



Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017

**Report No. 53, 55th Parliament
Legal Affairs and Community Safety
Committee
APRIL 2017**

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Legal Affairs and Community Safety Committee

April 2017

Legal Affairs and Community Safety Committee

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Abbreviations

The Act	<i>Corrective Services Act 2006</i>
The Bar Association	The Bar Association of Queensland
The Bill	Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017
The chief executive	The chief executive officer of Queensland Corrective Services
The department	Department of Justice and Attorney-General
FLPs	fundamental legislative principles
GCCASV	Gold Coast Centre Against Sexual Violence
GPS	Global Positioning System
JR Act	<i>Judicial Review Act 1991</i>
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
LSA	<i>Legislative Standards Act 1992</i>
The Minister	The Minister for Police, Fire and Emergency Services and Minister for Corrective Services
OPCAT	The Optional Protocol to the Convention Against Torture
The parole review report	The independent review of Queensland's parole system, led by Mr Walter Sofronoff QC
PBQ	Parole Board Queensland
Penalties and Sentences Act	<i>Penalties and Sentences Act 1992</i>
POQA	<i>Parliament of Queensland Act 2001</i>
QAI	Queensland Advocacy Incorporated
QCS	Queensland Corrective Services
QLS	Queensland Law Society
QHVSG	Queensland Homicide Victims' Support Group
secretariat	Parole Board Queensland Secretariat

ToR	Terms of reference
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All Acts are Queensland Acts unless specified.

Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee recommends that the Bill be passed.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the Bill. I also thank the committee secretariat and the Department of Justice and Attorney-General.

I commend this report to the House.

A handwritten signature in blue ink, reading "D. Pegg". The signature is written in a cursive, flowing style.

Duncan Pegg MP

Chair

Recommendations

Recommendation 1

1

The committee recommends the Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017 be passed.

1. Introduction

1.1 Role of committee

The Legal Affairs and Community Safety Committee is a portfolio committee of the Legislative Assembly. The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Training and Skills
- Police, Fire and Emergency Services, and
- Corrective Services.¹

A portfolio committee is responsible for examining each bill in its portfolio areas to consider the:

- policy to be given effect by the legislation, and
- application of fundamental legislative principles.²

1.2 Inquiry process

The Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017 (the Bill) was introduced by the Minister for Police, Fire and Emergency Services and Minister for Corrective Services, the Hon Mark Ryan MP, on 16 February 2017. The Bill was referred to the committee for detailed consideration, with the committee to report by 28 April 2017.

The committee invited written submissions from stakeholders by 9 March 2017 and received four submissions, listed at **Appendix A**.

The committee received a written briefing on the Bill from the Department of Justice and Attorney-General (the department). The department provided an oral briefing at the committee's public briefing on 1 March 2017. **Appendix B** lists witnesses that appeared at the public briefing.

The committee also heard from witnesses invited to give evidence and respond to questions on the Bill at a public hearing on 29 March 2017. **Appendix C** lists witnesses that appeared at the public hearing.

1.3 Outcome of committee consideration

Standing Order 132(1) requires the committee to determine whether to recommend the Bill be passed.

After its examination of the Bill and consideration of the information provided, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017 be passed.

1.4 Policy objectives of Bill

1.4.1 Background

In July 2016, a paroled prisoner allegedly murdered an 81-year-old woman. Responding to community disquiet and concern regarding the adequacy of the parole system to protect Queenslanders, on

¹ *Parliament of Queensland Act 2001*, section 88 and Legislative Assembly of Queensland, Standing Rules and Orders of the Legislative Assembly, Standing Order 194, Schedule 6.

² *Parliament of Queensland Act 2001*, section 93(1).

9 August 2016 the Government announced an independent review (the parole review) of Queensland's parole system, to be undertaken by Mr Walter Sofronoff QC.³

Review of Queensland's parole system

The parole review's terms of reference (ToR) stated the Government's commitment to a corrective services system that delivers community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders. The ToR required Mr Sofronoff QC to review the:

- effectiveness of the parole boards' current operations including decision making, structure and membership
- transparency of parole board decision making
- adequacy of existing accountability mechanisms for the parole boards and the parole system generally, and other mechanisms that ensure parole board decisions appropriately address risk to the community and victims, particularly women, and successful offender re-integration, including consideration of the independent Inspectorate recommended in the Callinan Review of the Victorian parole system⁴
- factors that would increase offenders' successful completion of parole and reintegration into the community and enhance community safety including, in particular:
 - effective supervision, management and monitoring
 - the availability and effectiveness of programs, services and interventions including for mental health disorders and drug and/or alcohol abuse
- effectiveness of the legislative framework for parole, including court ordered parole, in Queensland.⁵

In conducting the review, Mr Sofronoff QC was to:

- examine and have regard to best practice in parole systems operating in other Australasian jurisdictions, particularly regarding effective ways to manage risk when releasing a person on parole, and
- seek input from relevant experts, including those with knowledge and experience of the criminal justice system, organisations working with offenders, victims' organisations, and academic researchers.⁶

Parole review findings

The Queensland Parole System Review: Final Report (parole review report) identified systemic inefficiencies in the operation of the three existing parole boards and found substantial room for improvement in the parole system.⁷

The parole review report found that the decision-making of the three boards appeared to be unstructured and not always approached by the whole board on an informed basis, and that material provided to the parole boards before meetings was often long, unstructured, and compiled without

³ Explanatory notes, p 1.

⁴ In May 2013, the Victorian Government commissioned former High Court Justice Ian Callinan AC to carry out a review of the Adult Parole Board's operations (the Callinan Review). The Callinan Review made a number of recommendations to improve the operation of the parole system in Victoria.

⁵ Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, p x.

⁶ Ibid.

⁷ Explanatory notes, p 2.

careful consideration as to what information was necessary for the board to make its decisions.⁸ The parole review also highlighted the lack of full-time board members as a deficiency of the regime.⁹

Parole review recommendations

On 1 December 2016, Mr Sofronoff QC delivered his report to the Government, making 91 recommendations covering nine broad categories:

- legislative framework and sentencing
- assessment and management of offenders
- rehabilitation programs, mental health and substance misuse treatment
- re-entry services
- the parole board
- management of offenders in the community
- victims and other matters of importance to parole
- independent prison and parole inspectorates, and
- technology and infrastructure.¹⁰

Government response to the parole review

On 16 February 2017, the Honourable Anastacia Palaszczuk MP, the Premier and Minister for the Arts, tabled the parole review report in the Legislative Assembly,¹¹ as well as the Government's response to the report.¹²

The Government's response to the review supports, or supports in-principle, 89 of the 91 recommendations. The Bill proposes to implement parole review report recommendations 35 – 61, regarding the establishment of a new parole board system and the Global Positioning System (GPS) monitoring of parolees.¹³ The Government views implementation of these recommendations as a priority.¹⁴

1.4.2 Objectives of the Bill

The primary objective of the Bill is to amend the *Corrective Services Act 2006* (the Act) to establish the Parole Board Queensland (PBQ).

The Bill also proposes to make technical and clarifying amendments to the Act to facilitate the electronic monitoring of people released on court-ordered or board-ordered parole. It also proposes to amend the *Judges (Pensions and Long Leave) Act 1957*, the *Parole Orders (Transfer) Act 1984*, the *Criminal Law Amendment Act 1945*, the *Criminal Law (Rehabilitation of Offenders) Act 1986* and the *Penalties and Sentences Act 1992* (Penalties and Sentences Act).¹⁵

⁸ Hon M Ryan MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services, Queensland Parliament, Record of Proceedings, 16 February 2017, p 219.

⁹ Department of Justice and Attorney-General, briefing note, p 1.

¹⁰ Explanatory notes, pp 1 – 2.

¹¹ Explanatory notes, p 2.

¹² Queensland Department of Justice and Attorney-General, *Response to Queensland Parole System Review Recommendations*, February 2017.

¹³ Explanatory notes, p 2.

¹⁴ Department of Justice and Attorney-General, briefing note, p 1.

¹⁵ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, schedule 1.

