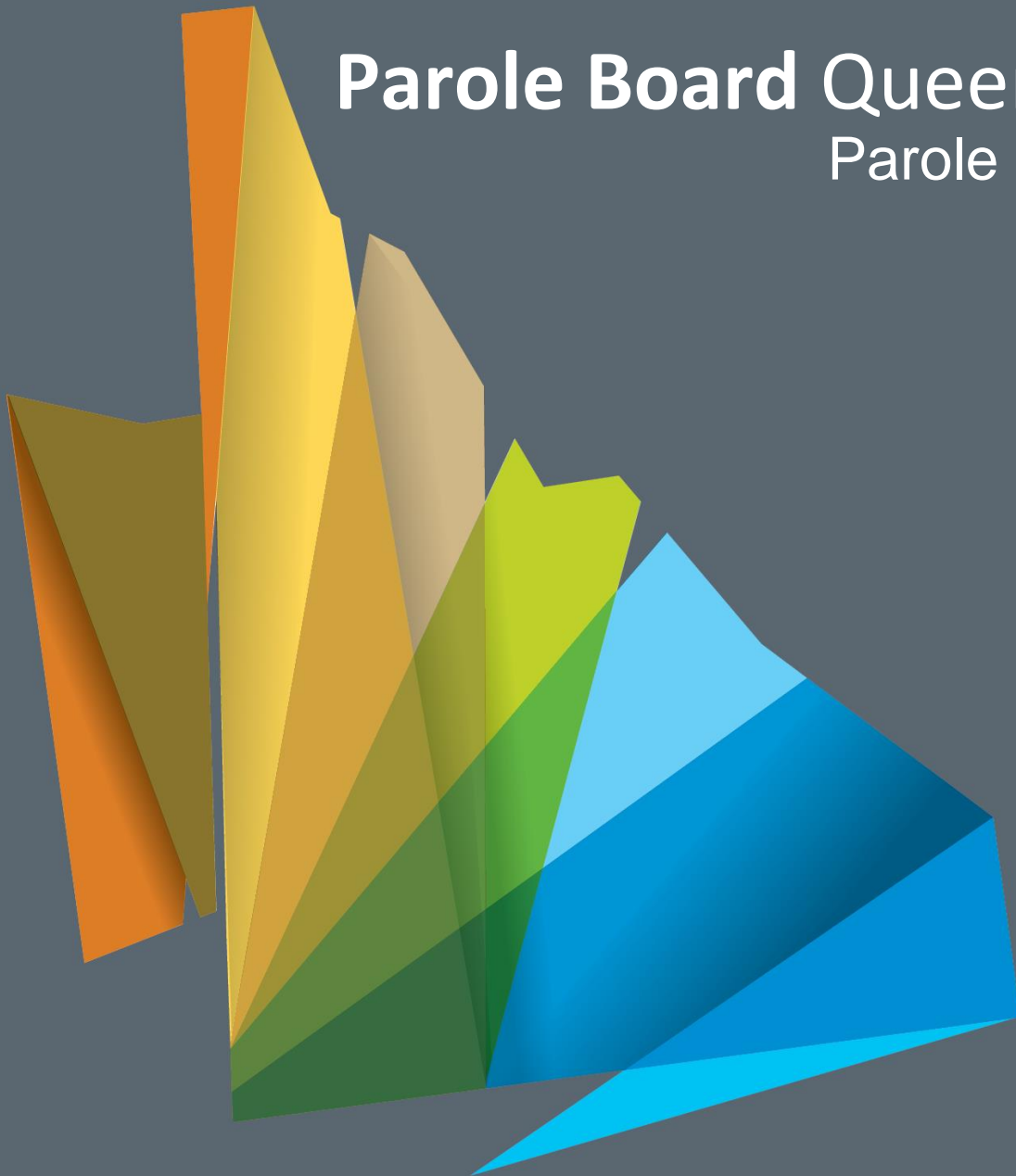


Parole Board Queensland

Parole Manual



Parole Board | Queensland



Queensland
Government



Published by the Parole Board Queensland

For further information, contact
Director, Parole Board Secretariat
Parole Board Queensland
Level 24, 50 Ann Street, Brisbane QLD 4001
PO Box 1054
Telephone (07) 3406 3411
Email: paroleboardqld@dcs.qld.gov.au
Internet: www.paroleboardqld.gov.au

The information contained in this manual was accurate as at 5 August 2019.

Accessibility:

This document is also available in PDF format on the internet at www.paroleboardqld.gov.au





CONTENTS

INTRODUCTION	6
THE BOARD	7
GENERAL PRINCIPLES RELATING TO PAROLE	11
THE PURPOSE OF PAROLE	11
DECISION MAKING TIMEFRAMES	12
MINISTERIAL GUIDELINES	12
EVIDENCE BASED DECISION MAKING	13
PAROLE ELIGIBILITY	14
CULTURAL CONSIDERATIONS	14
APPLICATION PROCESS	14
COMMENCEMENT OF APPLICATION	14
CONSIDERATION OF PAROLE APPLICATION BY THE BOARD	16
REFUSAL OF PAROLE	16
APPEARANCE BY PRISONERS/AGENTS	20
FACTORS CONSIDERED IN DECISION MAKING	22
CORRECTIVE SERVICES ACT 2006	23
MINISTERIAL GUIDELINES	23
PAROLE BOARD ASSESSMENT REPORT	24
ACCOMMODATION RISK ASSESSMENT	25
PSYCHIATRIC AND PSYCHOLOGICAL RISK ASSESSMENTS	26
PSYCHIATRIC HISTORY	27
BEHAVIOUR IN PRISON	28
SENTENCING REMARKS	29
CRIMINAL HISTORY	30
PREVIOUS RESPONSE TO SUPERVISED ORDERS IN THE COMMUNITY	30
COMPLETION OF INTERVENTIONS TO ADDRESS OUTSTANDING TREATMENT NEEDS	30
RELEVANT CASE LAW – COMPLETION OF INTERVENTIONS	31
RELEASE PLANNING INCLUDING FAMILY AND COMMUNITY SUPPORT	32
THE ‘MOORE’ PRINCIPLE	33



VICTIM'S SUBMISSIONS	34
<u>PAROLE CONDITIONS</u>	35
<u>EXCEPTIONAL CIRCUMSTANCES PAROLE</u>	36
<u>NO BODY NO PAROLE - THE APPLICATION OF SECTION 193A</u>	42
<u>AMENDING A PAROLE ORDER</u>	50
<u>SUSPENSION AND CANCELLATION OF PAROLE ORDERS</u>	54
SUSPENSION AND CANCELLATION BY THE BOARD	56
IMMEDIATE SUSPENSION BY BOARD OR PRESCRIBED BOARD MEMBER	57
BOARD MUST CONSIDER SUSPENSION	57
AUTOMATIC CANCELLATION	58
EFFECT OF CANCELLATION	58
EVIDENCE FOR A SUSPENSION AND CANCELLATION	61
IMMEDIATE SUSPENSION PROCESS	62
CANCELLATION PROCESS	64
EFFECT OF CANCELLATION	64
<u>INTERSTATE AND OVERSEAS TRAVEL</u>	66
<u>MINUTE TAKING OF BOARD MEETINGS</u>	67
<u>ELIGIBLE PERSONS REGISTER (VICTIMS REGISTER)</u>	68
<u>JUDICIAL REVIEW</u>	71
<u>ANNEXURES</u>	76
ACRONYMS- MOST FREQUENTLY USED AT THE PAROLE BOARD	76
MINISTERIAL GUIDELINES TO PAROLE BOARD QUEENSLAND	80
STANDARD PAROLE CONDITIONS	90
ADDITIONAL CONDITIONS	91
<u>FORMS</u>	94



ADVICE TO PAROLE BOARD REPORT	95
ASSESSMENT REPORT	95
PAROLE BOARD ASSESSMENT REPORT	96
SHOW CAUSE RESPONSE	99
ACCOMMODATION RISK ASSESSMENT	101





INTRODUCTION



On 3 July 2017, the Queensland Government established Parole Board Queensland (the Board) in response to recommendations made by the Queensland Parole System Review (QPSR) conducted by Mr Walter Sofronoff QC (as he then was) (Final Report November 2016).

The Board operates as an independent statutory authority to ensure transparent, evidence-based parole decisions are made objectively and not dependent upon Queensland Corrective Services (QCS) authorities responsible for the case management and supervision of prisoners.

Parole is not a privilege or an entitlement. Parole is a method developed to prevent re-offending and it plays an integral part in the community justice system.

When making parole decisions, the Board's highest priority will always be the safety of the community. The risk of reoffending cannot be eliminated, but the Board works to reduce the risk by granting parole to appropriate prisoner's along with appropriate conditions. If an offender successfully completes parole, then the community is successful.

This manual provides guidance to members of the Board in relation to their functions. Members are to use the guidance provided in this manual to assist them in their decision making however, it is not intended to restrict their powers, functions or discretion.

This manual also promotes transparency and accountability of the operation of the Board by documenting what the Board considers when making decisions regarding parole.

The Board is continuously revising the way in which it works and implementing business activities to increase the success of parolees. Legislation and case law are also integral to the operation of the Board. Consequently, this manual should be considered to be a living document which will be updated periodically to reflect any changes.

Michael Byrne QC

President

Parole Board Queensland



THE BOARD

Mission Statement

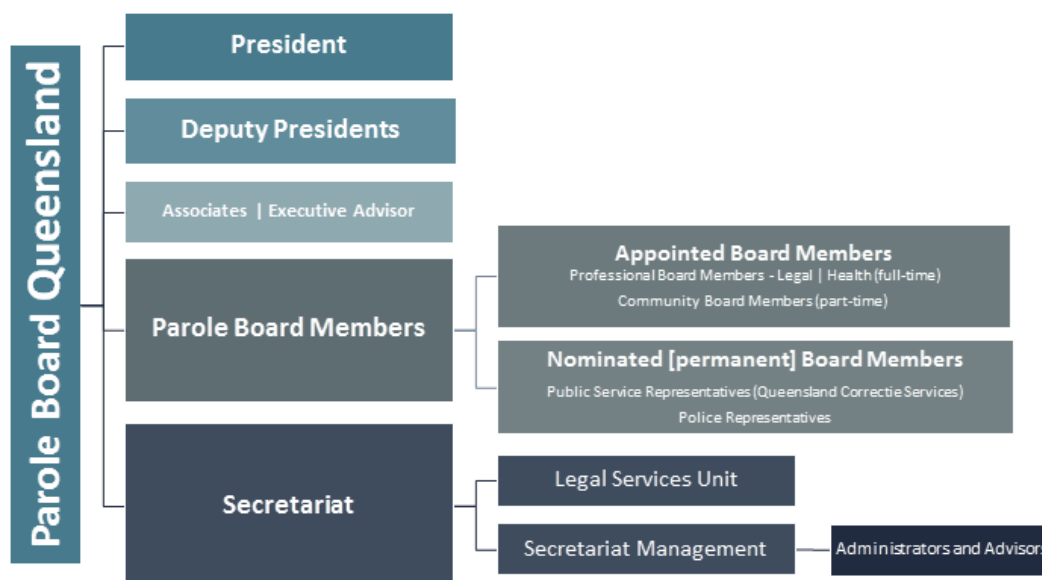
Parole is not a privilege or an entitlement. It is a method developed to prevent re-offending and plays an integral part in the criminal justice system. When making parole decisions, the Board's highest priority will always be the safety of the community.

Board Membership

The Board presently has 48 member positions (14 full-time positions and 34 part-time positions):

- President;
- Deputy Presidents (2);
- Professional Board Member (Health) (1);
- Professional Board Member (Legal) (3);
- Part-time Community Board Members (34);
- Police Representatives(3); and
- Public Service Representatives (4).

Board Structure





About the Board

The President, Deputy President, Professional Board Member and Community Board Member positions are appointed board members.

The President is equivalent to a Supreme Court Justice and the Deputy Presidents are equivalent to District Court Judges. The President and Deputy Presidents are appointed by Governor-in-Council and hold office for a term of five years. These board members may be reappointed but cannot hold office for more than 10 years in total.

Professional Board Members and Community Board Members are appointed by Governor-in-Council in consultation with the President and hold office for a term of three years. Professional Board Members and Community Board Members may be reappointed.

Professional Board Members must have a university or professional qualification that is relevant to the functions of the Board, including for example, a legal or medical qualification. Community Board Members do not require a formal qualification.

When recommending a person to Governor-in-Council for appointment as a Professional Board Member or Community Board Member, the Minister has regard to ensuring the Board represents the diversity of the Queensland community and in the membership of the Board there is:

- balanced gender representation
- representation of Aboriginal people and Torres Strait Islanders.

Police Representatives and Public Service Representatives are **nominated** board members. Nominated board members are respectively appointed by the Commissioner of Police and Commissioner, Queensland Corrective Services for a period of 1-2 years. Public Service Representatives must have expertise or experience in probation and parole matters.

The Public Service Representatives and the Police Representatives are able to provide an operational link to the Board, ensuring the relevant factors for each matter are reflected in the decision-making process. The representatives support the Board's primary consideration of community safety.

The Board is supported in performing its functions by a secretariat subject to the direction and management of the President. The secretariat includes three legal officers and 27 administration officers.



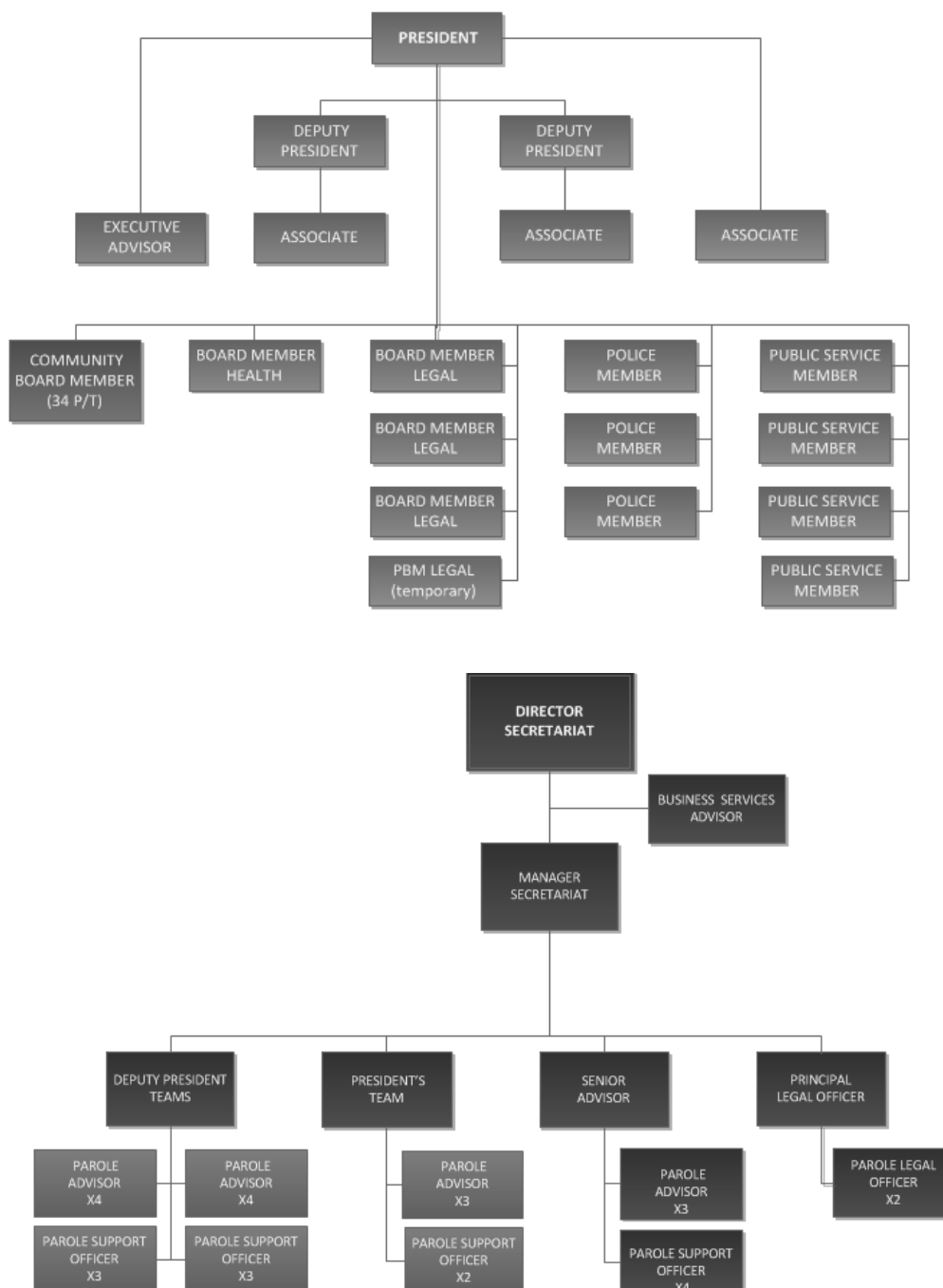
Full-time members generally perform their duties from the Board's premises located in Brisbane. Part-time members regularly attend board meetings using videoconference facilities located at various Probation and Parole District Offices throughout Queensland.

The Board operates each business day between 8am and 5pm, and provides a 24 hour 7 days a week on-call service for urgent parole suspension matters occurring outside business hours.

The Board is a decision-making body. It considers information provided to it by a range of people and organisations, including the prisoner, Queensland Corrective Services, Queensland Police Service, victims of crime, and community organisations. Whilst the Board scrutinizes the information it is provided, the Board is not an investigative body and has no such powers. However, the Board does have the power to request further information. The Board does not case manage prisoners once they are released. That is done by Queensland Corrective Services.



Parole Board Queensland and Secretariat Management Structure





GENERAL PRINCIPLES RELATING TO PAROLE

The Purpose of Parole

In the Queensland Parole System Review (QPSR) Final Report (November 2016) Mr Walter Sofronoff QC (as he then was) outlined the purpose of parole. According to Mr Sofronoff, 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.¹

Further, the review identified two main benefits of parole –

Firstly, parole is a system of administering sentences in a way that reduces reoffending by:

- 1. providing an incentive for prisoners to participate in programs in custody;*
- 2. supporting an offender's reintegration into the community;*
- 3. managing serious offenders more intensely.*

Secondly, parole reduces the social and financial costs of severe sentences in appropriate cases. The parole system allows expensive prison space to be allocated to the highest-risk offenders.²

Whilst on parole, a prisoner is still serving their sentence of imprisonment, albeit in the community (s. 214 of the Act). The conditions of the prisoner's parole are determined by the Board (except for those that are mandatory under the Act) and the prisoner is supervised by a parole officer from Queensland Corrective Services. At any time during the parole order, the Board may suspend or cancel the parole order, thereby requiring the prisoner to serve the remainder of their sentence in prison.

Prisoners who are not granted parole and are released from prison at the end of their sentence are not subject to the supervision and support that the parole system can provide. Parole cannot completely eliminate the risk of reoffending. However, as a system, parole can reduce the risk that prisoners will commit further offences when released into the community. The support provided by the parole system for the prisoner's reintegration is critical. When a prisoner succeeds, the community succeeds.

¹ Queensland Parole System Review (QPSR) by Mr Walter Sofronoff QC (Final Report November 2016) at page 1.

² Queensland Parole System Review (QPSR) by Mr Walter Sofronoff QC (Final Report November 2016) at page 37.





Decision Making Timeframes

The Act provides timeframes in which the Board must determine a prisoner's application for parole.

