Submission to Queensland Sentencing Advisory Council

Community based sentencing orders, imprisonment and parole

Options Paper

May 2019

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Introduction

Sisters Inside welcomes the opportunity to make a public submission to the Queensland Sentencing Advisory Council's review of community based sentencing orders, imprisonment and parole.

As the Council is aware, Sisters Inside is an independent community organisation that exists to advocate for the collective human rights of women and girls in prison, and provide services to meet the needs of women, girls and their families. Established in 1992, Sisters Inside has over 25 years experience supporting criminalised women and girls. Our work is informed by our *Values and Vision*,[1] which were developed by women in prison, alongside Sisters Inside's Management Committee.

Our submission is informed by our experience supporting women and girls in the criminal legal system through our programs and services. According to the Queensland Productivity Commission, if current rates of growth in prison numbers continue, the Queensland Government will be required to spend up to $6.5 billion on new prison infrastructure alone by 2025.[2] In our view, the Queensland Government and the Queensland community cannot afford to direct more resources to prisons; rather, we believe resources must be directed to addressing the social context of criminalisation and imprisonment, including homelessness, mental illness, substance use, and intergenerational trauma.

Sisters Inside believes judicial officers must have a broad range of options available to them to craft sentences consistent with each defendant's particular circumstances. We also believe all changes to sentencing legislation and practice must support *decarceration* – a reduction in the numbers of women in prison or subject to formal supervision by Queensland Corrective Services. We are particularly concerned to ensure that changes to sentencing legislation contribute to reducing the over-representation of Aboriginal and Torres Strait Islander women and girls in prison. We note our position accords with fundamental principles 4 and 5, identified in the Council's Options Paper.

Sentencing process and framework

Question 1: Sentencing principles

Sisters Inside agrees with the views of legal stakeholders that the principle of imprisonment as a last resort has been eroded by successive amendments to section 9 of the *Penalties and Sentences Act 1992* (Qld).[3] In our view, section 9 requires a comprehensive review to ensure that a sentence which supports people to remain or return to the community on a community based order is *always* considered by judicial decision makers. In our view, this principle is particularly important in the context of Queensland's high remand rates, especially for Aboriginal and Torres Strait Islander women in prison.[4]

Question 2: Mandatory sentencing

Sisters Inside is opposed to all mandatory sentences, including mandatory cumulative sentences[5] and minimum non-parole periods.[6] In our view, mandatory sentences are unfair and undermine the efficient administration of the criminal legal system. For example, as identified in the Options Paper, mandatory

[1] Sisters Inside, *Values and Visions*. Available at: https://sistersinside.com.au/about/sisters-inside/our-values-and-vision/. Accessed 30 May 2019

[2] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism: Draft Report* (February 2019), p xviii.

[3] Queensland Sentencing Advisory Council, *Community based orders, imprisonment and parole: Options Paper* (April 2019), p 63. (Hereafter cited as QSAC, Options Paper.)

[4] According to Queensland Corrective Services data, as at 31 March 2019 43% of Aboriginal and Torres Strait Islander women in prison in Queensland are unsentenced: Queensland Corrective Services, 'Custodial Offender Snapshot March 2019' (Custodial Offender Snapshot – statewide dataset, 24 April 2019). Available at: https://data.qld.gov.au/dataset/custodial-offender-snapshot-statewide/resource/3390914d-abd4-4a16-b081-d296099f1f61. Accessed 19 May 2019.

[5] The Options Paper identifies the cumulative sentencing provision in s156A, *Penalties and Sentences Act 1992* (Qld). We also note that terms of imprisonment imposed under s33(4), *Bail Act 1980* (Qld) for failure to appear must be cumulative. In our experience, this provision has very negative consequences for women.

[6] For example, mandatory minimum non-parole periods for people sentenced to life imprisonment: s181, *Corrective Services Act 2006* (Qld). See also other legislative provisions that affect parole eligibility in chapter 5, *Corrective Services Act 2006* (Qld).

sentences do not provide an incentive for defendants to plead guilty, particularly in relation to the offence of murder.[7]
In our experience, mandatory sentences have a particularly negative gendered impact, particularly for Aboriginal and Torres Strait Islander women. For example, the Council has previously found that since 2008-09, the proportion of women sentenced for breach of bail offences increased, while the proportion of men sentenced in that period decreased.[8] In our experience, many women are being sentenced for failure to appear, which requires a mandatory cumulative sentence if imprisonment is imposed.[9]

In the context of the recent changes to the definition of murder, we are concerned that this offence combined with the mandatory sentence will have a disproportionately harsh impact on women.[10] We have also observed that mandatory community based sentences in relation to certain offences[11] have a disproportionate impact on Aboriginal and Torres Strait Islander women, who are more likely to be charged for offences in public places.[12]

We believe all mandatory sentences must be abolished.

