LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Ms SL Bolton MP
Ms JM Bush MP
Mrs LJ Gerber MP (virtual)
Mr JE Hunt MP (virtual)
Mr AC Powell MP

Staff present:
Ms R Easten—Committee Secretary
Ms M Telford—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2021

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 15 OCTOBER 2021

Brisbane

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The committee met at 1.25 pm.

CHAIR: I declare open the public hearing for the Legal Affairs and Safety Committee's inquiry into the Police Powers and Responsibilities and Other Legislation Amendment Bill 2021. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share.

On 15 September 2021 the Hon. Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, introduced the Police Powers and Responsibilities and Other Legislation Amendment Bill 2021 into the parliament and referred it to the Legal Affairs and Safety Committee for examination. My name is Peter Russo, member for Toohey and chair of the committee. The other committee members here with me today are Ms Sandy Bolton, member for Noosa; Ms Jonty Bush, member for Cooper; and Mr Andrew Powell, member for Glass House. Mrs Laura Gerber, member for Currumbin and deputy chair, and Mr Jason Hunt, member for Caloundra, are attending via videoconference today.

The purpose of today is to hear evidence from stakeholders who made submissions as part of this committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. You have previously been provided with a copy of instructions to witnesses, so we will take those as read.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode. The program for today has been published on the committee's webpage and there are hard copies available from committee staff.

DE SARAM, Ms Binari, Manager and Solicitor, Legal Policy, Queensland Law Society

ROGERS, Mr Dan, Chair, Human Rights and Public Law Committee, Queensland Law Society

SHEARER, Ms Elizabeth, President, Queensland Law Society

CHAIR: Good afternoon. I invite you to make a short opening statement, after which committee members may have some questions for you.

Ms Shearer: Thank you, Chair, and thank you, committee, for inviting us to attend. I, too, would like to acknowledge the traditional owners and custodians of the land on which we are meeting today, the Turrbal and Jagera peoples, and pay deep respect to elders past, present and emerging.

Our written submission sets out a number of concerns, but as our time is brief we wanted to focus on one in this statement. That is to do with the new framework for parole decisions about a life-sentence prisoner who has committed multiple murders or who has murdered a child. We acknowledge the devastating impacts of these offences on families and the community. We support proportionate responses to serious offending and appropriate legal responses that respect fundamental principles of necessity, legality and proportionality. It is with those fundamental principles in mind that we hold significant reservations about the proposed amendments to the Corrective Services Act which would have the practical effect that affected prisoners could be subject to rolling consecutive periods of up to 10 years additional imprisonment without parole, potentially providing for conditions of indefinite

imprisonment of a prisoner who has not committed any further offences. As you see, I am joined today by Dan Rogers, who has some further brief remarks to make. Then we will be happy to take your questions.

Mr Rogers: As Elizabeth has just said, there are certainly other concerning aspects to this bill, and the society is pleased that you will hear from lots of experts this afternoon who will no doubt unpack some of those. Just dealing with the restricted prisoner declarations, to be frank, that proposal is just a flagrant and unjustified breach of so many different human rights and the society urges you not to pass that aspect of the bill. I want to unpack that just to hopefully explain why we say that it is such a flagrant breach of human rights.

Firstly, retrospective punishment is a breach of the Human Rights Act. The government committed to not imposing legislation unless it was demonstrably justified in that sense. Here we are talking about 10 years—another decade—retrospectively punishing someone for an offence that was committed a long time ago. That is the first breach. The second breach is that there is capacity for this extra decade to become a rolling thing. The rolling nature of that punishment really makes it arbitrary detention or indefinite detention, which is another breach of the Human Rights Act the government committed to. It is also a breach of longstanding international human rights jurisprudence and it is contrary to the intent of the judge who actually sentenced and set a parole eligibility date at a particular point in time.

Such a drastic change to the criminal justice system, which retrospectively punishes people indefinitely or for rolling 10-year periods, has to be demonstrably justified and it has to be based on evidence. Here the purported intent of this legislation is to avoid the retraumatisation of victim families. We can all agree that that is a goal, but there is no evidence to suggest that this will actually achieve that. I note that Mrs Gerber at the public hearing asked that very question, appropriately, and she received nothing in response. We have to ask ourselves: do we flagrantly breach human rights in the absence of research where such breaches are just enormous?

The society urges that you do not pass that aspect of the bill, but, if despite that objection you do press on with it, I urge you to at least consider the right to a fair hearing, which is under the Human Rights Act at section 31. The right to a fair hearing requires that a hearing be fair, it be done in public and it be done by an impartial decision-maker. There is no suggestion that the president of the Parole Board is not an impartial decision-maker—he is—but the process that is proposed for an extra 10 years on a rolling basis is not fair and it is not conducted publicly, and they are two really big problems if, despite our objections, you decide to pursue this policy.

There are other ways that this could be done if, despite objection, it is to occur, and the obvious way is that it be done properly by a court. An application to a Supreme Court judge in a similar way to an application under the Dangerous Prisoners (Sexual Offences) Act would be a way to ensure that at least a fair hearing is conducted for these people who are so incredibly vulnerable to just rolling 10-year periods. That would ensure, firstly, that a person has proper legal representation and that they have a proper opportunity to see the evidence that might justify them being detained indefinitely, to respond to that evidence, to call evidence, to call experts and then to have a court decide in an open, transparent way whether or not such an enormous additional retrospective form of punishment should be imposed. Without at least conducting it fairly in an open way, our view is that the community's confidence in the administration of justice would be seriously undermined by what would otherwise be a completely closed-door experience without any protection of rights. I am happy to answer any questions about that aspect of our submissions or anything else.

