

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

Explanatory Notes

Short title

The short title of the Bill is the Corrective Services (No Body, No Parole) Amendment Bill 2017.

Policy objectives and the reasons for them

The objective of the Corrective Services (No Body, No Parole) Amendment Bill 2017 (the Bill) is to amend the *Corrective Services Act 2006* (Corrective Services Act) to introduce the policy that is colloquially referred to as, ‘No Body, No Parole’, in Queensland.

The Northern Territory, South Australia and Victoria have commenced legislation in this regard; and on 17 May 2017, Western Australia also introduced legislation to implement such a policy.

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 the victims.

The establishment of the No Body, No Parole policy in Queensland was considered as part of the Queensland Parole System Review, which was undertaken by Mr Walter Sofronoff QC (as he then was). The Queensland Parole System Review Report (the review report) was delivered to the Government on 1 December 2016 and made 91 recommendations for the complete reform of Queensland’s parole system, including the introduction of the No Body, No Parole policy (Recommendation 87).

The review report expressly acknowledged that in the case of homicide offences, withholding the location of a victim’s body or remains prolongs the suffering of the families and all efforts should be made to attempt to minimise this sorrow.

The review report states that, ‘a punishment is lacking in retribution, and the community would be right to feel indignation, if a convicted killer could expect to be released without telling what he did with the body of the victim. The killer’s satisfaction at being released on parole is grotesquely inconsistent with the killer’s knowing perpetuation of the grief and desolation of the victim’s loved ones’ (page 235).

On 16 February 2017, the Queensland Government tabled, *Response to Queensland Parole System Review recommendations*.

In supporting recommendation 87, the Government confirmed that:

‘Legislative provisions will be introduced in 2017 to give effect to the “No Body, No Parole” policy which prevents a murderer from being granted parole where s/he has not revealed where the victim’s body is located.

A number of models, including that which has been introduced in South Australia (better known as a “no cooperation, no parole” system), exist and could be adopted in Queensland. The Government will determine the best model to introduce to give effect to this recommendation.”

The Bill delivers on the Queensland Government’s commitment.

Achievement of policy objectives

The Bill achieves the policy objective by amending the Corrective Services Act to establish the No Body, No Parole policy.

The Bill provides that the parole board must refuse an application for parole for a prisoner serving a period of imprisonment for a ‘homicide offence’ (that is, the Criminal Code offence of murder, manslaughter, accessory after the fact to murder or conspiring to murder; or who has counselled or procured the commission of, or conspired to commit, any of these offences) and the body or remains of the victim have not been located, or because of an act or omission of the prisoner or another person, part of the body or remains of the victim has not been located – unless the Board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim’s location.

The cooperation by the prisoner may have happened before or after the prisoner was sentenced for the homicide offence.

The Bill provides that when assessing whether the prisoner has cooperated satisfactorily, the parole board must take into account the following:

- a report provided by the Commissioner of Police about whether the prisoner has co-operated and if so, an evaluation of the prisoner’s cooperation;
- any information the Board has about the capacity of the prisoner to give the cooperation;
- the transcript of any proceeding against the prisoner for the offence, including any relevant remarks made by the sentencing court; and
- any other information the Board considers relevant.

The Bill provides that the No Body, No Parole policy will apply to the following parole applications:

- where the prisoner is convicted and sentenced for the homicide offence after commencement of the Bill;
- where the prisoner was convicted of the homicide offence before commencement but sentenced for the offence after commencement of the Bill;

- where the prisoner was convicted and sentenced for the homicide offence before commencement of the Bill and the application for parole:
 - is made after commencement of the Bill; or
 - was made before commencement but is not yet determined at the time of commencement of the Bill; and
- where the prisoner was convicted, sentenced and released to parole but returned to prison, whether before or after commencement of the Bill, and that parole order is cancelled.

