Submission to the Queensland Sentencing Advisory Council Review

Community based sentencing orders, imprisonment and parole: Options paper

Queensland Corrective Services

Queensland Government

Contents

Introduction

This document is Queensland Corrective Services' (QCS) submission to the Queensland Sentencing Advisory Council's (QSAC) Options Paper – Community based sentencing orders, imprisonment and parole. The submission contains data and analysis compiled and completed by QCS. It does not represent Government policy.

The QSAC Review and subsequent Options Paper form an important part of the implementation of the Queensland Parole System Review (QPSR). QCS welcomes the Review and Options Paper and has sought to provide QSAC with comprehensive information, data and analysis. Issues for consideration have been made throughout the submission. Further information on these issues can be provided if required.

List of acronyms

COP - Court ordered parole

BOP - Board ordered parole

CED – Custodial end date

CSA - *Corrective Services Act 2006*

DPSOA – *Dangerous Prisoners (Sexual Offenders) Act 2003*

ICO – Intensive Correction Order

PBQ - Parole Board Queensland

PED – Parole eligibility date

PSA - *Penalties and Sentences Act 1992*

PSCC - Pre-sentence custody certificate

PSR – Pre-sentence report

QCS - Queensland Corrective Services

QPSR - Queensland Parole System Review (Sofronoff Review)

QPS - Queensland Police Service

QSAC – Queensland Sentencing Advisory Council

VJR - Verdict and Judgment Records

Overview of Queensland Corrective Services' community corrections service and practices

Queensland Corrective Services (QCS) is responsible for the management and supervision of over 21,500 offenders in the community subject to either parole or community based orders. With a workforce of approximately 800 full time equivalent staff managing these offenders, QCS services seven regions, 34 district offices, and over 150 reporting locations across Queensland to ensure offenders meet the requirements of their orders.

In 2016, the Queensland Parole System Review (QPSR) was critical of the size of the Queensland community corrections workforce in comparison to other Australian jurisdictions. The QPSR noted the low cost of Queensland's community corrections system when compared with other jurisdictions was due to the high caseloads managed in Queensland relative to other jurisdictions.

Queensland has the highest offender-to-operational staff ratio in Australia (29.1 compared to a national average of 18.7) and the highest offender to all staff ratio (22.8 compared to a national average of 15.2). The 2019 Report on Government Services (RoGS) reported that Queensland was the lowest cost community corrections service in the country in 2017-18, with a cost of $13.79 per offender per day. This cost is substantially below the national average of $23.25.

These factors are relevant when considering significant reform to the orders QCS manages and QCS' ability to amend or expand existing practices.

QCS' supervision model

QCS' current community supervision model is derived from a rich base of criminal justice research and applies a tailored approach to offender management. Consistent with best practice, the current framework for managing offenders under supervision is designed to target resources towards high risk offenders achieved through a graduated supervision response based on six levels of service. QCS supervises a range of orders including probation, community service, intensive correction orders, court ordered parole and board ordered parole. An offender's risk is not necessarily correlated with the order type. Operational Practice Guidelines were implemented in 2012, replacing prescriptive procedures, to inform practice and provide guidance to staff whilst allowing discretion.

QCS supports an individualised approach to each offender through the development of university educated staff and the provision of intensive training in the areas of case management practices and the identification of risk and assessment of needs. To further support the use of officer discretion, QCS provides a progression training package, delivered by internal and external content experts, which covers prosocial modelling, motivational interviewing, management of sexual offenders and advanced risk assessment, management and mitigation.

Utilising a Risk, Needs and Responsivity (RNR) framework, QCS operates an empirically supported model of offender management to target reductions in offending behaviours. This approach allows officer discretion to tailor case management and resources to target higher risk offenders. This is based on empirical evidence that shows, while high-risk offenders benefit most from intensive intervention, low-risk offenders benefit most from less intensive intervention. This has been shown to hold true across a range of cohorts.

This principle requires QCS to properly assess an offender to determine their level of risk and then match them to an appropriate level of service with consideration given to order conditions rather than order type. Strategies and actions are then individualised to each offender.

Community Correction Orders

QCS acknowledges the benefits of implementing a Community Correction Order (CCO) model in Queensland, including the simplified nature of the order and the ability for courts to tailor orders specific to the offender. Simplifying orders not only assists the offender to understand their requirements and responsibilities whilst under supervision, but could also provide greater clarity as to the courts desired intent for supervision outcomes for offenders post-sentencing.

The CCO model aligns with the RNR framework which supports a tailored approach to case management. QCS conducts dynamic assessments of offenders to identify an offender's risk factors, criminogenic and non-criminogenic needs and protective factors at the point of admission. The purpose of assessing both criminogenic and non-criminogenic needs is to contextualise factors that result in offending behaviour and record information that is essential for individualised case management.

By benchmarking offender risk, QCS can dynamically assess and manage changes in an offender's risk. QCS acknowledges that an offender's risks and needs change over time and can be based on a number of factors, including an offender's responsivity and engagement, age, employment, family circumstances.

The evolution of an offender's risk and needs profile over time can make it difficult to determine an individual's future behaviours and needs. QCS acknowledges this and within the confines of current community based order conditions, supervises offenders based on a level of service. The Risk of Re-Offending - Prison Version (RoR-PV) and Risk of Re-Offending – Probation and Parole Version (ROR-PPV) are administered at the time of an individual's admission to determine an initial level of service for assessment and case management pathways. QCS is able to escalate or change an individual's level of service if it is necessary including for the purposes of risk management.

Within the levels of service, QCS is able to confidently increase and decrease an offender's supervision intensity commensurate with their risk. For example, QCS provides more intensive supervision within the first three months of an offender's order as it is proven to be the highest risk period for an offender.

In contrast, QCS also utilises a Biometric Offender Reporting Information System (BORIS) as an option in a low risk offender's reporting regime. BORIS utilises a kiosk with finger-print scan technology to identify the offender and a short list of questions to oversee the offender's supervision. Provisions within the system allows for staff to see the offender in person when required. It provides a flexible reporting alternative for offenders subject to community based supervision and is a valuable addition to QCS, providing a further tool to monitor and manage offenders in the community. Notably it reduces over-servicing of low risk offenders whilst ensuring effective management of risk and compliance occurs.

Net-widening and resource implications

A CCO may be an effective alternative to prison for offenders who are verging on imprisonment. This may divert some short-sentence prisoners from custody where it is appropriate for them to be managed in the community. While this may have the benefit of ameliorating prison overcrowding, the potential net-widening could have community supervision resource implications.

QCS notes that there is the potential that a CCO model as proposed could result in undesired outcomes including the net-widening of sentences to include offenders who may have previously received a suspended sentence or other non-supervised penalty under the current sentencing options.

Offenders subject to suspended sentences do not have contact with QCS; therefore, if courts were to impose a CCO in place of a suspended sentence, the staffing, services and possible infrastructure resources required to manage the offender on the CCO in the community would need to be considered.

Net-widening could also be experienced with the removal of the standalone community service order resulting in offenders receiving a CCO to perform community service that also contains a condition of supervision.

As part of a considered evidence-based case management plan, QCS undertakes a number of surveillance tasks as required throughout the supervision of an offender's order including home visits, curfew checks, urinalysis and breath tests, and collateral checks on employment and accommodation. It is noted only some district offices have dedicated surveillance resources to undertake these tasks, with the majority of these checks being conducted by case management officers. Any potential increase in the sentencing of orders which contain specific supervision or compliance conditions would require an expansion of this function.

Another factor to be considered is the best model to adopt for breach outcomes and non-compliance. The use of imprisonment as a response to a breach necessarily impacts upon prison numbers, which increases the State's prison costs. However, the capacity to intervene in minor rule breaking behaviour prior to the behaviour escalating is an important factor in community management, with delays and lengthy court processes potentially undermining the effectiveness of the sanction.

The addition of an administrative powers condition to recognise progress similar to New South Wales (NSW) would be beneficial to this approach. This provision supports the methodologies embedded in QCS practices (RNR model and BORIS) of tailoring supervision to ensure over-servicing does not occur to low risk offenders. However, should a similar provision be adopted in Queensland, clarity would be required regarding the courts' expectation should QCS suspend supervision of an offender and the offender re-offend prior to the expiration of the order. Further consultation on the operationalisation of such a condition would be required, with a review of the NSW operational model supported.

CCO conditions

QCS provides expert case management and supervision that supports behavioural change. For QCS to effectively supervise any model of CCOs, the proposed core conditions require an element of supervision such as the need for the offender to engage in supervision, engage in programs and counselling and restrict interstate travel without approval. Without a core condition of supervision, the order would more closely resemble a suspended sentence or a good behaviour bond and it would be unclear as to what role QCS has in monitoring such an order.

