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Liberty Victoria Comments on the Corrections Amendment (No Body, No Parole) Bill 2016

1. On 23 February 2016, the *Corrections Amendment (No body, no parole) Bill 2016* (Vic) (**the Bill**) was introduced into the Legislative Council by the Hon Edward O'Donohue, Shadow Minister for Corrections.
2. The Bill proposes an amendment to the *Corrections Act 1986* (Vic) (**the Act**) by insertion of a new provision that would, in effect, render a prisoner serving a prison sentence for murder, or conspiracy to commit murder, ineligible for parole unless the Adult Parole Board (**the Board**) is satisfied that the prisoner has 'cooperated satisfactorily in the investigation of the offence to identify the location, or last known location, of the remains of the victim of the offence'.¹
3. For the reasons that follow, Liberty Victoria opposes the Bill.

A. The Bill is antithetical to the purpose and proper function of the parole system

4. The primary purpose of the parole system is to promote and protect community safety. As the Board's Manual explains:

¹ See cl 4 of the Bill.

The purpose of parole is to promote public safety by supervising and supporting the transition of offenders from prison back into the community in a way that seeks to minimise their risk of reoffending, in terms of both frequency and seriousness, while on parole and after they complete their sentence.²

5. Indeed, s 73A of the Act provides that the Board must give paramount consideration to the safety and protection of the community in making determinations about parole.³
6. As Liberty Victoria has previously emphasised,⁴ prisoner rehabilitation and community safety are inextricably linked within the context of parole. As French CJ held in the High Court judgment of *Hogan v Hinch*: ‘Rehabilitation, if it can be achieved, is likely to be the most durable guarantor of community protection and is clearly in the public interest.’⁵ The relevant research overwhelmingly demonstrates that supervised and supported release of prisoners on parole is substantially safer for the community than is unsupervised release of prisoners at the expiration of sentence.⁶ Liberty Victoria is of the view that release of prisoners on parole is generally preferable to the unrestricted release of prisoners at the expiration of their sentence.
7. The present Bill appears to be directed primarily at the needs of victims. In giving reasons for the Bill in the Second Reading Speech, the Shadow Minister said:

There are murderers who have never previously disclosed the location of the remains of their victim/s, or who have otherwise withheld critical information, which would enable the loved ones of the victim to have the closure and understanding that they so desperately desire. Clause 4 of the bill precludes the granting of a parole order for such offenders unless the adult parole board is satisfied that the prisoner has cooperated satisfactorily in the investigation of the offence to identify the location, or last known location, of the remains of the victim. The families of victims who have not had the benefit of closure are entitled to have this important issue addressed.

8. Liberty Victoria acknowledges that the issue of locating victims’ remains a very important matter for the loved ones of victims of murder. However, the question whether an offender has assisted in the locating of their victim’s remains is one that has no rational bearing on the matter of public safety within the context of parole. In

² Adult Parole Board of Victoria, *Parole Manual*, p 7.

³ Section 73A of the Act was introduced after such a provision was recommended by Ian Callinan, *Review of the Parole System in Victoria*, July 2013 (the Callinan Review) p 91.

⁴ See Liberty Victoria, [Submission in Response to the Callinan Review, 23 April 2014](#).

⁵ (2011) 243 CLR 506; [2011] HCA 4, [32].

⁶ See, eg, Ivan Zinger, ‘Conditional Release and Human Rights in Canada: A Commentary’ (January 2012) *Canadian Journal of Criminology and Criminal Justice* 117, 118-119; Bronwyn Naylor and Johannes Schmidt, ‘Do Prisoners Have a Right to Fairness Before the Parole Board?’ (2010) 32 *Sydney Law Review* 436, 449-450.

other words, any failure of an offender to assist in locating their victim's remains should not detract from the importance to public safety of ensuring that their release into the community is both supervised and supported in a manner that seeks to minimise their risk of reoffending. We submit that the object of public safety at which parole is aimed and the object of relieving the burden on victims' loved ones at which this Bill is aimed are, while both important, quite separate matters. As we note below, Liberty Victoria is of the view that the Act already has sufficient provision for the role of victims within the parole process, and accordingly, we submit that further reform of the kind proposed in the Bill is neither necessary nor desirable.

9. Moreover, it is submitted that, in some circumstances, the proposed s 74AAA would, apart from addressing an issue separate to public safety, in fact compromise public safety. That is because the amendment would, in certain circumstances, have the strange effect of displacing the paramount consideration of community safety enshrined in s 73A of the Act. In cases where the Board was not satisfied of the matters in the proposed s 74AAA(1), the Board would be required to refuse an order for parole even in circumstances where an order for parole would best serve the safety and protection of the community.
10. A further matter of concern is that the proposed amendments would interfere with the discretionary nature of the Board's determinations on parole. Liberty Victoria is strongly of the view that the Board is better placed than any other body to make determinations about specific cases of parole. The Board is comprised of a range of experts in the field of parole and has the significant advantage of having before it all the relevant facts and circumstances that pertain to each matter for determination. There is no reason why their discretion should be obstructed by Parliament.
11. Liberty Victoria is concerned that, if enacted, the Bill would prevent the Board from exercising its informed discretion to make parole orders in certain circumstances where, despite the prisoner not satisfactorily cooperating in the manner prescribed in the proposed s 74AAA(1), in its judgment, supervised and supported release on parole is sufficiently safer for the community than unfettered release at the expiration of the prisoner's sentence.