CHAIR: I am conscious of time and that we have other people waiting, but if it is okay with everyone I would like to go over time. I apologise to the people waiting. Sometimes time defeats us. Laura, do you have any questions?

Mrs GERBER: Perhaps one, and maybe it is more of a reflection than a question. My reflection on this is that these monsters, for the nature of these crimes, are being given parole in a way that is perhaps not in line with what society expects in terms of the time they should serve for what they have done and this is perhaps a way of dealing with that when maybe it needs to be dealt with better in the first instance with the judiciary. Is there a way that we could deal with that here? Do you have a reflection on that?

Mr Rogers: I am happy to answer that. There is a lot of research that has been done around sentencing. Research from Kate Warner, the former governor of Tasmania, shows that community expectations, to pick up your language, in terms of what is an appropriate sentence will never be met unless the community understand the full circumstances of an offence and an offender. Where they do understand the full circumstances of an offence and offender, research shows that judges are actually

more harsh than members of the community. With the greatest respect, it is a myth that community expectations are an issue in the sense that if those community members expressing views were fully informed their views would not be aligned with the outcome of the sentencing judge.

Obviously it needs to be balanced against the decision of an impartial judge who has imposed a sentence and has set a parole eligibility date. To now retrospectively just add consecutive rolling terms of 10 years is entirely inappropriate and there should be some confidence in the Parole Board, who do assess whether or not there is a risk to that person being released. As we saw in relation to a decision yesterday, the Parole Board determined that there was an unacceptable risk to release that particular prisoner and he stays in custody. There is no reason that cannot continue to occur.

Mrs GERBER: If this bill was to go through and we were to push on with it, is there a trial period? Is there something that you would suggest be put in place in order to make sure that, for instance, the objectives in making sure that victims are not retraumatised is actually achieved by the legislation?

Mr Rogers: Firstly, if you were to press on despite the objections of those appearing before you today, it should not be retrospective and, secondly, there needs to be a fair process. The suggestion that it is an application to a Supreme Court judge—and judges of the Supreme Court often hear Dangerous Prisoners (Sexual Offences) Act applications, and they are best placed to assess the risk of release of persons that you describe as monsters into the community. The parliament should have confidence in the members of the Supreme Court to undertake that task, and the community would have greater confidence that it is being done openly and transparently as opposed to behind closed doors.

CHAIR: I want to deal with another aspect of your submission, if you do not mind, in relation to the parole system review, the extension of time for decisions to be made, the extended time frames. I wonder, Mr Rogers, if you could perhaps unpack that on a more practical basis, from your experience practising in the field. I know that we are going to hear from other people in that area, but can you unpack that a little bit? If I read this correctly, it is going to 210 days where it is currently 150 days, otherwise 180 days where it is currently 120. Could you unpack that and talk about practically what that means for people bringing parole applications?

Mr Rogers: Sure. The enormous funding resources for the Parole Board are well known and I will not traverse that, but 120 days is already a very significant amount of time for an independent Parole Board to consider someone's liberty. The society's view is that extending that and giving them more time is an attempt to fix what are funding deficiencies in the Parole Board. The effect of it will be that people will remain in custody for longer. If we want to look at it on a cost analysis basis, it will be an enormous cost to the government to continue to detain those people for longer because the Parole Board cannot make decisions within 120 days. To give them extra time for no reason other than insufficient funding is a poor fix to this problem. The society's position is that 120 days is more than enough to make those important decisions about people's liberty.

CHAIR: Do we know how often the Parole Board sits? That might be a question for someone else to answer.

Ms Shearer: I think it is a matter of the number of panels there are. They have been temporarily extended. We are conscious of the KPMG review that has been done. We would welcome the opportunity to read that review and see what their findings have been. It is certainly our experience that people are staying in custody who should not be there. Their sentence may expire before their parole application is considered. That, of course, deprives the community of the reintegration aspects of parole.

Ms BOLTON: From my understanding it is up to 10 years that the president can make a determination. However, you kept saying 10 years.

Mr Rogers: Yes.

Ms BOLTON: Should this come in and someone is given 40 years for a crime, it is parole at 20 years. Would that not be heard at 20 years and the president could actually go 'in one year', not 10 years?

Mr Rogers: That is possible, but if the intent is to avoid retraumatisation of victim families then the concern is that instead of imposing a declaration that they cannot apply again in one year it is more likely that it will be a longer period of time, in order to avoid that retraumatisation, but the effect of it will be substantial terms of imprisonment that a sentencing judge never intended or that the legislation does not intend.

Ms BOLTON: But the word 'retrospective', because they would have a hearing at the time the original judge said, 'Parole at 20'—they would get that original?

Mr Rogers: No. The parole eligibility date would remain, but the practical effect of the parole eligibility date is completely frustrated by this power to impose retrospectively a substantial additional period of time. That is what frustrates the original date.

Ms BOLTON: Thank you. I needed to understand that.

Mrs GERBER: Before you close, Chair, may I just ask Mr Rogers if he could send the committee one of those reports into community expectations? I am interested in looking at whether or not it really delves down into the types of crimes that this legislation is targeting.

Mr Rogers: I am happy to do that. That is no problem.

CHAIR: Thank you, Mr Rogers. Could we have that by 12 pm on Tuesday, 19 October? Thank you for your attendance.

GREENWOOD, Ms Kate, Barrister and Policy, Intervention and Community Legal Education Officer, Aboriginal and Torres Strait Islander Legal Service

CHAIR: Welcome. I ask you to make a short opening statement, but could you just be aware that we are due to finish this session at 1.45 pm and it is already 1.45 pm.

