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Queensland Sentencing Advisory Council

By email:

6th July 2018

RE: INITIAL INPUT INTO QSAC CONSULTATION QUESTIONS

Dear ,

We welcome and appreciate the opportunity to make a submission in relation to the review of community based sentencing orders, imprisonment and parole options being conducted by QSAC.

Preliminary Consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education; and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Aboriginal and Torres Strait Islander deaths in custody).

Our submission is informed by over four and a half decades of practice in the law as it impacts Aboriginal and Torres Strait Islanders. We trust that our submission is of assistance.

OVERALL COMMENTS

We understand that this input will be part of an ongoing engagement on framing these issues. Our preliminary comments are correspondingly going to address the issues in broad brush with the expectation that more detailed analysis will occur at a later stage.

It is impossible to talk about sentencing options without identifying the key drivers as to why better forms of parole or sentencing alternatives to parole need to be identified and implemented promptly. Relevantly, *The Queensland Parole System Review* (*The Sofronoff Report*) 2016 identified that:

- A scandalously high number of Aboriginal and Torres Strait Islander prisoners … [are] imprisoned;[1]
- Overcrowding of adult prisons continues resulting in a correctional system which is under pressure, currently operating at 118.8% capacity and holding 1,153 more prisoners than it was designed for.[2] This arises from an increase of 41.6% in the prison population over the four years between 2012 and 2016 with Aboriginal and Torres Strait Islander prisoners accounting for 31.3% of the prison population;
- Discriminatory effects of the current parole system against Aboriginal and Torres Strait Islander people, identified in the Sofronoff Report at paragraph 194, the factors of which continue to play in parole applications by Aboriginals and Torres Strait Islanders.

In our view there needs to be better options available than the existing parole orders and the return to prison for breaches, including minor breaches, of parole conditions. We welcome the exploration of sentencing options which may be alternatives to parole or return to prison for breaches of parole.

<u>For Questions 1-3 Court ordered parole and parole eligibility</u>

It has been noted in the Sofronoff Report and other surveys that prisoner numbers keep increasing in Queensland to the point where our prisons are seriously overcrowded. The return of parolees in violation of their parole is a significant source of the expanding numbers of prisoners and places further pressure on already overcrowded prison facilities. We are also aware of some prisoners who are so overwhelmed by the process that they elect not to apply at all.

The current constraints on courts in some circumstances to impose only parole eligibility dates adds to the strain on the system. It has been observed that historically, parole boards have proven unsuccessful at managing enormous workloads and this has led to the introduction of court ordered parole in many jurisdictions.[3] In our view it is unnecessary to constrain the sentencing judge from having the discretion to impose a parole release date for sentences longer than three years.

Similarly, where a Magistrate is currently constrained by law to give only a parole eligibility date, the discretion should be conferred on the Magistrate to consider a parole release date.

[1] *The Queensland Parole System Review* (*The Sofronoff Report*), para 124
[2] Sofronoff Report, para 268
[3] Sofronoff Report, para 401

For Questions 4 and 15 Special Conditions

4. *Should courts be able to include special conditions e.g. a requirement to continue or complete a treatment program or a requirement to abstain from alcohol or drugs, as conditions of court ordered parole?*

Whilst there could certainly be some positives with such an option - there are insufficient programs available in the community to meet the demand for these sorts of orders. There is also a dearth of culturally competent programs for Aboriginal and Torres Strait Islanders. Without more places being available, it makes the imposition of these sorts of conditions untenable. A down-side could be conditions being imposed which are sufficiently onerous to set a defendant up to fail – we see such on a regular basis already with community-based orders. That said, if such conditions were imposed by a court - then any transgressor, should be brought back before a court of the same jurisdiction – to consider the appropriate way of dealing with the alleged breach (i.e. as opposed to going straight back into prison on a breach of parole warrant).

For Question 5 concerning 160-160H PSA, PSA s 160B(2)), of sections 205 and 209 of the Corrective Services Act 2006 (Qld)

A more profitable exercise would be to cut through that Gordonian knot with legislative reform and to restore discretion to sentencing judges and magistrates to avoid convoluted sentences being imposed.