Pursuant to section 193(3) the Board must decide an application within **120 days** of receiving the application. However, if the Board has deferred the application for the purposes of obtaining any additional information it considers necessary (pursuant to s.193(2)), the Board must decide the application within **150 days** of receipt of the application.

The Act does not provide a penalty should the application not be decided within the appropriate timeframe. However, a prisoner may make an application to the Supreme Court for an order requiring the Board to make a decision. The Board will use its best endeavours to determine applications for parole within the legislated timeframe. On occasions these timeframes are unable to be met due to the Board requiring further information such as a psychiatric risk assessment or appropriate accommodation.

Judicial Review applications will be considered in more detail later in this manual.

Ministerial Guidelines

Pursuant to section 242E of the Act the Minister may make guidelines about policies to assist the Board in performing its functions. On 3 July 2017 the Minister made guidelines which provide that the highest priority for the Board should always be the safety of the community (Guideline 1.2).

In recognising the purpose and benefits of the parole system the guidelines provide the following:

"With due regard to this, Parole Board Queensland should consider whether there is an unacceptable risk to the community if the prisoner is released to parole; and whether the risk to the community would be greater if the prisoner does not spend a period of time on parole under supervision prior to the fulltime completion of their prison sentence."³

³ Guideline 1.3 – Guiding Principles for Parole Board Queensland



The Guidelines provide guidance with respect to suitability for parole, disclosure of material to prisoners, parole orders and contravention of parole orders.

When considering an application for parole, a suspension of a parole order or a cancellation of a parole order the Board has regard to the Ministerial Guidelines.

Evidence Based Decision Making

The Board makes decisions based on evidence. The Board only considers evidence that is before it; this may be material already on the prisoner's parole file or additional evidence that the Board has requested during consideration of the prisoner's application.

The Board's decision is based on the merits of each individual case. The evidence that the Board considers comes in many forms and will be explored in detail later in this manual. It can include, but is not limited to, the following:

- A prisoner's criminal history;
- Sentencing remarks;
- Parole Board Assessment Report;
- Advice to Parole Board;
- Program completion reports;
- Accommodation Risk Assessment;
- Submissions from the prisoner and his/her family;
- Letters of support from community based organisations;
- Medical reports;
- Psychiatric and Psychological Risk Assessments;
- Verdict and Judgment Records; and
- Toxicology reports

The weight that the Board gives to particular forms of evidence is a matter for the Board to determine.

The importance of evidence based decision making has been highlighted by the Supreme Court. In *Allan David McQueen v Parole Board Queensland*⁴ the Court stated that the Board “*should make evidence based decisions and obtain proper, reliable information and act on it using some realism and common-sense.*”⁵

⁴ *Allan David McQueen v Parole Board Queensland* [2018] QSC 216

⁵ *Allan David McQueen v Parole Board Queensland* [2018] QSC 216 at paragraph 93, page 24.



In circumstances where there is insufficient evidence in relation to a particular aspect of a prisoner's parole application, the Board will defer the matter to obtain further evidence.

Parole Eligibility

As outlined earlier, the Board has decision making powers in respect of all prisoners who have been given an eligibility date by the sentencing court. In some cases the sentencing court does not provide an eligibility date and in these circumstances legislation provides the prisoner's eligibility date.

Pursuant to section 180 of the Act a prisoner may apply for a parole order if the prisoner is within **180 days** of their parole eligibility date.

For example – Mr Smith has been sentenced to a term of imprisonment for 3 years and given a parole eligibility date of 30 December 2018. In these circumstances Mr Smith can submit his parole application at any time on or after 4 July 2018 (within 180 days of his eligibility date).

The Board also has functions with respect to Court Ordered Parole Orders. Prisoners who have previously had Court Ordered Parole cancelled, can submit an application for parole at any time after their cancellation given that their eligibility date has already been reached (as they have already been previously released into the community).

Cultural Considerations

The Board recognises the importance of cultural considerations in the decision making process. When considering a prisoner's application for parole; or the suspension or cancellation of a prisoner's parole order, the Board will have regard to relevant cultural considerations. The cultural considerations may be evidenced by the prisoner, the prisoner's legal representatives, a Cultural Liaison Officer, a Board member who has knowledge of the relevant cultural considerations or any other person and/or organisation that the Board regards has the relevant knowledge.

APPLICATION PROCESS

Commencement of Application

Once a prisoner is eligible to apply for parole the prisoner completes a Form 29 application for parole and submits it to Sentence Management at his/her correctional centre.



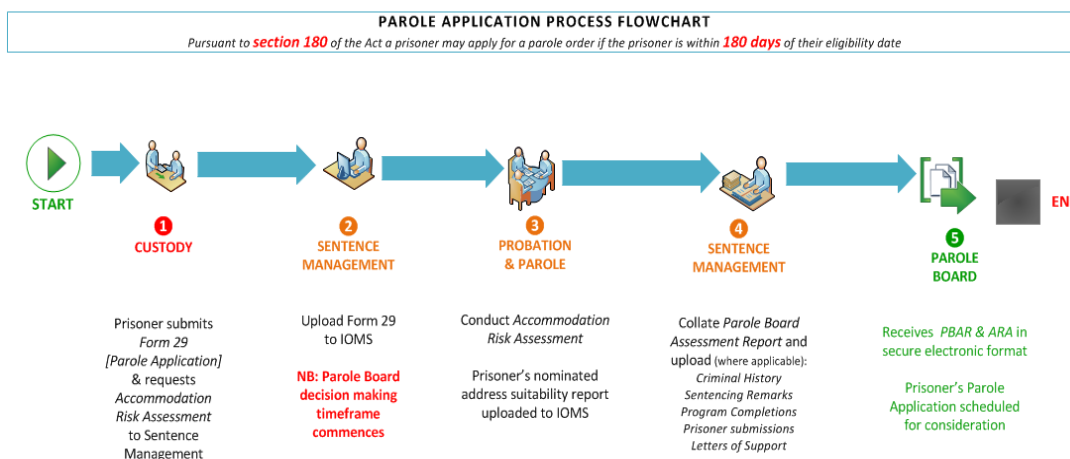
The application is then uploaded to the Integrated Offender Management System (IOMS) and is received by the Board. The decision making timeframe commences once the Board has received the application.

The submission of the application by the prisoner triggers a number of processes within Queensland Corrective Services in order to collate information for the Board. This includes the preparation of a Parole Board Assessment Report (PBAR). The PBAR has input from Probation and Parole officers and sentence management staff at the relevant prison. It provides information to the Board regarding the prisoner's supervision history in the community (if there is one) and supervision history within the prison.

At the time of submission of the parole application, the prisoner nominates an address for the purposes of an Accommodation Risk Assessment. The assessment is conducted by a staff member from Probation and Parole. This assessment provides a recommendation regarding the suitability of the nominated accommodation to the Board.

The parole file will then be collated and will include the prisoner's criminal history, sentencing remarks (if applicable), program completion reports (if applicable), any submissions by the prisoner including letters of support and any risk assessments (if applicable).

The information that the Board has regard to in decision making is considered in further detail below.





Consideration of Parole Application by the Board

Once the parole file is complete the application will be scheduled for consideration by the Board. On some occasions an application may be scheduled despite the parole file not being complete. This may be due to outstanding information, for example an Accommodation Risk Assessment. In these circumstances, the matter is scheduled to enable the Board to defer the matter to seek the outstanding material. This step has the consequence of extending the Board's decision making timeframe. This is often to the benefit of a prisoner as it will afford a further opportunity to provide information or, for some prisoners, obtain suitable accommodation.

Once the parole file is scheduled it is provided to members in a secure electronic format. Upon considering the parole application the Board can make one of the following decisions:

- Grant parole and determine conditions of the parole order; or
- Form a preliminary view not to grant parole and provide reasons to the prisoner; or
- Defer for further information

An application that is granted with parole conditions is a completed file. The Board has no further functions with respect to that application unless it returns to the Board for amendment, suspension or cancellation at a future date. Amendments, cancellations and suspensions will be explored in detail later in this manual.

If the Board forms a **preliminary view** not to grant parole, reasons must be provided during the Board meeting so that they can be included in a 'consider not grant' (CNG) letter to the prisoner. This forms an important part of the decision making process as it provides an opportunity for the prisoner to be informed of the adverse findings of the Board and invites the prisoner to make further submissions for the Board to consider at a later date. This process is discussed in more detail below.

Matters that have been deferred for further information will be rescheduled to the Board once the further information has been received. Upon rescheduling these files are referred to as 'further considerations' and the Board can make any of the decisions outlined above.

Refusal of Parole

The refusal of parole is a two-step process. The first step occurs when the Board forms a preliminary view to not grant parole. The second step occurs when the Board further considers the prisoner's application with any additional material. This ensures that the prisoner is provided procedural fairness by having an opportunity to address the Board in relation to adverse factors before a decision is made.



When the Board forms a **preliminary view** not to grant parole, the Board will articulate the reasons for the preliminary view in the meeting. The prisoner is then sent a 'consider not grant' (CNG) letter which outlines the reasons why the Board formed the preliminary view. The letter invites the prisoner to make any further submissions or submit any additional material for the Board's consideration within 14 days of receipt of the letter.

Ministerial Guideline 3.2 provides the Board guidance with respect to disclosure of documents to prisoners with the CNG letter. It provides –

at a minimum, the principles of procedural fairness require that the substance of the material or main factors adverse to the prisoner be disclosed (including the proper disclosure of documents to the prisoner which may be relied upon in coming to a decision), and the prisoner be given an opportunity to comment before a decision is made.

The Board considers each application on the basis of its individual merits. However, to assist the decision making process when a preliminary view not to grant parole has been formed, the Board has regard to the following considerations to ensure comprehensive reasons are provided to the prisoner-

- the prisoner's parole eligibility date
- factors favourable to the prisoner – this may include factors such as completion of courses, good custodial behaviour, custodial employment, identified community supports, progressed to residential/low security, suitable accommodation
- the prisoner's criminal history
- Sentencing remarks of the court (if applicable) – particularly those that are relevant to any outstanding treatment needs
- outstanding treatment needs
- psychological/psychiatric risk assessment report (if applicable)
- the prisoner's response to previous community based supervision
- the prisoner's relapse prevention and management plan – the suitability of the plan and identified community supports
- the prisoner's insight into offending behaviour
- the prisoner's maintenance of innocence (if applicable)
- the prisoner's poor custodial behaviour (if applicable)
- unsuitable accommodation (if applicable)
- the Moore Principle and the prisoner's custodial end date⁶

⁶ The Moore Principle is discussed on page 30



- consideration of all reasonable conditions

Each of the factors that the Board takes into consideration during the decision making process are explored later in this manual.⁷ The weight given to each of these factors is a matter for the Board.

When a prisoner has responded to the CNG letter the matter will be rescheduled before the Board. The Board will at that time consider all the material that it had when it formed the preliminary view and any new material that has been provided to the Board since the date of the preliminary view. Each Board member will review the material and determine if the additional material has, in their view, reduced the risks of release that were identified by the Board on the previous occasion.

When the matter is rescheduled the Board can make one of the following decisions:

- form the view that the risk of release has now been sufficiently mitigated and therefore grant parole and determine conditions of the parole order; or
- determine that the additional material does not adequately mitigate the risk of release and make a final determination not to grant parole (FNG); or
- form the view that further information is required as a result of the additional material and defer the application

A prisoner may or may not respond to the CNG letter. When a prisoner has elected not to respond within the specified timeframe, the matter will be scheduled for further consideration by the Board after the timeframe has lapsed. When the Board further considers the matter on the next occasion, it will be without any additional material and the agenda will note that a submission from the prisoner has not been received. In these instances the Board will consider the matter with the same information that was provided at the time that the preliminary view was formed. The Board is not bound to make the same decision as the preliminary view.

If the Board refuses to grant the application, the Board must give the prisoner written reasons for the refusal and decide a period of time within which a further application for parole may be made (s.193). For prisoners who are serving a life sentence this period of time must not be more than one year. For all other prisoners it must not be more than six months.

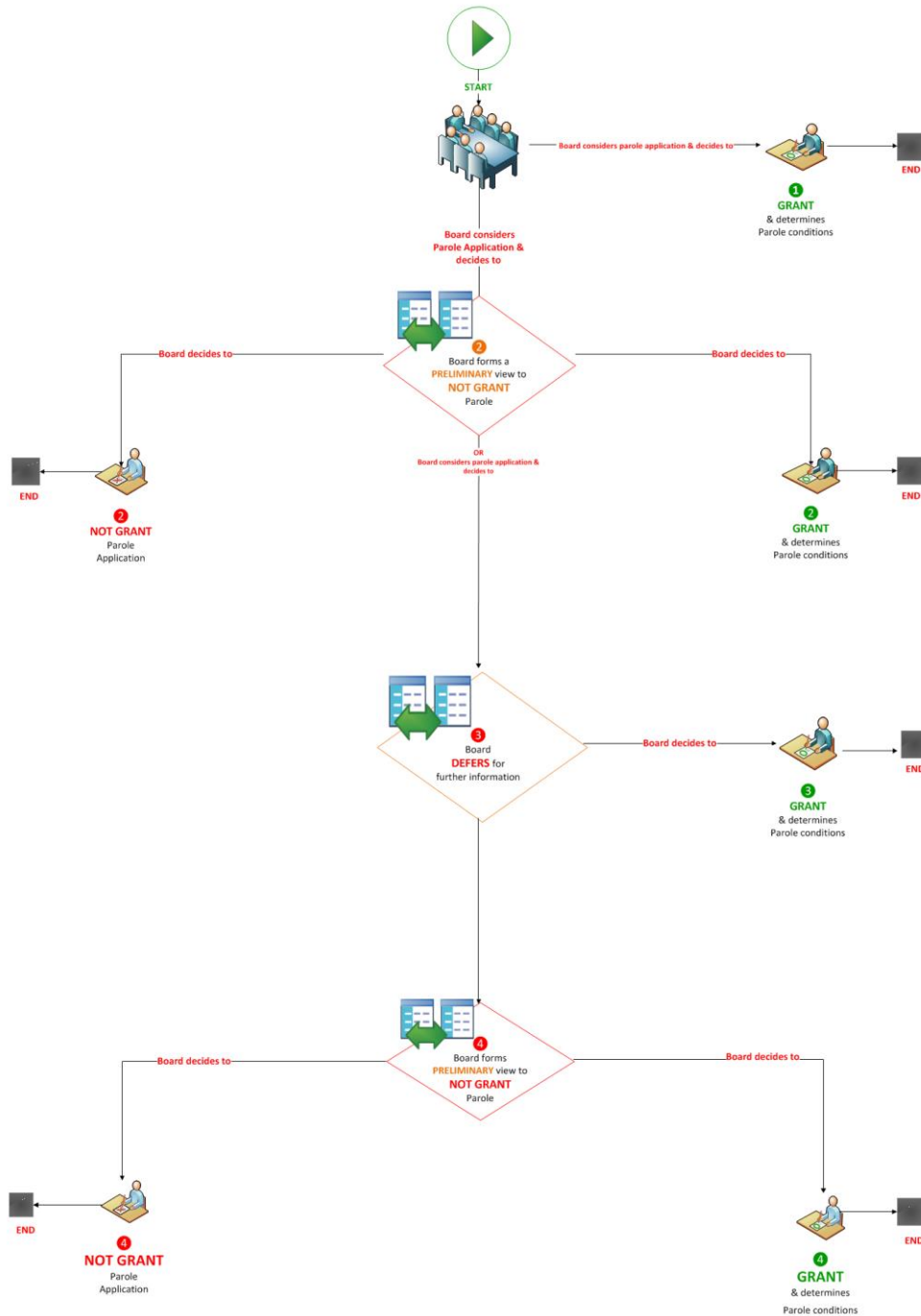
⁷ See Factors Considered in Decision Making commencing at page 22



Parole Board | Queensland

PAROLE APPLICATION DECISION MAKING PROCESS FLOWCHART

Pursuant to **section 180** of the Act a prisoner may apply for a parole order if the prisoner is within **180 days** of their eligibility date





APPEARANCE BY PRISONERS/AGENTS

Relevant Legislation

Section 189 of the Act provides that a prisoner's agent may, with the Board's leave, appear before the Board to make representations in support of the prisoner's application for a parole order. A prisoner may also appear before the Board.

Prisoner's agent is defined in Schedule 4 as to not include a lawyer.

Ministerial Guidelines

Section 4 of the Ministerial Guidelines provides the following guidance to the Board with respect to appearances before the Board:

- Guideline 4.1 The Board may grant leave to a prisoner to appear before the Board. Alternatively, the Board may grant leave to a prisoner's agent to appear and to make representations in support of the prisoner's application for parole.
- Guideline 4.2 If a prisoner is likely to experience communication or comprehension difficulties due to cultural differences, intellectual or cognitive impairment, or other disabilities, or if a prisoner requests that another person make representations in support of their application for parole, leave may be granted for an agent to appear with the prisoner.
- Guideline 4.3 When determining whether the agent nominated by the prisoner is an appropriate person to make representations in support of the prisoner's application the Board should consider:
- the agent's relationship to the prisoner;
 - the agent's professional qualifications and experience;
 - the agent's membership, if any, of professional bodies that require their members to comply with a code of conduct;
 - if the agent is a public servant, whether they are appearing in their capacity as a public servant or as an individual and any conflict of interest this entails;
 - fees charged by the agent to assist with the prisoner's parole application and to appear on the prisoner's behalf;
 - whether the agent has any convictions for indicatable offences or offences of dishonesty; and



- whether the agent is currently the subject of disciplinary or criminal proceedings.

Guideline 4.4 The Board should not act solely upon information provided by the agent and should confirm such information by reference to other reliable sources.

Process

The Queensland Parole System Review Final Report considered the use of technology to enable prisoners' and their agents to appear before the Board. The Board has videoconferencing facilities that enable videoconferences to be conducted across the state. The Parole Board Secretariat is responsible for arranging videolinks with prisoners.

The Board has discretion as to whether it provides a prisoner and/or his/her agent leave to appear before the Board.

Relevant Case Law

Edward Pollentine v Parole Board Queensland [2018] QSC 243

Mr Pollentine argued that he was denied natural justice because the Board had decided not to offer him the opportunity of an oral hearing despite his request for one. The critical question for the court to determine was whether, in the totality of the circumstances of this case, a reasonable and fair repository of the Board's power would have afforded an oral hearing to Mr Pollentine in addition to the opportunity to make written submissions which he did.

The Court held that the statutory framework of the *Corrective Services Act 2006* should be construed as permitting a prisoner and/or his/her agent to appear before the Board only with the Board's leave. The Court regarded this as a compelling factor in favour of concluding that there was no breach of the rules of procedural fairness in the present circumstances. In the circumstances of this case, the Board's obligation to comply with the rules of procedural fairness did not mandate according an oral hearing to Mr Pollentine.



Serious Offenders

The Board may require a serious offender to appear via videolink during the Board's consideration of the prisoner's parole application. The chair of the meeting will determine if the Board should exercise its discretion and require a serious offender to appear.