In practice, the only prisoners (who fall within the target cohort) to which the amendments will not apply are: those who are already on parole in the community at the time of commencement of the Bill (noting, that the No Body, No Parole policy will apply to them if they are returned to prison and their parole order is subsequently cancelled); or those whose parole order is ‘suspended’ (as distinct from cancelled).

Alternative ways of achieving policy objectives

The Northern Territory (section 4B of the Parole Act), South Australia (section 67 of the *Correctional Services Act 1982*) and Victoria (section 74AABA of the *Corrections Act 1986*) have enacted legislation to deliver the No Body, No Parole policy or ‘No Cooperation, No Parole’ policy, as the case may be. The Bill draws upon features from each of the models; and most closely aligns to the Victorian approach to best deliver the policy objective in the Queensland context.

Estimated cost for government implementation

The costs associated with the amendments will be determined through normal budgetary processes.

Consistency with fundamental legislative principles

The potential breaches of fundamental legislative principles raised by the Bill are addressed below:

Whether the legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*)

Clause 5 (Insertion of new ch 7A, pt 12) of the Bill sets out the transitional provisions. Relevant to existing applications for parole under sections 176 (Applying for an exceptional circumstances parole order) and 180 (Apply for parole order etc.) of the Corrective Services Act, new section 490V (Existing applications for parole) provides that if the parole board is required to ask the Commissioner of Police for a report under new section 193A (Deciding particular applications where victim’s body or remains have not been located) the parole board may extend the period within which it must make its decision by not more than 50 days.

The purpose of this provision is to allow the Commissioner of Police adequate time to furnish the report evaluating the prisoner’s cooperation.

This provision arguably adversely affects a prisoner's right to have their parole application decided as quickly as possible. However, the provision will only be applicable for a short period of time after the commencement of the Bill. The additional time is necessary to enable the report to be completed and to allow the parole board sufficient time to consider its contents in order to properly determine the parole application. For these reasons, the potential breach of the fundamental legislative principles is considered justified.

Whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively (section 4(3)(g) of the *Legislative Standards Act 1992*)

The Bill retrospectively applies the amendments to certain prisoners. New section 490U (Application of s193A) applies section 193A (Deciding particular applications where victim's body or remains have not been located) to parole applications regardless of when the prisoner was convicted of or sentenced for the homicide offence. New section 490V (Existing applications for parole order or applications under s 490R) applies section 193A to an application for parole made, but not yet decided before commencement of the Bill

A parole eligibility date is not a guarantee that the prisoner will be granted parole on that particular date; or that the prisoner's entitlement to parole will be determined based on the parole system as in force at the time of sentence.

Although the Bill provides for new section 193A to apply retrospectively, it is not removing a prisoner's right to receive parole. Rather, the Bill applies an obligation on the parole board to evaluate the prisoner's cooperation in locating a victim's body or remains. Gathering such information is designed to help victims' families and to provide a strong incentive for prescribed prisoners to cooperate. The No Body, No Parole policy will only apply to a very small cohort of prisoners; and is reserved for those who commit very serious criminal offences (murder, manslaughter, accessory after the fact to murder or conspiring to murder etc.). The retrospective application of new section 193A is considered justified for the above reasons and on public interest grounds.

Consultation

Preliminary discussions have taken place with the Queensland Law Society and some of the victims' advocacy groups, including the Queensland Homicide Victim Support Group, about the approach to progressing a No Body, No Parole policy in Queensland.

Consistency with legislation of other jurisdictions

The jurisdictions of Victoria, Northern Territory and South Australia have implemented No Body, No Parole or 'No Cooperation, No Parole' frameworks as the case may be. However, the Bill is specific to the State of Queensland and does not seek to be uniform with, or complementary to, legislation of the Commonwealth or another State.

Notes on provisions

Clause 1 states that Act may be cited as the *Corrective Services (No Body, No Parole) Amendment Act 2017*.

Clause 2 provides the Act amends the *Corrective Services Act 2006*.

