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Senate Legal and Constitutional Affairs Legislation Committee

Inquiry into the Commonwealth Parole Board Bill 2025 and the Commonwealth Parole Board (Consequential and Transitional Provisions) Bill 2025

Attorney-General's Department Submission

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Introduction

The Attorney-General's Department (department) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) on the Commonwealth Parole Board Bill 2025 (Parole Board Bill) and the Commonwealth Parole Board (Consequential and Transitional Provisions) Bill 2025 (Consequential Amendments Bill) (together, the Bills).

The Parole Board Bill would establish an independent Commonwealth Parole Board (the Board) to make efficient, effective and risk-informed decisions about the conditional release and management of federal offenders and other detained persons under Part IB of the *Crimes Act 1914* (Cth) (Crimes Act).

The Consequential Amendments Bill would make consequential amendments to the Crimes Act to give effect to the Parole Board Bill and support the transition of decision-making from the Attorney-General to the Board.

The Bills were introduced by the Attorney-General, the Honourable Michelle Rowland MP, on 8 October 2025. The Bills implement the government's commitment to ensure that the conditional release of offenders from custody into the community is made by law enforcement and other community safety experts, at arm's length from the government of the day.

On 30 October 2025, the Senate referred the Bills to the Committee for inquiry and report by 19 November 2025.

This submission provides information to assist the Committee's consideration of both Bills and the explanatory materials.

Background and rationale for reform

Deciding when a federal offender should be released into the community on parole is a critical decision. Research, including by the Australian Institute of Criminology and the NSW Bureau of Crime Statistics and Research, has found that offenders having a period of parole under appropriate supervision reduces the risk of reoffending and promotes community safety.¹

Parole decisions for federal offenders are currently made by the Attorney-General under Part IB of the Crimes Act. It has been the practice of Attorneys-General to delegate these decisions to a small number of senior executives within the department under the *Law Officers Act 1964* (Cth). The Crimes Act does not describe how consideration for release on parole is to be undertaken. It is a matter for the Attorney-General or their delegate to determine a procedure that is reasonable to the circumstances of the individual matter, and which adheres with principles of procedural fairness.

Historically, this framework was fit-for-purpose. Over time, the makeup and complexity of the federal offender cohort has changed and now includes increasing numbers of offenders who pose a direct risk to community safety, such as terrorism offenders and online child sexual abuse offenders.

The number of federal parole decisions have also been rising every year. There are approximately 1,300 federal offenders currently serving prison sentences across every state and territory in Australia. This is approximately equivalent to the prison population of the Australian Capital Territory and Tasmania

¹ Wan W, Poynton S, Doorn G & Weatherburn D 2014. Parole supervision and reoffending. Trends & issues in crime and criminal justice no. 485. Canberra: Australian Institute of Criminology.

combined. In 2024-25, over 530 parole related decisions were made. The number of decisions are increasing by approximately 10 per cent each year.

The Bills will transition decision-making from the Attorney-General to an independent statutory Board, comprising experts who have the necessary qualifications, experience and knowledge to assess the risks posed to the community, and whether an offender is suitable for conditional release on parole.

This will support greater public confidence in the federal parole system by ensuring parole decisions are made by experts who are best placed to make robust assessments of risk and remove any potential real or perceived political bias in decision-making about the release of federal offenders into the community.

This reform will align Australia's federal parole system with best practice approaches in the states and territories and likeminded countries including Canada, New Zealand and the United Kingdom, all of which have statutory parole authorities independent from government.

Subject to the passage of the Bills, the Board is intended to be operational in the second half of 2026.

Consultation

The department has met with large number of stakeholders across Australia and internationally to inform the development and design of the Bills. This includes state and territory corrective services, parole and justice agencies, victim's advocacy and support groups, legal and advocacy groups and international parole boards. The department thanks all the stakeholders that participated in these consultations for their contributions, but also their commitment to the establishment of this new important feature in the federal criminal justice system.

Many stakeholders have been long-standing advocates for the establishment of an independent federal parole authority, including the Law Council of Australia and National Legal Aid. The development of both Bills has been informed by this work, including recommendations in the Law Council of Australia's 2022 report, 'Principles underpinning a federal parole authority', and the Australian Law Reform Council's 2006 report, 'Same Crime, Same Time: Sentencing of Federal Offenders'.²

The department will continue to consult with stakeholders, including on future guidelines that will set out the Board's processes and procedures (section 13).

