

National Legal Aid Submission to 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*

7 November 2025

Acknowledgement of Country

National Legal Aid acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders both past and present.



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Summary of recommendations

Commonwealth Parole Board Bill

Recommendation 1

That section 13 is amended to require that the Chair's development of the Commonwealth Parole Board Guidelines includes a commitment to consultation with stakeholders and public release of the Guidelines.

Recommendation 2

That the Bill be amended to include the provision for the appointment of a legal practitioner to assist the offender, particularly where counsel has been appointed to assist the Commonwealth Parole Board or where the offender has mental health, cognitive or physical disabilities or is from a non-English speaking background.

Recommendation 3

That section 23 is amended to incorporate procedural fairness safeguards for conduct and use of offender interviews.

Recommendation 4

That section 29 is amended to require that both the Chair and Deputy Chair have been enrolled legal practitioners for at least 5 years.



Commonwealth Parole Board (Consequential and Transitional Provisions) Bill

Recommendation 5

That 19AKC includes the express provision that the Commonwealth Parole Board may reconsider parole at any time within the reconsideration period.

That clarification regarding 19AKC (3) is provided about the circumstances in which it may be relied upon.

Recommendation 6

That 19AW is amended to be expressly consistent with section 19AQ to allow for clean street time to be taken into account in revocation of parole by the Board.

Recommendation 7

That funding is made available for the provision of legal assistance as part of the establishment of the Commonwealth Parole Board.



National Legal Aid submission

Outline of support for the Commonwealth Parole Board Bill 2025 and the Commonwealth Parole Board (Consequential and Transitional Provisions) Bill 2025

National Legal Aid (**NLA**) welcomes the introduction of the Commonwealth Parole Board Bill 2025 and the Commonwealth Parole Board (Consequential and Transitional Provisions) Bill 2025 (the Bills) to establish a Commonwealth Parole Board. The Commonwealth Parole Board will strengthen community safety by establishing an independent Board with relevant expertise to make decisions regarding parole.

NLA welcomes the following components outlined in the Bills:

- the provision for the Board to be able to hear from an offender by way of interview, thereby enabling more active participation in the Board's decision-making process and supporting procedural fairness.
- the commitment that the Chair's guidelines will support decision making to be undertaken in accordance with natural justice and procedural fairness. Providing this function to the Chair is consistent with the objective of the Bill to establish the Board as an independent decision-making body.
- that the composition of the Board may include people with qualifications, experience or knowledge in law, law enforcement, corrections, medicine, psychology, social work, counselling, mental health, criminology, sociology or other relevant fields (clause 29). This broad composition will ensure diverse and appropriate experience informs the Board's decisions.
- A commitment to reviewing the Bills and the parole framework within three years of the commencement of the Bills.

NLA supports the establishment of the Commonwealth Parole Board for the following reasons:



Procedural fairness and transparency

Under the current statutory provisions, there is no prescribed procedure that must be followed in considering and determining parole, there is no requirement for a hearing, and no express requirement that the person be given legal assistance or the opportunity to make submissions. This means Commonwealth offenders are afforded a lesser standard of procedural fairness than State or territory offenders. It also risks the perception that decisions about parole for federal offenders are political, and not independent.

Protective role of parole supervision

The key purpose of parole is to promote community safety by supervising and supporting the conditional release and re-entry of prisoners into the community, thereby reducing their risk of reoffending. Research demonstrates that parolees are substantially less likely to reoffend than prisoners released unconditionally, and that it is particularly effective in reducing serious reoffending among high-risk prisoners and Aboriginal offenders.

Further, it has been repeatedly shown that the cost of supervision in the community is low compared to the cost of incarceration.

Benefits of an independent authority

No grant of parole will ever be risk-free, and balancing community safety with rehabilitation and reintegration of offenders can be a complex task. However, adopting a highly risk-averse approach to parole determinations risks greater long-term risk and cost to the community.

One of the primary benefits of an independent authority is that it can be constituted by a panel of statutorily appointed members with a broad range of expertise and qualifications, providing different perspectives and better reflecting the diversity of our community.

The creation of an independent representative body is consistent with principles of open justice and accountability.



Issues for consideration

National Legal Aid has had limited opportunity to consider the Bills and limited opportunity to engage with expert stakeholders, due to the Inquiry timeframes. Outlined below are some issues for consideration following analysis of the Bills within the timeframes available.

Commonwealth Parole Board Bill

Commitment to consultation and transparency regarding the Guidelines

National Legal Aid welcomes the requirement that the Chair develop Guidelines that outline the function and operation of the Commonwealth Parole Board (section 13). However, there is very little direction regarding the Guidelines provided in the Bills which limits the transparency of the Board's operation and the evidentiary and procedural requirements that will apply. It is therefore difficult to comment on the Board model and its functions and whether this will afford appropriate procedural fairness.

