SUPREME COURT OF QUEENSLAND

CITATION:	*Vakameilalo v Parole Board Queensland* [2026] QSC 223
PARTIES:	**AMASIA VAKAMEILALO** (applicant) **v** **PAROLE BOARD QUEENSLAND** (respondent)
FILE NO/S:	BS No. 1620 of 2026
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	18 September 2026
DELIVERED AT:	Brisbane
HEARING DATE:	30 July 2026
JUDGE:	Ryan J
ORDER:	**1. The application is granted.** **2. The decision of the Board dated 18 March 2026 is set aside.** **3. I will hear from the parties as to costs and further necessary orders.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – RELEVANT CONSIDERATIONS – FAILURE TO CONSIDER – where applicant sought a review of the decision of the Parole Board Queensland to refuse an application for exceptional circumstances parole – where the applicant suffered from Type 1 Diabetes Mellitus and chronic kidney disease (terminal, Stage 5) with a poor prognosis – where the applicant relied on the management of his health conditions in custody to grant exceptional circumstances parole – where applicant had a reduced life expectancy – whether the Board took his reduced life expectancy into account – whether decision ought to be set aside *Corrective Services Act 2006* (Qld) *Human Rights Act 2019* (Qld) s 17 *Penalties and Sentences Act 1992* (Qld) Explanatory Memorandum, Corrective Services Bill 2006 (Qld)

	Minister for Corrective Services, *Ministerial Guidelines to the Parole Board Queensland*, 24 December 2021
	Dranichnikov v Minister for Immigration and Multicultural Affairs (2003) 197 ALR 389 *Leggett v Queensland Parole Board* [2012] QSC 121
COUNSEL:	M J Jackson for the applicant (pro bono) A C Bellas for the respondent
SOLICITORS:	Creevy Horrell Lawyers for the applicant (pro bono) Crown Law for the respondent

[1] This is an application for a review of the decision of the Parole Board Queensland (**the Board**) to refuse the applicant prisoner's application for exceptional circumstances parole.

[2] For the reasons which follow, I set aside the Board's decision and I will hear from the parties as to further, appropriate orders.

The applicant and the progress of his application

[3] On 28 January 2020, the applicant was sentenced to an effective term of 12 years' imprisonment for trafficking and possessing dangerous drugs. His parole eligibility date is 15 October 2027,[1] and his fulltime release date is 8 March 2030.[2] He is 39 years old.

[4] The applicant is not an Australian citizen. His temporary visa was cancelled on 30 July 2020. He is likely to be deported upon his release from custody, including upon his release on parole.

[5] The applicant suffers from Type 1 Diabetes Mellitus, for which he requires insulin; and chronic kidney disease, terminal, Stage 5,[3] for which he requires haemodialysis three times per week. He has a fistula in his bicep. As a consequence of his diabetes and his kidney disease, he suffers from gout, dyslipidaemia and hypertension. His prognosis is poor.

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1 Under the legislation (the *Corrective Services Act 2006* (Qld) and *Penalties and Sentences Act 1992* (Qld)) he is required to serve 80 per cent of the 12-year sentence before his eligibility for parole arises.

2 Taking into account the time he served in custody pre-sentence.

3 He was not diagnosed with kidney disease until after he was sentenced.

[6] Relying on those complex health conditions, and the difficulties he experiences managing those conditions in custody, on 8 July 2025, the applicant applied for exceptional circumstances release on parole. His application was received by the Board on **9 July 2025**.[4] He did not mention his migration status in his application although the Board was aware of it.

[7] The Board considered the application on **21 July 2025.** It was concerned about the "aged nature" of the material submitted by the applicant. Accordingly, the Board deferred making a decision on the application, and sought more current, medical information.

[8] The Board reconsidered the application on **31 October 2025** but decided to defer it again until it received information which it considered necessary to make its decision. That information included advice about whether the applicant's treatment and dietary needs could be met in the correctional setting and more "robust" information about the applicant's poor medical prognosis and current treatment plan.

[9] It took some time for the Board to receive that information (including because one of its requests for it went to the recipient's "spam" email folder).

[10] The Board met again to consider the application on **16 February 2026**. At that meeting, the Board reached the preliminary view that exceptional circumstances did not exist. It so informed the applicant and invited him to send further submissions or supporting documents to the Board before it finally determined the matter. In response, *inter alia*, the applicant arranged for one of the senior doctors engaged in his care to send letters to the Board supporting his application.

[11] On **18 March 2026**, the Board met and made its final decision. It refused the applicant's application. Its letter of the same date, sent to the applicant, contained its reasons. I will discuss them later.

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4 He had previously made unsuccessful applications for exceptional circumstances release in 2024.

