

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

## Explanatory Notes

### Short title

The short title of the Bill is the Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017.

### Policy objectives and the reasons for them

The primary objective of the Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017 (the Bill) is to amend the *Corrective Services Act 2006* to establish the Parole Board Queensland.

The Bill also makes technical and clarifying amendments to the Corrective Services Act to facilitate the electronic monitoring of persons released to parole; whether court ordered parole or board ordered parole.

The Bill delivers on key recommendations under the Queensland Parole System Review Report (the review report) in terms of parole board considerations.

#### *The Queensland Parole System Review*

On 9 August 2016, the Queensland Government announced an independent review of Queensland's parole system to be undertaken by Mr Walter Sofronoff QC (the parole review), following widespread community disquiet and concern regarding the adequacy of the current parole system in protecting Queenslanders in the wake of a highly publicised murder allegedly committed by a paroled prisoner.

The Terms of Reference of the parole review stated the Queensland Government's commitment to a corrective services system that delivers community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders. To ensure Queensland's parole system operates as effectively as possible now and into the future, the parole review was, inter alia, focused on the effectiveness of the parole boards' current operations including decision making, structure, membership; transparency of parole board decision making; and adequacy of existing accountability mechanisms for the parole boards and other mechanisms that ensure parole board decisions appropriately address risk to the community and victims, and successful offender re-integration into the community.

On 1 December 2016, the review report was delivered by Mr Sofronoff to Government. The review report makes 91 recommendations for complete reform of Queensland's parole system. The recommendations relate to nine broad categories: legislative framework and sentencing; assessment and management of offenders; rehabilitation,

mental health and substance misuse treatment; re-entry services; the parole board; management of offenders in the community; victims; independent prison and parole inspectorates; and technology and infrastructure. The review report provides a comprehensive blueprint for reform.

On 16 February 2017, the Honourable Anastacia Palaszczuk MP, the Premier and Minister for the Arts, tabled the review report in the Legislative Assembly.

### **Parole Board**

Currently, three parole boards operate in Queensland – the Queensland Parole Board and two regional parole boards.

The Queensland Parole Board decides applications for parole from prisoners who have been 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*.

Two 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.

The review report found systemic inefficiencies in the current operation of the three existing parole boards; and that the current parole system in Queensland can be substantially improved.

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. In particular, the concerns of Mr Sofronoff regarding the parole boards are specifically addressed at recommendations 35 to 61 – the key recommendations include the:

- creation of a single parole board in Queensland to hear all applications for board ordered parole and which will supplant the three existing parole boards provided for under the Corrective Services Act (recommendation 35);
- appointment of a full-time President and Deputy President, each of whom are a retired judge of a state or Federal court (recommendation 36);
- appointment of at least two full-time professional member positions (recommendation 37);
- appointment of community members to the parole board in such number as the Governor-in-Council appoints from time to time (recommendation 40);
- appointment of a police officer to be part of the membership of the new parole board and a public service officer with experience or expertise in probation and parole (recommendations 44);

- importance of diversity in membership, including gender balance, and the need for representation by Aboriginal people or Torres Strait Islanders, in establishing the new parole board membership (recommendations 39, 41 and 42); and
- establishment of a dedicated Secretariat to support the new parole board in the performance of its statutory functions (recommendation 54); and
- distinction to be made between decision-making about a prisoner incarcerated for a serious violent offence or a serious sexual offence; as compared to all other prisoners (recommendations 45 and 46).

### **Electronic monitoring of parolees**

Recommendation 60 of the review report also identifies that the application of GPS monitoring of paroled offenders in appropriate circumstances, based on assessed risk, could assist in both improving the re-integration of parolees into the community and reducing reoffending.

## **Achievement of policy objectives**

### **Parole Board**

The Bill achieves the policy objectives through the establishment of one centralised, independent and professional parole board - the Parole Board Queensland; together with significant changes to the membership and structure as compared to the existing parole boards, and its operation.

The Bill provides that the Parole Board Queensland in effect supplants the three existing parole boards operating in Queensland. The Parole Board Queensland will be solely responsible for all decision-making with respect to board parole in Queensland.

Upon commencement of the Bill, the three existing parole boards are dissolved and the members of the three boards go out of office.

*Membership:* The Bill provides that the Parole Board Queensland is to be led by a full-time President and at least one full-time Deputy President. It will also include at least two full time professional members, who may be drawn from a diversity of backgrounds and who have university or professional qualifications relevant to the functions of the parole board (for example, but not limited to, lawyers, medical practitioners and psychiatrists).

Appointment to each of these positions is by the Governor-in-Council, upon the recommendation of the Minister. For the President and Deputy President, the Minister must consult with the relevant Parliamentary Committee about the proposed appointment; and for the professional members the Minister must consult with the President of the Parole Board Queensland.

The President must be a former judge of a state or federal court; or have qualifications, experience or standing that the Governor-in-Council considers equivalent to that of a

judge of a state or Commonwealth court. The Bill also provides that the Deputy President may be a former Magistrate.

In recognition of the significance and stature of these new roles, and the calibre of the appointees, the salaries, allowances and entitlements of the President and Deputy President will be based on a Supreme Court judge and District Court judge, respectively; and both positions will have a pension entitlement similar to (but not identical to) that of a Supreme Court or District Court judge, respectively.

The Bill ensures that service as the President or Deputy President will count as service as a judge in respect of a former judge who is appointed to the role for the purpose of judicial pension entitlements.

