Review of community based sentencing orders, imprisonment and parole options

Submission by Legal Aid Queensland

Legal Aid QUEENSLAND

TRIM no 2017/061484

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Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in response to the Queensland Sentencing Advisory Council's (QSAC) *Community Based Sentencing Orders, Imprisonment and Parole: Options Paper.*

LAQ conducts the largest criminal law practice in Queensland, representing disadvantaged clients charged with the full range of criminal offences and employing some of the most experienced criminal lawyers in the state.

LAQ also provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ seeks to offer policy input that is constructive and based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ supports legislative reforms providing judicial officers with discretion and options in sentencing. We do not support mandatory sentencing.

The Terms of Reference for the review do not require the review of sentencing options for the purpose of increasing the general level of sentencing. Further, the purpose of the referral to QSAC was not to consider "raising of the bar" on sentences, as compared with recent reviews conducted by the Council. In our view any reforms arising from this review need to be framed in a way that avoids any suggestion that the general level of sentencing should be increased.

List of Options

We have outlined LAQ's preferences below having regard to the "List of Options" set out at page xi) of the options paper. Much of this feedback is provided in the absence of a specific model and having regard to what are identified as QSAC's preferred options.

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Intensive correction orders (ICOs)

Option 1: Retain ICOs in their current form

Option 2: Abolish ICOs as a sentencing option and replace with the CCO (Council preferred option)

Option 3: Reform ICOs

Intensive corrections orders are currently underutilised by the courts and under resourced by Queensland Corrective Services (QCS). Their value has decreased with the introduction of the ability of a court to set a parole release date. Properly resourced, these orders can be a valuable sentencing option for a certain category of offenders and offences, particularly where actual imprisonment is imminent. It offers combined punitive and rehabilitative benefits for relatively short periods. Breaches are dealt with by a court, rather than the Parole Board. For these reasons we support in principal the retention of this type of order.

We would support Option 2 if the features of an ICO were to be incorporated into the proposed Community Corrections Order (CCO) in such a way that did not restrict a court's discretion to impose lower level supervision orders within the CCO, or lead to a practice where a defendant was effectively set up to fail. Ideally this CCO model would allow for a new and improved ICO with flexibility on community service and reporting, the length of the order, discretion on the recording of a conviction and implications for contravention. It could allow for graded versions of an ICO to allow for broader options and consequences for breaches, rather than imprisonment.

If a CCO is introduced but within a more limited and less flexible framework, LAQ would support Option 3. Under this option, ICO's could be reformed by having the 12 month period extended, greater flexibility in terms of reporting and community service and giving a court the discretion in regards to the recording of a conviction.

Community correction orders

Option 1: Retain probation and community service orders with no or minor changes only

Option 2: Introduce a limited form of CCO, replacing probation and CSOs

Option 3: Introduce CCOs, replacing probation, community service orders and ICOs (Council preferred option)

LAQ supports the maintaining of a court's ability to impose a small amount of community service or a short period of probation where it is currently considered appropriate. In the interests of avoiding imprisonment, particularly for those offences currently under section 9 of the PSA for which imprisonment is still a last resort, and to cover a wider range of offending, there may be value in increasing the maximum number of hours community service a court can impose.

Greater flexibility in relation to what could amount to community service and better resourcing as to what is on offer under a probation order would improve the current options. As mentioned above, there are also ways of improving the current ICO. If these changes could be incorporated into a comprehensive CCO without having the effect of over committing low level offenders, or setting up those offenders with complex criminogenic needs to fail, LAQ would support Option 3.

An offender who currently attracts a small amount of community service should under such an order still attract the same penalty. Similarly, an offender who currently attracts a penalty less than a community based order, should still be in the same position. This would need to be communicated either through clear explanatory notes in any introducing legislation, and/or through guidelines within the *Penalties and Sentences Act 1992* (PSA). Defendants would of course have avenues of appeal open to them in the event of an over utilising of the options under a broad CCO framework. However in our experience, particularly in relation to sentences in the Magistrates Courts (which is where the majority of offenders are sentenced), this is often not an option taken up by unrepresented defendants, or defendants represented by duty lawyers.

