

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Sir or Madam,

I write regarding the *Commonwealth Parole Board Bill 2025*.

I support the Government's proposal but would suggest some technical and checks and balances measures to ensure equity and fairness in the Board's role. I am writing as a private individual and I am not associated with any organisation in writing this.

In section 6 it may be wise to consider extending the Crown to be bound in right of the External Territories such as Norfolk Island, which does retain its own Court system.

Section 16 is one of the most difficult sections to grapple with from a checks and balances viewpoint. I understand there is a rationale for protecting the members of the board from making a "wrong" decision that has been made in good faith. But the extension of the immunity to all civil proceedings could mean that the Board could (although very unlikely) act with impunity without recourse to judicial review to decisions that were made in good faith.

Perhaps a better way forward for this section could be to exclude a member from being liable to any civil monetary penalty for a decision that is made in good faith, rather than a blanket immunity. If this is not amenable, there should be a carve out to allow civil proceedings pursuant to the *Administrative Decisions (Judicial Review) Act 1977*. This would in my view fairly balance the policy rationales with a right to correct an unlawful decision. It may also be just given that the Attorney-General would no longer be responsible to Parliament for parole decisions being made. This would ensure the independence of the board but provide that the Board makes their decisions lawfully.

Section 40 could be improved by mandating that a Board member can only be removed in a similar fashion to a Federal Judge for incapacity or *proved* misbehaviour. In addition there may be some benefit in removing the bankruptcy grounds for termination.

While incredibly unlikely it appears on the face of the bill, it is possible under the current legislation to for the Executive Council to remove a politically unsatisfactory board member as long as they subjectively feel that a board member has misbehaved or is incapacitated. To preserve the independence of the board, it should not be a purely executive (subjective) decision to remove members of the board - there should be a similar procedure to subsection 72(2) of *the Constitution* that requires proven misbehavior or incapacity and an address to Parliament. This provision or something similar is found in some other Acts, such as the procedure to remove the Commissioner of Taxation, under the *Taxation*

*Administration Act 1953*, or the Commissioner of the National Anti Corruption Commission in the Act that created that Commission. It follows that the Board, who will be making politically and emotionally sensitive decisions, should be afforded the same protections to their independence as judges or the Commissioners of Taxation or the NACC.

The bankruptcy provisions I press the least, however, I would submit that bankruptcy and insolvency does not carry the moral opprobrium that undermines the public confidence as it may have done when the Commonwealth was founded. Therefore it may be necessary to reconsider if this should be a ground for removal given the change in moral standards. However, I press this the least given that there are many civil disabilities that remain for bankrupts, especially given the Chair must be a lawyer.

Finally as an internal check on the board power, there should be a separate and independent oversight authority to oversee the operations as a board. I would recommend the system in place in South Australia with the Parole Administrative Review Commissioner position to be able to make an independent assessment and should ideally be a serving federal judge. This will ensure that the independence of the Board is maintained while simultaneously ensuring they are complying with law.

I hope this is of assistance and please do not hesitate to contact me if you have any queries or concerns.

Yours faithfully,

Angus Thompson.