



JUSTICE BEHIND BARS

2 March 2021

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,

Re: Parole delays – Urgent request for funding and review

Prisoners' Legal Service (**PLS**) is the only specialist community legal centre in Australia that is exclusively dedicated to providing legal advice and representation to people in prison. PLS provides over 4700 legal services annually to the most vulnerable people in prison on matters relating to their incarceration. PLS has been identified as a significant agent in reducing cost to Government as our parole service plays a crucial function in assisting a marginalised and disadvantaged cohort through a complex legal environment.¹

We write to raise concerns about significant delays in parole decisions being made for people in prison. The extent of current delays is unprecedented. We consider a crisis point has been reached which will become increasingly serious should the situation remain unaddressed. Responsible government requires that urgent attention be given to this matter.

There are substantial financial and human costs associated with parole delays. Many people are remaining in prison for considerably longer periods than necessary because they are waiting for release decisions. The cost to the State of these delays is estimated at \$3.9M per month, in addition to the loss of income, housing and other opportunities for the individual in prison, who would otherwise have been paroled on time. In addition, there are legal consequences associated with the Board failing to comply with statutory time frames to make decisions on parole applications. Individuals are entitled to pursue litigation against the Board to remedy these delays but the cost and time of doing so only compounds a systemic issue.

¹ *Queensland Parole System Review Final Report (2016) 191.*

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PLS respectfully acknowledges the Aboriginal and Torres Strait Islander peoples as the traditional owners and custodians of this land and acknowledges their Elders, past, present and emerging.

We consider 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. These services are a cost-effective strategy to reduce on-going delays in this system.
3. Consultation with the Board and stakeholders should take place to assist in identifying long term solutions.

Delays in parole applications

The average period of time for a person to receive a decision from the Board has increased by 160%. The Board is required by law² to make a decision on a parole application within 150 days, but based on our current parole casework, matters are considered within 225 to 250 days. Our current casework indicates that no people in prison are receiving decisions on parole applications by their parole eligibility date. A major cause of delays is that a backlog of applications has been created a result of the increasing prison population.

Delays in parole suspensions

Parole suspension decisions are similarly taking unprecedented periods of time to resolve. In 2015-16, the average time spent in custody on a parole suspension was 3.5 months³, whereas PLS data for parole suspension matters between 2017 and 2020 show an average period was 6 months.

The Board has power to issue an arrest warrant for a person on parole, where certain legislative criteria are met.⁴ A legal process then follows where a person returned to prison can make submissions and changes to their personal circumstances which often results in the Board lifting the parole suspension and releasing them back into the community.

There is no statutory timeframe in which the Board must make a final decision on a parole suspension; however our data indicates that the Board currently lacks capacity to make these decisions in an appropriate time.

Increased State Expenditure

The average total cost of these delays to the State is conservatively estimated as \$3,900,000 each month, with the cost per prisoner of delays being over \$20,000. This unnecessary State expenditure will continue should the current situation remain unresolved.

\$20,000 cost of delay for each prisoner = *per day cost of incarceration x average days of delay in parole application being considered*

- Cost to keep one person in prison per day is \$285.67.⁵
- The additional days that most applicants spend in prison on a standard application is 75 to 100 days, due to delays following the expiry of the statutory timeframe.

² *Corrective Services Act 2006* (Qld) s193(3)(a).

³ *Queensland Parole System Review Final Report* (2016) 85.

⁴ *Corrective Services Act 2006* (Qld) s205(2)(a).

⁵ Productivity Commission, *Report on Government Services 2020*.

\$3.9M total cost of delays per month = *cost of delay per prisoner x number of monthly standard parole applications x % of successful applications*

- An average of 328 standard applications are received by the Board each month.
- Approximately 60% of applications are granted parole at first consideration, with approximately 85% of all applications being granted overall.

An additional cost to the State not included in these calculations is the cost of litigation when people who do not receive parole decisions within the statutory time frame commence judicial review proceedings in the Supreme Court of Queensland seeking an order compelling the Board to make a decision. PLS is aware of a marked increase in the number of these proceedings being filed. There were 27 judicial review applications filed against the Board in the months of January and February 2021 compared to 13 judicial review applications filed against the Board throughout the year 2020. PLS anticipates these figures will increase in the coming weeks.

When an applicant files these proceedings, the Board brings forward the consideration of an individual applicant's parole application and must dedicate resources to handling the litigation matters. Not only are the Board's resources being withdrawn from its decision-making functions in these circumstances, parole litigants are moved to the front of the queue, pushing the consideration of other applications further away in time. This preferencing adversely impacts the most vulnerable people in prison who do not have the capacity or the finances to pursue Supreme Court litigation.

Well-being and community safety

The legislation enables a person in prison to apply for parole six months before they are eligible so they can be released on the date set by the sentencing judge.⁶ The mandatory timeframes for consideration of their application allows for certainty and planning before their release on parole.

Delayed parole decisions can result in:

- People spending additional time in prison when they have served the punitive element of their sentence and do not pose a risk to the community.
- People in prison being kept in a state of limbo about their liberty, with significant ramifications for their well-being and prospects of successful re-integration.
- Increased risk of institutionalisation. PLS has observed a discernible deterioration in the mental health of many of our clients due to the uncertainty they face regarding release.
- People being released at the expiration of their sentence without the benefit of community-based supervision.
- Loss of employment and housing established in the parole period (in the case of delays in considering parole suspensions).
- Increased distress of families and children of people in prison, particularly when support with parenting and financial responsibilities is required.

Each of these factors are well-documented as also increasing safety and well-being risks for the whole community.

⁶ *Queensland Parole System Review Final Report* (2016) 179.

Long term solutions

PLS recognises the complexity of this issue and that additional funds for the Board only form part of the solution. Should the prison population continue to increase at current rates, emergency funding packages will only provide temporary relief.

Nor should current parole delays be simplified as a temporary consequence of the COVID-19 pandemic. While there was an influx of applications for exceptional circumstances release in early to mid 2020, this simply exacerbated the pre-existing problem associated with the growing prison population and lack of commensurate funding for agencies working in this area.

Despite the implementation of reforms from the 2016 Queensland Parole System Review, we consider that ongoing reform to parole processes remain necessary. For example, the number of parole suspensions continues to increase dramatically and now make up more than half of the prison population, despite the implementation of reforms aimed at reducing the number of people returned to custody for parole suspensions.⁷

We are also mindful of delays due to the number of reconsideration and deferral decisions made due to the Board having insufficient information to make informed decisions. Significant change is required with how information is obtained and provided to the Board. Funding legal representation for applicants with complex matters would ensure that adequate information is prepared and provided to the Board in a timely way.

Thank you for your consideration of these matters. We are able to provide more detailed commentary on all matters raised. PLS intends to circulate this letter to other stakeholders and agencies to raise awareness about this significant issue.

We look forward to receiving your response.

Yours faithfully,



Helen Blaber
Director / Principal Solicitor
Prisoners' Legal Service Inc

⁷ Parole suspensions have increased by 28% since 2017. In 2019-20 the Board suspended 4621 parole orders. During that same year, the average prison population was 8884. See PLS, *Annual Report 2019-20*, 6; and Parole Board Queensland, *Annual Report 2019-20*, 30.