



Department of Justice and Attorney-General  
Office of the Director-General

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Mr Duncan Pegg MP  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

1 William Street Brisbane  
GPO Box 149 Brisbane  
Queensland 4001 Australia  
Telephone 13 74 68 (13 QGOV)  
www.justice.qld.gov.au

ABN 13 846 673 994

Dear Mr Pegg

The Legal Affairs and Community Safety Committee (the Committee) has requested a departmental response to the written submissions received by the Committee as part of its inquiry into the Corrective Services (No Body, No Parole) Amendment Bill 2017.

Please find enclosed a table that summarises the key issues raised in the written submissions to the Committee and provides a response from the Department of Justice and Attorney-General (DJAG).

Should the Committee Secretariat require any further information, they should contact [REDACTED] Acting Director, Strategic Policy and Legal Services, DJAG, on [REDACTED], or at: [REDACTED]

I trust this information will assist the Committee in its consideration of the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Mackie".

David Mackie  
**Director-General**

Enc.

## **Corrective Services (No Body, No Parole) Amendment Bill 2017**

### **Response to Legal Affairs and Community Safety Committee**

#### **Issues raised in written submissions**

The following 4 submissions were received in relation to the Corrective Services (No Body, No Parole) Amendment Bill 2017 (the Bill):

- 001 Queensland Law Society
- 002 Fiona Splitt
- 003 Queensland Council for Civil Liberties
- 004 Bar Association of Queensland

The Department of Justice and Attorney-General is referred to in the feedback below as 'the Department'.

Submission Number/Submitter	Submission Key Points	Department of Justice and Attorney-General Response
<p><b>001: Queensland Law Society (QLS)</b></p>	<p>Opposes the introduction of the Bill.</p>	<p>The Department notes this comment.</p>
	<p>In some circumstances, compliance with the framework is not possible. For example, a person who has maintained their innocence (and is in fact innocent) will not be in a position to disclose the victim's location.</p> <p>Similarly, where the offender is no longer aware of the location of the body due to changes in environment and weather events it would not be possible to cooperate in locating the victim's remains.</p>	<p>While the Bill does not expressly provide for those instances where the prisoner claims innocence and therefore claims that they cannot provide cooperation in locating the remains of the victim because they simply do not know, for those prisoners, it is anticipated that the existing criminal justice mechanisms would be relied upon in terms of appealing or pardoning their conviction for the homicide offence.</p> <p>The Bill does not provide an absolute rule that the Parole Board cannot grant parole unless the body is in fact recovered. A failure to locate the body does not equate to 'never to be released'.</p> <p>Rather, decision-making about release must be informed by a range of factors including: the report of the Commissioner of Police and any Court records relevant to the offence (including remarks at sentence) in order for the Parole Board to determine whether the prisoner has cooperated satisfactorily. The Bill is sufficiently broad to allow for the release of a prisoner to parole in circumstances where the body cannot be recovered for a variety of reasons, including for example, those who cooperate but it is an impossibility that the body or remains will ever be found (e.g. due to a loss of capacity on behalf of the prisoner or decomposition of the remains to the point where they are no longer recoverable).</p>
	<p>The QLS is concerned the requirement to cooperate may compel a prisoner to fabricate information.</p>	<p>For those prisoners who "cooperate" by providing deliberately erroneous and misleading information to law</p>

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		<p>enforcement agencies, the requirement that the Parole Board be informed by the report of the Commissioner of Police in evaluating the utility of the cooperation, means that this can be reflected in the decision making outcome (i.e. it may underscore that satisfactory cooperation was not provided in which case the application for parole must be refused).</p>
	<p>This type of legislative reform breaches a fundamental legislative principle as it fails to protect against self-incrimination and imposes obligations retrospectively. There is a risk that this requirement may be further broadened to require the prisoner to implicate others or provide other information.</p>	<p>The Bill's consistency with the fundamental legislative principles, in particular the retrospective application of the No Body, No Parole policy, is addressed at pages 3 and 4 of the Explanatory Notes.</p> <p>The Bill implements the Queensland Government's response to Recommendation 87 of the Queensland Parole System Review Report.</p> <p>Also, the retrospective application of the policy is generally consistent with the approach taken in other jurisdictions that have legislated for a No Body, No Parole or No Cooperation, No Parole policy.</p>
	<p>Cooperation is not necessarily reflective of the threat the offender poses to the community. Decisions around parole should more appropriately be determined using current factors such as risk assessment reports and patterns of offending.</p>	<p>Upon commencement, new section 193A will operate alongside the existing parole framework.</p> <p>Currently, in considering an application for release to parole, the Parole Board holds community safety as paramount. When considering the level of risk a prisoner may pose to the community, the Parole Board will have regard to all relevant factors, including patterns of offending and the potential for reoffending.</p>