LAQ is concerned that the introduction of CCOs similar to some other jurisdictions with long periods of supervision and increased hours of community service, together with conditions, without guidelines, could be interpreted by courts to mean an overall legislative intention to increase community based order sentences.

Suspended sentences

Option 1: No change to suspended sentences, or only minor reforms

Option 2: Reform suspended sentences to allow a court to order a combined suspended sentence with a community based order for a single offence (Council preferred option)

Option 3: Introduce a new form of order – the conditional suspended sentence

LAQ supports Option 2. This would allow for a punitive response and addressing of rehabilitative issues. Keeping the orders with different purposes separate has the benefit of avoiding incarcerating people for minor breaches of program participation as is the risk with a conditional suspended sentence. This is particularly important given the length of suspended sentences.

Court ordered parole

Option 1: No change to court ordered parole

Option 2: Reform court ordered parole to extend availability

Option 3: Reform court ordered parole to extend availability by removing cap

As noted above, LAQ supports judicial officers having flexibility and discretion when sentencing a defendant. We therefore support the availability of court ordered parole and eligibility for sex offenders. This may then prompt the need for greater information at sentence as to availability of courses and exploration of criminogenic needs, but these issues could be the subject of a presentence report. If the information is not available or not able to satisfy a court that a convicted sex offender should be released on a given date, the court could order imprisonment with eligibility. LAQ also supports the availability of a court ordering a parole release date for a sentence up to five years.

Pre-sentence reports (PSR)

Option 1: No change to the requirement for a PSR (Council preferred option)

Option 2: Presumption in favour of a PSR being prepared for certain orders (or conditions), but no requirement

Option 3: PSR required for specific condition types, rather than order types

LAQ takes on board the feedback provided during the review from QCS regarding current resource issues restricting their capacity to provide detailed PSRs across all jurisdictions. We also note that in Victoria where PSRs are compulsory before ordering CCOs, adjournments are required and the reports are more of an indication of an individual's suitability rather than an analysis of their criminogenic needs and availability of suitable programs. In light of this information, we support Option 1. This option also maintains the court's discretion.

List of Questions

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 the 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)?

LAQ has concerns as to how flexible and extended community based orders such as what is proposed under the QSAC's preferred CCO option will be utilised if the existing subsections removing imprisonment as a last resort for several categories of offences are maintained.

In our view the maintaining of sections 9(2A), (4), (6), (6A) and (7) of the PSA will greatly restrict any benefit a CCO may offer. In addition to the current community based options a CCO would offer a community based order designed with expanded lengths of operation, increased conditions, and or increased community service hours. They could operate as a viable alternative to actual imprisonment with court ordered parole. These features would make the order of great relevance to many offenders convicted of the offences captured by subsections (2A), (4), (6), (6A) and (7).

The appeal of flexibility and broader range of options and conditions under the CCO would be at its highest when applied to offenders committing the more serious offences (many captured by the abovementioned subsections) who may still be worthy of rehabilitation options rather than the low grade offending for which current sentencing options cover. Given the framework of the order it would be unfortunate to remove this group of offenders from eligibility for the order.

If the abovementioned subsections are not amended, there may need to be inserted into section 9 (for example an additional paragraph in subsection 3 recognising the value of imposing community based orders or requiring a sentencing court to have regard to the various options under the CCO that may be relevant to the offender.

Question 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?

- Penalty for murder: The mandatory life sentence for the offence of Murder under section 305 of the *Criminal Code* has resulted in a range of partial defences being developed to allow a court to have regard to the circumstances of a killing and to ensure a person is sentenced for their level of criminality. In our view this could be more effectively resolved by removing the mandatory life sentence for murder as is the case in

several other Australian jurisdictions. Significant resources are put into the running, prosecuting and defending of murder cases throughout Queensland. A court's inability to take into account on a case by case basis a person's level of criminality having regard to all the circumstances of a case and their personal attributes has led to pleas of guilty to a murder charge occurring rarely.

