

# Queensland Parole System Review

Issues Paper | August 2016

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## Background

The Honourable Anastacia Palaszczuk MP, Premier and Minister for the Arts and the Honourable Bill Byrne MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services have established a review into the parole system in Queensland. Mr Walter Sofronoff QC has been appointed to lead the review. The review will examine all facets of the parole system in Queensland.

The parole system enables prisoners to be released from correctional facilities and back into the community, prior to the end of their term of imprisonment, yet subject to supervision and conditions, the breach of which will result in their re-imprisonment.

In broad terms, the rationale for parole is that in circumstances where risk to the community is considered to be acceptable, those prisoners who have already demonstrated good behavior and progress towards reform whilst in prison might be released into the community for the remainder of their term of imprisonment, to further enhance the prospects for their eventual reintegration back into the community, as law-abiding citizens.

Of recent times, there have been instances in a number of Australian jurisdictions where the parole system has failed, with newly released prisoners almost immediately committing heinous crimes, including murder. Understandably, these cases give rise to community concern regarding the efficacy of the parole system. This review has been established in response to those concerns.

As part of the review, the review team seeks submissions and feedback from the public on the following:

- the operations of the parole boards, including the process of decision-making by the parole boards about the grant or denial of parole, and the accountability of the parole boards for those decisions;
- risk to the community;
- the legislative framework for board-ordered parole and court-ordered parole, and
- the factors that lead to success or failure of parole, including the effectiveness of parole supervision, management, parolee monitoring and rehabilitation.

To assist in formulating a submission, discussion points have been included throughout the issues paper. It would help the work of the parole review if submissions were responsive to these issues. Please however, feel free to raise any other matters that may be of concern to you.

A report, including findings and any recommendations, will be provided to the Premier and Minister for the Arts and the Minister for Police, Fire and Emergency Services and Minister for Corrective Services by **30 November 2016**.

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## Terms of Reference

The Queensland Government is committed to a corrective services system that delivers community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders. The effectiveness of the parole process, which includes Queensland's parole boards and Queensland Corrective Services' supervision of offenders on parole, is fundamental to the integrity of the corrective services system.

To ensure Queensland's parole system operates as effectively as possible into the future to ensure community safety, Mr Walter Sofronoff QC has been engaged to review:

1. the effectiveness of the parole boards' current operations including decision making, structure and membership;
2. the transparency of parole board decision making;
3. the adequacy of existing accountability mechanisms for the parole boards and the parole system generally, and other mechanisms to ensure parole board decisions appropriately address risk to the community and victims, particularly women, and successful offender re-integration, including consideration of the independent Inspectorate recommended in the Callinan (2013) Review of the Victorian parole system;
4. the factors that would increase offenders' successful completion of parole and reintegration into the community and enhance community safety including, in particular:
  - effective supervision, management and monitoring, and
  - the availability and effectiveness of programs, services and interventions including for mental health disorders and drug and/or alcohol abuse
5. the effectiveness of the legislative framework for parole, including court-ordered parole, in Queensland.

In conducting the review, Mr Sofronoff will:

- examine and have regard to best practice in parole systems operating in other Australasian jurisdictions, particularly regarding effective ways to manage risk when releasing a person on parole; and
  - seek input from relevant experts, including those with knowledge of and experience of the criminal justice system, organisations working with offenders, victims' organisations, and academic researchers.
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## Making a Submission

All comments and submissions to the Queensland Parole System Review must be made in writing.

In providing comments or a submission, please identify the question you are responding to and, if practicable, please provide reasons and supporting details for your responses. Please also feel free to comment on any other issues relating to parole, supervision of offenders in the community; and the availability and effectiveness of rehabilitation for offenders in the community that are of concern to you.

Please provide any comment or submission by **14 October 2016**

By email: [parolereview@qld.gov.au](mailto:parolereview@qld.gov.au)

By post: Parole Review  
c/o Social Policy  
Department of Premier and Cabinet  
PO Box 15185  
City East QLD 4002

## Privacy Statement

For the purpose of the *Information Privacy Act 2009*, by making a submission you are consenting to the use and disclosure of any personal information you provide, as now outlined in this privacy statement.

Any personal information in your comments or submissions will be collected by the Department of Premier and Cabinet ("DPC") for the purpose of the consultation. Members of the Parole Review may contact you for further consultation on the issues you raise, and your submissions and/or comments may be provided to others with an interest in the matter. Your submissions may also be released to other Government agencies as part of the consultation process.

Submissions provided to the Parole Review in relation to this issues paper will not be published. Please note however that all submissions may be subject to disclosure under the *Right to Information Act 2009*, and access to applications for submissions, including those marked confidential, will be determined in accordance with that Act.

Submissions (or information about their content) may also be provided, in due course, to a parliamentary committee that considers matters relating to the review.

If you have any questions regarding the handling of your personal information by DPC, please visit <http://www.premiers.qld.gov.au/tools/privacy.aspx> or call (07) 3003 9231.

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# Part 1 – Parole Board Operations

## ***What is parole?***

In Queensland, prisoners may be released prior to the end of their term of imprisonment to parole by means of either a court order ('court ordered parole'), or a decision by a parole board after an application for parole by the prisoner ('board ordered parole'), or released to 'exceptional circumstances' parole, which might be granted (for example), if a prisoner is terminally ill.

Parole, when granted, is intended to afford prisoners an opportunity to serve the remainder of a term of imprisonment in the community. This is intended to act as an incentive for good behaviour and proper effort by the prisoner toward rehabilitation whilst in prison, and then, under appropriate supervision, after release into the community, to maximize prospects to become fully reintegrated, law-abiding citizens by the time the term of imprisonment actually comes to an end.

## ***How do the parole boards currently operate?***

The parole boards in Queensland are independent statutory bodies, which means neither the Minister nor the Government can intervene in their decisions to release prisoners to parole. The members on the parole boards are appointed by the Governor-in-Council. The *Corrective Services Act 2006* ("the Act") established a Queensland Parole Board<sup>1</sup> as well as Regional Parole Boards.<sup>2</sup> Members can be removed at any time without reason.

The Queensland Parole Board hears all parole applications for prisoners serving eight years or more imprisonment, by prisoners who have been sentenced to life imprisonment, applications by those who have been declared by the courts to be Serious Violent Offenders ("SVO"),<sup>3</sup> interstate parole transfers into Queensland and overseas travel applications. The Central and Northern Queensland Regional Parole Board and Southern Queensland Regional Parole Board hear all other parole matters.

In 2014-15 the three Queensland Parole Boards together considered in excess of 20,000 matters. Six years ago, in 2007-08, the first full year after the commencement of the Act, the parole boards considered approximately 6,500 matters. There was no increase in funding for the parole boards until 2016-17.

## **Parole Board Membership**

As at 30 June 2016, there were 26 members on the parole boards in Queensland, including the President, who presides over and may appear on all three boards, along with a Deputy President for each board. Other than the President, all members of the parole boards in Queensland are part-time appointments.

The Act requires that the President and Deputy Presidents must be retired judges or magistrates, or lawyers who have engaged in legal practice for at least five years. The Act further requires that the boards must have at least two women, one Aboriginal or Torres Strait Islander, one doctor or psychologist, and one public service officer appointed by the Chief Executive.

The maximum number of members for a sitting of the Queensland Board is eight. There is no similar restriction on the maximum number of members that may be appointed to sit on one of the regional boards. At a minimum each meeting must consist of at least four

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<sup>1</sup> *Corrective Services Act 2006*, s218.

<sup>2</sup> *Corrective Services Act 2006*, s232.

<sup>3</sup> *Penalties and Sentences Act 1992*.

members including the President or relevant Deputy President.

The parole boards are supported by a secretariat of 25 public service officers. The secretariat includes a Director, Parole Boards Secretariat, and public service officers who represent the Chief Executive, Department of Justice and Attorney-General. The Queensland Parole Board and the Southern Queensland Regional Parole Board are each based in Brisbane together with the secretariat. A second office is located in Townsville where the Central and Northern Queensland Regional Parole Board is based.