1.4.3 Consultation on the Bill

The explanatory notes state Mr Sofronoff QC consulted with many people at all levels of the corrections and parole system, attended several meetings of the boards in Queensland and reviewed many recent parole board files. Mr Sofronoff QC also interviewed current and former members of parole boards in Queensland and spoke with researchers and clinicians with experience in actuarial risk assessment and offender treatment and management.

Mr Sofronoff QC received submissions regarding the operation of Queensland's parole boards from stakeholders with a range of experiences with the parole system. Mr Sofronoff QC also compared jurisdictions, which included attending sittings of the Victorian Adult Parole Board and the New South Wales Parole Authority.¹⁶

1.5 The purpose of parole

As noted by the parole review report, parole is the discretionary early release of a prisoner from custody and is a component of a sentence of imprisonment. All offenders on parole are still serving their sentence – they are simply serving a portion of the term of imprisonment in the community.¹⁷ The principal reasons for parole are to:

- reduce reoffending by:
 - providing an incentive for prisoners to participate in programs in custody
 - supporting an offender's reintegration into the community, and
 - managing serious offenders more intensely.
- reduce the social and financial costs of severe sentences in appropriate cases. Parole allows expensive prison space to be allocated to the highest-risk offenders.¹⁸

The parole review report noted that the evidence suggested that:

*... parole has a beneficial impact on recidivism, at least in the short term. Although its effect upon recidivism may be modest the parole system is in the interest of the community and should be retained.*¹⁹

1.5.1 How parole is granted

In Queensland, parole orders are made by the:

- court at the time of sentencing (court-ordered parole), or
- parole board during the sentence period (board-ordered parole).

Whether an offender is released on court-ordered or board-ordered parole depends upon the type of offence and the length of the term of imprisonment imposed. Offenders sentenced to a term of imprisonment of three years or less for offences that do not include a serious violent offence or a sexual offence are released on parole on a date fixed by the court. The court must fix the date for release in these circumstances, and may fix any day of the sentence as the release date. The chief executive is required to issue the parole order for an offender in accordance with the date fixed by the court for release on parole.

When sentencing an offender to a term of imprisonment of more than three years or for a serious violent offence or a sexual offence, the court may fix the date the offender is eligible for release on

¹⁶ Explanatory notes, pp 6 – 7.

¹⁷ Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, p 71.

¹⁸ Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, p 37.

¹⁹ Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, p 38.

parole. If the court does not fix a date that the offender is eligible for parole, the offender becomes eligible for parole after serving half of their sentence.

If an offender is sentenced to a further term of imprisonment while serving a sentence of imprisonment, a new parole eligibility date is set, replacing the parole eligibility date under the previous sentence.

Offenders serving a term of imprisonment with a parole eligibility date must apply to the parole board for release onto a parole order. The parole board must then hear and decide whether the offender will be released on parole and if so, on what conditions. The parole board may grant a parole order to release an offender on parole on any date after the parole eligibility date.

Currently, any order for court-ordered parole is limited to the standard conditions contained in section 200 of the *Corrective Services Act 2006*, which requires the offender to:

- be under the chief executive's supervision
- carry out the chief executive's lawful instructions
- give a test sample if required to do so by the chief executive
- report, and receive visits, as directed by the chief executive
- notify the chief executive within 48 hours of any change in the prisoner's address or employment during the parole period, and
- not commit an offence.

A board-ordered parole may also contain conditions the board considers reasonably necessary to ensure the prisoner's good conduct or to stop the prisoner committing an offence, such as conditions about the prisoner's place of residence, employment or participation in a particular program and a curfew for the prisoner.²⁰

²⁰ Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, pp 71 – 72.

2. Examination of the Bill

This section provides an overview of the committee's considerations and analysis of the main issues raised and considered.

2.1 Establishment of the Parole Board Queensland

Currently, there are three parole boards in Queensland – the Queensland Parole Board and two regional parole boards. The Queensland Parole Board decides applications for parole from prisoners sentenced to a period of imprisonment of eight or more years, or who have been declared to be convicted of a Serious Violent Offence under Part 9A of the *Penalties and Sentences Act 1992*.

The regional parole boards, the Central and Northern Queensland Regional Parole Board and the Southern Queensland Regional Parole Board, decide applications for parole orders from all other prisoners.²¹

Consistent with recommendation 35 of the parole review report,²² the Bill proposes to replace Queensland's three parole boards with a single board responsible for all decision-making regarding parole in Queensland – the Parole Board Queensland (PBQ).²³ The PBQ would be based in Brisbane.²⁴

On commencement of the Bill, the existing parole boards would be dissolved and the members of the existing boards will leave office.²⁵ Arrangements would be in place to make the transition from the three existing parole boards to the PBQ.²⁶ These arrangements are discussed in more detail in section 2.1.13.

Submitters' views

Queensland Law Society (QLS), Sisters Inside Inc and Gold Coast Centre Against Sexual Violence (GCCASV) were in favour of establishing the PBQ. Sisters Inside Inc supported the establishment of a 'new, professionalised and well-resourced Parole Board'.²⁷ GCCASV stated that a:

*... single modernised Parole Board in Queensland will be more efficient, will provide more consistency and has the potential to lower risk to the community and enhance community safety.*²⁸

2.1.1 Functions and powers of the Parole Board Queensland

The PBQ's functions would be to:

- decide applications for parole orders, other than court-ordered parole orders, and
- perform other functions given to it under the Bill or another Act.²⁹

The PBQ would have the power to do anything necessary or convenient to be done in performing its functions under the Bill or another Act.³⁰ It would be an independent entity, and be able to conduct its business as it sees appropriate.³¹

²¹ Explanatory notes, p 2.

²² Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, p 27.

²³ Explanatory notes, p 3; Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

²⁴ Department of Justice and Attorney-General, briefing note, p 2.

²⁵ Explanatory notes, p 3.

²⁶ Explanatory notes, p 5.

²⁷ Submission 4, p 1.

²⁸ Gold Coast Centre Against Sexual Violence, submission 3, p 3.

²⁹ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

³⁰ Ibid.

³¹ Explanatory notes, p 3; Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

2.1.2 Leadership of the Parole Board Queensland

A full-time president and at least one full-time deputy president would lead the PBQ.³² The president must:

- be a former judge of a State court, the High Court or a court constituted under a Commonwealth Act, or
- have qualifications, experience or standing the Governor in Council considers equivalent to an office mentioned above.³³

Each deputy president must:

- be a former judge of a State court, the High Court or a court constituted under a Commonwealth Act
- be a former magistrate, or
- have qualifications, experience or standing the Governor in Council considers equivalent to an office mentioned above.³⁴

2.1.3 Board membership

In addition to the president and at least one deputy president, the board would consist of:

- at least two professional members with qualifications relevant to the parole board's functions³⁵
- at least one police officer to be nominated by the commissioner
- at least one public service officer, nominated by the chief executive officer of Queensland Corrective Services (the chief executive), with expertise or experience in probation and parole matters, and
- community board members.³⁶

The department advised that the number of board members cannot be predicted at this stage, and may change over time depending on workload.³⁷

2.1.4 Appointment to the board

The Governor in Council appoints the following members, on recommendation from the Minister:

- the president
- deputy president(s)
- professional board members, and
- community board members.³⁸

When recommending a person to the Governor in Council for appointment, the Minister must:

- be satisfied the person is appropriately qualified, and

³² Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, p 27; Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

³³ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

³⁴ Ibid.

³⁵ Including, for example, a legal or medical qualification.

³⁶ The Minister for the parole board will decide the required number of community board members.

³⁷ Department of Justice and Attorney-General, correspondence dated 9 March 2017, p 3.

³⁸ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

- consult with the parliamentary committee about the proposed appointment of a president or a deputy president.³⁹

When recommending a person to the Governor in Council for appointment as a community board member or professional board member, the Minister must:

- consult with the president about the proposed appointment, and
- have regard to ensuring the parole board represents the diversity of the community.⁴⁰

The Minister must also have regard to ensuring the board has:

- balanced gender representation, and
- representation of Aboriginal people and Torres Strait Islanders.⁴¹

The Governor in Council does not appoint the police officer and public service officer as board members, in contrast to the other members.