Material before the Board

[12] In considering the application, the Board had regard to various medical reports and other materials.[5] The following paragraphs [13] – [34] set out the key pieces of information conveyed by the most relevant of the materials.

Medical Records

[13] The bulk of the applicant's medical records dealt with his thrice weekly transfers from custody to a satellite hospital (or occasionally to the RWBH) for dialysis. He is transported for dialysis after a review by a prison nurse and reviewed again by a prison nurse upon his return.

[14] The notes in the records revealed very few issues or concerns associated with the applicant's transfers or his dialysis treatment. They revealed some issues with his fistula, which resolved by December 2024 (see the letter from Dr Shaun Chandler at [17]). They also revealed that, from time to time, the applicant complained about feeling unwell. However, on the whole, the notes revealed that, with the exception of his complaints about the quality of prison food, the applicant's concerns were few and were dealt with reasonably promptly and apparently successfully.

[15] The notes also revealed the following of some relevance:

(a) The applicant suffered significant weight loss in 2023. On 24 October 2023, he was 109 kilograms, having lost 20 kilograms in the previous four months which was likely caused by his poorly functioning kidneys. He had not then commenced dialysis but was said to be "approaching" it.

(b) On 21 November 2023, he reported that his weight had stabilised.

(c) Dialysis was first discussed in April 2024 and commenced not long thereafter.

(d) On 17 June 2024, the applicant complained of stomach pains when eating some prison meals. He also complained of lethargy and poor sleep. A prison nurse contacted the dialysis unit. The nurse noted that the applicant receives a low electrolyte, high protein, lactose free diet at dialysis but the IOMS (prison records)

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[5] That material is set out in paragraph [16] of the affidavit of a junior legal officer employed by the Board, affirmed on 4 June 2026.

recorded him as "diabetic, [with] no oranges or seafood". The nurse generated a new diet form (for the prison) and recommended a medical review of his stomach pain.

(e) On 3 July 2024, the applicant was taken to an emergency department upon referral from dialysis because of the sudden onset of chest pain. He also had a rotting tooth and was on a waitlist for a dental review.

(f) On 4 July 2024, the applicant complained to a nurse practitioner about the food he was receiving in custody. He said he could not tolerate the meat – it caused abdominal pain and made him feel weak. He was told that "we" (I infer the prison health centre) could not specify the meals he was to be given, other than by recommending a "renal (low sodium) diet". The nurse practitioner suggested he try the prison's vegetarian options. Relevant forms about his food were completed.

(g) On a few occasions in 2024, the applicant refused to check his blood sugar levels or take his insulin.

(h) On 11 September 2024, a note was sent to those responsible for prison meals containing information about the dialysis team's recommendations for the applicant's diet as well as a request for vegetarian meals for the applicant because he was not tolerating the meat.

(i) On 16 September 2024, at a "diabetic review", the applicant complained about the prison food and requested a change to "freshly cooked meal[s]" – although this was not something recommended by the dietician. It was noted that his blood sugar level was still elevated and that his diabetes was poorly controlled

(j) On 28 October 2024, a doctor associated with Prison Health Services, Dr Jin Hui, observed that the applicant was in the **terminal stages of his chronic kidney disease and that his prognosis was poor**.

(k) On 31 October 2024, it was noted that the applicant was taking more than his prescribed dose of insulin.

(l) On 11 November 2024, his face was swollen – associated with a "wobbly tooth" and difficulty swallowing.

(m) On 8 December 2024, he was feeling unwell and, because of his medical history, was transported "via road speed QAS" to the emergency department of a hospital for assessment. No aetiology could be found for his symptoms. A dental review was recommended. It seems that he was suffering from a tooth abscess, associated with vomiting and cloudy vision.

(n) In March 2025, when Tropical Cyclone Alfred was expected to make land fall, arrangements were made to ensure there were no issues with the applicant receiving his dialysis.

(o) The applicant's weight on 3 September 2024 was 101.1 kilograms. At his lightest, he was 98.5 kilograms on 21 September 2024 (a drop of 2.6 kilograms from September). He was 100.2 kilograms on 8 February 2025 (900 grams lighter than his weight as at 3 September 2024).

(p) The applicant does not self-mange his medications.

(q) The applicant did not report any mental health concerns.

Report of Professor Kesh Baboolal

[16] The applicant supported his application with a document authored by Professor Kesh Baboolal, dated 5 January 2025,[6] which contained information about the applicant's medical conditions, their treatment, and the relevant health challenges associated with the custodial setting. The document explained the following:

(a) The applicant's kidney failure, diabetes and their complications are associated with **significant mortality and morbidity**.

