Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

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22nd April 2024

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000

By email: cssc@parliament.qld.gov.au

Dear Committee Secretary,

Re: Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

Thank you for the opportunity to provide comments in relation to the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (**Bill**) which proposes to make amendments to, inter alia, the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, *Crime and Corruption Act 2001*, *Mental Health Act 2016*, *Corrective Services Act 2006* and *Police Powers and Responsibilities Act 2000* (**PPRA**). We strongly oppose proposed amendments in the Bill that would broaden the discretion of the Parole Board to set a longer period during which a prisoner cannot reapply for parole after having an application refused. Aboriginal and Torres Strait Islander individuals, who are overrepresented in the numbers of those incarcerated, already face numerous barriers and challenges in accessing parole. The proposed amendments to the parole regime will only compound this disadvantage and, ultimately, have the potential to put society at a greater risk to safety as many incarcerated individuals will not be able to reapply for parole before their fulltime date, which will result in prisoners – some of which have been incarcerated for a long time – being released into the community without any prior structured community-based supervision. We also strongly oppose proposed amendments in the Bill to the safety order regime that would enable a broader range of practitioners, including social workers, occupational therapists, nurses and speech pathologists to make assessments about a person's mental health, suicide risk or self-harm risk to inform a decision about managing the prisoner on a safety order. These

practitioners are not suitably qualified to make such assessments and given the effect of a safety order is that the individual be held in solitary confinement, it is imperative that such a determination remain with doctors and psychologists only.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (**ATSILS**), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Comments on the Bill

Clause 8 - Proposed amendments to the *Corrective Services Act 2006* (**CSA**) which would restrict prisoners from reapplying for parole after being refused

Aboriginal and Torres Strait Islander prisoners already face numerous barriers and challenges in accessing parole including, but not limited to, the multifarious impacts of socio-economic disadvantage, the significant difficulties in securing a favourable decision on suitable accommodation as part of the parole process, the lack of properly resourced, widely and readily available culturally safe and trauma-informed rehabilitation programs and supports to help address the root causes of offending and complex health needs including the high prevalence of cognitive impairment and/or mental illness and poor literacy levels amongst those incarcerated which make it very

difficult to navigate the parole system process. We hold significant concerns regarding these proposed amendments and the inevitable negative implications such will have on individuals seeking parole. Pushing reapplication periods out so far that prisoners might reach their fulltime date prior to being able to reapply for parole is of particular concern, especially for those who have been incarcerated for long periods of time. Prisoners should be offered a fair pathway to obtaining parole such that they might access the benefits of community-based supervision in transitioning out of custody and back into the community to give them the best chance of not reoffending. This promotes community safety and is also consistent with preserving the human rights of the prisoner.

We have had the opportunity to review the submissions made by Prisoners' Legal Service (**PLS**) in relation to clause 8 of the Bill and we strongly support their submissions and recommendations. We agree, as expressed by PLS in its recommendations, that the Queensland Government must delay amendments to the parole regime until the recommendations which come out of the second Parole System Review (**QPSR2**) are properly considered, noting that the findings of this review were handed over to the Queensland Government in September 2023 and a report should be imminent[1]. ATSILS made extensive submissions as part of the consultation process for QPSR2 with respect to the ongoing barriers and concerns for Aboriginal and Torres Strait Islander peoples in accessing parole and the parole process generally. It is imperative that the review process be seen to completion, so that amendments are informed by comprehensive consultation and the considered recommendations which will come out of such.

In addition to our support for PLS' submission, we make the following discrete comments.

The Explanatory Notes for the Bill states as follows:

> *Under the current parole framework, prisoners are able to frequently reapply for parole after their parole application is refused. This occurs even though the risk they pose to the community has not diminished, or they have not demonstrated remorse for their actions, or meaningfully engaged in rehabilitative activities.*[2]

[1] Prisoners' Legal Service submission on the PPROLA Bill 2024, 19 April 2024, pages 7-8.
[2] Explanatory Notes, page 8.

We disagree with this statement on the basis that it does not appear to acknowledge or address:

(a) the realities of access to rehabilitation programs in the context of the parole process; and

(a) the fact that many parole applications are refused for reasons that a prisoner should not be punished for, including any disability, literacy issues and/or mental impairment/s that they might have.

