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Queensland Government

Parole Board Queensland

Presentation to the Australian and New Zealand Association
of Psychiatry, Psychology and Law



Parole Board | Queensland



Minogue v Victoria [2018] HCA 271

There is no right or entitlement to release on parole at the expiration of a minimum term determined at sentencing^[4].

It always remains a possibility that a prisoner may be required to serve the whole head sentence imposed^[5].

The expiration of a minimum term has been said merely to provide an opportunity for the prisoner to be released^[6]

[4] *Crump v New South Wales* [2012] HCA 20; (2012) 247 CLR 1 at 26-27 [60]; [2012] HCA 20; *Knight v Victoria* [2017] HCA 29; (2017) 91 ALJR 824 at 830 [27]; [2017] HCA 29; 345 ALR 560 at 566; [2017] HCA 29.

[5] *PNJ v The Queen* [2009] HCA 6; (2009) 83 ALJR 384 at 387 [11]; [2009] HCA 6; 252 ALR 612 at 615; [2009] HCA 6.

[6] *Bugmy v The Queen* [1990] HCA 18; (1990) 169 CLR 525 at 538; [1990] HCA 18.

“[T]he release of an offender for the purposes of rehabilitation through conditional freedom is not to be seen solely as a mercy to the offender but also and essentially, as a benefit to the public.”¹

¹*Bugmy v The Queen* [1990] HCA 18; (1990) 169 CLR 525

“Any consideration of parole must begin by a determination of the purpose of parole. The only purpose of parole is to reintegrate a prisoner into the community before the end of a prison sentence *to decrease the chance that the prisoner will ever reoffend*. Its only rationale is to keep the community safe from crime. If it were safer, in terms of likely reoffending, for prisoners to serve the whole sentence in prison, then there would be no parole. It must be remembered also that parole is just a matter of timing: except for those who are sentenced to life imprisonment, every prisoner will have to be released eventually.”¹

¹Walter Sofronoff QC, *Queensland Parole System Review*, Final Report (2016) 1

“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 modernized and professionalized.”¹

¹Explanatory notes, *Corrective Services (Parole Board) and other Legislation Amendment Act 2017*, 2

The Board is *independent of the Government* and cannot be influenced by the media or the public.