(b) The applicant is at risk of accelerated cardio-vascular disease, which may result in **sudden cardiac arrest, heart attack, heart failure and strokes**.

(c) He requires support to ensure he is engaging in self-care, including adhering to an appropriate diet.

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6 This report was sought in connection with the applicant's earlier application for exceptional circumstances parole, made in August 2024 (which was not successful). But it was not obtained from the Professor until after the Board had refused the August 2024 application. For the purposes of the applicant's July 2025 application, the Board did not consider it to be current enough.

(d) There are dietary guidelines for patients with kidney disease on dialysis (set out at page 4 of his report).[7] Minimally, they recommended:

(i) a certain protein intake (based on body weight);

(ii) low sodium;

(iii) low potassium;

(iv) fluid restriction;

(v) calorie control; and

(vi) the avoidance of high sugar foods and foods containing saturated fats.

(e) The health risks associated with dialysis (for persons in custody or not) include:

(i) **Cardiovascular complications (*inter alia* sudden death or seizures**);

(ii) Infection;

(iii) Diabetes complications (*inter alia* **diabetic coma or diabetic ketoacidosis**);

(iv) Complications of the AV fistula (used in dialysis) (*inter alia* **haemorrhage** which may be **life-threatening** if immediate help is not available); and

(v) Mental health impacts.

(f) "It is recognised that haemodialysis for prisoners presents unique challenges due to the interplay between medical needs, security and the constraints of the prison system."

(g) The challenges of the custodial setting include:

(i) delays in access to treatment, especially urgent or emergency treatment;

(ii) infection control – prisoners were at higher risk of infection and the applicant was at an even higher risk because of his diabetes;

(iii) an exacerbation of the psychological and emotional impact of the diagnoses; and

(iv) securing access to necessary care, medicines and an appropriate diet as well as adherence to the dialysis regimes.

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[7] The guidelines included the consumption of "high-quality" protein from meat, poultry, fish and eggs, low sodium, restrictions on fluids, potassium, calcium, and phosphorus (including by avoiding processed foods), a limit on fat and calories, and a certain fibre intake.

Letter of Dr Shaun Chandler

[17] Dr Chong Hean Chng is the Visiting Medical Officer for the applicant's correctional centre. Dr Shaun Chandler, a Senior Medical Officer in Nephrology, wrote to Dr Chng on **9 December 2024.** Dr Chandler recommended certain changes to the applicant's medication regime and some cardiac investigations. He reported that, overall, the applicant was "going along reasonably well". Past issues with his fistula seemed to have stabilised.

Correspondence about the applicant's diet in custody

[18] The material before the Board included correspondence between the hospital and the correctional centre which revealed that, in **January 2025**, there were discussions about the applicant's dissatisfaction with his prison meals which he considered had declined in quality since his nutritional requirements were conveyed to the correctional centre kitchen. He was apparently expecting freshly cooked meals thereafter.

[19] He was said to be avoiding prison food and said to have lost 4 kilograms over the past 5 months (although, on the basis of his charted weight, see [15], this does not seem to have been the case). He was feared by the hospital to be at risk of malnutrition.

[20] The correctional centre explained that they/the applicant could make some adjustments to the prison menu which would reduce his consumption of sodium and that a supplementary protein pack was available to him, but they were constrained by the resources available. It was also noted that while the applicant was complaining about his prison meals, he was purchasing high-salt or high-fat snack foods at buy-up.

Dr Chong Hean Chng – responding to Professor Baboolal's report

[21] The Board forwarded Professor Baboolal's report to Dr Chng and sought his opinion about the management of the applicant's health conditions in custody.

[22] Dr Chng replied on **29 January 2025**. He told the Board that the health risks which Professor Baboolal implied were specific to prisoners receiving dialysis (including the risk of cardiac death) were in fact "unchanged regardless of incarceration".

[23] Dr Chng said that the applicant's underlying health conditions and his prognosis would be no different in the prison setting from what they would be in the community as long as he remained compliant with his treatment plan and dialysis.

Dr Anchita Karmakar – correspondence to the Board in 2025

[24] Dr Anchita Karmakar is one of the Senior Medical Officers involved in the applicant's care. She supported his application for exceptional circumstances release. On **17 October 2025**, she wrote:

> "Mr Amasaya Vakameilalo is currently incarcerated at Woodford Correctional Centre. Given the degree of his comorbidities, any consideration for early parole would be ethical and in keeping with what would be in the best interest for the patient medically. **Patient has a very poor prognosis** and ongoing facilitation of his cares are increasingly challenging and any review based on exceptional circumstances may be beneficial."

[25] She reiterated her position in February 2026 – see [31].