For Question 6 Intensive Correction Orders

6. Do intensive correction orders still serve a useful purpose and should they be retained? What improvements could be made to increase their use, flexibility and effectiveness?

In our experience, Intensive Correction Orders are ordered only rarely by the Courts but they are ordered in circumstances where the only appropriate sentence would be an Intensive Correction Order. We do not have access to that data but, in our view, it would be fruitful to review the circumstances outlined in the sentencing remarks when Intensive Correction Orders are imposed.

For Question 7 Pre-Release Options

7. Should options such as remissions, work release and home detention be considered for Queensland?

Any option which gives an offender an opportunity to access housing and employment and offers an opportunity and an incentive to re-integrate back into community earlier, would be a positive development.

For Questions 8-9 Alternative options for community based orders

8. Should home detention, whether as a stand-alone sentencing option or to be used in conjunction with community based orders, be considered as a sentencing option for courts?

9. Would a model such as the community correction order adopted in Victoria (and to be introduced in Tasmania and New South Wales) work in Queensland and what might be some of the potential risks and/or benefits of such an approach (see summary provided)?

The experience of the Victorian model looks promising, especially where the increase in reliance on Community Corrections Order (CCO) has seen a move away from reliance on non-parole periods (a decline from 89.5 % to 10.7%) to include a CCO for terms of imprisonment of one to under two years (an increase from 5.3% to 81.3%).[4]

It is hard to do a quick appraisal of the benefits and drawbacks of the various early release from custody schemes adopted in the United Kingdom, Canada, New Zealand, New South Wales and South Australia, except to say that for short sentences, the focus should be on rehabilitation and on imposing realistic conditions on offenders. Minor lapses should be addressed in the community, rather than undoing all the positives that had occurred post-release.

The hope is that community options will offer better access to programs and services that support rehabilitation. Inside prison there are simply inadequate opportunities for rehabilitation. As noted in the Sofronoff report, offenders who serve short periods of imprisonment or time on remand prior to sentence are not given the opportunity to attempt to address their offending behaviour before their release from custody.[5] They are either ineligible or not referred for most rehabilitation programs inside prison. Prisoners who try to self-refer face long waiting lists and typically do not get access to programs.

Apart from consideration of CCOs it would also be useful to examine the model adopted in New Zealand for sentences under two years where prisoners are not released on parole to be supervised by parole officers but are instead released on conditions set by the court with monitoring of compliance done by probation officers. The strength of this approach is that the court could consider the conditions to apply in the circumstances of the offender and their community and could avoid unworkable conditions, such as not associating with someone with minor criminal history, and impose conditions which are more appropriate and tailored to the re-integration of the offender.

<u>For Questions 10-14</u>

All these questions touch upon the flexibility of existing sentencing options such as joining up disparate charges in the one sentencing hearing or taking into account time spent in custody for a number of disparate charges. The typical profile of an offender most affected by these rules is one who is mentally unwell, frequently living on the street, and who has been charged with a number of street offences. The cause for concern is that when all the sentences have been imposed, the cumulative effect of the multiple sentences exceeds what would be just and appropriate for the whole of the offending.

[4] Sofronoff Report, para 408
[5] Sofronoff Report, para 431

For Question 16

16. *Do you have views about any other matters that you consider should be scoped in as part of the Council's current review in addition to those specifically identified in the Terms of Reference?*

The availability or unavailability of sentencing options in our view has a direct impact on the current overcrowding in the Queensland prison system. The New Zealand sentencing option for sentences under two years where prisoners are released on conditions set by the court with monitoring of compliance done by probation officers in our view would address many of the problems currently experienced in the custodial system.

We thank you for the opportunity to provide input at this initial stage and thank you for your careful consideration of these submissions.

Yours faithfully,

Mr. Shane Duffy
Chief Executive Officer
ATSILS (Qld) Ltd.