A serious offender includes but is not limited to prisoners –

- sentenced to life imprisonment
- re-sentenced following an indefinite sentence being set aside; or
- convicted of a terrorism related offence

During an appearance the prisoner may be required by the Board to discuss any factors relevant to their application for a parole order, including but not limited to –

- their release plans including accommodation and post-release supports
- their relapse prevention plan
- their learnings from treatment programs
- their commitment to a parole order and motivation to succeed
- their understanding of parole and any conditions that the Board may be considering imposing

If a serious offender is granted parole the prisoner will be required to appear via videolink before the Board prior to their release from prison. During the appearance the Board will discuss the prisoner's parole conditions and his/her obligation to comply with the conditions. Post release to parole, a serious offender may be required to appear before the Board via videolink to discuss their progress on parole and success or difficulties that they have encountered. The Board will continue to have further videolinks with the serious offender as often as required. This may be at the request of the serious offender or the Probation and Parole Service. The Board has discretion as to who is present during a videolink with a prisoner. On occasions the serious offender's parole officer may be present. On other occasions the Board may speak with the parole officer and the serious offender separately.

FACTORS CONSIDERED IN DECISION MAKING

The Board considers each prisoner's application for parole or suspension/cancellation/amendment of parole order on its own individual merits. The matters discussed below are matters that may or may not be relevant to the consideration of a prisoners' parole application. This manual does not prescribe the weight that the Board attaches to each of these factors or how the Board utilises each of these factors. That is



entirely a matter for the discretion of the Board and will be done on a case by case basis having regard to the individual circumstances of each prisoner's application.

Corrective Services Act 2006

The *Corrective Services Act 2006* provides some guidance with respect to determining parole applications.

Section 192 provides that the Parole Board is not bound by the sentencing court's recommendation or parole eligibility date-

"When deciding whether to grant a parole order, the parole board is not bound by the recommendation of the sentencing court or the parole eligibility date fixed by the court under the Penalties and Sentences Act 1992, part 9, division 3 if the board-

(a) receives information about the prisoner that was not before the court at the time of sentencing; and

Example-

a psychologist's report obtained during the prisoner's period of imprisonment

(b) after considering the information, considers that the prisoner is not suitable for parole at the time recommended or fixed by the court.

Whilst the decision to grant parole is for the Board, this provision clearly creates an expectation that the Board will give effect to the parole eligibility date except in circumstances where material unknown to the sentencing court is considered by the Board.

Ministerial Guidelines

As outlined earlier, on 3 July 2017 the Minister made guidelines which provide that the highest priority for the Board should always be the safety of the community (Guideline 1.2). Whilst the Board always has regard to the Ministerial Guidelines, the Board ensures that decisions are evidence based and made with regard to the merits of the particular prisoner's case (Guideline 1.1).

Section 2 of the Ministerial Guidelines provides guidance as to factors that the Board should have regard to when deciding the level of risk that a prisoner may pose to the community.

These factors include, but are not limited to, the following:

- a) the prisoner's criminal history and any patterns of offending;
- b) the likelihood of the prisoner committing further offences;
- c) whether there are any other circumstances that are likely to increase the risk the prisoner presents to the community;
- d) whether the prisoner has been convicted of a serious sexual offence or serious violent offence or any of the offences listed in section 234(7) of the Act;



- e) the recommendation for parole, parole eligibility date, or any recommendation or comments of the sentencing court;
- f) the prisoner's cooperation with the authorities both in securing the conviction of others and preservation of good order within prison;
- g) any medical, psychological, behavioural or risk assessment report relevant to the prisoner's application for parole;
- h) any submissions made to the Board by an eligible person registered on the Queensland Corrective Services Victims Register;
- i) the prisoner's compliance with any other previous grant of parole or leave of absence;
- j) whether the prisoner has access to supports or services that may reduce the risk the prisoner presents to the community; and
- k) recommended rehabilitation programs or interventions and the prisoner's progress in addressing the recommendations.

Guideline 5.1 provides that when considering releasing a prisoner to parole, the Board should have regard to all relevant factors, including but not limited to-

- a) length of time spent in custody during the current period of imprisonment;
- b) length of time spent in a low security environment or residential accommodation;
- c) any negative institutional behaviour such as assaults and altercations committed against correctional centre staff, and any other behaviour that may pose a risk to the security and good order of a correctional centre or community safety;
- d) intelligence information received from State and Commonwealth agencies;
- e) length of time spent undertaking a work order or performing community service;
- f) any conditions of the parole order intended to enhance supervision of the prisoner and compliance with the order;
- g) appropriate transitional, residential and release plans; and
- h) genuine efforts to undertake available rehabilitation opportunities.

When considering the matters outlined by the Guidelines, the Board will ensure that it takes into consideration those matters that are demonstrated by evidence.

Parole Board Assessment Report

As outlined earlier, once a prisoner has submitted an application for parole, Queensland Corrective Services will prepare a Parole Board Assessment Report (PBAR). This report is a collaboration between Probation and Parole staff and correctional staff at the prison.

The PBAR outlines the prisoner's previous response to supervision in the community (which is completed by Probation and Parole staff).



It also provides an overview of the prisoner's supervision in custody – the prisoner's custodial behaviour, custodial employment, completion of recommended programs, reintegration needs and on most occasions some background information in relation to the offences. The PBAR makes a recommendation as to the suitability of the prisoner for parole which is then considered by the General Manager of the prison (GM) for endorsement. The recommendations by the author of the PBAR and the endorsement by the GM are not binding on the Board. The Board makes its own decision having regard to all of the material before it.

Accommodation Risk Assessment

Studies have demonstrated that there is a strong correlation between being homeless and returning to prison.⁸ A suitable home assessment is essential to the successful completion of a parole order.

Upon submitting his/her parole application, a prisoner requests an Accommodation Risk Assessment (ARA) be conducted on a nominated address. The request is made to sentence management staff who provide the request to the relevant Probation and Parole Office to conduct the assessment.

The Probation and Parole staff member who completes the ARA makes a recommendation as to the suitability or otherwise of the prisoner's nominated address. However, the decision regarding the suitability of the accommodation lies with the Board. The Board is not bound by the recommendation of the author of the ARA and must consider the accommodation holistically with all other material.

For example, there may be factors that the Board is aware of that make the accommodation suitable despite the recommendation by the Probation and Parole Officer that it is unsuitable, for example, identified community supports in the location.

In considering the suitability of accommodation, the Board takes into account issues such as:

- community safety;
- the recommendation from Probation and Parole staff;
- the sponsors capacity to provide adequate support;
- the availability of support services in the location that are required in order to mitigate the prisoner's risk to an acceptable level for parole;

⁸ Queensland Parole System Review (QPSR) by Mr Walter Sofronoff QC (Final Report November 2016) at page 160



- specific victim location considerations; and
- other factors relevant to each individual case.

The QPSR final report identified suitable accommodation as a significant barrier to prisoners obtaining parole.⁹ Prisoners who are experiencing difficulty in obtaining suitable community accommodation can link with CREST/MARA who are contracted by Queensland Corrective Services to provide transitional support. However, other external service providers such as Sisters Inside are also utilised depending on the prisoner's needs and location. These organisations assist with sourcing community accommodation such as boarding houses, rehabilitation centres and other forms of community accommodation.

If a prisoner has not been successful in sourcing suitable accommodation, the Board may defer the matter to enable the prisoner to source alternative accommodation. In taking this course, the Board will be mindful of the decision making timeframes.

Psychiatric and Psychological Risk Assessments

On some occasions the prisoner's parole file will contain a psychiatric or psychological risk assessment. However, on other occasions the Board may defer consideration of the application and request a psychiatric or psychological risk assessment be conducted.

Not all applications for parole will require the consideration of a psychiatric or psychological risk assessment. The request for such an assessment is at the discretion of the Board. Some of the matters the Board has regard to when determining if a risk assessment is required include, but is not limited to –

- the nature of the offences
- the prisoner's criminal history
- the sentencing remarks and any other relevant court transcripts
- any previous risk assessments
- any engagement between the prisoner and mental health services

On occasions, the sentencing transcript will reveal that a psychological or psychiatric risk assessment was tendered to the court during the sentencing process. If this has not already been obtained, the Board will defer the matter for further consideration and obtain a copy of the report that was tendered to the court.

⁹ Queensland Parole System Review (QPSR) by Mr Walter Sofronoff QC (Final Report November 2016) at page 160.



If a risk assessment has previously been completed for a prisoner, the Board will consider the age of the report and determine if a more contemporary report is required. In most cases, if the risk assessment was conducted more than two years ago, the Board will defer for a new assessment.

The decision to request a psychiatric report rather than a psychological report is at the discretion of the Board. If the request is for an assessment which includes an assessment of personality requiring use of various actuarial tools (assessment of intellectual functioning/ cognitive/psychometric testing, substance use disorders, developmental difficulties) then a psychologist is appropriate. A risk assessment can be conducted by either a psychiatrist or a psychologist, however if it is known that the prisoner has a history of mental illness and more serious offending, then a psychiatrist may be more appropriate.

For a specific risk assessment (eg stalking, fire setting, sex offending, serious violence) then it is important to ensure the skills of the assessor match what is requested, ie that the assessor has completed the appropriate training and is accredited to conduct the tools used (ie PCL (R), RSVP, stalking, fire setting, HCR 20). If it is known that the prisoner has co-morbid organic disorders, such as epilepsy, head injury, dementia, then a psychiatric assessment is more appropriate.

Psychiatric History

Mental health assessment, treatment, and transition services are provided to prisoners with a serious mental illness by the Prison Mental Health Service (PMHS), an in-reach service operated by Queensland Health. The PMHS aims to provide a mental health service that is equivalent to mental health services provided to members of the community. Primary mental health care (less serious mental illness that would normally be managed by a GP in the community) is provided by the primary health care providers in each correctional centre.

The PMHS accepts referrals from all sources and will triage each referral and prioritise care accordingly. In some cases this will mean that a prisoner will be not be accepted for further assessment at the point of triage ie “*on the papers*”, or may be assessed in person but not recommended for further assessment/treatment at that point. In both situations, all further mental health needs will be met by the primary health care providers. A prisoner who is opened to PMHS may be closed to that service at any time and referred to the primary health care providers.

A small number (approximately 15%) of open PMHS patients will be referred to the PMHS transitional care coordination program (TC program) for assistance with the transition from custody back to the community. Acceptance to the TC program is usually around 3 months prior to release from custody and ends 2 weeks post release.





Prisoners referred to the TC are almost always referred to Richmond Fellowship Queensland (a non-government organisation providing specialist mental health support in the community) for ongoing mental health support for up to 6 months post-release. Only the PMHS staff can refer to the TC program and to Richmond Fellowship Queensland.

The Board recognises that information regarding a prisoner's mental health is an important consideration when determining the merits of the prisoner's parole application. On some occasions the parole file will have a medical report from the treating psychiatrist or mental health clinician from the PMHS. On other occasions, the Board may need to enquire as to whether the prisoner is currently, or has recently been, engaged with the PMHS and if so, request the provision of a brief treating doctor's report.

The treating doctor's report provided by PMHS should contain the following -

- the prisoner's diagnosis;
- the prisoner's current treatment regime;
- the prisoner's post-release support needs in relation to his/her continuance of treatment;
- the prisoner's vulnerabilities linked with their mental health (eg. a return to substance use);
- whether or not the prisoner has been referred to the TC program.

If information from PMHS is required, the Board will defer consideration of the prisoner's application in order to request a report.

On occasion, at the time of an application for parole, the prisoner may have been transferred from custody to a hospital, using the provisions of the *Mental Health Act 2016*, for further assessment, treatment and care. In these circumstances, the name of the treating doctor or the principal service provider at the hospital where they prisoner is located should be sought from PMHS and contacted directly to request a treating doctor's letter, similar to that provided by PMHS. In addition, an estimation of when the prisoner is likely to be returned to custody should be sought, as the release plans will need to be managed according to the prisoner's location at the point of release from custody. The Board will require this information in order to assess the appropriateness of the prisoner's release plans.

Behaviour in Prison

The Ministerial Guidelines specifically require the Board to consider the prisoner's behaviour whilst in custody (see Guideline 5.1).



The PBAR outlines the prisoner's behaviour for the previous two years up to the date of preparation of the report. The Public Service Representative provides the Board an update in relation to the prisoner's behaviour at the time that the Board considers the prisoner's application for parole. This ensures that the Board is provided the most up to date information.

When considering the prisoner's behaviour the Board will consider the following:

- the nature of any breaches and incidents committed by the prisoner;
- the context of any breach and incident;
- the frequency of any breaches and incidents;
- any mental health issues that impact on the prisoner's behaviour;
- the age of the breaches and incidents;
- any relevant cultural considerations.

Breaches and/or incidents in prison may be constituted by, but not limited to, the following:

- Drug use or fail to provide a urine sample for testing;
- Assaults – on other prisoners or on correctional staff;
- Stealing or damaging property;
- Altering a person's appearance;
- Possession of a prohibited article – such as a tattoo gun or homemade syringe;
- Failure to follow correctional staff directions.

Breaches or incidents relating to drug use by the prisoner may be considered by the Board to be evidence of a continuing substance abuse issue.

Breaches or incidents relating to assaults, particularly of correctional staff, may be considered by the Board to be evidence of continuing violence issues.

The weight that the Board places on each breach and/or incident is a matter for the Board. These guidelines do not restrict the Board's discretion as to the weight and relevance the Board places on breaches and/or incidents.

Sentencing Remarks

Prisoners who are sentenced by the District Court, Supreme Court and/or have an appeal considered by the Court of Appeal will have sentencing remarks/appeal decision on their file. Sentencing remarks made in the Magistrates Court are not usually transcribed and are therefore not available to the Board.



If the sentencing remarks are not on the prisoner's parole file, the Board will defer to obtain a copy of the relevant remarks. The sentencing remarks may provide the Board evidence of the following:

- the nature of the offences
- the role of the prisoner in the offences
- the Court's view of suitability for parole
- a link between the prisoner's offending behaviour and outstanding intervention needs (eg. criminal offending linked to the prisoner's drug use)

Criminal History

The prisoner's parole file will contain a copy of the prisoner's Queensland Court Outcomes. If a prisoner has criminal history in another state/territory that will also be obtained for the Board's consideration.

Previous response to supervised orders in the community

If a prisoner has previously been subject to a supervised order in the community (eg. probation, community service order, parole, intensive correction order), a summary of the prisoner's response to supervision will be contained in the PBAR. This summary will outline when the prisoner was subject to an order and give an overview of the prisoner's performance. For example, the prisoner may have successfully completed supervised orders in the past, or has previously breached orders by non-compliance with community based order conditions.

Completion of Interventions to address outstanding treatment needs

If a prisoner is sentenced to a term of imprisonment of 12 months or over, on most occasions he/ she will be assessed for treatment needs. Queensland Corrective Services will do this by way of a Rehabilitation Needs Assessment (RNA). Prisoners on remand or serving a term of imprisonment under 12 months do not get assessed as to their treatment needs. On some occasions a prisoner serving a term of imprisonment over 12 months may not get a RNA completed. This may be due to a Benchmark Assessment occurring in the community in recent times which outlines the prisoner's treatment needs.

The RNA will assess a number of aspects of the prisoner's life. These include substance abuse (drugs and alcohol), accommodation, employment and relationships (including domestic violence). The RNA will make recommendations as to what interventions the prisoner should complete to address his/her treatment needs. The RNA will be on the prisoner's parole file for the Board's consideration.



The PBAR will outline what interventions the prisoner has completed in order to address his/her treatment needs that were identified in the RNA. On some occasions the prisoner may not yet have been offered a place on the relevant treatment program. In these circumstances the prisoner is referred to as being waitlisted for a place on the program. When a prisoner has completed an intervention program, on most occasions a completion report is provided. Not all programs have a completion report, for example Resilience which is not a core treatment program does not have a completion report. If a prisoner has recently completed a treatment program the Board may determine it appropriate to defer the matter to receive the completion report or make a decision that is subject to the receipt of a satisfactory completion report.

The Public Service Representative is able to provide the Board up to date advice regarding the prisoner's outstanding treatment needs and estimated timeframes for completion of treatment programs.

When having regard to prisoner's who remain waitlisted for treatment programs, some of the factors the Board will have regard to include, but are not limited to, the following –

- when the prisoner was sentenced
- when the prisoner was waitlisted for the intervention program
- if the prisoner has previously refused to participate in the recommended treatment program
- what alternatives to the treatment program are provided in the community
- the community supports identified by the prisoner
- the prisoner's Relapse Prevention Plan (if applicable) and release plan
- the completion of any treatment program previously (either in the community or in prison)
- the prisoner's previous response to community based orders and if non-compliance was directly related to an outstanding treatment need
- why the prisoner has been unable to complete recommended treatment programs
- whether community safety would be advanced by the prisoner having some supervision as opposed to remaining in custody until possibly full-time release with outstanding treatment needs.

Relevant Case Law – Completion of Interventions

In some instances a prisoner may not be able to undertake the relevant treatment programs due to waiting timeframes and their full time release date.



In *James Alexander Gough v Southern Queensland Regional Parole Board*¹⁰ the court considered a prisoner's inability to complete treatment programs. Mr Gough had attempted to undertake and complete the recommended treatment programs prior to his parole eligibility date however Queensland Corrective Services had failed to offer him a place on the relevant programs. The Court held that the Board had failed to take into account why Mr Gough had not completed the recommended treatment programs and failed to consider the applicant's request to undertake the courses in the community and the individual merits of Mr Gough's application.

In *Barrett v Queensland Parole Board*¹¹ the Court found that the Board had failed to consider whether community safety would be advanced by the prisoner remaining in custody possibly until his full-time release date with outstanding treatment needs not able to be met.

Release Planning Including Family and Community Support

One aspect of a prisoner's release plan is their living arrangements. Another aspect is the family and community supports that they have in place to support them upon their release from prison. This is particularly important for people who have spent lengthy periods of time in prison.

As part of their application for parole prisoners will provide some information in relation to their release plans and support networks. Prisoners who have completed substance abuse programs will also have completed a Relapse Prevention Plan (RPP) which will be provided to the Board. This outlines the prisoner's plan to remain abstinent in the community, identifies supports and his/her triggers. For those prisoners who have substance abuse issues but have not provided the Board a RPP, the Board may defer consideration of their application to enable the prisoner an opportunity to provide a RPP if it is considered appropriate in the circumstances. This may occur when the Board is of the view that the prisoner needs to provide more information in relation to their plans upon release and what services they will utilise to assist them in their rehabilitation and reintegration into the community.

Many prisoners provide letters of support from family, friends, employers and community organisations to demonstrate to the Board the supports that they have in the community. If the Board is of the view that a prisoner needs to have a particular identified support in order to mitigate their risk to an acceptable level, the Board may defer the consideration of the

¹⁰ *James Alexander Gough v Southern Queensland Regional Parole Board* [2008] QSC 222

¹¹ *Barrett v Queensland Parole Board* (Unreported, Supreme Court of Queensland, Applegarth J, 14 March 2016)





prisoner's parole application to enable the prisoner to make connections with the appropriate supports.

Other aspects of a prisoner's release plan include employment (the Board recognises the difficulty in obtaining employment whilst in prison), the prisoner's physical and mental health¹² and how the prisoner will utilise their spare time in order to avoid any identified triggers.

The 'Moore' Principle

The future risk of a prisoner being released to either no supervision (ie. at the end of his/her sentence) or with a shorter period of time of supervision, has been identified by the Court of Appeal as a relevant consideration for the Board when considering a prisoner's parole application. This is colloquially referred to as the 'Moore' principle.

