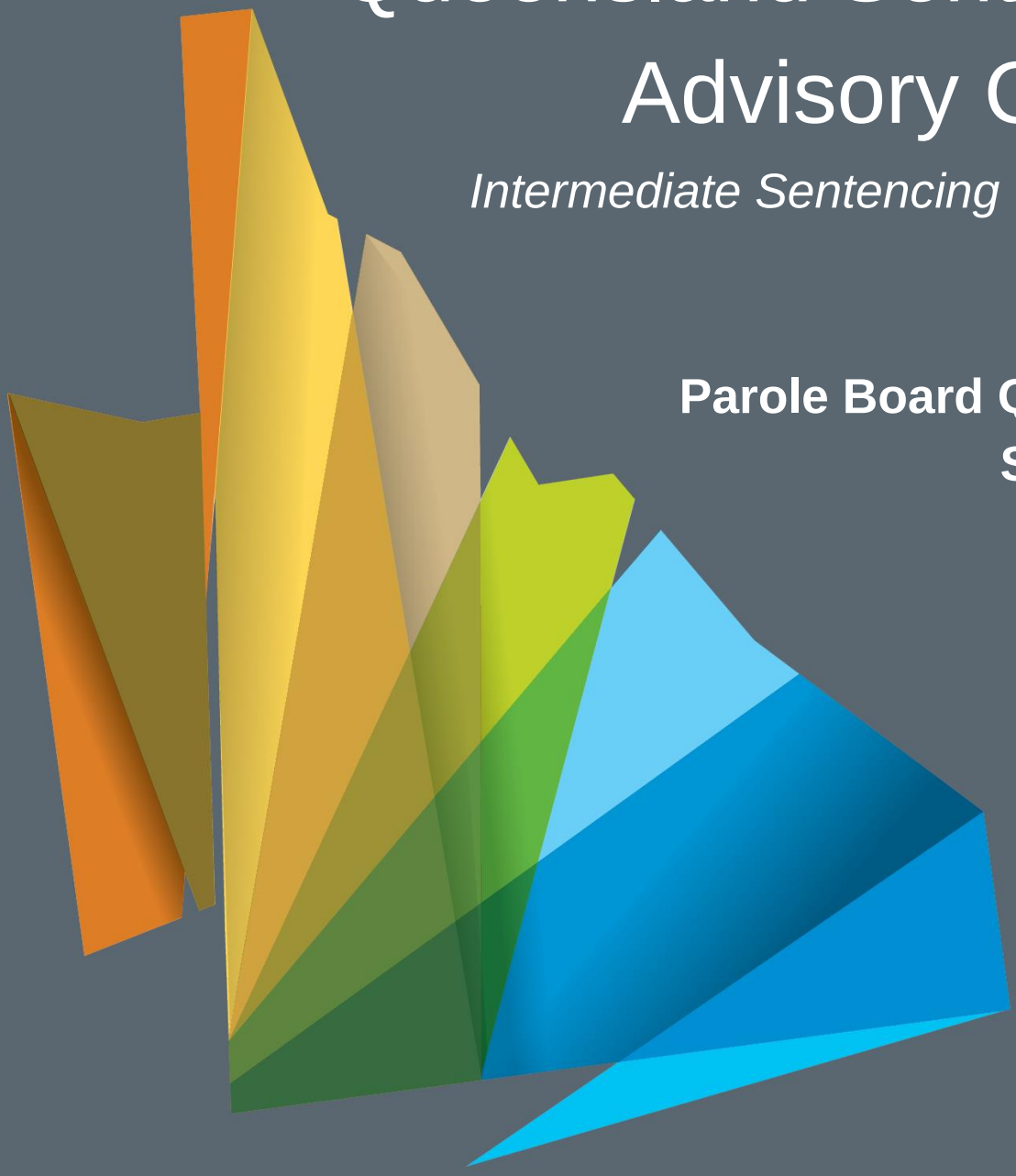
Queensland Sentencing Advisory Council

Intermediate Sentencing Options and Parole

Parole Board Queensland Submission

31 May 2019



Parole Board | Queensland

Queensland Government

Establishment of Parole Board Queensland

The Parole Board Queensland ('the Board') was established pursuant to the *Corrective Services (Parole Board) and other Legislation Amendment Act 2017* ('the Act') and commenced operation on 3 July 2017. The Board was established as a result of recommendations made by the Queensland Parole System Review ('QPSR').