Ms Greenwood: Thank you for the invitation. I will be very condensed. I speak on behalf of the Aboriginal and Torres Strait Islander Legal Service. ATSILS provides professional and culturally competent services across the state of Queensland. We have 24 offices. Our submissions are informed by what is now almost 50 years of providing legal services to Aboriginal and Torres Strait Islanders residing in Queensland. The particular emphasis that our submissions take is on disproportionate disadvantage and systemic issues.

Our submission touched upon a number of different issues that we wish to highlight in the legislation. Probably the most contentious one perhaps is our submission that none of the parole amendments should go ahead in this set of bills. I thought I would tease that out a bit further for the committee. On the very last page of our submission, I had a graph showing the increase in numbers of prisoners who are incarcerated either because they are in prison with parole suspended or cancelled parole, and it is an extraordinary figure. I might add—there is missing paragraph there—the overall rate of offending in Queensland is not quite flat, but it is not that far off it either. So you have this enormous contrast between actual offending levels and the rate of incarceration and reincarceration that occurs in this state.

There were three major reports which tease out various aspects of this. This includes the review of the parole system by the Sofronoff report; the inquiry by the Queensland Productivity Commission into imprisonment and—they called it recidivism, but when you unpack the figures it is actually high levels of reincarceration due to things other than reoffending; and, finally, the Queensland Sentencing Advisory Council on suggesting a new sentencing framework with community sentencing options in the community as opposed to in the jail system. Our ultimate submission would be that none of the parole changes should go ahead until the recommendations that were made in all of those reports are implemented at the same time.

In the Sofronoff report there were three main points that were made. One is that there is a substantial underfunding of parole officers supervising parole orders in the community. What was hinted at in the Sofronoff report was picked up in the Queensland Productivity Commission which was to urge re-examination of how counterproductive breaches of parole were—suspension and cancellation of parole, based on risk factors rather than actual reoffending. So there is a factor which is driving up over-incarceration and over-reincarceration.

The majority of parole sentences and what is driving this huge increase are sentences of less than 12 months. Again, in the parole system review report, two things were pointed out. One is that, while the public assume that rehabilitation occurs, the reality is that for sentences of less than one year there is no proper access to programs. The few prisoners that can get themselves onto waiting lists have very limited access. The chief thrust of the proposed new sentencing framework from the Queensland Sentencing Advisory Council was that exactly the sorts of programs, exactly the sort of rehabilitation that should be available, that should be rehabilitating these people, can be made available in the community where they are obviously absent from the prisons.

The final point made in the Sofronoff report, especially with reincarceration, was the loss of all the positive aspects that would bring about rehabilitation, reintegration into the community: loss of jobs, loss of housing, loss of access to services, for many losing their places in queues for getting access to services and access to housing et cetera.

The system is largely counterproductive and it is a mess. The jails are overcrowded. They were already on the way to being overcrowded with this increase in incarceration, but now with the delays from the Parole Board which, quite frankly, are unacceptable, the prisons are getting more and more overcrowded with prisoners who simply are not being released the way they used to be released, and, as was pointed out in an earlier submission, all the positive benefits you would expect from parole—the supports, the reintegration, the services, the keeping their noses clean under supervision—

CHAIR: Kate, sorry to do this, but I am going to ask you to wind it up so we can get to questions, unless you have some burning point that you think we need to hear.

Ms Greenwood: No, Chair, that pretty much takes me to the end. I might just point out that ATSILS has an MOU with the Prisoners' Legal Service, which can add much more detail to the actual issues of parole.

CHAIR: Do you know how often the Parole Board sits?

Ms Greenwood: I do not, Chair. I know—

CHAIR: That is okay. I am sure someone does.

Ms Greenwood: Again, there are extra panels and, as I understand it, there is a lot of cancellation of court ordered parole in order to add an accommodation requirement, and there are a lot of parole applications going in circles over accommodation.

CHAIR: Can you go back one step? You said there were a lot of parole applications cancelled.

Ms Greenwood: Court ordered. Maybe Prisoners' Legal Service can fill in that detail.

Ms BUSH: Is the graph you have included in your submission on page 6 lifted from the Sofronoff review or the QPC review?

Ms Greenwood: We sent that graph to the QPC review. It may turn up in both, but I originally took it from the Sofronoff report. I am sorry if that footnote disappeared. I will supply it.

Ms BUSH: It could be there. I am just looking now.

CHAIR: It is there.

Ms BUSH: It is on the page above, I think. Did they break that down in terms of Aboriginal and Torres Strait Islander prisoners specifically around those that remained in custody due to parole suspension and cancellation?

Ms Greenwood: I think that has been broken down by the Queensland Sentencing Advisory Council, but there is a significant proportion of our clients who are over-represented in a number of categories.

Ms BUSH: I am sure the data is out there.

Mr HUNT: Is there a contention or a belief that the delays in parole and that some of the obstacles in prisoners gaining parole are restricted exclusively to limitations around funding? Are there other reasons for delay identified or does anyone anecdotally want to offer why else there are delays in prisoners gaining parole?

Ms Greenwood: I will defer to the Prisoners' Legal Service on that. They will be able to unpack it a lot better. I can only speak to the broad brush. If you look at that graph, that is incoming work for the Parole Board, especially if court ordered parole has been cancelled for an accommodation requirement to then go on to a Parole Board parole order.

CHAIR: Are there any other questions from the committee before we move on? Kate, is there anything you would like to tell us before we move on to Sisters Inside?

Ms Greenwood: I just point to banning orders and how they have a disproportionate effect.

CHAIR: On the homeless?