Appointed board members, other than community board members, must be full-time appointees.

Submitters' views

QLS agreed with the proposed membership of the PBQ,⁴² as did GCCASV, who noted that a '[r]ange of professional backgrounds and both gender and cultural diversity needs to be reflected in the membership of the Parole Board.'⁴³

GCCASV highlighted the need for careful vetting of potential board members, to ensure all candidates hold the necessary qualifications.⁴⁴

Queensland Advocacy Incorporated (QAI) supported the proposal for board members to have relevant professional expertise. It also suggested that the board include a person with expertise in the areas of disability and mental health or a person with lived experience of disability.⁴⁵

Sisters Inside Inc suggested that as well as gender and Aboriginal and Torres Strait Islander representation on the PBQ, the Minister should also have regard to the representation of members from regional and remote communities on the parole board, to ensure 'the Parole Board maintains localised knowledge and expertise from across the State'.⁴⁶

Sisters Inside Inc acknowledged that one board member could represent more than one group, stating '[y]ou could find a person who lives in the rural community who has an understanding or experience of disability. We come in many forms with many experiences, not just one.'⁴⁷

The department's response

Regarding QAI's suggestion that the board should include a person with expertise in the areas of disability and mental health, and Sisters Inside Inc's suggestion that the board should include regional representation, the department noted that the parole review report raised the desirability of having community members that reflect Queensland's diverse population. The department advised that it could be impractical for the Bill to require that certain backgrounds be represented.

³⁹ This does not apply to the reappointment of a person as the president or a deputy president.

⁴⁰ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

⁴¹ Ibid.

⁴² Mr Potts, public hearing transcript, Brisbane, 29 March 2017, p 10.

⁴³ Gold Coast Centre Against Sexual Violence, submission 3, p 3.

⁴⁴ Ibid.

⁴⁵ Queensland Advocacy Incorporated, submission 2, p 3.

⁴⁶ Sisters Inside Inc, submission 4, p 2.

⁴⁷ Ms Kilroy, public hearing transcript, Brisbane, 29 March 2017, p 3.

The department stated that the Bill shows the Government's intention to ensure that the PBQ is comprised of people from diverse backgrounds and with relevant expertise.⁴⁸

Committee comment

The committee notes submitters' suggestions that the PBQ should be comprised of people from diverse backgrounds, including those from regional and remote communities and those with disability. The committee considers that diversity of representation on the PBQ could enhance decision-making and ensure it best represents the interests of the prison population and broader community.

2.1.5 Length of appointments

President and deputy president

The president and deputy president would be employed on a term of up to five years and could be reappointed to their roles provided no term of appointment is longer than five years and a person does not hold the role for a total of more than 10 years.⁴⁹

Other members

Other appointed board members – the professional and community members – would be appointed for up to three years. The police and public service representatives would be permanent board members.⁵⁰

2.1.6 The Parole Board Queensland's meetings

Board meeting procedures

The PBQ must meet as often as is needed to perform its functions. The president may call a board meeting, or in the president's absence, a deputy president may do so. The president presides at all meetings they attend. The deputy president presides if the president cannot attend – if there is more than one deputy president, the president chooses which deputy president should preside. Three members must be present at a meeting for there to be a quorum.⁵¹ Members do not need to attend meetings in person – the Bill allows for them to attend via a contemporaneous communication link.⁵²

If necessary, a question at a PBQ meeting must be decided by a majority of votes of the board members present. If votes are equal, the presiding member has a casting vote.⁵³

Board meetings to consider granting or varying a parole order

The PBQ's key role is to meet to consider:

- a prisoner's application for a parole order, or
- amending, suspending or cancelling a prisoner's parole order.

The Bill distinguishes between meetings held for prescribed prisoners and meetings held for all other prisoners. A prescribed prisoner is defined as being:

- imprisoned for a serious violent offence⁵⁴ or a serious sexual offence⁵⁵

⁴⁸ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, attachment, pp 2 & 6.

⁴⁹ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ As defined under the Act.

⁵⁵ Defined in the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

- imprisoned for an offence committed with the Serious Organised Crime circumstance of aggravation (under s 161Q of the Penalties and Sentences Act), or
- mentioned in s 181,⁵⁶ s 181A,⁵⁷ s 182A,⁵⁸ s 183⁵⁹ or s 185B⁶⁰ of the Act.⁶¹

The PBQ could only consider a prescribed prisoner's parole order application or to amend, suspend or cancel a prescribed prisoner's parole order if all of the following members were at the meeting:

- the president or a deputy president
- a professional board member
- a community board member
- a public service representative, and
- a police representative.⁶²

For other prisoners, a professional board member, a community board member and at least one other board member must be at the meeting.⁶³

Submitters' views

GCCASV supported the proposed board composition for prescribed prisoners, as 'serious violent offenders and serious sexual offenders pose the most serious risk to the community'.⁶⁴

GCCASV suggested that strangulation should be a serious violent offence, stating it is one of the most lethal forms of domestic violence and may be an attempted homicide as well as a serious assault. GCCASV submitted that non-fatal strangulation is an important risk factor for female homicide, as research shows that women who have previously been strangled by their partners are over seven times more likely to be killed by their partner than women who have not been strangled.⁶⁵

QAI stated that the PBQ must be provided with all of the information relevant to a person's disability and their needs before it can reach a decision. QAI highlighted the importance of providing assistance to people with disability in preparing their parole applications, when appearing before the PBQ and during the parole application process.⁶⁶

The department's response

Regarding GCCASV's suggestion that strangulation should be considered a serious violent offence, the department advised that it would consider whether the offence of strangulation pursuant to s 315A Criminal Code should be included among those offences that require consideration by the PBQ sitting as a minimum of five members.

⁵⁶ Parole eligibility date for prisoner serving term of imprisonment for life.

⁵⁷ Parole eligibility date for prisoner serving term of imprisonment for life for a repeat serious child sex offence.

⁵⁸ Parole eligibility date for prisoner serving term of imprisonment for other particular serious offences.

⁵⁹ Parole eligibility date for prisoner detained for a period directed by a judge under Part 3 of the Criminal Law Amendment Act 1945.

⁶⁰ Parole eligibility date for prisoners serving term of imprisonment for an offence against s 50, s 50B or s 60 of the *Weapons Act 1990*.

⁶¹ Explanatory notes, pp 4 – 5.

⁶² Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

⁶³ Ibid.

⁶⁴ Gold Coast Centre Against Sexual Violence, submission 3, p 3.

⁶⁵ Ibid.

⁶⁶ Queensland Advocacy Incorporated, submission 2, p 4.

The department advised that the offences under the serious violent offences schedule in the Penalties and Sentences Act are a wider policy consideration beyond the scope of this Bill.⁶⁷

In response to QAI's comment that the PBQ must be provided with all of the information relevant to a person's disability and their needs before it can reach a decision, the department highlighted that Queensland Corrective Services (QCS) can provide information on a prisoner's disability in the parole application and parole report.

The department noted that, as per recommendations 12 and 14 of the parole review report, QCS will review and enhance the parole application process to ensure the PBQ has the necessary information available to aid its decision-making.⁶⁸

2.1.7 Review of the PBQ's decisions

Currently, decisions of the two regional parole boards may be the subject of an internal review by the Queensland Parole Board.

Under the Act, a prisoner can apply to have the Queensland Parole Board review a regional board's refusal of a prisoner's most recent application for a parole order. The application must be received by the secretary of the Queensland Parole Board within seven days after the applicant received the regional board's written notice of the refusal.⁶⁹ The Queensland Parole Board has the power to confirm the decision of the regional board, or to set aside the decision and make any decision the regional board could have made.⁷⁰

If the president of the Queensland Parole Board took part in the regional board meeting at which the most recent parole application was refused, it must not take part in the review.⁷¹

The Bill does not allow for such a review procedure, because:

- there would only be one parole board, and
- decisions about objectively more serious prisoners must be made by the PBQ sitting with at least five members and presided over by the president or deputy president.