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<p><b>002: Fiona Splitt</b></p>	<p>Supportive of the Bill and its retrospectivity.</p> <p>The Bill should be amended to provide the prisoner has two years from the date of sentencing, within which to cooperate in locating the remains of the victim. For prisoners already in jail, the Bill should provide a period of one year from the date of commencement, within which to provide the cooperation.</p>	<p>The Department notes these comments.</p> <p>The Department notes this submission. However, the Bill is consistent with the approach recommended in the Queensland Parole System Review Report and the approach taken by other jurisdictions.</p> <p>The fundamental policy underpinning the Bill is that by making parole release for particular prisoners contingent on them satisfactorily cooperating in the investigation of the offence to identify the victim's location, it will encourage and provide incentive for these prisoners to assist in finding and recovering the body or remains of the victim. This will in turn, it is hoped, offer some comfort and certainty to the families of the victims.</p> <p>For this cohort of prisoners, it may be that the encouragement and incentive to cooperate does not become tangible until their potential release date is upon them; rather than them providing cooperation as a reflection of their remorse and consciousness of guilt.</p> <p>The Bill ensures that the report of the Commissioner of Police (or delegate) must include an evaluation of:</p> <ul style="list-style-type: none"> <li>• the nature, extent and timeliness of the prisoner's cooperation;</li> <li>• the truthfulness, completeness and reliability of any information or evidence provided by the prisoner in relation to the victim's location; and</li> </ul>

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		<ul style="list-style-type: none"> <li>the significance and usefulness of the prisoner's cooperation.</li> </ul> <p>As such, the Parole Board will be informed about the timing of any cooperation provided when assessing whether the cooperation is of the calibre required under new section 193A.</p>
	<p>The contents of the report under proposed new section 193A(6) should be based on information provided by the investigating officer(s) to the Commissioner of Police.</p>	<p>Section 193A(6) does not impose a limitation or restriction on the sources of information that may be used to compile the report. When appropriate and possible, this may include contemporaneous accounts of the offending and investigation.</p>
	<p>The definition of <i>victim's location</i> in proposed new section 193A(8) should include the belongings of the victim at the time of the offence and the location of any weapons/firearms/restraints used in connection with the offence.</p>	<p>The Department notes these comments. However, the fundamental policy underpinning the Bill is that by making parole release for particular prisoners contingent on them satisfactorily cooperating in the investigation of the offence to identify the victim's location, it will encourage and provide incentive for these prisoners to assist in finding and recovering the body or remains of the victim. This will in turn, it is hoped, offer some comfort and certainty to the families of the victims.</p> <p>The Bill is consistent with the recommendation in the Queensland Parole System Review Report which seeks to recover the remains of the victim.</p>
<p><b>003: Queensland Council for Civil Liberties (QCCL)</b></p>	<p>Opposes the Bill but acknowledges the Bill is likely to have the intended effect of incentivising eligible parolees and potentially providing some comfort and closure for the families of deceased victims.</p>	<p>The Department notes these comments.</p>

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	<p>Those who are wrongfully convicted may never be eligible for release. These significant miscarriages of justice are exacerbated if these prisoners are further detained under the Bill. This is an unacceptable risk and is not overcome by any potential benefits.</p>	<p>The Department notes its comments on Submission 001 at page 2 of the table.</p>
	<p>The purpose of parole is to reintegrate a prisoner into the community before the end of a prison sentence and to decrease the chance of a prisoner reoffending. The policy is inconsistent with this objective.</p>	<p>The Department notes these comments. However, the framework in the Bill is generally consistent with other jurisdictions.</p> <p>As noted in the context of Submission 001 above, upon commencement, new section 193A will operate alongside the existing parole framework.</p> <p>Currently, in considering an application for release to parole, the Parole Board holds community safety as paramount. When considering the level of risk a prisoner may pose to the community, the Parole Board will have regard to all relevant factors, including patterns of offending and the potential for reoffending.</p>
	<p>The Bill ought to provide that the prisoner is allowed sufficient time to consider the contents of the Commissioner's report and to bring before the parole board any evidence or submissions to the contrary.</p>	<p>The Department notes these comments. The existing <i>Ministerial Guidelines to the Queensland Parole Board</i> (the Guidelines) provide for the disclosure to the prisoner of material or factors adverse to the prisoner in the decision-making process.</p>