The explanatory notes for the Act stated:

> *"The review report recommends, to ensure the safety of the community, and the proper and efficient operation of the parole system in Queensland, the parole board must be modernised and professionalised."*[i]

The Board plays a vital role in the Queensland criminal justice system, and in advancing community safety. The Board makes independent and evidence-based decisions about prisoners' release on parole. As Mr Sofronoff QC (as his Honour then was) stated in the QPSR:

> "*The only 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. If it were safer, in terms of likely reoffending, for prisoners to serve the whole sentence in prison, then there would be no parole. It must be remembered also that parole is just a matter of timing; except for those who are sentenced to life imprisonment, every prisoner will have to be released eventually.*" [ii]

And further as to the benefit of parole to community safety:

> "*The most recent research suggests that paroled prisoners are less likely to re-offend than prisoners released without parole*." [iii]
>
> …
>
> "*In truth, it (parole) is nothing more than a method that has been developed in an attempt to prevent reoffending. It works to achieve that purpose to a degree; like the criminal justice system itself, it will never fully achieve the goal of eradicating*

offending, even serious offending. The only realistic issue is how it can be improved to reduce reoffending by increments and to avoid cases of serious offending on parole. The goal is perfection but perfection will always be out of reach."[iv]

Meetings to decide parole matters

Currently the Board meets nine times per week (excluding matters brought before the Board outside of session for urgent consideration).

Six meetings per week are held to consider:

- new applications for parole;
- further consideration of parole applications;
- further consideration of suspensions of parole orders; and
- miscellaneous matters such as requests to amend parole orders, travel requests and interstate transfers of parole.

The President and each Deputy President chair two meetings each per week.[v]

An additional meeting is chaired by the President each week to consider applications for exceptional circumstances parole.

The *Corrective Services Act 2006* ('the CSA') requires a quorum of five members (a full Board) to consider parole matters for 'prescribed' prisoners. The CSA defines that term to include prisoners convicted of serious sexual offences, serious violent offences, a strangulation offence or an offence with a circumstance of aggravation. It also applies to prisoners serving a term with a mandatory minimum non-parole period.

A full Board must be comprised of the President or a Deputy President ('Chair'), a Professional Board Member ('PBM'), a Public Service Representative ('PSR'), an Inspector of Police and a Community Member. All but the Community Member are full-time Board members.

Suspension of a parole order

The power to suspend, amend or cancel a parole order now vests solely with the Board.[vi]

The former power of the Chief Executive or delegate (Regional Manager) to suspend a parole order for up to 28 days has been extinguished.[vii]

This reflects recommendations 78, 79 and 80 of the QPSR, which stated:

Recommendation No. 78

"The Power to suspend parole should be vested solely in the Queensland Parole Board."

Recommendation No. 79

"The legislation should provide for urgent suspensions of parole to occur on the following basis:

a) *the Chief Executive (or delegate) can apply to the Parole Board for the urgent issuing of a warrant;*
b) *the decision to urgently issue a warrant can be made on behalf of the Parole Board by one professional member of the Board or the President or Deputy President of the Board;*
c) *the full Board must consider whether to rescind the warrant or, if the warrant has been executed, order the release of the parolee, within two business days of the warrant having been issued;*
d) *for the purposes of the consideration by the full Board, the parole officer responsible for the management of the prisoner must provide a written report to the Board as to the reasons justifying the suspension."*

Recommendation No. 80

"For the purposes of implementing the legislative system set out in the preceding recommendation, at least one professional member of the Parole Board should be

rostered 24 hours a day, seven days a week, for the purpose of considering an urgent application for a warrant."