Submitters' views

QLS considered that the internal review mechanisms of the present system should be maintained.⁷²

The department's response

The Bill retains the ability for the PBQ's decisions to be subject to judicial review.⁷³

Committee comment

The committee understands that internal review of regional parole boards' decisions are not provided by the Bill as these boards would no longer exist. Instead, the PBQ would be established.

The decisions of the PBQ could be subject to judicial review, which is provided by the *Judicial Review Act 1991* (JR Act). The public has the right to request the reasons for decisions which adversely affect them, or to seek a review of a relevant decision in the Supreme Court. The JR Act applies to

⁶⁷ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, p 5.

⁶⁸ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, p 3.

⁶⁹ *Corrective Services Act 2006*, s 196.

⁷⁰ *Corrective Services Act 2006*, s 198(1).

⁷¹ *Corrective Services Act 2006*, s 198(2)

⁷² Mr Potts, public hearing transcript, Brisbane, 29 March 2017, p 10.

⁷³ Department of Justice and Attorney-General, correspondence dated 9 March 2017, p 3.

administrative decisions of government departments, local authorities, quasi-government agencies and statutory authorities.⁷⁴

The court can make any or all of the following orders in respect of decisions:

- quashing or setting aside the decision
- referring the matter to the person who made the decision for further consideration subject to directions such as time limits for the further consideration and preparatory steps
- declaring the rights of the parties
- directing any of the parties to do or not do anything that the court considers necessary to do justice to the parties.⁷⁵

2.1.8 Publication of the PBQ's decisions

The Bill does not include a requirement for the PBQ's decisions to be published.

Submitters' views

Sisters Inside Inc proposed that the Bill should give the PBQ the discretion to publish anonymised decisions, and the reasons for them, to show the weight the PBQ will give to certain risks or conditions.

Sisters Inside Inc suggested that the new section could be modelled on section 758 of the *Mental Health Act 2016* (Qld). This allows the Mental Health Review Tribunal to publish, how it sees appropriate, its final decisions in a proceeding and any reasons for the decisions, including, for example, if it is satisfied the decision may be used as a precedent.⁷⁶

QLS also suggested that the PBQ's decisions be published and anonymised, because it is 'essential that the Parole Board communicate its expectations to those people who are sitting in prison'.⁷⁷

2.1.9 How a prisoner can appear before the Parole Board Queensland

The Bill provides that a prisoner granted leave to appear before the PBQ can appear at the meeting:

- by using a contemporaneous communication link, or
- if the prisoner has a special need – by attending personally.⁷⁸

Submitters' views

Sisters Inside Inc suggested that this provision assumes that a person appearing before the PBQ is in prison, not in the community. Sisters Inside Inc noted that people on parole in the community who are granted leave to appear before the PBQ for suspension, cancellation or amendment meetings are not likely to be able to access videolink facilities to participate in the meeting. Sisters Inside Inc suggested that the Act should allow for attendance in person in these situations.

Sisters Inside Inc noted that it is not clear whether the appearance of a prisoner's agent would be by videolink or in person and it would be useful to clarify this matter in the Bill.

Sisters Inside Inc also noted that in schedule four to the Act, a 'prisoner's agent' does not include a lawyer, suggesting that as the PBQ becomes professionalised, people applying for or on parole should

⁷⁴ Department of the Premier and Cabinet, <site accessed 21 April 2017>
www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/welcome-aboard/member-duties/judicial-review.aspx

⁷⁵ *Judicial Review Act 1991*, s 30.

⁷⁶ Sisters Inside Inc, submission 4, pp 4 – 5.

⁷⁷ Mr Potts, public hearing transcript, Brisbane, 29 March 2017, p 10.

⁷⁸ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

have the benefit of legal representation before the PBQ and this definition should be amended accordingly.⁷⁹

The department's response

Regarding Sisters Inside Inc's suggestion that a parolee should be able to appear before the PBQ in person, the department advised that the Bill does not preclude parolees from doing so.⁸⁰

2.1.10 Timelines for the Parole Board Queensland to decide applications for parole

The Bill proposes to reduce the time the PBQ must decide a parole application from 180 days to 120 days, while it also proposes to reduce the time the PBQ must decide a deferred parole application from 210 days to 150 days.^{81,82}

Submitters' views

Sisters Inside Inc submitted that these reduced timeframes were still 'excessive',⁸³ stating:

*We suggest that the timeframes should be shortened to 60 days for deferred decisions and 30 days for normal decisions. We would prefer the Parole Board to attempt to make decisions within shorter timeframes and notify applicants if it needs an extension of time.*⁸⁴

The department's response

The department advised that the proposed timeframes are a significant reduction in the time the PBQ would have time to make decisions. It noted that since 2006, the volume of matters for consideration has been steadily increasing, with over 20,000 matters considered in 2016 and that to further truncate the timeframes is not practical or possible.⁸⁵

2.1.11 Home assessments as a barrier to women leaving prison

Sisters Inside submitted that home assessments are a barrier to women leaving prison, as they are unable to live with someone who has a criminal record:

In our experience home assessments will not be approved if anyone who resides at a proposed address has a criminal record. This policy unfairly discriminates against Aboriginal and Torres Strait Islander families who are more likely to have been criminalised or imprisoned as a result of systemic racism ...

And:

*Given the extreme shortage of any public or other affordable or temporary housing for women leaving prison, there needs to be greater flexibility in the home assessment process to allow women to successfully apply for parole.*⁸⁶

⁷⁹ Sisters Inside Inc, submission 4, p 4.

⁸⁰ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, pp 8 – 9.

⁸¹ *Corrective Services Act 2006*, s 193(2) allows a parole board to defer making a decision (a 'deferred decision') until it obtains any additional information it considers necessary to make the decision.

⁸² Explanatory notes, p 8.

⁸³ Sisters Inside Inc, submission 4, p 2.

⁸⁴ Ibid.

⁸⁵ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, pp 6 – 7.

⁸⁶ Ms Kilroy, public hearing transcript, Brisbane, 29 March 2017, p 2.

2.1.12 Parole Board Queensland Secretariat

Currently, each of the three parole boards has a secretary and the boards are supported by 32 full-time equivalent staff.^{87,88}

The Bill proposes to establish the PBQ Secretariat (the secretariat), whose function is to support the PBQ in performing its functions. The chief executive would decide the secretariat's staffing levels.⁸⁹

In the absence of the president and deputy president(s), an officer of the secretariat prescribed by regulation could call a meeting to consider whether to amend, suspend or cancel a parole order.

2.1.13 Transitioning to the Parole Board Queensland

The Bill includes provisions to make the necessary arrangements to transition from the existing parole boards to the PBQ.⁹⁰ This includes dissolving the existing parole boards and ensuring that their members and secretaries leave office. The arrangements also maintain the validity of all decisions, orders, requirements and directions made by the existing parole boards by ensuring that those matters are to be taken to have been made by the PBQ.⁹¹

The Bill allows regulations to be made to implement any transitional arrangements. Such a regulation can be retrospective, starting from the day the relevant section of the Bill commences. A transitional regulation expires after one year.⁹²

Until the new PBQ processes have been developed and implemented, the current secretary position and support staff will operate within QCS to ensure the continued operation of the parole process.⁹³

2.1.14 Ministerial guidelines

The Bill allows the Minister to make guidelines about policies to help the PBQ perform its functions.⁹⁴

Submitters' views

Sisters Inside Inc noted that while the Bill provides for the Minister to publish guidelines to aid the PBQ, there is no provision for the PBQ to publish guidelines, practice notes or approved forms to support its operation. Sisters Inside Inc highlighted that the parole review report contemplated that the PBQ's President would publish practice notes on certain matters, in consultation with QCS.⁹⁵

Sisters Inside Inc recommended allowing the PBQ's President to publish practice notes relating to the PBQ's operation and that the President should be responsible for publishing new versions of approved forms or additional approved forms relating to parole. Sisters Inside Inc recommended that the Bill require all guidelines, practice notes and approved forms to be published.⁹⁶

⁸⁷ Department of Justice and Attorney-General, correspondence dated 9 March 2017, p 5.

