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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

8 October 2021

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane QLD 4000

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

Dear Committee Secretary

Police Powers and Responsibilities and Other Legislation Amendment Bill 2021

I write to you in relation to the Police Powers Responsibilities and Other Legislation Amendment Bill 2021 (the Bill). Sisters Inside welcomes the opportunity to provide a submission to the Queensland Legal Affairs and Community Safety Committee regarding the Bill.

About Sisters Inside

Established in 1992, Sisters Inside is an independent community organisation that advocates for the collective human rights of women and girls in prison, and their families, and works alongside criminalised women and girls to address their immediate, individual needs. Our work is guided by our underpinning Values and Vision.[1] All of our work is directly informed by the wisdom of criminalised women.

Sisters Inside does not support the Bill. Specifically, Sisters Inside does not support the proposed amendments to 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.

Current crisis and parole delays

In the last 18 months, the circumstances for women in prison have significantly deteriorated. The pandemic has resulted in extensive lockdowns, the loss of visitation (and therefore, connection with family), and extensive parole delays. The current extent of the delays is unprecedented and we consider it has reached crisis point.

In our experience, only a very small portion of women are currently having their decisions made within the 120-150 day legislative timeframe. Many women, even those with urgent circumstances, are sitting in prison past their legislative time frames. The estimated average timeframe is currently 240 days, but we have received multiple cases of correspondence from the Parole Board Queensland (the Board) advising that decisions will not be made until up to 300 days from the date of application. This

[1] Sisters Inside Inc., 'Values and Visions'. Available at: www.sistersinside.com.au/values.htm.

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has resulted in women being imprisoned up to 6 months longer than their parole eligibility date. We are also advised that individuals who were eligible for parole in May will likely not have their application heard until January 2022. The Board has advised that as of 24 March 2021, it has around 2100 undecided new parole applications. Additionally, in the last year we have seen women spending on average 6 months in prison on parole suspensions. In 2015-2016, this period was 3.5 months.

Since the Board was established, the number of parole applications has increased substantially, without corresponding increases in the resources available to them. This has resulted in a significant backlog in parole applications, and therefore, a significant percentage of parole applications not meeting the statutory decision-making timeframe. This is also true for decisions concerning parole suspensions. These delays will only continue with the influx of persons into the prison system and increasing suspensions of parole for minor violations.[2]

The parole delays have compounded the trauma of imprisonment, with many women we support reporting a concerning decline in their mental health and wellbeing. Parole delays have resulted in loss of housing, including private and social housing, and the removal of children. Women have sat in prison as family members have died, and as their children have been hospitalised with sickness and injury, all while knowing that they are past the date they are eligible for release. The only avenue women currently have when they do not receive their parole decision within the statutory timeframe is to commence judicial review proceedings in the Supreme Court of Queensland, seeking an order to compel the Board to make a decision.[3]

Extension of parole consideration timeframes

We understand that Clause 11 and Clause 21 of the Bill have the effect of extending the period of time which the Board has to consider a parole application by 60 days. This means that the Board will now have 180 or 210 days to make a decision, depending on whether they need to seek further information. In the Queensland Parole System Review, one of the recommendations was to decide applications for parole within 120 days, [4] as had been observed that the time frames allowed for decision making were too long and not always complied with. We note that these amendments would conflict with one of the recommendations made.

This new timeframe will apply to not only new applications, but also to existing parole applications that have not yet been decided by the Board. We understand that there are approximately 2000 existing applications which will come under these new provisions. We wish to note that these amendments were added into the Bill at a late stage, without prior consultation with stakeholders.

The effect (and presumably intent) of these amendments are to make it such that the Board will not be in breach of the statutory timeframe at the 120-150 day time period and, therefore, the imprisoned person will not be able to seek judicial review at that stage. These amendments will defer the sole avenue an imprisoned person has to have their continued imprisonment remedied by a court for two

[2] Queensland Corrective Services Statistics
https://corrections.qld.gov.au/stats/?chart=prisoner_population_historical
[3] Judicial Review Act 1991 (Qld), s 22(2).
[4] Walter Sofronoff QC, Queensland Parole System Review, Final Report (2016), recommendation 51.

