



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC:SSrg051022

5 October 2022

The Hon. Dr Geoff Lee MP
Minister for Corrections
GPO Box 5341
SYDNEY NSW 2001

Dear Minister,

Crimes (Administration of Sentences) Amendment (No Body, No Parole) Bill 2022

We refer to the Crimes (Administration of Sentences) Amendment (No Body, No Parole) Bill 2022 (the Bill), which was introduced on 21 September 2022.

We are concerned about the rush in which this legislation was introduced after the Dawson murder trial and the media that followed. We are disappointed that the Law Society was not consulted on the Bill.

We are opposed to the Bill, which provides that a parole order must not be made for an offender serving a term of imprisonment for a homicide offence where the victim's body or remains have not been located, unless the State Parole Authority (SPA) is satisfied the offender has satisfactorily cooperated in locating the victim's body or remains.

For the wrongly convicted, the Bill creates an absurd situation whereby an innocent person would have their parole prejudiced for lack of the necessary knowledge, and a properly convicted person, who cooperated, would be advantaged.

We note that a consideration of the effect of similar laws in other jurisdictions (Queensland, Victoria, Western Australia, South Australia and Northern Territory) suggested that there has not been any disclosure of a victim's remains following the introduction of these laws.¹

An alternative approach

The purpose of parole is to supervise the re-integration of an offender into the community as safely as possible before the end of their sentence, to reduce their risk of reoffending and protect community safety. Offenders must comply with strict conditions while they are on parole. The proposed laws have the effect of creating significant conflict in the role and objectives of the SPA, inter alia, in assisting offenders to integrate back into the community.

Section 135(3)(e) already requires the SPA to have regard to whether the offender has failed to disclose the location of the remains of the victim.

If reform in this area is desired, then we consider a more appropriate approach would be to

¹Michele Ruyters, Greg Stratton, Jarryd Bartle, Monique Moffa, RMIT University *'No body, no parole' laws could be disastrous for the wrongfully convicted*, The Conversation, 23 September 2022.

provide a reduction or discount on sentence for revealing the victim's location, or a provision bringing the parole date forward if the accused assists police with the victim's location.

Suggested amendments to the Bill

If the Bill is to proceed, we suggest the following amendments.

Supreme Court not the SPA

We suggest investing any "no body" parole prohibition power with a judicial body, rather than the SPA – for example a Supreme Court Justice, after an appropriate inquiry. An alternative would be to have a de novo review power in the Supreme Court for any parole prohibition order.

Evidentiary foundation

Proposed section 135A(5)(a)(i) provides that the SPA must have regard to the report given by the Commissioner of Police, whose views on the offender's cooperation may not be objective. Section 135A(6) states that the Commissioner of Police is not required to provide the SPA with any document, evidence or criminal intelligence used to prepare the report, or to make a statement or evaluation.

Given the gravity of the issue, a parole prohibition order should not be based on such a written report, but on an application containing:

- Affidavit evidence from a senior police officer (Inspector or above).
- Evidentiary material in primary form (i.e. statements not summaries).
- Affidavit evidence from the homicide victim's family that they want the power exercised.
- A right to answer for an offender.

Exceptional circumstances test

The Bill assumes that the offender knows where the body is, but that may be factually incorrect. We therefore suggest the inclusion of an exceptional circumstances test as a discretionary protection.

An exceptional circumstances test in respect of both assessing whether an inmate has exhausted their efforts to cooperate, or is unable to cooperate, could cover those inmates who because of the circumstances of the offence (e.g. body lost at sea, body disposed of by unknown third parties) may not be able to say where the body is/was, or because of a mental condition (e.g. dementia), cannot cooperate.

Retrospectivity

We oppose the retrospective application of the Bill to inmates currently serving their sentence.

For offenders already sentenced, there is a real concern that those offenders who are denied parole pursuant to the proposed laws, may in effect, be "punished" twice. That is because, at the sentence hearing, one of the significant factors that the sentencing judge would have taken into account is whether the offender was genuinely remorseful and contrite. To that end, the sentencing judge would have considered whether the offender was cooperative with police as to the location of the victim's body; as well as the impact on the victim's family given the body might never be recovered. If there was no cooperation in that regard, whether due to the insistence of innocence or otherwise, that would have reflected in the sentence imposed, both as to the head sentence and the non-parole period.

Had the sentencing judge known there was almost no practical chance of parole being granted, the sentence and/or structure may have been different.

It remains to be seen how the commencement of the proposed laws will impact upon or affect future sentence proceedings of offenders convicted of murder.

Yours sincerely,

A handwritten signature in blue ink that reads "Sonja Stewart". The signature is written in a cursive style with a large initial 'S'.

Sonja Stewart
Chief Executive Officer

CC The Hon. Dominic Perrottet MP, Premier
The Hon. Mark Speakman, SC MP, Attorney General
Mr Michael Daley MP, Shadow Attorney General