⁸⁸ The support staff perform tasks such as prepare correspondence from parole board outcomes for offenders, correctional centres, probation and parole and legal representatives; generate warrants and parole orders; liaise with stakeholders for and on behalf of the boards and processing matters for the boards' consideration.

⁸⁹ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

⁹⁰ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 14.

⁹¹ Department of Justice and Attorney-General, correspondence dated 9 March 2017, p 4.

⁹² Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 14.

⁹³ Department of Justice and Attorney-General, correspondence dated 9 March 2017, p 5.

⁹⁴ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 12.

⁹⁵ Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, Recommendation 57, p 30.

⁹⁶ Sisters Inside Inc, submission 4, p 4.

The department's response

The department advised that the PBQ and secretariat would determine the policies and procedures to be implemented to ensure optimal operation. It is not considered that a requirement to publish its operational procedures would assist in ensuring that optimal operation.⁹⁷

2.2 Monitoring parolees via electronic devices

The Act gives the chief executive the power to require an offender to wear a device to monitor the offender's location, if the chief executive considers it reasonably necessary. Parolees are one group the Act considers may be required to wear such a device.⁹⁸

Recommendation 60 of the parole review report proposed that QCS develop its GPS tracking capabilities so that it is possible for the PBQ to require GPS tracking and monitoring in appropriate circumstances based on the assessed risk of each parolee.⁹⁹ Consistent with this recommendation, the Bill makes a technical and clarifying amendment to the Act to ensure QCS officers can monitor parolees via electronic devices. The Bill provides that:

- a parole order may contain a condition that the prisoner must follow directions given by a corrective services officer that may restrict the prisoner or enable the prisoner to be monitored
- a corrective services officer may give a direction to a prisoner to:
 - remain at a stated place for stated periods (a curfew direction)
 - wear a stated device, or
 - permit the installation of a device or equipment at the place where the released prisoner resides.¹⁰⁰

A corrective services officer may also give other reasonable directions to the prisoner that are necessary for the proper administration of a direction. Such a direction must not be directly inconsistent with a condition of the prisoner's parole order.¹⁰¹

Failure to comply with directions from a corrective services officer may be a breach of parole.

Submitters' views – GPS monitoring

GCCASV supported monitoring some parolees via electronic devices, based on the assessed risk of each parolee.¹⁰² Queensland Homicide Victims' Support Group (QHVSOG) also supported this provision, noting:

*The use of GPS tracking devices to help regulate the movement of parolees will help to provide warnings both to the homicide victim families and to alert Police in situations where the parolee is detected as in danger of breaching [sic] parole conditions.*¹⁰³

QHVSOG also considered that victims of crime should be alerted when the perpetrator of that crime is about to be released on parole wearing a GPS device:

... for the simple fact that it then allows that person to protect themselves if that is deemed necessary.

⁹⁷ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, p 9.

⁹⁸ *Corrective Services Act, 2006*, s 267.

⁹⁹ Walter Sofronoff QC, *Queensland Parole System Review, Final Report*, November 2016, pp 30 – 31.

¹⁰⁰ Department of Justice and Attorney-General, briefing note, p 5.

¹⁰¹ Explanatory notes, p 9.

¹⁰² Gold Coast Centre Against Sexual Violence, submission 3, p 3.

¹⁰³ Queensland Homicide Victims' Support Group, Family Support After Murder Inc, submission 1, pp 1 – 2.

And:

*... in those cases where the families know and have a very real fear that they are in danger, giving them the opportunity to respond to that and to remove themselves from the situation, a warning, just time—even an hour or 24 hours sometimes is enough— to remove yourself from the vicinity of the perpetrator.*¹⁰⁴

Sisters Inside Inc recommended removing the GPS provisions from the Bill, stating that GPS is:

*... an intrusive process that does not actually prevent people on parole from committing further offences. It is also inappropriate for the requirement to wear a GPS tracking device or permit the installation of a monitoring device be imposed by a corrective services officer, rather than the Parole Board.*¹⁰⁵

QAI submitted that any electronic monitoring of people must occur within a robust human rights framework that safeguards all persons' rights to privacy, noting that Article 22 of the Convention on the Rights of Persons with Disabilities establishes international human rights to privacy for persons with disabilities.¹⁰⁶

QAI highlighted the cost of electronic monitoring, suggesting that the money may be better used by investing in programs that address some of the issues that contribute to offending, such as the disadvantages many people with disability face. QAI also stated that any staff shortfalls in Queensland Health's Prison Mental Health Service should not be addressed by electronically monitoring prisoners.¹⁰⁷

Submitters' views – corrective services officers' ability to give directions to prisoners

Sisters Inside Inc recommended removing the Bill's provisions allowing corrective services officers to direct prisoners to remain at a stated place for stated periods, as:

*... the Parole Board regularly includes curfew and residential conditions in parole orders. Conditions requiring people on parole not to approach, enter or remain at certain places (e.g. bars) are also common.*¹⁰⁸

And:

*... this could mean that corrective services officers could require a person to remain in their home for a whole day at a time. Unfettered power to give these directions is excessive.*¹⁰⁹

The Bar Association of Queensland (the Bar Association) objected to QCS officers being given the powers outlined above, stating that the ability to give a direction to a prisoner:

*... should be addressed by the Parole Board. I think once you get to the Parole Board too it takes out the immediacy and it takes out any problems that you might have with personalities. It takes out that immediacy. You are getting it looked at by, as the chair described, a much more professional body. That is good for the prisoner, the parolee, and that is good, I think, for the corrective services officer as well. I think it is better for all concerned that those decisions are taken up by the Parole Board.*¹¹⁰

¹⁰⁴ Ms Good, public hearing transcript Brisbane, 29 March 2017, p 15.

¹⁰⁵ Sisters Inside Inc, submission 4, p 5.

¹⁰⁶ Queensland Advocacy Incorporated, submission 2, p 8.

¹⁰⁷ Queensland Advocacy Incorporated, submission 2, p 9.

¹⁰⁸ Sisters Inside Inc, submission 4, p 5.

¹⁰⁹ Ibid.

¹¹⁰ Ms Wilson, public hearing transcript, Brisbane, 29 March 2017, p 7.

The Bar Association considered that a QCS officer could make a direction with immediate effect, provided it ‘... expires after a certain number of days’ and the PBQ would then be responsible for any potential extension or amendment to that direction.¹¹¹

The department’s response

Regarding Sisters Inside Inc’s recommendation to remove the GPS provisions from the Bill, the department noted that the parole review report identified that the application of GPS for parolees, as ordered by the PBQ, could give QCS additional resources to better manage the period of critical risk following release from custody by imposing certain curfew and monitoring conditions.

The department also noted that GPS monitoring is already used by QCS as part of a range of case management options to reduce the likelihood of re-offending, including programs to reintegrate offenders, programs to address offending behaviour, supervision, and substance testing.

The department advised that as part of the new parole processes, QCS would ensure the PBQ has the necessary information available, including a prisoner’s risk assessment, to ensure an informed decision can be made about which parole conditions are required to ensure community safety.¹¹²

2.3 Changes to the chief executive’s powers

Currently, the chief executive has the power to suspend a court-ordered or board-ordered parole order for up to 28 days if the prisoner:

- has failed to comply with the parole order
- poses a serious and immediate risk of harm to themselves, or
- poses an unacceptable risk of committing an offence.

The chief executive can only suspend a parole order during the period from when the prisoner is issued with their parole order (which occurs before their release), and when they are released from the correctional facility. For all suspension matters, the chief executive must refer the decision to the relevant regional parole board, which may amend, suspend or cancel the parole order, or cancel the chief executive’s suspension.¹¹³

Power to amend parole orders

The Bill removes the power for the chief executive to suspend a parole order and transfers the power to the PBQ.¹¹⁴ The Bill would allow the chief executive to, by written order, amend a prisoner’s parole order if the chief executive reasonably believes the prisoner has breached at least one of the conditions outlined above in section 2.3.

The written order would have effect for up to 28 days, starting on the day the order is given to the prisoner.