Mr Graham Kraak

[26] Mr Graham Kraak is the Director of the Office for Prisoner Health and Wellbeing.

[27] On **10 November 2025**, the Board wrote to Mr Kraak. The Board gave him the context for the applicant's application; explained that Queensland Health considered the applicant to have a "very poor prognosis"; and said that the ongoing facilitation of his care in custody was "increasingly challenging".

[28] The Board conveyed to Mr Kraak Professor Baboolal's concerns about delays in the applicant's access to treatment; infection control; the psychological and emotional impact of his health and its treatment; compliance; and adherence. The Board informed Mr Kraak about the issue of the applicant's inability to access nutritious foods and the "significant restraints to the food choices available" to the applicant in custody.

[29] The Board said:

> "Noting the above concerns, the Board kindly seeks your advice regarding the ability of [Queensland Corrective Services [**QCS**]] to currently meet Mr Vakameilalo's needs in the custodial setting, noting his prognosis is considered to be very poor.

> The Board seeks your advice regarding the concerns about the ability of QCS to meet Mr Vakameilalo's nutritional needs, in circumstances where his diet is linked to the effectiveness of his treatment, including overall quality and experience."

[30] In reply on **13 February 2026** Mr Kraak informed the Board that –

(a) While there were challenges with transport and escort services at Woodford Correctional Centre, the applicant had been identified as a high priority for transport and had not missed a scheduled appointment for dialysis.

(b) The applicant's dietary requirements were not overly onerous and should be easily managed in custody. Dietary supplements could be provided to address any nutritional deficiency. Choices about food were the applicant's to make.

Dr Anchita Karmakar – correspondence to the Board in 2026

[31] Dr Karmakar sent letters to the Board in February 2026, reiterating her support for the application. She said (my emphasis):

> "Given the high level and chronicity from his multiple comorbidities, health access needs regarding his ongoing appointments and the **known prognostication of his condition**, I would like to support the contention of early release to be considered by the Board."

[32] She also said (my emphasis):

> "Mr Vakameilalo is currently requiring at least three days a week of in person dialysis treatment. In addition to this he requires ongoing medical reviews, i-daily observations and medical administration. By virtue, and nature of having dialysis itself, this puts Mr Vakameilalo at a high-risk category for electrolyte disbalance, septicaemia and potential cardiac arrest as a result. It is also important to note that having dialysis also means that if those complications should arise, there will be a need for him to have timely access to diagnostics and treatment in a tertiary centre which is not possible at Woodford.
>
> It would also be pertinent to note that **although on average life expectancy for those on dialysis is 5 – 10 years given Mr Vakameilalo's co-morbidities and possible risks associated with his cares in a custodial setting, it would be reasonable to make an informed assumption that his prognostication would be less [than] the average life expectancy of the average patient**."

The applicant's arguments to the Board

[33] The applicant submitted to the Board that the available medical material supported a finding that his "health conditions" constituted "exceptional circumstances" because the evidence established that:

(a) There had been a deterioration in his health in the three years since his diagnosis, and he was in the terminal stage of his kidney disease.

(b) He was unable to access an appropriate diet (a "renal" or high protein diet, designed to slow the progression of his disease) in custody and some of the prison meals caused him stomach pain.

(c) As a consequence of his diet in prison –

(i) his diabetes was poorly controlled (around September 2024);

(ii) his blood sugar level was unstable with constant elevation; and

(iii) he unintentionally lost 4 kilograms in the five months to January 2025 and there was a risk of malnutrition.

(d) There were serious health risks, including life-threatening risks, associated with diabetic patients receiving dialysis, which were greater for patients in custody.

(e) The applicant had already suffered a tooth infection (December 2024).

(f) His fistula was impacted during transportation and treatment and, because he is handcuffed, he cannot, for example, stop the bleeding from it.

(g) Whilst the applicant remained in custody, his access to urgent or emergency care would be delayed.

(h) Contrary to the *Human Rights Act 2019* (Qld), he was suffering greater hardship than that which resulted from his detention alone.

[34] The applicant's submissions did not *emphasise* the terminal nature of his condition nor did they expressly seek exceptional circumstances parole release on compassionate grounds related to the terminal nature of his condition (*cf* section 17 of the *Human Rights Act* 2019). But that he was in the terminal stage of his illness was one of the first points

he made in his submissions, which also referred to the life-threatening risks of his condition.

The Board's reasons

[35] The Board's reasons for refusing the application were embedded into its letter to the applicant dated 18 March 2026.