Queensland Parole Board v Robert Steward Moore [2010] QCA 280

In this case, the Queensland Parole Board (as it then was) refused Mr Moore's application for parole on the basis of unacceptable risk based on a psychiatric risk assessment and a view that Mr Moore should progress to low security classification and consequently a low security prison in order to demonstrate his ability to self-manage his behaviour. Mr Moore applied for judicial review of the Board's decision. The court at first instance set aside the Board's decision to refuse Mr Moore parole and ordered that the Board reconsider Mr

Moore's application in accordance with the court's reasons. The primary judge determined that it was relevant for the Board to consider firstly, whether Mr Moore would ever be in a position to demonstrate behavioural improvement in a less structured environment than high security imprisonment and secondly, whether the risk to the community would be greater if he were not granted parole prior to his full-time release date.

The Board appealed to the Court of Appeal. Of relevance was that the psychiatric risk assessment stated that Mr Moore posed a moderate or high risk and would do better through gradual reintegration into the community than through discharge at the end of his sentence. Mr Moore contended that due to his history of self-harm he was not eligible to go to low-security due to Queensland Corrective Services policy.

¹² For more information regarding what the Board takes into consideration in relation to prisoners with mental health issues see the sections above on Prison Mental Health and psychiatric/psychological risk assessments.





The Court of Appeal stated *“if community safety is to be achieved by supervision and rehabilitation, it is necessary to consider an applicant’s likely progress over the potential parole period, rather than confining considerations to the present or the immediate future”*.¹³

The Court held that the primary judge was correct and that an examination of the Statement of Reasons did not demonstrate that the Board had taken into account the relevant considerations.

The Moore principle is also recognised in Ministerial Guideline 1.3 which provides the following –

“...Parole Board Queensland should consider whether there is an unacceptable risk to the community if the prisoner is released to parole; and whether the risk to the community would be greater if the prisoner does not spend a period of time on parole under supervision prior to the fulltime completion of their prison sentence.”

In *Johnson v Central and Northern Queensland Regional Parole Board*¹⁴ the Court determined that the Board’s reasons for refusing parole did not indicate that there had been any consideration of the future release risk. Consequently, the Board had failed to take into account a relevant consideration given that the Ministerial Guidelines (as they were at the time of the decision) required the Board to consider it.

Victim’s Submissions

The Board may receive submissions from victims (eligible persons) through the Victim’s Register which is operated by Queensland Corrective Services. When making a decision whether to grant a prisoner parole and if so, what parole conditions should be imposed, the Board will have regard to the contents of victims submissions. The Victim’s Register (eligible persons) is dealt with in more detail later in this manual.

¹³ *Queensland Parole Board v Robert Steward Moore* [2010] QCA 208 at paragraph 17 page 8.

¹⁴ *Johnston v Central and Northern Queensland Regional Parole Board* [2018] QSC 54



PAROLE CONDITIONS

The Board has formulated a standard set of mandatory conditions which are part of every Board Ordered Parole Order. These conditions satisfy the legislative requirements set out in section 200 of the *Corrective Services Act 2006*. These can be found at Annexure 3 Parole Conditions.

In addition to the mandatory conditions, the Board may impose additional conditions the Board reasonably considers necessary to ensure the prisoner's good conduct or to stop the prisoner committing an offence (s.200(3)). The Board makes evidence based decisions.

Therefore, the Board will ensure that there is evidence that supports the requirement for a particular condition under s.200(3). The Board also ensures that each additional condition imposed has a purpose. Each prisoner's application will be considered on its own merits and the conditions imposed will be relevant to that prisoner. The additional conditions formulated by the Board can also be found at Annexure 3 Parole Conditions.

For example – Abstain from alcohol condition – the Board will require evidence of the link between the prisoner's offending and alcohol. The evidence may be contained in the sentencing remarks of the court or the prisoner may have disclosed it in his/her parole application.

The Board may also amend the parole conditions of an existing Board Ordered Parole Order or of a Court Ordered Parole Order. Amendments to parole orders are considered later in this manual.

Relevant Ministerial Guidelines

The Ministerial Guidelines provide some guidance to the Board in relation to the parole conditions that should be imposed on a prisoner. Whilst the Board will determine the appropriate conditions based on the individual merits of each case the Board has regard to the following guidelines –

- 5.3 *the Board should consider including an electronic monitoring condition in the parole order for any prisoner granted parole, pursuant to section 200(2) of the Act. That is, a condition requiring the prisoner to comply with a direction by a corrective services officer, including a curfew or monitoring condition, in accordance with section 200A of the Act.*

This condition has been included in the Board's standard set of mandatory conditions and therefore forms part of every Board Ordered Parole Order.



- 5.5 *When the Board grants parole to a prisoner, particularly sex offenders, other serious violence offenders and prisoners serving a life sentence, careful consideration should be given to the imposition of a requirement that restricts prisoner access to websites, technology, application or tools that enable active and participatory publishing and interaction between the prisoner and individuals over the internet. This may include forums, blogs, wikis, social networking sites, and any other sites that allow prisoners to easily upload and share content.*
- 5.6 *When the Board grants parole to a prisoner, particularly sex offenders, other serious violence offenders and prisoners serving a life sentence, careful consideration should be given to the imposition of a requirement that restricts prisoner access to any personal introductory system whereby the prisoner can find and contact individuals over the internet (or any other means) to arrange a date, with the objective of developing a personal, romantic, or sexual relationship.*

The Board has regard to the Ministerial Guidelines when considering the appropriate conditions for a prisoner's parole order.

EXCEPTIONAL CIRCUMSTANCES PAROLE

Relevant Legislation

A prisoner may apply for an exceptional circumstances parole order at any time and an exceptional circumstances parole order may start at any time (ss. 176 and 177).

An exceptional circumstances parole order is **not** included in the definition of a parole order in the application of Subdivision 2 (s.178).

The parole board may, by a parole order release any prisoner on parole, if the board is satisfied that exceptional circumstances exist in relation to the prisoner. If the prisoner is to be released on exceptional circumstances parole, the board must note on the parole order that it is an exceptional circumstances parole order (s. 194).

'*Exceptional circumstances*' is not defined within the *Corrective Services Act 2006*. The term 'exceptional circumstances parole order' is defined in the dictionary of the Act as a parole order mentioned in s. 194(2).



Explanatory Note

The Explanatory Memorandum to the *Corrective Services Act 2006* provides some guidance as to what will amount to exceptional circumstances:

“For instance, irrespective of the prisoner’s period of imprisonment, a prisoner who develops a terminal illness with a short life expectancy or who is the sole carer of a spouse who contracts a chronic disease requiring constant attention may be granted an exceptional circumstances parole order. The Bill does not seek to limit the reasons for which a prisoner may apply for exceptional circumstances parole. The Board considering the application has absolute discretion to determine whether the circumstances of the application warrant the prisoner being released at a time earlier than he or she is eligible for release on parole.”

Relevant Ministerial Guidelines

The Minister may make guidelines about policies to help the parole board in performing its functions (s. 242E).

Guideline 1.2 When considering whether a prisoner should be granted a parole order, the highest priority for Parole Board Queensland should always be the safety of the community.

Guideline 5.7 Parole Board Queensland may release a prisoner on parole, if satisfied that exceptional circumstances exist in relation to the prisoner. If parole is granted, in the case of a prisoner claiming exceptional circumstances for serious medical reasons, Parole Board Queensland should first obtain advice from Queensland Health or other approved medical specialists on the seriousness, and management of, the prisoner’s medical condition.

Relevant Case Law

There is currently limited case law which considers what may constitute exceptional circumstances to enable an early grant of parole under section 176. The meaning of exceptional circumstances has been considered by the Courts, albeit not always with respect to the interpretation under the *Corrective Services Act 2006*. A number of cases provide guidance as to the meaning of exceptional circumstances.

Harvey v Attorney-General for the State of Queensland [2011] QCA 256

This case concerned the use of the phrase exceptional circumstances within the *Dangerous Prisoners (Sexual Offending) Act 2003*. Boddice J (at paragraphs 42 and 43) stated:



“The word ‘exceptional’ is an ordinary, familiar English adjective. It “describes a circumstance which is such as to form an exception, which is set out of the ordinary course, or unusual, or special or uncommon”. It need not be “unique, or unprecedented, or very rare”, but it cannot be a circumstance that is “regularly, or routinely, or normally encountered”. Whether exceptional circumstances are shown to exist will depend on the facts and circumstances of a particular case.

Attorney-General for the State of Queensland v Roy Friend [2012] QSC 108

The Court again considered the use of the phrase exceptional circumstances within the *Dangerous Prisoners (Sexual Offending) Act 2003*. In considering the phrase, the court referred with approval to the meaning outlined in Harvey (noted above) and to the use of the phrase in the *Corrective Services Act 2006*. The Court noted that although the phrase exceptional circumstances was not defined in the *Corrective Services Act 2006*, it “demonstrates that content will be given to the expression by reference to the purpose of the provision in which it appears” (at paragraph 56).

The cases demonstrate that exceptional circumstances are not just confined to the ill health of a prisoner. It has also extended to prisoner’s who have provided co-operation to authorities (post sentence and appeal). The cases demonstrate that the Board has a very broad discretion in determining what amounts to exceptional circumstances.

Neil Ian Leggett v Queensland Parole Board [2012] QSC 121

This case related to the deteriorating health condition of the Applicant and additionally his wife whom he had previously provided care to.

Regarding the term exceptional circumstances the court expressed the view that it is a very broad term and the Parole Board has a broad discretion in coming to a conclusion about exceptional circumstances (at para 37 of judgment).

Bulger v Queensland Community Corrections Board [1994] 2 Qd R 239

The applicant applied to be released on parole on the basis of special circumstances (akin to exceptional circumstances parole). The special circumstances consisted of the applicant’s assistance to authorities in relation to the commission of criminal offences by others (police corruption). The Court was of the view that the Board had an obligation to consider whether, in the public interest, the respondent should be released on parole to encourage others who might be minded to give co-operation to the authorities similar to that which the applicant had given. Further, that the benefit or detriment to the public from adopting one course or



the other was a consideration relevant to the exercise of the Board's function to order release on parole.

In relation to exceptional circumstances based on a prisoner's co-operation and/or risk post sentence, case law has established that the leniency to be applied by the Board for any particular case is a matter for the Board's discretion. In exercising this discretion, the Board must have regard to the particular facts and circumstances of the prisoner's case and no inflexible rule or principle applies.

Threshold

The Board has a very wide discretion in determining whether exceptional circumstances exist, however the threshold is high and there must be evidence to support that the circumstances are in fact exceptional.

Requirement of Evidence to Support Exceptional Circumstances

The evidence required by the Board in order to be satisfied that exceptional circumstances exist will depend on the basis of the application. Each case is to be considered on its own merits and supported by evidence. The examples outlined below are not exhaustive and are regarded as minimum requirements.

In circumstances where the application is based on the **prisoner's health**, the following will be required in order to evidence exceptional circumstances¹⁵:

- If the prisoner is currently **in hospital**, a medical report by an appropriately qualified medical practitioner (this refers to a member of the medical team responsible for the provision of the prisoner's current treatment) containing the following:
 - the prisoner's diagnosis;
 - the treatment required;
 - the availability and appropriateness of this treatment within the custodial setting (in some cases the medical practitioner may not be able to comment on this aspect);
 - the prisoner's prognosis; and

¹⁵ These requirements have been identified in response to a recommendation by the Coroner's Court, Inquest into the death of Jay Maree Harmer 2016/2668 10 August 2018.



- any special care requirements for the prisoner (eg. a carer for 24 hours per day or specialised equipment)
- If the prisoner remains **within the correctional centre**, a medical report by an appropriately qualified medical practitioner responsible for the provision of treatment at the relevant correctional centre containing the following:
 - the prisoner's diagnosis;
 - the treatment required;
 - the prisoner's prognosis;
 - any special care requirements for the prisoner (eg. a carer for 24 hours per day or specialised equipment); and
 - the ability of the health service to adequately and appropriately meet the prisoner's health needs within the custodial setting

The Board has the discretion to request further information if it is deemed necessary. In some instances a report from the hospital based treating doctor may be necessary in addition to a report from the correctional centre based doctor. Each case will be considered on its own factual basis.

In circumstances where the application is based on the **health of a family member (patient) of the prisoner**, the following will be required in order to evidence exceptional circumstances:

- Medical report by an appropriately qualified medical practitioner (in most cases this would be the patient's treating medical specialist) evidencing the following:
 - the patient's diagnosis;
 - the treatment required;
 - the patient's prognosis;
 - any special care requirements for the patient (eg. a carer for 24 hours per day or specialised equipment);
 - information regarding the assistance/support/care that the prisoner would need to provide the patient; and
 - any information that is relevant to substantiate why the prisoner is the only person that can provide the required assistance/support/care.
- Information from the prisoner outlining what assistance/support/care that he/she will be providing to the patient.



In circumstances where the application is based on the **prisoner's co-operation with authorities** (post sentence and appeal) **and/or safety/risk** the following will ordinarily be required in order to evidence exceptional circumstances:

- Information from the General Manager outlining safety/risk issues and whether these can be adequately managed by Queensland Corrective Services;
- Information from the relevant authorities (eg. Queensland Police Service, Crime and Corruption Commission) evidencing the prisoner's co-operation – including a timeline of the provision of co-operation;
- Information from the prisoner regarding the co-operation/risk/safety concerns;
- A report from Queensland Corrective Services Intelligence Group outlining safety/risk issues and the management of these within a custodial setting.

Cultural considerations

The Board recognises the importance of cultural considerations in the decision making process. When considering an application for parole based on exceptional circumstances, the Board will have regard to relevant cultural considerations when they are linked with the exceptional circumstances.

The cultural considerations may be evidenced by the prisoner, the prisoner's legal representatives, a Cultural Liaison Officer, a Board member who has knowledge of the relevant cultural considerations or any other person and/or organisation that the Board regards has the relevant knowledge.

In summary

- Application for exceptional circumstances parole can be made at any time
- The Board has broad discretion to determine what amounts to exceptional circumstances
- The threshold for granting is high
- Evidence based decision based on the merits of each individual case



NO BODY NO PAROLE - THE APPLICATION OF SECTION 193A

Relevant Legislation

Section 193A of the Act applies to deciding parole applications where a victim's body or remains have not been located. This is colloquially referred to as "No Body No Parole" legislation and it commenced on 25 August 2017.

The Board **must** refuse to grant parole unless the Board is satisfied that the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location (s.193A(2)).

For prisoners who are serving a sentence in relation to a homicide offence this means that determination of their parole application requires two steps. Firstly, the prisoner must satisfy the Board that they have cooperated satisfactorily to identify the victim's location. If the Board is so satisfied, the Board then goes on to consider the merits of the prisoner's parole application. However, if the Board is not satisfied that the prisoner has cooperated satisfactorily, then the Board does not progress to consider the merits of the prisoner's parole application. In these circumstances, the prisoner would be required to serve his/her entire custodial sentence.

A prisoner can cooperate before or after sentence (s.193A(3)).

Section 193A(7) provides that when deciding whether the Board is satisfied that the prisoner has cooperated satisfactorily the Board-

- (a) **must** have regard to -
 - (i) a report from Queensland Police Service; and
 - (ii) any information the Board has about the prisoner's capacity to give the cooperation; and
 - (iii) the transcript of any proceeding against the prisoner, including any relevant remarks made by the sentencing court; and
- (b) **may** have regard to any other information the board considers relevant.
- (c)

Pursuant to section 193A(6) the report from the Queensland Police Service will provide an evaluation of –

- (a) the nature, extent and timeliness of the prisoner's cooperation; and
- (b) the truthfulness, completeness and reliability of any information or evidence provided by the prisoner in relation to the victim's location; and
- (c) the significance and usefulness of the prisoner's cooperation.



A homicide offence means committing, counselling, procuring, conspiring to commit and being an accessory after the fact to any of the following offences-

- murder
- manslaughter
- misconduct with a corpse
- accessory after the fact to murder
- conspiring to murder
- unlawful striking causing death

A victim's location means –

- (a) the location, or the last known location, of every part of the body or remains of the victim of the offence; and
- (b) the place where every part of the body or remains of the victim of the offence may be found.

The legislation applies retrospectively. That is, it applies to all prisoners who have been convicted of a homicide offence regardless of whether they were convicted before or after the introduction of the law. It also applies to a prisoner who has transferred to Queensland from another jurisdiction regardless of the law in the state/territory from where the prisoner has transferred.

Prisoners who are already on parole for a homicide offence (that is, parole was granted prior to the introduction of the law) will become subject to the legislation should their parole order be cancelled.

Policy

The “No Body No Parole” policy is predicated on the notion that by making parole release for particular prisoners contingent on them satisfactorily cooperating in the investigation of the offence to identify the victim's location, it will encourage and provide incentive for these prisoners to assist in finding and recovering the body or remains of the victim.

The introduction of the “No Body No Parole” legislation implemented Recommendation 87 of the Queensland Parole System Review by Mr Walter Sofronoff QC (as he then was). The review report acknowledged that in the case of homicide offences, withholding the location of a victim's body or remains prolongs the suffering of the families and all efforts should be made to attempt to minimise this sorrow.¹⁶ Further, Mr Sofronoff noted:

¹⁶ QPSR at page 234



“A punishment is lacking in retribution, and the community would be right to feel indignation, if a convicted killer could expect to be released without telling what he did with the body of the victim. The killer’s satisfaction at being released on parole is grotesquely inconsistent with the killer’s knowing perpetuation of the grief and desolation of the victim’s loved ones.”¹⁷

Relevant Case Law

All decisions by the Board regarding the application of the “No Body No Parole” legislation are publicly available and published on Queensland Corrective Services website.

To date there has only been one consideration by the Supreme Court of a case in which the “No Body No Parole” legislation applies. Whilst the decision relates to a prisoner who is subject to the “No Body No Parole” legislation, the issue for the Court’s consideration was the Board’s composition after a revocation of a decision, as opposed to the application of the “No Body No Parole” legislation. Consequently, the case does not provide guidance to members regarding the application of the “No Body No Parole” legislation. However, the case is included in this section for completeness.

Stephen Dale Renwick v Parole Board Queensland [2018] QSC 169

Mr Renwick was convicted of accessory after the fact to manslaughter and the body of the victim had not been recovered. On 16 February 2018 the Board refused Mr Renwick’s application for parole on the basis that the Board was not satisfied that Mr Renwick had cooperated satisfactorily in the investigation of the offence to identify the victim’s location.

On 23 May 2018 the Board repealed its decision to refuse parole, on the basis that the Board failed to take into account material that was required to be considered (a number of court hearing transcripts). The Board was proposing to reconvene the same members to consider the material previously available and the material that had not previously been considered.

Mr Renwick applied for judicial review of the conduct the Board was proposing to engage in for the purpose of making a decision on his application for parole. He argued that there was a reasonable apprehension of bias by the Board given that the Board had previously made findings in relation to his credit (ie. truthfulness and reliability) when making the decision of

¹⁷ QPSR at page 234-235



16 February 2018. Mr Renwick argued that consequently a different composition of the Board should consider his parole application afresh.

The Court noted that having repealed its original decision, the Board was required to consider afresh the applicant's application and that it is not a continuing decision-making process. It is a fresh decision-making process. Her Honour Bowskill J stated that –

“The issue is the appearance of prejudgment, not the actuality of it: the question is one of possibility (real and not remote), not probability; it requires no prediction about how the Board will in fact approach the matter.”¹⁸

The Court ordered that the Board be constituted by different members to consider Mr Renwick's parole application.

Threshold cooperation question

The threshold question for the Board to consider in relation to parole applications where “No Body No Parole” legislation applies:

“Is the Board satisfied that the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location?”