#### *Discussion points:*

1. *What should be the necessary qualifications for the President?*
2. *Where should parole boards be located?*
3. *What should be the composition of parole boards?*
4. *Should parole board members be liable to removal without reason?*

#### **How are Parole Board members remunerated?**

Members of the parole boards (other than the President) are currently remunerated on a 'per meeting' basis, in accordance with the *Remuneration for Part-Time Chairs and Members of Government Boards, Committees and Statutory Authorities* ("the Remuneration Policy") as approved by the Governor-in-Council on 4 October 2007.

The Department of the Premier and Cabinet revised remuneration procedures on 24 February 2014. Under the revised procedure members of boards continue to be remunerated at rates set out in the 2007 remuneration policy until such time as determined by the relevant Minister.

The President is an appointed Senior Executive (Level 2.5) and is paid an annual salary (as at 26 August 2016) of \$212,795 per annum including superannuation and leave loading. The position is full time.

Queensland Parole Board members are paid according to Function A – Category 2 in the Remuneration Policy. The Chair (if that person is someone other than the President) receives \$978 per meeting, and ordinary members receive \$759, per meeting. This amount is halved if a meeting of the parole board lasts for less than 4 hours. In 2015-16 \$138,923 was spent on members' sitting fees for meetings of the Queensland Parole Board. This amount excludes the President's salary but includes chair fees paid whenever the President was absent, and another member chaired the meeting.

Regional Parole Board members are paid according to Function AA – Category 1 of the Remuneration Policy. The Chair receives \$759 per meeting and members receive \$543 per meeting. This amount is halved if a regional parole board meeting lasts less than 4 hours. The total expenditure in 2015-16 for meeting fees for members (again excluding the salary for the Queensland Parole Board President) was \$406,447 across the two regional parole boards.

Parole board members are not remunerated for their reading time prior to parole board meetings. The sitting fee paid to parole board members assumes two hours preparation for any meeting. The administrative preparation and reading material for the parole boards is large. A typical meeting for the Queensland Parole Board may deliberate on more than 50 separate matters of varying complexity. The workload of the Regional Parole Boards are



higher, with over 80 matters considered at each meeting. Each meeting typically involves a significant volume of written information and parole board members are expected to be familiar with that material prior to the meeting to participate meaningfully in the deliberation process. Practically, this means members must undertake many hours of unpaid reading. This may give rise to concern that there is a lack of incentive for board members to be fully across the material prior to meetings of the board.

One recent innovation that has been introduced in an effort to streamline meetings of the parole boards has been for pre-meeting reading materials to be sent to parole board members electronically, in lieu of their receiving physical files. Now, a great deal of the information required for the meeting is provided to parole board members by means of iPads, however the board members still do not have iPad access to the Integrated Offender Management System ("IOMS") which contains detailed information on the prisoner's management and behaviour, whilst in custody. If additional information is required, during deliberations of the parole board, particularly information held on IOMS, then the board member must request this information from the secretariat.

#### *Discussion points:*

5. *Should the board members be remunerated for their reading time?*
6. *Should a greater number of board members be appointed to reduce the work load for current parole board members?*
7. *Are parole boards able to meaningfully deliberate on large numbers of cases per meeting?*
8. *Should a limit be placed on the number of matters considered at each meeting?*
9. *What criteria should be used to determine the number of cases that are dealt with at each parole board meeting?*

## **Part 2 – Transparency of parole decision making**

Under this part, the term 'transparency' means the openness of parole decision making. It involves the communication with, and responsiveness to both the specific audience that the decisions immediately effect, as well as the public more generally.

### ***How do prisoners apply for parole?***

Any prisoner is eligible to submit a parole application, within six months of his or her parole eligibility date. Sentence Management Services within QCS also undertake a review to identify prisoners who are either past their parole eligibility date, or who are very close to their parole eligibility date, so as to identify and assist prisoners who may wish to apply for parole.

Once a parole application has been made, the relevant parole board must determine the application within 120 days from receipt by QCS or 210 days if the matter is deferred for further information.<sup>4</sup> Generally, QCS provides the Parole Board Secretariat with the completed application package from prisoners applying for parole within nine weeks of receipt.

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<sup>4</sup> *Corrective Services Act 2006* (Qld) s193.

## ***How do the parole boards make the decisions?***

Prior to applications for parole being formally considered by a parole board QCS prepares a 'Parole Board Report' that provides parole board members with a comprehensive summary of the prisoner's suitability for release. The information in the Parole Board Report provides a summary and analysis of the prisoner's:

- offending behaviour (past and present);
- prior response to community-based supervision; and
- response to incarceration, including their conduct and engagement in rehabilitation, education and re-entry programs, and their reintegration plans.

The report is provided in conjunction with the prisoner's Integrated Offender Management System ("IOMS") record and physical file. Additionally, if required, the parole board may commission an independent psychological or psychiatric report or risk assessment to assist in the decision-making for a particular matter.

In the specific case of sexual offenders who are applying for parole, the parole board will also receive a specialized risk assessment prepared by the department. The sexual offending program assessment includes a baseline risk assessment based on the prisoner's history ('STATIC-99R'), and a dynamic risk assessment ('STABLE-2007') that identifies risk indicators for treatment. The assessment also makes recommendations regarding the treatment programs the sex offender would be required to complete.


## ***The Role of the Ministerial Guidelines***

The parole board is subject to Ministerial Guidelines when considering applications by prisoners for release on parole.

Currently the Ministerial Guidelines state that the highest priority for the Queensland Parole Board should always be the safety of the community. The guidelines outline a number of relevant factors for parole boards to consider when making a decision about parole and stipulate that all decisions should be made with regard to the total merits of the case.

At present the Queensland Minister for Corrective Services may make guidelines to be considered when the parole boards are making decisions. The Minister may not otherwise comment upon or intervene in decisions made by the parole boards.

When considering community safety, the guidelines require that the parole boards should consider whether there is an unacceptable risk to the community if the prisoner is released to parole and conversely whether the risk to the community would be greater if the prisoner does *not* spend a period of time on parole before their release into the community.

 ***A copy of the Ministerial Guidelines has been up-loaded to the Queensland Parole System Review Website (<http://parolereview.premiers.qld.gov.au>) in order that it might be considered by persons interested in making a submission to this review.***

## ***As a concerned member of the public, or a registered victim, can I be involved in parole board matters?***

At present, there is no legislative requirement for the meetings of any of the parole boards to be open to the public, or to receive public submissions. The parole boards may conduct their meetings in any way that is considered appropriate.

Parole board meetings are conducted as follows:

- the parole board holds private meetings;
- registered victims are notified prior to the relevant meeting and invited to provide submissions to the parole board;
- there is no forum for the Minister, Attorney-General or Chief Executive of Corrective Services to make a formal submission;
- the Chief Executive's representative will make a recommendation and may provide updates regarding the prisoner to the parole board; and
- the prisoner or support persons for the prisoner may make further submissions and the prisoner or the prisoner's agent can, with permission, appear before the parole board to make representations at the time of the parole decision.

### ***What rights do victims have?***

Victims of serious and violent crime have the right to join a victims' register. A registered victim is informed of an application by their attacker to obtain parole (other than exceptional circumstances parole) through the Queensland Corrective Services Victims Register and are invited to provide a submission to the board. Registered Victims are engaged again at the time of the Probation and Parole Service conducting a home assessment, where the suitability of the accommodation the prisoner has nominated is examined by the Probation and Parole Service. If there is a registered victim, the parole board will consider the proximity of the proposed address to the registered victim. The parole board will consider any submissions by registered victims when determining parole applications.

A person may be eligible to register with the Victims Register if he or she is the victim of violence or a sexual offence, an immediate family member of a deceased victim, or a parent or guardian of a victim who has a legal incapacity or who is under 18 years. In certain circumstances, where a person can demonstrate a documented history of violence by an offender, or that their life or physical safety may be endangered due to a connection to the offence for which an offender has been imprisoned, they can also apply to be registered on the Victims Register.

### ***What is the involvement of the State?***

At the commencement of the application process, a prisoner's parole application is initially reviewed by a panel that makes a recommendation, along with a recommendation by the General Manager of the facility. These recommendations are considered, but not binding on the parole board. The Probation and Parole Service will also submit a report regarding the proposed address the prisoner has submitted. Once the application has progressed to the parole board, no further formal submissions are made by the Department. However, in practice, the Parole Board does accept updated information relevant to the application, including the prisoner's conduct, completion of treatment or other relevant information up to the point at which the decision is made. The senior representative of the Chief Executive is present at each board and will provide information, including a recommendation concerning release. There is no formal representation on behalf of any other government or non-government entity.