Clause 3 amends section 193 (Decision of parole board) of the Corrective Services Act, consequential to the insertion of new section 193A (Deciding particular applications where victim's body or remains have not been located), to ensure that where the parole board refuses to grant an application for parole because of section 193A, included in the written reasons for refusal (which are required under existing section 193(5)(a)), must be a statement that the parole board is not satisfied that the prisoner has cooperated as mentioned in new section 193A(2).

Clause 4 inserts a new section 193A (Deciding particular applications where victim's body or remains have not been located) into the Corrective Services Act.

New section 193A specifically applies to applications for a parole order from prisoners serving a 'period of imprisonment' (which is already defined under the Corrective Services Act, Schedule 4) for a *homicide offence* (which is defined under subsection (8)) and: the body or remains of the victim of the offence have not been located; or because of an act or omission of the prisoner or another person, parts of the body or remains of the victim have not been located. The latter would capture, for example, instances where the prisoner may have dismembered the body of the victim and deposited the parts of the body at various locations; or the prisoner may have taken a part of the victim as a trophy or souvenir of their killing.

For the purposes of new section 193A, 'homicide offence' is a reference to the following Criminal Code offences: murder, manslaughter, accessory after the fact to murder or conspiring to murder; or an offence of counselling or procuring the commission of, or conspiring to commit, any of these Criminal Code offences.

The parole board must refuse to grant the application for parole unless the Board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the *victim's location*.

For the purposes of section 193A, 'victim's location' is a reference to: the location, or the last known location, of every part of the body or remains of the victim of the offence; and the place where every part of the body or remains of the victim of the offence may be found.

The prisoner's cooperation in this regard may have happened before or after the prisoner was sentenced to imprisonment for the offence.

When assessing whether the prisoner has satisfactorily cooperated, the Board must take into account the following:

- a report of the Commissioner of Police (or delegate) which evaluates the prisoner's cooperation in the investigation of the offence to identify the victim's location;

- any information the Board has about the prisoner's capacity to give the cooperation;
- the *transcript* of any proceeding against the prisoner for the offence, including any relevant remarks made by the sentencing court; and
- any other information the Board considers relevant.

The reference to 'transcript, of a proceeding' means: a transcription of a record under the *Recording of Evidence Act 1962* of the proceeding.

The report of the Commissioner of Police (or delegate) must be in writing and state whether the prisoner has given any cooperation of the type referenced under section 193A and if so, an evaluation of:

- the nature, extent and timeliness of the prisoner's cooperation;
- the truthfulness, completeness and reliability of any information or evidence provided by the prisoner in relation to the victim's location; and
- the significance and usefulness of the prisoner's cooperation.

The parole board must request the report from the Commissioner of Police as soon as reasonably practicable after receiving the parole application; and in doing so must state the day it is proposed to hear the parole application. The Commissioner of Police (or delegate) must provide their written report to the parole board at least 28 days prior to the proposed parole hearing day.

Clause 5 inserts a new Part 12 (Transitional provisions for *Corrective Services (No Body, No Parole) Amendment Act 2017*) into Chapter 7A of the Corrective Services Act. New section 490U (Application of s193A) provides that new section 193A applies to parole applications whether the prisoner was convicted of or sentenced for the offence before or after the commencement.

New section 490V (Existing applications for parole order or applications under s490R) makes transitional provision for those prisoners who have made their parole application but the application is not yet decided at the time of commencement. That is, section 193A applies.

Further, for existing parole applications that have not been decided at the time of commencement, the parole board may extend the period within which the parole application must be decided under section 193(3) by not more than 50 days.

New section 490V also provides that section 193A applies to an application mentioned in section 490R (Review of a regional board's decision) as inserted into the Corrective Services Act under the Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017. That is, an application mentioned in section 490R(1) that has not been decided before commencement; and an application under section 490R(4) made to the parole board but not decided before commencement, or made to the parole board on or after the commencement.