Evidence of cooperation

The legislation provides the Board very wide discretion as to what evidence may be considered by the Board when determining the threshold cooperation question.

As outlined above, section 193A(7) provides what the Board must and may take into account.

The Board must take into account the following:

- A report by the Queensland Police Service which evaluates the prisoner's cooperation (as detailed above) – noting that the Board may or may not come to the same conclusion regarding the prisoner's cooperation as the Queensland Police Service;
- Any information the Board has about the prisoner's capacity to give the cooperation – this is a very wide provision and could include, but is not limited

¹⁸ Stephen Dale Renwick v Parole Board Queensland [2018] QSC 169 at paragraph 27.



- to, matters such as evidence regarding a prisoner's cognitive functioning or the ability to cooperate given the prisoner's role in the offence; and
- The transcript of any proceeding against the prisoner for the offence, including any relevant remarks made by the sentencing court (eg. committal transcript, sentencing submissions, Court of Appeal submissions etc.)

The Board may have regard to any other information that the Board considers relevant. This may include and is not limited to, statements of co-accused, affidavits from the prisoner, maps, telephone records etc.

Process

In determining the process to be implemented for parole applications that are subject to the "No Body No Parole" legislation, the Board has the power to do anything necessary or convenient to be done in performing its functions (s.218). The Board may conduct its business, including its meetings, in the way it considers appropriate (s.230).

The composition of the Board is determined by the President having regard to the sentence that the prisoner is serving, the nature of the offence and any other circumstances that are particular to the prisoner's application.

Given the significant consequences of the application of the "No Body No Parole" legislation, the Board conducts public hearings when considering the threshold question of whether the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

Upon receipt of a prisoner's parole application (who is subject to the "No Body No Parole" legislation), the Board will request a report from the Queensland Police Service evaluating the prisoner's cooperation. The Board will then set a hearing date. The report from the Queensland Police Service must be provided to the Board at least 28 days prior to the hearing date (s.193A(6)).

A hard copy file of the material will be provided to each member, unlike other parole applications which are provided by way of secure electronic format.

The prisoner is invited to appear at the hearing. On most occasions the prisoner appears via video-link, however, on some occasions the prisoner appears in person. Prisoners are entitled to be legally represented at the hearing and prisoners can apply to Legal Aid Queensland for assistance in this regard (s. 189).



Prior to the hearing, the Board liaises with the legal representatives of the prisoner to determine if they wish to provide written submissions prior to the hearing date. These submissions are then placed on the file. These submissions are **not** evidence of the prisoner's cooperation. They are a tool to assist in drawing each member's attention to the matters which the prisoner asserts demonstrate that he/she has cooperated satisfactorily.

The Board conducts the "No Body No Parole" hearings in public at the Magistrates Court complex in Brisbane. It is an open court and members of the public are welcome to attend. The hearings focuses only on the threshold question – that is, has the prisoner cooperated satisfactorily in the investigation of the offence to identify the victim's location. The purpose of the hearing is not to re-litigate the facts of the offence albeit as far as it is necessary in order to determine the threshold question. During the hearing the prisoner's legal representatives may make oral submissions and answer any questions from the Board.

At the conclusion of the oral hearing the Board will defer the matter to a date to be fixed and all deliberations of the Board will occur in private. The oral hearing only focuses on the evidence before the Board of the prisoner's cooperation. All deliberations of the Board when considering the threshold question are completed in private.

Preliminary view that the prisoner has not cooperated satisfactorily

If the Board forms the preliminary view that the prisoner has not cooperated satisfactorily in the investigation of the offence to identify the victim's location, the Board is not required to move to the next step (i.e. considering the merits of the prisoner's parole application). A Consider Not Grant letter is issued to the prisoner outlining the preliminary view and reasons of the Board. The prisoner then has an opportunity to respond to the Board's preliminary view, as like other applications.

Once the prisoner has responded to the Board's preliminary view letter, the Board will reconvene and consider the submissions of the prisoner and/or his/her legal representatives. The Board will consider if these submissions and/or any other material provided on behalf of the prisoner change the Board's preliminary view as to whether the prisoner has not cooperated satisfactorily.

If the Board decides to refuse the application on the basis that the prisoner has not cooperated satisfactorily, the Board is required to give written reasons and include a statement that the Board is not so satisfied (s.193(6)).



If the Board changes its preliminary view after considering the material from the prisoner and/or his/her legal representatives, the Board is then required to consider the merits of the prisoner's parole application.

Determination that the prisoner has cooperated satisfactorily

If the Board decides that the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location, the Board is then required to consider the merits of the prisoner's parole application. In this process the Board may make one of the following decisions:

- Determine that the prisoner has cooperated satisfactorily and that after considering the merits of the prisoner's parole application determine that a grant of parole is appropriate; or
- Determine that the prisoner has cooperated satisfactorily and that after considering the merits of the prisoner's parole application form a preliminary view not to grant parole; or
- Determine that the prisoner has cooperated satisfactorily and that after considering the merits of the prisoner's parole application defer the application to receive further information.

If the Board forms the preliminary view that the prisoner should not be granted parole (despite deciding the threshold question in the prisoner's favour) the Board is required to provide the prisoner with a Consider Not Grant letter outlining the adverse factors. The prisoner is then provided the opportunity to respond and the process continues in the same manner as other applications for parole.

Publication of "No Body No Parole" decisions

Once the Board has made a decision as to whether the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location, the Board will publish a written decision on the Queensland Corrective Services website. The decision will only relate to the threshold question of whether the prisoner has cooperated satisfactorily and will not refer to the merits of the prisoner's parole application.

Prisoners who have not cooperated satisfactorily

If the Board has decided that a prisoner has not cooperated satisfactorily in the investigation of the offence to identify the victim's location the prisoner must serve his/her entire sentence. Prisoners sentenced to life imprisonment are required to serve their entire natural life in prison.



Further applications after refusal of parole

Pursuant to section 193(5) if the Board refuses to grant an application for parole the Board must decide a period of time within which a further application for a parole order (other than an exceptional circumstances parole order) by the prisoner may be made. For prisoners serving a life sentence the period of time must be no more than one year. For all other prisoners this period of time must be no more than six months. This applies to prisoners refused parole on the basis of the threshold question and those who satisfy the threshold question but are refused based on the merits of their parole application.

For prisoners who satisfy the threshold question but are refused based on the merits of their parole application, the Board will **not** reconsider the threshold question on any subsequent application for parole. The Board will utilise its published decision regarding the prisoner's cooperation from the previous application. In these circumstances the Board will only consider the merits of the prisoner's parole application.

For prisoners who **do not** satisfy the threshold question the Board **will** consider the threshold question afresh on any subsequent application. Section 193A(3) provides that a prisoner may cooperate before or after they are sentenced. Therefore, a prisoner may cooperate subsequent to a decision by the Board that they have not cooperated satisfactorily. In these circumstances, on any subsequent application for parole, the prisoner would be able to rely on any new acts of cooperation, in addition to any previous acts of cooperation. On any new application for parole, the Board would firstly be required to consider the threshold question of cooperated satisfactorily (taking into account the previous material and any additional material) before proceeding to consider the merits of the prisoner's application.

In summary

- The law applies to a prisoner who is serving a sentence for a homicide offence where the victim's body or remains have not been located
- The application **must be refused** unless the board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location (referred to as the threshold cooperation question). If the application is refused then the prisoner is required to serve his/her entire sentence
- The Board conducts open hearings as part of the process for parole applications which are subject to the "No Body No Parole" legislation
- The legislation provides the Board very wide discretion as to what evidence may be considered by the Board when determining the threshold cooperation question
- Evidence based decision on the merits of each individual case





- Decision regarding the threshold question only is published and available to the public.

AMENDING A PAROLE ORDER

Relevant Legislation

Court Ordered Parole Orders and Board Ordered Parole Orders may be amended at any time (including prior to the prisoner's release to parole)¹⁹.

An amendment refers to the addition or deletion of conditions, or the amendment of existing conditions of the parole order. There are mandatory conditions required under the CSA which are not able to be deleted. These are contained in section 200 of the CSA and are outlined earlier in this manual.²⁰

The chief executive of Queensland Corrective Services has the power to amend a parole order however, the amendment has effect for no more than 28 days, starting on the day the order is given to the prisoner (s.201). The Board may cancel the amendment made by the chief executive at any time (s.202).

A parole order granted by the Board, in addition to the mandatory conditions, may also contain conditions the Board reasonably considers necessary to ensure the prisoner's good conduct or to stop the prisoner committing an offence (s.200(3)).

The Board may amend a prisoner's Court Order Parole Order or Board Ordered Parole Order for the following reasons:

- the Board reasonably believes that the amendment is necessary to ensure the prisoner's good conduct or to stop the prisoner committing an offence or the condition is no longer necessary for these purposes (s.205(1)(a) and s.205(1)(b));
- the Board reasonably believes that the prisoner poses a serious risk of harm to himself/herself (s.205(1)(c));
- the Board reasonably believes that the prisoner has failed to comply with the parole order (s.205(2)(a)(i));
- the Board reasonably believes that the prisoner poses a serious risk of harm to someone else (s.205(2)(a)(ii));

¹⁹ Foster v Shaddock [2017] 1 Qd R 201 at paragraph 44.

²⁰ See Parole Conditions Annexure 3



- the Board reasonably believes that the prisoner poses an unacceptable risk of committing an offence (s.205(2)(a)(iii));
- the Board reasonably believes that the prisoner is preparing to leave Queensland, other than under a written order granting the prisoner travel approval (s.205(2)(a)(iv)); or
- if the prisoner subject to the parole order is charged with committing an offence (s.205(2)(c)).

The Board may also amend a *Board Ordered Parole Order* if the Board receives information that, had it been received before the parole order was made, would have resulted in the Board making a different parole order (s.205(2)(b)). This does not apply to a Court Ordered Parole Order given that the parole order was not made by the Board.

If practicable, the Board must, before amending a parole order, give the prisoner an information notice and a reasonable opportunity to be heard on the proposed amendment. The information notice is to advise the prisoner of the proposed amendment, reasons for the amendment and invite the prisoner to show cause, by written submissions, within 21 days why the Board should not make the proposed amendment (s.205(6)(c)).

Ministerial Guidelines

The Minister may make guidelines about policies to help the parole board in performing its functions (s. 242E).

Guideline 6.2 provides the following guidance as to what the Board should take into account when considering amending a prisoner's parole order-

- a) reasons for the chief executive's amendment;
- b) seriousness and circumstances surrounding the prisoner's failure to comply (if that is the basis for the amendment);
- c) the prisoner's home environment;
- d) factors such as the prisoner's personal situation, including employment status and response to supervision to date; and
- e) if the prisoner is close to full time discharge, whether the risk to the community would be greater if the prisoner does not remain on parole (this is applicable to suspension requests).

Guideline 6.3 provides that if the Board does decide to amend a parole order, Parole Board Queensland should consider making additional conditions to reduce the risk of reoffending.



Relevant Case Law

TBR v Southern Queensland Regional Parole Board [2010] QSC 204

This case considered the amendment of TBR's parole order subsequent to his release to parole. The Court held that no valid Information Notice was given to TBR regarding the amendment. The Court stated that the addition of further requirements to a parole order post release is a significant additional restriction and in accordance with the Act, the Board should indicate the reason for doing so, as well as indicating the terms of the proposed amendments. The prisoner should then be given an opportunity to be heard on the amendment.

Foster v Shaddock [2017] 1 Qd R 201

This case considered the pre-release suspension of Mr Foster. The Court determined that the Board may amend, suspend or cancel a parole order (Court Ordered Parole Order or Board Ordered Parole Order) either before or after the prisoner's release from custody.

Evidence required for a proposed amendment

The Board makes evidence based decisions. Therefore, in order to amend a prisoner's parole order the Board requires evidence to establish that the condition is necessary for one of the reasons specified in s.205 (as outlined above).

The nature and extent of the evidence required to satisfy the Board that an amendment is necessary will depend on the factual circumstances of the case and the type of amendment that is being sought by Queensland Corrective Services.

Some common types of amendments and the required evidence are provided as examples below:

- A request to add a requirement to abstain from alcohol – the Board would require evidence that establishes that alcohol is linked to the prisoner's offending. For example – the sentencing remarks of the court may refer to the prisoner being under the influence of alcohol at the time of the offending or the prisoner may disclose during case management meetings with his/her parole officer that alcohol is a risk factor and is linked to his/her offending.
- A request to add conditions regarding domestic violence – this is commonly evidenced by the prisoner being subject to a parole order for domestic



violence offending or the prisoner is a respondent in a current Domestic Violence Order.

Process

Requests to amend a parole order are made by Queensland Corrective Services staff by the submission of an Advice to Parole Board. Once the Board has received the request to amend the order, a Professional Board Member will review the request and determine when the matter should be scheduled for consideration by the Board. In determining when the amendment request should be scheduled, the Professional Board Member will have regard to the nature of the amendment sought, the urgency of the amendment and the current parole order conditions.

Once the matter is scheduled, the file will be provided to members in a secure electronic format.

Pursuant to sections 234(5) and 234(6), amendments of a prisoner's parole order must be considered by a Professional Board Member, a Community Board Member and at least one other Board member. In these circumstances the Professional Board Member chairs the meeting.

The Board may make a preliminary view to amend. This preliminary view is advised to the prisoner by way of an Information Notice. The information Notice states the proposed amendment, the reason why the Board is proposing to amend the parole order and invites the prisoner to make any written submissions within 21 days as to why the Board should not amend the parole order as proposed.

If the prisoner is already on parole the Board may choose to immediately amend the prisoner's parole order. In these circumstances the Board will provide the prisoner with the Information Notice and advise the prisoner that the Board is willing to consider any submissions by the prisoner regarding the amendment.

If the Board receives a submission from the prisoner regarding the amendment, the Board will convene to further consider the amendment in light of the prisoner's submissions. If the Board made a preliminary decision to amend the parole order, the Board will consider if the amendment should be confirmed. If the amendment is confirmed the new conditions will be provided to the prisoner by way of a new parole order (if the prisoner is on Board Ordered Parole) or an attachment (if the prisoner is on Court Ordered Parole).

If upon review of the prisoner's submissions and all relevant material, the Board is of the view that the proposed amendment is not necessary the Board will not confirm the



amendment. If the amendment has already been made (ie. not a preliminary view to amend) the Board may delete the condition if the Board considers it appropriate.

A prisoner may also make application to amend his/her parole order. In these circumstances the Board will be provided with a submission from the prisoner and an Advice to Parole Board from the prisoner's parole officer. The Advice to Parole Board will provide background in relation to the prisoner's offending, his/her performance on parole thus far and a recommendation as to whether or not Queensland Corrective Services supports the amendment.

If the Board decides not to make a requested amendment, there is no requirement to provide reasons to Queensland Corrective Services staff or the prisoner (depending on who made the application to amend). However, in most circumstances, the Board will provide reasons to the prisoner by way of a letter and feedback will be provided to Queensland Corrective Services staff through the Public Service Representative who participated in the meeting.

In summary

- Amending a parole order includes the addition or deletion of conditions and amending existing conditions
- Applications for amendment can be made by the prisoner or Queensland Corrective Services staff
- Application for amendment of a Court Ordered Parole Order or a Board Ordered Parole Order can be made at any time (including prior to the prisoner's release from custody)
- Evidence based decision based on the merits of each individual case

SUSPENSION AND CANCELLATION OF PAROLE ORDERS

The Board has the power to suspend and/or cancel Court Ordered Parole and Board Ordered Parole.

The current suspension process was introduced as a result of the Queensland Parole System Review (QPSR).



The QPSR found that suspension of an offender's parole order is the most serious consequence for a breach as it results in the offender being removed from the community and returned to prison.²¹

Mr Sofronoff QC (as he then was) stated:

*"...suspending offenders and returning them to custody should be used as a last resort when the risk to the community becomes intolerable."*²²

*"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 services 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. In addition, for prisoners on suspension, like prisoners on remand and prisoners sentenced to short prison sentences, there is almost no access to intervention programs in custody."*²³

Relevant Legislation

A Court Ordered Parole Order and a Board Ordered Parole Order can be cancelled by the Board or automatically if a Court imposes a further term of imprisonment (ss. 205 and 209).

A Court Ordered Parole Order and a Board Ordered Parole Order can be suspended by the Board **or** by a Prescribed Board Member (as an individual) (ss.205 and 208B). A decision to suspend by a Prescribed Board Member is referred to as an immediate suspension of a parole order (ss.208A and 208B).

A Prescribed Board Member is defined in Schedule 4 as –

- (a) President; or
- (b) a Deputy President; or
- (c) a Professional Board Member.

²¹ QPSR at page 219

²² QPSR at page 219.

²³ QPSR at page 222.



Suspension and Cancellation by the Board

The Board may suspend or cancel a prisoner's Court Order Parole Order or Board Ordered Parole Order for the following reasons:

- the Board reasonably believes that the prisoner has failed to comply with the parole order (s.205(2)(a)(i));
- the Board reasonably believes that the prisoner poses a serious risk of harm to someone else (s.205(2)(a)(ii));
- the Board reasonably believes that the prisoner poses an unacceptable risk of committing an offence (s.205(2)(a)(iii));
- the Board reasonably believes that the prisoner is preparing to leave Queensland, other than under a written order granting the prisoner travel approval (s.205(2)(a)(iv)); or
- if the prisoner subject to the parole order is charged with committing an offence (s.205(2)(c)).

The Board may also suspend or cancel a *Board Ordered Parole Order* if the Board receives information that, had it been received before the parole order was made, would have resulted in the Board making a different parole order or not making a parole order (s.205(2)(b)). This does not apply to a Court Ordered Parole Order given that the parole order was not made by the Board.

The Board is not required to give the prisoner an Information Notice or a reasonable opportunity to be heard at the time that the Board makes the decision to suspend or cancel the prisoner's parole order (s.205(4)). This step does not occur at the time of the decision, it occurs once the prisoner has been returned to custody. An order suspending or cancelling a parole order has effect from when it is made by the Board (s.205(5)).

If the Board suspends or cancels a prisoner's parole order, the Board may then issue a warrant for the prisoner's arrest (s.206). In some circumstances a warrant will not be necessary as the prisoner may already be in the custody of Queensland Corrective Services (for example – the prisoner has been remanded in custody on alleged further offending).

Pursuant to section 208 the Board must give the prisoner an Information Notice on his/her return to custody. The Information Notice must state the following:

- (a) the Board has decided to suspend or cancel the parole order; and
- (b) advise of the reasons for the decision; and



- (c) invite the prisoner to show cause, by written submissions given to the Board within 21 days after receipt of the Information Notice, why the Board should change its decision.

The Board must consider all properly made submissions and inform the prisoner, by written notice, whether the Board has changed its decision, and, if so, how (s.208(2)).

Immediate Suspension by Board or Prescribed Board Member

Section 208A provides that the chief executive, may, by written notice to the Board, request the Board to suspend a prisoner's parole order and to issue a warrant for the prisoner's arrest.

Pursuant to s. 208B if a request is made under s.208A, the Board or a Prescribed Board Member (as an individual decision maker) **must, as a matter of urgency** –

- (a) consider the request; and
- (b) decide whether or not to suspend the parole order.

The Board or the Prescribed Board Member may decide to suspend the parole order only if the Board or member reasonably believes the prisoner (s.208B(2)) –

- (a) has failed to comply with the parole order; or
- (b) poses a serious and immediate risk of harm to another person; or
- (c) poses an unacceptable risk of committing an offence; or
- (d) is preparing to leave the State, other than under a written order granting travel approval.