After the application process, the prisoner may provide further information to the parole board, and support persons of the prisoner may make submissions. The Parole Board will accept new information to inform the decision making process. Prisoners may also be called upon by the Parole Board to submit further information, for example an alternative address, if the Board is minded to not grant an application.

### ***How are Serious Violent Offenders dealt with?***

In Queensland, a prisoner who is declared to be a serious violent offender under the

*Penalties and Sentences Act 1992* (Qld) cannot be granted parole until after serving 80% of their sentence. They are not eligible for court ordered parole and must apply to a parole board. There is a separate process for the consideration of serious violent offenders by the Queensland Parole Board.

Matters concerning the merits of a decision to release a prisoner are considered in Part 3. Parole for Serious Violent Offenders is further discussed in Part 5.

#### *Discussion points:*

10. *What should the role be for Ministerial Guidelines? Should these remain as 'guidelines' or should these become requirements in legislation?*
11. *Should Queensland adopt an additional stage of review for serious violent offenders prior to consideration by the parole board?*
12. *What other matters should the parole boards take into account?*
13. *Do the parole boards need other assessments (e.g. from experts) to make informed decisions about release?*
14. *Should the parole board hearings be open to the public?*
15. *Should victims be able to appear before the parole boards?*

## **Part 3 – Accountability mechanisms for the Parole Board**

Accountability is the responsibility for actions, decisions, and policies. Under this part, it encompasses administration and governance, whether there is an obligation to report, explain and be answerable for decisions, and the mechanisms in place to have decisions reviewed.

### ***Are reasons for the decision made available?***

The reasons for a decision to release or not release a prisoner are not made readily available. A prisoner may seek reasons for a decision not to grant parole. The prisoner may further seek a review of a decision not to grant parole by application for Judicial Review, discussed further in this part.

Similarly, Registered Victims are not given reasons why a prisoner is released to parole, however they are notified if a parole board is intending to release a prisoner. The rights of victims are discussed above, in Part 2.

The reasons for a decision to release a prisoner are treated as confidential information under the Act and accordingly they are not published even if the matter generates significant public attention or concern.

### ***Are the decisions of the parole boards reviewed?***

There is no review of decisions made to release a prisoner from custody.

### ***Judicial Review***

The *Judicial Review Act 1991* (Qld) ("the JR Act") provides that any person who is 'aggrieved' by a decision to which the JR Act applies is entitled to make an application for

judicial review.<sup>5</sup>

A 'person aggrieved' is defined in the JR Act to include a person whose interests are adversely affected by the decision, conduct or failure.<sup>6</sup> The courts interpret the test for whether a person has sufficient 'standing' (ie: entitlement) to bring an application for judicial review under the JR Act broadly.<sup>7</sup>

The decision of a parole board is subject to a review under the JR Act. Significantly however, judicial review is not the same as "merits" review. Courts undertaking judicial review are limited to considering whether a decision was lawfully made. The courts will not intervene to consider the merits of the actual decision.

Decisions by Queensland Parole Boards are regularly subjected to judicial review (usually by prisoners) before the Supreme Court. A failure to follow or adequately take into account the Ministerial Guidelines is a common ground for challenge by judicial review.<sup>8</sup> In those circumstances where the Supreme Court does find the decision making by the parole board to have been deficient, the matter is remitted back to the parole board for reconsideration. There is nothing to prevent the board making exactly the same decision as that which was taken on judicial review, yet now in accordance with the guidelines.

The parole board is required to inform the prisoner and provide written reasons for a refusal to grant parole. Where a prisoner has been refused parole by a Regional Parole Board three times, there is an internal appeal process to the Queensland Parole Board. However, there is no appeal process for decisions by the Queensland Parole Board.

There have been 71 Judicial Reviews completed since 2014. In Financial Year 2014-15, QCS expended approximately \$500,000 in legal fees in response to applications for judicial review of decisions made by the parole boards.

#### *Discussion points:*

16. *Who should be able to challenge a decision to release a prisoner or to refuse to release a prisoner?*
17. *Should Queensland establish a review board to hear appeals about a decision to grant release to a prisoner?*
18. *Should there be a public review hearing?*
19. *Should prisoners be able to seek Judicial Review of decisions by the parole board?*

### **Who oversees the performance of the parole boards and the Probation and Parole Service?**

Currently, there is no mechanism in Queensland to oversee the day-to-day performance of the parole boards. Judicial review is available, yet as discussed above, this is a narrowly focused oversight mechanism, concerned with process rather than substance.

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<sup>5</sup> *Judicial Review Act 1991* (Qld), ss 20, 21 and 22.

<sup>6</sup> *Judicial Review Act 1991* (Qld), s 7.

<sup>7</sup> *North Queensland Conservation Council Inc v Executive Director, Queensland Parks and Wildlife Service* [2000] QSC 172 (at [12]).

<sup>8</sup> I Callinan, *Review of the Parole System in Victoria* (2013) 48.

Unlike the parole boards, Queensland prisons are subject to day-to-day oversight by the Office of the Chief Inspector, which is required to examine the custodial operations of Queensland's prisons and who manages the Official Visitor's Scheme.

The Probation and Parole Service supervises prisoners who are released into the community. As an interim measure, the powers of the Chief Inspector have been temporarily expanded to oversee the administration of the Probation and Parole Service, at least while this review of the Queensland parole system is being undertaken.

### **What are the training requirements for Parole Board members?**

In Queensland, parole board members are provided with an initial induction prior to their commencing to sit on parole board hearings. In addition, ad hoc presentations are occasionally delivered for parole board members regarding various QCS initiatives and in relation to operational matters. There is at present no formalized scheme for continuing education and training for parole board members.

### **How are serious offences committed by parolees reported?**

Not all attempts to re-integrate parolees into the community by means of parole are successful. The largest proportion of 'parole failures' relate to minor breaches by parolees of their parole conditions (reporting, participation in community-based rehabilitation programs, and so on). Most public concern relates to those instances where parole fails because the offender engages in further criminal behaviour. There have been instances in Queensland where offenders on parole have committed truly heinous crimes, including rapes, armed robberies, and murders.

In the 2016 Report on Government Services, Queensland reported that 69.6% of supervision orders were successfully completed, compared to the national average of 70.9%.

#### *Discussion points:*

20. *Should Queensland create an independent Inspectorate for parole boards?*
21. *Alternatively, should the powers of the Chief Inspector be expanded to include all facets of the correctional system in Queensland?*
22. *What special preparation or education should be given to members of parole boards?*
23. *Should the parole boards be required to annually report on murders and other serious offences committed by parolees? Other than annual reporting, is there some other mechanism that could be used to document and understand when the parole system fails?*

## **Part 4 – Factors to increase success on parole**

The purpose of the parole system in Queensland is to ensure the safety of the community by reducing the risk of re-offending by offenders under supervision by means of case management of offenders, their participation in rehabilitation programs, and steps taken to ensure their re-integration back into the community (for example, by ensuring that prisoners on parole have proper access to housing, and opportunities for employment).

QCS has a Probation and Parole Service, which is responsible for prisoners and other offenders who are not in prison but out in the community. Currently there are more than 18,000 offenders subject to community supervision in Queensland. The Probation and Parole Service has the highest offender to staff ratio in Australia, and expenditure by Queensland 'per offender per day' on community supervision is the second lowest in the nation. The Queensland Probation and Parole Service ratio of offenders to supervisors is approximately 35:1. The national average is approximately 21:1. Queensland spends \$14.01 per day, per offender. The national average daily expenditure on community supervision is \$22.64, per offender.

One unique aspect of the parole system in Queensland is the limited capacity of the system to require prisoners to demonstrate they have addressed their offending behaviour or engaged in rehabilitation before their release from prison. Here, a very high number of prisoners released to parole are on Court Ordered Parole (which is discussed later in Part 5). This is parole that has been ordered by the Courts when the offender is sentenced. In those instances parole is not contingent on the good conduct of the offender whilst in prison, or their participation in prison-based rehabilitation programs. In addition, a great many prisoners are not in the system long enough to be offered any form of rehabilitation or treatment. With the average length of stay in custody in Queensland being less than 2 months, very many prisoners are not 'in the system' for long enough for them to be able to participate, in any meaningful sense, in any programs. These programs generally take far longer than the short time these offenders are in prison. In the result, a great many prisoners are released from prison without any treatment at all for their offending behaviour, mental illnesses, or substance abuse problems.