- Serious violent offender (SVO) provisions: in our experience, when mandatory sentence provisions are introduced without clear definitions, the courts then spend several years developing case law to determine the meaning of terms and phrases. This has occurred in relation to the SVO provisions of the PSA. Whilst we acknowledge the meanings are now well settled, in our view there are anomalies within the Schedule 1 associated with the provisions. The Schedule is referenced in a number of circumstances outside the SVO provisions. This may explain the inclusion of offences which simply do not necessarily involve violence; in particular the trafficking, supply and producing of dangerous drugs. In our experience, sentences for offences of particularly producing or supplying dangerous drugs without an association with a more serious charge would rarely attract a head sentence of 10 years or more and only on occasions attract a sentence of five years or more.

- Section 754 of the *Police Powers and Responsibilities Act 2000* (PPRA): the penalty outlined under the *failure to stop* provision of the PPRA has resulted in a split in judicial opinion that warrants legislative clarification as regards whether or not the provision leaves open the option for imposing community based orders. As mentioned above, LAQ does not support mandatory sentencing and is in favour of giving the judicial officer hearing all of the facts of the case a wide sentencing discretion.

Question 3: Legislative guidance on use of 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:

(a) Should it be a requirement for a court to consider the availability of a CCO prior to considering imprisonment?

LAQ supports this as a consideration for a court, although notes there are inequities across regional and remote Queensland as to the availability of supervision and programs. In some respects it may be helpful to recognise a contrary position that imprisonment is not to be imposed where a community based order is considered appropriate but there are geographic constraints and limitations on service delivery in the region where the defendant resides (similar to s.150(2)(d) of the Youth Justice Act 1992 (YJA)

(b) Should there be legislative guidance that provides no more conditions are to be ordered than are necessary to meet the purposes of the order?

LAQ supports the imposition of conditions proportionate to the offending. There is a risk with the introduction of a new sentencing option incorporating a large range of options on a larger scale than previously able to be imposed of overloading of conditions either in an effort to punish or to 'fix" a problem. This could be managed through a general reference to proportionality when imposing community based orders within section 9.

(c) 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?

Current community based order provisions provide discretions for a court when imposing such orders, including suitability for community service and the requirement of consent. Suitability would also be addressed in court reports (predominantly only available in Magistrates Courts). In our view the vulnerabilities and constraints would currently be considered by a court. However, LAQ would seek to address inequities across the state which might see individuals sentenced in better serviced urban areas better off than those in the regions where fewer services are available. As mentioned above, section 150(2)(d) of the YJA sets out a suitable way to counter such inequity to avoid a sliding scale of sentencing where a community based order cannot be serviced.

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)?

If the provisions were to be drafted in such a way as not to exclude the possibility of further orders, it may not be necessary. However if the all-encompassing CCO is adopted, it may be addressed in a fairly simple way within the provisions ensuring clarity with such changes.

Question 4: Home detention

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

As another sentencing option home detention, may represent a good half way step back into the community for those on lengthy remand periods, or be appropriate options for young offenders. For many of our clients, stable housing is a major issue and may not be available for long periods of time. However, this option is likely to be costly to impose and monitor.

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?

This may sit better as a stand-alone sentencing option. It would present as a different option to court ordered parole given the inability to leave the home. There would need to be some flexibility if there are reporting requirements or to allow a person to attend courses, training, schooling or family commitments.

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:

(a) The person is convicted of an offence punishable by imprisonment.

Yes

(b) A conviction is recorded.

Not necessarily

(c) The person consents to the order being made.

Yes

(d) 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.

LAQ would see this option sitting between a suspended sentence and up to an alternative option to court ordered parole.

(e) 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.

Yes

(f) Any co-resident has consented to the person living at the nominated address?

Yes.

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)?

LAQ would not support the limitation by offences. The above protections/guidelines in conjunction with a suitability assessment would be sufficient.

4.5 What should the maximum period of home detention be:

(a) 12 months (Northern Territory and New Zealand model)

In our experience, many of our clients would struggle to maintain consistent housing for 12 months or more. We would support up to 12 months but also have included the ability to vary the address during the course of the order.

