

Queensland Sentencing Advisory Council

Parole Board Queensland Submission
31 May 2019



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**Queensland
Government**



Establishment of Parole Board Queensland

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

The explanatory notes for the Act stated:

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

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

*"The only purpose of parole is to reintegrate a prisoner into the community before the end of a prison sentence to decrease the chance that the prisoner will ever reoffend. Its only rationale is to keep the community safe from crime. If it were safer, in terms of likely reoffending, for prisoners to serve the whole sentence in prison, then there would be no parole. It must be remembered also that parole is just a matter of timing; except for those who are sentenced to life imprisonment, every prisoner will have to be released eventually."*ⁱⁱ

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

*"The most recent research suggests that paroled prisoners are less likely to re-offend than prisoners released without parole."*ⁱⁱⁱ

...

"In truth, it (parole) is nothing more than a method that has been developed in an attempt to prevent reoffending. It works to achieve that purpose to a degree; like the criminal justice system itself, it will never fully achieve the goal of eradicating



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

Meetings to decide parole matters

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

Six meetings per week are held to consider:

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

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

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

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

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



Suspension of a parole order

The power to suspend, amend or cancel a parole order now vests solely with the Board.^{vi}

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

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

Recommendation No. 78

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

Recommendation No. 79

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

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

Recommendation No. 80

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



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

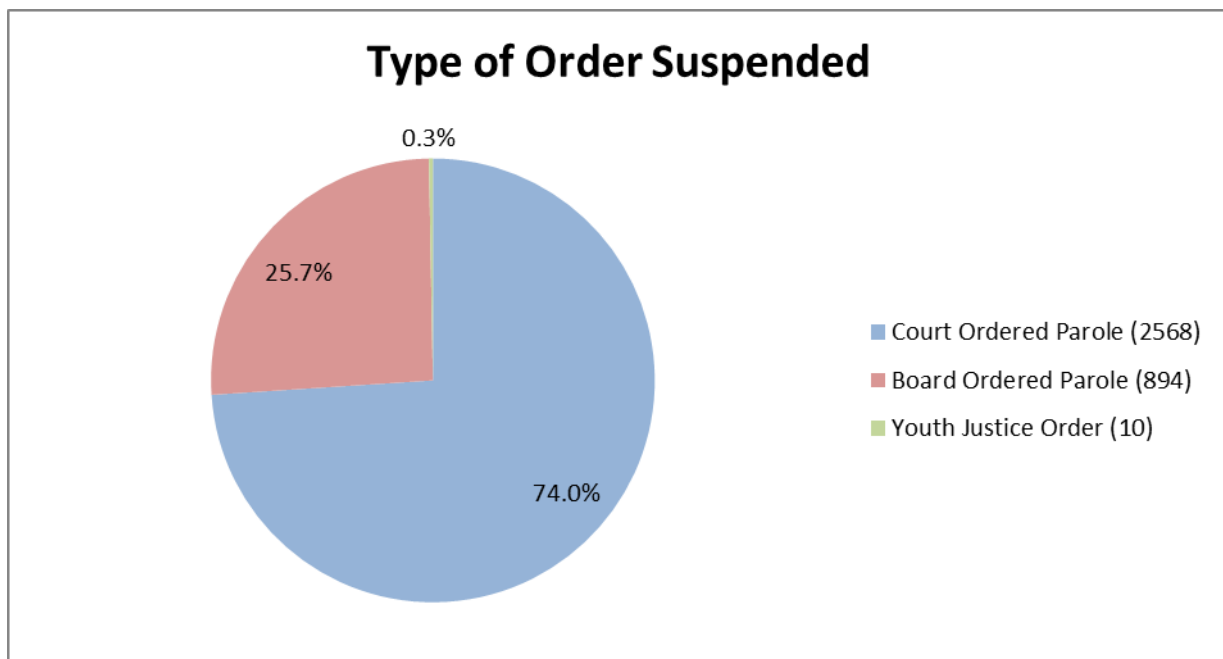
The aforementioned recommendations are accurately reflected in Chapter 5 – Subdivision 2A of the CSA – Requests for immediate suspension.