Allowing supervision for the period of the order or for a lesser period, such as until all rehabilitation conditions have been met satisfactorily, would allow QCS the flexibility to end supervision if it reasonably believes it is in the interest of the offender and the community to cease supervision early. Research shows that servicing an offender above their level of risk can have negative effects, including increasing recidivism. The ability to revoke an order in circumstances of exceptional progress would benefit not only the individual offender and the community, but would be more resource efficient for QCS, in that it could focus its resources towards offenders that benefit from supervision.

The *Penalties and Sentences Act 1992* (PSA) currently allows for the courts discretion in administering additional requirements to both probation (section 94) and intensive correction orders (section 115). Additional conditions are not currently permitted on other community based orders.

Providing the courts with a suite of developed additional conditions is imperative in ensuring the tailored philosophy of a CCO model. However, to support a tailored CCO and provide the most flexibility post-sentencing, it is important that the suite of additional conditions is broad enough to not hinder QCS' ability to tailor case management and respond to an offender's changing risk, engagement and needs.

To ensure consistency across jurisdictions, it may be useful to give consideration to the powers of corrective services officers to amend or suspend conditions of an order and when to return an order to court.

Treatment and rehabilitation

Programs and intervention services assist offenders to address their criminal behaviour and develop pro-social skills and techniques to control their behaviour and avoid situations that may lead to further offending.

An intervention need may be identified during the assessment of an offender or throughout the case management process as it arises. Tailoring CCOs to be effective rehabilitative orders requires the non-specificity of conditions. To effectively respond to risk and needs as they arise, QCS requires the ability to utilise an array of intervention services that will assist to address the offender's underlying responsivity factors.

Only a very small number of programs (sexual offending programs, substance abuse programs and, in some locations, general offending programs) are offered by QCS staff in the community. Where possible, QCS brokers supportive relationships with non-government organisations and external stakeholders to ensure a range of treatment and support options are available to offenders in the community. Some of these services experience more demand for support than can be provided, particularly if they are the only available service in the local area.

On average, QCS makes over 16,000 referrals to external services per year. This large number of referrals can affect waitlists for external services, impacting on the ability for an offender's needs and risks to be addressed in a timely manner. There are often a number of agencies and non-government organisations working with offenders and their families, and it can be challenging to coordinate services across these agencies. This can complicate the effectiveness of community-based interventions. The availability of service providers in the community, particularly in rural and remote areas, is also a concern.

QCS notes the transient nature of some offenders and the need for conditions to be broad so as to allow flexibility within its application in the community. Allowing the courts to be specific with programs and interventions within conditions could restrict QCS in appropriately addressing assessed needs, in turn potentially impacting on the effectiveness of the order. A condition scheme which is too prescriptive also increases the risk of an offender being required to attend a specific program or intervention service that is not available within their community (i.e. due to the location or demand of the service).

Imposing generalised conditions in the order, such as to submit to assessment and treatment directions as required by the chief executive of QCS, would have the benefit of allowing decisions about the specific criminogenic needs of the offender to be informed by a risk assessment, and could also take into account the availability of specific treatment programs.

An increase in order conditions related to programs would lead to an increase in referrals to external providers. If the availability of community based programs is not also expanded this would result in greater levels of unmet demand.

Judicial monitoring

QCS acknowledges the success of judicial monitoring conditions in isolated and intensive situations, such as Drug and Alcohol Courts, however notes these models potentially have a negative effect on lower risk offenders and are resource intensive, with their success contingent on appropriate resources and/or limits on intakes.

Whilst the importance of the court's discretion is vital in sentencing, especially under a proposed CCO framework, it is important to not hinder the expertise of QCS and its discretion in being able to appropriately case manage and respond to breaches and risk.

QCS notes that lack of engagement with supervision and risk of harm are not necessarily correlated events. Not all engagement issues will result in risk and not all risk will be a result of poor engagement. Research supports the need to look carefully at the impact of a trigger event and consider the level of harm it presents.

Providing what is in essence an element of case management to the judiciary poses a significant risk of over servicing offenders that are in the process of making incremental shifts towards addressing their criminogenic behaviours. Returning offenders to court under a judicial monitoring condition could have a detrimental effect on their rehabilitative journey and overall outcomes, not aligned with the original intent of the condition.

It is noted court workloads can also have broader impacts across the system, for example the length of time taken to conclude court matters affects the amount of time prisoners spend in custody on remand.

Judicial monitoring as a condition of a CCO order would allow for an additional layer of accountability on the offender. However, it is recommended that judicial monitoring be an optional condition reserved for offenders with a poor history of complying with community based supervision, or who have previously failed to comply with a community based order and been resentenced. The use of judicial monitoring would have resource implications for QCS if officers are required to attend court and/or provide regular status updates to the court.

Electronic monitoring and curfew

When considering the application of electronic monitoring (EM) for an offender, QCS conducts extensive assessments to ensure effective implementation and reduction in assessed criminogenic risks. An ability for the courts to broadly apply EM and curfew conditions, as currently proposed, would be a significant departure from QCS' current approach to offender management.

The use of GPS monitoring for offenders is complex. Whilst GPS monitoring devices have benefited from technological advances in recent years, they are not a replacement for case management, but rather a supplement to inform pro-active supervision of an individual subject to supervision. For example, discussing the offender's attendance at a particular location or time and how this relates to an increase in their risk of re-offending.

Without proper screening and assessment procedures, the application of these conditions to community based offenders could result in unnecessarily intense supervision of a large number of offenders. Furthermore the dual use of EM and a curfew condition could impose a form of home incarceration on a cohort of offenders not requiring this level of supervision, potentially hindering their rehabilitative opportunities, including finding or maintaining employment.

Additionally, GPS monitoring devices have a number of components to ensure their effective operation including the Smart Tag, Smart Beacons, Radio Frequency (RF) Beacons, On-Body Chargers, On-Body Charger docks and docking stations. Some offenders with intellectual impairment do not have sufficient capacity to understand and adhere to the

operating requirements of the devices. The imposition of an EM monitoring condition could result in unintentional technical breaches (e.g. battery alerts) and a vulnerable cohort of offenders being subjected to increased contact with the justice system.

Section 267 of the *Corrective Services Act 2006* (CSA) provides that if considered reasonably necessary, QCS may require an offender to wear a GPS monitoring device for monitoring the offender's location. Additional provisions were subsequently inserted into the CSA (section 200A) to provide that a parole order may contain a condition requiring a prisoner be subject to a direction to wear a GPS monitoring device, remain at a stated place (curfew), and permit installation of any device of equipment at the place they reside. Additionally, the Parole Board Queensland (PBQ) may also apply the condition to a parolee.

As at 30 April 2019, there were 7,595 offenders subject to a parole order and 170 offenders subject to a parole order being supervised using a wearable GPS monitoring device.

Wearable GPS monitoring devices represent a significant investment to QCS and there are significant staff resources dedicated to managing the current cohort of offenders subject to GPS monitoring.

The current QCS operational response for parolees and *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA) offenders identified as having tampered, damaged or removed a device is the immediate suspension of their order via approval from the PBQ or the issuing of a warrant for the return of DPSOA offenders to the Supreme Court.

The intent of the proposed EM condition suggests timely breach action and return to court for an offender should a GPS device be removed. The current community based order breach process is resource intensive and time consuming due to requirements to compile court reports, up to date police documents (criminal history and QP9's), complete a Complaint and Summons, Oath of Service, and lodge at a local court.

Throughout the case management and supervision of an offender, technical violations can occur that do not always result in an increase of the offender's risk. To retain effective evidence based case management practices, it is important that QCS has discretion in responding to breaches of EM conditions or curfews. This not only provides for better outcomes and rehabilitation of offenders but reduces the likelihood of courts being unnecessarily burdened with technical breach matters.

Should an offender breach an EM condition, their location may, at that point in time, be unknown. This would provide an additional barrier in returning an offender to the court in a timely manner for the breach. Without clarification about the expected timeliness of breach action, any requirement to return community based offenders to court quicker than QCS' current practice would require the implementation of a new breach process.

Community service

QCS partners with many not-for-profit organisations and local councils to supervise offenders performing unpaid community work as part of a court order or as part of unpaid debt registered with the State Penalties Enforcement Registry (SPER). QCS acknowledges the importance of community service orders as part of an offender's rehabilitation and reparation to the community they offended against. These orders can also help offenders form worthwhile social contacts, gain employment and develop new skills. In 2017-18, a total of 325,929 hours of community service was performed by offenders on community supervision.

