courts’ power to deal with breach of a CBO imposed by a Magistrates Court on own initiative

Should section 124 of the *Penalties and Sentences Act 1992* (Qld) be amended to allow a Magistrates Court to deal with a breach, by reoffending, of a CBO imposed by a Magistrates Court, without proceedings first having to be instituted under section 123?