If the chief executive made an order to amend a parole order, the chief executive must give the secretariat written notice of the grounds for making the order immediately after it is made and the chief executive must give the PBQ any further information about the amendment requested by the board. At any time, the PBQ may cancel the order.¹¹⁵

Submitters’ views

Sisters Inside Inc supported removing the chief executive’s power to suspend parole orders.

¹¹¹ Mr Mac Giolla Ri, public hearing transcript, Brisbane, 29 March 2017, p 7.

¹¹² Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, p 6.

¹¹³ Department of Justice and Attorney-General, correspondence dated 9 March 2017, pp 6 – 7.

¹¹⁴ Department of Justice and Attorney-General, correspondence dated 9 March 2017, p 7.

¹¹⁵ Explanatory notes, p 9.

Power to suspend parole orders

The chief executive may request that the PBQ suspends a parole order and issues a warrant for a prisoner's arrest via a written notice to the secretariat stating the grounds on which the request is made. The chief executive can make such a request if they reasonably believe that a prisoner who is the subject of a parole order:

- has failed to comply with the parole order
- poses a serious and immediate risk of harm to another person
- poses an unacceptable risk of committing an offence, or
- is preparing to leave the State, other than under a written order granting the prisoner leave to travel interstate or overseas.¹¹⁶

If such a request is made a prescribed board member – the president, a deputy president or a professional board member – must, as a matter of urgency, consider the request and decide whether to suspend the parole order. The prescribed board member may decide to suspend the parole order only if they reasonably believe one of the four scenarios outlined above has occurred.

If the prescribed board member decides not to suspend the parole order, the member must give the chief executive written notice of the decision.

If the prescribed board member decides to suspend the parole order, the member must, by written order, suspend the parole order and issue a warrant for the prisoner's arrest signed by the member or an officer of the secretariat prescribed by legislation. This order takes effect from when it is made.

The warrant for the prisoner's arrest may be directed to all police officers. When arrested, the prisoner must be taken to a prison to be kept there until the suspension period ends.

Where a prescribed board member decides to suspend a prisoner's parole order and issue a warrant for the prisoner's arrest, the PBQ must, within the period prescribed by regulation, confirm or set aside the decision of the prescribed board member. If the PBQ decides to confirm the prescribed board member's decision, the decision is considered to have been made by the PBQ. When making this decision, the board's composition would depend upon whether the prisoner is a prescribed prisoner.¹¹⁷

If the PBQ sets aside the prescribed board member's decision, the suspension and warrant cease to have effect. If the warrant has been executed, the prisoner must be released. In addition, the prisoner is taken not to have been unlawfully at large for the period from when the order was made by the prescribed board member and when the PBQ sets aside that decision.¹¹⁸

Submitters' views

Sisters Inside Inc suggested that the Bill does not require the PBQ to give a parolee an information notice or a reasonable opportunity to be heard if the PBQ suspends or cancels their parole. It suggested that the Bill should be amended to require the PBQ to provide an information notice to the parolee and allow reasonable opportunity for them to be heard when the PBQ is considering a non-urgent suspension. Sisters Inside Inc also suggested allowing the parolee or their agent, which should include a lawyer, to apply to the PBQ to attend the meeting where the suspension or cancellation is considered.¹¹⁹

Sisters Inside Inc highlighted instances where some women were unable to comply with some parole conditions, such as:

¹¹⁶ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 11.

¹¹⁷ Department of Justice and Attorney-General, correspondence dated 9 March 2017, p 7.

¹¹⁸ Explanatory notes, pp 10 – 11.

¹¹⁹ Sisters Inside Inc, submission 4, p 3.

- being restricted to apply for or accept employment, which could affect compliance with Centrelink requirements
- reporting conditions which are inflexible due to poor access to childcare or public transport, and
- curfew conditions that may impact on employment prospects or a woman's ability to maintain connection with their children.

Sisters Inside Inc suggested the Act be amended to allow parolees to apply to the PBQ for their order to be amended and to allow the PBQ to amend a parole order.¹²⁰

The department's response

Sisters Inside Inc's stated that the Bill does not require the PBQ to give a parolee an information notice or a reasonable opportunity to be heard if the PBQ suspends or cancels their parole. However, the department advised that this is currently the case. The department also advised that upon the prisoner's return to prison the board must give the prisoner an information notice of the board's decision and an opportunity to make a written submission to the board requesting re-consideration of the decision. Judicial review is available for these decisions.

The Bill only amends these provisions to ensure that references to the current boards are taken to be a reference to the PBQ.¹²¹

Responding to Sisters Inside Inc's suggestion that parolees be allowed to apply for their parole order to be amended, the department advised that QCS will replace the current parole application process with an improved assessment and case management process that includes dedicated Assessment and Parole Units within centres and a validated assessment tool.

Furthermore, the PBQ would receive training in the new parole process and the value and use of risk assessment tools. It is anticipated that through this new process, the PBQ would have sufficient information to make an informed decision on which parole conditions are required to ensure community safety. As is currently the case, a prisoner would be able to provide a written submission to the PBQ requesting an amendment to their parole conditions.¹²²

2.4 Commencement of the Bill

The Bill states that, other than sections 6, 7 and 8, the Act is intended to commence on a day to be fixed by proclamation. Sections 6, 7 and 8 of the Act would commence on assent.¹²³

2.5 Other issues raised in submissions

Some issues raised in submissions did not relate directly to the changes proposed in the Bill. These issues are discussed below.

2.5.1 Support for parolees and people leaving prison

Most submitters highlighted the importance of parolees, and those leaving prison, to have access to adequate support services to help them reintegrate into society and reduce the likelihood of re-offending. Such services suggested were:

- access to affordable housing¹²⁴

¹²⁰ Sisters Inside Inc, submission 4, pp 2 – 3.

¹²¹ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, p 8.

¹²² Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, pp 7 – 8.

¹²³ Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017, cl 2.

¹²⁴ Ms Kilroy, Sisters Inside Inc, public hearing transcript, Brisbane, 29 March 2017, pp 2 & 5.

- help to reconnect with children who have been placed into state care¹²⁵
- mental health care, and¹²⁶
- drug rehabilitation services.¹²⁷

Access to affordable housing – the department’s response

The department advised that QCS and the Department of Housing and Public Works would work closely to address the identified issues set out in recommendation 34 of the parole review report.

The department noted that QCS received funding from 2017-18 to increase transitional housing support for prisoners exiting custody, which will allow for progression from custody into the community and help to reduce returns to prison from parole and reduce long-term re-offending.¹²⁸

2.5.2 Courses – access and funding

A theme that emerged frequently during the committee’s public hearing was the need for prisoners, parolees and people released from prison to have prompt access to appropriate courses both in prison and in the community. Sisters Inside submitted that:

*By funding community based services we think it will be easier for people, for women in prison for example, to make a successful parole application that shows that they can be connected to essential services in the community, that addresses whatever issues the Parole Board might consider are underlying their offending. I think by funding community services it actually makes the process of risk assessment and the process of applying for parole much easier.*¹²⁹

The Bar Association submitted that ‘there tends not to be very many courses available’, and while some are ‘excellent’, some are ‘a little bit short of that.’ It suggested, ‘this is a reflection of where we are putting our resources.’¹³⁰

2.5.3 Potential disincentive for prisoners with court-ordered parole to attend courses

The committee and submitters discussed the possibility that prisoners whose parole date is given to them as part of their sentence may lack an incentive to attend courses or to conduct themselves well generally, as they know when they will be released from prison on parole.¹³¹

The Bar Association acknowledged that this was a possibility, stating ‘[a]s a matter of logic that must be right. There must be some people who are sitting back and not doing programs because they feel they are not going to get parole anyway.’¹³²

QLS highlighted the potential for court-order parole to be beneficial, if a person is:

*... very motivated to do the time and do it well and get out. Some of them have rehabilitated before they go in. In those circumstances, fixed parole periods have an advantage to the courts and to the community over the wholly suspended sentence.*¹³³

2.5.4 Contact between the Parole Board Queensland and the National Disability Insurance Agency

QAI suggested that the Bill should include provisions to require contact between the PBQ and the National Disability Insurance Agency (NDIA), if a person is eligible for funding under the National

¹²⁵ Ms Kilroy, Sisters Inside Inc, public hearing transcript, Brisbane, 29 March 2017, p 2.