[36] The letter/the reasons reflected the Board's accurate understanding of the applicant's medical conditions and the risks to his health of being in custody. Among other matters it noted that:

> "The average life expectancy for those on dialysis is between five to ten years. A Senior Medical Officer has opined that noting your comorbidities and possible risks, including high risks, associated with your care in the custodial setting, the prognosis could be considered less than average expectancy …"

[37] Under the heading "**Decision – final determination that exceptional circumstances do not exist**", the Board noted, correctly, that the considerations relevant to its determination were "broad and unfettered, save for the matter referred to in clause 5.7 of the Ministerial Guidelines issued to the Board (dated 21 December 2024) which deals with circumstances relating to the health of a prisoner."

[38] The Board explained that, in reaching its preliminary view that exceptional circumstances did not exist, the Board noted that the available medical information indicated that the applicant's current health and dietary needs were being adequately met in the custodial setting at the time. The Board continued:

> "The Board appreciates the submissions that have been raised on your behalf, including medical information available, noting the nature of your health conditions, including the exhausting effect of receiving regular dialysis off-site and the potential high-risk complications that can arise by virtue of your condition and incarceration.
>
> Notwithstanding the concerns that have been raised, including the opinion of a Senior Medical Office of Queensland Health and Dr Karmarker regarding the nature of your comorbidities and that you may benefit from early release to exceptional circumstances parole order, the Board noted that there are established arrangements currently in place within the custodial setting directed to monitoring and treatment for your health conditions in an adequate and effective manner.

> The Board noted information that the Director of Prisoner Health and Wellbeing recently discussed your health care needs with staff at the Metro North Hospital and Health Service, which is responsible for providing primary healthcare services at Woodford Correction[al] Centre, along with more specialised public health services that are unable to be provided at the correctional centre.
>
> The importance that you have access to timely medical resources and treatment has been stressed in the material provided to the Board. In this regard, the Board noted information that you are currently flagged as a high priority for transport and escort services within (sic) by your correctional centre, and that you have not missed a scheduled appointment for dialysis to date.
>
> The importance of your access to an individualised and adequate diet has also been stressed in the material before the Board. The Board noted information that you have been provided with dietary advice and that you are being provided with a protein supplement to address certain nutritional deficiencies. The Board noted information that whilst certain restrictions to food groups may be experienced in the correctional centre setting, dietary supplements can be provided to you by health service staff to address any further nutritional deficiencies you may experience. Notwithstanding this, the Board noted the opinion that you still need to make appropriate food choices based on your dietary advice such as managing your calorific intake, not adding additional salt to your food, limiting your fluid intake to the amount recommended and avoiding foods that are high in sugar.
>
> Whilst there are certain risks associated with your condition, as is the case with any serious illness, the Board noted the information provided to it which indicates that your health needs are currently being managed appropriately, that your dietary needs are not overly onerous and that your health and care needs can be met and managed in the correctional setting.
>
> Notwithstanding the concerns you have raised, the Board considered your application and the information available to it collectively and determined it was not satisfied that exceptional circumstances exist so as to justify your early release to an exceptional circumstances parole order at this time. As it currently stands, the Board was of the view that your continued detention pursuant to the sentence you are serving does not give rise to circumstances that fall outside of those that are ordinarily experienced by prisoners with health conditions – including of varying severity – which require ongoing monitoring and treatment, and which are able to be adequately facilitated between QCS and Queensland Health through custodial escort and prisoner health services."

[39] The Board then went on to explain the way in which it dealt with the applicant's human rights under the *Human Rights Act 2019* (Qld).

The applicant's arguments on this application

[40] In seeking a review of the refusal, the applicant relied upon the following three grounds:

(a) "The Respondent's decision to find that … the Applicant's circumstances were not exceptional was unreasonable."

(b) "The Respondent misconstrued the term "exceptional circumstances" because it considered whether the Applicant's health needs are currently being managed appropriately and the question as to whether the applicant's circumstances fall outside of those that are ordinarily experienced by other prisoners with health conditions which are able to be adequately facilitated" and

(c) "The Respondent's decision took into account an irrelevant consideration, namely whether the Applicant's circumstances fall outside of those that are ordinarily experienced by other prisoners with health conditions which are able to be adequately facilitated."

Consideration

[41] The statutory framework for the Board's decision is set out in the parties' written submissions, and I will not repeat it here.

[42] The Board has absolute discretion in determining whether the circumstances relied upon by an applicant for exceptional circumstances parole are indeed exceptional.

[43] The concept of "exceptional circumstances" is not defined. Its meaning must be ascertained having regard to the text of the legislation, and its purpose.

[44] As to the ordinary meaning of the word "exceptional" – what is required is something which forms an exception, something out of the ordinary or special or uncommon.