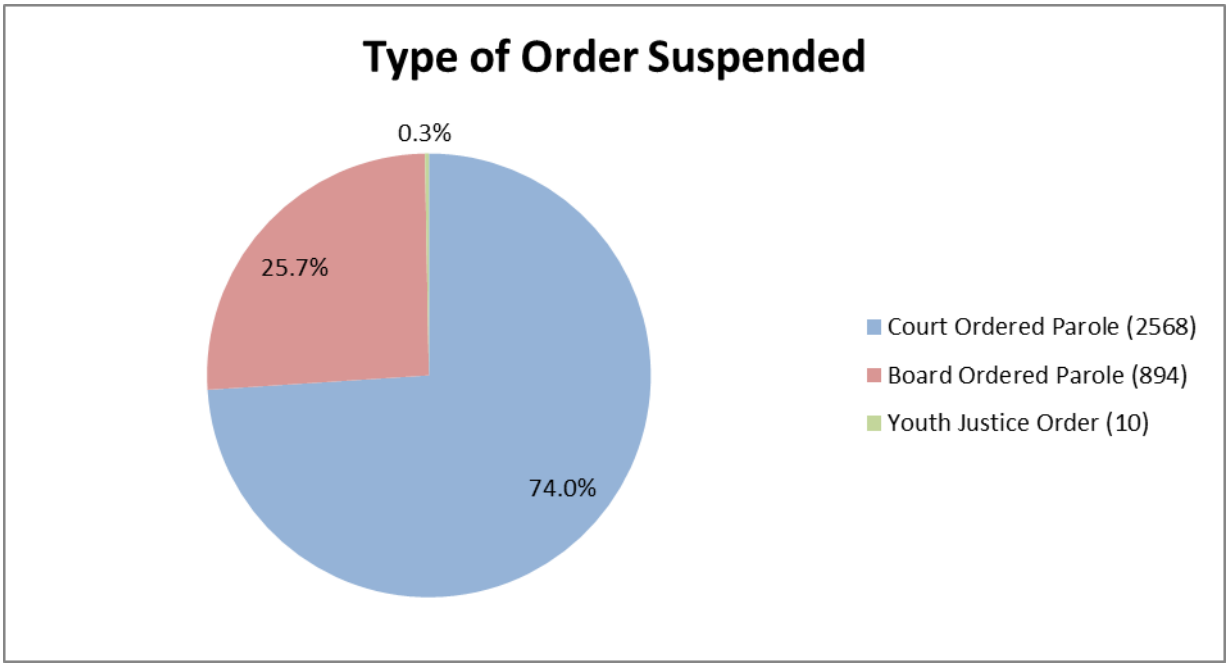
The aforementioned recommendations are accurately reflected in Chapter 5 – Subdivision 2A of the CSA – Requests for immediate suspension.