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months. This will obviously have a significant detrimental effect on that person. Additionally, the ability to seek judicial review is an important mechanism for public accountability where there have been failures by the Executive branch.[5] In other jurisdictions, delay in considering a parole application has been found to amount to arbitrary detention and therefore infringe on the right to liberty and security of person.[6] We submit that extending the time on which judicial review may be sought has serious human rights ramifications, given there is a real danger that the continued detention of many people currently imprisoned in Queensland is arbitrary.

We submit that these amendments are not an effective or appropriate response to the ongoing parole backlog. We recognise that judicial review proceedings come at an expense to the State and redirect the resources of the Board, however, Prisoners Legal Service (PLS) has estimated that the average total cost of these delays to the State is $3,900,000 each month, with the cost per prisoner of delays being over $20,000. We note that if the Board had appropriate recourses to deal with the backlog of parole applications, an entire prison could be emptied. More importantly, delaying the date on which an individual is released from prison comes at a considerable human cost, which includes, but is not limited to, the mental harm of being kept in a state of limbo about their liberty, loss of housing and other opportunities, and the distress of families and children of people in prison.

Though the proposed timeframe extension is 'temporary', we consider that further amendments extending the timeframe will inevitably be deemed unnecessary if the underlying causes of the parole backlog continue to not be acknowledged. We submit that the following measures are required to address the parole backlog:

1. Additional funding for the Parole Board;
2. Increased funding for legal representation and quality self-help services for people in prison, delivered by Sisters inside and other identified community legal centres, including PLS;
3. Ongoing reform to the parole processes, including to reduce parole suspensions;
4. Increased funding of housing, health and social support programs to address the growing prison population; and
5. Consultation with stakeholders to assist in identifying additional long term solutions to the increasing prison population.

Publication of parole decisions

We do not support the proposed insertion of ch 5, pt 2, div 4A due to the infringements of individual's privacy these amendments would inevitably entail. In summary, the amendments would make it possible for the Board to publish certain parole decisions made on their website.

[5] For an example of the publicising effect of judicial review application see Danielle O'Neal, 'Eight month parole delays for Queensland prisoners' (Courier Mail, online, 6 July 2021) https://www.couriermail.com.au/news/queensland/eight-month-parole-delays-for-queensland-prisoners/news-story/3ed49d0c70e7a27c4d1e20db67dc976e

[6] Johnson v Secretary of State for the Home Department [2007] EWCA Civ 427 (9 May 2007); R (Faulkner) v Secretary of State for Justice and another; R (Sturnham) v Parole Board and another (Nos 1 and 2) [2013] 2 AC 254.

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Parole Board decisions contain particularly sensitive personal information. Details concerning an individual's physical and mental health, behaviour in prison, family circumstances, and living and care arrangements are often contained in these decisions. Releasing this information to the public would be extremely distressing to not only the individual, but also to the individual's family and support networks. We are deeply concerned that publishing this material will have a serious negative impact on an individual's mental health and may undermine the person's ability to reintegrate into the community. Further, there is a very real risk that the residence or location of an individual or their family may be exposed through the publication of a parole decision. Sisters Inside had recently assisted a woman where the Board decided to publish the decision to release onto parole. The publication of this decision resulted in significant media attention and identified parties who were assisting her in the community, which in turn, led to her location becoming publically available. Whilst the decision did not specifically name her location, the detail released in the decision ultimately enabled the media to locate her. This is highly distressing for a person who has recently been released onto parole. We are concerned therefore that publication of this highly personal information may put the safety of the individual and/or the individual's family at risk.

There does not appear to be any mechanism or safeguards in place in these amendments to provide for the redaction or removal of particularly sensitive or specific material from publicised decisions. Additionally, there does not appear to be any safeguards to not publish identifying information. We note that procedures exist elsewhere which set out legislative requirements for when information must be anonymised. Further, there is no stipulation requiring the Board to seek the consent of the individual to which the decision relates, nor any avenue for an individual to oppose the publication of a decision relating to them.

