RMT;dgr

19 June 2019

Queensland Sentencing Advisory Council
GPO Box 2360
Brisbane Qld 4001

Dear Chair

Re: Review of community based sentencing orders, imprisonment and parole options

The Bar Association of Queensland ("the Association") thanks the Queensland Sentencing Advisory Council (QSAC) for the opportunity to take part in the extensive consultation undertaken as part of the review of community based sentencing orders, imprisonment and parole options.

We note that we have provided three written responses to Policy Issues Papers during the course of the consultation and advise that we have no objection to those contributions being published on the QSAC website along with other stakeholder responses.

We confirm that at least one representative from our Criminal Law Committee was present for the stakeholder meetings held by QSAC as part of this review. We note your specific questions in relation to potential changes to court order parole. In considering our response we have had regard to the QSAC Options Paper: Community Based Sentencing Orders, Imprisonment and Parole, and the recommendations made by the Queensland Parole System Review.

Your letter of 10 June 2019 posed a number of questions which are reproduced here for ease of reference, followed by the Association's response.

Context: The Council put forward three options for reform of court ordered parole in its Options Paper to respond to issues identified by the Parole Review:

1. *No change to court ordered parole;*
2. *Reform court ordered parole to extend availability beyond the current three year cap, up to five years;*
3. *Reform court ordered parole to extend availability by removing the cap.*

A fourth option was discussed at page 238 (final paragraph) of the paper, although not presented as a formal Council option:

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Providing courts with a discretion to order either: a parole release date or eligibility date, when sentencing for current offences to which the court ordered parole scheme applies, but without extending the availability of court ordered parole beyond this period or to other offences until such time as the effectiveness of the scheme has been further evaluated.

This fourth option could extend the same dual discretion to courts when sentencing for a sexual offence.

The Council invites feedback from your agency on these reform options - specifically:

1. *Whether a dual discretion should be introduced under s160B of the PSA that would allow courts to set either a parole release or parole eligibility date for sentences of three years or less, but retaining other criteria, including offences to which court ordered parole does not apply;*
2. *Whether instead of, or in addition to the above, a dual discretion should be introduced that allows a court to set either a parole release date or parole eligibility date when sentencing a person for a sexual offence in circumstances where the sentence of imprisonment imposed is three years or less.*

Response:

The Association supports the removal of the current cap on court ordered parole (at 3 years) and the introduction of a dual discretion allowing a court to set either a PRD or PED when sentencing a person for sexual offences in circumstances where the sentence of imprisonment imposed is three years or less.

This position reflects the Association's general commitment to judicial discretion in sentencing, but also acknowledges the public interest in ensuring that individuals who are convicted of serious sexual offences are subjected to the scrutiny of the parole system prior to their release from custody.

The combination of reforms suggested would enable sentencing judges to impose appropriate and proportionate sentences while still having the power to order release at a certain point depending on the circumstances of the individual. This is particularly important in cases where long periods of presentence custody have been served prior to sentence.

We note that QSAC sought a specific response to this question from the Options Paper:

Question 14: Availability of parole for short sentences 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?

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:

(a) to activation of a suspended term of imprisonment on breach by reoffending?
(b) 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?

Response:

The Association is concerned that while an alternative to short periods of imprisonment with immediate release on parole may be provided in the form of Community Corrections Orders, the result of such a reform may in fact be a significant increase in the prison population. Such sentences are unlikely to be regularly challenged on appeal due to the timeframes involved in the appellate process.

The members of the Association who regularly practice in criminal law are of the view that short terms of imprisonment are of questionable utility, doing little to reduce recidivism or foster rehabilitation of the prisoner. It is further noted that prisoners who were ordered to serve their sentences in full would then be released from custody with no supervision.

An alternative response to the difficulties with short periods on parole is to abolish sentences of imprisonment of less than 6 months.

The Association does not support the abolition of parole for short sentences of imprisonment.

Thank you for the opportunity for the Association to provide input to this important review. The Association would be pleased to provide further feedback, or answer any queries you may have on this matter.

Yours faithfully

Rebecca Treston QC
President