Intensive Correction Orders

We refer to our previous submission to the Council regarding Intensive Correction Orders (**ICOs**). Sisters Inside supports Option 3 in relation to ICOs, which provides for ICOs to be retained with amendments to allow for greater flexibility in the conditions imposed.

The reason for our position is that:

- Sisters Inside does not support introduction of Community Correction Orders;
- the available data suggests ICOs are a positive, successful sentencing option, with relatively high completion rates;[13]
- abolishing ICOs may have a negative gendered impact, as women are more likely to be sentenced to ICOs compared to men;[14]
- there is merit in maintaining ICOs as they may be an appropriate sentence to ensure people avoid actual imprisonment;
- greater flexibility can be achieved with minor legislative amendments that allow greater judicial discretion and monitoring in respect of the components of ICOs. (We do not support administrative breach powers.)

Even if Community Correction Orders were introduced in Queensland, Sisters Inside would still support retaining ICOs as a unique sentencing option.

We also note the possible complexity in respect of Commonwealth offences if ICOs are abolished and replaced by CCOs. ICOs are a prescribed offence for Queensland pursuant to section 20AB(1AA)(c) of the *Crimes Act 1914* (Cth) and regulation 6 of the *Crimes Regulations 1990* (Cth). We are aware that ICOs are commonly used in cases of Centrelink fraud. In Australia, women are up to twice as likely to be charged with Centrelink fraud offences than men.[15] The gendered impacts of abolishing ICOs may be particularly detrimental for women in this category.

[7] QSAC, Options Paper, p81.
[8] Queensland Sentencing Advisory Council, *Sentencing spotlight on … breach of bail offences* (November 2017) p 5. Available at: https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0007/543598/qsac-spotlight-series-breach-of-bail.pdf. Accessed 30 May 2019.
[9] s33(4), *Bail Act 1980* (Qld).
[10] See e.g. Felicity Caldwell, 'Fears women could be jailed for life for killing violent partners', *Brisbane Times (online)*, *25* March 2019. Available at: https://www.brisbanetimes.com.au/politics/queensland/fears-women-could-be-jailed-for-life-for-killing-violent-partners-20190325-p517fw.html. Accessed 30 May 2019.
[11] ss180A-D, *Penalties and Sentences Act 1992* (Qld).
[12] See e.g. Tamara Walsh, 'Public nuisance, race and gender' (2018) 26(3) *Griffith Law Review* 334. Copy of the research paper can be provided on request.
[13] QSAC, Options Paper, p 89.
[14] Ibid, p 96.
[15] Scarlet Wilcock, 'Policing Welfare: Risk, Gender and Criminality' (2016) 5(1) International Journal for Crime, Justice and Social Democracy 113, p114 (citing Prenzler).

Community Correction Orders

According to the Options Paper, the Council's preferred option is to introduce CCOs, replacing probation, community service orders and ICOs (Option 3). We understand the Victorian model of CCOs most closely resembles Option 3. Sisters Inside is opposed to the introduction of Community Correction Orders (**CCOs**) in Queensland. Sisters Inside supports Option 1, to retain probation and community service orders with minor changes.

The Options Paper notes that CCOs are highly resource intensive sentencing orders.[16] In our view, it is highly inappropriate to prioritise additional resources for Queensland Corrective Services (**QCS**) to implement CCOs, instead of addressing the fundamental issues that contribute to entrenched cycles of criminalisation and imprisonment. People should not have to be criminalised to access essential services such as substance use counselling and rehabilitation or other support services.

For example, the Queensland Government's resources would be better directed to addressing homelessness. We believe addressing homelessness through adequately funded social housing or subsidised private housing would have a greater positive impact on community safety than the introduction of CCOs. In April 2019, Anglicare published the national Rental Affordability Snapshot.[17] The Snapshot surveyed over 69,000 rental listings across Australia advertised on realestate.com.au and found that:

- 317 rentals were affordable for a single person on the Disability Support Pension
- 75 rentals were affordable for a single parent with one child on Newstart
- 2 rentals were affordable for a single person in a property or share house on Newstart
- 1 rental was affordable for a single person in a property or share house on Youth Allowance
- 0 rentals were affordable for a single person on Newstart or Youth Allowance in any major city or regional centre.

