

16 April 2021

Our ref: BDS-CrLC

The Honourable Cameron Dick MP
Treasurer and Minister for Investment
GPO Box 611
BRISBANE QLD 4001

By email: [REDACTED]

Dear Treasurer

Parole delays

We write on behalf our members, notably those on our Criminal Law and Human Rights and Public Law Committees, to raise significant concerns about delays in parole decision-making by the Parole Board of Queensland (the Parole Board).

We understand that Treasury have commissioned an independent review of the workload of the Parole Board and associated issues which is being conducted by KPMG with an expected reporting date of about ten weeks. We would be pleased to be consulted as a part of the KPMG review. We trust that this review will highlight the issues noted in our correspondence and will alleviate the current backlog.

The Parole Board is responsible for all decision-making about parole applications, amendments, suspensions and cancellations in Queensland. Under the *Corrective Services Act 2006* (Qld) section 193(3)(a) (the *Corrective Services Act*), the Parole Board is required to make a decision on a parole application within 120 days, which may be deferred in certain circumstances for up to 150 days. We have the benefit of reviewing the correspondence sent by Prisoners' Legal Service (PLS) to your offices on 2 March 2021 concerning parole delays. The letter raised serious concerns regarding the impact of current parole delays on incarcerated people and their families in Queensland. QLS was particularly concerned that PLS reports that most matters are considered within 225 to 250 days, well out of the statutory timeframe.

QLS has received similar information from our members. We now hold serious concerns in relation to:

1. Delays in parole applications; and
2. Delays in parole suspensions;

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There is clear evidence that the following is needed:

1. Additional funding for the Parole Board;
2. Funding for legal representation in complex cases; and
3. Ongoing reform to the parole processes, including to reduce parole suspensions.

The Parole Board has advised that as of 24 March 2021, the Board has around 2100 undecided new parole applications. Approximately three quarters of these new applications are already outside the decision making timeframes required by the *Corrective Services Act 2006*. This means that a prisoner lodging an application for parole today will most likely have it considered in August 2021.

Since the establishment of the Parole Board, the number of parole applications has increased significantly, without corresponding increases in the resources available to the Board to make parole decisions. This has resulted in a significant backlog in parole applications, and a significant percentage of new parole applications not meeting the statutory decision-making timeframe. Timeframes for decisions concerning parole suspensions have also increased significantly. These delays will only continue with the influx of persons into the prison system and those who are returned to prison following suspension of their parole.

The consequences of delays in parole decisions

1. Costs to the State

Failure to meet the statutory decision-making timeframe presents distinct risks to the State. By not complying with the statutory decision-making timeframe, the Parole Board opens itself to liability for a significant number of applications for judicial review in the Supreme Court.¹ The Parole Board does not have a defence to such applications, and may have to bear the costs of defending these actions and potentially the costs of a successful applicant. In addition, the bringing of judicial review applications will have a significant impact on the time and resources of the Supreme Court.

Delays in parole decision-making also incur the costs of imprisonment unnecessarily. The costs of imprisonment are high. According to the Productivity Commissioners *Report on Government Services 2020*, in 2018-19, the recurrent expenditure per prisoner per day was \$285.67 in Queensland.² By contrast, the cost to administer non-custodial orders by corrective services was \$14.61 in the same period.³ It is clear that keeping people in prison who would otherwise be eligible for parole has a significant economic impact and that there are clear economic benefits to the State if more prisoners are released on parole in a timely and safe manner.

2. Impact on human rights

The right to liberty is protected under section 29 of the *Human Rights Act 2019* providing that

¹ *Judicial Review Act 1991* (Qld) s 22(2).

² Productivity Commission, *Report on Government Services* <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice/corrective-services>>.

³ *Ibid.*

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“every person has the right to liberty and security” and further that “a person must not be subjected to arbitrary arrest or detention”⁴.

QLS is concerned that the substantial delays in considering the parole applications for all incarcerated people in Queensland constitutes a breakdown of the parole system of an extreme character. Such a breakdown could characterize the detention of those affected as arbitrary, as discussed in the UK case of *Faulkner, R (on the application of) v Secretary of State for Justice the Parole Board*.⁵

Personal liberty at the back end of a sentence is equally as valuable as liberty at the front end of a sentence. Despite this, the resourcing, transparency and accountability for decisions at the front end of a sentence is much higher than when considering the liberty at stake in parole decisions.

Some of the factors that underscore this difference include:

- The legislative prohibition on legal representation in parole hearing;⁶
- The under resourcing of lawyers to provide advice and assistance on parole applications despite their complexity, as evidenced in the letter from PLS;
- The absence of merits review of parole decisions; and
- The lack of transparency for parole board meetings that result in parole decisions.