B. The Bill is unnecessary and without proper basis

12. Liberty Victoria submits that the Bill is unnecessary and without a proper basis.
13. In 2013, having been commissioned by the then Liberal Victorian Government, former High Court judge, Mr Ian Callinan AC, conducted a comprehensive review of the parole system (**the Callinan Review**). In his wide-ranging review, Mr Callinan made 23 recommendations, many of which have since been implemented by acts of Parliament. Liberty Victoria made a detailed submission in response to the Callinan Review, within which we agreed with some recommendations made by Mr Callinan, while opposing others.⁷
14. As part of his review, in addition to addressing how the parole system could better achieve its purpose to promote public safety, Mr Callinan also gave careful consideration to the place and needs of victims of crime within the parole context.⁸ It is notable that nowhere in his review did Mr Callinan contemplate, let alone recommend, reform of the kind proposed in the present Bill. It is submitted that if such reform had any proper basis in evidence or theory, it would have been a matter at least considered for recommendation by Mr Callinan.
15. Furthermore, Mr Callinan also gave careful consideration to the issue of whether particular measures were required for dealing with serious violent offenders, including those convicted of murder,⁹ and made recommendations that such offenders be dealt with as a special category of offenders.¹⁰ The Parliament sought to give effect to some of those recommendations by enacting the *Corrections Amendment (Further Parole Reform) Bill 2014*, which amended the Act by adding s 74AAB. It is again notable that Mr Callinan neither contemplated nor recommended reform of the kind proposed in the present Bill concerning prisoners convicted of murder. Liberty Victoria submits that, especially after the recently introduced s 74AAB, no further amendment to deal with offenders convicted of murder in the parole context is warranted.
16. Liberty Victoria is not aware of any evidence which would support the reform of the kind proposed in this Bill, and certainly, there is no reference in the Shadow Minister's Second Reading Speech to any such evidence. The Second Reading Speech refers

⁷ Liberty Victoria, [Response to the Callinan Review, 23 April 2014](#).

⁸ Callinan Review, see esp, pp 80-86, 94.

⁹ Ibid, see esp, 90.

¹⁰ Ibid, see measures 5 and 6.

only to victims' needs and is otherwise silent on whether, and if so how, the proposed Bill would do anything to further the parole system's capacity to promote public safety.

17. Liberty Victoria acknowledges that it is very important that victims have a role and a voice in the parole process, but we are of the view that their role is already sufficiently accounted for in ss 74A and 74B of the Act, which requires the Board to consider any relevant victim submission it receives before making a parole order. Liberty Victoria believes that while victims' perspectives should be a relevant factor for the Board to take into account (as ss 74A and 74B of the Act already provide), the central consideration for all parole determinations should remain the protection and safety of the community.

18. In our submission, this Bill appears to be an appeal to emotion rather than having any rational basis in evidence or principle. Indeed, even the title of the Bill is more emotive than it is accurate. The title of the Bill includes the phrase, 'no body, no parole', and yet, the substance of the Bill proposes no law to that effect. The focus of cl 4 of the Bill is on whether a prisoner has 'cooperated satisfactorily' in the investigation to identify the location, or last known location, of the remains of their victim. So, a relevant prisoner, for example, while not being able to assist in the discovery of a physical cadaver (for example, because it was moved since the murder, or was cremated and the ashes dispersed), may still be able to satisfactorily cooperate in an investigation in the manner prescribed in the proposed s 74AAA(1). Therefore, the title, 'no body, no parole', while catchy, is apt to mislead, and further suggests that the Bill appeals more to emotional grounds than rational ones.

C. The Bill presents an issue concerning the denial of natural justice to parole applicants

19. The Bill proposes that, for the purposes of determining whether a prisoner has cooperated satisfactorily in the manner prescribed in new s 74AAA(1), the Board must take into account any report by the Chief Commissioner of Police evaluating the prisoner's cooperation.

20. Liberty Victoria is concerned that because, at present, the Board is not bound by the rules of natural justice,¹¹ a prisoner to whom the proposed s 74AAA would apply would have no opportunity to access or respond to the information provided to the

¹¹ See s 69(2) of the Act.

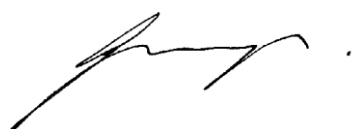
Board by the Chief Commissioner of Police pursuant to proposed ss 74AAA(3)–(4). In our submission in response to the Callinan Review, we strongly argued that the rules of natural justice should apply to the Board’s processes and decisions.¹²

21. Liberty Victoria is of the view that, if the Bill is enacted, prisoners to whom its amendments will apply should have the opportunity to test, challenge, and contribute to the body of information upon which the Board makes its determinations under new s 74AAA(1).

22. In summary, Liberty Victoria is opposed to the amendments proposed in the Bill. First, the proposed amendments are antithetical to the purpose and proper function of the parole system. Secondly, there is no need or proper rational basis for the amendments. Thirdly, it is noted with concern that, due to the existing state of affairs in which Board is not bound by the rules of natural justice, prisoners to whom the amendments would apply would be denied the opportunity to challenge adverse information and provide favourable information in respect of a determination of the Board under the proposed s 74AAA.

Please contact Gillian Garner through the Liberty Victoria office on 9670 6422 or info@libertyvictoria.org.au if we can provide any further information or assistance.

Yours sincerely



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¹² See Liberty Victoria, [Submission in Response to the Callinan Review](#), 23 April 2014, pp 15-20.