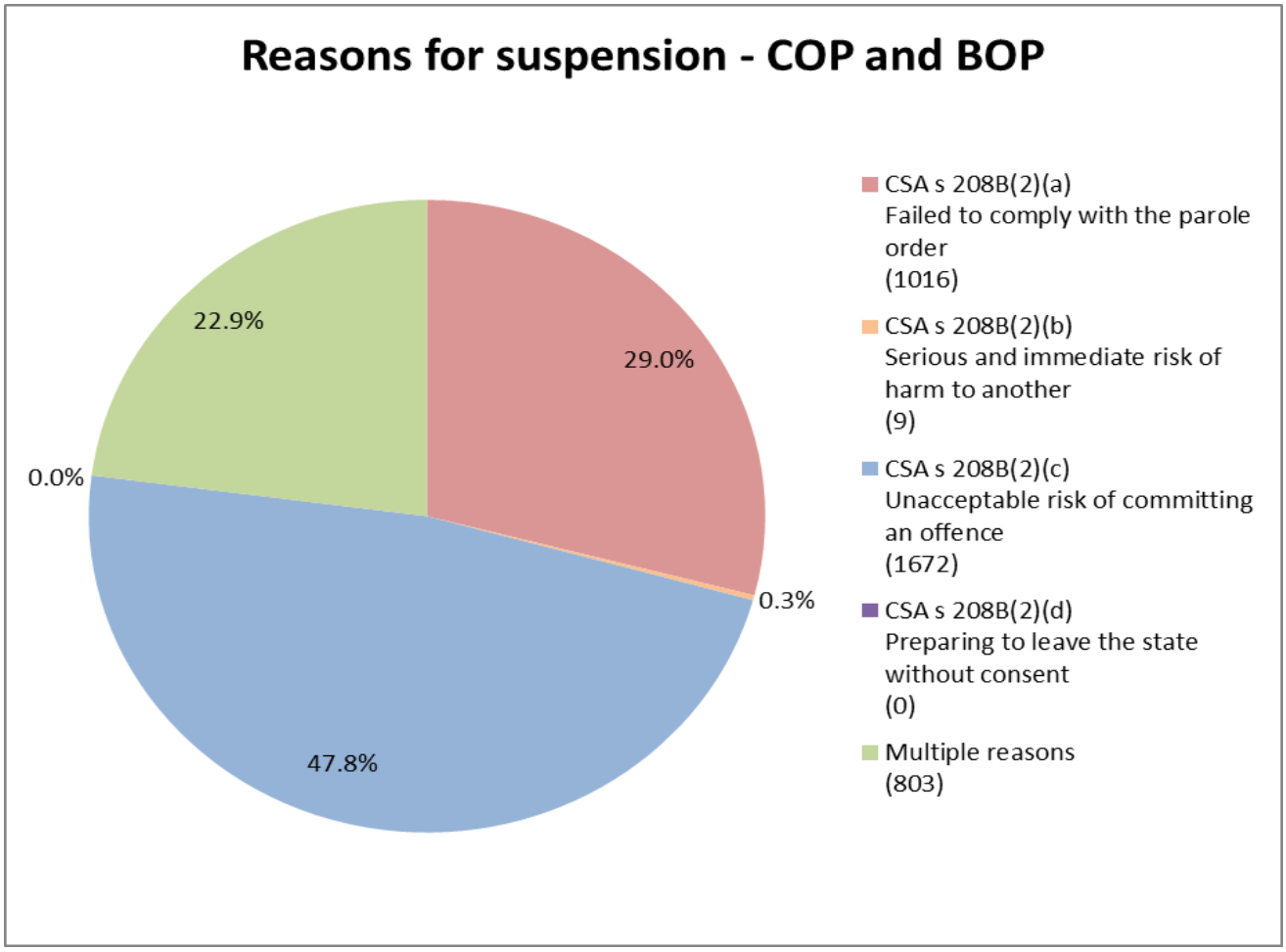
Meetings to confirm or set aside a decision to suspend parole

Pursuant to s208C of the CSA, the Board meets twice per week to confirm or set aside (within two business days) the decisions made by the PBM to suspend parole orders (while on-call 24 hours a day, 7 days per week). Those meetings are usually chaired by one of the Deputy Presidents.

In the financial year 2017/2018 the Board confirmed the suspension of **3,491** parole orders.
In the financial year 2018/2019[viii] the Board confirmed the suspension of **3,472** parole orders.

A breakdown of the 2018/2019 Board confirmed suspensions[ix]





Historically, the Board confirms that the failure of prisoners to successfully complete their parole orders is as Mr Sofronoff QC remarked in the QPSR in November 2016:

> *"Consistently and continually, people with whom I spoke identified three things as the most important factors in a prisoner's success on parole: a home, a job and freedom from substance misuse. Parolees the subject of court ordered parole commonly start parole homeless. For others, there can be no parole without proof that there will be suitable accommodation; but accommodation is difficult enough to secure for anyone convicted of a serious crime and it is even harder to secure from behind the walls of a prison."*[x]

The significant number of parole order suspensions confirmed by the Board between 3 July 2017 and 19 May 2019, namely **6,963**, should not be overlooked by the Queensland Sentencing Advisory Council.

That total of **6,963** of prisoners being returned to custody subsequent to their parole orders being suspended equates to **81.9%** of the total built cell capacity of all correctional centres in Queensland.[xi]

The Senior Members of the Board, having experienced first-hand almost two years of chairing meetings of the Board to confirm or set aside the decisions made by the PBM to suspend parole orders, endorse and adopt the observations made by Mr Sofronoff QC in the QPSR at [1135] – [1136]:

> "…*The high number of parole suspensions is having a significant impact on Queensland's prisoner population and it destabilises the lives of many offenders. That increases, rather than reduces, the risk to the community presented by those offenders.*
>
> *A period of imprisonment on suspension can be expected to cause serious disruption to any progress that an offender makes in the community on parole, isolating the offender from family and friends, destroying employment and housing arrangements, and separating the offender from rehabilitation service providers. When the offender is released back into the community it is likely that he or she will be in a worse position than before the suspension and the risks of the offender lapsing back into further offending behaviour, (particularly because of unaddressed drug addictions and/or mental health issues) may be intensified…*"

Community based sentencing orders, imprisonment and parole options

The Board has carefully considered the Terms of Reference to the Queensland Sentencing Advisory Council ('the Council'),[xii] the Community based sentencing orders, imprisonment and parole options paper[xiii] and the views previously expressed by all stakeholders at the roundtable meetings.[xiv]

The Board confirms the three options for reform to court ordered parole as identified by the Council as being:[xv]

Option 1: Retain court ordered parole in its current form, with no changes to eligibility criteria or the circumstances in which a parole release date can be set.

