

15 March 2021

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The Honourable Shannon Fentiman MP
Attorney General and Minister for Justice

The Honourable Cameron Dick MP
Queensland Treasurer

The Honourable Mark Ryan MP
Minister for Police and Corrective Services

By email and post: attorney@ministerial.qld.gov.au;
treasurer@ministerial.qld.gov.au; police@ministerial.qld.gov.au;

Dear Ministers,

Parole delays – Urgent request for funding and review

We are writing to express our concerns regarding the current significant delays in parole decisions being made for people in prison. We understand that our colleagues at the Prisoners' Legal Service (**PLS**) wrote to you about this issue on 2 March 2021, and we write to you in support of this correspondence, and to share our views on the current crisis.

LawRight is a community legal centre and the primary facilitator of structured pro bono legal services in Queensland. LawRight's Court and Tribunal Services (**C&TS**) assists individuals with proceedings in the District Court and Supreme Court of Queensland, the Federal Court and Federal Circuit Court and the Queensland Civil and Administrative Tribunal. In collaboration with law firms, barristers, and university law schools, C&TS assisted 778 litigants and leveraged over 13,327 hours of pro bono services in 2019/20.

The C&TS State Courts office has been aware of the increasing delays in parole decisions for several months now but received our first request from an individual for assistance to commence Supreme Court proceedings under s22(2) of the *Judicial Review Act 1991* (Qld) in early February. In the last three weeks, we have received 33 such requests for assistance, which is three times the number of applications for assistance for all matters to the State Courts office in an equivalent time period.

Each individual that contacts us is understandably frustrated about the delay in receiving a decision about their parole application and is concerned about the failure of the Parole Board of Queensland (**the Board**) to make a decision within the maximum statutory deadline of 150 days. On average, these clients have been

PO Box 12217
George Street QLD 4003

ABN 52 033 468 135
IA 30188

P: 07 3846 6317
F: 07 3846 6311
E: admin@lawright.org.au
W: www.lawright.org.au



waiting for a decision for 220 days, although we understand that many individuals have been waiting longer than this timeframe. To our knowledge, no other service in Queensland provides a service to this cohort. C&TS provide advice to, and assist these individuals to prepare applications to the Supreme Court seeking an order of the court that the Board be forced to make a decision within a set period of time. While we intend to support these clients with pro bono and self-help resources, this is not a permanent solution to this problem and an urgent response is required from responsible government.

We have had the benefit of reading the letter from our colleagues at PLS ([PLS – Calls for Urgent Attention to Parole Delays](#)). Although PLS is the only specialist community legal centre in Australia that exclusively assists people in prison and is the most appropriate organisation to comment on this issue more broadly, we echo the concerns raised by PLS and support the proposed recommendations from PLS that:

1. Additional emergency funding should be allocated to the Board as an immediate first step.
2. Increased funding should be provided for legal representation and quality self-help services for people in prison, delivered by PLS and other identified community legal centres.
3. Consultation with the Board and stakeholders should take place to assist in identifying long term solutions.

We ask that you take urgent action to address these delays and to implement the proposed recommendations.

Please contact Ben Tuckett of the Court and Tribunal Services at ben.tuckett@lawright.org.au for additional information, or to discuss these matters further. We will also be circulating this letter to other stakeholders and to our pro bono partners.

We look forward to hearing from you.

Yours faithfully



Sue Garlick
Joint Director



Linda Macpherson
Joint Director



JUSTICE BEHIND BARS



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21 April 2021

Management Consulting
KPMG
Riparian Plaza
71 Eagle St
Brisbane QLD 4000 Australia

By email and post: lbecker1@kpmg.com.au

Dear Sir/Madam

Independent review of Parole Board Queensland

We write in relation to stakeholder consultations currently taking place with KPMG as part of the independent review of the Parole Board Queensland.

Prisoners Legal Service (**PLS**) and LawRight have been working collaboratively in response to current parole delays and this letter is a joint submission from our respective centres. The purpose of this submission is to provide preliminary information to KPMG about key concerns and potential solutions that we have identified to help inform discussions that will take place during forthcoming focus groups.

PLS and LawRight are at the forefront of this administrative and social crisis and we offer a unique and independent perspective on the issues and on the costs of no action or ineffective action being taken.

We refer to previous correspondence from LawRight on March 15, 2021 and PLS on March 2, 2021 about parole board delays. We enclose copies of this correspondence for your convenience.

We have also had the opportunity to read a relevant submission made by the Queensland Law Society on 16 April, 2021, which we endorse; a letter addressed to the Premier on these matters from Sisters Inside dated 25 March, 2021 and an email from Lisa Hendy, Director of Legal Services, Parole Board confirming that as of 24

Prisoners' Legal Service Inc.
Justice Behind Bars
ABN: 15 677 129 750

Postal address: GPO Box 257
Brisbane QLD 4003
Phone: 07 3846 5074
Fax: 07 3229 9222
Email: pls@plsqld.com
Website: www.plsqld.com

LawRight
PO Box 12217
George Street QLD 4003
ABN 52 033 468 135
IA 30188
P: 07 3846 6317
F: 07 3846 6311
E: admin@lawright.org.au
W: www.lawright.org.au



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March, 2021, a total of 2100 parole applications were undecided and that 75% of these applications were already outside the statutory timeframes.