Prisoners with instances of mental illness and substance dependence problems are increasingly prevalent. Upon release to the community, QCS relies heavily on referral to non-governmental service providers for community based rehabilitation services, because of the limited availability and long wait lists for government services in many areas of the State. In a recent review undertaken by Ernst & Young for QCS, it was observed that the non-government sector has services concentrated in South East Queensland and far fewer services in other regions. The Ernst & Young review examined key services used by QCS, including education and training, employment, re-entry support, homelessness and substance abuse. That review observed that the relatively small number of service providers, particularly outside South East Queensland, provides challenges for government, especially in the absence of a coordinated approach across government to refer offenders to mainstream services for health, substance abuse, housing and employment, and so on.

## ***Previous reforms***

Over the past decade, there have been two major sets of reforms within the Probation and Parole Service. In the 2006-07 budget, QCS expanded community supervision and implemented court ordered parole, which was a key feature of the *Corrective Services Act 2006* (Qld). In 2012, QCS implemented a 'Next Generation Case Management Model', with supervision aligned to five distinct levels of service determined by an assessment of an offender's risk of re-offending. This model included the implementation of biometric reporting technology to monitor low risk offenders.

All the while, offender numbers have continued to increase, resulting in a number of issues that impact on the quality of supervision being provided to offenders in the community. Broadly, these issues include:

- High caseloads (significantly higher than the national average) impacting on officers' abilities to effectively monitor offenders and ensure community safety;
- Increased parole suspension rates directly exacerbating overcrowding in prisons:

offenders sent back to custody on parole suspension have approximately doubled between 2010 and 2016;

- Compliance by parolees with parole conditions being prioritised for supervising parole officers, thus limiting the capacity for the underlying causes of offending behavior to be addressed; and
- An increase in the risk profile of offenders, thus exacerbating the risk to supervising staff and the community.

### ***Prisoner numbers in Queensland***

Queensland experienced a 37.3% increase in prisoner numbers, from 5,604 to 7,695 between 31 January 2012 and 22 August 2016. The 2016 Report on Government Services identifies that Queensland's operating expenditure 'per prisoner per day' was \$177.86. When multiplied by the current number of incarcerated prisoners, this equates to approximately \$1.36 million, per day.

Where prisoner numbers exceed the built capacity of the correctional system, prisoners are "doubled-up" with two prisoners in cells designed for one prisoner. Prisoners are not doubled-up in low security correctional centres or prison farms. As at 22 August 2016, there were 7,083 prisoners in high security facilities, with a built capacity of 6,138. In other words the State prison system was holding 945 more prisoners than it has been designed for, thus putting the prison system at 115.4% capacity. The approximate average cost to government of accommodating prisoners at "above built capacity" is \$110 per prisoner, per day.

The key factors considered to be contributing to the current growth in Queensland's prisoner numbers include:

- an increase in reported and cleared property offences;
- an increase in sentences of imprisonment imposed by the courts, in lieu of non-custodial orders;
- a decrease in grants of parole by Queensland's Parole Boards; and
- an increase in the number of prisoners returning to prison, due to parole breaches.

### ***Offender numbers in Queensland***

The number of offenders on parole has also continued to increase, which has exacerbated the pressure experienced by the correctional system. Queensland experienced a 30.3% increase in offenders under supervision in the community, from 15,259 to 19,881 between 31 January 2012 and 31 July 2016, which has adversely affected the workload of the parole boards and the corrective services system as a whole.

Various administrative changes over the last decade in QCS have directed effort towards reducing the general administrative burden for prisoner supervision, as well as improving supervision practices within the State correctional system so as to free up further resources to dedicate towards offenders with higher risk. Although some efficiency dividends have been able to be obtained from these efforts, little has been done to increase the size of the Probation and Parole Service frontline workforce to respond to the growth in offender numbers.

The 2016 Report on Government Services shows that Queensland had the second lowest expenditure on supervision in the community, with \$14.01 being spent in Queensland per offender per day, compared to the Australian average of \$21.64. Queensland's caseload of offenders per operational staff member was 35.1 prisoners for each staff member, compared to the national average of 21.2.



## ***Aboriginal and Torres Strait Islander people in the prison system***

Aboriginal and Torres Strait Islander people are over-represented in the prison system. When it comes to probation and parole practice guidelines, Aboriginal and Torres Strait Islander people are treated no differently to other people on parole.

### *Discussion points:*

- 24. Should the Queensland ratio of offenders to staff align more closely with the Australian average?*
- 25. What other steps or measure could be considered to enhance the ability to properly supervise offenders in the community?*
- 26. Will increasing funding and staff for the Probation and Parole Service be likely to reduce the risk of re-offending ('recidivism') by offenders on parole?*
- 27. Are there specific issues in relation to parole that relate to Aboriginal and Torres Strait Islanders?*

## ***How does the Probation and Parole Service supervise offenders?***

In Queensland, higher risk offenders are supervised by more experienced officers. These officers have a reduced caseload to reflect the additional workload that these higher risk offenders represent. Conversely, officers who supervise lower risk offenders generally have higher caseloads. Currently, the Probation and Parole Service workforce has been structured so as to perform discrete functions of assessment, case management, reporting, compliance and surveillance.

QCS introduced the 'Next Generation Case Management Model' in 2012. This research-based model introduced five distinct levels of service determined by an offender's assessed risk of re-offending. QCS introduced biometric reporting kiosks for use by lower risk offenders to assist in avoiding over-management of low risk offenders and to increase the availability of resources for the management of higher risk offenders. The Next Generation Case Management model, including biometric reporting, has assisted QCS to manage the increase in offender numbers without requiring immediate additional funding support from government.

### **How is the level of risk and service determined?**

QCS use two Risk of Reoffending tools to screen for the risk of reoffending. These tools also assist in determining the required access to rehabilitation programs in custody and the level of service required for case management in the community. Both tools were developed by Griffith University and validated on a sample of prisoners and offenders in Queensland.

The 'Risk of Reoffending-Prison Version' (RoR-PV) is validated for use with prisoners, to assess the risk of general re-offending, post release from prison. The Risk of Reoffending-Probation and Parole Version (RoR-PPV), is used to calculate the likely risk of general re-offending for offenders who commence supervision in the Probation and Parole Service. Both Risk of Reoffending tools are automatically calculated, using data held in the Integrated Offender Management System. The Risk of Reoffending tools are not specifically designed to assist in making assessments of parole eligibility, when making pre-sentencing decisions, or to provide assessments of dangerousness. Nor do the tools

predict technical breaches of parole.

An offender subject to community supervision will be assigned a level of service upon administration of the Risk of Reoffending (RoR-PPV), or when an offender is moved in from custody (based on RoR-PPV score). The level of service guides the intensity and activities undertaken with each parolee during supervision. The higher the risk, the more intensive the supervision becomes. The level of service is determined by the offender's RoR-PPV score, order type, and offence. In the event that a level of service change is required sources of information may include advice from Courts, police, offender behavior records, intelligence, or specialized assessment outcomes. The QCS operational practice guidelines provide the following table demonstrating how the level of service is assigned according to the Risk of Reoffending scores.

Level of Service	RoR-PPV	RoR-PV	Excluding Factors
Low Risk	1 - 7	1 - 4	<ul style="list-style-type: none"> <li>▪ Intensive Corrections Order</li> <li>▪ Board Ordered Parole</li> <li>▪ Serious Violent Offenders (declared)</li> <li>▪ Current or previous sex offence</li> <li>▪ DPSOA</li> <li>▪ Current conviction of an exclusionary offence*</li> </ul>
Standard	8 - 11	5 - 12	<ul style="list-style-type: none"> <li>▪ Serious Violent Offenders (declared)</li> <li>▪ Current or previous sex offence</li> <li>▪ DPSOA</li> </ul>
Enhanced	12 - 15	13 - 17	<ul style="list-style-type: none"> <li>▪ Serious Violent Offenders (declared)</li> <li>▪ DPSOA</li> </ul>
Intensive	16 - 20	18 - 22	<ul style="list-style-type: none"> <li>▪ DPSOA</li> </ul>
Extreme	RoR - irrelevant		<ul style="list-style-type: none"> <li>▪ Any order excluding DPSOA</li> </ul>

### How is a sex offender risk assessed?

The STATIC-99R, STABLE-2007 and ACUTE are actuarial assessment tools with strict and simple scoring guidelines. These have replaced 'clinical judgement' assessments by psychologists or psychiatrists, on the basis that the actuarial assessments have proved to be more reliable. All three tools have been developed over the past 25 years using validated and well known factors which are predictive of either sexual recidivism (STATIC-99R), treatment needs (STABLE-2007), or acute factors indicative of heightened risk of sexual offending (ACUTE). The STATIC-99R has been used and validated on prison populations in Canada, the United Kingdom, Netherlands and the United States of America. The STATIC-99R has been found to have moderate to good predicative accuracy when attempting to identify prisoners at risk of sexual recidivism across each of these jurisdictions. It is now also used by all Australian correctional jurisdictions.