Ms Greenwood: Exactly, and with 'commit public nuisance'—banning orders surrounding somebody who is intoxicated and disorderly close to a drinking establishment. What we found was that those links were very tenuous indeed when those banning orders were imposed. Again, for the reasons outlined in our submission, we are very concerned that the homeless will end up getting banning orders, which really have nothing to do with them going anywhere close to licensed areas, and will have all the disproportionate effects outlined in my submission, including not being able to go to the very places that have services that they need.

CHAIR: That concludes this part. Sorry that we had to cut you short, Kate, but I thank you for your indulgences and thank you for the written submission and your attendance today.

KILROY, Mrs Debbie, Chief Executive Officer, Sisters Inside

McHENRY, Ms Katherine, Policy Officer, Sisters Inside

CHAIR: Welcome. I invite you to make a short opening statement, after which committee members will have some questions for either or both of you.

Mrs Kilroy: I would like to acknowledge the traditional owners of the land on which we meet, the Turrbal and Jagera people, and pay respects to elders past and present. We acknowledge the continuing sovereignty of all First Nations people in struggles for justice. Every day you walk into a prison you see that injustice of not having land back due to the mass incarceration of Aboriginal and Torres Strait Islander people in this jurisdiction and across this country.

I was going to talk a bit about Sisters Inside as an independent community organisation with nearly 30 years of experience in providing support and advocacy for criminalised women and girls and their families. Our submission outlines that Sisters Inside does not support this bill. Specifically, we do not support the proposed amendments of the Corrective Services Act 2006 relating to the extensions of time in deciding parole applications, the publication of parole decisions, parole eligibility and parole decision-making. We are extremely concerned about the impact this bill will have on women in prison and their families, particularly their children.

We have identified the following issues in the bill to make comment. The first is in respect of parole delays. In the last 18 months, the circumstances for women in prison have significantly deteriorated. The current extent of the delays is unprecedented, and we consider it has reached crisis point. The parole delays have compounded the trauma of imprisonment, with many women we support reporting a concerning decline in their mental health and wellbeing as a result of being in a state of limbo about their parole. Parole delays have resulted in the loss of housing, including private and social housing, and the removal of their children by the state.

In addition to the loss of housing and other opportunities for women, the cost to the state overall is estimated to be $3.9 million per month. We note that if the board had the appropriate resources to deal with the backlog effectively an entire prison would be emptied, so we would not have to build another prison in this jurisdiction. We consider that the amendment to extend the time frame of decision-making for parole applications is not an effective or appropriate response to the ongoing parole backlog. We also note that this is contrary to one of the recommendations made in the Queensland Parole System Review. This bill will affect the sole mechanism imprisoned people have to address their ongoing incarceration past their parole eligibility date and decision date. It also removes an important avenue for public accountability for what is a failure of government.

Secondly, we do not support the proposed amendment relating to the publication of parole decisions. Parole decisions contain sensitive information, including details concerning physical and mental health behaviour inside the prison and other personal circumstances. Publishing this information will likely have a serious negative impact on the individual and may undermine their ability to reintegrate into the community.

Sisters Inside recently assisted a woman who was released onto parole and the board decided to publish their decision. That decision contained information about her behaviour in custody and her mental health. As a result of the publication, the media identified her location in the community. This was highly distressing not only for her but also for her family and placed them all at risk. In our view, this amendment would frustrate the board's ability to properly carry out its function of decreasing the chance the individual will ever reoffend. Further, we hold concerns that the bill infringes the right of privacy.

On three-year restricted prisoner declarations, we also do not support the proposed amendments to chapter 5 of the Corrective Services Act relating to restricted prisoners. We submit that these amendments are unnecessary, disproportionate, highly punitive and have concerning implications for human rights. I will not continue there.

I have been around the prison system long enough now—for probably 50 years of my life—as a prisoner and as someone who is no longer a prisoner but a lawyer and also the CEO of Sisters Inside. I remember the days when the Parole Board had a backlog like it has today, although maybe not as bad. What the government did then was introduce court ordered parole for people serving under three years. Here we are back at the same spot again, if not worse. If we could release the backlog of 3,000 people who have parole applications before the Parole Board, as I said, we could release more than a whole prison in this state, but we do not. We continually enact more oppressive laws that keep people in prison longer.

I note the response—I have read that; it was given to us just earlier this morning—to our submissions to state that it is not a person's right or entitlement to be given parole. However, there is an expectation about natural justice that when a judge or a judicial officer sentences someone then they believe that they are eligible at that date and should be released in line with so-called community safety. If we are actually not going to do that and say that it is not a right or an entitlement for someone to be released, then abolish parole absolutely. That means getting rid of the Parole Board, getting rid of community corrections and putting all that money into social services to support women so that they are not criminalised in the first instance because they are homeless, mentally unwell and living in poverty, criminalised by the police and pipelined into the prison system and having their children removed.

If we want to be fair dinkum about community safety, people need to be released at the time of their eligibility date, not with 180 days to consider or 210 days. We know women who are 330 days past their parole eligibility date and are at risk of losing their housing and their children by the state. This has implications for individuals. Those who are in prison are actually human beings, no matter what they have been convicted of. A court has dealt with that and it is time for us to step up and support those human beings to come back into the community. We are so much more than what we were criminalised for and imprisoned for.

Mr HUNT: Debbie, there have been suggestions from other submitters that delays in parole are funding related or directly attributable to funding in certain areas. I am not 100 per cent convinced that that is the sole determining factor. Are you able to expand on that? I know you just did; you spoke very well on some of those other factors. If not funding, where else do you think the blockages can be fixed?

Mrs Kilroy: I think there are a number of things, and funding is one of those things because of the huge volume of applications that the Parole Board is behind with. We need to sort that out. I will hand over to Katie to talk about Corrective Services with regard to applications, particularly for women, for the addresses they are to be released to and the blockage there.