Option 2: Reform court ordered parole by increasing the current three year cap (retaining other criteria, but applying the same principles to sexual offences) by giving courts discretion to set either a parole release or eligibility date in one of the following three circumstances (which are intended to be alternatives):

a) for sentences over three-year cap, if appropriate release date is no more than 12 months from date of sentence (QPSR Recommendation No. 3)
b) for sentences of over three years, and up to five years; or
c) for all sentences up to five years (aligning with suspended sentence regime).

Option 3: Removing the cap of the setting of a parole release date altogether, giving courts full discretion to set either a parole release or a parole eligibility date, and extending this discretion to all offences, other than serious violent offences, offences for which a life sentence is imposed, or other offences or circumstances which are expressly excluded (such as through the operation of mandatory sentencing provisions).

In relation to the three (3) identified options for reform to court ordered parole, the Board **does not** at this time support any of those options.

It is the Board's view that any increase in the ability of a sentencing court to sentence an offender to court ordered parole: by increasing the current three year cap, or by removing the cap for the setting of a parole release date altogether, or by extending court ordered

parole as a sentencing option for other offences or circumstances which are currently expressly excluded, will lead to an exponential increase in the number of parole orders being suspended, with the inevitable result of further overburdening an already overburdened prison system.

The Board shares the Council's concerns:

> "… *that the existing evidence about the efficacy of court ordered parole is not robust enough to support an extension of court ordered parole beyond those offences to which it currently applies, or to longer sentences*."[xvi]

This is in part because of the way in which Corrective Services record whether a prisoner has or has not successfully completed a parole order.

The Board has significant concerns regarding whether the current definitions being utilised by Corrective Services have led to a distortion of the facts which represent whether a prisoner has or has not successfully completed their parole order.

Under current Queensland Corrective Services' definitions[xvii] relating to categories for the administrative completion of a parole order, a parolee is considered to have successfully completed their parole order under any one of the following eight applicable categories:

1. If the parolee adheres to the requirements of their parole order and completes their sentence without contravening order conditions;

2. If the parolee contravenes order conditions however a decision is made by the delegate to issue an administrative warning, and the parolee then reaches their full time release date;

3. If the parolee contravenes order conditions however a decision is made by the delegate to take no action in response, and the parolee then reaches their full time release date;

4. Upon a parolee's interstate parole order being registered in Queensland, or upon a Queensland parole order being registered interstate;

5. If a parolee is deported from Australia by the Department of Home Affairs prior to the expiration of the parole order;

6. If a parolee appeals their sentence and the outcome of the appeal results in the parole order no longer being in force;

7. If the death of a parolee occurs prior to the expiration of the parole order; or

8. If a parole order is reinstated. Specifically this category currently relates to when a parolee is returned to custody following suspension of the parole order however is released back to the community prior to the expiration of the parole order AND, if a parolee is returned to custody following suspension of the parole order however remains in custody at the expiry of the parole order under order suspension.

By applying the above definitions a prisoner is recorded as having successfully completed his/her parole order, despite:

- Being arrested and convicted for further offences committed interstate during the operational period of the parole order, due to the prisoner having their parole order registered interstate (as per point 4, above);

- Being arrested and convicted for further offences committed overseas during the operational period of the parole order, due to the prisoner having been deported from Australia (as per point 5, above);

- A prisoner dies at the commencement of the parole order or at any time during the parole order (as per point 7, above); and

- A prisoner has their parole order suspended and is returned to custody as a consequence of being charged with further offences. However, those further offences are not finalised prior to the expiry of the parole order (as per point 8, above).

The inaccuracy in recorded data concerning whether a prisoner has successfully completed their parole order is best illustrated by the following examples which are taken from real case files:

Case No 1.