The STATIC-99R, STABLE-2007 provide QCS with the risk assessment information needed to allocate prisoners to either high or moderate intensity sexual offending programs. The STATIC-99R and STABLE-2007 assessments are routinely provided to the

parole board to identify the recommended interventions and risks level posed by a particular sexual offender. In the community, the STATIC-99R, STABLE-2007 and ACUTE-2007 assessments are also used by Probation and Parole Service officers to manage the risk and needs in the community of offenders, including as a criteria by which to allocate some offenders to sexual offending programs delivered in the Probation and Parole Service.

While under supervision, ACUTE-2007 risk factors are monitored each time the offender is interviewed by their Probation and Parole case manager. The ACUTE-2007 risk factors require assessments of factors such as victim access, hostility, sexual preoccupation, rejection of supervision, emotional collapse, collapse of social supports and substance abuse. These short term risk factors can act as indicators of the immediate likelihood of reoffending by sex offenders. The ACUTE-2007 helps the Probation and Parole Service officer to analyse short term risk factors of a possible re-offence, in order to instigate risk mitigation strategies. The ACUTE-2007 is administered to offenders who have been convicted of a current or recent (within ten years) sexual offence. Where an offender receives a score of IN ('intervene now') for any risk factor, or receives a supervision priority classification of HIGH upon completion of an ACUTE-2007, a case conference is to be considered.

### **How does risk assessment interact with supervision?**

The case management approach used in the Probation and Parole Service is based on extensive criminal justice research. Under Next Generation Case Management, the Probation and Parole Service tailors the supervision of offenders in an attempt to match resources to risk, and attempts to balance the requirements of controlling the parolee in the community by means of general supervision with their requirements for treatment. For sex and violent offenders, particularly moderate to high risk offenders, greater resources and interventions are provided.

Risk identification and management is fundamental to the Next Generation Case Management model. The work commences with a Benchmark Assessment to examine risk factors related to those factors that may destabilize an offender on supervision in the community. Factors examined include accommodation, employment, substance abuse, mental health, relationships, attitude, and order conditions. Using the Dynamic Supervision Instrument (DSI), these factors are repeatedly assessed during supervision to identify any change in the risk profile. The DSI will produce a risk threshold score which indicates if an offender's risk has escalated beyond the management level for their currently assigned level of service. This will trigger a case conference with senior staff to consider the appropriate response to an escalation in risk, which may include an increase in the level of service, or if the risk is thought to be too great, the offender may be returned to prison.

### **How does QCS manage contraventions of parole orders?**

The aim of Probation and Parole Service supervision is to reduce the risk of contravention by managing escalation in risk through case management. Actions may include increased surveillance, home visits, drug testing, referral to intervention and case management with the supervisor.

Consistent with the case management approach, contraventions of parole are not an offence under legislation and decision makers have discretion as to how they will respond to a breach. When breaches of parole conditions do occur, the Probation and Parole Service officer who is the case manager for that particular offender must use their professional judgement to identify the risks and make recommendations to their supervisor or district manager, who apply oversight in the decision making process. Parole contraventions do vary in severity and can range from relatively minor (missed appointments for supervision or treatment), to positive substance testing results and, in the

most severe cases, new offences.

Contravention actions may include verbal warnings, a written censure notice, a referral to the parole board, or ultimately suspension. The Chief Executive or delegate may suspend a parole order for up to 28 days if they reasonably believe the parolee:

- has failed to comply with the parole order;
- poses a serious and immediate risk of harm to someone else;
- poses an unacceptable risk of committing an offence; or
- is preparing to leave Queensland, other than under a written order granting the prisoner leave to travel interstate or overseas.

Further discussion concerning parole orders is provided in Part 5.

### **‘Extreme’ level of service: How the highest risk sex offenders are managed under the *Dangerous Prisoners (Sexual Offenders) Act 2003***

The *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* (‘DPSOA’) provides an option to supervise or detain sex offenders in custody, beyond the end of their sentence, if the Supreme Court determines they are a serious danger to the community.

Just like other sex offenders managed by the department, DPSOA offenders are initially identified on the basis of the STATIC-99R and STABLE-2007 risk assessment tools. Any prisoner who is in custody, serving a sentence of greater than two years for a sexual offence, will be assessed and considered by the Serious Offender and Dangerous Offender Assessment Committee (SODOAC) for referral to the Attorney-General. The Attorney-General makes the final determination as to whether the State will then pursue an application for a DPSOA order.

DPSOA offenders are strictly supervised in the community, using a combination of intensive case management, psychological treatment, physical surveillance, drug testing, and since 2007, electronic monitoring by GPS tracking. As at 26 August 2016, there were 88 DPSOA offenders subject to GPS tracking in Queensland. GPS tracking enables the department to monitor the movements of DPSOA offenders, to identify if they enter areas restricted by their order conditions, and it ensures the offenders submit to the conditions of their curfews. If an offender attempts to access, or passes through, an exclusion zone, an immediate alert is raised by the system. Critical alerts are escalated to the Queensland Police Service for response, in conjunction with QCS.

The GPS devices are tamper-resistant. Breaking or cutting the GPS straps generates an immediate critical alert to the QCS Central Monitoring Station. It is a criminal offence for an offender to remove a GPS tracking device while they are subject to a DPSOA order. GPS tracking is centrally monitored 24 hours a day by specialist staff in the QCS Electronic Monitoring and Surveillance Unit, within the High Risk Offender Management Unit.

### **Can GPS tracking be used for other types of offenders?**

The Act permits GPS tracking for other offenders (other than DPSOA offenders), if the Chief Executive or delegate considers it necessary to monitor a particular offender’s location. In practice, this is rarely applied, with only one non-DPSOA parolee currently subject to GPS tracking as at 26 August 2016.

#### *Discussion points:*

28. *Are the supervision practices in Queensland adequate?*

29. *Are Queensland's Probation and Parole Service staff properly equipped and resourced to manage risk to the community?*
30. *How should the Probation and Parole Service manage or tolerate risk to the community?*
31. *Should breaches of parole be viewed more seriously?*
32. *Should GPS tracking be a requirement for parolees in Queensland?*

## ***Mental health disorders and management***

In 2015, the Australian Institute of Health and Welfare reported 49% of people entering custody across Australia had been diagnosed with a mental health disorder and one in four reported they were medicated. History of mental health disorders was higher for female prisoners (62%) than males (47%). Approximately one third of the prisoners reported high levels of psychological distress in the four weeks after entry to prison.

### **How are prisoners and parolees with a mental illness managed?**

Prisoners receive support from QCS staff and offenders on community orders may be referred to community agencies, general practitioners or programs. Prisoners and offenders with more significant mental illness are managed by Queensland Health through the Prison Mental Health Service, the Forensic Mental Health Service in the community, inpatient mental health, or Community Mental Health Services.

Psychological services in correctional centres include assessments on admission to assess the risk of suicide or self-harm, rehabilitation and parole planning, referrals to the Prison Mental Health Service, risk assessments and counselling. QCS also delivers wellbeing and psychological health programs to assist prisoners to manage stress, emotions and behaviours, such as suicidal thoughts.

In addition, QCS psychologists, counsellors and cultural liaison officers provide support and manage the wellbeing and psychological health of prisoners as part of their daily duties within correctional centres. Referrals to Queensland Health and Prisoner Mental Health Services are made to assess and treat mental illness.

