



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queenslanders' individual rights and liberties since 1967

Watching Them While They're Watching You

9 June 2017

Acting Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Sent via email: lacsc@parliament.qld.gov.au

Dear Acting Committee Secretary,

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

1. On 23 May 2017 the *Corrective Services (No Body, No Parole) Amendment Bill 2017* (Qld) (**the Bill**) was introduced in to the Queensland Parliament by the Hon YM D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills.
2. Two primary purposes are cited for the introduction of the Bill in the Explanatory Notes, they are as follows:

*"The No Body, No Parole Policy is predicated on the notion 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 victims**".*

3. The Queensland Council for Civil Liberties accepts that 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.
4. However, for the reasons that follow, the Queensland Council for Civil Liberties opposes this Bill and submits that the potential for further miscarriages of justice that may follow the introduction of this bill cannot be outweighed by its potential benefits.
 - A. **Those who are wrongfully convicted of homicide offences due to miscarriages of justice will be unable to ever be released**

qccl.org.au



@LibertyQld

PO Box 2281, Brisbane QLD 4001

Enquiries:

Media Enquiries:

5. The nature of the criminal justice system is that wrongful convictions do occur, this is summarised perfectly by David Hamer in the UNSW Law Journal:

*'Proof of crime at a trial is a complex and difficult process. Absolute certainty is not achievable and it is not demanded. Inevitably innocent defendants are convicted. In Australia these errors only come to light occasionally, but there is reason to believe that many wrongful convictions remain hidden from view...An individual wrongful conviction is a searing injustice. The fact that only a very small portion of wrongful convictions are corrected is a grave social problem.'*¹

6. The result of this means that there will inevitably be innocent people that will never be released under these laws. An innocent person, who had no involvement in the death of the deceased cannot provide to authorities the location of that body. The only cooperation the prisoner can possibly offer is to be a model prisoner, which is not sufficient to overcome the hurdle posed by the proposed laws.
7. Those who are wrongfully convicted of homicide offences are inherently disadvantaged to successfully appeal the conviction. In conjunction with the finality principle applying to jury decisions and the depleted resources available to the prisoner, the law must provide additional protections to vulnerable prisoners.²
8. The notion that this will occur is not far-fetched or fanciful. The infamous death of Azaria Chamberlain in the Northern Territory resulted in her mother, Lindy Chamberlain being wrongfully convicted of murder. She was exonerated, but only after serving three years in prison. If this Bill was in effect at this time, Lindy Chamberlain would have never been released.
9. If a person is wrongfully convicted of a crime they did not commit, that is a significant miscarriage of justice. If this is exacerbated by the fact that they are further detained because they are unable to meet the requirements suggested by the Bill, we submit that this is an unacceptable risk and is not overcome by any potential benefits.

B. The laws are not connected to the primary purpose of parole, which is the protection of the community and the rehabilitation of offenders.

10. Whilst the Committee accepts that the victim and their families' experiences and pain need to be acknowledged by the criminal justice system, this is a completely separate exercise from decision-making regarding parole.
11. This Bill was introduced in response to the Parole System Review Conducted by Mr Walter Sofronoff QC (**The Report**).³ In his overview he outlines the purpose of parole, he states:

'The only purpose of parole is to reintegrate a prisoner into the community before the end of a prison sentence to decrease the chance that the prisoner will ever reoffend'.⁴

12. We submit that there is not a sufficient connection between providing comfort to the family of a deceased and the core principle of parole, as outlined above in The Report.

¹ David Hamer, 'Wrongful Convictions, Appeals and the Finality Principle: The Need for a Criminal Cases Review Commission' (2014) 37(1) *UNSW Law Journal* 270, 311.

² David Hamer, 'Wrongful Convictions, Appeals and the Finality Principle: The Need for a Criminal Cases Review Commission' (2014) 37(1) *UNSW Law Journal* 270, 271

³ Queensland, Queensland Parole System Review, Walter Sofronoff QC, *Final Report* (2016).

⁴ Queensland, Queensland Parole System Review, Walter Sofronoff QC, *Final Report* (2016) 11 para [4].

C. The Bill does not provide for adequate accountability measurements as it does not allow the prisoner to challenge any adverse findings in the Report issued by the Police Commissioner to the Parole Board.

13. As the Bill currently stands, it places too much reliance on a single report by the Police Commissioner.
14. There is no direct avenue outlined in the Bill that allows the prisoner to challenge potentially adverse findings in the Report.
15. We submit that any amendments to the Bill ought to include a provision that allows time for the prisoner to consider the Report and to bring before the Parole Board any evidence or submissions to the contrary.

D. The Transitional Provisions in the Bill have a concerning retrospective effect, especially to those who have already applied for parole and have a decision pending.

16. To implement law that is retrospective in nature contradicts accepted fundamental legislative principles.
17. The Explanatory Notes for the Bill addresses this inconsistency with legislative principles and justifies the provisions on public interest grounds and that it will continue to provide an incentive to prisoners to cooperate and help victim's families.⁵
18. The Committee submits that by applying this condition to those who have already applied for parole prior to the commencement of the Bill, but who have a decision pending is unnecessary and removes the opportunity and thereby incentive for prisoners to cooperate with authorities.
19. If the Parliament passes this law, it is strongly urged to remove those prisoners with a pending decision from the transitional provisions.

Conclusion

20. This Bill has the capacity to lead to serious miscarriages of justice and that cannot be outweighed by the objectives of the Bill.
21. The Review into the Queensland Parole System did not consider incidents of wrongful convictions in making recommendations for changes to the existing laws.
22. Finally, the objectives of the Bill are significantly disconnected from the primary purpose of the parole system, namely the protection of the community and prevention from re-offending (through rehabilitating offenders).

Yours faithfully

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES



TERRY O'GORMAN
VICE-PRESIDENT

⁵ Explanatory Memorandum, Corrective Services (No Body, No Parole) Amendment Bill 2017 (Qld) 4.