The Bill also provides that the membership of the Parole Board Queensland will include at least one police representative nominated by the Commissioner of Police; as well as at least one public service representative nominated by the chief executive, who has expertise or experience in probation and parole matters.

Additionally, the Queensland community will be represented on the Parole Board Queensland in the form of community board members – who will be appointed by the Governor-in-Council on the recommendation of the Minister and on the terms and conditions set out in the instrument of appointment. In making the recommendation, the Minister must consult with the President. The community members may be part-time or full-time appointees.

As emphasised in the review report, the Bill ensures appropriate representation of Aboriginal people or Torres Strait Islanders and for balanced gender representation in the membership of the new board.

*Secretariat support:* The Bill expressly provides for the establishment of a dedicated secretariat, whose role will be to support the Parole Board Queensland in the performance of its functions. The Bill makes it clear that these officers are public service employees.

*Composition of the Board for certain matters:* The Bill distinguishes between a meeting of the Parole Board Queensland where the board is to consider an application for a parole order, or the amendment, suspension or cancellation of a parole order for a prescribed prisoner (as set out below), as compared to all other prisoners. That is, a prescribed prisoner is a prisoner:

- imprisoned for a serious violent offence (as defined under the Corrective Services Act) or a serious sexual offence (as defined under the *Dangerous Prisoners (Sexual Offenders) Act 2003*); or
- imprisoned for an offence committed with the Serious Organised Crime circumstance of aggravation (under section 161Q of the Penalties and Sentences Act); or
- mentioned in section 181 (Parole eligibility date for prisoner serving term of imprisonment for life), section 181A (Parole eligibility date for prisoner serving

term of imprisonment for life for a repeat serious child sex offence), section 182A (Parole eligibility date for prisoner serving term of imprisonment for other particular serious offences), section 183 (Parole eligibility date for prisoner detained for a period directed by a judge under Criminal Law Amendment Act 1945, Pt 3) or section 185B (Parole eligibility date for prisoners serving term of imprisonment for an offence against weapons Act 1990, s.50, 50B or 65) of the Corrective Services Act.

For this most serious cohort of prisoners, the Parole Board Queensland must be comprised of at least five members and those sitting at the meeting must include: the President or Deputy President; a professional board member; a community board member; a public service representative and a police representative.

For all other cases, the Bill provides that the Parole Board is to be comprised of at least three members and one of those members must be a professional member and another a community member (the professional member is to preside at the meeting in the absence of the President or Deputy President).

*Transitional arrangements:* The Bill includes provisions to make the necessary arrangements to transition from the three existing parole boards to the new Parole Board Queensland, for example: the dissolution of the existing three parole boards, their membership and the secretaries to the three boards; and to maintain the validity of all decisions, orders, requirements and directions etc. made by the existing three parole boards by ensuring that those matters are to be taken to have been made by the Parole Board Queensland.

### **Electronic monitoring of parolees**

The Bill makes a clarifying amendment to the Corrective Services Act to ensure that corrective services officers are able to 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; and
- a corrective services officer may give a direction to a prisoner to:
  - remain at a stated place for stated periods (a curfew direction); and
  - wear a stated device and permit the installation of a device or equipment at the place where the released prisoner resides (a monitoring direction);

Failure to comply with these directions can be actionable as a breach of parole.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives other than through legislative amendment.

## Estimated cost for government implementation

The costs associated with the amendments will be determined through normal budgetary processes.

## Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below:

**Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, the legislation is consistent with the principles of natural justice *Legislative Standards Act 1992*, section 4(3)(b).**

Clause 11 of the Bill inserts new section 208B (*Prescribed board member may suspend parole order and issue warrant*) into the Corrective Services Act. This provision potentially breaches the principle that legislation must have sufficient regard to the rights and liberties of individuals by not providing natural justice to the prisoner as it does not require the prescribed board member to provide any prior notice to the prisoner or provide any right for the prisoner to be heard in respect of the member's deliberation of the matter.

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.

**Legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons - *Legislative Standards Act 1992*, section 4(3)(c)**

Clause 14 of the Bill inserts new section 490T (Transitional regulation-making power) into the Corrective Services Act. 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.

## Consultation

In undertaking the parole review, Mr Sofronoff consulted with many people working at all levels of the corrections and parole system, attended several meetings of the boards in Queensland, reviewed many recent parole board files, interviewed current and former members of parole boards in Queensland, and spoke with researchers and

clinicians with experience in actuarial risk assessment and the treatment and management of offenders. Submissions as to the operation of the parole boards in Queensland were also received by Mr Sofronoff from groups and people with a diverse range of experiences with the parole system. Mr Sofronoff also undertook a cross-jurisdictional comparison, which included attending sittings of the Victorian Adult Parole Board and the New South Wales Parole Authority (refer to page 162 of the review report).

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

# Notes on provisions

## Part 1 Preliminary

### Short Title

*Clause 1* states that, when enacted, the Bill will be cited as the *Corrective Services (Parole Board) and Other Legislation Amendment Act 2017*.

### Commencement

*Clause 2* 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 will commence on assent.

## Part 2 Amendment of *Corrective Services Act 2006*

### Act amended

*Clause 3* states that this Part amends the *Corrective Services Act 2006*.

### Omission of s 187 (*Which parole board may hear and decide application*)

*Clause 4* omits section 187 (*Which parole board may hear and decide application*). This amendment is consequential to the creation of a single parole board in clause 12.