### **Referral to Prison Mental Health Services**

Queensland Health, Offender Health Services, provides primary health services in all publicly managed prisons. Health services in the two privately managed secure centres are provided by the private contractor. Forensic mental health services in all public and privately operated centres are currently provided by Prison Mental Health Service.

Referrals to the Prison Mental Health Service typically occur through a QCS psychologist, Queensland Health nurse or general practitioner, or a visiting medical officer. During the prisoner's Immediate Risk Needs Assessment the assessor must make a referral to the Prison Mental Health Service for assessment if it is identified that a prisoner has a history of mental illness, a current diagnosis of mental illness or previous contact with a mental health service provider (including immediately prior to admission to custody). Further, at any other time during a prisoner's incarceration, a referral to the Prison Mental Health Service may be made by the prisoner themselves, centre psychologist and counsellors, prison officers, or Queensland Health staff. For prisoners leaving custody, the Prison Mental Health Service may do a referral to the prisoner's general practitioner, psychiatrist or Community Mental Health Service.

## **Mental health treatment services available in the Probation and Parole Service**

An Immediate Risk Needs Assessment is administered at the first contact with all offenders. Offenders presenting with mental health needs may be referred to a general practitioner for further assessment and consideration for a mental health care plan. Probation and Parole Staff may also refer offenders' directly to specialist external service providers.

### *Discussion points:*

33. *Does Queensland adequately support and treat prisoners with mental health disorders?*
34. *Are prisoners with a mental health disorder adequately supported as they re-enter the community?*
35. *Are there sufficient services available to assess, treat and support offenders with a mental health disorder in the community?*

## **How is substance abuse managed by QCS?**

In 2015, the Australian Institute of Health and Welfare reported two thirds of people entering custody reported they had used an illicit substance in the 12 months prior to incarceration. It was higher for younger prisoners, aged 18-24, where 76% reported illicit substance use. Of the respondents, 50% reported use of methamphetamine and 41% reported using marijuana. Heroin and other opiates were much lower, accounting for 9% and 8% respectively.

### **Substance abuse treatment in prison**

Upon entry to prison, all prisoners are subject to an Immediate Risk Needs Assessment. If immediate needs related to addiction are identified, the prisoner is referred to Queensland Health. Prisoners serving terms longer than 12 months also receive a Rehabilitation Needs Assessment and Progression Plan that creates recommendations for engagement with programs and services. Prisoners serving short periods in custody can access shorter programs via self-referral, or be referred by staff.

Substance abuse rehabilitation programs delivered in custody include:

- Pathways High Intensity Substance Abuse Program (6 months duration)
- Pathways Challenge to Change Program (10-11 weeks)
- Positive Futures Program (6-8 week)
- Low Intensity Substance Intervention (16-24 hours)
- Short Substance Intervention (8 hours)

There is no specific program for prisoners that targets methamphetamine use.

### **Substance abuse treatment delivered by Queensland Health**

An intake assessment by Queensland Health also considers detox issues. Symptomatic relief for those experiencing detoxification is provided, if indicated. The West Moreton Prison Mental Health Service, which services seven South East Queensland prisons, has two clinicians that provide drug and alcohol assessment and intervention for prisoners who are patients with the service.

Opioid Substitution Treatment is administered by Queensland Health, at certain locations, in the form of buprenorphine mono (Subutex) or buprenorphine/naloxone (Suboxone). To be eligible for the Opioid Substitution program, male and female prisoners must be serving a sentence of less than 12 months, and have already been on an Opioid Substitution Treatment program prior to their incarceration. In addition, pregnant opioid dependent prisoners may initiate Opioid Substitution Treatment upon entry to prison. There is no Opioid Substitution Treatment program in the majority of Queensland's male prisons.

### **Substance abuse treatment in the Probation and Parole Service**

When an offender comes under the supervision of the Probation and Parole Service, an assessment determines their level of need regarding substance abuse. These needs are rated as either low, medium or high. A plan is then developed in response to the assessment, and will often involve referral to community based services or in some locations, to QCS programs.

There is no specific program for parolees that targets methamphetamine use.

The Queensland Health Alcohol and Other Drugs Service, which provides drug and alcohol treatment in the community, is also utilised by the Probation and Parole Service for offenders under supervision.

#### *Discussion points:*

36. *Are there enough resources dedicated to the assessment and treatment of prisoners with a history of substance abuse?*
37. *How could the State better prevent relapse to substance abuse when offenders re-enter the community?*
38. *Are sufficient services dedicated to manage people with a substance abuse problem in the community?*
39. *How could the government more effectively deal with the issues associated with substance abuse?*

### **What other rehabilitation programs are delivered by QCS?**

The QCS service delivery model for rehabilitation programs is based on a combination of staff delivery, purchased interventions, local partnerships and, in the case of the Probation and Parole Service, referrals to existing community-based services via the case management processes.

Programs occur in group formats, and all are accredited under National Offender Program Accreditation standards which are based on international research about the types of interventions that have been shown to be most effective in reducing recidivism. All QCS programs use trained and supervised facilitators. The programs provide higher intensity intervention to higher risk offenders, consider responsibility factors such as motivation and ability, use methods such as cognitive behavioural therapy and include skill development and relapse planning methods.

Given the diversity of the prison population, a mix of short, low intensity and higher intensity programs are delivered to offenders, at a level dictated by available staffing resources and funding allocations. The currently available programs are:

- General re-offending
  - Positive Futures Program (6-8 weeks)
  - Making Choices Women's Program (100 hours)
  - Turning Point Preparatory Program (15-20 hours)
- Violence
  - Positive Futures Program (6-8 weeks).
  - Cognitive Self Change Program (120-150 hours)
- Wellbeing and psychological health
  - Strong Not Tough: Adult Resilience Program (10 hours)
  - Real Understanding of Self Help (40 hours over 10 weeks)
  - Learn and Live Program
- Sexual offending
  - Getting Started Preparatory Program (24 hours over 6 weeks)
  - Medium Intensity Sexual Offending Program (75-175 hours over 4-6 months)
  - High Intensity Sexual Offending Program (350 hours over 9-12 months)
  - Inclusion Sex Offending Program (108 hours over 5 months)
  - Sexual Offending Program for Indigenous Males (75-350 hours over 3-12 months)
  - Sexual Offending Maintenance Program (16-24 hours over 12 weeks)

### ***Is rehabilitation a requirement for parole?***

In Queensland, the Ministerial Guidelines state community safety is the overriding factor in parole deliberations. The Ministerial Guidelines also require the parole board have regard to "all relevant factors" when considering a prisoner's risk to the community, including recommended rehabilitation programs and the prisoner's progress in completing programs. The Courts in Queensland have consistently held that parole cannot be refused on the basis of failure to complete a program in circumstances where a program is not available.

### ***What support is provided to prisoners to successfully re-enter the community after prison?***

Re-entry services are aimed at assisting prisoners to desist from re-offending, to succeed on parole and thus remain out of custody for as long as possible. Generally, these services focus on practical ways to reduce re-offending by assisting prisoners to secure stable accommodation, address substance abuse needs, develop social supports, improve their education and gain employment. In 2015-16, 4,038 prisoners received support. In 2016-17, QCS implemented enhanced re-entry services to support prisoners. The new services include:

- a regionally based re-entry service;
- centre-based services for Borallon Training and Correctional Centre, designed in collaboration between government and NGO service agencies; and
- a specific service for female prisoners in South East Queensland, also designed in collaboration between government and NGO agencies.



*Discussion points:*

40. *Is the current availability of programs prior to release from prison sufficient to reduce risk to the community?*
41. *Should the completion of rehabilitation be a mandatory requirement prior to parole release?*
42. *Is Queensland targeting the right issues through the delivery of rehabilitation and re-entry services?*
43. *How could Queensland improve the availability of programs and services for offenders in the community?*
44. *Should greater effort be directed to the delivery of re-entry programs, with extended support for offenders under supervision?*

## **Part 5 – What is the legislative framework for parole in Queensland?**

### ***What are the options when sentencing offenders?***

When sentencing an offender, there are a variety of different sentences that the court may impose, including non-custodial sentences, custodial sentences, and special orders. When sentencing, the court must have regard to a number of principles set out in the *Penalties and Sentences Act 2009*. Generally, imprisonment is a sentence of last resort.<sup>9</sup> This principle does not however apply to offences that involve violence, result in physical harm, or in the case of child sex offences.