(b) 18 months (Tasmanian model)

No.

(c) 2 years (NSW model)?

No.

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

There is logic in applying a curfew to distinguish it as an option from a suspended sentence or court ordered parole, however it should be assessed on a case by case basis having regard to an individual's commitments outside the house, the nature of the offending and the availability of services in the area.

Question 5: Suspended sentences

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

The graphs in Chapter 8 of the options paper confirm that wholly suspended sentences are utilised by the court. In our experience they can operate to provide an appropriate alternative to actual imprisonment for certain offenders.

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

The introduction of court ordered parole has provided a convenient option for courts to impose a form of supervision, not just suspension, where breaches of the order are diverted to the parole board. In some of these cases there may be only a weak basis for such supervision.

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:

(a) affect a court's decision to make a suspended sentence order;

Possibly particularly if the other options open are not attractive options due to insufficient resourcing.

(b) if imposed, are likely to predispose such offenders breaching the order through commission of a new offence?

There is a risk in regional and remote areas with limited services that offenders who would ordinarily attract a community based order may receive a suspended sentence. This issue could be addressed as outlined above under Question 3.1(c).

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?

No. There is merit in including a requirement that the operational period be proportionate to the imprisonment imposed, the offence and personal attributes.

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)?

Legislative guidance together with professional development.

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?

No, a statement of the need for the operational period to be proportionate should be sufficient.

Question 7: Power of court dealing with offender on breach of a suspended sentence

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

(a) 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?

Given someone has breached the order by the time this provision applies, it is conceded that for the legislation to have the appropriate effect there should be a significant test to meet.

(b) 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'?

Yes. Given legislative reform in recent years, very few charges will fit within the category of "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:

(a) impose a fine and make no other order (Western Australia and England and Wales); and/or

Yes.

(b) make no order (Northern Territory and Tasmania).

Yes or alternatively legislative recognition of acknowledging the breach is proven but no action is taken.

LAQ would support a discretion being available to a court when dealing with the circumstances outlined under section 146(1)(b). In our view the current provision can lead to harsh and unintended consequences for offenders potentially years after the fact.

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?

Yes.

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

Yes, on the defendant's election.

Question 9: Combined suspended sentence/community based order

9.1 Should greater flexibility be introduced to allow a court:

(a) to make a probation order in addition to a suspended sentence for a single offence, and/or

Yes

(b) to make a community service order in addition to a suspended sentence for a single offence; or

Yes

(c) as an alternative to point 1 and 2, to make a CCO in addition to a suspended sentence for a single offence?

Yes

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?

In our view they should be retained as separate orders. Please see our above response under the List of Options.

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?

If the orders run separately (i.e., the suspended sentence is a stand-alone order) that address different sentencing issues, the community based order maximums will apply.

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?

Morrison JA at paragraph [53] sets out two alternative ways of dealing with the current provisions:

"[53] The conundrum is one which calls for legislative attention. Perhaps the answer lies in specifying that a subsequent court which is sentencing an offender to a lesser period of imprisonment than an existing sentence, is not required to set a parole release date. Or maybe in permitting the subsequent court in that case to set a parole release date at the limit of the term it imposes, but on the basis that that date does not cancel the later date set by the previous court."

In our view, if the current provisions are retained, the first option seems appropriate. This question is only relevant if the current parole provisions are retained. We would support an overhaul to these provisions in the interest of greater clarity and flexibly.

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?

These provisions are difficult to traverse and are unnecessarily complicated. From a practical point of view it would be helpful to have them combined into one legislative scheme.

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 discretion to again set a parole release date if it considers court ordered parole is still appropriate?

Yes.

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?

The complexity is in determining what is declarable. The proposal in 13.1 and 13.2 may address this. We would support a more simplified, administrative approach. Within the youth justice jurisdiction any period must be counted. It is calculated at the detention centre/youth justice end without the need for a declaration (section 218 of the YJA). This option may be worth considering with other agencies.