Costs and opportunities

The matters which our centres are uniquely able to comment on and which KPMG should consider regarding the costs of inaction or inadequate action include the following:

1. YTD costs of excess prison time caused by delay - \$31.5M

In their recent letter, PLS estimated the cost of the Parole Board backlog as \$3.9 million/month. Given the Parole Board's estimate that 1575 matters this financial year are already out of time, this is a YTD cost of \$31.5 million, based on a \$20,000 per prisoner cost. These figures do not take into account the costs associated with delayed parole suspension decisions which are discussed below.

Responding to this unnecessary expenditure by establishing a temporary fourth board is a welcome but short-term solution that will not resolve core operational failings or increase cost-effectiveness.

2. Parole suspensions

Specific consideration of the impact of increasing parole suspension decisions is required by KPMG to fully capture the extent of the parole crisis.

In 2016, the Queensland Parole System Review (QPSR) identified that parole suspensions were creating significant pressure in the prison system and should be minimised because they resulted in short periods of incarceration for minor or technical breaches of parole.¹ Legislative reform was subsequently introduced aimed at reducing parole suspension decisions.² However, parole suspensions continue to occur at unprecedented rates with 4621 suspensions being issued by the Parole Board last year,³ accounting for half of the Queensland prison population. In contrast, a total of 2966 parole orders were suspended in New South Wales, despite the significantly larger numbers of people on parole in that jurisdiction compared to Queensland.⁴

Despite the QPSR's aim of reducing suspensions for low level breaches, failure to comply with parole conditions accounted for 25% of parole suspension decisions in 2018-19 compared to 0.02% of decisions that were made because a person was considered to pose a serious risk of harm to another person.⁵

¹ Sofronoff W QC (2016) 'Queensland Parole System Review, Final Report', 84.

² *Corrective Services (Parole Board) and other Legislation Amendment Act 2017* (Qld).

³ Parole Board Queensland, 'Annual Report: 2019-20', 30.

⁴ NSW State Parole Authority, 'Annual Report 2019', 12.

⁵ Parole Board Queensland, 'Submission to Queensland Sentencing Advisory Council: Intermediate Sentencing Options and Parole 31 May 2019', 6.

Delays in consideration of these matters have increased exponentially but are less visible than parole application delays due to the lack of a statutory time frame for parole suspension decisions to be finalised. The cost of these delays to Queensland Corrective Services (QCS) and to Parole Board operations is considerable.

3. Improved Board operations through streamlined processes and targeted representation during oral hearings

PLS regularly observes delays caused by inefficient Board procedures that could be addressed through improved scheduling practices and providing targeted oral hearings with legal representation from the community sector. The establishment of a fourth Board offers a timely and discrete opportunity to test these benefits.

The Board frequently defers making decisions in the absence of relevant material; produces correspondence that is incomplete or inaccurate; and is limited in its capacity to receive information from prisoners who are illiterate, have a cognitive impairment or otherwise unable to engage effectively with the current process.

PLS has observed the following practices that contribute to delays in the Parole Board making final decisions:

- Parole matters being scheduled prior to receipt of relevant information required to make a decision;
- Delays in the identification of information that is required to make a decision; and
- Requests being made for irrelevant or outdated information that is not required to make a decision.

These failings result in numerous deferrals to obtain material after the statutory time frame for making a decision on a parole application has already expired or where a person has already spent several months in custody on a parole suspension. The current information-gathering processes of the Board, including the Secretariat and reports from external agencies are evidently inefficient as well as lacking independence.

Many of these challenges could be immediately addressed through an increase in targeted legal representation with the mechanism of oral hearings enabling this to be cost-effective.

Evidence suggests that jurisdictions which provide oral hearings result in fewer deferrals of parole decisions. For example, in the ACT, oral hearings are required for all parole breach decisions in recognition of their complexity.⁶ In 2019-20 a total of 198 hearings were conducted for 160 parole breaches, this indicates that the majority of cases reached a final determination after one oral hearing.⁷ In addition, the Board is able to assess risk more accurately during oral hearings where representation is

⁶ ACT Government, Justice and Community Safety Annual Report 2019-20 Annexure A: Sentence Administration Board', 455.

⁷ ACT Government, Justice and Community Safety Annual Report 2019-20 Annexure A: Sentence Administration Board', 455.

provided because a wider range of information is available and there is an opportunity to properly ventilate and address the Board's concerns about release through verbal interactions.⁸ Research has shown that where oral hearings were granted for adverse parole decisions in the ACT, the decision was altered in more than 50% of matters⁹ – indicating that if oral hearings were provided at first hearing in targeted matters, less decisions would be required over-all.