[45] The explanatory notes' examples of exceptional circumstances include a prisoner developing a terminal illness with a *short life expectancy*; or a prisoner who is the sole carer of a spouse who contracts a chronic disease requiring constant attention.[8]

[46] The examples convey that exceptional circumstances may include those which were unexpected or unforeseen at the time of a prisoner's incarceration (this is apparent from the notions of a prisoner *developing* a terminal illness or a spouse *contracting* a chronic condition) which call for some compassion.

[8] Explanatory Memorandum, Corrective Services Bill 2006 (Qld).

[47] The explanatory notes also state that the *Corrective Services Act* does not seek to limit the reasons for which a prisoner may apply for exceptional circumstances parole.

[48] The Ministerial guidelines relevantly inform the Board that when a prisoner seeks exceptional circumstances parole release for serious medical reasons, the board should first obtain advice from Queensland Health or other approved medical specialists on the **seriousness and management of the prisoner's medical condition**.[9]

[49] As above, the applicant contended that the Board erred in three ways.

[50] **As to (a), that the decision was unreasonable**: The applicant submitted that the refusal was unreasonable because the Board failed to give adequate weight to two matters of "great importance" which he submitted should have grounded the conclusion of exceptionality. Those two matters were the burden of the dialysis arrangements and the applicant's asserted inability to secure an appropriate diet in custody.

[51] As to the first, the applicant submitted that it was hard not to overstate the practical and physical burden imposed upon the applicant because he requires this life sustaining measure.

[52] The applicant must travel from custody, handcuffed and shackled, three times a week, to a satellite hospital for dialysis. It's a six-hour round trip; he is handcuffed during his two-hour treatment; and "sometimes, his fistula is impacted by the handcuffs".

[53] Whilst it is unfortunate that the applicant suffers from a serious health condition and must receive dialysis three times a week, in our community, neither his health condition nor his treatment regime is unusual.

[54] Travel for medical treatment several days per week is a fact of life for many persons – whether they are incarcerated prisoners or not. Indeed, the submissions made on the applicant's behalf acknowledge that the travel cost burden does not fall on him as it would for persons who must find their own way to hospital. There have been no delays or missed appointments. Whilst he is handcuffed for treatment, there is no suggestion that that complicates his health care in any significant way. The medical records reveal

[9] Minister for Corrective Services, *Ministerial Guidelines to the Parole Board Queensland*, 24 December 2021.

that the applicant rarely – if ever – made a complaint about his dialysis treatment or the burden of travel or issues with his handcuffs.

[55] Whilst it is true that the applicant might require *urgent* dialysis – and there would be a delay in his receiving it – that has not in fact been the case since his treatment commenced. Also, it is reasonable to assume that urgent dialysis for anyone not already in hospital would be facilitated after ambulance transfer to the nearest hospital. In other words, it is reasonable to assume that there would be a delay, of some duration, for anyone requiring urgent dialysis who was not already in hospital.

[56] Further, it seems to me that for the applicant to successfully rely upon the burden of his treatment as grounding exceptional circumstances (in combination with other circumstances or exclusively), he would likely need to demonstrate that his undertaking treatment in custody was materially more burdensome than it would be for him if he were released on parole.

[57] *Ignoring for the moment the complications of his immigration status*, the applicant did not place material before the Board which explained *how* his life would look different if he were on parole from the point of view of managing his health conditions. Indeed, he did not place before the Board *any* information at all about how his dialysis would he handled *if* he were in the community on parole.

[58] On the assumption that it was not fanciful for the applicant to hope that he would be permitted to live in the Queensland community were he to be granted exceptional circumstances parole release: He did not explain where he would receive dialysis; or how he would get to dialysis (e.g. via public or private transport, and if private, whether he would be accompanied); or how long it would take him to get there; or how much shorter (if at all) his journey to and from dialysis would be compared to his return trip from custody. He did not explain how his transport would be funded (if that were an issue) or, critically, how his health care would be funded – because *prima facie* as an unlawful non-citizen, he would not be entitled to Medicare.

[59] In any event, it is completely unrealistic to ignore the complications of the applicant's immigration status. The information before the Board explained that the applicant's visa was cancelled. As I understand matters (neither party made submissions about it), that would inevitably mean that, upon his parole release (exceptional circumstances or

otherwise) he would be taken to an immigration detention centre. Indeed, on 20 March 2020, the applicant was anticipating his ultimate deportation and his "Rehabilitation Needs Assessment" reveals that the plan, at least at that time, was for his then partner and their four children to return to New Zealand six months before his deportation. The applicant did not inform the Board whether that was still the plan, or how his dialysis would be handled while he was in immigration detention.