Ms McHenry: One of the requirements for release onto parole is that the person has to have suitable accommodation that is approved by probation and parole. We have seen that with women who do not have access to accommodation, who are homeless when they come into custody and homeless when they are released from custody, addresses can be a massive issue for people who are in prison. Administrative issues like that can be a holdup in the person getting a decision from parole because there are all these checks and balances that need to be done first. Then you compare that with court ordered parole, for instance. When someone is released onto court ordered parole they are released that day and they go into probation and parole. They do not have to have an address assessed. They just tell their parole officer where they are. I think there are some administrative issues that can probably clear up the backlog.

CHAIR: Katherine, in relation to the administrative process—I understood what you said: if you get court ordered parole, you go down to the parole office and they do not check where you are living—how could you administratively fix that? I know it is a blockage in the system. If they do not have a suitable address, they do not even get past—

Mrs Kilroy: The issue is that you can only put one address up to be assessed. If it is deemed not eligible, they have 28 days for another address. We have proposed to the Parole Board and to Corrective Services before to allow women to put three addresses up so that they could be assessed at the same time, instead of saying no, then wait; no, then wait; no, then wait. For some reason, Corrective Services cannot even get their act together to assess addresses in a timely manner.

CHAIR: I interrupted you, Katherine.

Ms McHenry: That is okay.

CHAIR: Debbie has clarified that.

Mrs Kilroy: There are other blockages. When the Parole Board is asking, for example, for mental health documentation or reports, women could wait for months and months until someone comes to actually undertake that report. There are a number of issues that cause the blockages.

Ms McHenry: Another issue is that sometimes the board will defer the application so that they can obtain sentencing remarks when that should be normally available to them at the time the person is sentenced. There are administrative blockages.

CHAIR: Going back to the sentencing remarks, the Parole Board cannot access them?

Ms McHenry: There have been instances before where they do not have immediate access to the sentencing remarks so they have had to defer the application to obtain them.

Mrs Kilroy: I will give an example. Yesterday a young Aboriginal woman was sentenced in the Townsville Supreme Court. I was with her. She was given a head sentence of 7½ years and was eligible for parole yesterday. She will put in the papers today or early next week, but she will have to wait probably until next year before she is assessed due to these blockages, when the Supreme Court was very clear about her release as of yesterday. In the two years that she has spent on remand in custody she has not seen her four children in that whole time, which was considered by Justice North. Her children will not see her again—they were in court yesterday—probably for another six to eight months until she is eligible, just for addresses to be cleared and to get the sentencing remarks, because Justice Miller said yesterday that he would have to tidy them up in case there are grammar issues or whatever else. Waiting and waiting is an issue.

Ms BOLTON: Debbie, in other jurisdictions across the world is anybody utilising court ordered parole to process when there is a backlog? Are there any examples you can give?

Mrs Kilroy: I am not sure what you mean.

Ms BOLTON: You said that we could literally free up a whole prison at the moment.

Mrs Kilroy: Yes, with the parole applications that are waiting to be assessed.

Ms BOLTON: I thought you had said that to do that quickly you could just do that through a court ordered—

Mrs Kilroy: No. When there was a backlog years ago, the government enacted the penalty so anyone sentenced to under three years—there were some types of offences that were not—would get court ordered parole. I know that some people, including the Parole Board, are advocating to clear the backlog to bring that to five years to get court ordered parole, but we are going to be in the same situation with regard to suspensions or cancellations: anyone who gets sentenced to five years and two weeks will only get an eligibility date, for example. We keep compounding the issue; it is not being addressed. It is about the number of people being pipelined and criminalised and put into our prison system when they actually do not need to be in the prison system in the first instance.

Ms BOLTON: Are there any examples of the situation where, say, it is a lesser crime and they have been sentenced to three years or under and once parole comes up they are automatically released?

Mrs Kilroy: That is correct.

Ms BOLTON: There are examples across the world?

Mrs Kilroy: That is what happens now. That is the law.

Ms BOLTON: At the moment?

Mrs Kilroy: Yes. Anyone who is sentenced to three years or under gets a court ordered parole. We could go to court today you and I, you being the defendant. You get sentenced to three years imprisonment and you could get court ordered parole today and you are released automatically. All you have to do is report to probation and parole within 24 hours and you are on parole. A lot of people do not understand that. When they walk out of court they forget, because a lot of people are homeless or have mental health issues. They do not actually go and report. They forget and then a warrant is issued to return them to prison. That is automatic; you do not come back to the court. That is how the court ordered parole regime works now.

Ms BOLTON: Thank you for clearing that up.

Mr HUNT: I refer to the documentation that the Parole Board cannot currently access or has difficulty accessing with sentencing details et cetera. You are familiar with the system and the software, Deb. Aside from your dealings with clients, is there a capacity for that to be available on the Integrated Offender Management System now? Could all that be available now on the IOMS system that QCS uses?

Mrs Kilroy: I will let Katie answer that because Katie used to work at the Parole Board before she came to work at Sisters Inside.

Ms McHenry: All of the sentencing information, QP9s, criminal history et cetera should be on the IOMS. However, the sentencing remarks in particular sometimes have to be revised and so they are not published straightaway. As a result, not all the information is available on IOMS. In addition to that, they have to do Parole Board assessment reports along with home assessments. They do not get uploaded onto IOMS automatically. Someone has to go in and interview the person and see what their release plans are. Not everything is on the software.

Mr HUNT: That matches with my experience. Is there the capacity, however, for that to be more speedily and readily available?