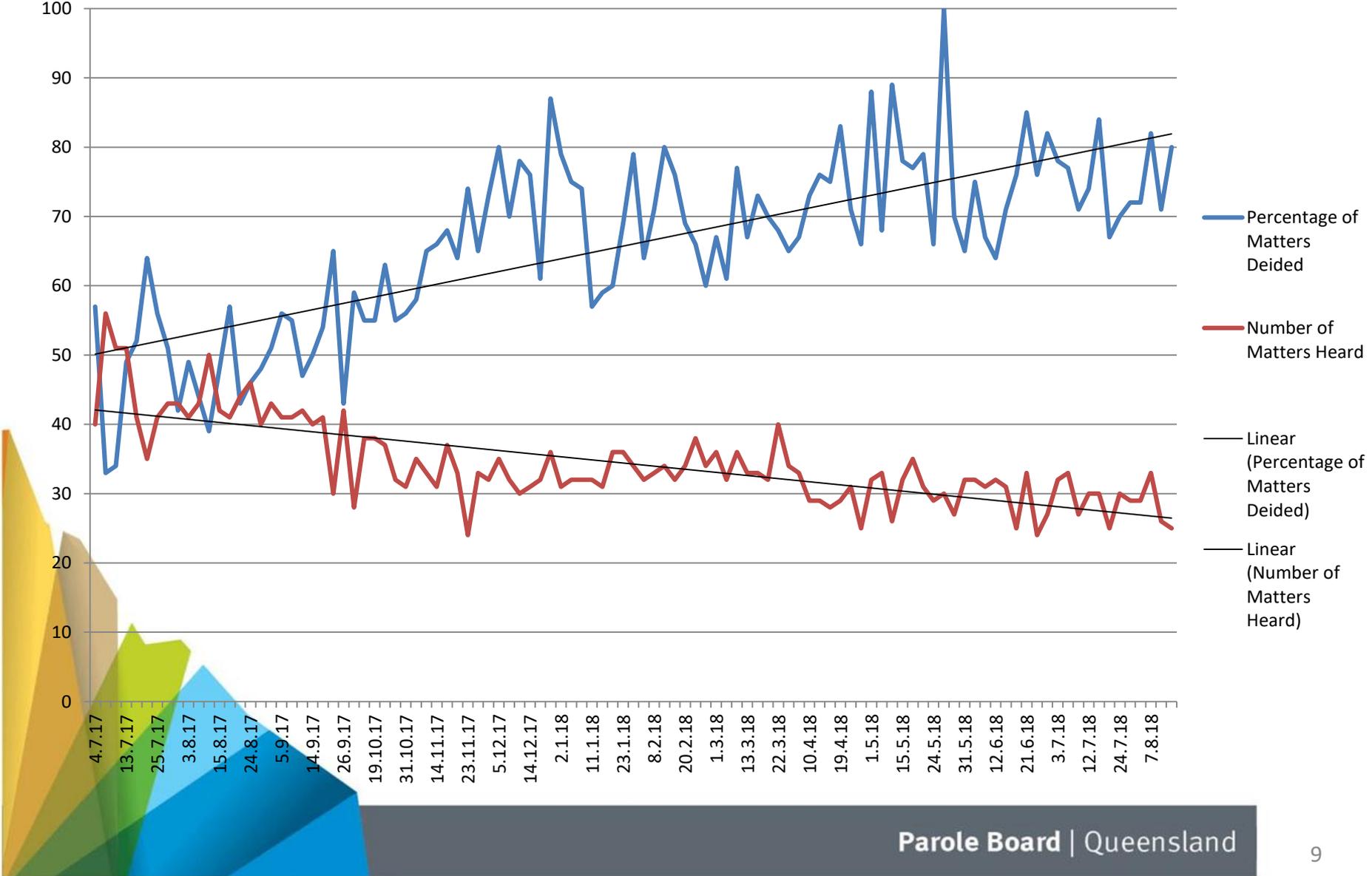
- 1 x President (Supreme Court Judge equivalent);
- 2 x Deputy Presidents (District Court Judge equivalents);
- 1 x Professional Board Members (Health qualification and expertise);
- 3 x Professional Board Members (Legal qualifications and expertise);
- 3 x Public Service Representatives (Probation and Parole expertise);
- 3 x Police Representatives;
- 22 x Active Community Board Members.

Between 3 July 2017 and 30 June 2018 the Board decided to:

- grant 1749 parole orders;
- refuse 768 parole orders;
- amend 832 parole orders;
- suspend 3610 parole orders;
- lift 427 suspended parole orders; and
- cancel 1458 parole orders.

Since July 2017, Parole Board Queensland has considered 3720 applications for parole.

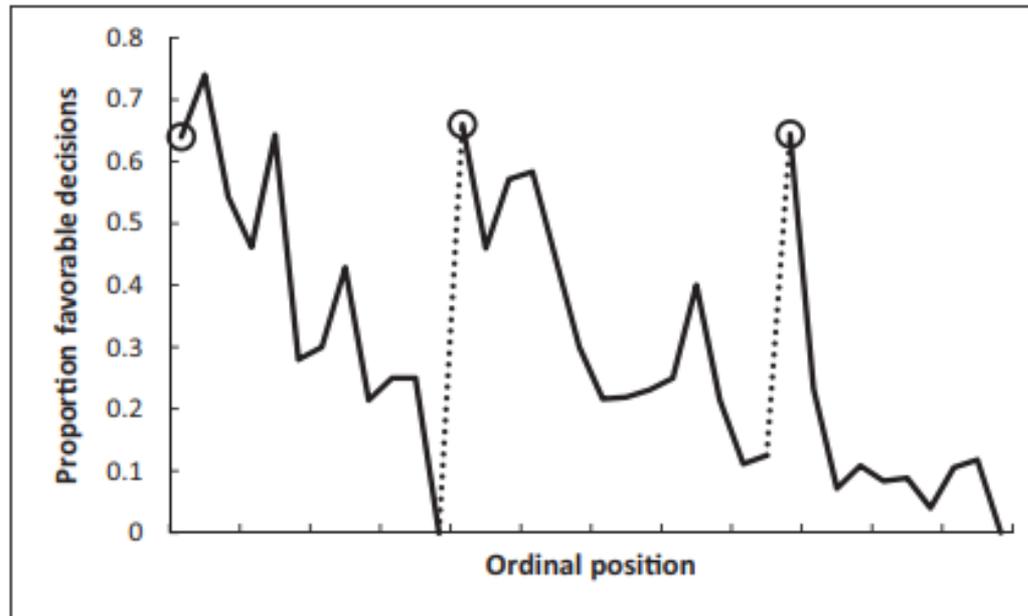
Deputy President Peter Shields – Meetings July 2017 – August 2018