### Amendment of s 193 (*Decision of parole board*)

*Clause 5* amends section 193 (*Decision of parole board*).

Sub clause (1) amends section 193(1) to omit reference to multiple parole boards. This amendment is consequential to the creation of a single parole board in clause 12.

Sub clause (2) amends section 193(3)(a) to reduce the period within which the parole board must decide a deferred application from 210 days to 150 days.

Sub clause (3) amends section 193(3)(b) to reduce the period within which the parole board must decide an application, other than a deferred application, from 180 days to 120 days.

### Amendment of ch 5, pt 1, div 4, hdg (*Conditions of parole*)

*Clause 6* amends the Chapter 5, part 1, division 4, heading (*Conditions of parole*) so that it reads: *Conditions of parole and directions to prisoners*. This amendment is consequential to clause 8, the insertion of new section 200A (*Directions to prisoners subject to parole order*).

### Amendment of s 200 (*Conditions of parole*)

*Clause 7* makes an amendment to section 200 (*Conditions of parole*) which is consequential to clause 8 of the Bill, the insertion of new section 200A (*Directions to prisoners subject to parole order*).

Subclause (1) amends section 200 to insert new subsection (1A) clarifying that a parole order may contain a condition requiring the prisoner to comply with a direction given to the prisoner under the new section 200A.

Subclause (2) amends section 200(2) to omit reference to multiple parole boards. This amendment is consequential to the creation of a single parole board in clause 12.

Subclause (3) amends section 200 to renumber the subsections to account for the inclusion of new subsection (1A) in subclause (1).

**Insertion of new s 200A**

Clause 8 inserts new section 200A (*Directions to prisoners subject to parole order*) into Chapter 5, part 1, division 4.

Subsection (1) states that the purpose of the provision is to enable the movements of a prisoner who is subject to a parole order to be restricted and for the prisoner's location to be monitored.

Subsection (2) empowers a corrective services officer to direct the prisoner:

- to remain at a stated place for stated periods; or
- to wear a stated device; or
- to permit the installation of any device or equipment at the place where the prisoner resides.

Subsection (3) provides that a corrective services officer may also give other reasonable directions to the prisoner that are necessary for the proper administration of a direction stipulated in section 200A(2).

Subsection (4) provides that a direction under this section must not be directly inconsistent with a condition of the prisoner's parole order.

**Replacement of ch 5, pt 1, div 5, sdiv 1 (Chief executive powers)**

Clause 9 replaces subdivision 1 of Chapter 5, part 1, division 5, subdivision 1.

Section 201 (*Chief executive may amend parole order*) subsection (1) provides that the chief executive may, by written order, amend a prisoner's parole order if the chief executive reasonably believes the prisoner has failed to comply with the parole order; poses a serious and immediate risk of harm to himself or herself; or poses an unacceptable risk of committing an offence.

Subsection (2) provides that the written order has effect for the period of not more than 28 days, stated in the order, starting on the day the order is given to the prisoner.

Section 202 (*Parole board may cancel amendment*) subsection (1) provides that if the chief executive makes an order under section 201 amending a parole order, the chief executive must give the secretariat written notice of the grounds for making the order. Pursuant to subsection (2) the written notice must be given to the secretariat immediately after the order is made.

Subsection (3) provides that the chief executive must give the parole board any further information about the amendment requested by the board.

Subsection (4) provides that the parole board may, at any time, cancel the order.

**Amendment of ch 5, pt 1, div 5, sdiv 2, hdg (Parole board powers)**

*Clause 10* amends the Chapter 5, part 1, division 5, subdivision 2, heading, so that it reads: *Parole board powers generally*.

**Insertion of new ch 5, pt 1, div 5, sdiv 2A**

*Clause 11* inserts new subdivision 2A *Requests for immediate suspension* into Chapter 5, Part 1, Division 5.

Section 208A (*Request for immediate suspension of parole order*) provides that in circumstances where the chief executive reasonably believes that a prisoner the subject of a parole order:

- has failed to comply with the parole order; or
- poses a serious and immediate risk of harm to another person; or
- 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,

the chief executive may by written notice given to the secretariat, request the parole board to suspend the parole order and issue a warrant for the prisoner's arrest.

The written notice must state the grounds on which the request is made.

Section 208B (*Prescribed board member may suspend parole order and issue warrant*) subsection (1) provides that if a request is made pursuant to 208A (*Request for immediate suspension of parole order*), a prescribed board member must as a matter of urgency consider the request and decide whether or not to suspend the parole order.

Subsection (2) provides that 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; or
- poses a serious and immediate risk of harm to another person; or
- 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.

Subsection (3) provides that if the prescribed board member decides not to suspend the parole order, the member must give the chief executive officer written notice of the decision.

Subsection (4) provides that 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 legislation.

Subsection (5) provides that this order takes effect from when it is made.

Subsection (6) provides that the warrant for the prisoner's arrest may be directed to all police officers, Pursuant to subsection (7) when arrested, the prisoner must be taken to a prison to be kept there until the suspension period ends.

Section 208C (*Parole board must consider suspension*) provides that where a prescribed board member decides, pursuant to section 208B, to suspend a prisoner's parole order and issue a warrant for the prisoner's arrest, the parole board must, within the period prescribed by regulation, either confirm or set aside the decision of the prescribed board member.

Where the parole board decides to confirm the prescribed board member's decision, section 208 (*Reconsidering decision to suspend or cancel parole order*) applies to this decision as if it were a decision to suspend a parole order under section 205(2).