Ms McHenry: I am not sure, to be honest. Sentencing remarks are a bit unusual because sometimes they have to be revised and take a while to draft up, but everything else ordinarily should be readily available, but not always.

Mr HUNT: That is my experience as well.

CHAIR: That brings to a conclusion this part of the hearing. I thank you for your written submissions and for your attendance today.

BLABER, Ms Helen, Director and Principal Solicitor, Prisoners' Legal Service

DENOVAN, Mr Zachary, Paralegal, LawRight

TUCKETT, Mr Ben, Managing Lawyer, LawRight

CHAIR: Welcome. We are running a bit behind.

Mr Tuckett: In the interests of time and given that you probably will have a lot of questions for my colleague, I do not propose to make much of a submission other than to introduce myself. I am the managing lawyer of LawRight's Court and Tribunal Services. I am joined today by my colleague Zachary Denovan, a paralegal in our state courts office. I want to quickly apologise: I did receive an email earlier today requesting a copy of some documents that were embedded in our submission. I have been in another hearing this morning so I have only just received that. I will provide them.

CHAIR: That is okay. It was me who was trying to access them. If you could get that to the secretariat at your convenience, that would be good.

Mr Tuckett: Not a worry.

Ms Blaber: I can be very brief. I acknowledge the traditional owners of the land on which we meet and pay my deep respect to elders past and present. Prisoners' Legal Service represents people experiencing disadvantage within the prison and parole system. Over the decade that I have worked at PLS I have seen increasing numbers of First Nations people and people with disability entering prison and becoming enmeshed in the system because of the disadvantage they face in the parole system, not because they pose a risk to the community. Legal representation is often necessary for these people. This is demonstrated by the fact that PLS representation changes the outcome of preliminary parole refusals in around 70 per cent of cases.

Parole reforms are desperately needed in Queensland, but these are not the reforms that we need. Some of these reforms will take Parole Board resources away from the majority to focus on the few. This is wholly unnecessary because the Parole Board already has unconfined discretion to refuse release on parole where a person poses an unacceptable risk. Focusing time and resources on high-profile cases will undoubtedly come at the expense of vulnerable people in prison who do not pose a risk to the community. Some of these reforms will make people being released on parole unsafe and heighten the risk they pose to others as a consequence. None of these reforms address the parole issues which are most significantly contributing to a prison population that is exploding and cannot be sustained.

Over 50 per cent of people released from prison in Queensland are returned to custody within two years. Parole suspensions are a major contributor to this, yet there is no focus on the underlying factors contributing to those suspensions or the overly administrative legislative processes and procedural processes that surround those decisions. Investment is needed into services that help people exiting prison, many of whom are experiencing profound levels of disadvantage. Focusing on helping people will reduce their risk and better protect the community.

These reforms are reactive and unnecessary. What is needed is proactive and long-term investment in the services for the majority of the prison population who do not pose an unacceptable risk to the community when they become eligible for parole but who need therapeutic supports and in some cases legal representation in order to obtain release.

CHAIR: We will move to questions. Laura, do you have a question?

Mrs GERBER: I will pass to Andrew because I know that we are really short on time and he has not asked a question yet. If you have a question, Andrew, I am happy to forgo mine for yours.

Mr POWELL: I am open to whoever wants to respond to this. If not these amendments, what amendments? We have heard from previous submitters how we can fix this up. What are LawRight and Prisoners' Legal Service suggesting we do?

Ms Blaber: The purpose of these amendments is to address the parole crisis that we are facing. There are a lot of reforms that could be looked at, but then there are no quick fixes. I would suggest dismantling the whole parole suspension process because parole suspensions are the hidden numbers that we are not talking about. To give you an idea of those numbers, 4,651 parole orders were suspended last year. Those are people getting returned to prison from the community. When you contrast that to the prison population, which is currently 10,153, you get an idea of the number of people we are talking about and why the prison population is expanding. Parole suspensions have been increasing for the last decade and continue to increase. Despite the Sofronoff reforms, parole suspensions continue to be one of the major drivers for why the prison population keeps going up.

Mr POWELL: Are those not largely due to reoffence?

Ms Blaber: Not necessarily. Some of them are for reoffences like public nuisance or reoffences like contravention of a domestic violence order where there is contact with both parties but nothing more and where a person does not get a custodial sentence for those offences but still gets their parole order cancelled because they failed to comply with the conditions of their parole order.

We see a lot of people coming back into prison for parole suspensions spending six to 12 months in prison on that suspension, no material change taking place in their risk factors—except for the fact that they might lose access to their housing supports et cetera—and then being released with no change. It begs the question: what was the point of doing that? Unless that person was an immediate risk—'We have to get this person off the street right now'; there are a very small number of suspensions made for that reason—then it is not really necessarily for community safety and from our perspective makes us all less safe because it takes people back to prison to spend an indefinite period of time in prison where they do not get access to rehabilitation, lose their housing and get back out, sometimes after their full time, with no supervision. From our perspective, we are very concerned about the parole suspension process and we think it needs to be completely dismantled and restarted. We are in the process of doing a research project with the University of Queensland about that. We will be putting forward further recommendations about what we think needs to be changed in the parole suspension space.

CHAIR: Helen, could you unpack that now?

Ms Blaber: I can try. In the Sofronoff review it was recognised that probation and parole officers should not be making the decisions about whether to return a person to custody. For that reason, legislative reform was introduced following the Sofronoff review to remove that power from probation and parole officers. They now have the powers to only make recommendations to return a person to custody. The problem is that the Parole Board just follows those recommendations, so it really has not made any difference. In 97 per cent of cases the Parole Board just follows the recommendation made to suspend the parole order.