There are some offences for which imprisonment is mandatory, including murder and driving under the influence where the offender has two prior driving convictions in the last five years.

#### **Community based orders**

Community based orders are non-custodial orders, that allow the offender to serve their sentence within the community. These include community service orders, graffiti removal orders, intensive correction orders, and probation orders.

Probation is a sentencing option the courts may use instead of, or in conjunction with, a prison sentence. Probation involves an offender being released into the community with government monitoring and supervision. A probation order can last from six months to three years. Much like parole, after being released on probation, an offender must report regularly to a probation and parole officer, who will monitor their progress and rehabilitation. They will ensure that the offender is complying with their order conditions, help with rehabilitation, and start disciplinary action in the event that the offender breaches any of the conditions imposed on their probation order. Unlike parole, when the Probation and Parole Office determines that an offender has breached the conditions of their probation, the offender is summonsed to appear before court. The court can then deal with the breach in a variety of ways.

#### **Imprisonment**

When a court sentences an offender to a period of imprisonment, depending on the length

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<sup>9</sup> *Penalties and Sentences Act 1992*, s 9(2)

of term of imprisonment, the court will either set a parole release date, or a parole eligibility date. If the period of imprisonment is five years or less, a court may order that the term of imprisonment be wholly or partially suspended.<sup>10</sup> Under a suspended sentence, an offender is released from custody after serving the period ordered by the court. There is no supervision of these offenders in the community. A court may only make an order that the term of imprisonment be suspended if it is satisfied that it is appropriate to do so in the circumstances.

If the court believes an offender is a danger to the community because of the offender's past history, character, age, health or mental condition; the seriousness of the offence; or any other circumstance, it may impose an indefinite prison sentence. An indefinite sentence will continue until a court reviews the sentence and orders that the indefinite term be discharged.

## **Parole**

The *Corrective Services Act 2006* established parole as a form of supervised early release from custody. Parole decisions are made by either the sentencing court or a parole board. Offenders on parole will be supervised in the community for the duration of their sentence of imprisonment and will be returned to custody, if that is necessary to protect the community. Parole orders can include strict conditions in relation to employment, program attendance and place of residence.

In the case of prisoners serving short sentences of imprisonment of three years or less who are not serious violent offenders or sex offenders, the *Corrective Services Act* provides that they are to be automatically released to parole at the time fixed by the original sentencing court. This is court-ordered parole. As is discussed further below, Court ordered parole was introduced by amendments to the *Corrective Services Act* in 2006.

The intention behind the introduction of court ordered parole was to provide greater sentencing certainty for victims, and the community by requiring a sentencing court to specify the length of time that a prisoner, serving imprisonment of three years or less who is not a serious violent offender or sex offender, must spend in custody before being released on parole.<sup>11</sup>

In contrast to prisoners serving short sentences of imprisonment of three years or less who are not serious violent offenders or sex offenders, all sex offenders, serious violent offenders and prisoners serving periods of imprisonment of more than three years may only be considered for parole at the time recommended by a sentencing court or after serving a fixed percentage of their imprisonment. These more serious offenders may not obtain parole automatically at a specified future date. Rather, these prisoners must apply to a parole board for parole, and their application must be granted before they can be released on parole. Sex offenders will be eligible for consideration by a parole board after serving half of their period of imprisonment,<sup>12</sup> or as recommended by a court. Serious violent offenders will only be eligible for parole after serving 80 per cent of their sentence of imprisonment.<sup>13</sup> A parole board will then only release a prisoner to parole if the prisoner is considered suitable for supervised release into the community.

## **Court Ordered Parole**

Where a sentence is for a period of three years or less, and is for an offence that is not a serious violent offence or a sexual offence, a court will set a parole release date. The court

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<sup>10</sup> *Penalties and Sentences Act 1992*, s 144(1).

<sup>11</sup> Explanatory Notes, *Corrective Services Bill 2006*.

<sup>12</sup> *Corrective Services Act 2006*, s 184(1).

<sup>13</sup> *Corrective Services Act 2006*, s 182.

can fix any day as a parole release date.<sup>14</sup> On the day of release to court ordered parole, the prisoner has one business day within which he or she must report to a Probation and Parole office, whereupon, a parole order will be issued. The parole order contains a set of statutory, standard conditions, including that the offender:

- be under QCS supervision until the end of the period of imprisonment;
- carry out lawful instructions;
- give a test sample (urine/breath) if required to do so;
- report and receive visits as directed;
- notify QCS within 48 hours of any change of address or employment; and
- not commit any offence for the duration of the sentence.

### **Why was court ordered parole introduced?**

Court ordered parole was developed only comparatively recently, in 2006, following a review of the *Corrective Services Act 2000* by the then Department of Corrective Services. The review identified a number of shortcomings in existing arrangements for early release of prisoners. Prior to 2006, a short-sentence prisoner (those serving two years or less) who was granted early release could *not* be supervised by corrective services in the community for the remainder of their sentence.

Early remission allowed the Chief Executive to administratively reduce the length of a prisoner's sentence by authorizing the release of the prisoner from custody for good behaviour whilst in custody. These decisions however, could not be based on considerations of community safety. The prisoner could not be monitored, nor could their risks upon release be addressed and supported via appropriate case management. Court ordered parole was designed on the principle that a prisoner's release should be determined by either the sentencing court or an independent parole board and short-sentence prisoners released prior to their full-time discharge are subject to supervision by corrective services, either in prison or in the community until the expiry of their sentence. The introduction of the *Corrective Services Act 2006* abolished remission and phased out conditional release, along with two types of community-based release: release to work and home detention.

Additional investment to QCS in both 2006 and 2010 was aimed to give confidence to the judiciary and the community that QCS then had the necessary capability to successfully manage offenders in the community, which in turn would decrease growth in prisoner numbers. In conjunction with the new Probation and Parole Service, the introduction of court ordered parole also aimed to address the over-representation of short-sentenced, low risk prisoners in QCS facilities. It was intended that court ordered parole would be used as a mechanism to divert these low-risk offenders from custody, whilst ensuring post release support and supervision.

### **What were the impacts of court ordered parole?**

Following the introduction of court ordered parole in 2006 there was a rapid increase in the amount of offenders being supervised in the community. One of the most significant effects of court ordered parole was the impact on court decisions regarding partially suspended sentences. The number of prisoners on partially suspended sentences sharply declined - from approximately 500 prior to the introduction of court ordered parole - to 250 by January 2008, and has since been relatively stable. As sex offenders are not eligible for court ordered parole, the number of sex offenders in custody with a partially suspended sentence has been stable since 2006. Short sentenced sex offenders remain unsupervised in the community upon release.

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<sup>14</sup> *Penalties and Sentences Act 1992*, s 160G.

On an average day in 2015-16, there were 4,070 people on court ordered parole orders in Queensland. Offenders on court ordered parole generally serve shorter sentences with 66% (statistic from 2013) serving a sentence of 12 months or less in duration. In 2015-16, 74% completed court ordered parole without cancellation by the parole board. This group could potentially have received wholly suspended sentences with no community supervision.

### **What happens when court ordered parole is suspended?**

If the offender fails to comply with a condition of their order, is charged or convicted of an offence, or is an unacceptable risk of further offending, QCS has a number of options available to ensure the safety of the community. Case management options include increasing surveillance (office visits, home visits, drug testing) and/or referring the offender to an intervention program or external support service. QCS can also temporarily amend the conditions of the parole order if the offender has failed to comply or requires further restriction to be appropriately managed. Formal contravention actions include issuing a verbal warning, written censure, temporarily suspending the parole order and returning the offender to prison for up to 28 days or referring the offender to a parole board for suspension or cancellation.

If Queensland Corrective Services suspends an offender's parole, a warrant for arrest is issued, and the offender is returned to custody. The parole board is notified and the matter is listed for a parole board meeting. At the initial parole board meeting, the board must determine what action to take, which can include directing that the offender be released from custody on the same parole conditions, or to defer the matter to consider cancelling the parole order. If the parole board decides to consider cancelling the order, the prisoner is issued with a letter from the parole board advising them that the board is considering cancelling their parole and the offender is given 14 days to respond. If parole is then subsequently cancelled, the offender is imprisoned under the original sentence and may re-apply for parole through the parole board application process.