Where the parole board sets aside the decision of the prescribed board member, the suspension and warrant cease to have effect. If the warrant has been executed, the prisoner must be released.

In addition, where the parole board sets aside the decision, the prisoner is taken not to have been unlawfully at large for the period starting when the order was made by the prescribed board member under section 208B (*Prescribed board member may suspend parole order and issue warrant*) and ending when the parole board sets aside that decision.

### **Replacement of ch 5, pt 2 (Parole boards)**

*Clause 12* omits chapter 5, Part 2 (*Parole Boards*) and replaces it with a new Chapter 5, Part 2 (*Parole Board*) which provides the legislative framework for the establishment and functions of the Parole Board Queensland.

#### *Division 1 Establishment and functions*

Section 216 (*Establishment*) establishes the Parole Board Queensland.

Section 217 (*Functions*) stipulates that the functions of the Parole Board Queensland are to decide applications for parole orders (other than court ordered parole orders) and to perform other functions given to it under this or another Act.

#### *Division 2 Powers*

Section 218 (*Powers generally*) provides that the parole board has the power to do anything necessary or convenient to be done in performing its functions under this or another Act.

Section 219 (*Power to require attendance*) empowers the parole board, by written notice given to a person, to require the person to attend a meeting of the parole board (at a stated time and place) to:

- give the board relevant information; or
- produce a stated document containing relevant information.

A person given such a notice must:

- attend as required by the notice, unless the person has a reasonable excuse; and
- give the parole board the relevant information that a board member requires the person to give, unless the person has a reasonable excuse; and

- produce a document containing relevant information that the person is required to produce by the notice, unless the person has a reasonable excuse.

Failure to discharge these obligations is punishable by a maximum of 10 penalty units.

It is a reasonable excuse for a person to fail to give relevant information or produce a document if giving the information or producing the document may tend to incriminate the person.

A person required by an attendance notice to attend a meeting of the parole board may attend the meeting by using a contemporaneous communication link between the person and the board.

The term *relevant information* is defined to mean information relating to:

- a prisoner's application for a parole order other than a court ordered parole order; or
- a prisoner's parole order, including a court ordered parole order.

*Section 220 (Expenses of attendance and documents produced)* subsection (1) provides that if a person is required by an attendance notice to attend a meeting of the parole board, the secretariat must pay the person's reasonable expenses of attending the meeting as certified by the board member presiding at the meeting.

Subsection (2) provides that if the person produces a document under section 219(2)(c), the parole board may inspect the document or make copies of it.

### *Division 3 Membership*

Section 221 (*Membership*) sets out the requirements for membership.

Subsection (1) provides that the parole board consists of the following members:

- the president
- at least 1 deputy president
- at least 2 professional board members who have a university or professional qualification that is relevant to the functions of the parole board, including, for example, a legal or medical qualification
- at least 1 police representative who is an officer nominated by the commissioner
- at least 1 public service representative who is a public service officer nominated by the chief executive, who has expertise or experience in probation and parole matters
- the number of community board members, as determined by the Minister

Subsection (2) provides that the president, a deputy president, professional board members and community board members are *appointed board members*.

Subsection (3) provides that police representative(s) and public service representative(s) are permanent board members.

Section 222 (*President and deputy president*) subsection (1) states that the president must either:

- 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 a judge of a State court, the High Court or a court constituted under a Commonwealth Act.

Subsection (2) provides that each deputy president must:

- be a former judge of a State court, the High Court or a court constituted under a Commonwealth Act; or
- be a former magistrate (including a magistrate appointed under the law of another State); or
- have qualifications, experience or standing the Governor in Council considers equivalent to that of a magistrate or judge of a State court, the High Court or a court constituted under a Commonwealth Act.

Section 223 (*Appointment*) subsection (1) provides that appointed board members are appointed by the Governor in Council.

Subsection (2) provides that in recommending a person to the Governor in Council for appointment, the Minister must be satisfied the person is appropriately qualified to perform the functions of a board member.

If the appointment is for the position of president or a deputy president the Minister must consult with the parliamentary committee about the proposed appointment. For an 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 Queensland community. For all appointments the Minister must have regard to providing for balanced gender representation and representation of Aboriginal people and Torres Strait Islanders in the membership of the parole board.

Subsection (3) provides that an appointed board member, other than a community board member, must be appointed on a full-time basis.

Subsection (4) provides that for the reappointment of a person as the president or a deputy president, the Minister is not required to consult with the parliamentary committee.

The term *parliamentary committee* is defined in subsection (5) for the purposes of the section.

Section 224 (*Term of appointment*) provides for the terms of appointments for appointed board members.

Subsection (1) provides that the president and each deputy president holds office for the term, up to 5 years, stated in the board member's instrument of appointment.

Subsection (2) provides that an appointed board member, other than the president or a deputy president, holds office for up to 3 years, stated in the member's instrument of appointment.

However, pursuant to subsection (3) if a successor has not been appointed by the end of the appointed board member's term, the member continues to hold office until a successor is appointed.

Subsection (4) provides that an appointed board member may be reappointed.

Subsection (5) provides that the president or a deputy president may be reappointed to the office for up to 5 years. Further the reappointed president or deputy president cannot hold office for more than 10 years in total.

Section 225 (*Conditions of Appointment*) subsection (1) provides that the president and each deputy president are to be paid the prescribed salary.