Most concerning is there no judicial oversight in relation to the publication of parole decisions. There must be a provision allowing individuals who may be subject to the publication of a parole decision to challenge the publication. Additionally, legal representation must be afforded as of right to people who are subject to publication of their parole decision and wish to challenge this decision. As such, if these amendments are introduced, it should be accompanied by additional funding to legal aid and community legal centres to ensure legal representation is available.

We submit that ultimately, this proposed amendment would unjustifiably infringe with the right of individuals to 'not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with', as protected under section 25 of the *Human Rights Act 2019.* This right extends to individuals in prison and their families. In the view of Sisters Inside, the Bill is incompatible with human rights. The personal information contained in a Parole Board decisions would not ordinarily be disclosed to the public. The principle of open justice that applies to court proceedings does not and has not ever applied to decisions of Parole Boards in Australia. This principle should not be extended to Parole Board decisions in Queensland. We submit that this amendment would frustrate the Parole Board's ability to properly carry out its overarching function of decreasing the chance the individual will ever reoffend with a view to keeping the community safe from crime.[7]

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

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If it is determined that there needs to be a legislative mechanism for publication of parole decisions, Sisters Inside strongly suggest that the Bill be amended to allow an individual to be notified that the Parole Board intends to publish the parole decision and allow the individual to oppose the publication. We also recommend that the decision to publish decisions be reviewable, and suggest the amendments require the Board to anonymise sensitive information to ensure it de-identifies the individual.

Restricted prisoner declaration

We do not support the proposed amendments to Chapter 5 of the *Corrective Services Act 2006* relating to 'restricted prisoners'. We submit that these amendments are unnecessary, disproportionate, highly punitive, and have concerning implications for human rights. Sisters Inside will likely support women who may be subject to such a declaration.

Murder currently carries a mandatory sentence of life imprisonment with a minimum non-parole period of 20 years imprisonment, which is extended to 30 years for a person sentenced for more than one murder or a person with a previous conviction for murder. A sentencing court can increase this minimum non-parole period, but it cannot be decreased. We submit that the proposed amendments would undermine the little discretion which remains for judicial officers in determining the appropriate punishment for murder. Sisters Inside considers that irrespective of the crime, judicial officers should retain discretion to ensure parole eligibility dates are appropriate to the facts of a case. If judicial officers make mistakes or are not applying accepted sentencing principles their decisions can be appealed. These amendments are contrary to the fundamental right to have criminal charges or proceedings decided by an open and transparent court or tribunal.[8] Further, these amendments are unnecessary to 'protect community safety' as the Board is empowered to refuse any application for parole where it considers the person poses and unacceptable risk to the community.

We submit that it is not appropriate for the power to make a restricted prisoner declaration to rest solely in the hands of the President of the Board, given the serious consequences of such a decision on an individual's liberty. The ability to make such a declaration is a significant power and is not appropriately the subject of the unfettered discretion of one decision-maker. This is particularly concerning in circumstances where the decision-maker is a non-judicial officer and thus not subject to the same level of scrutiny as a judicial officer. Additionally, there is no precedent or guidelines which would inform the President's decision about the operational period of a declaration. We are concerned about the amount of discretion in determining the operational period, for example, deciding what circumstances would warrant a 1-year declaration versus a 10-year declaration.

As stated by Mr Walter Sofronoff QC, the only purpose of parole is to reintegrate an individual into the community before the end of a prison sentence to decrease the chance that the individual will ever reoffend. It's "only rationale is to keep the community safe from crime". [9] Sisters Inside considers that these proposed amendments would frustrate rather than further this central purpose and undermines an individual's prospects for rehabilitation, by giving the President power to extend a persons

[8] See discussion in Frieberg et al, "Parole, Politics and Penal Policy" (2018) 18 *QUT Law Review* 191.
[9] Walter Sofronoff QC, Queensland Parole System Review, Final Report (2016) 1.

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sentence at the back-end. We agree with the view expressed by PLS that this puts the President into a position to impose an 'irreducible life sentence', which have been found in other jurisdictions to violate fundamental human rights.[10] This Bill will have the effect of increasing deaths in prison.