Rehabilitation programs

Prisoners, particularly those serving longer sentences, should already have been offered and completed rehabilitation programs by the time that they are eligible for parole.

In our coalface experience, we have seen several instances where prisoners are assessed by Queensland Corrective Services (**QCS**) as not being required to complete programs and are, therefore, not waitlisted for any. Once they apply for parole, the Parole Board has a different view, and either defers their application or refuses their application on the basis that there are outstanding treatment needs. Furthermore, the wait lists for most of these programs are very lengthy and QCS often cannot say when a prisoner will be able to participate in the relevant program.

We have also seen instances where the Parole Board will refuse a client's application and require them to undertake specific programs, however, the client is unable to meet this requirement for reasons that are outside of their control, for example: the program is not offered at the correctional centre in which they are detained; the client cannot participate because of safety concerns or their security classification; or that the client is assessed as not being suitable for the program by QCS.

Parole refusals in the context of prisoners with literacy issues and/or mental impairment/s

We note the challenges that prisoners that have literacy issues or intellectual impairment/s experience, which often result in them not being able to lodge comprehensive applications the first time around and applications being refused as a result. There is limited legal support available for clients applying for parole. There is also limited legal support available to clients whose applications are refused. We receive weekly calls from clients who are illiterate and not able to complete their own applications. We have even seen blank applications being sent to the Parole Board only containing the client's name and signature. Unfortunately, we do not have the

resources to assist the majority of these individuals and they have to rely on other prisoners to assist them in completing their parole applications. We are very concerned that these proposed amendments will only compound the disadvantage that such prisoners already experience and will, in effect, punish them for their inability to sufficiently read/comprehend what is required of them.

Notably, there are limited avenues available for prisoners once their parole application is refused. Whilst they are able to challenge a refusal by applying for Judicial Review (**JR**), provided they have grounds for doing so, we are not funded to provide such services (i.e., to represent a client in a JR of a decision to refuse parole) and, therefore, clients would need to rely on barristers to assist them on a pro-bono basis or they would have to represent themselves. Accordingly, access to a fair review is out of reach for many. Additionally, it is foreseeable, in our view, that the proposed amendments might increase the number of self-represented JR matters, leading to an increase in the workload of the Supreme Court.

Additional concerns

1. When parole applications are refused, reasons provided for the refusal are often meagre and unhelpful, which makes addressing the same with the hopes of obtaining a favourable decision upon re-application very challenging. We also note that in instances where we have requested a Statement of Reasons from the Parole Board for a refusal, it has taken longer than the required 28 days to obtain the same and the Statement of Reasons provided appears to merely re-state previous correspondence without providing actual reasons for the decision.

2. The proposed amendments do not appear to take into account the legislated timeframes pursuant to section 193 of the CSA which provides that the Parole Board has 120 days, or if a matter is deferred—150 days, before they have to make a final determination on a parole application. If a prisoner seeking parole is prohibited from applying for 12 months, the actual effect is that they can be in custody for several months after that 12 month period before the Parole Board needs to make a decision.

3. There is a very real risk that prisoners will end up serving their fulltime dates and will, therefore, be released into the community without any support or rehabilitation. Where such prisoners are not supported, there is real potential that those individuals will re-offend and/or, for example, fall into a drug relapse. We refer to 1.3 of the Guiding Principles for the Parole Board in the Ministerial Guidelines to the Parole Board Queensland which relevantly states:

"As noted by Mr Walter Sofronoff QC in the Queensland Parole System Review '*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. The only rationale for parole is to keep the community safe from crime.*' With due regard to this, Parole Board Queensland should consider whether there is an unacceptable risk to the community if the prisoner is released to parole; and whether the risk to the community would be greater if the prisoner does not spend a period of time on parole under supervision prior to the fulltime completion of their prison sentence."[3]

In our view, the proposed amendments are at odds with this guiding principle.