In drafting the Bills, the Attorney-General's Department undertook extensive consultation and review of existing Parole Board models and consequently the Bills include components that have built on existing experience and good practice.

It is recommended that the legislation is amended to require a similar consultation process in developing the Guidelines and that there is a commitment to publicly releasing the Guidelines, to assist with ensuring that the Commonwealth Parole Board is consistent with principles of open justice and accountability.



Recommendation 1

That section 13 is amended to require that the Chair’s development of the Commonwealth Parole Board Guidelines includes a commitment to consultation with stakeholders and public release of the Guidelines.

Interview process and legal assistance for offenders

National Legal Aid welcomes the inclusion of interviews as an essential feature of the Commonwealth Parole Board. As part of our engagement around the design of the Commonwealth Parole Board we recommended that there be provision of the right of the offender to appear legally represented at a hearing and to make submissions orally or in writing where there is an intention to refuse parole.

The Bills provide that the Board ‘may’ conduct interviews in accordance with Guidelines, if any are developed by the Chair.

Again, the limited information regarding conduct of offender interviews limits the transparency of key evidentiary, procedural and operational matters associated with the Board’s core function. It is therefore difficult to comment on the inclusion of offender interviews and whether this will address procedural fairness shortcomings under the current scheme by implementing appropriate procedural safeguards.

It is also noted that section 15 outlines the role of staff assisting the Board and allows for the Commonwealth Parole Board to appoint a legal practitioner to act as counsel for the Board. If government representatives are to be given an opportunity to make submissions of fact and law to supplement reports by local Corrections agencies, the offender should be given a right to respond and to make submissions before the Board makes a decision to refuse parole. This is essential to ensuring the Board is provided with all relevant information, is not inadvertently led into error and to ensure procedural fairness.



Recommendation 2

That the Bill be amended to include the provision for the appointment of a legal practitioner to assist the offender, particularly where counsel has been appointed to assist the Commonwealth Parole Board or where the offender has mental health, cognitive or physical disabilities or is from a non-English speaking background.

Recommendation 3

That section 23 is amended to incorporate procedural fairness safeguards for conduct and use of offender interviews.

Appointment of Chair and Deputy Chair

National Legal Aid welcomes the consideration given to the qualifications and expertise required for appointment to the Board outlined in the Bills.

Given the increasing volume of parole decisions, the complexity of matters including terrorism, drug importation, and modern slavery. It is highly desirable that the Board be led by persons with judicial experience and practical knowledge and experience with the Commonwealth sentencing provisions. Given that the Deputy Chair may exercise functions of the Chair, section 29(3) should provide that both roles are reserved for persons who are enrolled legal practitioners with at least 5 years' legal experience.



Recommendation 4

That section 29 is amended to require that both the Chair and Deputy Chair have been enrolled legal practitioners for at least 5 years

Commonwealth Parole Board (Consequential and Transitional Provisions) Bill

Reconsideration of whether to make a parole order

Early reconsideration

Section 19AKC(4) gives the Board power to delay reconsideration beyond 12 months to up to 24 months. The EM suggests that the purpose of this is to allow for completion of longer programs or for the offender to progress through classification. These are examples of pragmatic reasons to defer reconsideration.

[336] of the EM suggests the board would have the discretion to reconsider making a parole order for a person “earlier than the reconsideration periods set out in proposed s.19AKC(4)”. However, the section does not make this plain, as it does not expressly provide that the Board may reconsider parole at any time. A further subsection should be incorporated to expressly provide this and an application process for early reconsideration in relevant circumstances, such as where a decision to refuse was based on false, misleading or irrelevant information, or there has been a significant change in circumstances relevant to the parole decision. Provisions of this kind operate in NSW under the ‘manifest injustice’ provisions.

Delay in reconsideration by the Board

Section 19AKC (1) is expressed in mandatory terms and requires that the Board must reconsider whether to make a parole order for the person before the end of the reconsideration period and either grant, refuse or defer the decision for not more than 3 months. Section 19AKC (3) then contemplates the Board *not* making a decision under (1) before the end of the



reconsideration period, providing only that it must make a decision “as soon as practicable” after the reconsideration period.

Unlike an *initial* parole decision – consideration of which may necessarily be delayed if there is a sentence imposed and backdated so the person is immediately eligible for parole – a reconsideration date will always be anticipated because it is 12 months or more away.

It is not clear how (1) and (3) work together given the mandatory terms of (1), or what circumstances (3) is attempting to address except perhaps an intervening sentence. The Explanatory Memoranda (EM) does not address this. It provides only (at [330]) that “...19AKC(3) requires the board to make a decision under new subsection 19AKC(1) ‘as soon as practicable’ after the end of the reconsideration period if a decision has not been made in accordance with that subsection.”