Extraneous factors in judicial decisions

S Danziger, J Levav and L Avnaim-Pesso

“When judges make repeated rulings, they show an increased tendency to rule in favour of the status quo, that is to deny a prisoner’s request.”¹



1. *Extraneous factors in judicial decisions* S Danziger, J Levav and L Avnaim-Pesso SPNAS April 26, 2011 108 (17) 6889-6892; <https://doi.org/10.1073/pnas.1018033108>

THE DECISION TO GRANT OR NOT GRANT PAROLE

A decision to grant, or to not grant, parole is made having regard to the relevant provisions of the Act (Chapter 5 – Parole), the Ministerial Guidelines and in accordance with administrative law principles, importantly, procedural fairness.

The Ministerial Guidelines can be found at -

<http://www.justice.qld.gov.au/corporate/justice-agencies/statutory-authorities/parole-board-queensland>

192 Parole Board not bound by sentencing court's recommendation or parole eligibility date

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

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

Example—

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

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

[Emphasis added]

“Section 192 clearly implies that a parole board is bound to make a parole order if there is no relevant information before it which was not before the sentencing judge.”¹

¹*Sweeney v Queensland Parole Board* [2011] QSC 223

“But in the absence of such information placing the Board in a better position to make a judgement on this question than the sentencing judge, there is cause to question whether the refusal by the Board to grant parole at or about the time recommended is the result of some error by it which would justify a review of its decision.”¹

¹*Williams v Qld Community Corrections Brd* [2000] QCA 75 at [25]

“If this court recommends that the applicant be eligible for release on parole after having served two years of his term, **the reasonable expectation** thereby created cannot be defeated by imposing upon him a high security classification on the basis of factors considered by the court and then refusing an application for parole at the recommended time on the basis of the classification.”¹

¹ *R v Maxfield* [2000] QCA 320

Evidence Based Decision Making



In order to comply with the legislation (and avoid the financial and reputational costs of judicial review), the Board must make evidence based decisions.

Evidence has been considered and defined by the High Court as:¹

Any matter of fact, the effect, tendency, or design of which is, to produce in the mind a persuasion, affirmative or disaffirmative, of the existence of some other matter of fact.

1. *Cheney v Spooner* (1929) 41 CLR 532 at 537.

The Board must justify any decision using evidence.
The Board cannot refuse a prisoner's application for parole unless it has an evidential basis for doing so.

Examples of evidence that would have been before the sentencing judge include: the nature of the index offence; criminal history; and previous response to community orders.

As such, it would be improper to refuse someone parole purely on the basis of their criminal history or poor response to parole if that information existed before the date the prisoner was sentenced.

Conditions of Parole



CONDITIONS OF PAROLE

If a decision is made to grant parole, a number of standard conditions must be included (s200(1)) and the Board may include additional conditions –

- Requiring the prisoner to comply with a direction given to him or her under 200A (a curfew and monitoring condition – allowing for electronic monitoring) – section 200(2)
- To ensure the prisoner's good conduct; or
- To stop the prisoner committing an offence – section 200(3)

EXERCISING THE POWER TO AMEND, SUSPEND OR CANCEL PAROLE ORDERS

SECTIONS 201 – 211 *CORRECTIVE SERVICES ACT 2006*

Between 3 July 2017 and 30 June 2018 the Board's Professional Board Members confirmed 3491 of 3626 requests (96%) for immediate suspension of a parole order made by authorised Queensland Corrective Services delegates.

The Parole Board must confirm or set aside the decision of a prescribed board member. If a decision is set aside, the suspension and warrant cease to have effect – section 208C.

The Board will have regard to the information before the prescribed member and any other relevant information that has come to hand since.

The Ministerial Guidelines are also relevant – Section 6: Contravention.

When the Board confirms a decision to suspend a parole order, it will very often request certain further material before considering 'lifting' the suspension order.

The 28 day sanction is a thing of the past

If a prisoner's order has been suspended and the prisoner has not been returned to custody within a reasonable period, the Ministerial Guideline provide that the Board should (and does) consider cancelling the parole order – Guidelines at [6.5].