Opportunities to perform community service are limited by the number of sites and partner organisations. As at 15 May 2019, QCS had 700 registered community service project sites. However, not every site operates on a full-time basis, some may only operate one day per week. Whilst QCS makes every effort to source appropriate community service sites across

the state, difficulties have been experienced in obtaining community service sites providing regular and ongoing work, particularly for sexual or violent offenders.

Section 103(2) of the PSA currently provides that the total number of hours stated in a community service order must not be less than 40 and not more than 240 to be performed within one year from the making of the order, or another time as determined by the court.

An increase in the maximum number of community service hours a court can order may have a range of impacts. Increasing community service hours, potentially up to 600 hours, could be inflexible for offenders, particularly those offenders who may also have work for dole, employment, education or parenting/caregiver obligations. It could also impact on an offender's ability to address other aspects of their criminogenic behaviour.

Conversely, limiting the hours that can be performed per week or month does not recognise that some offenders may be unemployed or prefer to complete their community service work as quickly as possible. Limiting the ability to assist willing and capable individuals to attend community service and successfully complete their orders can impact on the chance of offenders breaching their orders.

A significant increase in community service sites and sponsors would be needed to support lengthy community service orders. An increase of this magnitude may not be feasible given QCS' existing efforts to source appropriate community service opportunities has still resulted in limited sites in some areas and a need for in house community service projects for offenders who may not be suitable to attend certain community service sites.

In line with the Council's preferred option, it may also be appropriate to consider the removal of other specific orders, including Safe Night Out, Graffiti Removal, Alcohol Fuelled Violence and Fine Option Orders. The removal of these orders and potential inclusion of specific additional conditions that reflect the philosophy of each would provide the courts a greater ability to tailor a CCO to the needs of the offender and circumstances surrounding their offending. This also assists in reducing sentencing complexities.

Additionally, QCS acknowledges the importance of a broad community service condition, which could see offenders attending unpaid training and education classes or program attendance to address criminogenic needs or increase their employability. If the maximum community service hours were to be extended beyond the current 240 hours maximum, consideration should be given to the ability to count rehabilitation, education and other reintegration activities (excluding work for dole) as community service where these activities deliver a community benefit.

Whilst the Report and this submission address pre-sentence reports (PSRs) separately to community service, QCS views PSRs of significant importance prior to sentencing offenders to community service. PSRs allow QCS to assess not only a person's willingness to engage in community service but their ability to successfully comply with the order, including current employment and family obligations and any medical concerns that may hinder placement at a community service site. Informing the court of potential obligations and barriers to placement supports informed sentencing and reduces the offender's chance of breaching the order.

Pre-sentence reports

QCS recognises the importance of the courts having information to make informed sentencing decisions. In relation to the Victorian model, it is noted Corrections Victoria has a dedicated court service function supported by recurrent funding to deliver such services. A critical element of the Victorian CCO model is the requirement for a pre-sentence report (unless the only proposed condition is community work) to tailor the conditions to the offender.

The provision of pre-sentencing advice can reduce the administrative burden on the community corrections service seeking amendments to the offender's conditions, and the PBQ in making the change (noting the 28 day revision period for conditions on a court ordered parole order). Pre-sentence advice could also help to ensure the use of community based orders rather than prison, where appropriate. The time intensive and specialised requirements of these activities are reflected in Victoria's decision to establish the Court Advice and Prosecution Service as a dedicated function.

While the importance of both written and verbal pre-sentence reports (PSRs), and the opportunity PSRs provide to tailor an order to the specific risks and needs of individuals is acknowledged, it is important to note that Queensland does not have a dedicated court support service. The ability for QCS to provide PSRs and court services is further compounded by Queensland's geographical spread, when compared with Victoria, and the operation of remote circuit courts.

Between July 2016 and June 2018, QCS conducted 1,446 PSRs (verbal and written reports) across the state. Over the same period 50,036 admissions for new community based orders were received by QCS, indicating only a small percentage of offenders (2.9%) have PSRs requested by the courts prior to sentencing to community based orders.

A broad and flexible legislative CCO model in conjunction with QCS' assessment and supervision framework would enable flexibility and offenders to receive supervision commensurate to their risk and needs. The PSA currently restricts the court's ability to impose additional requirements on orders in some instances. The importance of tailoring orders and additional requirements is pivotal to the success and rehabilitation of offenders. Whilst the proposed CCO framework expands on the courts ability to impose additional requirements, it also increases the risk of the courts imposing conditions that are not tailored to an offender's risks, needs and other personal circumstances.

In some cases, a PSR should be requested, particularly where there are questions regarding suitability of EM, to perform community service, or to complete a certain program (such as an intensive sexual offender program or drug program) as PSRs provide QCS with the opportunity to conduct initial screening and assessments relevant to imposing certain conditions and assess an offender's readiness to change and engage in intervention services. QCS can offer some guidance as to the suitability of a proposed condition and its availability in the local community. Where an offender is to be sentenced to an order with core conditions and some broad special conditions such as counselling (which may include drug counselling/ relationship counselling) a pre-sentence report should not be required.

With the ability to impose conditions including electronic monitoring, a curfew, location restrictions and substance testing, a CCO could potentially be constructed into an order as intensive as those imposed under the DPSOA. This would undoubtedly be incommensurate with an individual's risks, negatively impact on their ability to address criminogenic behaviour, and be resource intensive for QCS to supervise appropriately.

The ability to provide PSRs through a dedicated court advisory service would support courts in making informed sentencing decisions that are commensurate with offending behaviour, risk to community and ability to address criminogenic behaviour to reduce re-offending. Expanding the availability of PSRs and court advisory services throughout Queensland would also allow QCS to administer initial screening and assessments to a greater cohort of offenders prior to sentencing. In the absence of a dedicated function, there is a risk that sentencing may not be compatible with the needs of the offender, community or current resource or service restrictions. This may lead to increases in breach action and ultimately impact on prisoner numbers.

In the absence of imposing mandatory PSRs for certain orders or conditions, QCS notes the need for conditions to remain broad enough to enable interventions, treatment and program requirements to be individualised post-sentence and following assessments.

Further, an offender's suitability for a CCO should not be solely determined by the presence of a recorded breach, but should be determined through the use of PSRs to adequately assess and contextualise previous non-compliance and if the barrier for rehabilitation remains or can now be addressed. This could be most prevalent in young adult offenders who previously breached an order and, whilst offending behaviour has continued, are now in a more mature mindset to address recalcitrant behaviours.

When currently determining an offender's suitability for a further community based order, QCS relies on the information contained in a completion summary conducted at the expiry of the previous order. This summary provides information beyond breach action, including the offender's response to supervision, and history of contravention, administrative warning and order termination, cancellation or revocation.

Court Ordered Parole

Parole is not a privilege or entitlement. It is a method developed to prevent re-offending by providing a conditional and supervised transition to the community. As explained in the Second Reading Speech for the CSA, the sole purpose of parole 'is to reintegrate a prisoner into the community before the end of a prison sentence to decrease the chance that the prisoner will ever reoffend. Its only rationale is to keep the community safe from crime'.

Court Ordered Parole (COP) offers certainty about a prisoner's release date, whereas Board Ordered Parole (BOP) provides a parole eligibility date (PED) after which time the prisoner's release date is the decision of the Board. Knowing a release date ahead of time is essential for planning a prisoner's release, particularly for planning suitable accommodation, rehabilitation support and programs in the community, including supports funded by the National Disability Insurance Scheme, where service providers require a release date. Both the courts' and the Board's decisions with respect to release dates can impact on the ability of QCS and service providers to support a prisoner during this transition.

Retaining COP in its current form

This option may not align with Principle 6: *CBSOs have significant advantages over imprisonment where the offender does not pose a demonstrated risk to the community*. QCS has previously raised concerns regarding limitations to effectively manage sexual offenders subject to community based orders and limited ability to take swift action in response to emerging risks. Retaining COP in its current form would not resolve this issue.

Extending COP eligibility to sexual offences

Post-release supervision decreases the risk of reoffending for sexual offenders. An evaluation of QCS' sexual offending treatment programs found that offenders were less likely to re-offend if they are subject to supervision after their release from prison, whether on parole or under continuing supervision pursuant to the DPSOA.[1] This effect was independent of whether or not the offender had participated in sexual offending treatment in custody.