There are reports written by parole officers in the community that say, 'Joe Bloggs is not capable of being supervised. He does not turn up for his appointments. He is using marijuana. He is not listening to us. He is not suitable for community based release and we recommend he be returned to prison.' When it is there in black and white from someone supervising them in the community saying, 'I think this person is a risk. I think this person needs to be returned to custody,' I think it is very hard for the Parole Board not to follow that recommendation.

We get involved in the cases we can and we put forward submissions like, 'Here are all the things in the community that this person has. Isn't it better to get them back out into supervision? We have now connected them with all of these supports. We have got them an NDIS package. We have got them into X, Y and Z'—maybe we have got them into a residential rehabilitation services; all of these things will mitigate their risk—'Can you not just release them?' Sometimes there is no real change between the factors when they came in and the factors when they come back out again. The reality is that people are not going to be perfect. The expectations that are being placed on people who are experiencing very significant levels of disadvantage are unrealistic and returning them to custody for six months does not fix that. The parole suspension process is one area that we think requires a significant amount of attention.

One other thing I would like to see—if I could just have this happen—is removing the requirement for a person to lodge an application for parole. That is something that should just happen automatically. That happens in the federal space: a prisoner is not required to lodge pieces of paper to be considered. This was something that was not recommended in the Sofronoff review because His Honour's view was that people should have a choice. Maybe not everyone wants to apply for parole. The problem is that the prison population is characterised by people who are quite disadvantaged. Often they do not realise they have not applied for parole. We come across many people who think they have a parole application in when they do not and they have sat there for six months because they thought one was in when it was not. An immediate fix to getting things moving would be to have that process happen automatically rather than putting the onus on the prisoner to try to get things moving.

Another reform that we have been advocating for for some time is the introduction of oral hearings. This is something which is done in New South Wales and the ACT. You have heard Deb and Katie talk about the burdensome administrative processes that take place. I have seen parole suspensions go for nine or 10 different meetings of the Parole Board. It goes back and forth because all the communication takes place by correspondence via the prison officers. Sometimes a person might be returned to custody on a parole suspension and they might sit there for six weeks before they

get the document telling them why and inviting them to respond. Then the prisoner has to write a letter which is sent via sentence management at the prison to the Parole Board which is then scheduled at some point.

It is very slow. This process is very inefficient, not to mention inappropriate for people who cannot read or write or who have very low levels of education. The correspondence is confusing. I look at it and I do not know what the Parole Board wants. I am not clear. Pre crisis, we used to have meetings with the Parole Board when representing people and say, 'What do you want? What is it you are looking for from this person? What is it you are worried about?' They would explain it to us and we would have a conversation. There would be dialogue and within five minutes we would work out what it is and work on a plan for that person. Instead, we have this back-and-forth via correspondence. In my view, an increased number of oral hearings would increase efficiency in the way decisions are made. That is just a couple of reforms we are supportive of.

CHAIR: I am conscious of time. Does anyone have any questions for LawRight?

Mr POWELL: Is there anything that Ben or Zac would you like to say?

CHAIR: Do you want to add anything?

Mr Tuckett: We are okay from our end. LawRight is mostly coming in at the moment with individuals seeking to make applications to the Supreme Court because of a delay in parole. The earlier parole issues that Helen raised, we are happy to let her—

CHAIR: Do you know how many applications you are dealing with?

Mr Tuckett: How many we are dealing with?

CHAIR: If you do not know, it is fine.

Mr Denovan: We have had 132 people come across to us and we have sent out 168 self-help toolkits. They are our numbers.

Mr Tuckett: Then we are doing three or four appointments each week where individuals are seeking assistance to make their application to the Supreme Court.

CHAIR: Helen, do you know how often the Parole Board sits?

Ms Blaber: The Parole Board has just released its annual report. On the last page there is a section with figures. They talk about the fact that there are 499 meetings a year. My understanding is that the average matters are 32. My understanding is that 32 matters are considered at each meeting. My understanding is that they sit Monday to Thursday. The way it works under the legislation is that you have to have either the president or one of the two deputy presidents sitting on each board. There are three boards that can sit separately on those four days a week. We have now had the temporary fourth board added on. We are about to get the temporary fifth board added on. You essentially have five separate boards sitting four days a week considering on average 32 matters at each meeting.

CHAIR: Is the problem made worse because the president has to sit on each one of them?

Ms Blaber: Obviously there could be more matters heard more quickly if that was not a requirement. The cause of the delays is multifaceted. A lack of resources is certainly a major reason. You have to factor in the fact that the Parole Board are the ones making decisions to suspend parole orders. If we continue just giving them more money, the trajectory of suspensions is going to continue and in two years you are going to need to give them more money again. We are supportive of giving them more money—we think they need more money—but that is not the only thing. Housing needs to be available for people getting out of prison. Something needs to be done to fix the administrative inefficiencies associated with the decision processes. Intensive supports need to be available, not 'Here is a list of boarding houses. See how you go.' These are not effective ways to support people coming out of prison.

CHAIR: That brings to a conclusion this part of the session. Thank you for your written submission and thank you for coming along.

MURPHY, Mr Joseph, Lawyer, Bar Association of Queensland

O'GORMAN, Ms Ruth, Barrister, Bar Association of Queensland

CHAIR: Welcome. As you probably know, we are way over time. We are in your hands.

Mr POWELL: You had a very succinct submission.

Ms O'Gorman: We can be brief. Thank you for the invitation for us to be here today. Obviously I am here today as a member of the Bar Association of Queensland and therefore as its representative. Mr Murphy is a lawyer with the association and he has assisted in respect of a number of submissions that we have made on this issue.