Overview of the Bills

Key features of the Parole Board Bill

The Bill will continue to support the purposes of parole under Part IB of the Crimes Act, which is the rehabilitation and reintegration of federal offenders and the protection of the community.³

The Bill includes the following measures:

- establishes an independent Board as a secondary statutory structure within the department (section 41), including functions and powers of the Chair, Deputy Chair and sessional members (sections 8-12)

² Law Council of Australia, Principles underpinning a federal parole authority, Position Paper, November 2022 and Australian Law Reform Commission, Same Crime, Same Time: Sentencing of Federal Offenders (ALRC Report 103), April 2006.

³ Section 19AKA, *Crimes Act 1914* (Cth).

- outlines the decision-making arrangements of the Board, including convening of meetings, quorum and voting requirements and the power to conduct interviews (sections 17-24)
- empowers the Board to request or require, and disclose information (sections 25-28)
- provides the administrative arrangements, including Board member appointments (sections 29-40)
- requires the Chair to prepare an annual report for tabling in Parliament (section 44), and
- ensures an evaluation of the effectiveness of the parole framework through a statutory review to commence 3 years after the Board's commencement (section 45).

Key features of the Consequential Amendments Bill

The Consequential Amendments Bill amends Part IB of the Crimes Act to empower the Board to:

- make, refuse to make, or defer deciding to make a parole order for a person (subsections 19AKB(1) and 19AKC(1) of the Crimes Act)
- set a reconsideration date that is more than 12 months after a date of refusal, but no more than 24 months (subsection 19AKC(4) of the Crimes Act)
- not reconsider a person for parole if a person has 30 days or less left on their sentence at the end of the reconsideration period (subsection 19AKC(2) of the Crimes Act)
- rescind a parole order or license before a person has been released in circumstances where it is appropriate to do so (section 19APC of the Crimes Act), and
- deal with other parole related decisions, including release on license, overseas travel requests, amending parole orders, and revocation of a parole order or licence (sections 19AP, 19APA, 19AN and 19AU of the Crimes Act).

These provisions are intended to enhance the existing parole decision-making powers under Part IB of the Crimes Act, which require the Attorney-General to consider making a parole order for a person before the end of the non-parole period set by the court, and reconsider making a parole order for a person within 12 months after any refusal of parole. The Attorney-General does not have any discretion to defer the initial consideration or reconsideration of offenders for parole for any reasons.

They align the Board's decision-making arrangements with state and territory parole authorities and provide the flexibility to ensure the Board is able to carry out its functions efficiently and effectively.

Schedule 2 of the Consequential Amendments Bill provides transitional and application provisions to ensure the seamless transfer of decision-making powers and functions from the Attorney-General to the Board.

These changes will ensure the Board can make risk-informed decisions and manage its caseload in an efficient and effective manner.

The establishment and functioning of the Board follows four key design principles: independence, transparency, accountability and continuity, as discussed below.

Independence

Ensuring the Board operates arms-length from government is a key objective of the Bills.

The following features of the Parole Board Bill ensure the Board will operate independently in carrying out its functions:

- the Board will not be subject to direction when performing or exercising its functions and powers. This includes direction from the Attorney-General and the government of the day. This will ensure that the activities of the Board operate independently and without real or perceived political bias.
- appointments to the Board – these will be made by the Governor-General, on the recommendation of the Minister (section 29).
- security of tenure – members hold statutory office for a fixed term of up to 5 years and may only be removed by the Governor-General on specified grounds, ensuring they can make independent decisions without fear of removal from office due to any decision-making (sections 30 and 40). Members may be reappointed, which stakeholders have highlighted helps build expertise in the Board, and provides a pathway for members to be appointed to leadership positions in the Board.
- limitations placed on other paid work – the Chair and Deputy Chair cannot engage in other paid work outside of their duties without the Minister’s approval, and sessional members cannot engage in other paid work outside of their duties which would in the Minister’s opinion, conflict with their functions (section 36).
- disclosure of interests – members must disclose any interests that conflict, could conflict, or could reasonably be perceived to conflict with the performance of their functions (section 37).
- empowering the Chair to make guidelines as required – this further reinforces operational independence, ensuring the Chair can independently determine appropriate processes and procedures to manage the Board (section 13). The guidelines may also be published if the Chair considers it appropriate to do so, contributing to transparency and accountability.

