Corrective Services (Parole Board) Amendment Bill 2025

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Mr Michael Crandon MP
Chair
Governance, Energy and Finance Committee
Parliament House
Cnr George and Alice Streets
BRISBANEQLD 4000

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

Dear Chair,

Re: Corrective Services (Parole Board) Bill 2025

Thank you for the opportunity to provide comments on this Bill. We have strong concerns about several aspects of this bill and submit that the Bill does not comply

We note that the provisions are intended to take retrospective effect from 3 July 2017, the date that sections 208B and 208C originally commenced. We also note a statement that the retrospective provisions do not impact any curren t prisoner , something that is hard to confirm without actual numbers.

We would also respectfully disagree with the statement that the Bill is considered consistent with fundamental legislative principles (FLPs) as per section 4(2) of the *Legislative Standards Act* 1992 (LSA).

Such is not a n inconsequential issue, given that this question is fundamental to the observance of the rule of law in Queensland and the oversight of the Parliament in a parliamentary democracy.

For ease of reference, we include the relevant portions of section 4 below and have added bolding to the passages we wish to draw attention to:

4 Meaning of *fundamental legislative principles*

(1)For the purposes of this Act, ***fundamental legislative principles*** are the principles relating to legislation that **underlie a parliamentary democracy based on the rule of law**.

Note—

Under section 7, a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation.

(2)The principles include requiring that legislation has**sufficient regard to —**

(a)rights and liberties of individuals; and

(b)the institution of Parliament.

(3)Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation—

(a)**makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review** ; and

(b)**is consistent with principles of natural justice** ; and

(c)**allows the delegation of administrative power only in appropriate cases and to appropriate persons;** and

(d)does not reverse the onus of proof in criminal proceedings without adequate justification; and

(e)confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and

(f)provides appropriate protection against self-incrimination; and

(g)**does not adversely affect rights and liberties, or impose obligations, retrospectively** ; and

(h)does not confer immunity from proceeding or prosecution without adequate justification; and

(i)provides for the compulsory acquisition of property only with fair compensation; and

(j)has sufficient regard to Aboriginal tradition and Island custom; and

(k)is unambiguous and drafted in a sufficiently clear and precise way.

(4)Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill—

(a)allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(b)sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(c)authorises the amendment of an Act only by another Act.

Two particular concerns we wish to raise are:

- The requirement that due process be followed when state authorities exercise their powers of arrest and detention was missing when a special regime, not authorised by a law of a parliament, was used by the Parole Board.
- The second concern is that the protection against retrospective laws and punishments has been disregarded. While remedial legislation fixes the first problem, its retrospective nature offends against the latter.

Section 29(3) of the *Human Rights Act* 2019 provides that a person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law.

The right protects personal liberty and is focused on the requirement that due process be followed when state authorities exercise their powers of arrest and detention. The right protects against the deprivation of liberty that is **arbitrary or unlawful** . The right is relevant whenever a person is placed at a risk of imprisonment.

For reasons outlined below it cannot be automatically said that due process was followed when government power was exercised by creating a special regime that had no authorising machinery. Our concerns about the arbitrary nature of some decisionsare outlined in more detail below.

The first rights have already been breached by practices, the second right will be breached by the passage of these provisions with retrospective action instead of appropriate transition provisions .

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 (including,

child protection and domestic violence) 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 com ment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Introductory comments

The Billneeds to be placed in its proper context with the roles of sentencing and parole and current problems with the parole system as highlighted in 2019 by the Queensland Parole System Review and whichcontinues to this day with extraordinarily high levels of suspensions

Parole provides a monitored form of reintegration and rehabilitation . A well-constructed parole order supports community safety, a badly constructed parole order or a badly administered one sets offenders up to fail and contributes to the overload crisis in the criminal justice system.