The exclusion of sexual offenders from the COP regime reduces the likelihood of post-release supervision. The exclusion of sexual offenders from the COP regime reduces the likelihood of post-release supervision. As noted by the Sentencing Advisory Council in 2012, "at the time when court-ordered parole was introduced in Queensland in 2006, offenders convicted of sexual offences were deliberately excluded on the basis of the 'serious risk to the community' these types of offenders pose. Courts can achieve a fixed release date through the partial suspension of a sentence, but such a sentence does not carry the supervisory component on a prisoner's release that COP provides."[2]

However, the unintended consequence of excluding sexual offenders from COP appears to be that many sexual offenders are being granted sentences with no supervision (partially suspended sentences) or non-custodial sentences (probation), at a greater rate than they otherwise would be.

After the introduction of COP, partially suspended sentences decreased significantly, except for sexual offenders. The total number of partially suspended sentences also dropped significantly each month. The number of sexual offenders subject to a partially suspended sentence remained steady.

---

[1] Smallbone S. & McHugh M., 2010. *Outcomes of Queensland Corrective Services Sexual Offender Treatment Programs*.

[2] Sentencing Advisory Council (Qld). 2012. Sentencing of child sexual offences in Queensland: Final Report. p.78. http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2012/5312T6433.pdf

The result of giving sexual offenders a suspended sentence is that they are released into the community without supervision. If COP were an option, the courts may prefer to impose sentences that allowed for additional supervision and the imposition of conditions to manage release into the community.

The exclusion of sexual offenders from COP is also correlated with an increase in the growth of sexual offenders on probation orders and on combinations of prison and probation orders compared to non-sexual offenders

QCS data suggests some sexual offenders sentenced to over three years imprisonment have a similar, and in some cases lower, risk profile to sexual offenders sentenced to a community based order. This suggests that the sentences and consequences of breaching those sentences are not always commensurate to risk.

Corrective services officers have limited power to give directions to an offender on probation under section 93 of the PSA. Accordingly, there are limited options to deal with emerging risks posed by a sexual offender under a probation order, and those risks must be addressed through applications to the Court, which may not result in timely management of the risk. Unlike parole orders, amendments to the conditions on probation orders must go through the court and cannot be implemented by QCS. Also, the offender must agree to the condition being added to the order.

Parole provides a wider range of management options in response to changes in risk, including the imposition of a new condition by the PBQ and return to prison if the PBQ believes the offender cannot be safely managed in the community.

Amending COP to include sexual offenders would allow for the courts to apply more rigorous community based supervision of this cohort and the ability for QCS to swiftly manage escalating risk. Making sexual offenders eligible for COP would also likely reduce the number of sexual offenders being released to suspended sentences without supervision, or receiving community based orders that require lengthy return to court processes for breach action, where it would be in the interest of community safety for QCS and the Board to take immediate actions where an unacceptable risk is identified.

There is a risk that some sexual offenders, including sexual offenders with complex needs, may receive immediate release to COP, or a COP release date with insufficient time in custody for QCS to complete specialist sexual offending assessments, and for the offender to complete relevant programs to address sexual offending, particularly for offenders with complex needs. However, if sexual offenders are subject to supervision under COP, community based intervention options can be considered and breaches can be more readily detected with swift consequences commensurate with risk.

QCS acknowledges that if COP is extended to sexual offenders, the program delivery model would need to be changed, as sexual offending programs are currently primarily available in correctional centres. If extending COP resulted in short custodial stays but longer parole periods, then a larger scale sexual offending program delivery model in the community would need to be established. In contrast, if extending COP resulted in longer custodial stays, then the custodial sexual offending program delivery model would also need to be expanded.

All imprisoned sexual offenders who have sufficient time remaining in custody to complete a program are referred to their recommended sexual offending program. Evaluations of the QCS sexual offending programs identified that offenders who complete a program reoffend at a lower rate than sexual offenders who do not participate, across sexual offending, violent offending and combined “all offending” categories.

All efforts are made to motivate offenders to attend programs and to equitably prioritise offenders into programs based on PEDs. Offenders closest to release are provided available

program places in the first instance. In instances where, despite the continued efforts of QCS, a prisoner has refused to participate in rehabilitation programs, has not been granted parole and has subsequently served their full sentence in custody, discharge occurs in accordance with the original court order.

Extending COP to sentences up to five years

The Council proposes to increase the availability of COP to a maximum of five years, in line with the suspended sentence regime in Part 8 of the PSA which allows wholly and partially suspended sentences to be imposed for any offence punishable by imprisonment provided the head sentence does not exceed five years.

Extending COP to sentences up to five years may not align with Principle 4: *Any changes to existing CBSOs or new sentencing options should aim to reduce Queensland's prison population, while maintaining community safety*.

There is a risk that if COP is extended to five years, there may be net-widening in that it may result in longer head sentences, potentially resulting in a combination of:

- shorter periods in custody and longer periods on parole;
- longer periods in custody and shorter periods on parole; and
- longer periods in custody and longer periods on parole.

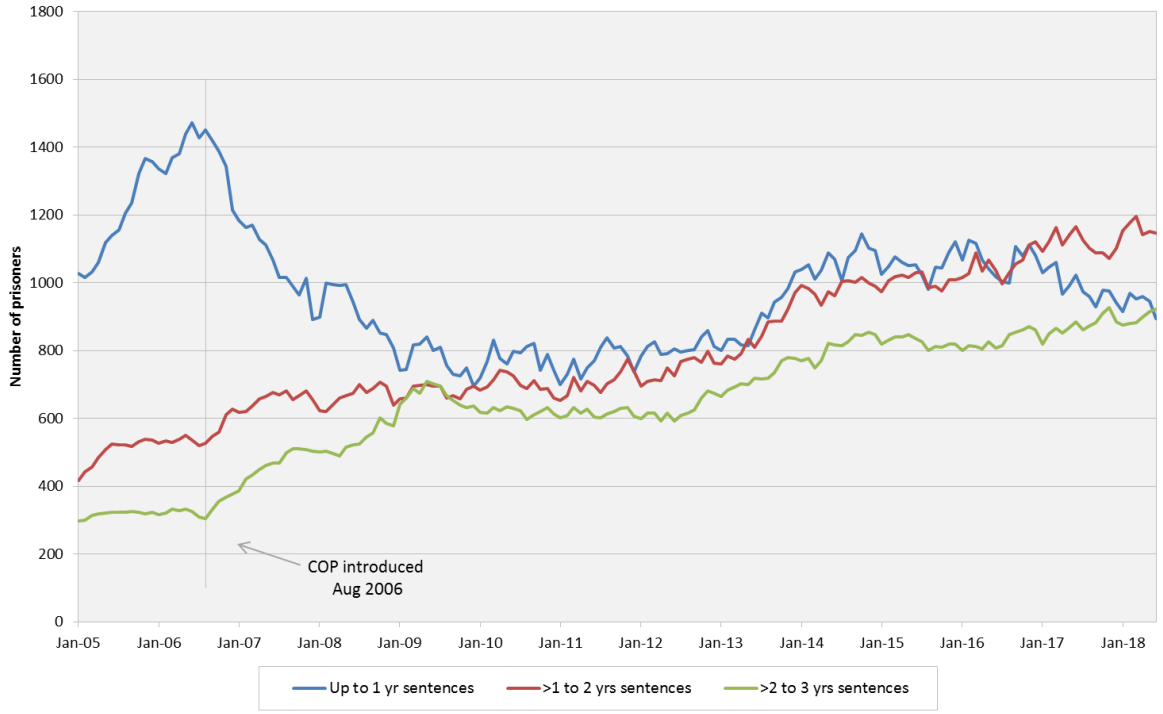
The latter two combinations are of most concern considering Queensland's current imprisonment rate.

Increasing COP to 5 years could increase the sentence length for short sentence prisoners. For example, the court may have previously sentenced an offender to 3 years but may now sentence the same offender to 3.5 years. This would likely increase the length of time the offender comes under QCS supervision. There is no indication that the introduction of COP reduces the sentence length for those outside the COP timeframe, as there was no reduction in the number of people sentenced to more than 3 years and up to 5 years when it was introduced.