Subsection (2) provides that an appointed board member other than the president or a deputy president is to be paid the remuneration and allowances decided by the Governor in Council.

Subsection (3) provides that an appointed board member holds office on the terms, not otherwise provided for by this Act, decided by the Governor in Council.

Subsection (4) provides that an appointed board member is appointed under this Act and not the *Public Service Act 2008*.

Section 226 (*Vacancy in office*) provides that an appointed board member's office becomes vacant if—

- the member completes the member's term of office; or
- the member resigns office by signed notice given to the Minister; or
- the member's appointment is terminated by the Governor in Council under subsection (2) or (3).

Subsection (2) provide that the Governor in Council may, at any time, end the appointment of a community board member for any reason or none.

Subsection (3) provides that the Governor in Council may terminate the appointment of another appointed board member in the following circumstances:

- the member is guilty of misconduct of a type that could warrant dismissal from the public service if the member were an officer of the public service; or
- the member becomes incapable of satisfactorily performing the functions of a board member because of physical or mental incapacity or for some other reason.

Subsection (4) provides that for the purposes of this provision misconduct is misconduct pursuant to section 187(4) of the *Public Service Act 2008*.

Section 227 (*Leave of absence*) sets out the circumstances in which a leave of absence may be granted to board members.

Subsection (1) provides that with regards to the president, the Minister may grant a leave of absence.

Subsection (2) provides that with regards to a deputy president, professional board member or community board member, the president may grant leave to these board members.

Subsection (3) however makes the proviso that only the Minister can approve a leave of absence of more than 20 business days for a deputy president or professional board member.

Section 228 (*Acting appointments*) makes provision for acting appointments.

Subsection (1) provides that the Governor in Council may appoint a qualified person to act in the office of a prescribed board member for all or part of a period in which the office is vacant; or the person holding the office is absent from duty or from the State or, for another reason, cannot perform the duties of the office.

Subsection (2) provides that a person may not be appointed to act in the office for:

- a continuous period of more than 3 months; or
- a period that, with the periods of other appointments of the person to act in the office, form a continuous period of more than 3 months.

Subsection (3) makes the proviso that subsection (2) does not apply to the appointment of a person to act in the office of president or deputy president if, in recommending the person for the appointment, the Minister has consulted with the parliamentary committee about the proposed appointment pursuant to section 221(2)(b).

Subsection (4) provides that before recommending a person to act in the office of Deputy President the Minister must consult with the President.

Subsection (5) stipulates that for the purpose of the section the term *qualified*, in relation to an appointment to act in an office, means qualified for appointment to the office.

Section 229 (*Preservation of rights*) applies if a person is appointed as a prescribed board member and resigns the person's role as a public service officer in order to accept the appointment.

Subsection (2) provides that the person retains all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as a prescribed board member were a continuation of service as a public service officer.

Subsection (3) provides that at the end of the person's term of office or on resignation:

- the person has the right to be appointed to an office in the public service on the same terms and conditions that applied to the person before being appointed as a prescribed board member; and
- the person's service as a prescribed board member is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

*Division 4 Proceedings*

Section 230 (*Conduct of business*) provides that subject to this division, the parole board may conduct its business, including its meetings, in the way it considers appropriate.

Section 231 (*Quorum*) provides that a quorum for a meeting of the parole board is 3 board members.

Section 232 (*Presiding at meetings*) subsection (1) provides that the president presides at all meetings of the parole board at which the president is present.

Subsection (2) provides that if the president is absent from a meeting and the parole board has only 1 deputy president, the deputy president is to preside.

Subsection (3) provides that if the president is absent from a meeting and the parole board has more than 1 deputy president, the deputy president chosen by the president is to preside.

Subsection (4) provides that if neither the president, nor any of the deputy presidents, are present at a meeting, a professional member chosen by the president is to preside.

Section 233 (*Meetings generally*) subsection (1) provides that the parole board must meet as often as is necessary to perform its functions.

Subsection (2) provides that a meeting may be called by the president or, in the absence of the president, a deputy president.

Subsection (3) provides that in the absence of the president and each deputy president, the prescribed officer of the secretariat may call a meeting to consider whether a parole order should be amended, suspended or cancelled.

Subsection (4) provides that the parole board may hold meetings, or allow board members to take part in meetings, by using a contemporaneous communication link between the members.

Subsection (5) provides that a board member who takes part in a meeting under subsection (4) is taken to be present at the meeting.

Subsection (6) provides that a question at a meeting of the parole board must be decided by a majority of votes of the board members present.

Subsection (7) provides that if there is an equality of votes, the board member presiding at the meeting has a casting vote.

Subsection (8) provides that a prisoner granted leave to appear before the parole board under section 190 may appear before a meeting through the use of either a contemporaneous communication link between the prisoner and the parole board or by personal attendance (if the prisoner has a special need).

Section 234 (*Meetings about particular matters relating to parole orders*) Subsection (1) provides that this provision applies if, at a meeting of the parole board, the board is to consider a prisoner's application for a parole order, or the amendment, suspension or cancellation of a prisoner's parole order.

Subsection (2) provides that if the prisoner is a prescribed prisoner the parole board must not consider a matter at the meeting unless the following board members are present at the meeting—

- the president or a deputy president;
- a professional board member;
- a community board member;
- a public service representative;
- a police representative.

In all other cases a professional board member, a community board member and at least 1 other board member must be present at the meeting.