If the Board or the Prescribed Board Member decides not to suspend the parole order, written notice of the decision must be given to Queensland Corrective Services.

If a Prescribed Board Member suspends a parole order the member may issue a warrant for the prisoner's arrest (s.208B(4)).

Board must consider suspension

Section 208C provides that if a Prescribed Board Member decides under s.208B to suspend a prisoner's parole order, the Board **must** within two business days of the decision being made, either confirm or set aside the decision.



If the Board sets aside the Prescribed Board Member's decision, the suspension and warrant stop having effect immediately and if the warrant has been executed the prisoner must be released (ss.208C(4) and 208C(5)).

Automatic cancellation

A Court Ordered Parole Order or a Board Ordered Parole Order is automatically cancelled if the prisoner is sentenced to another period of imprisonment for an offence committed in Queensland or elsewhere during the period of the order (s.209(1)). This does not include a prisoner who is subsequently sentenced to an intensive corrections order or a wholly suspended sentence (s.209(3)).

Effect of Cancellation

Section 211 provides that the time for which a prisoner was released on parole prior to a cancellation, counts as time served under the prisoner's period of imprisonment.

Ministerial Guidelines

The Minister may make guidelines about policies to help the parole board in performing its functions (s. 242E).

Guideline 1.2 When considering whether a prisoner should be granted a parole order, the highest priority for the Board should always be the safety of the community.

Guideline 6.1 If a prisoner on a parole order has been charged with a further offence, the Board should consider the suspension of the parole order and seek the prisoner's return to custody until a court determines the charge. Factors relevant to the exercise of any discretion may include the –

- a) seriousness of the alleged offence;*
- b) whether the prisoner has been remanded in custody or released to bail;*
- c) circumstances surrounding the commission of the alleged offence;*
- d) prisoner's personal situation, including employment status;*
- e) prisoner's response to supervision to date; and*
- f) length of time needed to determine the outcome of the charge.*

Guideline 6.2 If a prisoner has failed to comply with a condition of their parole order or the parole order has been amended by the chief executive under s.201 or the chief executive has requested that the parole order be suspended under s.208A, the Board should consider whether to suspend or cancel the



prisoner's parole order. In considering whether to do so, the following should be taken into account –

- a) reasons for the chief executive's requested suspension;*
- b) seriousness and circumstances surrounding the prisoner's failure to comply;*
- c) prisoner's home environment;*
- d) prisoner's personal situation, including employment status and the prisoner's response to supervision to date; and*
- e) if the prisoner is close to full time discharge whether the risk to the community would be greater if the prisoner does not remain on parole.*

Guideline 6.5 If a prisoner on a parole order is unlawfully at large because the parole order has been suspended, the Board should consider cancelling the parole order if the prisoner is not returned to custody within a reasonable period.

Guideline 6.6 A decision regarding whether or not to cancel a suspended parole order should be made as soon as practicable after the prisoner has returned to custody.

Guideline 6.7 If the Board considers a prisoner suitable for release to parole, it should cancel the suspension of the prisoner's parole order.

Relevant Case Law

Douglas v Southern Queensland Regional Parole Board [2015] QSC 310

Mr Douglas' parole order was suspended by the Board for alleged further offending. The further offending included offences that pre-dated the parole order and more minor offences that occurred subsequent to his release on parole. The Court held that the Board's power to suspend is enlivened if a charge is brought within the parole order, notwithstanding that the offending conduct occurred prior to the commencement of the parole order.

Foster v Shaddock [2017] 1 Qd R 201

This case considered the pre-release suspension of Mr Foster's parole order. The Court determined that the Board may amend, suspend or cancel a parole order (Court Ordered Parole Order or Board Ordered Parole Order) either before or after the prisoner's release from custody.

Central and Northern Queensland Regional Parole Board v Jeffrey Martin Finn [2018] QCA 47



This case considered the *Corrective Services Act 2006* prior to the legislative amendments made in 2017 which amended the suspension process (and established Parole Board Queensland).

At first instance the court decided that the suspension of Mr Finn's parole order be set aside. The court determined that Mr Finn was not provided natural justice in that he was entitled to be told the reasons for his suspension (and that includes the evidence upon which the suspension is based in the Information Notice) and in turn, to attempt to provide a submission. The Board then appealed to the Court of Appeal against the order setting aside its decision to suspend the parole order for an indefinite period.

The Court of Appeal held that pursuant to s.208, the right to be heard given to a prisoner in an Information Notice regarding a suspension or cancellation, is limited to whether at a time subsequent to the original decision the Board should make a different decision. There is no requirement for natural justice in relation to decisions under s.205. It only arises in relation to decisions under s.208.

Allan David McQueen v Parole Board Queensland [2018] QSC 216

Mr McQueen made an application for an order for statutory review of a decision of the Board to confirm a peremptory cancellation of his parole order. Mr McQueen's parole order was cancelled on the basis of failing to comply with a condition of his parole order.

The Court held that s.208(1) of the *Corrective Services Act 2006* and s.27B of the *Acts Interpretation Act 1954* require that the Information Notice must give full reasons for the peremptory decision under s.205(2)(a). That is, the notice issued to Mr McQueen was to contain all the Board's reasons for its cancellation of his parole. Section 208(2) then requires the Board to consider all properly made submissions and give written notice to the prisoner as to whether or not it has changed its decision. When considering the submissions given to it by the prisoner pursuant to s.208(2), the Board is obliged to revisit its discretionary decision.

The Board was obliged to consider whether or not it should exercise its discretion to change the decision to cancel Mr McQueen's parole because he had failed to comply with a condition of his parole order. The nature of the breach, including its seriousness or lack of seriousness was a relevant consideration for the Board in exercising its discretion pursuant to both ss.205(2) and 208(2). The court noted that this is confirmed by Ministerial Guideline 6.2(b).

The Court also considered that it was relevant for the Board to look at the purpose for which the condition (the condition that was the subject of the failure to comply) had been imposed





both in the exercise of its discretion under s.205(2) and s.208(2). The Court held that it was a relevant consideration for the Board to take into account in exercising its discretion both pursuant to ss.205(2) and 208(2) Ministerial Guideline 6.2(d) which provides that a prisoner's personal situation, including employment status, should be taken into account as well as the prisoner's response to supervision up to the date of the breach.

The Court stated that the Board should make evidence based decisions and obtain proper, reliable information and act on it using some realism and common-sense.²⁴ The Court determined that the Board did not give real and genuine consideration to relevant considerations in Mr McQueen's favour and that this was an error of law.

The Court held that the Board's decision to confirm its earlier decision to cancel Mr McQueen's parole pursuant to s.208(2) was affected by errors of law and ought to be regarded as invalid.

Jason Ronald Vaughan v Parole Board Queensland [2019] QSC 10

The court considered whether the extension of Mr Vaughan's parole suspension for three days post the decision to lift the suspension was not authorised under the CSA or was an improper exercise of power. The Court held that there is no power in section 208C to set aside a decision to suspend at a future date.

It must be noted that this case related to a specific set of facts which involved the Board's original decision under s.208C being rescinded and the decision of the Prescribed Board Member to suspend being considered afresh. It was not a re-consideration of the decision to suspend under s.208.

Evidence for a Suspension and Cancellation

Like all other decisions of the Board, a decision to suspend or cancel a prisoner's parole order must be evidence based. The evidence that is required will depend on the circumstances of the case and the grounds for the suspension/cancellation.

The Court in *Allan David McQueen v Parole Board Queensland*²⁵ stated that the Board should make evidence based decisions and obtain proper, reliable information and act on it using some realism and common-sense.²⁶

²⁴ At paragraph 93, page 24.

²⁵ *Allan David McQueen v Parole Board Queensland* [2018] QSC 216

²⁶ At paragraph 93, page 24.



To assist Queensland Corrective Services staff to provide relevant evidence for suspension requests, the Board has formulated an Advice to Parole Board Template. This can be found in the Annexures of this manual and identifies the types of evidence required for the various grounds of suspension.

Immediate Suspension Process

A Prescribed Board Member may determine immediate suspension applications as an individual decision maker. To prioritise immediate suspension applications, one Professional Board Member each week is rostered from 9am until 5pm as the primary individual decision maker in relation to immediate suspension applications for the state. All suspension requests are provided to the rostered member during that week. A request to suspend a prisoner's parole can only be made in writing (s.208A(2)).

The Board provides a 24/7 on call service for urgent after-hours suspension requests. The Professional Board Members share this after hours on call rostering. The Parole Board Secretariat also provides an after-hours staff member to facilitate the on call service.

The suspension process is commenced when a Queensland Corrective Services staff member submits an Advice to Parole Board seeking suspension of a prisoner's parole order. The Advice to Parole Board together with any relevant intelligence holdings are provided to the Prescribed Board Member for the member's determination.

When the information necessary to make a decision has not been included in the Advice to Parole Board a staff member of the Parole Board Secretariat requests the additional material from Queensland Corrective Services staff. Once the additional information has been provided the member then considers the suspension request.

When considering a suspension request the Prescribed Board Member has regard to the following:

- Section 208B of the *Corrective Services Act 2006*;
- The Ministerial Guidelines;
- Any relevant case law;
- The Advice to Parole Board;
- Any relevant intelligence holdings; and
- Any other additional information that is deemed necessary by the member.

Once the member has made a decision, the member provides a written decision to the Parole Board Secretariat who then convey the decision to Queensland Corrective Services staff and if required, complete the necessary documentation in order to issue a warrant.





If a member decides **not** to suspend the prisoner's parole the member must notify the President or a Deputy President accordingly. If the decision is made out of hours, the President or Deputy-Presidents must be notified on the next business day.

Within two business days of the decision by a Prescribed Board Member to suspend a prisoner's parole order, the Board must consider the suspension and decide to either confirm the suspension or set aside the decision.

The composition of the Board for this meeting will depend on whether the suspension relates to a prescribed or non-prescribed prisoner. At the meeting the Board will be provided with the information that the Prescribed Board Member had and any additional information that has been provided during the intervening period of time.

If the suspension relates to a Board Ordered Parole Order, the Board will also have access to the prisoner's original parole file. The Prescribed Board Member does not have access to the prisoner's file or Queensland Corrective Services' Integrated Offender Management System (IOMS) when making the decision regarding a suspension request for a Board Ordered Parole Order.

If a prisoner's parole order has been confirmed as suspended by the Board, he/she will receive an Information Notice upon his/her return to prison advising that his/her parole has been suspended, the reasons why it was suspended and an invitation to show cause as to why the Board should change its decision.

When a prisoner has made submissions in response the suspension of his/her parole order, the Board must consider whether or not it should exercise its discretion to change the decision to suspend. In exercising its discretion the Board has regard to the following material –

- Section 208 of the *Corrective Services Act*;
- The Ministerial Guidelines;
- The Advice to Parole Board;
- The prisoner's submissions – including any material submitted on behalf of the prisoner (for example – a submission from the prisoner's legal representative or a family member);
- Any relevant case law;
- Any relevant intelligence holdings; and
- Any other information that the Board deems necessary to make an evidence based decision.



To assist prisoner's prepare a show cause response that addresses the relevant issues, the Board has developed a short form which includes questions aimed to assist the prisoner to identify changes that may need to occur to be successful on parole. This form can be found in the annexures of this manual.

Cancellation Process

If a prisoner has had his/her parole order cancelled by the Board, upon his/her return to custody, the prisoner will receive an Information Notice advising that his/her parole has been cancelled, the reasons why it was cancelled and an invitation to show cause as to why the Board should change its decision.

When a prisoner has made submissions in response the cancellation of his/her parole order, the Board must consider whether or not it should exercise its discretion to change the decision to cancel. In exercising its discretion the Board has regard to the following material-

- Section 208 of the *Corrective Services Act*;
- The Ministerial Guidelines;
- The Advice to Parole Board;
- The prisoner's submissions – including any material submitted on behalf of the prisoner (for example – a submission from the prisoner's legal representative or a family member);
- Any relevant case law;
- Any relevant intelligence holdings; and
- Any other information that the Board deems necessary to make an evidence based decision.

Effect of Cancellation

If a prisoner's parole order is cancelled, the prisoner is required to serve the remainder of his/her sentence in custody. The prisoner is entitled to make a new application for parole despite the cancellation of his/her parole order immediately upon receipt of the Information Notice. For prisoner's who were previously subject to a Court Ordered Parole Order, this means that in order to be re-released on parole, the prisoner will need to apply for parole to the Board. In these circumstances, the Board will consider the prisoner's application in the same manner as all other applications for parole.



In summary

- Suspension of Court Ordered Parole Orders and Board Ordered Parole Orders may be determined by the Board or a Prescribed Board Member (as an individual)
- Application for suspension and cancellation of a Court Ordered Parole Order or a Board Ordered Parole Order can be made at any time (including prior to the prisoner's release from custody)
- If a parole order is suspended by a Prescribed Member it must be considered by the Board within two business days
- Upon return to custody, a prisoner must receive an Information Notice which advises if their parole order has been suspended or cancelled, the reasons for the cancellation or suspension and an invitation to make submissions as to why the Board should change the decision to suspend or cancel
- Upon receipt of submissions in relation to a prisoner's suspension or cancellation, the Board is obliged to consider whether or not it should exercise its discretion to change the decision to suspend or cancel the prisoner's parole order
- Evidence based decision based on the merits of each individual case.



INTERSTATE AND OVERSEAS TRAVEL

The Board is required to consider applications for travel outside of Queensland. These may be applications to travel interstate or overseas. The considerations for interstate and overseas travel are different due to the requirement of sections 212 and 213 of the *Corrective Services Act 2006*.

Interstate travel requests

Section 212(3) provides that the Board may, by written order, grant leave to a prisoner who is released on parole to travel interstate for a period of more than seven days and the leave is subject to the conditions that the Board determines.

Overseas travel requests

Section 213 provides that the Board may, by written order, grant leave to a prisoner who is released on parole to travel overseas for a stated period for compassionate purposes in exceptional circumstances. The leave is subject to the conditions determined by the Board.

As discussed in the section above on exceptional circumstances parole, exceptional circumstances is not defined in the *Corrective Services Act 2006*. Compassionate purposes is also not defined by the legislation.

The Board must be satisfied that the overseas travel is for a compassionate purpose **and** is an exceptional circumstance.

Process

When a prisoner wishes to travel either interstate or overseas, an Advice to Parole Board report is provided to the Board. This report will contain information regarding the purpose of the travel, the duration of the travel, the prisoner's response to supervision to date and will include a recommendation as to whether the travel request should be approved. The parole officer provides a recommendation. It is for the Board to determine if the travel request should be approved.

In some cases, the prisoner may provide a written submission relating to their travel request. If this is provided, the Board will consider it together with the Advice to Parole Board report. If the Board decides to approve the travel request, the Board will then consider what conditions should attach to the travel approval.



The prisoner will be provided with a travel permit which specifies the dates of travel and the conditions of the travel. For example, the Board may require the prisoner to phone report on specified days during the travel period. If the parole officer is recommending that the Board approve the travel request, a draft travel permit will usually be provided together with the Advice to Parole Board report.

MINUTE TAKING OF BOARD MEETINGS

The Parole Board Secretariat allocates a staff member who is responsible for minute taking in each meeting of the Board.

All decisions of the Board are minuted and these minutes are saved on the Integrated Offender Management System (IOMS). Queensland Corrective Services staff, have access to the minutes and therefore, highly confidential minutes are not uploaded to IOMS.

The minutes outline what material the Board has considered, the decision of the Board and the reasons for the decision. Previous minutes are placed on a prisoner's parole file for reference by the Board.

The minute taker utilises a number of templates depending on the type of decision made by the Board. Templates have been developed for the following decision types –

- grants of parole
- preliminary view not to grant parole
- decision not to grant parole
- suspension or cancellation of a parole order
- amendment of a parole order
- deferral of a parole application

The templates include the necessary headings to ensure that the Board has provided full reasons. The templates do not prescribe what weight the Board should place on any of the material for consideration or what the decision should be. They are utilised as aids to ensure that the Board has considered all relevant considerations and outlined detailed reasons that can be provided to the prisoner.



ELIGIBLE PERSONS REGISTER (Victims Register)

Relevant Legislation

Queensland Corrective Services are responsible for the management of the Eligible Persons Register (also referred to as the Victims Register). Section 320 of the *Corrective Services Act 2006* provides that the chief executive must keep a register of persons who are eligible to receive information about –

- (a) a supervised dangerous prisoner (sexual offender); or
- (b) a prisoner who has been sentenced to a period of imprisonment for an offence of violence or a sexual offence; or
- (c) a prisoner who has been sentenced to a period of imprisonment for an offence other than an offence of violence or sexual offence.

Pursuant to section 320(2) an eligible person includes-

- (a) in relation to a supervised dangerous prisoner or a prisoner sentenced for an offence of violence or sexual offence the following persons:
 - (i) the actual victim of the offence; or
 - (ii) if the victim is deceased, an immediate family member of the deceased victim; or
 - (iii) if the victim is under 18 years or has a legal incapacity, the victim's parent or guardian; or
 - (iv) another person who –
 - (A) provides documentary evidence of the prisoner's history of violence against the person; or
 - (B) satisfies the chief executive that the person's life or physical safety could reasonably be expected to be endangered because of a connection between the person and the offence.

For other prisoners sentenced to a term of imprisonment an eligible person includes –

- (i) a person who provides documentary evidence of the prisoner's domestic violence against the person, whether or not the domestic violence constitutes the offence for which the person is imprisoned; or
- (ii) a person who satisfies the chief executive the person's life or physical safety could reasonably be expected to be endangered because of a risk of domestic violence committed by the prisoner against the person.

Section 188 provides notice provisions to eligible persons about a prisoner's application for parole –



- (1) After receiving a prisoner's application for a parole order (other than an exceptional circumstances parole order) the Board must give the chief executive written notice of the application.
- (2) Within seven days after receiving the notice, the chief executive must give each eligible person in relation to the prisoner notice of the application.
- (3) The notice given to the eligible person must be dated and advise the person that –
 - (a) The prisoner has applied for a parole order; and
 - (b) the Board is about to consider whether the parole order should be made; and
 - (c) the person may, within 21 days after the date of the notice, make written submissions to the Board about anything that –
 - (i) is relevant to the decision about making the parole order; and
 - (ii) was not before the court at the time of sentencing.
- (4) The Board may have regard to any submissions made to the Board under this section.

Section 324A provides that the chief executive must give an eligible person the following information about a prisoner in relation to whom the eligible person is registered –

- (a) the prisoner's eligibility dates for discharge or release;
- (b) the prisoner's date of discharge or release;
- (c) the fact, and date, of the death or escape of a prisoner;
- (d) the fact, and date, of any particular circumstances relating to the prisoner that could reasonably be expected to endanger the eligible person's life or physical safety

A prisoner's date of discharge or release must be given to the eligible person at least 14 days before the prisoner's date of discharge or release (s.324A(2)(b)).

Section 325 provides the chief executive the power to release other information if it is reasonably considered appropriate.

Relevant Ministerial Guidelines

Ministerial Guideline 2.1 outlines a number of factors that the Board should have regard to when deciding the level of risk that a prisoner may pose to the community. It includes the following –

- (h) any submissions made to the Board by an eligible person registered on the Queensland Corrective Services Victims Register



Process

At the time that an eligible person is advised of a prisoner's parole application they are invited to make submissions to the Board for consideration. This process is completed by Queensland Corrective Services (through the Victim's Registry section). The Board does not have any role in administering the victim's register or have any direct contact with victims. The Board may be notified by Queensland Corrective Services of an eligible person at any time; that is prior to the scheduling of the prisoner's parole application or during the course of the consideration of the prisoner's application.