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')?

Yes.

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?

Yes.

There are no specific risks that we can identify.

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?

LAQ acknowledges that there are currently significant issues in the administration of parole attached to short sentences. Underlying these issues appears to be a lack of resources in terms of the early linking of people to programs/supervision, and the availability of meaningful programs within the short timeframes. The statistics from the Parole Board presented at the QSAC round table meetings of the instances of return to custody of people placed on these orders would suggest that they are not effective for many offenders. In relation to eligibility there is also the delay between when an individual applies for parole and when the application is considered by the board.

It is of concern that at the time of receiving this information, there is consideration for the introduction of a possibly more resource intensive, longer community based order in the form of a CCO. In theory both sentencing options have appealing features for a variety of our clients if properly resourced. As mentioned above, in our view court ordered parole, in particular with short sentences, is being over utilised at the expense of alternatives like a suspended sentence or ICO. The consequences for our clients for a breach

are more immediate under a court ordered parole breach compared with other orders which require a court to determine what should occur.

If parole under short sentences is abolished, what is then on offer for offenders who would ordinarily attract this type of sentence? A suspended sentence coupled with a community based order, or a structured CCO could be considered.

As mentioned above, LAQ supports the availability of a wide range of sentencing options. Short term imprisonment with parole is another option for our clients. Whilst we do not want to set our clients up to fail, the failure in this instance is not necessarily related to the form of the legislation, but the practicalities of administering the order. If the resourcing situation is not likely to improve, perhaps this is an area in which legislative requirement of further investigation (for example, in the form of a presentence report) may be of use rather than removing the option entirely.

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?

No.

(b) if an offender has an existing parole date and reoffends while on parole?

No.

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

Abolishing parole for short term periods of imprisonment will leave the courts having to rely upon the alternative sentencing orders. Some of these orders if breached will see a large number of breach matters currently diverted from the courts, back before them adding to already voluminous court lists. Those who would ordinarily be entitled to release on parole will be left to serve the entire period in custody and released at their full time date leaving more people in jail for longer and then with no supervision upon release. Those on suspended sentences who might have warranted supervision through parole due to a combination of their criminal history and the nature of their offending, will have a rehabilitative option removed. In essence there is a risk that the cost of properly administering these orders will simply be shifted to other agencies within the criminal justice system with their abolition.

Question 15: Pre-sentence reports

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

As outlined under List of Options, LAQ supports retaining the current system. Given resource issues raised elsewhere in this response a mandatory requirement is probably not realistic from a resource perspective. This option may overload the system such that quality of all is reduced.

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

Given our response to question 15.2, this question is in applicable.

Question 16: Operation of sections 651 and 561 Criminal Code (Qld) & section 189 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 1992 (Qld)?

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

We agree that the process surrounding the use of section 651 of the *Criminal Code* can be inflexible and cause delay. In terms of expediency, there is merit in removing the need for an offender's signature on the paperwork. In relation to section 189 we agree with the concerns raised by other stakeholders, however, this option should remain in the legislative scheme to allow for increased flexibility. With respect to section 561 ex-officio indictments this remains an important way with which to handle charges. Whilst ex-officio indictments are not used as often as they previously were, they remain a useful mechanism, particularly in a situation where matters need to be dealt with urgently or to avoid delay. For example, where there is an error in the committal process where a charge that must proceed on indictment has not been committed up there can be delays in sentencing whilst the parties wait for that matter to catch up with other matters already committed and listed for sentence. The presentation of an ex-officio indictment for the charge left in the Magistrates Court means that the sentence can proceed as listed which reduces delay and assists the Court in the managing the lists.

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?

Yes.

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

The fact that the term "convicted" does not require an actual conviction to be recorded.

Question 18: Ability of higher courts to deal with breach of a Magistrates Court (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?

Yes, for expediency but with the parties' consent.

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?

Yes.

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

Yes, with defence election and provided relevant material is before the court.

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?

Yes, but only by consent. There needs to be some guidelines as to how to deal with this, for example, relevant material before the court.