- A 26 year old is sentenced to 9 months imprisonment for property offences with an immediate parole release date of 27 April 2018.
- Whilst on parole the prisoner is alleged to have committed the following offences on 3 September 2018: attempted murder, unlawful use of a motor vehicle and assault police.
- The prisoner's parole order is suspended and he is returned to custody.
- Because the parole order expires prior to the prisoner being convicted and sentenced for the offences committed on 3 September 2018, the parolee is considered to have successfully completed their parole order.

Case No 2.

- A 30 year old is sentenced to 6 months imprisonment for contravening a domestic violence order with a parole release date of 19 August 2018.
- Whilst on parole the prisoner is alleged to have committed the following offences on 28 November 2018: torture, kidnapping, robbery with violence, assault with intent to commit rape, assault occasioning bodily harm and unlawful use of a motor vehicle.
- The prisoner's parole order is suspended and he is returned to custody.
- Because the parole order expires prior to the prisoner being convicted and sentenced for the offences committed on 28 November 2018, the parolee is considered to have successfully completed their parole order.

Case No 3.

- On 22 June 2018 a 27 year old is sentenced to 9 months imprisonment for contravening a domestic violence order on multiple occasions with an immediate parole release date.
- Whilst on parole the prisoner is alleged to have committed the following offences on 3 October 2018: robberies with violence, assault occasioning bodily harm, enter premises with intent, wilful damage and unlawful use of a motor vehicle. Further, all offences are domestic violence offences.
- The prisoner's parole order is suspended and he is returned to custody.
- Because the parole order expires prior to the prisoner being convicted and sentenced for the offences committed on 3 October 2018, the parolee is considered to have successfully completed their parole order.

The Board believes that any further consideration of court ordered parole must be evidence based.

Further, the evidence regarding the effectiveness or otherwise of court ordered parole must be made public and should be subject to extensive stakeholder engagement. This is because the Board believes the granting of a parole order to a prisoner represents a significant social compact between the executive or judiciary, the prisoner and the community.

The granting of the parole order to a prisoner by the Board through the legislative power given to it by the executive, or by an order of a court, imposes obligations on the prisoner as outlined in the conditions of the parole order. The purpose of imposing those obligations is to reduce the risk of the prisoner reoffending. The prisoner in being released from prison subject to the parole order undertakes to fulfil those conditions. If the prisoner satisfactorily complies with the conditions of the parole order, then at the expiration of the order the prisoner may be seen by the community as having demonstrated efforts towards rehabilitation, therefore making the community safer from crime.

As previously stated, the Board does not endorse any of the three options for reform to court ordered parole as identified by the Council.

Instead, the Board respectfully submits the Council should do the following:

i. recommend an independent inquiry into the recorded data currently administratively recorded by Corrective Services on whether a prisoner has successfully completed a parole order;

ii. recommend that a new simplified definition of whether a prisoner has successfully completed a parole order is adopted and utilised;[xviii]

iii. recommend that after a suitable period of time the new data referred to above is subject to critical analysis which forms the basis of a further inquiry into the reform of court ordered parole.

The Board has provided an answer to the twenty questions posited by the Council in an attachment marked, "Annexure 1" which is attached to this submission.

[i] Explanatory notes, *Corrective Services (Parole Board) and other Legislation Amendment Act 2017,* page 2.

[ii] Queensland Parole System Review Report, November 2016 at [3].

[iii] Ibid at [7].

[iv] Ibid at [8].

[v] The President is equivalent to a Supreme Court Justice of the Trial Division and the Deputy Presidents are equivalent to District Court Judges. This is in accordance with the recommendation by Mr Sofronoff QC in the QPSR at [855] that, "*Judicial officers, or former judicial officers, would bring particular skills and experience to the work that would improve the consistency and quality of the parole decisional process as well as bringing an intellectual rigour to the reasoning process*."

[vi] Section 205 of the *Corrective Services Act 2006*.

[vii] Corrective Services Act 2006 (Qld) ss 201(2) and 205(2), as it was prior to the *Corrective Services (Parole Board) and other Legislation Amendment Act 2017*.

[viii] Up to and including 19 May 2019

[ix] The Board does not hold the breakdown data for the Board confirmed suspensions in the financial year 2017/2018.

[x] Queensland Parole System Review Report, November 2016 at [97].

