

Changes to murder sentencing

During the October sittings of parliament, Attorney-General Dr Peter Toyne introduced the Sentencing (Crime of Murder) and Parole Reform Bill 2003.

This bill introduces a series of changes to the Territory's murder sentencing arrangements and reforms the Parole Board.

The bill institutes a parole process for inmates currently serving mandatory life sentences for murder and sets a non-parole period of 20 years. The reforms also involve the introduction of a new offence for aggravated murder which would attract a non-parole period of 25 years.

Previously, inmates serving life for murder were only eligible for parole under the special circumstances of a mercy release, which was at the discretion of the Administrator and the government of the day.

The introduction of parole procedures is a welcome step towards judicial independence, but it does not go nearly far enough. Under the proposal there will be some limited flexibility in setting longer or shorter non-parole periods depending on the circumstances of the case, however a head sentence of life will still be mandatory.

Aggravated murder will include cases where:

- * the victim is a community worker, public official (i.e. police officer, teacher, health worker, judicial officer, etc) killed while carrying out their duties;
- * the death was accompanied by sexual assault;
- * the victim was a child;
- * the offender is convicted of more than one murder; or
- * the offender has a previous conviction for murder or manslaughter.

"By retaining mandatory life and creating a new category for aggravated murders, and allowing the courts to set a higher non-parole or order that an offender never be released, this new regime is significantly tougher," Dr Toyne said.

"While retaining mandatory life, the court will now be able to set higher non-parole periods or decline to set a non-parole period, by taking into account community safety and protection, the level of culpability of the offenders and community interest in retribution, deterrence and punishment," he said.

The bill will allow a shorter non-parole period to be set only when there are exceptional circumstances:

- * the offender is otherwise a person of good character and unlikely to re-offend; and
- * the victim's conduct, or conduct and condition, substantially mitigate the conduct of the offender.

"While we are toughening up non-parole periods, the court will be able to make a lower non-parole period in extremely limited cases like battered wife or mercy killing cases," Dr Toyne said.

One point that seems to be too often overlooked in debates about sentencing is that eligibility for parole does not equate to automatic release.

However, the Attorney-General did address this point when presenting the bill: "Eligibility for parole is of course no guarantee of release. However, there is an unfortunate tendency for the media when reporting on the sentence of a crime to focus on the non-parole period as being the actual sentence handed down by the court and which will be served by the prisoner."

It is widely believed that getting released on parole by the government's new-look Parole Board could be a difficult task.

According to a government media release: "Under the new framework, the Parole Board will now be required to consider community safety and the public interest, as well as the likely effect on the victim's family when considering parole applications from

convicted murderers".

To order release on parole, the ten person Board would need to make a unanimous decision (with a quorum of eight board members).

"The new process is deliberately rigorous as the Parole Board must reach an unanimous decision when considering parole applications from prisoners convicted of murder, and with the current record of less than 50% of parole applications being successful, the process will certainly be tough," Dr Toyne said.

"The overhaul of the Parole Board also includes significant changes to the Board's membership," Dr Toyne said.

The Parole Board members will include:

- * the Chief Justice or another Judge of the Supreme Court nominated by the Chief Justice;
- * the Director of Correctional Services; and
- * a member of the police force nominated by the Commissioner of Police.

The remaining seven members will be appointed by the Administrator for a three-year term and will include a medical practitioner or a psychologist, a representative of victims of crime and five people who reflect the composition of the community at large including women and Aboriginals and Torres Strait Islanders.

Editor's note: As this edition was going to print, the Sentencing (Crime of Murder) and Parole Reform Bill 2003 was passed through parliament. The next edition of Balance will include an article looking at the changes and implications of these reforms.^①