Meetings to confirm or set aside a decision to suspend parole

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

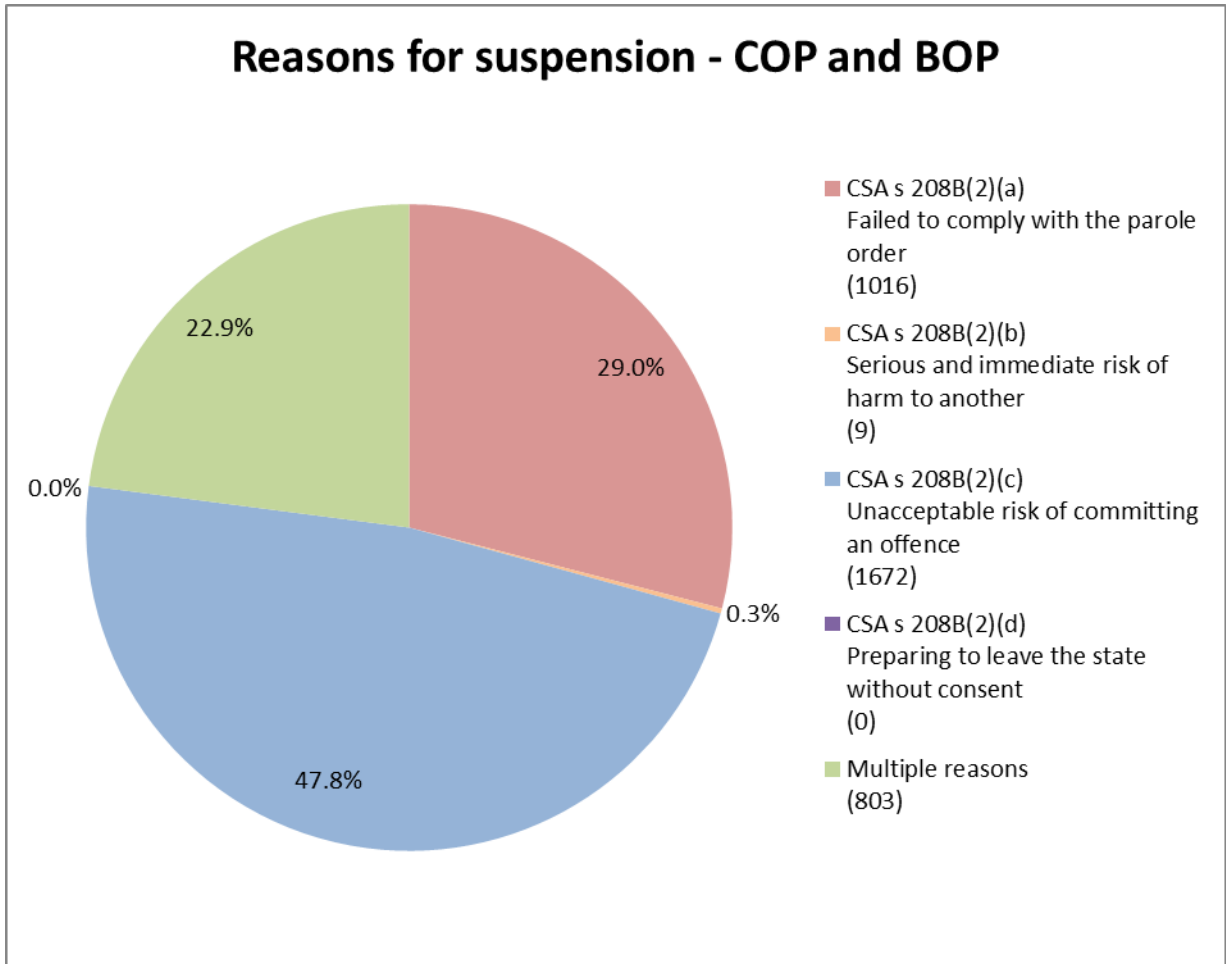
In the financial year 2017/2018 the Board confirmed the suspension of **3,491** parole orders. In the financial year 2018/2019^{viii} the Board confirmed the suspension of **3,472** parole orders.

A breakdown of the 2018/2019 Board confirmed suspensions^{ix}





Reasons for suspension - COP and BOP



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

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



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

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

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

"...The high number of parole suspensions is having a significant impact on Queensland's prisoner population and it destabilises the lives of many offenders. That increases, rather than reduces, the risk to the community presented by those offenders.