[xi] Queensland Corrective Services Snapshot – as at 3 June 2019, '1. Prisoner Population and Profile, Centre Overview'.

[xii] Under the hand of Yvette D'ath, Attorney-General and Minister for Justice and Minister for Training and Skills, dated 25 October 2017

[xiii] Queensland Sentencing Advisory Council, April 2019.

[xiv] A Senior Board Member of Parole Board Queensland attended stakeholder roundtable meetings on 26 March 2019 and 14 May 2019.

[xv] QSAC, Community based sentencing orders, imprisonment and parole – Options Paper, April 2019 at p.267.

[xvi] QSAC, Community based sentencing orders, imprisonment and parole – Options Paper, April 2019 at p.268.

[xvii] Corrective Services, Probation and Parole Operational Practice Guidelines.

[xviii] For example: A prisoner has successfully completed their parole order if at the expiry of the parole order the prisoner is in the community and his parole order is not suspended or cancelled.

Annexure 1

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 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?

The Board does not wish to express a view in relation to this question as it is outside the Board's remit.

Questions 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?

The Board does not wish to express a view in relation to this question as it is outside the Board's remit.

Question 3: Legislative guidance on use of community correction orders (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?
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?
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?

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)?

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

Question 4: Home detention

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

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?

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.
b) A conviction is recorded.
c) The person consents to the order being made.
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.
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.
f) Any co-resident has consented to the person living at the nominated address?

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)?

4.5 What should the maximum period of home detention be:

a) 12 months (Northern Territory and New Zealand model)
b) 18 months (Tasmanian model)
c) Two years (NSW model)?

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

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

Question 5: Suspended sentences

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

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

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

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

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?

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)?

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?

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

Question 7: Power of court dealing with offender on breach of a suspended sentencing (PSA, s 147)

7.1 Are the courts' powers on breach of a suspended sentence, as set out under section 147 of 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; and/or
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'?

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

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

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?

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

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

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

b) to make a community service order in addition to a suspended sentence for a single offence; or
c) as an alternative to point 1 and 2, to make a CCO in addition to a suspended sentence for a single offence?

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?

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?

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

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?

The Board supports legislative amendment which permits a subsequent court sentencing an offender to a lesser period of imprisonment than an existing sentence, not to be required to set a prole release date, as per [53] of R v Sabine [2019] QCA 36 (18 February 2019).

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?

The Board does not believe the above provisions require amendment.

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?

The Board agrees with the proposal.

Question 12: Sentence calculation

Are there any particular sections of the *Penalties and Sentences Act 1992* (Qld) or Corrective Services Act 2006 (Qld) that makes the sentencing calculation process in Queensland unnecessarily complex? If so, how would you recommend the current level of complexity be remedied?

s.159A of the Penalties and Sentences Act 1992 (Qld).

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')?

The Board agrees with the proposal.

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?

The Board agrees with the proposal.

Question 14: Availability of parole for short sentence 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?

The Board agrees with the proposal.

Note: Under the Council's preferred option for reform of suspended sentences, courts would have an ability under the Penalties and Sentences Act 1992 (Qld) to combine a suspended sentence with a community based order when sentencing an offender for a single offence, in addition to their existing power to combine these orders when imposing sentence for two or more offences.

14.2 If a court's ability to set a parole release or eligibility date for short sentences of six months or less is abolished, should there be any recognised exceptions. For example, should this apply:

a. to activation of a suspended term of imprisonment on breach by reoffending?
b. if an offender has an existing parole date and reoffends while on parole?

The Board agrees with both proposals.

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

The Board believes that any risk is less than what is currently being experienced because of the large number of prisoners being returned to custody due to homelessness and/or substance abuse, which leads to a failure to comply with COP conditions.

Question 15: Pre-sentence reports

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

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

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

Question 16: Operation of ss 651 and 561 Criminal Code (Qld) and s189 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* (Qld)?

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

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

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?

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

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

Question 18: Ability of higher courts to deal with breach of a magistrate's court community based order (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?

The Board does not wish to express a view in relation to this question as it is outside the Board's remit.

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?

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

The Board does not wish to express a view in relation to these questions as it is outside the Board's remit.

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?

The Board does not wish to express a view in relation to this question as it is outside the Board's remit.