**North Queensland Law Association 2023 Conference, Cairns**

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**Peter Shields, Deputy President Parole Board Queensland**

Since 3 July 2017, Parole Board Queensland (‘the Board’) is solely responsible for the grant or refusal of an application for a Board ordered parole order and the suspension, cancellation or amendment of any parole order.

There are three (3) distinct limbs to the criminal justice system. The police who institute criminal proceedings. The courts which ensure any trial or sentence is fair and conducted in accordance with the law and who have sole responsibility for the sentencing of persons who are found or plead guilty. The Board which has the power to release a prisoner into the community prior to the prisoner’s custodial end date.

The genesis of the Board was the Queensland Parole System Review (‘QPSR’) which was undertaken by former President of the Court of Appeal, Walter Sofronoff KC.

The final report was handed to the Government on 30 November 2016.

The QPSR was commissioned by the Government following widely published media reports of the murder of an elderly woman by a man on parole. Those media reports caused widespread community disquiet about the adequacy of the then parole system protecting Queenslanders.[[1]](#footnote-1)

It was a key recommendation of the QPSR that one independent Board be established to hear all Board ordered parole matters in Queensland.

As emphasised in the QPSR by Mr Sofronoff KC[[2]](#footnote-2):

“*The only* ***purpose*** *of parole is to reintegrate a prisoner into the community before the end of a prison sentence to decrease the chance that the prisoner will ever reoffend. The only rational for parole is to keep the community safe from crime. It if were safer, in terms of likely reoffending, for prisoners to serve the whole sentence in prison, then there would be no parole. It must be remembered also that parole is just a matter of timing; except for those who are sentenced to life imprisonment, every prisoner will have to be released eventually*”.

In *Ripi v Parole Board Queensland*,[[3]](#footnote-3) the Honourable Justice Davis stated:

“*the* ***priority*** *of the corrective services regime, including parole, is protection of the community*.”

The Board is a vital part of the Queensland criminal justice system as it decides if a prisoner should be granted parole, and if so, what conditions they should be subject to in order to reduce their risk of re-offending.

The Board also decides if the parole order of a released prisoner should be amended, suspended or cancelled based on risk to the community.

The Board must justify any decision using evidence. The Board cannot refuse a prisoner’s application for parole, or suspend a prisoner’s parole order, unless it has an evidential basis for doing so.

A pivotal role the Board plays in the criminal justice system is when the court, in recognition of a plea of guilty will as part of the sentence, order the prisoner be eligible for release on a parole order earlier than would otherwise be the case.

This is illustrated by the Court of Appeal decisions in *Lilley* and *Randall*.

*R v Lilley* [2021] QCA 52 at [49] and [50] (Rafter AJ with Sofronoff P and Boddice J in agreement)

[49] …The decisions of this Court have consistently held that there is no inflexible rule that a plea of guilty must be reflected in a non-parole period of one third of the head sentence of imprisonment.

[50] … The discretion to fix a parole eligibility date is unfettered and the significance of a guilty plea for the exercise of that discretion will vary from case to case. Consequently, there can be no fixed mathematical approach to setting such a date. And I would add, nor can there be any rule that effect must be given to a plea by reducing either the head sentence or the parole eligibility date. There is no justification in the statute or in principle to support such a proposition. [footnotes omitted]

*R v Randall* [2019] QCA 25 at [43] The Court (Sofronoff P and Morrison JA and Burns J)

[43] The purposes of sentencing are many and the process itself is not capable of being reduced to discrete intellectual modules. Sentencing practices emerge and develop over the course of years. One of these practices is the rule of thumb that a timely plea of guilty is often reflected by setting parole at the one third point. However, as Fraser JA said in *R v Amato*, although s. 13 of the Penalties and Sentences *Act* requires a plea of guilty to be taken into account, the Act does not dictate how it must be taken into account. The discretion to fix a parole eligibility date is unfettered and the significance of a guilty plea for the exercise of that discretion will vary from case to case. Consequently, there can be no mathematical approach to fixing such a date. [footnotes omitted]

Whilst acknowledging the famous and oft quoted words of Viscount Sankey: *"Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt’*,[[4]](#footnote-4) the practicality though of all persons who are charged with a criminal offence electing to go to trial, would cause the criminal justice system to break.

The discount provided through the plea of guilty ensures the timely resolution of those who plead guilty to a crime, whilst providing a fair trial to those who plead not-guilty and proceed to trial. The ability of a criminal justice system to provide a trial to a person in reasonably close proximity to the crime alleged, may be seen as a component of providing a ‘fair’ trial.

Those who are part of the criminal justice system in Queensland realise the importance of a properly funded and functioning parole system because between March 2020 and 2022, a lack of funding led to a backlog in applications for a parole order.

As reported by the former Chief Justice of the Supreme Court of Queensland, the Honourable Catherine Homes AC SC, in the 2020 – 2021 Supreme Court annual report:

“This year has seen a steady rise in the number of applications for parole awaiting consideration by the Parole Board Queensland and a corresponding expansion of the time elapsing between application by a prisoner and consideration by the Board. This is of considerable concern to the Court for two reasons.

The first is that anticipation of delay in the obtaining of parole makes the sentencing process more complicated and makes it more difficult to achieve a just result while securing community protection. A fixed parole release date (which does not entail a need for consideration by the Board) can only be given where the sentence is three years or less. (In some prescribed circumstances it cannot be given whatever the sentence length.) The result is that although, for example, a prisoner may already have served close to half of his sentence on remand and shown excellent signs of rehabilitation, if his offence is one that properly warrants a sentence of more than three years, he can only receive a parole eligibility date. That means that even though justice might dictate his immediate release to serve the balance of his sentence under parole supervision, he must wait at least eight months after making his application before the Board will even consider it

An alternative sentencing option is to suspend the sentence after the time already served, but that carries the disadvantage that the community supervision which is usually needed, particularly in the case of drug offences, will not be available. Another consideration is this: supervised parole is a rehabilitative measure and an incentive to good behaviour, both in and out of prison; but uncertainty as to when an application for parole will receive attention, and awareness that it will not be within the 120 days prescribed by statute, or anything like it, are unlikely to promote a positive attitude.

The second consequence of the backlog for the Court is that, as they are entitled to do, prisoners seek judicial review of the Board’s failure to consider their applications for parole within the statutory time frame. The practical result is that where for the first seven months of the reporting year to January 2021, the number of applications arising from Parole Board decisions never exceeded single figures, there was a sudden rise in February of this year; and for the last four months of the reporting year the numbers have been in excess of 50 applications per month, with a peak in April of 83 applications. This absorbs registry and Court time and resources in dealing with applications where the outcome is usually inevitable.

The Board is now properly funded and the backlog has been remedied. But the words of former Chief Justice Holmes also speak to the symbiotic relationship with exists within the criminal justice system between the courts who sentence offenders and the parole system who considers their application for safe release back to the community on a parole order.

Parole Application Backlog

1. Overview of QPSR at [1] [↑](#footnote-ref-1)
2. At page 1[3]. [↑](#footnote-ref-2)
3. [2018] QSC 205 at [44]. [↑](#footnote-ref-3)
4. *Woolmington v DPP* [1935] AC 462 at[ 481]. [↑](#footnote-ref-4)