This means that **no** houses are affordable for many of the most marginalised people in Queensland, who are churned through the criminal legal system. Unless we have a society that supports the conditions for all people to live in safety, then we cannot expect to successfully implement community based orders of any kind.

We are also concerned that CCOs will undermine clarity, transparency and consistency in sentencing, in relation to the conditions imposed on people's orders. It is not yet clear to us how CCOs would be recorded on people's criminal history. There is a possible gendered impact of certain types of conditions, particularly as criminalised women are more likely to present with complex needs and trauma. The Australian Law Reform Commission appeared to accept the research and evidence that Aboriginal and Torres Strait Islander women often have greater difficulty complying with the requirements of sentences, and a punitive response is not appropriate to address the underlying drivers of their incarceration.[18] In our view, CCOs will not offer diversion; rather they risk imposing a 'suite' of punitive conditions that reflect women's level of need rather than 'risk'.

In the context of Queensland's current imprisonment numbers, it does not make sense to introduce CCOs. The number of unique individuals (adults and children) convicted of criminal offences is decreasing in Queensland.[19] As imprisonment numbers have continued to rise in the same period, this is a very concerning trend. It suggests that a smaller group of people are being proceeded against by police and further entrenched in the criminal legal system. This is reflected in high remand rates. Remand is a gendered issue, and Aboriginal and Torres Strait Islander women are most affected by the extreme rise in remand in the criminal legal system. As at 31 March 2019, there were 9,036 adults in

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[16] Ibid, pp 125-126 referring to Victorian experience. See also pp133-134.

[17] Anglicare Australia, Rental Affordability Snapshot 2019 (April 2019). Available at: https://anglicare-ras.com/. Accessed 30 May 2019.

[18] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report* (ALRC Report 133, December 2017), see esp pp266, 358-359. Available at: https://www.alrc.gov.au/sites/default/files/pdfs/publications/final_report_133_amended1.pdf. Accessed 30 May 2019.

[19] There were 112,768 'unique offenders' in Queensland in 2017-18, a decrease of 5.4% from 119,170 'unique offenders' in the previous year. This is the second successive yearly decrease. Queensland Government Statistician's Office, *Crime report, Queensland, 2017-18* (2019), p80 (see p 2 for definitions). Available at http://www.qgso.qld.gov.au/products/reports/crime-report-qld/crime-report-qld-2017-18.pdf. Accessed 30 May 2019.

prison in Queensland.[20] Women represented 10% of the total prison population (906 women). Around 36% of women in prison were Aboriginal and/or Torres Strait Islander women (326 women). In total, around 38% of women were unsentenced; however over 43% of Aboriginal and Torres Strait Islander women were unsentenced. In contrast, only around 31% of Aboriginal and Torres Strait Islander men and non-Indigenous men were unsentenced.

According to the Australian Bureau of Statistics, New South Wales and Victoria both experienced the largest increases in prison numbers between 2017 and 2018, and as at 30 June 2018 the proportion of unsentenced prisoners was higher in both Victoria and New South Wales than in Queensland.[21] Based on informal conversations with stakeholders we know in Victoria, we understand CCOs have contributed (at least in part) to rising remand rates. We note that Victoria had one of the lowest percentages of successful completions for supervision orders in 2017-18.[22] We are concerned that breach of CCOs will contribute to higher remand rates in Queensland.

We particularly concerned that CCOs will not address fundamental *sentencing* issues arising as a consequence of very high remand rates, as CCOs will provide greater power and influence to QCS to assess suitability.

Finally, we note the introduction of CCOs may politicise the sentencing process, which could undermine the effective operation of the criminal legal system. As the Options Paper notes, the Victorian Sentencing Advisory Council ultimately recommended *against* introducing CCOs because of 'the possible fast-tracking of offenders to prison and the potential for uncertainties and disparities in sentencing outcomes should a broader range of conditions be made available under a single form of community order'.[23] CCOs were introduced in Victoria as an election commitment of the Liberal-National Coalition Government.[24] Since their introduction, there have been successive legislative amendments to CCOs, eroding their applicability to certain categories of offences.[25] The Options Paper also identifies that there has been a reduction in the use of community orders in England and Wales, which some have attributed to magistrates lacking confidence in the effectiveness of community orders.[26] We do not want to see a 'law and order' auction in Queensland.