[60] As to his dietary issues, reasonably in my view, the Board did not accept that the defendant did not have access to an appropriate diet in custody. The material before the Board clearly established that the applicant's dietary requirements were not particularly onerous. Broadly, it was recommended that he eat a healthy diet and avoid processed foods, especially high fat and high sugar snacks. Whether he chose to consume an appropriate diet is a separate issue. Supplements were available to him to meet his nutritional needs.

[61] It is acknowledged that the food available to the applicant in prison is not of the same quality or variety as food available to those not in custody. But there was nothing to suggest that the food available to the applicant in custody was wholly unsuitable, or even mostly unsuitable. Nor did the applicant place anything before the Board about how his diet would change if he were released on parole – including whether he would change his snacking habits.

[62] Ms Bellas for the Board submitted, correctly, that the weight to be given to particular matters is one for the decision maker and the question really was whether those matters had been treated in such a way as to give rise to manifest unreasonableness or a decision which was plainly unjust.

[63] Taking care not to undertake a merits review and responding to this aspect of the applicant's argument as framed by the applicant, in my view, on the material before it, it was not unreasonable for the Board to conclude that those two matters, in combination, did not make the applicant's circumstances exceptional.

[64] **As to (b), that the Board misconstrued the term** "exceptional circumstances": the applicant complained that the Board erred in testing whether exceptional circumstances existed by reference to (i) whether his health needs were currently being managed

appropriately; and (ii) whether his circumstances fell outside those ordinarily experienced by other prisoners with health conditions.

[65] As to (i): The guidelines *required* the Board to consider the management of the applicant's health condition in the circumstances of the present application. The applicant argued primarily that exceptional circumstances arose *because* of the way in which his health (including his diet) was being *managed* in custody. He thereby invited the Board to investigate the management of his condition – even apart from the direction in the guidelines. That is, when the complaint is "my medical condition is not adequately addressed in custody and therefore my circumstances are exceptional", the Board's interrogation of the adequacy of care – and here, diet – is exactly what is required to reasonably consider the complaint.

[66] It follows that it cannot be sensibly said that it was unreasonable or erroneous for the Board to have focused on that consideration.

[67] The Board had before it reports from doctors who advocated for the applicant's early release, but it also had before it the reports of Dr Chng and Mr Kraak. Having regard to the content of the reports, and the qualifications of their authors, there was nothing unreasonable about the Board acting on the opinions of Dr Chng and Mr Kraak when it came to a consideration of the management of the applicant's health condition generally – again bearing in mind that I am not conducting a merits review. In my view, on the evidence, it was reasonable for the Board to have reached the conclusion that the present arrangements for the management of the applicant's health, including his diet, were adequate and effective.

[68] But what does concern me is the Board's apparent failure to engage on the issue of the applicant's life expectancy, which is obliquely raised by the second aspect of his second ground and the applicant's **third ground (c)** which asserted that whether the Applicant's circumstances fell outside of those that are ordinarily experienced by other prisoners with health conditions was irrelevant.

[69] While I am still on the second ground: The applicant's complaint was that the Board's consideration of the way in which the health conditions of other prisoners were managed was *irrelevant* to the decision the Board had to make about whether the applicant's circumstances were relevantly exceptional.

[70] In the context of this application, and the applicant's circumstances, it may be that the comparison might not have been particularly useful (because it did not appear to be "like for like"), but that does not make it an irrelevant consideration, bearing in mind the wide and unfettered decision of the Board. It is easy to imagine a comparison which might work in favour of an applicant, such as where the health needs of other prisoners could be met at the correctional centre, without the need to travel, whereas the health needs of an applicant could not be.

[71] **As to the Board's treatment of the terminal nature of the applicant's illness and his reduced life expectancy**: There was more than one reference to the applicant's poor prognosis or significant mortality or to his being in the terminal stage of his kidney disease in the material before the Board, which also identified the risks of his condition (wherever he may be housed) including the high risk of cardiac arrest (see the emphasised portions of the material set out in [16] – [32]).

[72] There was evidence before the Board that spelt out that the applicant's life expectancy would be less than the average life expectancy of the average dialysis patient – that is, less than the average of 5 to 10 years – for reasons which included the fact that he was incarcerated as well as his comorbidities. Thus, the Board was not limited to information about the applicant's reduced life expectancy in the abstract.

[73] The applicant is still a young man. His life expectancy might be limited to something under five years which, especially for a man not yet 40 would be considered "short". Indeed, for a man not yet 40, a life expectancy of only up to 10 years may also be considered short.

[74] I acknowledge that the applicant's reduced life expectancy was not the focus of his application to the Board and it was not given prominence on this application for review. The material before the Board revealed that the applicant has seven children from two relationships, although it appeared that he wanted little to do with three of his children or their mother. However, *his current personal circumstances,* and the *personal impact* of his terminal condition upon him were not a feature of his application to the Board.