The Board currently schedules a small number of oral hearings which are primarily conducted by video link.¹⁰ When they do occur, they are highly effective and efficient. COVID-related increases in remote hearings across all jurisdictions have made justice more affordable and would be an appropriate development for many Parole Board matters, particularly where applicants experience disability, limited literacy or similar vulnerabilities that impacts their ability to understand or respond to correspondence.

PLS has explored the benefits of providing targeted legal representation for parole decisions through a joint Pilot Project Proposal with ATSILS that was provided to QCS in 2019. This proposal provided costed modelling demonstrating that funding this type of service would reduce the over-representation of vulnerable people in prison and promote safer communities through reduced recidivism at a lower cost to Government than ongoing incarceration. We would welcome further discussion on this option which we consider would also enhance parole efficiency.

4. Costs of Judicial Reviews streamlined through self-representation support

As outlined in our previous correspondence, the only avenue a parole applicant can pursue in response to the current unprecedented and non-compliant delays of the Parole Board is to apply for judicial review (**JR**) to the Supreme Court to compel a decision by the Board. 137 applications for JR have been made this year, as compared to 13 in the previous year. The costs, delays and inequities of this process are multiple, including the impact on the courts' time, the costs orders the Board is exposed to; additional hearings by the Board once the JR application is filed or heard; and the low standard of JR documentation produced by highly vulnerable applicants.

As raised in our previous correspondence, the impact on the operations of PLS and LawRight has been significant and is hindering PLS' ability to provide core services to prisoners. Since January 2021, PLS have provided 929 parole delays services, this constitutes more than 50% of all services delivered.

Similarly, LawRight's State Courts office resources have been almost entirely absorbed with addressing this crisis, despite a waiting list of 4-5 weeks for self-representation support services for parole matters and resources being used to develop a self-help kit.

⁸ See Blaber H (2012) 'Parole bodies and human rights in Australia' Vo18(1) Australian Journal of Human Rights 145; Naylor B & Schmidt J (2010) 'Do prisoners have a right to fairness before the parole board?' Vol 32, Sydney Law Review 437.

⁹ See Blaber H (2012) 'Parole bodies and human rights in Australia' Vo18(1) Australian Journal of Human Rights 145, 150.

¹⁰ A total of 247 video conferences took place during 2019-20 for a total of more than 9532 matters considered by the Board. See Parole Board Queensland, 'Annual Report: 2019-20', 30.

As self-representation is the only affordable option for most JR applicants, applications will continue to be of an inadequate standard and take further time for the Court to “cure” or respond to, notwithstanding support from LawRight in as many matters as possible. LawRight’s team of staff and pro bono lawyers are located at the Supreme Court and in regular liaison with the Registry. All highly vulnerable applicants would benefit from an initial appointment with LawRight prior to filing the application, to streamline the JR process and where possible and appropriate, divert applicants from commencing proceedings. In other jurisdictions, LawRight has developed duty lawyer programs with the support of the Bar Association of Queensland. With appropriate resourcing, a similar model could be developed for those matters that do proceed to hearings to ensure that applicants can benefit from legal representation and to streamline the hearing and reduce costs for the court.

5. Cost to community

While our previous correspondence outlined costs to the community of these delays, these issues have increased in severity and risk and require immediate attention as an economic and social cost the community cannot afford. Backlogs in decisions inevitably lead to a lower quality of decision-making, thus increasing the risk to community safety. The inability of prisoners to plan for, or in the case of parole suspensions maintain employment, housing and Centrelink increases the likelihood of recidivism. Prolonged and unfair incarceration also significantly impacts prisoner mental health and compliance. PLS have been approached by Corrective Services and Health staff who are alarmed at the increase in the incidence and severity of mental health problems for prisoners as a result of uncertainty surrounding parole delays.

While the opportunities we have outlined are all resource dependent, we are confident that they are cost-effective in both the short and long term.

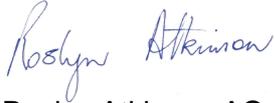
We respectfully request that:

1. Consideration be given to establishing a pilot program of increased oral hearings with independent representation and self-representation by community legal centres for selected matters before the fourth parole board - to streamline processes, divert judicial review applications and offer KPMG the opportunity to assess potential cost and system efficiencies.
2. PLS and LawRight be kept informed regarding the progress and findings of the review.

Please contact Helen Blaber, Director Prisoners’ Legal Service, helenb@plsqld.com or Linda Macpherson, Joint Director LawRight, linda.macpherson@lawright.org.au for additional information, or to discuss these matters further. We will circulate this letter to other stakeholders and pro bono partners.

We look forward to hearing from you.

Yours faithfully



Roslyn Atkinson AO
President, Lawright



Matt Woods
Chairperson, Prisoners' Legal Service

CC:

The Honourable Shannon Fentiman MP
Attorney General and Minister for Justice

The Honourable Mark Ryan MP
Minister for Police and Corrective Services

Mr Peter Martin APM
Commissioner, Queensland Corrective Services

Mr Michael Byrne QC
President
Parole Board Queensland

Mr Anthony Reilly
Queensland Ombudsman