COP Data

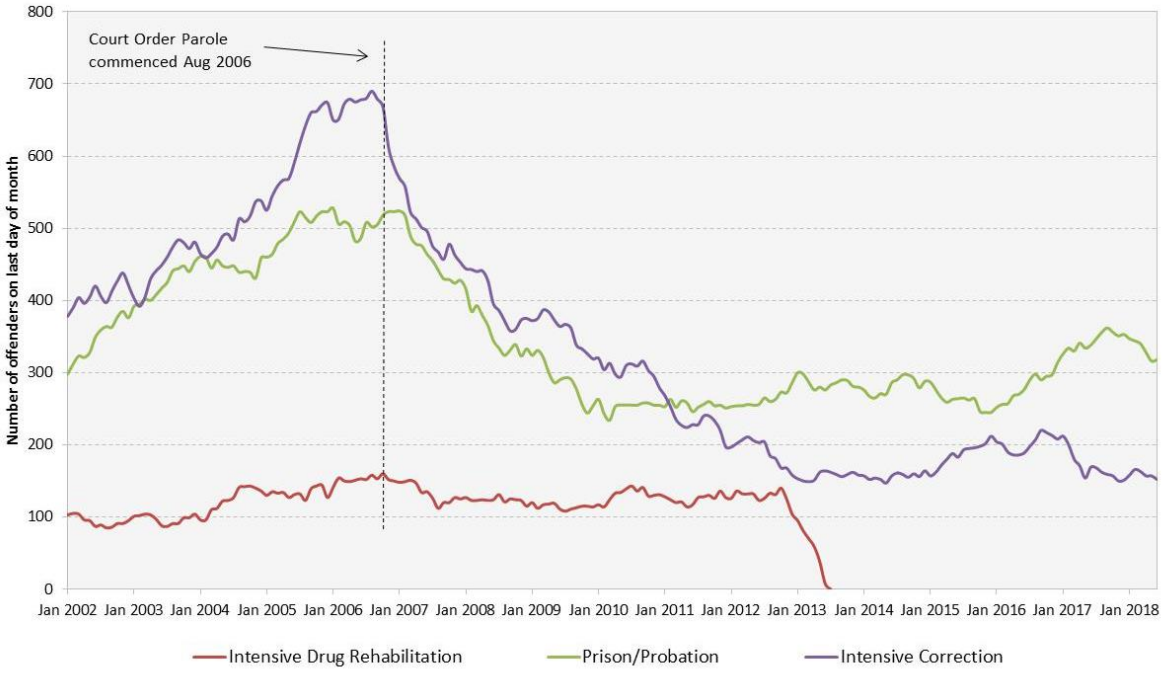
Overall the introduction of COP in 2006 resulted in a reduction in prisoners sentenced to 3 years or less (**Figure 1**). There was an initial significant drop in short sentence prisoners sentenced to less than 12 months, with the number of prisoners sentenced to 1-2 years and 2-3 years increasing. Since then, short sentence prisoners sentenced to 1-3 years have continued to increase.

Figure 1 – Number of short sentence prisoners, January 2005 to June 2018



Since 2014, the number of short-term prisoners (sentenced to less than 12 months) has increased. This is likely due in part to the reduction in the number of combined prison orders, intensive correction orders and partially suspended sentences for non-sexual offenders being issued to offenders with sentences up to 3 years (**Figure 2**). Due to this trend, the number of offenders with longer sentences in the correctional system (both in prison and in the community) increased, while at the same time the length of prison stay for those offenders decreased.

Figure 2 – Number of probation and parole offenders supervised on Prison/Probation Orders, Intensive Correction and Intensive Drug Rehabilitation Orders to June 2018



For extensions of COP up to 5 years, previous QCS modelling showed that increasing COP to 5 years could decrease the proportion of time these prisoners spend in custody as part of their sentence. However, reducing the length of prison stay for prisoners sentenced to 3-5 years means they would spend more time under supervision in the community. Modelling did not look at the potential impact on suspension rates for this cohort. The more time a prisoner spends under supervision in the community the more time there is that the prisoner may have their parole suspended or cancelled, and be returned to prison.

Potential impacts

Consideration was given to the possible scenario of applying COP to sentences of 5 years in the short term impact evaluation of COP completed by QCS in 2008. The 2008 evaluation canvassed the views of some external stakeholders including Legal Aid Queensland and prisoner advocacy groups. These groups were broadly in favour of increasing COP to 5 years.

However, there was concern about QCS' capacity to meet the more complex needs of these offenders in the community. Stakeholders were concerned that if these needs could not be met, applying COP to people with sentences of up to 5 years could lead to increased parole suspensions and cancellations.

The 2008 evaluation found that extending COP could have the following impacts:

- increase the number of offenders provided with a set release date to parole,
- align legislation with the provisions related to suspended sentences,
- increase the number of offenders under the supervision of Probation and Parole in the community,
- decrease prisoner numbers,
- reduce the successful completion rate of COP,
- change the risk profile of offenders under supervision in the community by increasing the number of offenders with higher likelihood of recidivism and complex criminogenic needs on parole,
- increase the workload of Probation and Parole, sentence management and reception officers within Custodial Operations and the Parole Board Queensland,
- possibly increase the number of prisoners not willing to participate in employment and programs in custody,
- reduce the compliance rate of COP orders,
- significantly increase the number of offenders eligible for QCS programs being supervised in the community, and
- decrease the number of offenders on suspended sentences.

COP conditions

A prisoner released on COP is subject, at a minimum, to the standard, mandatory conditions set out in section 200(1) of the CSA, which require the prisoner to:

- be under the chief executive's supervision;
- carry out the chief executive's lawful instructions;
- give a test sample if required to do so by the chief executive;
- report, and receive visits, as directed by the chief executive;
- notify the chief executive within 48 hours of any change in the prisoner's address or employment during the parole period; and
- not commit an offence.

Currently, standard conditions attached to COP do not include a requirement to complete specific programs or rehabilitation. Acknowledging the expertise of QCS case managers and the importance of professional discretion to develop case management plans in response to individual risks and needs is critical to successful parole outcomes. It is not uncommon for QCS officers to make 'lawful instructions' to offenders in order to manage their risk in the community (for example, directing them to participate in a relevant program).

The CSA does not confer power on the Chief Executive to impose a condition on a parole order. Thus, an instruction issued cannot confer any power on the chief executive to impose a new condition on a parole order. The CSA does not define 'condition'. However, s200(3) provides 'examples' of conditions of an order: Condition about the prisoner's place of residence, employment or participation in a particular program; Condition imposing a curfew for the prisoner; Condition requiring the prisoner to give a test sample.

Conditions not imposed by the CSA can only be imposed by the PBQ, which limits the ability for QCS to use professional discretion in using section 200(1)(b) to issue instructions to offenders in the way it was intended, for example, to be able to direct a child sexual offender to stay away from schools or places where children regularly gather, or direct a domestic and family violence perpetrator to complete a perpetrator program or comply with a non-contact condition of a police issued Domestic Violence Order.

Applying to the Board to vary or amend a parole order for COP may be impractical and the Board does not have the capacity to manage the volume of amendments that would have to be made to effectively manage offenders in the community (there are currently over 6,000 persons subject to parole in Queensland).

All Australian jurisdictions empower community corrections officers to instruct persons subject to a parole order to undergo treatment or refrain from visiting certain places, to support the conditions of their parole order. Victoria, New South Wales and the Australian Capital Territory adopt a broader approach to lawful instructions in their Act or Regulations.

Should any amendments be made to the COP model, it is suggested that broad discretion is provided for QCS to direct a parolee to participate in assessments and programs relevant to their identified risks and needs, and that are available and accessible for the parolee, rather than it being mandatory to all parolees, which could further address stakeholder concerns and align with the intent of the court in supporting offender rehabilitation to reduce recidivism for the safety of the community. It would also reduce the administrative burden of returning COP orders to the Board to amend or add particular conditions and enable QCS officers to appropriately address static and dynamic risks as they are identified in a timely way. QCS and the Board could then focus on case planning for parole, taking timely action on breach matters, and for the Board to decide upon more specific conditions such as location restrictions, curfews and electronic monitoring.

In the context of the proposed CCOs, which, if implemented, could provide significant discretion and flexibility to the courts to impose specific conditions for community based orders, amending the mandatory COP conditions would also align mandatory COP conditions with those available in CCOs and ensure CCOs do not become more intensive to comply with than COP.

QCS notes the proposed COP does not include the ability to incrementally reduce supervision in response to positive response to supervision to the extent that the proposed CCOs may, where the Chief Executive could choose to cease the supervision condition. While QCS recognises the importance of supervision in the community, the intensity of supervision should be commensurate to risk. If COP was extended to five years there may be instances where a person sentenced to five years imprisonment may serve a few months in custody and spend over four and a half years on parole in the community, even if completing all relevant programs within the first year.

Discretion to set COP release date or PED

Providing courts with discretion to set either a COP release date or PED for the current COP cohort (sentences up to 3 years) may not align with Principle 4: *Any changes to existing CBSOs or new sentencing options should aim to reduce Queensland's prison population, while maintaining community safety*.