A period of imprisonment on suspension can be expected to cause serious disruption to any progress that an offender makes in the community on parole, isolating the offender from family and friends, destroying employment and housing arrangements, and separating the offender from rehabilitation service providers. When the offender is released back into the community it is likely that he or she will be in a worse position than before the suspension and the risks of the offender lapsing back into further offending behaviour, (particularly because of unaddressed drug addictions and/or mental health issues) may be intensified..."

Community based sentencing orders, imprisonment and parole options

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



The Board confirms the three options for reform to court ordered parole as identified by the Council as being:^{xv}

- Option 1: Retain court ordered parole in its current form, with no changes to eligibility criteria or the circumstances in which a parole release date can be set.
- Option 2: Reform court ordered parole by increasing the current three year cap (retaining other criteria, but applying the same principles to sexual offences) by giving courts discretion to set either a parole release or eligibility date in one of the following three circumstances (which are intended to be alternatives):
- a) for sentences over three-year cap, if appropriate release date is no more than 12 months from date of sentence (QPSR Recommendation No. 3)
 - b) for sentences of over three years, and up to five years; or
 - c) for all sentences up to five years (aligning with suspended sentence regime).
- Option 3: Removing the cap of the setting of a parole release date altogether, giving courts full discretion to set either a parole release or a parole eligibility date, and extending this discretion to all offences, other than serious violent offences, offences for which a life sentence is imposed, or other offences or circumstances which are expressly excluded (such as through the operation of mandatory sentencing provisions).

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

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

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

The Board shares the Council's concerns:

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

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

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

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

1. If the parolee adheres to the requirements of their parole order and completes their sentence without contravening order conditions;
2. If the parolee contravenes order conditions however a decision is made by the delegate to issue an administrative warning, and the parolee then reaches their full time release date;
3. If the parolee contravenes order conditions however a decision is made by the delegate to take no action in response, and the parolee then reaches their full time release date;

4. Upon a parolee's interstate parole order being registered in Queensland, or upon a Queensland parole order being registered interstate;
5. If a parolee is deported from Australia by the Department of Home Affairs prior to the expiration of the parole order;
6. If a parolee appeals their sentence and the outcome of the appeal results in the parole order no longer being in force;
7. If the death of a parolee occurs prior to the expiration of the parole order; or
8. If a parole order is reinstated. Specifically this category currently relates to when a parolee is returned to custody following suspension of the parole order however is released back to the community prior to the expiration of the parole order AND, if a parolee is returned to custody following suspension of the parole order however remains in custody at the expiry of the parole order under order suspension.

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

- Being arrested and convicted for further offences committed interstate during the operational period of the parole order, due to the prisoner having their parole order registered interstate (as per point 4, above);
- Being arrested and convicted for further offences committed overseas during the operational period of the parole order, due to the prisoner having been deported from Australia (as per point 5, above);
- A prisoner dies at the commencement of the parole order or at any time during the parole order (as per point 7, above); and
- A prisoner has their parole order suspended and is returned to custody as a consequence of being charged with further offences. However, those further



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offences are not finalised prior to the expiry of the parole order (as per point 8, above).

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

Case No 1.

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

Case No 2.

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

Case No 3.

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

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

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

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



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

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

- i. recommend an independent inquiry into the recorded data currently administratively recorded by Corrective Services on whether a prisoner has successfully completed a parole order;
- ii. recommend that a new simplified definition of whether a prisoner has successfully completed a parole order is adopted and utilised;^{xviii}
- iii. recommend that after a suitable period of time the new data referred to above is subject to critical analysis which forms the basis of a further inquiry into the reform of court ordered parole.

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



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

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

ⁱⁱⁱ Ibid at [7].

^{iv} Ibid at [8].

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

^{vi} Section 205 of the *Corrective Services Act 2006*.

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

^{viii} Up to and including 19 May 2019

^{ix} The Board does not hold the breakdown data for the Board confirmed suspensions in the financial year 2017/2018.

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

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

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

^{xiii} Queensland Sentencing Advisory Council, April 2019.

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

^{xv} QSAC, Community based sentencing orders, imprisonment and parole – Options Paper, April 2019 at p.267.

^{xvi} QSAC, Community based sentencing orders, imprisonment and parole – Options Paper, April 2019 at p.268.

^{xvii} *Corrective Services, Probation and Parole Operational Practice Guidelines*.

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