4. Lawyers representing individuals that are seeking parole are not permitted to attend parole hearings. We are aware of proposed amendments in the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024 (**CS Bill**), which was introduced into Parliament on 13 February 2024 and has not yet passed, that would enable victims to be able to make oral submissions at parole hearings. As stated in our submissions on the CS Bill, these proposed amendments, if enacted, would be significantly prejudicial to those seeking parole and create an imbalance between the rights of a victim and the rights of an individual seeking parole. The proposed amendments under this Bill would place yet another obstacle in the way of those seeking parole, with the reasoning for doing so not being sufficient justification, in our view. In the interests of procedural fairness, we recommend that the legislation expressly mandates oral hearings for all parole decisions and/or introducing a system which provides prisoners with access to legal representation for parole decisions. We are aware that, in the New Zealand jurisdiction, parole hearings are able to be undertaken in person by way of submissions and oral hearings. Lawyers are able to attend these hearings and represent their client. In our view, this is essential, to help guide the client through the hearing, especially in circumstances where they might have literacy challenges and/or mental impairment/s.

Clauses 11 to 19 - Promoting timely prisoner safety order decisions

The Bill proposes to amend the CSA to expand the range of suitably qualified professionals that can be appointed by QCS to assess prisoners at risk of self-harm or

[3] Minister for Police and Corrective Services, *Ministerial Guidelines to the Parole Board Queensland* (31 December 2021), page 1.

suicide for the purpose of a safety order from 'doctors' and 'psychologists' to social workers, speech pathologists, occupational therapists and appropriately qualified registered nurses.

The justification provided in the Explanatory Notes for these proposed amendments is that there is an increasing number of prisoners presenting with complex needs coupled with a national shortage of psychologists. The intent is to broaden the types of practitioners that can make this type of assessment for the purpose of informing a decision about managing the prisoner on a safety order.

The effect of a safety order is that prisoners are removed from the general population and held in separate confinement where they often have no interaction with other prisoners and have restrictions placed on when and for how long they can leave their cells. Generally, safety orders can only be made for a month at a time but it is not uncommon for consecutive safety orders to be made where clients are kept on these orders for several months. In effect, safety orders are a form of solitary confinement. There is a vast body of evidence that shows the harmful effects of solitary confinement on an individual including that solitary confinement, even for short periods of time, can result in serious psychological harm.[4] Individuals that have complex health needs and might be at risk of self-harm or suicide often have already experienced significant trauma in their lives. The use of solitary confinement exponentially compounds that trauma, with the effect that, once released, there is potential for the individual to pose an heightened risk to members of the community if they are placed in a scenario where a trauma response is triggered.[5]

Social workers, occupational therapists, nurses and speech pathologists are <u>not</u> suitably qualified to make assessments about a person's mental health, suicide risk or self-harm risk. As mentioned, these prisoners are often individuals that have very complex mental health conditions and significant trauma which a speech pathologist, occupational therapist or social worker are simply not trained to deal with.

To suggest that an individual that is not suitably qualified to make such assessments can subject a prisoner to these types of conditions when they are in their most vulnerable state is an egregious breach of their human rights including, in particular, the right to humane treatment when deprived of liberty and the right to protection from torture and cruel, inhuman or degrading treatment.[6] International human rights

[4] T Walsh & H Blaber, 'Solitary Confinement and Prisoners' Human Rights' (2023) 49(1), *Monash University Law Review*, 1.
[5] Note 1.
[6] See section 30 and 17 of the *Human Rights Act 2019* (Qld).

standards provide that solitary confinement should only be used in very exceptional cases, for as short a time as possible and only as a last resort[7]. We are concerned that, if the proposed amendments are enacted, there is a real risk that prisoners will spend more time than what is necessary on safety orders. There is limited scope to oppose a safety order or a consecutive safety order, which is particularly concerning for vulnerable clients with mental health conditions.

Accordingly, we are extremely concerned about these proposed amendments and strongly oppose them.

If, despite our significant concerns, the Queensland Government is minded on making these changes, we strongly recommend that:

(a) the regime, as amended, ensures that any *consecutive* safety orders must only be made on the advice of a doctor or psychologist; and
(b) proposed section 305C (Authorised practitioner policy) be removed from the Bill on the basis that it essentially gives QCS the ability to decide who they can deem an 'authorised practitioner' and what training such practitioners require, which is wholly inappropriate.

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,

[redacted]

Shane Duffy
Chief Executive Officer

[7] Note 1, 2; Symposium, 'The Istanbul Statement on the Use and Effects of Solitary Confinement' (2008) 18(1) *Journal on Rehabilitation of Torture Victims and Prevention of Torture* 63, 66; *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),* GA Res 70/175, UN Doc A/RES/70/175 (8 January 2016, adopted 17 December 2015) r44.