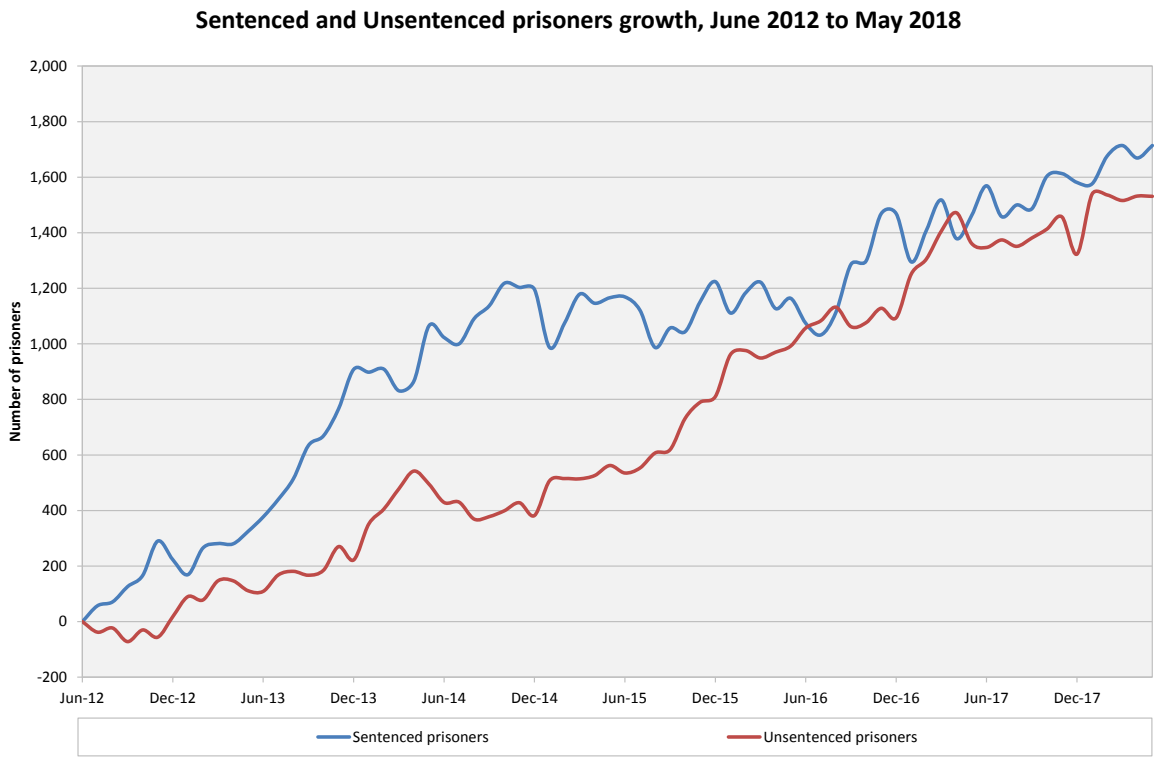
This proposal would create a risk that persons who may otherwise receive a COP release date receive a PED where the decision to release the prisoner is a decision for the Board. An optional PED, if set at the same date as COP release, will increase length of stay because some prisoners will not be released on PED (or potentially before full-time discharge)

Further, the Board has a high workload, and extending the period to which a person can receive a PED to under three years would add to the volume of matters, potentially resulting in longer periods spent in custody waiting for the Board's decision.

There may be benefit, at least initially, in retaining the option to set a PED for sexual offenders with sentences under 3 years given this cohort is not currently eligible for COP. Approximately 45% of sexual offenders currently do not have the opportunity to complete a sexual offending program prior to release to BOP or full-time discharge, and this number may decrease if COP dates are set for certain offenders. The ability to prescribe a PED would ensure QCS and the Board have the ability to properly assess risk, case plan, require a prisoner to satisfactorily complete relevant programs prior to release, and to take into account institutional behaviour when deciding parole.

Overall, the court may not be best placed to consider the operational factors that may impact on a prisoner's suitability for release. As noted by the QPSR, the growth in Queensland's sentenced and unsentenced prisoner population in recent years (**Figure 3**) has placed significant strain on QCS' resources. Overcrowding and resourcing issues impact QCS' ability to deliver rehabilitative programs to prisoners, particularly those with more complex criminogenic needs. When a prisoner is brought into QCS custody, a risk assessment is conducted and their access to programs is scheduled based on a hierarchy of needs approach. Usually 12 months is required for assessment, access and completion of interventions, however this increases for complex needs prisoners.

Figure 3 – Sentenced and unsentenced prisoners growth



A PED provides incentive for prisoners to engage in interventions in custody. COP has been criticised for not encouraging good behaviour in prison as a fixed release date provides little incentive. Providing a COP release date could result in more prisoners, including sexual offenders, refusing to participate in rehabilitation programs as it can be challenging to motivate offenders when their release is not dependent on the Board's decisions.

The expansion of COP presents two potential issues here. Firstly, if the non-parole period is short for an offender with more complex needs, QCS may not have the capacity or opportunity to effectively deliver rehabilitative services prior to their release on COP. Secondly, courts are unable to foresee the progress a prisoner may make with their rehabilitation and preparedness for release back into the community.

Requiring, as opposed to allowing, the court to impose COP for sentencing over 3 years may therefore have adverse unintended consequences. A discretionary power, e.g. that the courts may impose COP for sentences longer than 3 years but less than 5, may allow for a greater consideration of the circumstances of each individual case and allow courts to avoid setting a release date where it may be considered inappropriate to do so.

To promote community safety, it is proposed that if COP is extended to five years, that the discretion to prescribe either a COP release date or a PED be restricted to sexual offenders and sentences of 3-5 years. QCS notes that the average duration of stay in custody past a prisoner's PED for prisoners released in 2018 was 6.6 months, with the median duration of stay being 3.9 months. Allowing discretion to prescribe a PED for sentences of imprisonment less than three years would likely result in longer periods spent in custody and increase prisoner numbers due to the increased workload on QCS and the Board.

Removing the cap for COP

QCS has concerns with the option to reform COP to extend availability by removing the cap for the setting of a PED, giving courts full discretion to set either a parole release or a PED, and extending this discretion to all offences, other than serious violent offences, life sentences, or other offences or circumstances which are expressly excluded.

There are concerns this option could cause significant net-widening should the courts choose longer head sentences with longer COP release dates beyond five years for prisoners who may have otherwise received an earlier PED and potentially been released to parole sooner. This would further increase Queensland's incarceration rate.

As noted in the QPSR, the Board should play a critical role in determining whether a prisoner is an unacceptable risk to be released into the community. The process a prisoner must undertake when applying for parole has tangible benefits for prisoners in requiring them to undertake programs in custody, prepare and make plans for their release, obtain suitable accommodation and be assessed by a psychiatrist or a psychologist as required.

As noted in the Council's report, courts may not have sufficient information at the time of sentence to decide whether to fix a release date. This option may also not align with Principle 11: *Sentencing options and their administration should reflect the individual needs of all parties involved, including offenders, victims and the broader community*. The ability of the courts to determine a COP release date more than five years in advance, based on static risk factors at the time of sentencing for a serious offence that attracts sentences longer than five years, could undermine community safety. It would be beneficial for community safety to take into account the prisoner's future risks, institutional conduct, release plans, and willingness to engage meaningfully in rehabilitation activities over the subsequent period of time spent in custody (as per Board decisions) before a decision about future release is made for these prisoners.

There are also behavioural concerns, as a prisoner with a release date that is not determined by the Board's decision making process may be more likely to refuse to engage meaningfully in rehabilitation and other prison activities.

Given that COP could apply to sentences over five years imprisonment under this option (meaning more serious offences that attract longer sentences would be eligible), there is a concern that the rehabilitative needs may not be met prior to release should the prisoner lack incentive, such as the prospect of earlier release decided by the Board, to meaningfully participate. This could also mean more prisoners are not incentivised to follow prison rules, which could jeopardise the safety of custodial corrections officers.

This option may not align with Principle 12: *Public confidence in the criminal justice system should be encouraged and maintained; sentencing practices should consider community expectations and take into account the impact on victims of crime,* as the certainty of a release date that does not take into account rehabilitative efforts since sentencing may not meet victim or community expectations.

Completion rates

The Council noted there is a lack of consensus on the effectiveness of COP versus BOP. In part, this could be caused by perceptions arising from the difference in the number of people subject to COP over BOP.