Recommendation 5

That 19AKC includes the express provision that the Commonwealth Parole Board may reconsider parole at any time within the reconsideration period.

That clarification regarding 19AKC (3) is provided about the circumstances in which it may be relied upon.

Clean street time

Under section 19AQ, if a person commits a fresh offence while on parole and is sentenced to more than 3 months imprisonment, their Commonwealth parole is automatically revoked. The sentencing court is to set a new non-parole period of the Commonwealth offence. The court is



expressly required to consider “the clean street period” served under s.19AQ(4)(2)(b) in deciding the new non-parole period for the Commonwealth offence.

In contrast, where parole is revoked by the Attorney (or following these bills, the Board) under section 19AU for actual or suspected failure to comply with a condition of parole or licence (not a fresh offence), clean street time cannot be taken into account because of the combined effect of s.19APB and s.19AW. This appears to be an unintended consequence of the *Crimes Amendment (Remissions of Sentences) Act 2021* (Cth).

The effect of the amendments is that there is no longer capacity to reduce the unserved part of a sentence for clean street time except under s.19AQ(4). This means an offender who has committed a fresh offence is in a better position on resentence than a person whose parole is revoked by the Board for a relatively minor condition breach. It may result in an offender being subject to indefinite parole if they continue to be “breached” towards the end of their sentence.

If the amendment cannot be considered within the time for passage of the Commonwealth Parole Board Bills, it should be the subject of separate, urgent consultation before commencement of the Board.

Recommendation 6

That 19AW is amended to be expressly consistent with section 19AQ to allow for clean street time to be taken into account in revocation of parole by the Board.

General comment



Importance of funding legal assistance

Legal Aids – particularly Legal Aid NSW - have been assisting Commonwealth offenders with the administrative parole process for a number of years. The number of parole matters has been increasing every year. NSW gaols, in particular, have much larger numbers of federal offenders in custody than gaols in other states.

Many of the applicants whom Legal Aids assist with parole matters are very disadvantaged. A significant proportion require interpreters. Clients who do not speak English, have low literacy or cognitive issues have considerable difficulty in understanding and participating in the process. Many cannot effectively advocate for themselves. The parole work undertaken by Legal Aids is labour intensive and time consuming, but adds significant value to the decision making process.

With an increase in the number of federal offenders being considered for parole every year, parole is an aspect of Commonwealth criminal law which needs to be appropriately resourced. Funding legal assistance for Commonwealth parole work would increase the efficiency of the process, which would also benefit the Parole Board. Enabling offenders to be represented is also likely to lead to better outcomes in the parole system which would be of overall benefit to the community.

Recommendation 7

That funding is made available for the provision of legal assistance as part of the establishment of the Commonwealth Parole Board.



About National legal Aid

Who are we?

National Legal Aid represents the eight independent Legal Aid Commissions in each state and territory of Australia. These commissions work collaboratively to deliver essential legal services, making sure that justice is accessible to all Australians. We strive to support those who are most in need, ensuring fair and equitable legal outcomes.



National Legal Aid (NLA) STRATEGIC PLAN 2025-2030

Vision

All people experiencing disadvantage have access to legal assistance and fair justice outcomes that contribute to safe, thriving families and communities

About us

NLA is made up of 8 statewide Legal Aids who provide legal assistance to Australians experiencing disadvantage. The Legal Aids receive \$1.79 billion under the National Access to Justice Partnership to deliver family law and national civil law legal assistance

Each year under the NAJP we deliver:

- 32,000 family law legal representation grants
- Respect@Work, domestic & family violence, migration & income support legal assistance
- Non-legal supports such as social supports and law reform work.

72% of representation grants are handled by private lawyers.

Clients receiving legal representation include:

- 24% First Nations people
- 25% people with disabilities
- 100% under the poverty line

Purpose

- Establish a national legal aid system that is sustainable and responsive to the needs of local communities.
- Use our expertise and leadership to improve legal assistance and drive law reform.
- Foster trusted partnerships with government, community, and legal assistance providers.

Goals

1. Ensure people facing disadvantage obtain legal representation by increasing core funding from all levels of government

4. Advocate for people experiencing disadvantage in civil law strategic areas including income and child support, disability, migration and disaster

2. Advocate for the safety and well-being of families and children within the legal and justice systems

5. Establish a nationwide evidence base to demonstrate legal need and the impact of legal assistance for disadvantaged clients

3. Implement Closing the Gap including delivering culturally safe services, supporting more First Nations services, & partnering with First Nations legal assistance partners on justice issues

6. Ensure safe and sustainable working conditions and culture to attract and retain a strong and engaged legal aid workforce

How we work



Putting clients at the centre of trauma informed practice



In partnership with others



Informed by evidence



National
Legal Aid