The Board, as a secondary statutory structure within the department, does not limit the independence of the Board. Board members will be independent statutory officeholders and will be officials of the department for the purposes of financial accountability only.

Arrangements relating to staffing

The Parole Board Bill provides that any staff made available to assist the Board, either from the department or any another agency listed under subsection 15(1), will only be subject to the direction of the Chair or the Deputy Chair. This provision operates to ensure the independence of the Board extends to all individuals involved in the Board’s operation.

The purpose of enabling staff to be made available to assist the Board under section 15 of the Parole Board Bill is to provide the necessary flexibility to increase or decrease the Board’s capacity as required.

Persons assisting the Board other than from the department would be made available as secondees from their home agency. This would enable the Board to recruit for specialised expertise. This provision relates to staffing of the Board and is not intended to extend to agencies performing functions under

Part IB of the Crimes Act or providing information to the Board (e.g. Commonwealth Director of Public Prosecutions appearing in revocation of parole matters, or Australian Federal Police officers providing information to the Board).

Qualified, expert, and knowledgeable decision-making

The Parole Board Bill ensures independent decision-making by requiring members of the Board to have the relevant qualifications, experience and knowledge to make risk-informed decisions on whether to release an offender on parole, and related conditions. The legislation ensures the Board is equipped with the legal knowledge necessary to support this decision-making by requiring the Chair or the Deputy Chair to be enrolled as a legal practitioner for at least 5 years (subsection 29(3)). This ensures that decisions are grounded in sound legal reasoning.

The legislation will further protect the Board's independence by requiring the Minister to ensure the membership of the Board, taken as a whole, possesses an appropriate mix of qualifications, experience and knowledge, having regard to the functions of the Board (paragraph 29(4)(a)). This reflects a multi-disciplinary approach, where balanced board composition enhances both independence and quality decision-making.

Immunity from civil proceedings

The Parole Board Bill recognises that expert and independent decision-making for parole decisions needs to be protected by affording immunity from civil proceedings to members of the Board, persons made available to assist the Board, and persons who provide information to authorised officers (section 16). This will ensure that the Board can make risk-informed decisions in an efficient and effective manner without fear of personal liability for any action performed in good faith.

These immunities are proportionate to achieving this objective by only applying to specific individuals, and not the Commonwealth more broadly. Importantly, this means affected people could still seek an effective remedy against the Commonwealth for any alleged loss or damage suffered in the purported exercise of the Board's functions.

Information sharing arrangements

The Parole Board Bill empowers the Board to make independent and risk-informed decisions by allowing the Board to request and disclose information (Part 4). This will ensure the Board has access to relevant information to make independent decisions in accordance with procedural fairness.

The Board will only be able to request or require information that it reasonably believes to be relevant to the performance of the functions of the Board, including to make independent and risk-informed decisions (section 25). Information will be provided from those performing official functions in law enforcement, justice, corrections, regulation and oversight (section 28).

Minister rule-making power

The Parole Board Bill permits the Minister to make rules covering administrative matters only (section 46). This is not intended to extend to the performance of the Board's decision-making functions or powers. In addition, decisions made under Part IB of the Crimes Act are reserved for Board members only. Any rules made by the Minister would be legislative instruments and are disallowable by the Parliament.

Transparency, accountability and continuity

To support the transparency and accountability of the Board's functions, section 44 of the Parole Board Bill requires the Chair to prepare an annual report on the Board's performance and functions during the financial year, to be tabled in Parliament and published on the Board's website.

The Board will be directly accountable to the relevant Minister and Parliamentary oversight functions, including the Legal and Constitutional Affairs Senate Committee.

Consistent with the current parole framework, the Consequential Amendments Bill maintains the requirement for the Board to provide federal offenders with written notice of a parole refusal or deferral (section 19AKF Crimes Act).

The Bills do not require the Board to publish reasons for its decisions. The Board must strike the balance between protecting community safety, while providing parolees the relevant privacy to ensure their successful reintegration and rehabilitation into the community.

The Chair will have flexibility to determine processes through guidelines, which could include the publication of decisions or other related information, subject to compliance with the Australian Privacy Principles. This approach balances an individual's right to privacy with the public interest in parole outcomes.