Any submissions made by an eligible person are treated as confidential and are not released to the prisoner. Consequently, they are not numbered on a prisoner's parole file and are treated as a separate annexure to a prisoner's parole file. The eligible person has 21 days from the date of notification to make the submissions. The submissions should relate to matters that are relevant about a parole order and were not before the court at the time of sentencing (s.188(3)(c)).

At the time of consideration of a prisoner's parole application the Board will have regard to the eligible person's submissions.



JUDICIAL REVIEW

The Board's decision making is open to review by the Supreme Court of Queensland under the provisions of the *Judicial Review Act 1991*. The review of the decision is limited to the legality of the decision (ie. was there power and was it exercised lawfully), rather than its merits (ie. should it have been a different outcome/decision). The court cannot make a new decision in place of the one made by the Board.

Relevant Legislation

Judicial Review Act 1991

In relation to decisions already made section 20 provides –

- (1) A person who is aggrieved by a decision to which this Act applies may apply to the court for a statutory order of review in relation to the decision.
- (2) The application may be made on any one or more of the following grounds –
 - (a) that a breach of the rules of natural justice happened in relation to the making of the decision;
 - (b) that procedures that were required by law to be observed in relation to the making of the decision were not observed;
 - (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
 - (d) that the decision was not authorised by the enactment under which it was purported to be made;
 - (e) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made;
 - (f) that the decision involved an error of law (whether or not the error appears on the record of the decision);
 - (g) that the decision was induced or affected by fraud;
 - (h) that there was no evidence or other material to justify the making of the decision;
 - (i) that the decision was otherwise contrary to law.

Section 21 provides that if a person has engaged, is engaging, or proposes to engage, in conduct for the purpose of making a decision, a person who is aggrieved by the conduct may apply to the court for a statutory order of review in relation to the conduct on the following grounds –

- (a) that a breach of the rules of natural justice has happened, is happening, or is likely to happen, in relation to the conduct;



- (b) that procedures that are required by law to be observed in relation to the conduct have not been, are not being, or are likely not to be, observed;
- (c) that the person proposing to make the decision does not have jurisdiction to make the proposed decision;
- (d) that the enactment under which the decision is proposed to be made does not authorise the making of the proposed decision;
- (e) that the making of the proposed decision would be an improper exercise of the power conferred by the enactment under which the decision is proposed to be made;
- (f) that an error of law –
 - (i) has been, is being, or is likely to be, committed in the course of the conduct; or
 - (ii) is likely to be committed in the making of the proposed decision;
- (g) that fraud has taken place, is taking place, or is likely to take place, in the course of the conduct;
- (h) that there is no evidence or other material to justify the making of the proposed decision;
- (i) that the making of the proposed decision would otherwise be contrary to law.

A prisoner may also apply for a statutory order of review if the Board has failed to make its decision within the period provided by the *Corrective Services Act 2006* (s.22 of *Judicial Review Act 1991*).

Pursuant to section 23 an improper exercise of power referred to in sections 20 and 21 means the following –

- (a) taking an irrelevant consideration into account; and
- (b) failing to take a relevant consideration into account; and
- (c) an exercise of a power for a purpose other than a purpose for which the power is conferred; and
- (d) an exercise of a discretionary power in bad faith; and
- (e) an exercise of a personal discretionary power at the direction or behest of another person; and
- (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; and
- (g) an exercise of a power that is so unreasonable that no reasonably person could so exercise the power; and
- (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
- (i) any other exercise of a power in a way that is an abuse of the power.

Section 30 provides the orders that the Supreme Court can make on an application for a statutory order of review in relation to a decision that has been made include –



- (a) an order quashing or setting aside the decision, or a part of the decision;
- (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to such directions as the court determines;
- (c) an order declaring the rights of the parties in relation to any matter to which the decision relates;
- (d) an order directing any of the parties to do, or to refrain from doing, anything that the court considers necessary to do justice between the parties.

In relation to conduct that has been, is being, or is proposed to be, engaged in for the purpose of the making of a decision, the court may make either or both of the following orders –

- (a) an order declaring the rights of the parties in relation to any matter to which the conduct relates;
- (b) an order directing any of the parties to do, or to refrain from doing, anything that the court considers necessary to do justice between the parties.

On an application for a statutory order of review in relation to failure to make a decision within the prescribed period the court may make all or any of the following orders –

- (a) an order directing the making of the decision;
- (b) an order declaring the rights of the parties in relation to the making of the decision;
- (c) an order directing any of the parties to do, or to refrain from doing, anything that the court considers necessary to do justice between the parties.

Relevant Ministerial Guidelines

Section 3 of the Ministerial Guidelines provides guidance to the Board regarding disclosure to prisoners and procedural fairness.

- 3.1 *Parole Board Queensland's decision making is open to review by the Supreme Court of Queensland under the provisions of the Judicial Review Act 1991. During the decision making process, when considering which documents should be disclosed to a prisoner, a primary consideration for the Board is ensuring that the prisoner is afforded procedural fairness taking into account the requirements of the Judicial Review Act 1991.*
- 3.2 *At a minimum, the principles of procedural fairness require that the substance of the material or main factors adverse to the prisoner be disclosed (including the proper disclosure of documents to the prisoner which*



may be relied upon in coming to a decision), and the prisoner be given an opportunity to comment before a decision is made.

3.3 *In determining how procedural fairness will be achieved, the Board should, where possible, also take account of the following factors:*

- (a) Sensitive third party information, including information received in confidence, must not be disclosed to a prisoner where it may place another party at risk, or in instances where the third party has provided a valid reason for requesting that it not be disclosed to the prisoner, unless the information can be disclosed in a non-identifying way;*
- (b) Correspondence from eligible persons as defined by the Act, or victims, must not be released to a prisoner;*
- (c) Raw psychological assessment data, treatment plans, program screening tools and program case notes should not be released in that format. A report interpreting the data is appropriate for release, if available. Some psychological or psychiatric reports may require controlled release, to allow the writer or another qualified person to explain the report findings to the subject of the report;*
- (d) Sensitive intelligence documents that could place the source of the information or the community at risk or jeopardise police or intelligence agency operations should not be released to a prisoner. Guidance on whether intelligence documents, or a summary or the relevant information within the documents, can be released to a prisoner should be sought from the Queensland Police Service and/or Queensland Corrective Services intelligence officers; and*
- (e) Legally privileged documents must not be released to a prisoner unless approval has been provided by the writer of the documents for release.*

Process

If a prisoner is aggrieved by a decision of the Board, the prisoner may request a Statement of Reasons be provided by the Board (s.32(1) *Judicial Review Act 1991*). The Statement of Reasons outlines the background of the prisoner's application (or suspension or cancellation), findings of fact made by the Board and the reasons for the Board's decision. The Board is required to provide a Statement of Reasons within 28 days of receiving the prisoner's request.

If the prisoner still remains aggrieved, the prisoner may lodge an application for a statutory order of review with the Supreme Court under the *Judicial Review Act 1991*. Upon receiving



Parole Board | Queensland

an application for review, the Supreme Court will advise the Board of the application and a date for a directions hearing. This initial step is an opportunity for the court to canvass with the prisoner and the Board the relevant issues and make orders with respect to a timeline for litigation of the application. The Board has legal representation for all review matters.





ANNEXURES

Acronyms

Most Frequently Used at the Parole Boards

APB	Advice to Parole Board
ARA	Accommodation Risk Assessment
CSA	<i>Corrective Services Act 2006</i>
CNG	Consider not grant
CREST	Community Re-entry Services Team
FNG	Final not grant
GM	General Manager of a correctional facility
HCR 20	Historical Clinical and Risk Management-20 (tool)
JR	Judicial Review
PBAR	Parole Board Assessment Report
PCL(R)	Hare Psychopathy Checklist-Revised
PMHS	Prison Mental Health Service
QCS	Queensland Corrective Services
QPSR	Queensland Parole System Review
RNA	Rehabilitation Needs Assessment
RPP	Relapse Prevention Plan
RSVP	Rapid serial visual presentation
TC	Transitional care coordination program

DEPARTMENTS & LOCATIONS

QCS	Queensland Corrective Services
DJAG	Department of Justice and Attorney-General
PBQ	Parole Board Queensland
PBS	Parole Board Secretariat
M/C	Magistrates Court
D/C	District Court
S/C	Supreme Court
DPP	Director of Public Prosecutions
SPER	State Penalties and Enforcement Registry
CSIU	Corrective Services Investigation Unit
QCSIG	Queensland Corrective Services Intelligence Group
DoCS	Department of Child Safety
QPS	Queensland Police Service
RTI	Right to Information
HROMU	High Risk Offender Management Unit
EMSU	Electronic Surveillance Officer Unit
MSU	Maximum Security Unit
BCC	Brisbane Correctional Centre





BWCC	Brisbane Women's Correctional Centre
AGCC	Arthur Gorrie Correctional Centre
WCC	Wolston Correctional Centre
SQCC	Southern Queensland Correctional Centre (Gatton)
WFDCC	Woodford Correctional Centre
TCC	Townsville Correctional Centre
LGCC	Lotus Glen Correctional Centre
CAP CC	Capricornia Correctional Centre
BTCC	Borallon Training & Correctional Centre
PAH	Princess Alexandra Hospital Secure Unit
NCC	Numinbah Correctional Centre
PCC	Palen Creek Correctional Centre
HJCC	Helena Jones Community Custody

POSITION TITLES

P&P	Probation and Parole
PPO	Probation and Parole Officer
PSO	Probation Services Officer (P&P)
SCM	Senior Case Manager (Probation and Parole)
CM	Case Manager (Probation and Parole)
PDO	Program Delivery Officer
CCO	Custodial Correctional Officer
CSO	Corrective Services Officer
TC	Transitions Coordinator

DM	District Manager
RM	Regional Manager
GM	General Manager
PBM	Professional Board Member
CBM	Community Board Member
PSR	Public Service Representative
PR	Police Representative
DC	Deputy Commissioner
DGM	Deputy General Manager
DG	Director-General
AG	Attorney-General

LEGISLATION

PSA	Penalties and Sentences Act 1992
CSA	Corrective Services Act 2006
DPSCA	Dangerous Prisoner Sexual Offender Act

ORDERS

NTR	Next to Report
-----	----------------



FTR	Fail to Report
FTA	Fail to Attend (Community Service)
HV	Home Visit
PC	Phone Call
OV	Office Visit
CSO	Community Service Order
FOO	Fine Option Order
FOO	Fine Option Order
PROB	Probation Order

Dual Order Probation Order and Community Service - Order for the same offences

ICO	Intensive Correction Order
COP	Court Ordered Parole
BOP	Board Ordered Parole
PARIS	Parole Order Registered from Interstate
AFVO	Alcohol Fuelled Violence Community Service Order
GRO	Graffiti Removal Order
SNO	Safe Night Out Order
CS	Community Service
DVO	Domestic Violence Order
AVO	Apprehended violence order (NSW protection order)
CBO	Community Based Order

CASE MANAGEMENT

IOMS	Integrated Offender Management System
ANCOR	Australian National Child Offender Register
CPOR	Child Protection Offender Registry
IRA	Immediate Risks Assessment (Probation and Parole)
LoS	Level of Service
IRNA	Immediate Risk Needs Assessment (Custodial)
RNA	Rehabilitation Needs Assessment (Custodial)
RPP	Relapse Prevention Plan
BA	Benchmark Assessment (Probation and Parole)
ROR – PPV	Risk of Re-offending - Probation and Parole Version (scored out of 20)
ROR- PV	Risk of Re-offending - Prison Version (scored out of 22)
DSI	Dynamic Supervision Instrument
STATIC-99	Specialised Sex Offender Assessment (Static Risk Factors)
STABLE-2007	Specialised Sex Offender Assessment (Treatment Needs)
ACUTE-2007	Dynamic Risk Assessment for sex offenders
ORP	Offender Rehabilitation Plan (Custodial)
HA or HAR	Home Assessment Report
ARA	Accommodation Risk Assessment (replaces the home assessment)
DoC	Decision on Contravention (Probation and Parole)
SCAL	Sentence Calculations
AOD	Alcohol and Other Drugs



MET	Methamphetamines
AMP	Amphetamines
OPI	Opiates
OXY	Oxycontin
BUP	Buprenorphine (Subutex/Suboxone)
BZO	Benzodiazepine
XTC/MDMA	Ecstasy
BAC	Blood Alcohol Content
UT	Urinalysis test
BT	Breath test
FTP	Fail to provide (drug testing)

PROGRAMS

AODS	Alcohol and Other Drugs Service
UTL	Under The Limit (Drink-Driving Program)
QTOP	Queensland Traffic Offenders Program (Drink-Driving Program)
BIC	Back In Control (AODS program)
MDVEIP	Men's Domestic Violence Education and Intervention Program
GS:PP	Getting Started Preparatory Program (Sex Offender Program)
MISOP	Medium Intensity Sex Offender Program
HISOP	High Intensity Sex Offender Program
SOMP	Sex Offender Maintenance Program
PF	Positive Futures (Indigenous offenders only)
TP	Turning Point
LISI	Low Intensity Substance Intervention
SAMI	Substance Abuse Maintenance Intervention
SSI	Short Substance Intervention
C2C	Challenge to Change (Phase 1 of the Pathways Program)
DUI	Drive Under Influence

COURT

RIC	Remanded in custody (court outcome)
C&F	Convicted and fined (court outcome)
CNFP	Convicted and not further punished (court outcome)
RTPW	Return to prison warrant
PSR	Pre-Sentence Report
CH	Criminal History
TH	Traffic History
QP9s	Queensland Police Form No. 9 (Police Facts)
IJIS	Integrated Justice Information System (notification of reoffending)
QWIC	Queensland Wide Integrated Courts
QPRIME	Queensland Police System



**Ministerial Guidelines to
Parole Board Queensland**

Page 1 of 9





SECTION 1 – GUIDING PRINCIPLES FOR PAROLE BOARD QUEENSLAND

- 1.1 Under section 242E of the *Corrective Services Act 2006* (the Act) the Minister may make guidelines about policies to assist Parole Board Queensland in performing its functions. In following these guidelines, care should be taken to ensure that decisions are made with regard to the merits of the particular prisoner's case.
- 1.2 When considering whether a prisoner should be granted a parole order, the highest priority for Parole Board Queensland should always be the safety of the community.
- 1.3 As noted by Mr Walter Sofronoff QC in the Queensland Parole System Review *'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. The only rationale for parole is to keep the community safe from crime'*. With due regard to this, Parole Board Queensland should consider whether there is an unacceptable risk to the community if the prisoner is released to parole; and whether the risk to the community would be greater if the prisoner does not spend a period of time on parole under supervision prior to the fulltime completion of their prison sentence.

SECTION 2 - SUITABILITY

- 2.1 When deciding the level of risk that a prisoner may pose to the community, Parole Board Queensland should have regard to all relevant factors, including but not limited to, the following—
 - a) the prisoner's criminal history and any patterns of offending;
 - b) the likelihood of the prisoner committing further offences;
 - c) whether there are any other circumstances that are likely to increase the risk the prisoner presents to the community (including any of the factors set out in section 5.1 of these guidelines);
 - d) whether the prisoner has been convicted of a serious sexual offence or serious violent offence or any of the offences listed in section 234 (7) of the of the Act;
 - e) the recommendation for parole, parole eligibility date, or any recommendation or comments of the sentencing court;





- f) the prisoner's cooperation with the authorities both in securing the conviction of others and preservation of good order within prison;
- g) any medical, psychological, behavioural or risk assessment report relevant to the prisoner's application for parole;
- h) any submissions made to Parole Board Queensland by an eligible person registered on the Queensland Corrective Services (QCS) Victims Register;
- i) the prisoner's compliance with any other previous grant of parole or leave of absence;
- j) whether the prisoner has access to supports or services that may reduce the risk the prisoner presents to the community; and
- k) recommended rehabilitation programs or interventions and the prisoner's progress in addressing the recommendations.

2.2 A prisoner is not eligible for parole if under section 8 (1) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA), a court has set down a hearing of an application for a Division 3 Order in relation to the prisoner and the application has not been discontinued or finally decided.

2.3 For serious sexual offenders who are not subject to a DPSOA application at the time of applying for parole, Parole Board Queensland should consider the likelihood of an application being sought in the future, prior to making a decision to grant parole. It is recommended Parole Board Queensland apply the same criteria used by the Attorney-General in these instances.

SECTION 3 – DISCLOSURE

3.1 Parole Board Queensland's decision making is open to review by the Supreme Court of Queensland under the provisions of the *Judicial Review Act 1991*. During the decision making process, when considering which documents should be disclosed to a prisoner, a primary consideration for Parole Board Queensland is ensuring that the prisoner is afforded procedural fairness taking into account the requirements of the *Judicial Review Act 1991*.



- 3.2 At a minimum, the principles of procedural fairness require that the substance of the material or main factors adverse to the prisoner be disclosed (including the proper disclosure of documents to the prisoner which may be relied upon in coming to a decision), and the prisoner be given an opportunity to comment before a decision is made.
- 3.3 In determining how procedural fairness will be achieved, Parole Board Queensland should, where possible, also take account of the following factors:
- (a) Sensitive third party information, including information received in confidence, must not be disclosed to a prisoner where it may place another party at risk, or in instances where the third party has provided a valid reason for requesting that it not be disclosed to the prisoner, unless the information can be disclosed in a non-identifying way;
 - (b) Correspondence from eligible persons as defined by the Act, or victims, must not be released to a prisoner;
 - (c) Raw psychological assessment data, treatment plans, program screening tools and program case notes should not be released in that format. A report interpreting the data is appropriate for release, if available. Some psychological or psychiatric reports may require controlled release, to allow the writer or another qualified person to explain the report findings to the subject of the report;
 - (d) Sensitive intelligence documents that could place the source of the information or the community at risk or jeopardise police or intelligence agency operations should not be released to a prisoner. Guidance on whether intelligence documents, or a summary of the relevant information within the documents, can be released to a prisoner should be sought from the Queensland Police Service and/or QCS intelligence officers; and
 - (e) Legally privileged documents must not be released to a prisoner unless approval has been provided by the writer of the documents for the release.

SECTION 4 – APPEARANCE OF AGENTS BEFORE THE PAROLE BOARD

- 4.1 Parole Board Queensland may grant leave to a prisoner to appear before Parole Board Queensland. Alternatively, Parole Board Queensland may grant leave to a prisoner's





agent to appear and to make representations in support of the prisoner's application for parole.

- 4.2 If a prisoner has been granted leave to appear before Parole Board Queensland and is likely to experience communication or comprehension difficulties due to cultural differences, intellectual or cognitive impairment, or other disabilities, or if a prisoner requests that another person make representations in support of their application for parole, leave may be granted for an agent to appear with the prisoner.
- 4.3 When determining whether the agent nominated by the prisoner is an appropriate person to make representations in support of the prisoner's application, Parole Board Queensland should consider:
- (a) the agent's relationship to the prisoner;
 - (b) the agent's professional qualifications and experience;
 - (c) the agent's membership, if any, of professional bodies that require their members to comply with a code of conduct;
 - (d) if the agent is a public servant, whether they are appearing in their capacity as a public servant or as an individual, and any conflict of interest this entails;
 - (e) fees charged by the agent to assist with the prisoner's parole application and to appear on the prisoner's behalf;
 - (f) whether the agent has any convictions for indictable offences or offences of dishonesty; and
 - (g) whether the agent is currently the subject of disciplinary or criminal proceedings.
- 4.4 Parole Board Queensland should not act solely upon information provided by the agent in relation to the prisoner, or in relation to support available to the prisoner on release, and should confirm such information by reference to other reliable sources, including but not limited to, reports prepared by QCS.