Given Queensland's very high imprisonment and remand rates, we are concerned that fundamental legislative changes to introduce CCOs would have an overall negative impact on the most marginalised people in our communities, especially Aboriginal and Torres Strait Islander women. We note the Queensland Productivity Commission's preliminary finding that 65% of people are in prison for non-violent offences.[27] We believe any fundamental changes to community based sentences must be explicitly linked to reducing the number of people in prison (e.g. greater use of prison-probation sentences).

Question 4: Home detention

Sisters Inside does not support introduction of home detention as a sentencing option in Queensland. Additionally, Sisters Inside does not support electronic monitoring, in conjunction with home detention or as a separate, distinct sentence condition.

In our view, home detention extends the violence of the prison system into people's homes. It normalise surveillance and compliance, rather than support, autonomy and accountability. It provides a basis for greater expansion of the carceral state by resources and population. We are concerned that home detention will have a negative gendered impact for women, both as people sentenced for offences and as family members.

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[20] Queensland Corrective Services, 'Custodial Offender Snapshot March 2019' (Custodial Offender Snapshot – statewide dataset, 24 April 2019). Available at: https://data.qld.gov.au/dataset/custodial-offender-snapshot-statewide/resource/3390914d-abd4-4a16-b081-d296099f1f61. Accessed 19 May 2019.
[21] See Australian Bureau of Statistics, 4517.0 – Prisoners in Australia, 2018. Available at: https://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0. Accessed 30 May 2019.
[22] QSAC, Options Paper, p129.
[23] Ibid, p113 (citing Victorian Sentencing Advisory Council report).
[24] Ibid, p114.
[25] Ibid, pp123-124.
[26] Ibid, p131.
[27] Queensland Productivity Commission, *Inquiry into imprisonment and recidivism: Draft Report* (February 2019), p ix.

Citing evidence that women are exposed to harsher penalties under home detention, George explains that home detention builds on and reinforces the home as a site for the control and punishment of women.[28] It may expose women to further punishment, as it 'criminalises' ordinary activities such as drinking, being late or leaving the house as potential conditions of an order.[29]

Home detention may also expose women to violence, as they may feel unable to leave a violent relationship or call the police for assistance. Aboriginal and Torres Strait Islander women are already less likely to call police in situations of domestic violence, due to distrust of the service system as well as fear of reprisals.[30] In situations where a violent partner is sentenced to home detention, women will be even less likely to call police, as reporting would potentially result in new charges for a violent incident *and* a breach of the home detention order.

Many criminalised women are single mothers or have primary responsibility for children in the context of violent, unstable relationships. Home detention is not in the best interests of children in households with criminalised caregivers; it is likely to impose unreasonable restrictions on a caregiver's ability to support children and it may lead to involvement or intervention by child protection authorities. For example, a mother may not feel able to accompany a child to hospital if she is subject to a curfew under home detention and a medical emergency happens 'after hours'. Limits on 'normal' parenting may expose women to (additional) surveillance by child protection authorities, creating significant distress.

As a sentencing option, home detention perpetuates the inequality that already exists in the criminal legal system as it will only be available to women who have a 'suitable' home.[31] We are aware from our work supporting women with bail and parole that many women in Queensland prisons do not have a 'suitable' address. According to the 2018 National Prisoner Health Data Collection, people who entered prison were 66 times more likely to be homeless than people in the general population, and 54% of people leaving prison who participated in the survey expected to be homeless on release.[32]

If the State is unwilling to divert resources to provide housing for women in prison, it is unconscionable to introduce a sentencing option that relies on people having a home.

Similar criticisms are applicable to electronic monitoring. It is costly, it net widens, it does not prevent 'crime' and it is highly stigmatising.[33] Use of electronic monitoring also raises ethical concerns about the privatisation of 'public safety' as Governments generally outsource the provision of monitoring technology to the private sector.[34] In the United States, the significant costs of electronic monitoring are passed onto 'users';[35] it is very concerning to imagine a future in which criminalised women on inadequate fixed incomes through Centrelink might be required to pay fees for their release through electronic monitoring. The Queensland Government's limited resources should not be directed to expanding surveillance, instead of resourcing non-punitive support options such as drug rehabilitation or community mental health services.

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[28] Amanda George, 'Women and Home Detention – Home Is Where the Prison Is' (2006) 18(1) *Current Issues in Criminal Justice* 79, p 83. Available at: http://www.austlii.edu.au/au/journals/CICrimJust/2006/17.pdf. Accessed 19 May 2019.
[29] Ibid, pp 86-87.
[30] Domestic and Family Violence Death Review and Advisory Board, *2016-17 Annual Report* (2017), p 60. Available at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0003/541947/domestic-and-family-violence-death-review-and-advisory-board-annual-report-2016-17.pdf. Accessed 19 May 2019.
[31] Amanda George, 'Women and Home Detention – Home Is Where the Prison Is' (2006) 18(1) *Current Issues in Criminal Justice* 79, p 82.
[32] Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018* (May 2019), pp 22-24. Available at https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true. Accessed 30 May 2019.
[33] See Center for Media Justice and Urbana-Champaign Independent Media Center, 'No More Shackles: Why We Must End the Use of Electronic Monitors for People on Parole' See also Lorana Bartels and Marietta Martinovic 'Electronic monitoring: The experience in Australia' (2017) 9(1) *European Journal of Probation* 80.
[34] Center for Media Justice, 'Fact sheet: Electronic monitoring is a form of incarceration'. Available at: https://centerformediajustice.org/wp-content/uploads/2018/03/electronic-monitoring-infographic-final.pdf. Accessed 20 May 2019.
[35] See Olivia Solon, ''Digital shackles': the unexpected cruelty of ankle monitors', *The Guardian (online)*, 28 August 2018. Available at: https://www.theguardian.com/technology/2018/aug/28/digital-shackles-the-unexpected-cruelty-of-ankle-monitors. Accessed 20 May 2019; James Kilgore and Emmett Sanders, 'Ankle monitors aren't humane. They're another kind of jail', *Wired (online)*, 8 April 2018. Available at: https://www.wired.com/story/opinion-ankle-monitors-are-another-kind-of-jail/. Accessed 20 May 2019.

Suspended sentences

Consistent with the Council's fundamental principle 2, Sisters Inside supports retaining suspended sentences.

Question 5: Suspended sentences

Sisters Inside believes suspended sentences are under-utilised as a sentencing option. One barrier to greater use of suspended sentences may be lack of legislative recognition for extended periods of successful compliance with bail (c.f. pre-sentence custody). If successful completion of bail was more explicitly taken into account, this might encourage greater use of wholly suspended sentences.

Question 6: Guidance on setting operational period

To ensure the operational period for a suspended sentence made in combination with a community based order is proportionate, we would support a legislative amendment to section 144 of the *Penalties and Sentences Act 1992* (Qld) to require the operational period to be the shortest period possible and in proportion to any other sentence. Alternatively, this guidance could be included in a bench book. We believe it would not be useful to specify a specific proportion, as this may undermine judicial discretion.

Question 7: Power of court dealing with breach

We support amending the wording in sections 147(2) and 147(3) of the *Penalties and Sentences Act 1992* (Qld) to promote greater judicial discretion in sentencing for breaches. We further support legislative amendments to allow for judicial decision makers to impose a fine and/or make no other order in respect of a breach of a suspended sentence.

Question 8: Breach powers

Sisters Inside would support introducing a legislative discretion for a court to deal with a breach of a suspended sentence imposed by a higher court. We largely agree with the Council's preferred model for this procedure, based on section 651 of the *Criminal Code* (Qld).[36] Under this model, a court could deal with a breach on its own motion, provided (a) the court considers it appropriate; (b) the defendant is legally represented; (c) the Crown and the defendant consent; and (d) sufficient information about the original offence and circumstances in which it was imposed is before the court.

Question 9: Combined suspended sentence/community based order

Sisters Inside supports Option 2, to reform suspended sentences to allow a court to order a suspended sentence combined with probation or community service order for a single offence. Sisters Inside does not support the introduction of conditional suspended sentences, as this would undermine the unique features of suspended sentences for people who do not require supervision. Any breaches of the conditions of the community based order should be dealt with under Part 7, Division 2 of the *Penalties and Sentences Act 1992* (Qld), and not as a breach of the suspended sentence. Any period of supervision must be limited to the maximum period available for probation under s92 of the *Penalties and Sentences Act 1992* (Qld) (i.e. 3 years) and supervision ought to be proportionate to any operational period.