The term *prescribed prisoner* is defined in subsection (3) for the purposes of the section to mean—

- a prisoner mentioned in section 181(1), 181A(1), 182A(1) or (2), 183(1) or 185B(1) of the *Corrective Services Act 2006*; or
- a prisoner who is imprisoned for—
  - a serious violent offence; or
  - a serious sexual offence; or
  - an offence committed with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q(1).

Subsection (3) provides that *serious sexual offence* is as defined in the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Section 235 (*Attendance of staff members at meetings*) provides that if asked to do so by the president, a deputy president or the prescribed officer of the secretariat, a staff member must:

- attend a meeting of the parole board, including by using a contemporaneous communication link between the staff member and the board; and
- give the information the parole board asks for to help it decide a matter relating to a parole order.

#### *Division 5 Parole Board Queensland Secretariat*

Section 236 (*Establishment and functions*), subsection (1) establishes the Parole Board Queensland Secretariat (the secretariat).

Subsection (2) provides that the function of the secretariat is to support the parole board in performing its functions.

Subsection (3) provides that the chief executive may appoint as officers of the secretariat as many persons the chief executive considers necessary to support the function of the secretariat.

Subsection (4) provides that each person appointed to the secretariat by the chief executive is employed under the *Public Service Act 2008*.

*Division 6 Pension entitlements of president and deputy president*

Section 237 (*Judges pension scheme applies to former senior board member*) provides that the Judges Pensions Act, other than sections 15 and 15A, applies to a former senior board member as if a reference to a judge in that Act includes a reference to the former senior board member, but with—

- the changes set out in this division; and
- other changes necessary to enable that Act to apply to a former senior board member.

Section 238 (*Period for which person holds office as president or deputy president*) provides that when applying the Judges Pensions Act to a former senior board member under this division, the following are to be counted as a period for which a person held office as the president or a deputy president:

- any period, before the person's appointment as the president or a deputy president, that would be counted as service as a judge for the purposes of the Judges Pensions Act;
- any period, before the person's appointment as the president or a deputy president, for which the person acted as the president or a deputy president.

Section 239 (*Pension at end of appointment generally*) subsection (1) provides that sections 3 and 4 of the Judges Pensions Act applies to a former senior board member:

- if the member held office as the president or a deputy president for at least 5 years; and
- regardless of the age of the member when the person ceased to hold the office of president or deputy president.

A note to subsection (1) directs the reader to section 241 for when a pension becomes payable.

Subsection (2) provides that the annual pension to which the former senior board member is entitled is an annual pension:

- at a rate equal to 6% of the prescribed salary for each year for which the member held office as the president or a deputy president; but
- up to a maximum of 60% of the prescribed salary.

Section 240 (*Pension if appointment ends because of ill health*) subsection (1) provides that section 5 of the Judges Pensions Act applies to a former senior board member if:

- the member resigned the office of president or deputy president and a medical practitioner, prescribed under section 5(1)(a) of that Act, certified to the Minister that the resignation was because of a permanent disability or infirmity; or
- the member's appointment as president or deputy president was terminated under section 226(3)(b) because of a proved incapacity to perform the duties of the office.

Subsection (2) provides that the annual pension to which the former senior board member is entitled is an annual pension:

- at a rate equal to 6% of the prescribed salary for each year of the period consisting of:
  - the period for which the former senior board member held office as the president or a deputy president; and
  - the period for which the former senior board member could have held office as the president or a deputy president under the member's terms and conditions of appointment (including under an option to renew the appointment for a further term) if the member had not resigned, or the member's appointment had not been terminated, as mentioned in subsection (1); but
- up to a maximum of 60% of the prescribed salary.

Subsection (3) also provides that a former senior board member is entitled to an annual pension as set out in this section only if the period mentioned in subsection (2)(a) is at least 5 years.

Section 241 (*When pension becomes payable*), subsection (1) provides that the section applies if a former senior board member is entitled to a pension under the Judges Pensions Act, as applying under this division.

Subsection (2) provides that the pension does not become payable until the former senior board member reaches 65 years of age.

Section 242 (*Pension of spouse and children on death of former senior board member*) subsection (1) provides that the Judges Pensions Act, sections 7 to 8A applies to a former senior board member if the member is entitled to a pension under the Judges Pensions Act, as applying under this division.

Subsection (2) provides that the Judges Pensions Act, sections 7 and 8A applies to a spouse or child of a former senior board member who dies before the member reaches 65 years of age in the way the sections apply to a spouse or child of a judge who dies before retirement.

Subsection (3) provides however that if the spouse or child is entitled to a pension under the Judges Pensions Act, section 7 or 8A, the pension is not payable to the spouse or child until the time when the former senior board member would have reached 65 years of age.

Subsection (4) provides that the Judges Pensions Act, sections 8 and 8A applies to a spouse or child of a former senior board member who dies after the member reached 65 years of age in the way the sections apply to a spouse or child of a retired judge.

Subsection (5) defines *child* to include an *adopted child*.

Section 242A (*What happens if former senior board member is removed from office as a judge*) provides that section 16 of the Judges Pensions Act (*What happens if judge removed from office*) applies to a person who is a former senior board member if the

person was a judge removed from office as mentioned in the section after the person held office as president or a deputy president.

Section 242B (*What happens if former senior board member's appointment is terminated because of misconduct*) provides that this division (Division 6) does not apply to a former senior board member if the member's appointment is terminated under section 226(3) (a) unless the Governor in Council decides otherwise.