Considering these systemic issues in addition to the parole delays raised in PLS' correspondence, there is a real and distinct danger that the continued detention of many people currently in Queensland prisons is arbitrary.

3. Impact on the wellbeing of prisoners and the community

Parole provides prisoners with a supported and supervised transition from prison back into the community. By supporting prisoners to return to the community under supervision toward the end of their sentence, parole aims to reduce the risk of reoffending and promote community safety. However, failure to meet the statutory timeframes in the Corrective Services Act raises a number of concerns that compromise the aims of the parole system, including by:

- risking greater numbers of people being released at the expiration of their sentence without the benefit of a supervised transition;
- increasing the risk of the institutionalisation of people in prison and its harmful effects such as loss of independence;
- interfering unnecessarily with the human right to liberty of a person in prison, where they might reasonably have been released into the community;
- negatively impacting the mental health and wellbeing of people in prison and their families by increasing time in prison and creating uncertainty around release; and
- where delays relate to considering parole suspensions, interfering with employment and housing established while on parole.

⁴ *Human Rights Act 2019* (Qld), s29

⁵ *Faulkner, R (on the application of) v Secretary of State for Justice the Parole Board* [2010] EWCA Civ 1434.

⁶ *Corrective Services Act 2006* (Qld), s189 and Schedule 4

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Ultimately, these factors undermine the benefits of parole in providing prisoners with a supported transition back into the community. This has implications not only for the wellbeing and safety of the person in prison, but also their family and the broader community.

Recommendations

It is in the interests of the State, the community and people held in custody that the Parole Board is given proper resources to ensure it can make decisions within the statutory time period. This includes resourcing for more permanent decision-makers, and also additional temporary decision-makers to address the backlog of undecided applications.

We also note that a properly resourced parole system requires adequate resourcing for a range of associated services. Legal services to represent prisoners on parole applications can be a cost saving measure as it ensures applications are brought appropriately and are relevant and well prepared, and saves the additional time required of the Board to deal with self-represented litigants.

Similarly adequate funding of housing, health and social support programs are vital. It is QLS' position that these services contribute to an effective parole system, and should be appropriately resourced and funded. In particular, QLS notes the effect of housing on parole applications. Often, parole is granted subject to the applicant locating suitable accommodation. According to the Parole Board, in the 2018-19 financial year, 110 prisoners were granted parole subject to suitable accommodation, and spent a cumulative total of 3085 extra days in custody beyond the grant of parole. 79 prisoners remained awaiting suitable accommodation, and had spent a total of 4046 extra days in custody at the time of reporting. In total, the delays in release and extra days spent in custody by this cohort amounted to a cost of \$1,294,633 (as of April 2019).⁷ Greater availability of public housing for parolees would contribute significantly to reducing excess days spent in custody for those eligible for parole. Similarly, success on parole requires addressing the root cause of criminal conduct, such as homelessness, poverty, substance abuse and mental health concerns. Greater availability of reintegration and support services, including rehabilitation and mental health services, after release would reduce recidivism, contributing to a more effective and sustainable parole system.

QLS recognises that additional funds for the Parole Board represents a temporary solution, particularly as the number of people in prison continues to increase rapidly. QLS therefore also considers that ongoing systemic and process reform will be necessary to ensure that the Parole Board can continue to make timely decisions that meet its statutory obligations and support the safe transition of people from prisons into the community.

We propose that further consideration also be given to the holding of more oral hearings by the Parole Board and the provision of legal representation at these hearings.

We also recommend that consideration be given to measures that will provide the Parole Board with greater independence. The Board is an independent statutory authority, however, remains dependent on Queensland Corrective Services in a number of ways, including for preparation of a Parole Board Assessment report. Greater independence from Corrective

⁷ Parole Board of Queensland, *Submission to Queensland Productivity Commission on the Inquiry into Imprisonment and Recidivism* (Submission, 27 April 2019) <<https://www.pbq.qld.gov.au/wp-content/uploads/2020/06/QPC-Submission.pdf>>

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Services would ensure that the decisions of the Parole Board are made impartially and in a manner that is separate and independent from other branches of Government, which may have differing policy objectives.

We look forward to hearing from you regarding our request to be consulted as part of the KPMG review.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President

Copy to:

The Honourable Mark Ryan MP, Minister for Police and Corrective Services

The Honourable Shannon Fentiman MP, Attorney General and Minister for Justice

Mr Peter Martin APM, Commissioner for Queensland Corrective Services