The purpose of sentencing and the purpose of parole

The broad principles underpinning sentencing in Australia and other common law jurisdictions include:

- parsimony – a sentence must be no more severe than is necessary to achieve the purposes for which the sentence is imposed
- proportionality – the overall punishment must be proportionate to the gravity of the offending behaviour. it is a core principle ensuring sentences are just, fair, and appropriate considering the nature of the offence and the offender.
- parity – similar sentences should be imposed for similar offences committed by offenders in similar circumstances
- totality – where an offender is to serve more than one sentence, the overall sentence must be just and appropriate in light of the overall offending behaviour. it prevents a sentence that is overly harsh or lenient by considering the overall criminality of offending behaviour.

Parole is intended to allow an offender to serve a part of their sentence in community subject to conditions, which includes supervision. The purpose of parole is to improve public safety while reintegrating the person into the community and minimising the likelihood of reoffending.

Its only rationale is to keep the community safe from crime. As noted in the seminal Queensland Parole System Review Report published in 2016

> *" if it were safer, in terms of likely reoffending for prisoners to serve the whole sentence in prison, then there would be no parole."*[1]

Walter Sofronoff KC, Queensland Parole System Review Final Report (2016) 1 [3].

Adherence to the proper sentencing principles are not incompatible with parole, in fact they should run in lockstep. Done well a properly functioning parole system increases access to health interventions and effective programs increasing community safety.

The deleterious impacts of suspension

The very detailed and well researched Report gives careful insight to the impacts of suspension (at paragraphs 436-437):

> *However, mere supervision of an offender without the assistance and time to undertake programs to address offending behaviour is also likely to result in noncompliance with the parole order. Each time an offender's parole is suspended for noncompliance, th ere is a return to custody. But there are no programs available in*
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> *A period of imprisonment on suspension can be expected to cause serious disruption to any progress that the offender was making in the community. When the offender is released back into the community there is the real likelihood that she or he will be in aworse position than before suspension.*

For suspensions that are unrelated to any re-offending but arise from a perception of risk, there are no positives for the return to prison and the gains being made on the outside are lost.

[1] Walter Sofronoff KC, *Queensland Parole System Review Final Report* (2016) 1 [3].

The implications of this are clear, t he impacts of unnecessary suspensions of parole can work completely counter to the aims of parole . The impact of the decision (based on perceived risk and not on actual reoffending) is that instead of a n offender being on parole and continuing to be subject to conditions the offender is sent back into an overcrowded jail with no foreseeable access to programs or health interventions that are available on the outside.

The parole processes do not remedy the current problems

The ideal for decision making on parole is that it is made through an independent, transparent and accountable process and in accordance with high standards of procedural fairness.

There is a public interest in an effective parole system providing a monitored form of reintegration and rehabilitation , there is also a public interest in offenders accessing suitable programs and parole.

At every stage, t he system fails to address the barriers for offenders trying to access programs and parole, lack of basic understanding , literacy skills, anxiety, mental illness, age, level of maturity, poor social skills, cognitive impairment or learning difficulties. In our view it results in the warehousing of the mentally unwell who get trapped in the system.

Concerns about appropriate assessments of risk

Further it is the subjective opinion by a QCS officer making a call about assessment of risk which drives the number of suspensions An individual officer's perception of risk may be coloured by cultural misunderstandings,a mismatch with cultural expectations (not looking a person in the eye is a classic but very simple example) and what is "normal" behaviour. Add to that whether the tools used for risk assessment are appropriate. In 2019, The Parole System Review commented;

> *"The developers of the RoR tools reinforced in discussions with members of my team that the RoR is not specifically designed, nor ever intended to be used, to assist in making assessments of parole eligibility or pre-sentencing decisions; a prominent warning is present in the administration manual. 265 Nor is the RoR designed or intended to provide assessments of dangerousness or predict the likelihood of technical breaches of parole."*

The increasingly high numbers of suspensions point to something more than just a perception of risk.

Lack of transparency around decision making

It is also unclear whether prisoners will be told about the initial decision not to suspend and given reasons why that decision has been overturned by the BoardIn the interest of procedural fairness, they should be given this information.