¹²⁶ Ms Kilroy, Sisters Inside Inc, public hearing transcript, 29 March 2017, p 2.

¹²⁷ Ms Kilroy, Sisters Inside Inc, public hearing transcript, 29 March 2017, p 2; Mr Potts, Queensland Law Society, public hearing transcript, 29 March 2017, p 12.

¹²⁸ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, p 4.

¹²⁹ Ms Dooris, Sisters Inside Inc, public hearing transcript, 29 March 2017, p 4.

¹³⁰ Mr Mac Giolla Ri, Bar Association of Queensland, public hearing transcript, 29 March 2017, p 7.

¹³¹ Mr Crandon MP, Member for Coomera, public briefing transcript, 1 March 2017, p 3.

¹³² Mr Mac Giolla Ri, public hearing transcript, 29 March 2017, p 7.

¹³³ Mr Potts, public hearing transcript, 29 March 2017, p 11.

Disability Insurance Scheme (NDIS). For a person to obtain NDIS funding they must first apply to the NDIA to see if they are eligible for funding. QAI highlighted the difficulty that prisoners may face in gaining assistance with their NDIS application.

QAI suggested that all people with disability in the prison system should be linked with a local independent advocacy organisation to assist with NDIS applications, regardless of whether the prisoner is thought to be eligible for funding.¹³⁴

The department's response

The department advised that QCS offers re-entry services to assist prisoners to desist from re-offending, to succeed on parole and remain out of custody for as long as possible. For prisoners with a disability or mental illness, services focus on providing practical day of release needs and a range of care support services.

Current re-entry service providers are either NDIS service providers or have partnerships with NDIS providers, helping to ensure prisoners receive appropriate support for their disability or mental illness upon release.

Where QCS is aware a prisoner is eligible for NDIS, QCS will facilitate contact with the NDIS to initiate the assessment and planning process. Through the parole application process, the PBQ would be informed whether a prisoner is eligible for NDIS support.¹³⁵

2.5.5 Additional problems faced by people with disability

QAI highlighted specific problems that people with disability face when applying for parole, including:

- the need for parole applications to be handwritten
- parole board members holding incorrect beliefs that people with disability or poor mental health are more likely to be violent than those without disability or poor mental health
- proving to the parole board they have accommodation – prisoners with intellectual disability tend to get fewer visitors than those without disability because of a lack of family and friendships outside prison. Without the accommodation of family or friends to move into if parole is granted, the probability of gaining parole is lower
- completing prison rehabilitation programs – such programs can help prisoners gain parole, but they are rarely designed to take into consideration the needs of people with disability, and
- their higher chance of being placed in separate maximum security units, denying them the chance to be in the least restrictive environment and to take part in rehabilitation programs.¹³⁶

The parole review report recommended that '[t]he risk and need assessments used in Queensland Corrective Services, in the custodial and Probation and Parole setting, should be replaced with a validated assessment.'¹³⁷

The department's response

Rehabilitation programs

The department advised that QCS is exploring options to adjust programs and services to support prisoners with a disability and that the current suite of programs can be modified to support offenders with borderline intellectual or other cognitive impairments.

¹³⁴ Queensland Advocacy Incorporated, submission 2, pp 5 – 6.

¹³⁵ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, pp 3 – 4.

¹³⁶ Queensland Advocacy Incorporated, submission 2, p 6.

¹³⁷ Walter Sofronoff QC, *Queensland Parole System Review*, November 2016, p 24.

Additionally, consent forms have been adjusted to better identify the type and level of cognitive impairment, as well as prisoners' ability to comprehend program content. The department advised that the needs of prisoners with a disability would be considered when delivering programs in future.¹³⁸

Accommodation

This is discussed in section 2.5.1.

The risks posed by prisoners with disability or poor mental health

The department advised that QCS already uses a number of assessment and screening tools to identify and assess risk to community safety and consistent with recommendation 8 of the parole review report, QCS will validate all risk and need assessments used in the custodial and Probation and Parole setting.

Recommendation 10 of the parole review report requires an expert review of the assessment tools and includes consideration of the appropriate role these assessments should play in informing and guiding parole board decision making. The PBQ would receive training in the value, uses and limitations of these risk assessment tools.¹³⁹

2.5.6 No body, no parole provision

QHVSQ submitted that a person accused of murder or manslaughter should only ever be eligible for parole for:

*... a period of two years ... following the last of any legal appeals during which the prisoner be directed to reveal where the body of the deceased can be found. After that period the offer of future parole be denied.*¹⁴⁰

QHVSQ made this suggestion to ensure homicide victims' families have the best chance possible of retrieving their loved one's body. The absence of such a restriction on the offer of parole in exchange for a prisoner disclosing the location of the victim's body risks, for example, development or construction that makes it impossible to locate a body.

2.5.7 Ratifying the Optional Protocol to the Convention Against Torture

QAI highlighted that Australia signed the Optional Protocol to the Convention Against Torture (OPCAT) in 2009, but has yet to ratify it.¹⁴¹

The OPCAT is an international agreement aimed at preventing torture, cruel, inhuman or degrading treatment or punishment and the mistreatment of people in detention. It requires signatories to agree to international inspections of places of detention by the United Nations Subcommittee on the Prevention of Torture and to establish an independent mechanism to conduct inspections of all places of detention, including prisons, juvenile detention centres and other places where people are deprived of their liberty.¹⁴²

QAI submitted that the increased scrutiny of prisons would benefit:

*... those in detention, including by improving the conditions, safety, transparency and accountability of these facilities. For people with disability who are incarcerated, it will hopefully help to improve the access they have to programs and services that improve their prospects of achieving parole and ultimately reduce recidivism.*¹⁴³

¹³⁸ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, p 3.

¹³⁹ Department of Justice and Attorney-General, correspondence dated 23 March 2017, attachment, pp 4 – 5.

¹⁴⁰ Queensland Homicide Victims' Support Group, Family Support After Murder Inc, submission 1, pp 2 – 3.

¹⁴¹ Queensland Advocacy Incorporated, submission 2, pp 9 – 10.

¹⁴² Australian Human Rights Commission, *Optional Protocol to the Convention against Torture (OPCAT)*, last updated Tuesday 9 August 2016.

¹⁴³ Queensland Advocacy Incorporated, submission 2, pp 9 – 10.

3. Compliance with the Legislative Standards Act 1992

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (the LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals,¹⁴⁴ and
- the institution of parliament.¹⁴⁵

The committee has examined the application of FLPs to the Bill. The following section discusses potential breaches that were not discussed in the previous policy examination section of this report.

It is considered that clauses 8, 11 and 14 contain potential issues of fundamental legislative principles.

3.1.1 Rights and liberties of individuals

Clause 14 has the potential to raise the issue of whether the Bill has sufficient regard to the rights and liberties of individuals.

Clause 14

Clause 14 of the Bill proposes to insert transitional provisions into the Act. It inserts new section 490N (Dissolution of Queensland Parole Board and regional boards). Pursuant to section 490N(1)(a)-(c), on commencement, the Queensland Parole Board will be dissolved, each regional board will be dissolved and the members of these boards will go out of office. Section 490N(2) provides that upon dissolution of the parole boards, no compensation is payable to a member. Similarly, section 490O provides that a person who held the position of secretary of a former board goes out of office and no compensation is payable.

As at 30 June 2016, there were 26 members on parole boards in Queensland including the President, who may appear on all three boards, and a Deputy President for each board. Other than the President, all other parole board members are part-time appointments. Members are currently remunerated on a per meeting basis in accordance with the *Remuneration for Part-Time Chairs and Members of Government Boards, Committees and Statutory Authorities*.

Potential FLP issues

Section 4(2)(a) of the LSA provides that sufficient regard be given to the rights and liberties of individuals. It may be argued that in dissolving the three parole boards and removing members from their roles without compensation, their rights and liberties will be impinged. The parole board members may have a legitimate expectation that the duration of their appointment be fully realised. The fair treatment of persons is a relevant consideration when deciding whether legislation has sufficient regard to the rights and liberties of individuals.