Further provisions in the Parole Board Bill which support transparency and accountability include:

- quorum – preventing unliteral decisions, or decisions that do not reflect deliberative and proper consensus. A quorum of a meeting of the Board is constituted by a minimum of 3 members which must include at least one full-time member (Chair or Deputy Chair) and 2 other members (section 19).
- voting requirements – promotes collective judgements and transparent decision-making. As a general rule, decisions of the Board must be supported by at least one full-time member (section 20).
- single member decisions – the Chair or the Deputy Chair, as the full-time Board members, will be able to make single member decisions only in limited circumstances of urgency to revoke or rescind a parole order or where it is administratively appropriate (section 22). This may include amending the conditions of a parole order or licence under subsection 19APA(1) of the Crimes Act. Single member decisions do not extend to the decision to make, or refuse to make, a parole order for a person, which must be made by the Board.
- termination of Board members – ensuring the relevant accountability of Board members in upholding their significant statutory duties. The Governor-General is empowered to terminate a Board member for misbehaviour, bankruptcy, physical and mental incapacity, absence from duty without leave, engaging in outside work without approval, failing to comply with duties to disclose interests (section 40).
- statutory review – the review must be undertaken as soon as practicable between 36 months and 48 months after the commencement of the Parole Board Bill and will consider whether the parole framework is fit for purpose, as well as the composition, operation and decision-making processes of the Board (section 45).

Procedural fairness

Procedural fairness is a fundamental principle of common law, applying to administrative decisions that affect a person's rights. Procedural fairness is embedded within the design of the Bills through multiple provisions that safeguard the rights and interests of affected parties, without compromising the independence or transparency of the Board.

This is a long-standing and well-established principle, upheld by the High Court of Australia in 2015, which stated that, in the 'absence of a clear, contrary legislative intention, administrative decision-makers must accord procedural fairness to those affected by their decisions'.⁴ As such, it is unnecessary to explicitly refer to procedural fairness obligations in the Bills. They will remain embedded in the administrative law processes of parole decision-making based on common law principles.

An offender will continue to be notified of, and have sufficient opportunity to respond to, any adverse matters which might weigh against their release on parole, and they may engage legal representation, or other relevant supports throughout the parole process.

The Chair will be empowered to create guidelines to support the Board in the performance of its functions, including ensuring that decision-making is undertaken in accordance with natural justice and procedural fairness.

While not explicitly referenced in the Bills, parole decisions are subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and section 39B of the *Judiciary Act 1903* (Cth).

Continuity of operations – Secretary may participate as a member of the Board

The Parole Board Bill allows the Secretary of the department to participate as a member of the Board at the request of the Chair in certain circumstances. Section 24 provides that the Secretary may participate in a meeting of the Board or in making a decision without a meeting if the Chair has requested the Secretary to do so for one or more of the following reasons:

- Both the Chair and Deputy Chair cannot participate in a decision due to a conflict of interest.
- The Chair, Deputy Chair or a sessional member is not readily available to attend a meeting or participate in the making of a decision, due to a vacancy or other reason.
- The Chair considers it appropriate for any other reason.

This provision is modelled on subsection 13(2) of Schedule 1 of the *Crimes (Administration of Sentences) Act 1999* (NSW), which provides that the Secretary of the NSW State Parole Authority may act as a non-judicial member.

It is intended that the Secretary would only participate as a member of the Board when there is no alternative. This stop-gap arrangement may be required from time to time to enable the Board to meet its legislative requirement to make parole decisions within the statutory deadline. It will ensure the Board can continue to discharge its functions in circumstances where members are not available or where quorum or voting requirements cannot otherwise be met.

If the Secretary participates in a meeting or making a decision without a meeting, the Secretary is subject to all the requirements of the Parole Board Bill. The Secretary may exercise a power or perform a function of

⁴ *Minister for Immigration and Border Protection v WZARH* [2015] HCA 40 at 8-9 [30].

the member they are participating as and is taken to be that member for all purposes in relation to that meeting or decision. This means that section 14 applies to the Secretary, and they have complete discretion in performing or exercising the Board's functions or powers and are not subject to direction when doing so.

The circumstances in which the Secretary may participate as a Board member are not intended for long-term vacancies. The Minister has an obligation under the legislation to fill a vacancy as soon as practicable, and acting appointments may be made where a member is absent for an extended period (sections 31 and 32).

The Secretary may also delegate their functions as a Board member to a senior SES employee of the department (section 43).

Conclusion

The department thanks the Committee for the opportunity to make this submission.