Section 242C (*Former senior board member entitled to other pension*) provides that a pension is not payable, or stops being payable, under the Judges Pensions Act in relation to a former senior board member in the member's capacity as a former senior board member if a pension is payable under that Act in relation to the member in the member's capacity as:

- a judge; or
- a member of the Land Court, the industrial court, or the industrial commission.

Section 242D (*Provision about agreements and court orders under Family Law Act 1975 (Cwth)*) subsection (1) provides that the Judges Pensions Act, part 2, division 2 applies to a former senior board member as follows—

- the reference to a retired judge in section 9 of that Act, definition *entitled former spouse* is taken to be a reference to a former senior board member;
- information allowed to be given under section 10 of that Act includes information about a benefit for a person who holds office as president or a deputy president;
- section 11 and section 12 of that Act apply whether the person is the president, a deputy president or a former senior board member, at the operative time mentioned in the section;
- section 13 of that Act applies in relation to a person who is the president or a deputy president at the operative time mentioned in the section and dies while holding office as the president or a deputy president.

Subsection (2) however provides that if a person, who is the president or a deputy president at the operative time mentioned in section 13 of the Judges Pensions Act, dies before reaching 65 years of age, the pension payable to the person's entitled former spouse under the section does not become payable until the time when the person would have reached 65 years of age.

#### *Division 7 Other matters*

Section 242E (*Guidelines*) provides that the Minister may make guidelines about policies to help the parole board in performing its functions.

Section 242F (*Annual report*) provides that on or before 30 September after the end of each financial year the parole board must provide the Minister with a report about the operation of this Act in relation to parole orders (other than court ordered parole orders) and the activities of the parole board. The report must state the number of persons who, in that financial year, were—

- released on parole, other than under a court ordered parole order; and
- returned to prison after their parole order, including a court ordered parole order, was suspended or cancelled.

The Minister must table the report in the Legislative Assembly within 14 sitting days after receiving the report.

Section 242G (*Special report*) provides that, if asked by the Minister, the parole board must give the Minister a written report about the operation of this Act in relation to parole orders or the performance of a function by the parole board.

Section 242H (*Disclosure of interests*) sets out the requirements where a board member becomes aware of a conflict of interest.

Subsection (1) provides that the provision applies to a board member if in the following circumstances:

- the board member has an interest in an issue being considered, or about to be considered, by the parole board; and
- the interest conflicts or may conflict with the proper performance of the board member's duties about the consideration of the issue.

Subsection (2) provides that as soon as practicable after the relevant facts come to the board member's knowledge, the board member must disclose the nature of the interest to the president. If the member is the president, the disclosure must occur to a deputy president.

Subsection (3) provides that the disclosure must be recorded in the parole board's minutes.

Subsection (4) provides that unless the president, or deputy president, to whom the disclosure was made otherwise decides, the board member must not be present when the parole board considers the issue, nor must they take part in a decision of the parole board about the issue.

Subsection (5) provides that a contravention of this section does not invalidate any decision of the parole board. This is however subject to the proviso in subsection (6) that if the parole board becomes aware a board member contravened this section, the board must reconsider any decision made by the board in which the member took part in contravention of this section.

#### **Amendment of s 355 (Regulation-making power)**

Clause 13 subclause (1) amends section 355 (*Regulation-making power*) to enable the making of a regulation to prescribe matters relating to the parole board and the secretariat.

Subclause (2) renumbers the provision as a consequence of subclause (1).

#### **Insertion of new ch 7A, pt 11**

Clause 14 inserts new Part 11 *Transitional provisions for Corrective Services (Parole Board) and Other Legislation Amendment Act 2017* into Chapter 7A.

Section 490M (*Definitions for part*) defines the terms: *amended Act*, *amendment Act*, *former board*, *former*, *Queensland Parole Board* and *regional board*.

Section 490N (*Dissolution of Queensland Parole Board and regional boards*) subsection (1) provides that on commencement the Queensland Parole board and the two regional boards are dissolved and the members of these boards go out of office.

Subsection (2) provides that no compensation is payable to a member because of subsection (1).

Section 490O (*Secretary of former board*) subsection (1) provides that on commencement a person who immediately before the commencement held an appointment as the secretary of a former board goes out of office.

Subsection (2) provides that no compensation is payable to a person because of subsection (1).

Section 490P (*Existing instruments and decisions made by a former board*) makes provision for transition of instruments and decisions made by a former board and in force immediately before the commencement.

Section 490Q (*Existing application made to a former board*) provides for the transition of certain applications made to a former board that were not decided by commencement.

Subsection (2) provides that certain applications (listed in subsection (1)(a) to (d)) made to a former board, but not decided by commencement, are taken to have been made to the Parole Board Queensland and must be dealt with and decided by the Parole Board Queensland under the amended Act.

Subsection (3) provides that in relation to an application for a parole order made under former section 176 or 180, section 193(3) continues to apply as if the amendment Act had not commenced.

Subsection (4) provides that in deciding an application for a parole order made under former section 180, the parole board must consider any submissions relating to the application made to a former board under former section 188.

Subsection (5) provides that an application made under former section 190 for leave to appear before a former board is taken to be an application for leave to appear before the parole board.

Section 490R (*Review of a regional board's decision*) provides for the transition of an application made under former section 196, but not decided by commencement.

Section 490S (*Particular orders made by the chief executive*) provides for the transition of a written order made by the chief executive under former section 201 (*Amendment or suspension*) that is in force immediately before commencement.