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		<p>While new Guidelines must be issued upon proclamation of the <i>Corrective Services (Parole Board) and Other Legislation Amendment Act 2017</i>, it is envisaged that such a requirement would be retained under the new Guidelines given its importance in ensuring natural justice to the applicant.</p> <p>As such, the Commissioner's report would be required to be disclosed to the prisoner (subject to any exceptions listed in the new Guidelines, for example perhaps where the information may put another person at risk).</p>
	<p>Opposes retrospective application of the amendments. Applying the Bill to prisoners who, upon commencement, have a decision pending is unnecessary and removes the opportunity and thereby incentive for prisoners to cooperate with authorities. This aspect should be removed from the Bill.</p>	<p>Justification for the retrospective application of the Bill is provided for at pages 3 and 4 of the Explanatory Notes.</p> <p>The approach is consistent with that taken in Victoria.</p> <p>The Bill makes transitional provision for those prisoners who have applied for parole but the application has not been finally determined at the time of commencement (see new section 490V). In particular, it enables the Parole Board to extend the period within which the parole application must be decided under section 193(3) by not more than 50 days.</p> <p>This will enable time for the report of the Commissioner of Police to be obtained and considered by the Parole Board (including disclosure of the report to the prisoner).</p>

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<p><b>004: Bar Association of Queensland (BAQ)</b></p>	<p>Opposes the Bill.</p> <p>The No Body, No Parole principle should only be based on a finding of fact (at sentencing) that the prisoner actually has knowledge of the location of the victim's remains. This decision would be better made by a judge than a parole board (informed by the Commissioner of Police) many years after the victim's disappearance.</p>	<p>The Department notes this comment.</p> <p>The Department notes this submission. The Bill provides the parole board must refuse to make a parole order for a prisoner serving a period of imprisonment for a <i>homicide offence</i> unless the Board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location.</p> <p>The principle will be enlivened when the body of the victim of the offence has not been located at the time of the parole application. The parole board, when making its decision must take into account information from a variety of sources, including any relevant remarks made by the sentencing court.</p> <p>The High Court decision in <i>Crump v New South Wales</i> (2012) 247 CLR 1 establishes that the States have broad power to alter the conditions which a person who has been sentenced must meet to be eligible for parole. That is, legislation that alters the conditions on which parole will be available does not interfere with the judicial order sentencing the person to imprisonment. Once the sentence is imposed, and the appeal processes exhausted, the exercise of judicial power is spent.</p> <p>The sentencing order does not create any right or entitlement in the prisoner to their release on parole; or that their entitlement to parole would be determined based on the parole system as in force at the time of sentence.</p>

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		<p>The Bill does not purport to set aside, vary, alter or otherwise stultify the effect of the judgement, decree or sentence of the court; albeit it may alter the 'statutory consequences of the sentence'</p>
	<p>The only prisoners to whom a no body, no parole policy should be implemented are those serving sentences of life imprisonment rather than a lesser term for a lesser offence (such as manslaughter). To do otherwise is inconsistent with the objectives of parole and would lead to uncooperative violent offenders being released into the community at the end a sentence without any of the supervision that parole provides.</p>	<p>The introduction of No Body, No Parole laws is a policy decision of the Government.</p> <p>To extend the No Body, No Parole policy beyond prisoners serving a sentence of mandatory life imprisonment (e.g. to include those convicted of manslaughter, accessory after the fact to murder and conspiring to murder; offences that carry maximum penalties as compared to a mandatory sentence) is consistent with Recommendation 87 of the Queensland Parole System Review (which refers to murder or manslaughter) and is consistent with the approach taken in Victoria.</p>
	<p>Maintaining a mandatory sentence of life imprisonment for the offence of murder means that cooperation provided in locating remains prior to sentence cannot be taken into account by the sentencing judge.</p>	<p>The Bill does not amend the existing penalties applicable to the offence of murder.</p> <p>Under the Bill as framed, there is no intersect between new section 193A (i.e. a law altering the conditions on which parole is available) and the sentencing order, and therefore the Bill does not interfere with that sentencing order.</p> <p>Further, the Bill does not interfere with the factors to which the sentencing court may have regard in structuring the appropriate penalty for a convicted murderer (i.e. whether to impose the mandatory minimum non-parole period or a longer period).</p>

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	<p>Opposes the retrospective application of the provisions as they have the potential to significantly affect the right to liberty of individuals.</p>	<p>The Department refers to the response to submissions 001 and 003 in this regard.</p>
	<p>Some prisoners may be ineligible for parole due to passage of time upon their memory or the state and location of the remains.</p>	<p>The Department refers to the response to submission 001 at page 2 of the table.</p> <p>Further, the Bill expressly provides that when assessing whether the prisoner has satisfactorily cooperated, the Parole Board must take into account: <i>any information the board has about the prisoner's capacity to give the cooperation.</i></p>