Firstly, can I say in respect of what the submitters before me have had to say about their concerns in relation to the proposed new time frames for deciding parole applications that their concerns are shared by the Bar Association of Queensland. We are well aware of significant delays within the system. We are well aware of the time that as a result is being taken up in the court system dealing with these problems. We have the same concerns that have already been shared.

In the interests of being brief and being targeted with the relatively small amount of time that we have, I would prefer to make some submissions in respect of a slightly different aspect of the proposals, and that is in respect of the proposal that there be amendments to the Corrective Services Act such that the Parole Board will have the power to make a declaration in respect of an inmate sentenced for the murder of a child or for multiple murders that a prisoner may not apply for parole for a stated period of up to 10 years. It is that proposal in particular in respect of which the association holds deep concerns.

As a primary position, the association's view is that such an amendment would be unduly harsh. The reality is that those who are sentenced for those types of offences are already subject, as a matter of law, to long periods of time in custody before they can apply for parole. It will be in the order of either 20 years or 30 years before a parole application can be made at all. The response that is proposed in this bill, in our view, is disproportionate to the problem that really is limited to relatively few prisoners in our system anyway. In our view, the parole regime is sufficiently robust to deal with those who have been sentenced for such offences. The inclusion of a power to require a prisoner essentially to serve beyond the 20 or 30 years already served in custody—a further period of 10 years—before being able to make an application for parole is unduly onerous. We have deep concerns about it.

In respect of the proposed time frame—that is, that it be a power to allow an order that an application may not be made for 10 years—we note the following aspects in addition to our primary concerns. The first is that the reality is that a prisoner's life circumstances will change significantly in a period of 10 years or any period approaching that sort of period of time. In the case of a young prisoner or a relatively young prisoner, there is the capacity for huge change and change in particular around rehabilitation that might be undergone during that time. In respect of an old prisoners or a more elderly prisoner, the risk that might be posed by such a prisoner to the community one would consider would diminish significantly over a period of something like 10 years. The association is concerned that it does not appear that there is a proposal that there would be a mechanism for the review of such a decision that the prisoner not be able to apply for parole within that period of time.

Having said that our primary position is that we are opposed to the inclusion of such a change at all, might I just say that there are two particular aspects that we continue to have concerns about in the event that the change is brought in. We note that there have already been some amendments to the bill, but we have two concerns. Firstly, under section 175G(3) it does not appear at the moment that there be a requirement that a prisoner who might be the subject of such a declaration be provided with the restricted prisoner report which triggers these considerations. That we consider is a significant problem because, although the bill has been amended so that when the decision is being made by the president of the Parole Board he or she must have regard to the inmate's submissions made about that fact, in the absence of that prisoner being informed about the report and the contents of the report and the matters included in the report it would be very difficult for a prisoner to make specific, targeted, helpful submissions about whether or not the order should be made. We hold concerns that as the bill stands it appears that it is in the president's discretion whether to provide that report or indeed any summary of the contents of the report or findings of the report to the prisoner. We consider that the president would then be disadvantaged by having submissions from the prisoner in due course that will not necessarily address matters raised in the report.

The other aspect that we continue to have concerns about is the fact that it appears the way 175G(3) is presently drafted it would be a matter of discretion for the president whether or not to provide the inmate with an indication of how long it is currently being considered that such a declaration might

be made for. The bill is drafted that the declaration might be made for a period of up to 10 years. That would appear to contemplate that the president might be considering an order of something less than that. For the inmate, in the absence of being informed about what period is under consideration there is some limit to the utility of the submissions that that inmate might then make for the president's consideration. If indeed the president is considering making an order—a restricted prisoner declaration—which would prevent the prisoner from applying for parole for a period of two years, it may be that the inmate does not wish to make submissions about that or that those submissions would be very different to if the inmate knew and understood that what was in fact under consideration was that the inmate would not be able to apply for parole for 10 years.

As I hope I have been abundantly clear, the association is deeply concerned about the proposal and opposed to the introduction of the proposal at all for the reasons I have advanced. We indicate, in any event, if the proposal were to be made law, that we have those residual concerns.

Ms BOLTON: You said that the parole system as it is for these offenders who do the most horrific of crimes—they are the ones we are talking about—is sufficient. We have just seen the case of the trauma that my community and other communities went through regarding a person coming up for parole. It is my understanding that without any change to legislation they can apply again in another 12 months, thus putting our community through that again. How is that saying that the system is sufficient to meet the expectations of communities?

Ms O'Gorman: In making its submissions, the Bar Association recognises that communities will experience pain and trauma in such cases. The Bar Association's position, though, is reached on a balancing of those issues and those concerns and indeed concerns around the protection of the public and the need to protect the public from people who have committed the worst offences, as you say, with the need to ensure that people who are sentenced to the longest periods of custody that can be imposed under our system are able to apply for parole after an appropriate time and if their parole application is knocked back should be able to reapply for parole again at a time they consider appropriate. On balance, and bearing in mind the relatively few people that this change would apply to, the Bar Association's view is that it is better that the change not be introduced and that, rather, people who are caught up in this cohort are able to continue to make applications for parole and not be prohibited from applying for a period of another 10 years.

Ms BOLTON: And it would not be covered by the president having the ability, because it is up to 10 years—and as you said they could say two years—to have that determination there?

Ms O'Gorman: The problem that the Bar Association considers exists is that discretion to make the order for a period of up to 10 years—that period being such an extensive time.

CHAIR: That brings to a conclusion this public hearing. Thank you very much to all witnesses who have participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare this public hearing for the committee's inquiry into the Police Powers and Responsibilities and Other Legislation Amendment Bill 2021 closed.

The committee adjourned at 2.39 pm.