If these amendments are to pass, we are particularly concerned that there is no provision to appeal a restricted prisoner declaration. We assert that there must be a process available to an individual subject to a restricted prisoner declaration to challenge the declaration in court, particularly given that the individual's liberty is at stake. Additionally, we note that the individual subject to the restricted prisoner declaration is not entitled access to the restricted prisoner report, nor afforded access to legal representation. We submit that the individual should be entitled to a copy of the report at the time the written notice is provided and that legal representation must be provided. Further, written reasons are only provided to the individual after a decision has been made. We submit that there seems to be a limited process for individuals to appropriately respond to the restricted prisoner declaration. Individuals who are subject to these declarations should be provided transparency and procedural fairness so that a sufficient response can be provided to the Board.

Extension of time to not consider a further application for a life sentenced individual

We do not support the amendments extending the period of time the Board have to consider a further application for parole for life sentenced individuals from 12 months to 3 years. We note that this would undermine the primary purpose of parole – the safe reintegration of a prisoner into the community – and is highly punitive. Further, we consider that the current period of 12 months is already a substantial period of time to wait to reapply for parole, especially given the current delays. There has not been sufficient justification for the need to extend this period of time. We reiterate that these proposed amendments have extremely serious consequences for individuals' fundamental human rights and must have compelling justification.

No Body No Parole

We are concerned about the amendments to Chapter 5 of the *Corrective Services Act 2006* relating to exceptional circumstances parole where a non-cooperation declaration has been made. Under the proposed amendments, a prisoner who develops a terminal illness with a short life expectancy would have no option but to remain in prison until their custodial end date. We submit that this would defeat the object of exceptional circumstances parole and would have the effect of unduly punishing an individual who may ordinarily qualify for exceptional circumstances parole, noting the already extremely high threshold.

Banning notice powers

Sisters Inside does not support the extension of the banning notice powers under the *Police Powers and Responsibilities Act 2000*. Research has unequivocally demonstrated that banning notices have a

[10] See Vinter v United Kingdom [2013] ECHR, Applications nos. 66069/09, 130/10 and 3896/10 (9 July 2013; Andrew Dyer, "Irreducible Life Sentences, Craig Minogue and the Capacity of Human Rights Charters to Make a Difference" (2020) 43(2) *UNSW Law Journal* 484.

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disproportionate and discriminatory effect on homeless individuals. The areas over which banning notices apply are often hubs for social and community services accessed by homeless individuals – this includes the Brisbane CBD and Fortitude Valley precincts. McNamara et al found that:

> "The destabilising effects of banning notices on people experiencing homelessness can be profound:
>
> *We had a fella literally ... [had] an exclusion from the entire CBD. He was banned. How does that affect a homeless person that's denied access to legal service[s]? Without all the other things that are basic necessities. (P16, FG5).*"[11]

Under the proposed amendments, there is no requirement for an individual to have actually been found guilty of a relevant knife-possession offence in order to receive a banning notice. They may have therefore had a reasonable excuse for possessing a knife that may not have been considered at the time of charge. They may nonetheless be banned for up to 10 days, and potentially even up to 3 months, from a public area. This area may be essential to them in accessing medical and social services and may, in effect, be their home. While there are options for review of banning notices, it is unlikely this would be accessible to vulnerable persons most likely to be affected by these provisions.

We consider that the type of behaviour which may result in an individual being banned from a public area is already extremely broad. We note that the proposed amendments include as an example of relevant behaviour "attempting to damage property or threatening to damage property". We submit that expanding the circumstances in which an individual can receive a banning notice will inevitably have a negative effect on homeless individuals and result in further criminalisation.

Thank you for considering this letter. If you would like to discuss this letter further, please do not hesitate to contact me on (07) 3844 5066.

Yours sincerely

Debbie Kilroy
Chief Executive Officer
Sisters Inside Inc

[11] McNamara, Luke; Quilter, Julia; Walsh, Tamara; Anthony, Thalia, "Homelessness and Contact with the Criminal Justice System: Insights from Specialist Lawyers and Allied Professionals in Australia" (2021) 10(1) International Journal for Crime, Justice and Social Democracy 111.