[75] Nevertheless, in my view, the applicant's reduced life expectancy was an obvious relevant consideration which ought to have been taken into account by the Board in

deciding whether the applicant's circumstances were exceptional. The examples in the explanatory notes made that plain, if it were not otherwise apparent.

[76] Ms Bellas for the Board submitted that the applicant's reduced life expectancy was taken into account. She submitted that the level of the Board's engagement on a particular topic depended, at least to some extent, on the submissions made about it. She also made the point that whilst there was evidence of reduced life expectancy because of incarceration from one doctor, there was contrary evidence from another (Dr Chng). She drew my attention to the fact that the Board noted the opinion about the applicant's life expectancy in its reasons and submitted, in effect, that the weight given to it by the Board was a matter for the Board. She contrasted *Leggett v Queensland Parole Board* [2012] QSC 121, upon which the applicant relied, on the basis that it could not be said that the Board overlooked or ignored the evidence about the applicant's reduced life expectancy.

[77] As will emerge, it is my view that, while the Board was *aware* of the information about the applicant's reduced life expectancy, it did not feature at all in its decision making.

[78] I have quoted from the letter which contained the Board's reasons above.

[79] In its reasons, the Board recorded that it had received information from the applicant's lawyers in February 2026 that his health condition was deteriorating and it was aware of Dr Karmaker's opinion, in letters dated 17 October 2025 and 5 February 2026, that the applicant had a poor health prognosis. In fact, it was Dr Karmaker who referred expressly to the applicant's reduced life expectancy in terms of years in one of her letters to the Board, supporting his application.

[80] The Board's reasons included (but not only) –

(a) recognition that the Board's discretion was broad and unfettered;

(b) that the Board was assisted by the medical material provided by the applicant as well as material it sought out in accordance with clause 5.7 of the Ministerial Guidelines;

(c) that the medical information indicated that the applicant's health and dietary needs were being adequately managed in the custodial setting;

(d) that the Board "appreciate[ed]" the submissions made on the applicant's behalf, noting "the nature of your health conditions, including the exhausting effect of receiving regular dialysis off-site and the potential high-risk complications that can arise by virtue of your condition and incarceration";

(e) that "Notwithstanding the concerns that have been raised, including the opinion of a Senior Medical Officer of Queensland Health and Dr Karmaker regarding the nature of your comorbidities and that you may benefit from early release to an exceptional circumstances parole order, the Board noted that there are established arrangements currently in place within the custodial setting directed to the monitoring and treatment of your health conditions in an adequate and effective manner;

(f) that, acknowledging the needs for access to timely medical resources and treatment, the applicant was flagged as a high priority for transport and escort services and had not missed a dialysis appointment;

(g) diet issues had been adequately addressed and the applicant bore responsibility for his own food choices;

(h) while there were risks associated with the applicant's condition, they were being managed appropriately;

(i) that "[T]he Board was of the view that [the applicant's] continued detention pursuant to the sentence [he] was serving does not give risk to circumstances that fall outside of those that are ordinarily experienced by prisoners with health conditions – including of varying severity – which require ongoing monitoring and treatment, and which are able to be adequately facilitated between QCS and Queensland Health through custodial escort and prisoner health services".

[81] The Board made no reference to the applicant's reduced life expectancy in its statement of reasons. In my view, it failed to take into account a very relevant and obvious consideration in making its decision and in that sense erred.

[82] As mentioned above, the applicant did not emphasise his reduced life expectancy in his submissions to the Board. The dominant theme of the applicant's application to the Board (and to this court) was that his circumstances are exceptional because his health

conditions required treatment which was very burdensome for him (and he submitted, the taxpayer) whilst he was in custody and his dietary needs were not being met.

[83] It was therefore not surprising that the Board focused on the management of the applicant's condition in custody. Whilst the applicant may not have made a "substantial, clearly articulated argument" about it (*cf Dranichnikov v Minister for Immigration and Multicultural Affairs* (2003) 197 ALR 389, referred to in *Leggett* at [26] – [28]) the applicant referred to the terminal nature of his illness in his submissions to the Board and his poor prognosis was mentioned often in the medical material submitted to the Board on the applicant's behalf or obtained by the Board. The Board was required not only to acknowledge it as it did but to actively consider it in making its decision.

[84] Nothing in the material suggested that the applicant's health conditions were not being adequately met whilst he was in custody. But that was something separate from the fact of his reduced life expectancy because of his terminal health condition which was not apparent at sentence – a life expectancy which was likely further reduced by virtue of his being in custody.

[85] Accordingly, the decision of the Board is set aside and I will hear from the parties as to further necessary orders.