If a person successfully complies with probation and no longer requires ongoing supervision, we suggest there should be legislative amendments to allow the person or QCS to apply either to a court for the probation order to be discharged.

Court ordered parole

Data requested by Sisters Inside from Queensland Courts confirms that since 2007-08, an increasing number of women appear to be sentenced to period of imprisonment with a parole eligibility date within 6 months of their sentence date. In 2007-08, 27 Aboriginal and Torres Strait Islander women and 53 non-Indigenous women were sentenced to a period of imprisonment with a parole eligibility date within

[36] QSAC, Options Paper, p189.

six months of their sentence date; in contrast, in 2016-17 – at the peak of this trend – 118 Aboriginal and Torres Trait Islander women and 313 non-Indigenous women had parole eligibility dates within 6 months of their sentence date[37]. Although the numbers decreased in 2017-18, the number of women being sentenced with a parole eligibility date in close proximity to their sentence remains significantly higher than 10 years ago.

In our experience, women are often sentenced to a period of imprisonment and the parole eligibility date is set as the sentence date. Women are often not sentenced to periods of imprisonment longer than three years; however, a parole eligibility date (rather than a parole release date) is required because women have been charged with further offences while subject to an existing parole order.

These trends suggest that women are increasingly becoming entrenched in cycles of criminalisation for 'minor' offences, as a result of social exclusion and disadvantage. While women's marginalised situation is recognised by courts, because women are sentenced with a parole eligibility date, they are spending longer periods of time in prison because of systemic delays in the parole and social services system.

The operation of the Parole Board has significantly improved following implementation of the recommendations of the Sofronoff review. However, women still face significant barriers to parole, especially in relation to housing, mental health services and advocacy with the Parole Board. Legislative amendments are required to ensure that the sentencing and parole system work together fairly and effectively, particularly for women.

Question 10: Setting of parole release date

In relation to the anomaly identified in *R v Sabine* [2019] QCA 36 (18 February 2019), we support the position that a subsequent court which sentences a person to a lesser period of imprisonment than an existing sentence is not required to set a parole release date.

Question 11: Court powers where offence committed while on parole

We strongly support amendment of sections 209, 211 and 215 of the Corrective Services Act 2006 (Qld) and section 160B(3) of the *Penalties and Sentences Act 1992* (Qld) to allow greater judicial discretion to craft sentences that support immediate release from imprisonment. As indicated above, in our experience, women are frequently sentenced with immediate parole eligibility dates or parole eligibility dates within a very short period of the sentence date. In these cases, it is absolutely unjust that women are required to apply to the Parole Board for parole.

These provisions must be amended to give a subsequent sentencing court discretion to set a parole release date. Additionally, if the court imposes a community based order (which we have seen in rare circumstances), in circumstances where a person's parole is suspended, there ought to be a mechanism for the court to also order the person's release from prison in respect of the suspended parole order.

Question 13: Pre-sentence custody

Sisters Inside agrees that sections 159A(1) and 159(4)(b) of the *Penalties and Sentences Act 1992* (Qld) should be amended to clarify the circumstances in which a court can declare pre-sentence custody by removing the words 'for no other reason'. Imprisonment is costly, and has significant social costs for women and their families. In our view, it is appropriate that any time a woman spends in prison should be taken into account by the sentencing court.

Question 14: Availability of parole for short sentences of imprisonment

Sisters Inside reiterates the highly damaging consequences of short sentences of imprisonment for women. A short sentence of imprisonment can result in loss of employment, housing or access to

[37] Received via email from Jennifer Gallagher, A/Senior Performance Information Advisor, Courts Performance and Reporting Unit, Department of Justice and Attorney-General on 10 October 2018. A copy of this data can be provided on request.

certain Centrelink benefits,[38] removal of children and deterioration in physical and mental health and wellbeing.

Sisters Inside supports legislative amendments that would serve to reduce *actual* periods of imprisonment of 6 months or less. We are cautious of the possible impact of abolishing court ordered parole for short sentences – this change may lead to longer sentences and/or it may lead to more women spending actual time in prison, rather than being immediately released to court ordered parole.

We would support legislative amendments that provide better outcomes for women sentenced to short periods of imprisonment, as long as this did not result in higher numbers of women spending actual time in prison. One option may be to provide strong legislative guidance that any periods of imprisonment under 6 months must be wholly suspended, unless it is in the interests of justice for a person to be sentenced to actual time in prison.