As noted on page 197 of the Options Paper, there are significantly more offenders subject to COP orders compared to BOP orders (**Table 1**), with offenders subject to COP outnumbering offenders subject to BOP by 3.8 times. Consequently, as should be expected, there is a higher number (not rate) of COP breaches compared to BOP.

On a rate basis, offenders subject to COP currently have higher successful completion rates than BOP offenders. Even if the completion rates for COP and BOP were equal, however, it could be expected that non-completion events would be 3.8 times higher for COP over BOP due to the significantly higher volume of offenders ordered to COP.

Table 1 – Number of offenders supervised on parole any time during 2017-18

Penalty type	Distinct offender count	Distinct order count
Court ordered parole	12,937	13,592
Board ordered parole	3,359	3,515
All parole orders	15,817	17,107

It should also be noted that completion rates are captured for all community based orders, including COP and BOP, and reported in the Report on Government Services (RoGS), governed by a national counting rule. This counting rule is also applied for state based reporting to ensure consistency across reported data.

During 2017-18, the volume of completed orders (all types) finalised by QCS was in excess of 37,000. QCS employees select from a number of completion categories and enter this in to the offender's record upon an order being completed. The selection of the correct completion category and order completion date is overseen and endorsed by a Supervisor.

In calculating completion rates, the national counting rule considers the number of orders with a completion date during the counting period. This includes orders successfully finished, orders revoked or breached to a new charge being laid and orders removed or breached for other reasons. Unsuccessful order completions are those that are revoked or breached due to a new charge being laid, and orders revoked or breached for other reasons. This applies equally to both COP and BOP.

QCS has recently received queries regarding use of the completion category 'Completed after Reinstatement' in determining the successful completion of parole orders.

The relevant procedure directs staff to use this completion category primarily in cases a parolee has been suspended during the course of supervision, however then returns to the community following a period in custody and no further action has been taken against the order. This category is also used in cases where a parolee is charged with further offences and remanded in custody until the expiration of the order, while the further charges remaining outstanding.

The 'Completed after Reinstatement' completion category is counted as a successful completion of an order and as such affects the reported successful completion rates.

During 2017-18, approximately 9.7% of all parole orders and 2.6% of all orders were finalised with this category.

Under section 208A(1)(c) of the CSA, the Chief Executive may request the PBQ to immediately suspend a parole order on the grounds they pose an unacceptable risk of committing an offence. This enables QCS to act on parolees presenting at risk, and who have not necessarily formally breached their order conditions.

Under section 205(2)(c), the PBQ may also amend or suspend a parole order if the prisoner subject to the order is charged with committing an offence. Only upon conviction of this offence would it then constitute a breach of the parole order condition.

In Queensland, an offender's order may be breached and they may be penalised by a court for unsatisfactory compliance by varying the order rather than cancellation. In other

jurisdictions, a court determination that a breach of the order has occurred would generally result in the termination of the order.

QCS' application of the completion category 'Completed after Reinstatement' as a successful completion is therefore compliant with the national counting rule as the parole orders in question are suspended and remain in this state until the expiration of the order. These orders are neither revoked or breached.

QCS has also reviewed orders with a completion category of 'Completed after Reinstatement' to determine the scope and detail of a potential decision to modify the procedure regarding the use of this completion category for parolees remanded in custody until the expiration of the parole order.

Results indicate that the proportion of orders that are completed under these circumstances is minimal and a change to current practice would have no material effect on reported results.

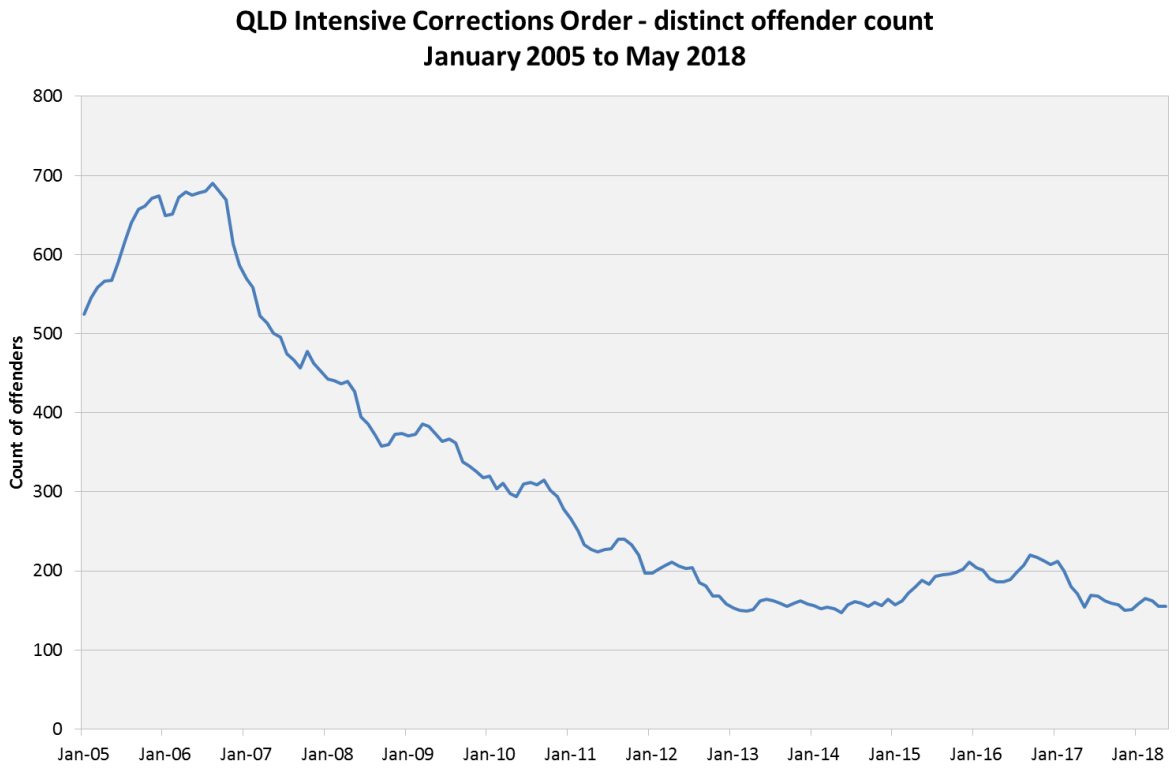
Calculations based on the removal of orders completed under the category 'Completed after Reinstatement' where the offender has been remanded in custody during 2017-18 would result in a 0.4 per cent decrease in the supervision order successful completion rate.

In respect to the separate Parole order types, applying this same removal would result in the Court Ordered Parole order completion rate decreasing from 70.3% to 68.3% while the change would result in a 1.5 per cent decrease in the successful completion rate for Board Ordered Parole.

Intensive Correction Orders

The introduction of COP altered the sentencing patterns of magistrates, and coincided with a decrease in prison/probation orders and Intensive Correction Orders (ICOs) (**Figure 4**).

Figure 4 – Queensland Intensive Corrections Orders



In practice, ICOs in Queensland are seen as being inflexible and restrictive, particularly in relation to the ability to impose an ICO, the core conditions required, and how the breach process is managed.

Broadly, ICOs have not been successful in meeting the intent of the order with some offenders being unable to comply with such an intensive community order. Additionally, breaches of ICOs must be returned to court for action, providing limited opportunity for QCS to act in response to emerging risks and persistent non-compliance. The capacity to intervene in minor rule breaking behaviour prior to the behaviour escalating is an important factor in community management, with delays and lengthy court processes potentially undermining the effectiveness of the sanction.

Generally courts are not using imprisonment in response to a breach of an ICO, therefore suggesting the order is not meeting the intent of being “a period of imprisonment served in the community”. Other orders, such as COP, could more effectively achieve this intent and provide a swift and certain response to risk.

Suspended sentences

In Victoria, the introduction of the CCO coincided with a complete or partial roll back on suspended sentences. The conditions of a CCO should reflect the seriousness and type of offence to which the person would have ordinarily received a suspended sentence.

While suspended sentences may still be a useful form of order for the courts, for example, where the offence is serious but the risk of recidivism is considered minimal and supervision would have little community benefit.

As noted previously, there is the potential that a CCO model could result in the net-widening of sentences to include offenders who may have previously received a suspended sentence. Courts may also be more likely to add on a 'front end' supervision component (CCO) instead of a front end period of imprisonment. While this may have the benefit of slightly easing Queensland's imprisonment rate, the potential net-widening would have implications for community corrections.