When introducing the Bill, the Minister advised that current board members would be removed from their positions:

*Whilst this means the current board members' existing appointments will end upon commencement of the bill, the current board members will be able to apply to be a member of the new board.*¹⁴⁶

¹⁴⁴ *Legislative Standards Act 1992*, s 4(2)(a).

¹⁴⁵ *Legislative Standards Act 1992*, s 4(2)(b).

¹⁴⁶ Queensland Parliament, Record of Proceedings, 16 February 2017, p 219.

Committee comment

Section 490N would result in parole board members losing their positions without compensation. However, in considering this section the committee notes that one of the primary objectives of the Bill is to re-structure the parole board system based on the recommendations of the parole review report. Apart from the President, all positions are currently held by members on a part-time basis so it may be the case that members have other employment besides their role on the parole board. Further, the committee is aware that section 218(3) of the Act provides that it is unnecessary for any reasons to be given for ending a parole member's appointment.

3.1.2 Natural Justice

Clause 11 has the potential to raise the issue of whether the Bill complies with the principles of natural justice.

Clause 11

Clause 11 inserts new section 208A – Request for immediate suspension of parole order. Section 208A(1) applies where the chief executive reasonably believes that a prisoner the subject of a parole order:

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

Section 208B(1) provides that, where a request for the immediate suspension of a parole order is made pursuant to section 208A, a prescribed board member must, as a matter of urgency consider that request and decide whether or not to suspend the parole order.

Under section 208B(2), the prescribed board member may decide to suspend the parole order only if the member reasonably believes the prisoner:

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

Potential FLP issue

New section 208B would allow a parole board member to suspend a parole order if certain criteria are met. It does not require the member to provide the prisoner with any prior notice of the suspension, or allow the prisoner to be heard in relation to the member's decision. In not allowing a prisoner to be heard in relation to the suspension, the provision potentially breaches section 4(3)(b) of the LSA which provides that a Bill should be consistent with the principles of natural justice.

The principles of natural justice, as developed by the common law, are that:

- something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker
- the decision maker must be unbiased, and

- procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.

The explanatory notes provide the following justification for the new section:

It is considered that this imposition is justified as the prescribed board member may only suspend the parole order if the member is satisfied of limited and specific circumstances, namely that the person has, (a) 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, without the necessary approval, preparing to leave the State.¹⁴⁷

Committee comment

The committee notes the limited and serious circumstances in which a parole order may be suspended. Also, that such suspension can be made without prior notice to the parolee and without allowing the parolee to be heard in response before the order is suspended.

The committee notes that the parole is being suspended, not revoked, and the parolee still has recourse to make written submissions within 21 days of being advised of the parole board's decision.

3.1.3 Delegation of administrative power

Clause 8 has the potential to raise the issue of whether the Bill appropriately delegates administrative power.

Clause 8

Section 267 of the Act allows for the chief executive, if they consider it necessary, to require an offender to wear a device for monitoring an offender's location.

Clause 8 inserts new section 200A(2)(b) which provides that a corrective services officer may direct a prisoner to wear a stated device. Section 200A(2)(c) permits the installation of any device or equipment at the place where the prisoner resides.

Potential FLP issues

New section 200A would allow corrective services officers to direct a prisoner to wear a monitoring device while on parole. Currently, only the chief executive may direct a paroled person to wear such a device. The broadening of the power to include corrective services officers potentially breaches section 4(3)(c) of the LSA which provides that legislation should delegate administrative power only in appropriate cases and to appropriately-qualified persons.

The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.¹⁴⁸

Committee comment

The committee notes that section 200A would allow a corrective services officer to determine whether a paroled person is to wear a monitoring device. Currently, only the chief executive has this power pursuant to section 267.

Section 275 of the Act provides that the chief executive may appoint an 'appropriately qualified person' as a corrective services officer. Given that the Act requires a suitable person to carry out this role, it is expected that an officer who has to make a decision with respect to a monitoring device would have the necessary skills and experience to do so. Therefore, the committee considers that the

¹⁴⁷ Explanatory notes, p 6.

¹⁴⁸ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.

extension of power afforded to an ‘appropriately qualified’ corrective services officer is acceptable in the circumstances.

3.1.4 Rights and liberties

Clause 14 has the potential to raise the issue of whether the Bill adversely affects the rights and liberties of individuals.

Clause 14

Clause 14 inserts new section 490T (Transitional regulation-making power) into the Act. Section 490T(1) provides that a regulation may make provision of a saving or transitional nature when it is necessary or convenient to make provision to allow or facilitate the change to the operation of the amended Act.

Pursuant to section 490T(2), a transitional regulation may have retrospective operation to a day not earlier than the day the section commences. Section 490T(4) provides that any transitional regulation is to expire one year after commencement.

Potential FLP issues

New section 490T(2) allows for the retrospective operation of a regulation to a day not earlier than the day the section commences. This potentially breaches section 4(3)(g) of the LSA which provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively.

The explanatory notes do not comment on the retrospective provision however they do acknowledge that the section may see the delegation of power to facilitate the creation of the new board, and potentially infringe section 4(3)(c) of the LSA:

*This provision potentially breaches the principle that administrative power is to be delegated in appropriate cases and to appropriate person(s) by allowing a regulation to provide for transitional provisions. This delegation of power is however necessary to ensure for the comprehensive and effective establishment of the Parole Board Queensland and the secretariat. Section 490O also contains a sunset provision so as to limit the use of the transitional regulation-making power to a year after commencement. This is an important safeguard on the use of this power.*¹⁴⁹

Committee comment

The committee notes that the object of the transitional provisions is to facilitate the establishment of a new parole board. The retrospective operation of section 490T(2) is limited to a day not earlier than commencement. In relation to the continued operation of the transitional regulation-making power, a safeguard is provided by way of section 490T(4),¹⁵⁰ where the provision would expire one year after commencement.

In light of its limited operation, the safeguard pursuant to section 490T(4), and the justification provided in the explanatory notes, the committee considers that appropriate regard has been given to fundamental legislative principles in this instance.

3.2 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

¹⁴⁹ Explanatory notes, p 6.

¹⁵⁰ The explanatory notes at page 6 incorrectly refer to s 490O instead of s 490T(4) in relation to the transitional regulation-making power expiring one year after commencement.

Explanatory notes were tabled with the introduction of the Bill. The committee considers that the notes are fairly detailed and contain the information required by Part 4, as well as a reasonable level of background information and commentary to facilitate an understanding of the Bill's aims and origins.

Appendix A – List of submissions

Sub #	Submitter
001	Queensland Homicide Victims' Support Group
002	Queensland Advocacy Incorporated
003	Gold Coast Centre Against Sexual Violence Inc.
004	Sisters Inside Inc.

Appendix B – Witnesses at the public briefing – 1 March 2017

Department of Justice and Attorney-General
<ul style="list-style-type: none">• Mrs Leanne Robertson, A/Assistant Director-General, Strategic Policy and Legal Services• Ms Carolyn McAnally, A/Director, Strategic Policy and Legal Services
Queensland Corrective Services
<ul style="list-style-type: none">• Mr Tom Humphries, General Manager, Strategy and Governance• Ms Kate Petrie, Director, Operational Support Services

Appendix C – Witnesses at the public hearing – 29 March 2017

Sisters Inside Inc
<ul style="list-style-type: none">• Ms Debbie Kilroy, Chief Executive Officer• Ms Marissa Dooris, Policy Officer
Bar Association of Queensland
<ul style="list-style-type: none">• Ms Elizabeth Wilson QC, Chair Criminal Law Committee• Mr Eoin Mac Giolla Ri, Criminal Law Committee Member
Queensland Law Society
<ul style="list-style-type: none">• Mr Bill Potts, Immediate Past President• Ms Binny De Saram, Senior Policy Solicitor
Queensland Homicide Victims Support Group
<ul style="list-style-type: none">• Ms Tina Good, President