No Body, No Parole

- No Body, No Parole applies to prisoners who have been convicted and sentenced for prescribed offences relating to the killing of a member of our community, where the victim's body or remains have not been located.
- In accordance with section 193A of the Act, the Parole Board Queensland must refuse to grant a prisoner parole unless the Board is satisfied the prisoner has cooperated satisfactorily to identify the victim's location.
- In essence, the legislation compels the Board to give consideration to the degree to which a prisoner has cooperated in the investigations of the offence.
- It also compels the prisoner, who may have otherwise refused to cooperate, to disclose the location of a victim's remains to the authorities, giving the victim's family the opportunity to give their loved one a dignified goodbye.
- Queensland Corrective Services has actively engaged with victim support groups and other government agencies to advise of these changes.
- Consistent with the notion that judicial proceedings be conducted in open court, the Parole Board Queensland hears the No Body No Parole aspect of a parole application in public and publishes the decision and reasons for the decision.
- This is to further the ideal that justice must not just be done, it must be seen to be done, in particular, by the families of the victims.
- If the Parole Board Queensland finds that a prisoner has not satisfactorily cooperated to identify the victim's location, the Board must refuse to grant parole.

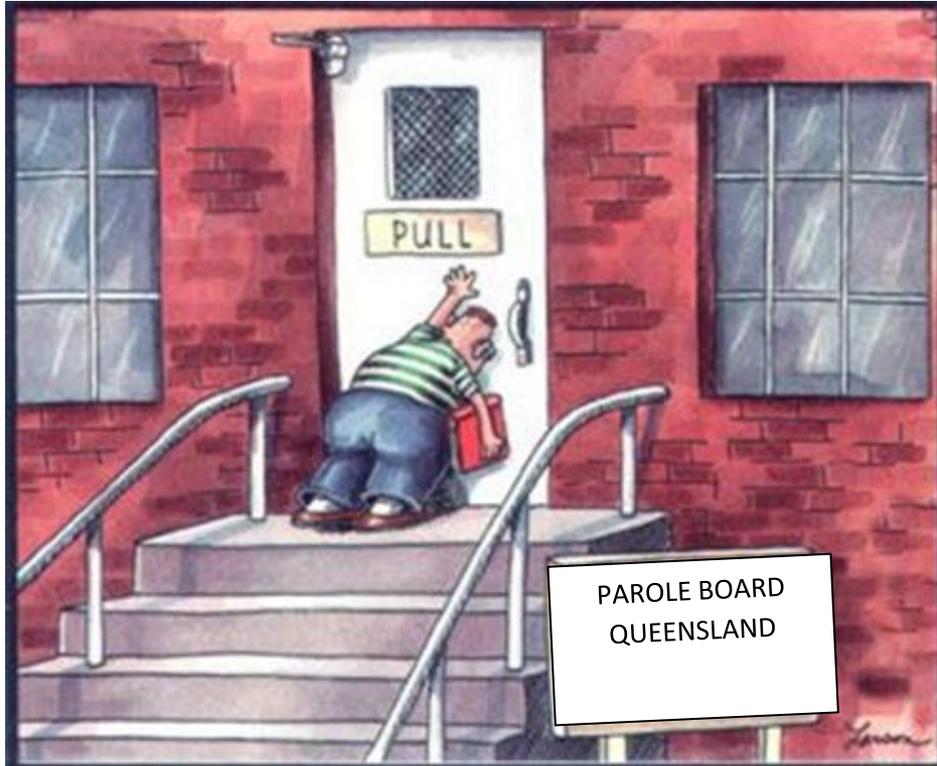
This inevitably means that certain prisoners may never be released from prison

PAROLE BOARD QUEENSLAND INITIATIVES

- Attending all correctional facilities to meet with staff and Prisoner Advisory Committees;
- Greater engagement with legal representatives and community organisations to assess concerns and resolve matters, where possible, at an early stage;
- Unlocking accommodation options;
- Information sharing arrangements with Prison Mental Health Service and others;
- Internal restructure and process improvement for improved quality and efficiency; and
- Conducting public hearings in No Body, No Parole matters.

There are known knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don't know. But there are also unknown unknowns. There are things we don't know we don't know.

Donald Rumsfeld



Questions?