Of court ordered parole suspensions, 62.25% had their parole suspended because Probation and Parole assessed that there was an unacceptable risk of further offending. This can be because Probation and Parole are alerted that the offender has been charged with an offence or because there has been an increase in risk factors associated with the individual's offending pathway. For example, these could include the offender losing their job or their accommodation, or a separation from their partner or support person.

From 2015-16, 3888 (approximately 325 per month) offenders on court ordered parole were suspended and returned to prison. On any given day, there are approximately 1,068 prisoners in custody on a parole suspension (both court ordered and board ordered parole) at a cost of \$322,055 per day. On average these individuals will spend 84 days in custody before being re-released. Currently the parole boards have up to 28 days to review a suspension matter and make a decision. Parole Board data indicates that 17% of parole suspension reviews result in immediate, or near immediate release.

In making its decision on the timing and conditions of release, the Board takes into account a range of factors, many of which are not required to be considered by or are not known to the court that imposed the original sentence. These factors include the stability of an offender's accommodation or an offender's behaviour while in custody (participation in rehabilitation programs, disciplinary infractions etc.).

### **Recidivism in offenders on court ordered parole**

Offenders who have court ordered parole orders have no capacity to influence the period of time they will spend in custody. They will not reduce their time in custody by participating in a rehabilitation program. Further, due to their comparatively short sentences, offenders on

court ordered parole may not have enough time in prison to be considered for program participation, even if they wish to participate. In contrast, board ordered parolees can increase their likelihood of release once they become eligible for parole by displaying an intention to rehabilitate. As a consequence, they have greater incentive to participate in programs designed to reduce the risk of re-offending.

A recent study by the New South Wales Bureau of Crime Statistics and Research found that parolees released by the New South Wales State Parole Authority appear to be less likely to re-offend, compared to court ordered parolees, particularly once the parole order has expired. This may be due to the selective processes of the Parole Authority in choosing who should and should not be granted parole or because Parole Authority parolees are more motivated to participate in rehabilitation programs whilst in custody.

#### *Discussion points:*

45. *Is court ordered parole effective?*
46. *Should the maximum sentence for court ordered parole be increased from three years?*
47. *Should there be more alternatives to court ordered parole available to the court when sentencing?*
48. *Should there be legislative principles guiding the court as to whether an offender should be placed on probation, a suspended sentence or court ordered parole?*
49. *Should there be a risk assessment performed on offenders prior to sentence?*
50. *Does QCS have the capability to successfully manage court ordered parolees in the community?*
51. *Does the broad discretion of the Parole Officers to suspend an offender's parole interfere with the determination of release date by the sentencing court?*
52. *What is the impact of parole suspensions and short prison stays on the offender, the corrections system, and the parole board?*
53. *Should there be an alternative body making determinations regarding offenders who have had parole suspended?*
54. *Should parolees be immediately taken into custody when QCS suspends their parole?*

### **Serious Violent Offenders**

Several offences can be considered 'serious violent offences', these include rape, violent assaults and child sexual offences.<sup>15</sup> When sentencing an offender for one of these offences, the court may declare an offence is a serious violent offence. However, if an offender is sentenced to a period of imprisonment of 10 years or more for an offence listed in the act as a 'serious violent offence', it is automatically declared a serious violent

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<sup>15</sup> *Penalties and Sentences Act 1992*, sch 1.

offence. An offender cannot apply for parole for a serious violent offence until they have served 80 per cent of their sentence or 15 years in prison (whichever is less), or a later parole eligibility date has been set by a court.

In practice, this means that serious violent offenders serve only a small portion of their sentence under supervision in the community. For example, if an offender is sentenced to a term of imprisonment of 10 years for an offence of rape, they will not be eligible for parole until they have served 8 years in prison. Further time passes as the offender applies for parole and awaits their hearing before the parole board. If the offender is deemed ready to be released on parole by the parole board, the offender is then only monitored in the community until the expiration of their original sentence of 10 years, which by the point of their actual release from prison on parole, may only be a matter of months. If the example offender serving a ten year term is deemed to be an unacceptable risk to the community, they may in fact never be released on parole, and yet, at the expiration of their ten year term they will be released from prison with no supervision whatsoever.

*Discussion points:*

55. *Should there be an enlarged regime of community supervision for serious violent offenders?*
56. *Would there be community benefit in their being a system requiring serious violent offenders to be subject to much longer periods of supervision in the community, after their eventual release from prison?*
57. *Should there be minimum parole periods for serious violent offenders?*
58. *Should the board have regard to the offender's inevitable release into the community when considering an application for parole by a serious violent offender?*

## Discussion points

1. *What should be the necessary qualifications for the President?*
2. *Where should parole boards be located?*
3. *What should be the composition of parole boards?*
4. *Should parole board members be liable to removal without reason?*
5. *Should the board members be remunerated for their reading time?*
6. *Should a greater number of board members be appointed to reduce the work load for current parole board members?*
7. *Are parole boards able to meaningfully deliberate on large numbers of cases per meeting?*
8. *Should a limit be placed on the number of matters considered at each meeting?*
9. *What criteria should be used to determine the number of cases that are dealt with at each parole board meeting?*
10. *What should the role be for Ministerial Guidelines? Should these remain as 'guidelines' or should these become requirements in legislation?*
11. *Should Queensland adopt an additional stage of review for serious violent offenders prior to consideration by the parole board?*
12. *What other matters should the parole boards take into account?*
13. *Do the parole boards need other assessments (e.g. from experts) to make informed decisions about release?*
14. *Should the parole board hearings be open to the public?*
15. *Should victims be able to appear before the parole boards?*
16. *Who should be able to challenge a decision to release a prisoner or to refuse to release a prisoner?*
17. *Should Queensland establish a review board to hear appeals about a decision to grant release to a prisoner?*
18. *Should there be a public review hearing?*
19. *Should prisoners be able to seek Judicial Review of decisions by the parole board?*
20. *Should Queensland create an independent Inspectorate for parole boards?*
21. *Alternatively, should the powers of the Chief Inspector be expanded to include all facets of the correctional system in Queensland?*
22. *What special preparation or education should be given to members of parole boards?*

23. *Should the parole boards be required to annually report on murders and other serious offences committed by parolees? Other than annual reporting, is there some other mechanism that could be used to document and understand when the parole system fails?*
24. *Should the Queensland ratio of offenders to staff align more closely with the Australian average?*
25. *What other steps or measure could be considered to enhance the ability to properly supervise offenders in the community?*
26. *Will increasing funding and staff for the Probation and Parole Service be likely to reduce the risk of re-offending ('recidivism') by offenders on parole?*
27. *Are there specific issues in relation to Parole that relate to Aboriginal and Torres Strait Islanders?*
28. *Are the supervision practices in Queensland adequate?*
29. *Are Queensland's Probation and Parole Service staff properly equipped and resourced to manage risk to the community?*
30. *How should the Probation and Parole Service manage or tolerate risk to the community?*
31. *Should breaches of parole be viewed more seriously?*
32. *Should GPS tracking be a requirement for parolees in Queensland?*
33. *Does Queensland adequately support and treat prisoners with mental health disorders?*
34. *Are prisoners with a mental health disorder adequately supported as they re-enter the community?*
35. *Are there sufficient services available to assess, treat and support offenders with a mental health disorder in the community?*
36. *Are there enough resources dedicated to the assessment and treatment of prisoners with a history of substance abuse?*
37. *How could the State better prevent relapse to substance abuse when offenders re-enter the community?*
38. *Are sufficient services dedicated to manage people with a substance abuse problem in the community?*
39. *How could the government more effectively deal with the issues associated with substance abuse?*
40. *Is the current availability of programs prior to release from prison sufficient to reduce risk to the community?*
41. *Should the completion of rehabilitation be a mandatory requirement prior to parole release?*
42. *Is Queensland targeting the right issues through the delivery of rehabilitation*



*and re-entry services?*

43. *How could Queensland improve the availability of programs and services for offenders in the community?*
44. *Should greater effort be directed to the delivery of re-entry programs, with extended support for offenders under supervision?*
45. *Is court ordered parole effective?*
46. *Should the maximum sentence for court ordered parole be increased from three years?*
47. *Should there be more alternatives to court ordered parole available to the court when sentencing?*
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