Speech By

Michael Berkman

MEMBER FOR MAIWAR

Record of Proceedings, 30 November 2021

POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL

Mr BERKMAN (Maiwar—Grn) (5.42 pm): I rise to speak on the Police Powers and Responsibilities and Other Legislation Amendment Bill. This bill is effectively Labor's *Courier-Mail* headline omnibus bill. It is a collection of reforms that they have forced their poor drafters to cobble together based on media statements or to paper over their failures. It is their attempt to make it seem like they are tough on crime and that they care about protecting vulnerable members of society and, sure, there are some changes around reportable child sex offences that do that. However, in reality, their other media-friendly proposals like a restricted prisoner parole scheme and allowing police to ban people from public spaces will seriously limit human rights, especially those of vulnerable and marginalised people.

Hidden amongst it all is the government's apparent solution to their disgraceful parole delays crisis. That solution is to simply legislate their way out of dealing with out-of-time applications and removing people's rights to judicial review. At the start of October in Queensland there were 4,410 people in prison waiting for their parole applications to be considered. That includes over 2,000 new applications and another 2,400 or so for parole suspensions, some as minor as not showing up to an appointment. The average wait time to have a parole application considered is now 194 days, which is more than 44 days over the statutory limit.

This is a steadily escalating crisis that, according to groups such as LawRight and Sisters Inside, is costing the state around $20,000 per prisoner per month or almost $4 million every month. Meanwhile, prisons are dangerously overcrowded with a record-breaking 10,219 people imprisoned in Queensland at the end of September this year. If we invested in getting out of prison people who have reached their parole date and who are determined not to pose a danger to the community, we could likely empty an entire prison. Instead, this government commissioned a KPMG review, which they now refuse to share publicly, and introduced this bill to extend the statutory time frame for considering applications.

In practice, this means that, for people whose parole applications have not been considered within the statutory time limit, the option to apply for judicial review is taken from them. That applies retrospectively which, as the Queensland Law Society pointed out, contradicts fundamental legislative principles. It also contradicts the recommendations of the 2016 *Queensland parole system review* report, which noted that the statutory time frames were too long and recommended a reduction to a 120-day limit. This government failed the assignment and now they are rewriting the criteria in the hope that they might pass.

The worst part is that this will not even fix the problem. Many people's applications are already well past the new maximum time frame. Without structural changes or a shift in the government's lock-em-all-up approach, more people will be locked up for longer periods. This government continues to frame that as a good outcome even though it disproportionately impacts First Nations people, disabled people and poor people, and even where it violates their fundamental rights.

The Prisoners' Legal Service is one organisation that has been on the front line of this crisis. I want to share one story from their solicitors about support they recently gave to an Aboriginal man from Cherbourg. He is a man who cannot read or write. He was given an immediate parole eligibility date by the court in November 2020 and lodged his parole application in December 2020. While waiting for a decision he received multiple letters from the Parole Board telling him that his application would be considered within 10 days. Over 300 days passed and he received no decision. During that period three of his close family members passed away. He was unable to attend their funerals or engage in his cultural obligations around sorry business. Missing their funerals compounded his pre-existing trauma and loss as well as that of his community.

Due to his illiteracy and his inability to pay the court filing fee associated with judicial review proceedings for out-of-time parole decisions, he remained in prison until he made contact with the Prisoners' Legal Service. After multiple attempts to communicate with the Parole Board urging a decision to be made, PLS helped him file a judicial review application for the board's failure to make a decision and the Parole Board released him shortly after that application was filed. By the time he was released he had been eligible for parole for 387 days and more than a year had passed since he first applied. Putting aside the personal impact of that delay—and it honestly feels crass to monetise this—it cost $111,000 to keep him in prison during that period.

The Sisters Inside submission refers to similar stories throughout the parole delays crisis. Their submission states—

> 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.

This bill is taking away the option of judicial review, which is the only avenue open to those people. Since January this year, the Prisoners' Legal Service has dealt with more than 2,000 matters regarding parole delays. Despite this, the government persists with its absurd tough-on-crime mentality and kicks the can down the road instead of looking at real solutions—solutions like properly funding the board to deal with the backlog; like increasing the funding for community legal services; like building more public housing, investing in community health services and decriminalising drugs.

While the government seek to paper over their mistakes and detract from the growing media scrutiny of the parole delays crisis, when it comes to the restricted prisoner parole framework they are desperate for attention. The bill creates a new parole framework for people serving a life sentence for multiple murders or the murder of a child. Under the proposed framework the president of the Parole Board can declare that a restricted prisoner must not be considered for parole for a period of up to 10 years. Even if that declaration is not made, the bill creates a presumption against parole, with the onus on the prisoner to demonstrate that they do not pose an unacceptable risk to the community. The bill also sets a higher threshold for exceptional circumstances release.

Let us be clear about what this really is. It comes from a media statement responding to one specific case where a man convicted of a particularly heinous crime was nearing the date when he would be eligible for parole. While it sounds good for the government to say that they will keep him in prison, they did not need this bill to do that. As many submissions pointed out, the likelihood that someone like Barrie Watts would actually get parole is slim to none. As the minister himself told us in an attempt to defend the ongoing parole crisis, parole eligibility does not guarantee parole.

It also sounds good to say that they will limit the retraumatisation of families by limiting notifications of parole applications but, again, we did not need a bill to do that. The committee report states—

> … no evidence is provided to support the assertion that victims' families, friends and the community experience trauma caused by restricted prisoners being considered for parole under the currently permitted yearly intervals. There is no evidence that restricted prisoners in fact apply for parole each year. It is not apparent how persons other than those required to be notified would find out that a life prisoner has made an application for parole.

In fact, the committee report says that the statement of compatibility with human rights is missing information and does not adequately justify the reforms in this bill. It says these reforms may even require the government to make a declaration overriding its obligations under the Human Rights Act to address the incompatibility with human rights. The Queensland Human Rights Commission submission points out that the rights of victims and prisoners are not mutually exclusive and states—

> Parole provides an incentive for rehabilitation and a process to facilitate reintegration into the community. Removing that incentive and process risks undermining community safety.

It is a well-established principle that the non-parole period of a sentence represents the punitive element of a sentence as opposed to rehabilitation, deterrence and protection. This bill removes the regular opportunity to consider rehabilitation that parole offers. It also creates the potential for rolling declarations that would preclude the prospect of release despite rehabilitation, which effectively

amounts to arbitrary or indefinite detention. The Queensland Law Society, Prisoners' Legal Service, Sisters Inside and the committee's report all raised concerns about this effective life sentence without the possibility of parole, yet here we are set to legislate it anyway.

It seems obvious that this part of the bill has been written in response to this single, media-driven matter rather than any broader policy need. Unfortunately nothing, this bill included, is going to take away the trauma of victims' families. For the government to frame it this way is disingenuous, disrespectful and irresponsible.

On a related note, I also share concerns raised by groups such as ATSILS and the Queensland Council for Civil Liberties in their submissions about the no-body no-parole framework. While I fully understand and sympathise with families' need for closure after experiencing such a tragedy, we cannot ignore the possibility that this framework is applied to wrongfully convicted people and that the proposed changes mean they may never be released. I am short of time but want to finish with a quote from the Prisoners' Legal Service submission. It states—

> In the long-term, it is not possible for the Queensland Government to build its way out of the problems of mass incarceration or the parole backlog by creating additional prison beds. Attention should be redirected from short term fixes to addressing the underlying causes of a failing criminal justice system.