We agree that court ordered parole should remain an option for sentences of six months or less in certain situations, for example if a person is re-sentenced for breach of a suspended sentence or if a person is sentenced for offences committed while they were subject to an existing parole order. In respect of activation of a suspended sentence, the current provisions in relation to court ordered parole should apply – that is, a court must set a parole release date if the sentence is less than 3 years. In relation to sentences of imprisonment, where a previous parole order has been in place, the court should have discretion to set a parole release date or a parole eligibility date (see response to question 11).

Options for reforming court ordered parole

Sisters Inside supports the extension of judicial discretion to order court ordered parole for all sentences of between 3 to 5 years, and for sexual offences.

We understand the concerns that courts may not be able to adequately assess 'risk' at the time of sentence; however, we note that Queensland Corrective Services could notify the Parole Board of any risks prior to a person being released to court ordered parole, resulting in a suspension. We are aware of cases that already occur where people's court ordered parole is suspended prior to their release from prison, e.g. due to lack of suitable accommodation.

Sisters Inside does not support legislative changes that would undermine the current position in section 160B(2), which requires the court to set a parole release date in certain circumstances. In our view, certainty is an important value in sentencing, particularly to assist with referrals for support and to plan for release from imprisonment. Any change to this position may result in more women spending actual time in prison, which would have significant detrimental consequences for women's health and wellbeing. There are more funded services to support women sentenced to immediate release on court ordered parole (e.g. Women's Early Intervention Service (pilot) recently funded in the Brisbane Magistrates Court).

Sisters Inside does not support the requirement for mandatory pre-sentence reports (see below question 15).

Implementation – Issues and challenges

Question 15: Pre-sentence reports

Sisters Inside supports Option 1, to retain the current approach to pre-sentence reports. We note this is the Council's preferred option.

[38] According to changes to Commonwealth policy, people must re-apply for the Disability Support Pension if they have been in prison for longer than 13 weeks.

Sisters Inside does not support mandatory pre-sentence reports for any orders or conditions. Mandatory requirements for pre-sentence reports may result in delays, without any guarantee that the reports will be of a high quality or provide useful information to the court. We are also concerned that requiring pre-sentence reports by QCS might prejudice particular defendants, who would not be funded by Legal Aid to prepare their own independent report. For people with complex needs, a pre-sentence report prepared based on a 'risk' framework may fail to adequately recognise the impact of trauma and social factors.

Sisters Inside recognises the value of the specialist cultural reports prepared in the Murri Court. However, we believe it would have significant resourcing implications to extend these reports more broadly.

Other issues

Question 16: Administrative mechanisms

Section 651 of the *Criminal Code* (Qld) creates unnecessary complexities and delays for people on remand. In circumstances involving pre-sentence custody, the Crown's consent should not be required to transfer matters to higher courts. This should be available on defence election, on certification by a lawyer.

In relation to ex officio indictments under section 561 of the *Criminal Code* (Qld), these are still used in cases where the Crown does not consent to transfer particular matters under section 651. In these circumstances, there should be a prompt administrative mechanism to provide for the matter to be 'resolved' in the Magistrates Court.

We do not have any comments on section 189 of the *Penalties and Sentences Act 1992* (Qld).

Question 17: Sentencing disposition – Convicted and not further punished

We do not believe it is a high priority to legislate the sentence of 'convicted and not further punished'. Any legislative provisions introduced to reflect this sentence should allow for judicial discretion, and not limit the application of this sentence to particular circumstances.

Questions 18, 19 & 20: Power of courts to deal with breaches of CBOs

Sisters Inside supports amendments to the *Penalties and Sentences Act 1992* (Qld) to provide for judicial discretion to allow courts to deal with breaches of community based orders imposed in other jurisdictions.

In cases where the Magistrates Courts or the District Court are dealing with a community based order from a higher court, we agree that this discretion should be exercised on the court's own motion, if the court is satisfied that it is appropriate in all the circumstances and the defence consents.

We agree that it makes sense to amend section 124 of the *Penalties and Sentences Act 1992* (Qld) to prevent totality issues. To avoid significant delays between sentences for new offences and breach proceedings being instituted by QCS, we suggest it would be appropriate to impose a statutory timeframe within which QCS is required to bring breach proceedings (e.g. within 30 days of being notified of the new offence) to prevent significant delays for defendants.