Section 490T (*Transitional regulation-making power*) provides for a transitional regulation-making power.

**Amendment of sch 4 (Dictionary)**

Clause 15 subclause (1) amends schedule 4 by omitting the definitions of: *appointed member*, *most recent parole application*; *parole board*; *Queensland board*; *regional board*; *replacement board*; and *suspend*.

Subclause (2) amends schedule 4 by inserting the following new definitions: *appointed board member*; *attendance notice*, *board member*; *Chief Judge*; *Chief Justice*; *community board member*; *deputy president*; *former senior board member*; *judge*; *Judges Pensions Act*; *parole board*; *permanent board member*; *police representative*; *prescribed board member*; *prescribed salary*; *president*, *President of the Court of Appeal*; *professional board member*; *public service representative*; *retired acting District Court Judge*; *secretariat*; and *suspend*.

Subclause (3) amends the definition of *accredited visitor*, to replace paragraph (d).

Subclause (4) amends the definition of *leave of absence*.

**Part 3 Amendment of Judges (Pensions and Long Leave) Act 1957**

**Act amended**

Clause 16 provides that this part amends the *Judges (Pensions and Long Leave) Act 1957*.

**Insertion of new 2AC**

Clause 17 inserts new section 2AC (*Length of service if previously senior parole board member*).

Section 2AC subsection (1) states that this section applies to a person serving as a judge after the commencement, whether the judge was appointed before or after the commencement.

Subsection (2) provides that for this Act, in deciding the length of service as a judge, a period for which the person held office as a senior parole board member after the commencement is to be counted as service as a judge.

Subsection (3) provides that the period for which the person held office as a senior parole board member after the commencement includes a period for which the person acted as a senior parole board member that is to be counted as a period for which the person held office as a senior parole board member under section 238(b) of the *Corrective Services Act 2006*.

**Insertion of new s 2BB**

Clause 18 inserts new section 2BB (*Salary of District Court judge if previously president of the Parole Board Queensland*).

Section 2BB, subsection (1) provides that this section applies to a District Court judge if:

- an entitlement to a pension under this Act arises for the judge in the judge's capacity as a District Court judge; and
- when the entitlement arises, an entitlement to a pension under this Act, as applying under chapter 5, part 2, division 6 of the *Corrective Services Act 2006*, exists for the judge in the judge's capacity as a former president (whether or not that pension has become payable under the *Corrective Services Act 2006*, section 241 (*When pension becomes payable*)).

The note to subsection (1) states that under section 242C of the *Corrective Services Act 2006*, a pension payable in relation to a former senior parole board member under this Act, as applying under chapter 5, part 2, division 6 of the *Corrective Services Act 2006*, stops being payable if a pension is payable in relation to the former senior parole board member under this Act in the former senior parole board member's capacity as a judge.

Subsection (2) provides that for the purposes of this Act, the judge's salary is the prescribed salary within the meaning of the *Corrective Services Act 2006*, schedule 4.

Subsection (3) provides that for the purpose of the section, the term *former president* means a person who has held office as the president of the Parole Board Queensland.

#### **Amendment of s 18AA (Retired judge appointed as CCC chairperson)**

*Clause 19* amends section 18AA (*Retired judge appointed as CCC chairperson*).

Subclause (1) amends the section 18AA heading to insert *or senior parole board member* after *chairperson*.

Subclause (2) amends section 18AA(1) to insert *or a senior parole board member* after *chairperson*.

Subclause (3) amends Section 18AA(2) to insert *or senior parole board member* after *chairperson*.

#### **Amendment of s 18A (Minister is manager for Commonwealth Act)**

*Clause 20* amends the section 18A(3) definition of *scheme* to insert a new subsection (e). The effect of this is that a scheme established under the *Corrective Services (Parole Board) and Other Legislation Amendment Act 2017* as it applies for providing pensions to a senior parole board member, and to a senior parole board member's spouses and children, because of the *Corrective Services Act 2006*, section 237 will become a scheme recognised by the *Judges (Pensions and Long Leave) Act 1957*.

#### **Amendment of sch 1 (Dictionary)**

*Clause 21* amends schedule 1 to insert definitions of *Parole Board Queensland* and *senior parole board member*.

## **Part 4 Amendment of Parole Orders (Transfer) Act 1984**

#### **Act amended**

*Clause 22* provides that this part amends the *Parole Orders (Transfer) Act 1984*.

**Amendment of s 5 (Registrar of transferred parole orders)**

*Clause 23* amends section 5 to omit subsection (2) and insert new subsections (2) and (3). This is consequential to the insertion of new section 236 in the *Corrective Services Act 2006* which establishes the Parole Board Queensland Secretariat.

Subsection (2) provides that the registrar of transferred parole orders is the officer of the Parole Board Queensland Secretariat, prescribed by regulation, who is responsible for performing the functions of the registrar under this Act.

Subsection (3) clarifies that Parole Board Queensland Secretariat means the Parole Board Queensland Secretariat established under the *Corrective Services Act 2006*.

**Part 5 Other amendments**

**Acts amended**

*Clause 24* provides that Schedule 1 amends the Acts it mentions.

**Schedule 1 Other amendments**

Schedule 1 makes minor and technical amendments to the *Corrective Services Act 2006*, *Criminal Law Amendment Act 1945*, *Criminal Law (Rehabilitation of Offenders) Act 1986*, *Parole Orders (Transfer) Act 1984* and *Penalties and Sentences Act 1992*.