

Statement of Compatibility

FOR

Corrective Services (Parole Board) Amendment Bill 2025

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Laura Gerber, Minister for Youth Justice and Victim Support and Minister for Corrective Services make this statement of compatibility with respect to the Corrective Services (Parole Board) Amendment Bill 2025 (the Bill).

In my opinion, the Bill is compatible with the rights protected by the *Human Rights Act 2019* for the reasons outlined in this statement.

Overview of the Bill

The Queensland Government is committed to ensuring that parole decisions maintain community safety. Parole is not a privilege or an entitlement, it is a method intended to prevent reoffending and as a result plays an integral part in the criminal justice system. Under the *Corrective Services Act 2006* (CSA), only the Parole Board Queensland (the Board) has the power to amend, suspend or cancel a parole order. If Queensland Corrective Services (QCS) observes that a prisoner on parole is presenting an increased risk to community safety, sections 208A to 208C of the CSA provide the framework for QCS to ask the Board to suspend the parole order and return the prisoner to custody.

In the circumstance where a prisoner on parole presents a risk to community safety, the QCS chief executive can request the Board suspend the prisoner's parole order. To maintain community safety and manage emergent and serious risks, the request for immediate suspension may be considered by the Board, or a prescribed board member. As a safeguard to the rights of the prisoner, if a prescribed board member decided to suspend a parole order and return the prisoner to custody, within 2 business days the Board must convene to reconsider that decision, and decide whether to suspend the parole order, cancel the parole order or set aside the prescribed board member's decision.

In the interest of community safety, the Board operated on the basis that it also had the ability to review decisions of a prescribed board member to not suspend a prisoner's parole, after a request from the chief executive to suspend. The objective of this Bill is to ensure the Board has the authority to continue this practice to provide a safeguard to community safety.

The specific amendments relating to the CSA are to:

- enable the Board to review all prescribed board member decisions about requests for immediate suspension of a parole order, including decisions to leave a prisoner in the community, and
- validate decisions made by the Board when it reviewed a prescribed board member's decision to not suspend a parole order after a request for immediate suspension.

Human Rights Issues

Human Rights relevant to the Bill (part 2, division 2 and 3 *Human Rights Act 2019*)

The amendments in the Bill engage a range of rights protected by the *Human Rights Act 2019* (HRA), namely:

- the right not to be arbitrary deprived of the person's property (s24(2));
- the right to liberty and security of person (s29); and
- the right to a fair hearing (s31).

The amendments in the Bill also promote several human rights by preserving community safety as the decisions of the Board are intended to reduce victims. In doing this, the amendments promote the right to recognition and equality before the law (s15 of HRA) by ensuring that the law protects all people equally. The amendments also protect the right to life (s16), the right to property (s24), the right to privacy and reputation (s25) and protection of families and children (s26).

Enabling the Board to review all decisions made by a prescribed Board member

Clause 3 of the Bill amends section 208C of the CSA to enable the Board to review all decisions made by a prescribed Board member after a request for immediate suspension of a parole order.

The amendments promote the right to liberty (section 29(2) of the HRA) and the right to a fair hearing (section 31(1) of the HRA).

The nature of the right to liberty is set out above.

The right to fair hearing under section 31 of the HRA provides that a 'person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing'.

The clause may result in the detention of prisoners whose parole is suspended; however this clause ensures that such detention will be in accordance with the law and will be based on evidence.

The detention of a person under this clause will not be arbitrary. A person will only be detained if the Board considers that the prisoner the subject of a parole order:

- has failed to comply with the parole order;
- poses a serious and immediate risk of harm to another person; or
- poses an unacceptable risk of committing an offence; or
- is preparing to leave the State, other than under a written order granting the prisoner leave to travel interstate or overseas; or
- poses a risk of carrying out a terrorist act.

Consequently, the clause is considered to be consistent with a free and democratic society based on human dignity, equality and freedom.

The right to a fair hearing is engaged but not limited, as the clause includes the safeguards in section 208 of the CSA which require the Board to provide an information notice and consider all properly made submissions if it determines to suspend a parole order.

Validating Parole Board Queensland decisions

Clause 5 of the Bill will validate decisions made by the Board in the above circumstances. The decisions will be taken to be valid as if the Board had the authority to review the prescribed Board member's decision.

Property rights under section 24(2) of the HRA include the right not to be arbitrarily deprived of one's property. The concept of "property" encompasses economic interests. The clause will effectively extinguish a cause of action for false imprisonment and therefore may limit the right to property.

The clause will not limit the right to be subjected to arbitrary detention in s29(2) of the HRA as there are no prisoners in custody affected by clause. Further, the determination to suspend parole was not arbitrary but based on evidence and on the understanding that this was permitted by law.

Section 29(3) of the HRA provides that a person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law. This section protects a person's right to liberty and security of person. The right protects personal liberty and is focused on the requirement that due process be followed when state authorities exercise their powers of arrest and detention. The right protects against the deprivation of liberty that is arbitrary or unlawful. The right is relevant whenever a person is placed at a risk of imprisonment.

It is considered that this right will not be limited as the impact on liberty will be 'established by law' by the clause.

The legitimate purpose of the clause is to re-establish legal certainty about the Board's decision making. It promotes public confidence in the Board and removes any doubt about the legal effect of the Board's decisions. It also preserve's the State's revenue¹ in circumstances where the decision by the Board was for a proper purpose and based on evidence.

¹ *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 335-6 [36]; *Dragon v France* (2006) 42 EHRR 40, 833 [77].

By removing any doubt about the status of previous decisions of the Board, the clause helps to re-establish legal certainty. By extinguishing potential liability, it helps to preserve the revenue.

There are no less restrictive ways to achieve those aims. Providing for the new 208C provision to operate prospectively would not ensure legal certainty about previous decisions and it would leave the State exposed to potential liability in respect of those previous decisions. Providing some form of compensation to affected prisoners would be a less restrictive alternative however that alternative would not be as effective in preserving the State's revenue, particularly in circumstances where it has not been determined that their prior detention was unlawful. The fact that the HRA is not intended to provide a right to compensation² is also relevant.

The validating provision is considered justified because the impacted individuals had their parole order suspended or cancelled on the Board's assessment of their risk to community safety. The decision to suspend or cancel a parole order is based on whether the individual is a risk to the safety of the community, and orders that were impacted were because the Board as a collective decided there was a higher level of risk than an independent prescribed board member.

Therefore, while the right to property will be limited, it is considered that, on balance, the limitation is outweighed by the need to provide certainty and protect State revenue.

Conclusion

In my opinion, the Corrective Services (Parole Board) Bill 2025 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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² Explanatory Notes, Human Rights Bill 2018 (Qld) 22.