Suspended sentences are not supervised by QCS and there are limited enforcement options. They do not allow for the specific criminogenic needs of an offender to be addressed through treatment, courses and programs. There would be significant resource implications for QCS if additional requirements/special conditions, requiring monitoring by QCS, were to become a feature of this penalty. Further, there would need to be clarity around the response to breaches of such conditions between the different bodies that may be involved at the administrative level. It is not recommended QCS be responsible for monitoring offenders' compliance with suspended sentences.

The implications for non-compliance would need to be considered as presently a breach can only be incurred following a conviction punishable by imprisonment during the suspended period. The imposition of the suggested conditions may in practice make suspended sentences more like COP. It may be that if COP were extended, courts may prefer to impose it rather than a suspended sentence in cases where supervision, treatment and behavioural management/change are the purpose of the sentencing option.

Sentence calculation and complexity

There are a number of issues faced when attempting to structure complex sentence calculations, including:

- intersecting legislation;
- courts being legislatively restricted to making orders based on a file rather than the prisoner's current period of imprisonment; and
- the need for QCS to seek legal advice and clarification of the court's intent when the total period of imprisonment intended is unclear and PED is not fixed by the court for complex cases that involve a number of orders and/or declarations (ie., serious violent offenders, section 33(4) of the *Bail Act 1980* (Bail Act), and cumulative directions).

As noted in the QSAC Report, the Queensland Audit Office in its report *Criminal Justice System - Prison Sentences (Report 4: 2016-17)* identified sentencing complexity and calculation as a risk and considerable cost to the criminal justice system.

When court orders are misinterpreted and sentences are calculated incorrectly, either the community is exposed to the risk of releasing prisoners from custody before they are legally entitled to be released or a prisoner's rights are infringed upon by holding them past the court's intended release date.

Neither of these outcomes is in the best interest of the community, victims, or the offender. It undermines the community's confidence in the criminal justice system and results in unnecessary costs associated with managing prisoners beyond their sentence, locating and returning prisoners released in error, and managing complaints, compensation, and legal costs.

Legislative amendments to remove uncertainty in sentencing structures and assist in mitigating these risks could provide significant benefits to QCS and other criminal justice stakeholders.

Setting of parole release date

QCS notes that section 160B(6)[3] of the PSA is a complicated area of legislation, and as identified in *R v Sabine*, requires legislative attention. Section 160C(4) also raises similar issues.

QCS notes the possible legislative amendments expressed by the Court of Appeal, however is concerned that neither option would necessarily resolve the anomaly for future cases.

The option in relation to a subsequent court which is sentencing an offender to a lesser period of imprisonment than an existing sentence not being required to set a parole release date still requires the second court to be satisfied with the preceding court's parole date. Ultimately, even if a prisoner is able to successfully appeal a preceding sentence, the court is still unable to set an earlier parole date. This continues to restrict the court's role in hearing the appeal and disadvantages the prisoner.

The option permitting the subsequent court to set a parole release date at the limit of the term it imposes but on the basis that the date does not cancel the later date set by the previous court raises the same concern.

The anomaly identified by these provisions could be addressed by providing the ability for a subsequent court (even if restricted to a court hearing an appeal) to consider the prisoner's

[3] Formerly section 160(4)

full existing sentence structure and provide the intended custodial end date and the parole release/eligibility date that would supersede any existing dates. Depending on the circumstances considered by the court, this could include a lesser parole release/eligibility date.

This case highlights the need for courts to be provided with the ability to consider a holistic view of the prisoner's imprisonment when fixing a future parole date and/or custodial end date. Amending the court's powers in this way would support flexibility in sentencing and remove confusion and complexity.

It would also in turn result in QCS not needing to seek legal advice and clarification of the court's intent in relation to correct sentence structures. This could allow QCS resources to be re-directed to providing the courts with better information (further than existing pre-sentence custody certificate information) to make more informed sentencing decisions (for example, providing the prisoner's full history in relation to sentence and remand imprisonment, rather than just information in relation to the offence/s).

Court powers where offence committed while offender on parole

In response to the issues raised in questions 11.1 and 11.2, QCS does not have concerns with the intent of sections 209 and 211 of the CSA, or consider that an amendment is required to the sections identified to clarify or amend the court's powers in relation to further offending while the prisoner is on COP.

However, section 209(1) provides that a prisoner's parole order is automatically cancelled if the prisoner is sentenced to another period of imprisonment for the offence committed during the period of the order. An offence committed by a prisoner while their parole order is suspended is not covered by section 209(1). This causes a number of potentially unintended consequences. For example, if a prisoner is unlawfully at large, has their parole order suspended and then commits an offence for which he/she is subsequently sentenced to imprisonment, the court could impose COP and not a PED. This outcome appears contrary to the intention of section 160B(2).

The wording of section 160B(2), "[I]if the offender has had a court ordered parole order cancelled under the CSA, section 205 or 209 during the offender's period of imprisonment, the court must fix the date the offender is eligible for parole", also creates operational issues. The words *during the offender's period of imprisonment* result in the COP restriction not applying where a new period of imprisonment is imposed after the expiration of the original sentence. This results in a favourable outcome for prisoners where their court hearing is delayed and provides an incentive for outstanding matters to be deferred until after the prisoner's original sentence expires.

Sentence calculation complexity

As the courts do not set a sentence end date, and sometimes do not set a PED, QCS uses significant resources daily to interpret the court's intent. QCS staff are required to calculate the offender's custodial end date and PED using the information on the Verdict and Judgment Records (VJRs) and pertinent rules in statute. This includes a complex landscape of intersecting and sometimes conflicting provisions in the Bail Act, PSA and CSA.

With rising prisoner and offender numbers and current recidivism rates, it is unlikely that prisoners coming before the courts in Queensland have single or simple sentences. Additionally, the court's intent on many VJRs received by QCS is difficult to interpret. They are often not clear on the requirements of the sentence imposed or the impact that it will have on the existing sentence being served.

Current practice is that QCS contacts the court via an email from the Sentence Administration Managers, who have long standing expertise in sentence calculations, to

clarify anomalies/intent to avoid unlawful detention and/or discharge in error. A common example of this complexity arises with fail to appear offences under section 33(4) of the Bail Act, and how these are to be calculated or incorporated into an existing sentence. This clarification is sought from the courts on a weekly basis. Additionally, QCS is often required to seek legal advice to assist with the interpretation of intersecting legislation and to enable the structuring of lawful sentence calculations to ensure lawful detention.

The current process does not appropriately recognise the expertise and role of the courts or QCS staff. It requires operational QCS staff to be experts in legislative interpretation and the determination of parole eligibility and/or custodial end dates. This results in ambiguity of the court's intent, including for the offender, victim/s and the community.

The ability for a court to consider a prisoner's current sentence structure at the time of sentencing for new offences, and provide for one new parole release/eligibility date and custodial end date, should be considered.

This approach has already been adopted in New South Wales, where a court is required to calculate and specify the release date at the time of sentence. The purpose of the section, as stated by section 48(2) of the *Crimes (Sentencing Procedure) Act 1999* (NSW), is to "require the court to give information about the likely effect of a sentence."

A similar amendment could be considered in Queensland, along with an amendment to sections 160C and 160D of the PSA to change the word 'may' to 'must'. A consequential amendment would be required to CSA (removal of sections 181-185B) to support this amendment.

Time in pre-sentence custody which is declarable

QCS is responsible for completing pre-sentence custody certificates (PSCC) for a prosecuting authority in support of section 159A(4A). A PSCC must state the offence or offences for which the prisoner was held in custody, state the dates between which the prisoner was held in custody for the offence or offences, and calculate the period of time the prisoner was held in custody.

QCS notes the intent of section 159A of the PSA in the original Explanatory Notes (formerly section 161) is to *'provide that a court may deduct time which a prisoner has spent in custody only waiting for the proceedings for the offence to commence, from a sentence of imprisonment'*.

As demonstrated by *R v McCusker* [2015] QCA 179 (29 September 2015), while considered an exception to the rule, the consequence of different interpretations of section 159A(1) is significant. In McCusker's case, under the initial interpretation of the intersect between section 199(2) of the CSA and section 159A(1) the judge declared 35 days spent in pre-sentence custody as time served under the sentence imposed. Following *R v McCusker*, this time was later recognised as 553 days.

When considering the interpretation of this section in *R v McCusker*, the Court of Appeal determined that *'the legislature was plainly concerned that prisoners were not to be disadvantaged by serving longer in incarceration than was proportionate to their crime'*.

Given the current drafting of section 159A(1), QCS do not see how the removal of the words 'for no other reason' would weaken parliament's intent. Conversely, the removal of these words may assist in resolving interpretation issues with how time held in pre-sentence custody is to be counted and reflected on the PSCCs supplied by QCS to prosecuting authorities.