Unfortunately, it is hard for us to unpack patterns of problems around decision making. The Board already relies heavily on section 340AA of the Corrective Services Act 2006 (CSA) which they can rely upon in order not to disclose the reasons for the suspension. This makes it very difficult for prisoners to show cause and address the Boards concerns. We are seeing an increas ing pattern in the Boards reliance on s 340AA.

Loss of protections against arbitrary decisions to suspend

The ability of a single board member to decide not to s uspend was a useful circuit breaker on questionable decisions to suspend.

We have seen shifts over the years from parole officers working with parolees to keep them on track to an overwhelmed workforce dropping into compliance mode, simply administering urine testing and mechanistic reporting requirements. The implications of an overwhelmed parole officer wrongly assuming an order has been breached and suspending parole can be profound. See *Inquest into the death of Terrence Michael Malone*, 8 May 2019for an offender who was wrongly suspended due to a mistake by the parole officer as to which address he was meant to be at.

There used to be an ability to do legal appearances in the Magistrates Court for prisoners on Return to Prison Warrants to sort out any misunderstandings, and to bring other factors to the attention of Probation and Parole (for example some missed reportin g days due to a woman fleeing domestic violence), but that avenue has gone.

Removing Reviews of non-suspensions for sentences of 12 months or less

We would recommend that the review measure not be introduced for decisions not to suspend for sentences of 12 months or less.

The benefits of removing parole for sentences of 12 months or less or six months or less was described in the Queensland Parole System Review Report at paragraphs 441 and 442.

> *Removing parole for sentences of 12 months or less would bring Queensland into line with most other Australian states and removing parole for six months or less would bring Queensland into line with New South Wales.*
>
> *Removing parole for short sentences would reduce the number of offenders on parole, which could result in more resources being available for parole orders to be administered effectively by the Probation and Parole Service on offenders who have committed serious offences or are of more risk to the community.*

In our view it would be unnecessary to introduce a special measure for the board to review a decision not to suspend by a single member for sentences of 6 months or less or 12 months or less. (We leave it to the committee to consider which length of time).

Resource implications

We note that there is an assertion that there are no resource implications to this measure.

Although the explanatory notes suggest there will be no additional costs to government for implementing the proposed amendments, with respect it is hard to see how that will be so, in two key respects.

There will be an increase in decisions before the board which goes from just considering one class of decisions (decisions to suspend) to considering two classes of decision, decisions to suspend and decisions not to suspend.

Add that higher number to the backlog that currently exists (albeit reduced from the terrible situation that existed earlier) and there are resource implications. Increasing Parole Board resources will still be needed to avoid even more congestion in the system.

Then there is the cost of the jail cells themselves:

Lack of additional resources to address the additional workloads could mean a back log in processing parole applications, which in turn keeps prisoners remaining in custody for longer.

Presumably the number of overturned suspensions will be reinstated. We note that over a 22 -month period between 3 July 2017 and 19 May 2019, the Board (PBQ) reported that 6, 963 prisoners were returned to custody following a suspension of their parole order. That number equates to 81.9% of the total built cell capacity of all prisons in Queensland (see Parole suspensions in Queensland: an examination of Prisoners' Legal Service case files 2018-2020).

Justice Reinvestment arose in recognition that the costliest and least effective solution (returning to prison) was happening at the expense of funding more effective options which ultimately support the safety of the community the best. Similar calculations and like-minded approaches have been adopted in various jurisdictions.

Conclusion

We welcome constructive improvements as having a parole system that is more fit for purpose and does not drain emphasis and resources away from progress on the inside and linking prisoners to programs and health interventions on the outside.

A better interlinking to community programs and health services will start to create the options to relieve the pressure on a broken system, help drive down the anticipated numbers caused by even greater use of return to prison and offer more effective protections from future offending.

Returning to the procedure of the Bill itself rather than its subject matter, fundamental legal principles, fundamental freedoms and the effective scrutiny of parliament over the laws should remain primary concerns and should be upheld.

Yours faithfully,

Shane Duffy
Chief Executive Officer