SECTION 5 – PAROLE ORDERS

Release to parole

- 5.1 When considering releasing a prisoner to parole, Parole Board Queensland should have regard to all relevant factors, including but not limited to the following—
- a) Length of time spent in custody during the current period of imprisonment;
 - b) Length of time spent in a low security environment or residential accommodation;
 - c) Any negative institutional behaviour such as assaults and altercations committed against correctional centre staff, and any other behaviour that may pose a risk to the security and good order of a correctional centre or community safety;
 - d) intelligence information received from State and Commonwealth agencies;
 - e) length of time spent undertaking a work order or performing community service;
 - f) any conditions of the parole order intended to enhance supervision of the prisoner and compliance with the order;
 - g) appropriate transitional, residential and release plans; and
 - h) genuine efforts to undertake available rehabilitation opportunities.
- 5.2 Parole Board Queensland should be aware that release onto a parole order may result in certain prisoners being immediately taken into immigration custody or removed from Australia. Before making such an order, Parole Board Queensland should ensure that the Department of Immigration and Border Protection is contacted to confirm its intentions regarding the relevant prisoner's release.
- 5.3 Parole Board Queensland should consider including an electronic monitoring condition in the parole order for any prisoner granted parole, pursuant to section 200 (2) of the Act. That is, a condition requiring the prisoner to comply with a direction by a corrective services officer, including a curfew or monitoring condition, in accordance with section 200A of the Act.
- 5.4 When Parole Board Queensland grants parole to a prisoner who was previously subject to an indefinite sentence for their offence/s, Parole Board Queensland must



refer to Section 174 and Section 174A of the *Penalties and Sentences Act 1992* to determine the period of parole supervision.

- 5.5 When Parole Board Queensland grants parole to a prisoner, particularly sex offenders, other serious violent offenders and prisoners serving a life sentence, careful consideration should be given to the imposition of a requirement that restricts prisoner access to websites, technology, application or tools that enable active and participatory publishing and interaction between the prisoner and individuals over the internet. This may include forums, blogs, wikis, social networking sites, and any other sites that allow prisoners to easily upload and share content.
- 5.6 When Parole Board Queensland grants parole to a prisoner, particularly sex offenders, other serious violent offenders and prisoners serving a life sentence, careful consideration should be given to the imposition of a requirement that restricts prisoner access to any personal introductory system whereby the prisoner can find and contact individuals over the internet (or any other means) to arrange a date, with the objective of developing a personal, romantic, or sexual relationship.

Exceptional circumstances parole

- 5.7 Parole Board Queensland may release a prisoner on parole, if satisfied that exceptional circumstances exist in relation to the prisoner. If parole is granted, in the case of a prisoner claiming exceptional circumstances for serious medical reasons, Parole Board Queensland should first obtain advice from Queensland Health or other approved medical specialists on the seriousness, and management of, the prisoner's medical condition.

SECTION 6 – CONTRAVENTION

Further offending

- 6.1 If a prisoner on a parole order has been charged with a further offence, Parole Board Queensland should consider the suspension of the parole order and seek the prisoner's return to custody until a court determines the charge. Factors relevant to the exercise of any discretion may include the—





- a) seriousness of the alleged offence;
- b) whether the prisoner has been remanded in custody or released to bail;
- c) circumstances surrounding the commission of the alleged offence;
- d) prisoner's personal situation, including employment status;
- e) prisoner's response to supervision to date; and
- f) length of time needed to determine the outcome of the charge.

Failure to comply

6.2 If a prisoner has failed to comply with a condition on their parole order or the parole order has been amended by the chief executive under section 201 of the Act or the chief executive has requested that the parole ordered be suspended under 208A of the Act, Parole Board Queensland should consider whether to amend, suspend or cancel the prisoner's parole order. In considering whether to do so, Parole Board Queensland should take the following into account, the—

- a) reasons for the chief executive's amendment or requested suspension (if applicable);
- b) seriousness and circumstances surrounding the prisoner's failure to comply;
- c) prisoner's home environment;
- d) factors outlined in section 6.1 (d) and (e); and
- e) if the prisoner is close to full time discharge whether the risk to the community would be greater if the prisoner does not remain on parole.

6.3 If Parole Board Queensland decides to amend a parole order, Parole Board Queensland should consider making additional conditions to reduce the risk of reoffending.

Unlawfully at large

6.4 If a prisoner released to a parole order is unlawfully at large, every effort should be made to return the prisoner to custody. Parole Board Queensland should take any necessary steps to facilitate the prisoner's return to secure custody in accordance with Chapter 5, Part 1 of the Act.







- 6.5 If a prisoner on a parole order is unlawfully at large because the parole order has been suspended, Parole Board Queensland should consider cancelling the parole order if the prisoner is not returned to custody within a reasonable period.

Suspension of parole orders

- 6.6 A decision regarding whether or not to cancel a suspended parole order should be made by Parole Board Queensland as soon as practicable after the prisoner has returned to custody.
- 6.7 If Parole Board Queensland considers a prisoner suitable for release to parole, Parole Board Queensland should cancel the suspension of the prisoner's parole order.

Issued at Brisbane in the State of Queensland

on the 3rd day of July 2017 to take effect from 3 July 2017.

Mark Ryan MP
Minister for Police, Fire and Emergency Services and Minister for Corrective Services





Standard Parole Conditions

The Board directs that you be released on parole to the following conditions:

1. You are to be under the Chief Executive's supervision –
 - (a) Until the end of your period of imprisonment; or
 - (b) If you are being detained in an institution for a period fixed by a judge under the Criminal Law Amendment Act 1945, part 3 – for the period you were directed to be detained;
2. You must comply with the conditions included in this order;
3. You must not commit an offence;
4. You must carry out the Chief Executive's, or an authorised corrective services officer's, lawful instructions;
5. You must report to your supervising Probation and Parole Office within two business days after your release unless otherwise directed by the Chief Executive or an authorised corrective services officer;
6. You must report, and receive visits, as directed by an authorised corrective services officer;
7. You must reside at a residence approved by the Board or an authorised corrective services officer;
8. You must not leave Queensland unless permitted to do so by the Board or an authorised corrective services officer;
9. You must notify the Chief Executive, or an authorised corrective services officer, within 48 hours of any change in the prisoner's address or employment during the parole period;
10. You must comply with a direction by an authorised corrective services officer, including a curfew or monitoring condition, in accordance with s200A of the *Corrective Services Act 2006*;
11. You must not unlawfully use or possess any drugs (illegal or prescription);
12. You must give a test sample if required to do so by the Chief Executive, or an authorised corrective services officer, under section 41 of the *Corrective Services Act 2006*;



13. You must attend courses, programs, meetings and counselling at such places and times as directed by an authorised corrective services officer; and
14. In accordance with section 27(1) of the *Corrective Services Act 2006* you must not apply to change your name under the *Births, Deaths and Marriages Registration Act 2003* or via the relevant Registry in the respective State or Territory in which you were born whilst subject to your parole order without written permission from the Chief Executive, Queensland Corrective Services.

Additional Conditions

Addiction

15. You must abstain from alcohol.
16. You must undertake and engage with alcohol and other drug counselling and/or programs if directed to do so. If such a direction is given, you must authorise in writing that your treating health services providers make available to an authorised corrective services officer and/or the Board, a report on your medical and/or other conditions at all reasonable times.
17. You must not gamble and must, if directed by an authorised corrective services officer, seek assistance and/or counselling in controlling your gambling.

Mental Health

18.
 - a. You must authorise in writing that your treating health services providers make available to an authorised corrective services officer and/or the Board, any report relating to your medical and/or other conditions as required.

You must, if directed by an authorised corrective services officer, undergo:

- i) psychological assessment and/or counselling; and/or
 - ii) psychiatric assessment and counselling.
 - b. You must advise an authorised corrective services officer of:
 - i) the name and address of your treating health services providers; and
 - ii) immediately of any changes to the name and/or address of your treating health services provider.
 - c. You must comply with all directions of your health services providers, including treatment and medication.



Finances

19. You must not engage in any activity, paid or unpaid, involving the control of money or assets or other people or organisations without the prior approval of an authorised corrective services officer.

Weapons

20. You must not possess or use any weapons within the meaning of the *Weapons Act 1990*, including firearms and other prescribed weapons whether operable or not.

Victims

21. You must not in any way, directly or indirectly, contact or communicate with [victim and/or victim's family].
22. You must not in any way, directly or indirectly, contact or communicate with [specified person] without the express prior approval of a corrective services officer.

Child Protection

23. You must not be in the company of a person under the age of 16 years unless accompanied by an adult as approved by an authorised corrective service officer, and must not engage in written or electronic communication with any person under the age of 16, other than with those approved by an authorised corrective services officer.
24. That the prisoner shall report any personal or intimate relationship with anyone who has the care, custody or guardianship of a child, to an authorised corrective services officer at the commencement of the relationship.

Internet Access

25. You must comply with any restrictions placed upon you by an authorised corrective services officer and/or the Board that relate to your access to websites, technology, applications or tools that enable active and participatory publishing and interaction between you and individuals over the internet.
26. You must comply with any restrictions placed upon you by an authorised corrective services officer and/or the Board that relate to your access to any personal introductory system whereby you can find and contact individuals over the internet (or by any other means) with the objective of developing a personal, romantic or sexual relationship.

Co-Offenders/Criminal Organisations

27.
 - a. You must not in any way, directly or indirectly, contact or communicate or associate with [co-offender/s name, without the approval of an authorised corrective services officer.



- b. You must not in any way directly or indirectly contact or communicate or associate with members or associates of Criminal Organisations (for example, but not limited to, Outlaw Motorcycle Gangs).

Location

- 28. You must not visit or be within [specify distance] distance from [specify place, suburb or Local Government Area] without the prior approval of an authorised corrective services officer.

Parole to Australian Border Force custody

- 29. You are approved to travel interstate and overseas whilst in the custody of the Australian Border Force;
- 30. If you are released from the custody of the Australian Border Force in a State of Australia other than Queensland, you are approved to remain that State for a period of time no longer than the maximum of time that still enables you to comply with the requirement to report in person to Queensland Probation and Parole within 48 hours of your release; and
- 31. If you return to Australia after being removed, you are to report in person to your nearest Queensland Probation and Parole office within 48 hours.

Domestic Violence Conditions

- 32. You must not commit any act of domestic violence; and/or
 - a. You must attend domestic violence counselling and/or programs as directed by an authorised corrective service officer; and/or
 - b. You must comply with the conditions of any Domestic Violence/Protection Order/Safety Order in which you are named as respondent.



FORMS

Form 29 QUEENSLAND

Corrective Services Act 2006 (s.180)

APPLICATION BY PRISONER FOR PAROLE ORDER

Prisoner: [name of prisoner]

Date of Birth: [insert DOB] **Identification Number:** [insert ID number]

Location: [insert current correctional centre]

I, the above named prisoner, seek to apply for a parole order through application to Parole Board Queensland.

Signature of Prisoner: _____

Date: _____

PERSONAL PARTICULARS

Marital status: [insert marital status]

Address of nominated accommodation: [insert address]

Name of primary resident: [insert primary resident name]

Primary resident telephone: [home number] (Home) [mobile number] (Mobile)

Primary resident email address: [email address]

Relationship to primary resident: [eg. wife, husband, de-facto, friend]

If applicable, advise name and address of future employer: [insert details]

You will be granted the opportunity to discuss your background, offending and behavioural change during interview. An official report and all required documentation will be collated and provided to Parole Board Queensland for deliberation on your behalf. You are not required to provide anything further at this time, however if you wish to prepare for your interview with an authorised Corrective Services Officer, you may complete the available prisoner submission administration form.

Privacy Statement

Queensland Corrective Services is collecting the information on this form so that the Parole Board Queensland may hear and decide a prisoner's application for a parole order under Sections 180, 263 and 341 of the *Corrective Services Act 2006*. Queensland Corrective Services usually gives some or all of this information to the Queensland Police Service or other State, interstate, Commonwealth and international government departments or other entities; to private organisations which provide services to offenders and, in some circumstances, to individuals.





ADVICE TO PAROLE BOARD REPORT



Department of Justice & Attorney-General
Queensland Corrective Services

ADVICE TO PAROLE BOARD REPORT

REPORT DETAILS

Purpose:	
Legislation:	
Has a further offence contributed to this application?	
Intel Note/Report Number (if applicable):	

GENERAL DETAILS

Offender Name:	IOMS ID:	
DOB:	Sentence Date:	
Age:	Parole Release Date:	
Gender:	Order Expiry Date:	
Last Known Address:		
Order type:		
Offences:		
Sentence Length:		
Level of Service:		
RoR Score:		

ISSUE

--

RELEASE BACKGROUND

--

ANALYSIS

--

RECOMMENDED ACTION / STRATEGY

--

Supervising Officer:

Delegate:
Advice to Parole Board Report





PAROLE BOARD ASSESSMENT REPORT

Queensland Corrective Services
Department of Justice & Attorney-General



PAROLE BOARD ASSESSMENT REPORT

REPORT DETAILS

Application Type:		
Date Application Received:		
Parole Board Initial Decision Date:		
*Deferred Matters Final Decision Date:		
Active Prisoner Flags:		
Sentenced to Life:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
DPSOA Referral:	N/A	
Relevant Intelligence Available:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Comments:
Date of Prisoner Interview:		

PRISONER DETAILS

Prisoner Name:	Prisoner DOB:
Age:	Prisoner IOMS ID:
RoR PPV/PV:	Parole Eligibility Date:
Ethnicity:	Full time Discharge Date:
Cultural Liaison Support Offered:	<input type="checkbox"/> Accepted <input type="checkbox"/> Declined <input checked="" type="checkbox"/> Not Applicable
Interpreter Required:	<input type="checkbox"/> Accepted <input type="checkbox"/> Declined <input checked="" type="checkbox"/> Not Applicable/Required
Disability:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Comments:

SUPERVISION BACKGROUND

Parole suspension history

Order	Commencement Date	Suspension Date	Return to Custody	Completion Category	Contravention type

Previous Response to Supervision:

INSTITUTIONAL RESPONSE

Classification and placement – Report only upon change during current custodial episode and within the last 2 years

Date	Classification	Location
Comments:		





Parole Board | Queensland

Queensland Corrective Services
Department of Justice & Attorney-General



Incidents and breaches - Incidents and breaches - Include details that nominate the prisoner within the current episode and within the last 2 years

Date	Description	Perp/Victim	Location	Action Taken
Incident History Synopsis:				

Prisoner safety – Prisoner safety orders only within the current custodial episode and within the last 2 years

Date	Details	Location	Status	End Date
Comments:				

Program/intervention needs –

Program Type	Recommended intervention	Date waitlisted or offered program placement	Status (include completion date)	Equivalent program in the Community?
QCS				
Relapse Prevention Plan Completed:		<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A		
Other				
Comments:				

Employment – Employment records only within the current custodial episode and within the last 2 years

Commenced	Position Details	Reason	Completed





Parole Board | Queensland

Queensland Corrective Services
Department of Justice & Attorney-General



Comments:			

REINTEGRATION

Mental Health & Wellbeing: Sentencing Remarks available for Mental Health & Wellbeing:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Substance Abuse:	
Re-entry to Community:	

RECOMMENDATION & ENDORSEMENT

Summary:		
Parole Recommendation:	<input type="checkbox"/> suitable <input checked="" type="checkbox"/> not suitable	
Suggested Conditions:	Comments:	
Officer Name: Position:	Date:	

RECOMMENDATION ENDORSEMENT:

Recommendation Endorsed:	<input checked="" type="checkbox"/> I endorse the recommendations made in this application <input type="checkbox"/> I do NOT endorse the recommendations made in this application	
Comments:		
Authorised Delegate: Position:	Date:	





SHOW CAUSE RESPONSE

Parole Board Queensland	
Prisoner Submission to the Board	
Version: 1.0	Implementation date:
Availability: Public	

This form can be used to provide information you wish the Board to know regarding your:

- Suspension;
- Cancellation.

You can complete this form with dot points or sentences

This form will be provided to the Board for consideration.

Prisoner name:	
Prisoner ID:	
Centre:	

Background	<i>Talk about yourself</i>
Criminal Behaviours: Talk about your offences and explain your version of events. You should also consider how your crime affected your victim/s and friends/family.	
Substance Abuse: Do you have a problem with drugs or alcohol? If yes, how are drugs and/or alcohol linked to your offending?	
Mental Health & Wellbeing: Does disability, mental	



health or illness have anything to do with your offending?

Future Plans	What is your plan when you get out of custody?
Relationships and Community Support: Who will support and help you in the community? Why are they important to you? Support people may include friends, family, children, doctors, case workers, psychologists or counsellors.	
Accommodation: What are your accommodation plans for the future? Include where you would like to live and who you might live with.	
Key Risks: What things might increase your risk of getting in trouble after you leave prison?	
Get Back on Track: What's your plan to get back on track? How will you avoid old habits?	





Accommodation Risk Assessment

ACCOMMODATION RISK ASSESSMENT			Admin Form
Version:1.2	Implement date: 23/08/2018	Availability: Public	

Offender's Full Name:		Referred by:	
IOMS ID:		Date requested:	
Proposed address:			
Co-occupant/s name/s:		Relationship/s:	

CRITERIA		
A	Does the offender have a Victims Register flag raised on IOMS where the proposed address is identified as a concern to the victim or nominee?	Yes <input type="checkbox"/> No <input type="checkbox"/>
B	Are there <i>specific</i> Intel concerns <i>directly relating</i> to the offender living at the proposed address?	Yes <input type="checkbox"/> No <input type="checkbox"/> Intel Number:
C	Is there a court order, parole condition or instruction that prevents the offender from returning to a particular address?	Yes <input type="checkbox"/> No <input type="checkbox"/>
*If any of the above criteria are answered with a YES – the accommodation is to be deemed unsuitable and no further assessment is required.		
D	Does the offender's release to the identified address pose a serious and/or immediate harm to someone else? This includes consideration for Domestic and Family Violence profiles.	Yes <input type="checkbox"/> No <input type="checkbox"/>
E	Is the offender convicted of a current or historical sexual offence OR are subject to the Australian National Child Offender Register?	Yes <input type="checkbox"/> No <input type="checkbox"/>
F	Is the offender a declared serious violent offender (current sentence)?	Yes <input type="checkbox"/> No <input type="checkbox"/>
G	Is the offender serving a Life sentence?	Yes <input type="checkbox"/> No <input type="checkbox"/>
*If any of criteria D E, F and G are endorsed with YES – further assessment must be undertaken using this form. If the answer is NO to all criteria, the accommodation can be deemed suitable.		



RISK PROFILE

Criteria assessed:

Link between identified criteria and accommodation risk:

PROPOSED MITIGATIONS / CASE MANAGEMENT RECOMMENDATIONS

If any concerns have been identified, please provide a simple statement as to how this can be managed / mitigated within the community

Decision

Based on the information assessed, the address is deemed:

Suitable ☐

Not Suitable ☐

Name of Officer:

Signature:

Date:

Name of
Supervisor/District
Manager:



Parole Board | Queensland

Signature:

Date:

