

Parole Board reform

The murder sentencing reform package, which Government passed through parliament during the November sittings last year, included reforms to the Parole Board.

Under the new framework, the Parole Board membership for murderer applications has been increased to ten, including new victims and police representatives. A quorum of eight is required for determining parole applications from convicted murderers. Membership has been increased from four to six members for all other parole applications.

Parole Board members 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.

The Parole Board will also now be required to give reasons for its decisions to release prisoners convicted of murder.

A victims register will also be established so victims' families can register their wish to be advised when parole of an offender is to be considered and to ensure they have a chance to provide input if they wish, or at least be informed about the decision.

Paul Henderson, a member of the Martin cabinet, welcomed the reforms to the Parole Board.

"The legislation includes long overdue reforms of the Parole Board. The Parole Board is responsible for consideration of applications for the release of prisoners at the end of the non-parole period," Mr Henderson.

"The Parole Board has been tightened with victim's families, police and community representatives on the Parole Board to consider that application because, as a society, we expect our Parole Board to reflect that society in regards to hearing applications for people on release.

"Five members of the ten member Board will be required, as closely as possible, to reflect the composition of the community at large. This is a very, very important change in this bill. These are not going to be faceless people who sit there and make decisions and very difficult decisions in regards to release of people who have committed the

ultimate crime. But the Parole Board, now, is actually going to be reflective of our community and I think that this is one of the most significant and important reforms of this bill.

"There are strict guidelines for making decisions on applications... Decisions to release prisoners convicted of murder must be unanimous and written reasons must be provided. The community has a right to know. If somebody, who has been convicted of the crime of murder, who has been sentenced to a mandatory life sentence, the community has a right to know why that person has been released... The Parole Board will have to consider the public interest including community safety as a matter of primary importance."

During the parliamentary debate, Shadow Attorney-General Jodeen Carney raised concerns about the requirement of a unanimous decision.

"You have nine people on a parole board and what happens if out of the ten, nine of them say we want this bloke to be released? And one person says, 'No, I completely disagree. This person should continue to sit in jail?'" Ms Carney said.

"If that one person digs in their heels, then the prisoner will be, I think, significantly disadvantaged," she said.

Ms Carney also pointed out that in criminal trials, if a jury cannot make a unanimous decision within six hours, the court will accept a majority decision.

"Under this bill, in terms of parole, you might as an offender, be sent to jail from a majority decision, but you cannot actually get out of it unless you have an unanimous decision."

The debate focused on the requirement that the Parole Board must make a unanimous decision.

"Some people have criticised the need for [the] decision of the Parole Board to [be] unanimous," said

Matthew Bonson, Member for Millner.

"They argue that eight people will never be able to reach a decision and no person will ever be released. I do not share these concerns. Murder is the most serious crime in our society. People convicted of murder should not be released until the community can be assured they pose no significant threat, even though they will always be under the supervision of Community Corrections. That is why the government has included a requirement in the legislation that community safety is the primary consideration of the Parole Board. The requirement to give written reasons ensures the decisions of the Parole Board are transparent and that the Board is accountable," Mr Bonson said.

"This new regime for murder sentencing and parole is the toughest in Australia. However, it is not only tough, it is appropriate and it is just, because it contains the critical elements of community protection as the paramount consideration, direct community involvement in decisions of parole, and it also reflects the community interests in deterrence, punishment and justice for serious offences which have been committed," he said.

In response to arguments that a recalcitrant Parole Board member

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Correction

The Government's recently introduced murder sentencing reform package does not actually make any changes to the mandatory life sentence for murder.

Instead, it introduces flexibility to consider the circumstances of each case through setting different non-parole periods. This is where the provisions for aggravated murder or battered wife syndrome become relevant.

Balance apologises for any confusion it caused regarding this new legislation.

Parole Board reform cont...

could jeopardise the process by refusing to grant parole to any prisoner serving time for murder, Attorney-General Peter Toyne pointed out that the Parole Board is chaired by a Supreme Court judge.

"In fact, the Chief Justice is the nominated Parole Board Chair. He can, in turn, delegate the responsibility to one of the other justices but, one way or another, a Supreme Court Judge will be sitting as the Chair of the Parole Board when these decisions are made," Dr Toyne said.

"I have great confidence, not only in the leadership of the chairperson of this new Parole Board once it is formed, to make reasoned and informed decisions regarding the decision to release or not to release applicants before them, but also will be very careful to appoint people to that Parole Board who are reasonable and thinking people – not people who are hell-bent on an emotive mission," he said.

"To the degree that the Parole Board has already demonstrated that it can make consensus decisions, I have no doubt that, if the evidence is strong enough that the prisoner has shown remorse and success in their rehabilitation programs and clearly not going to constitute a further danger to the community, that you will see releases under these new arrangements."

Further to this reform package, the Government is also reviewing crimes of manslaughter and causing death by a dangerous act.

"The government is also looking at closing loopholes that see manslaughter charges used as plea bargaining to escape the murder charge. We are also commencing a further review of manslaughter and dangerous act offences, " Mr Henderson said.

"When we reviewed the sentencing outcomes for the crime of murder, manslaughter and dangerous acts - and seeing some of the circumstances under which those crimes were committed - there is no

doubt in this government's mind that we have a serious problem regarding how the various charges are applied and the plea bargaining process," he said.

"There is no doubt in my mind that, over many years, people who have managed to escape with a lesser sentence, being convicted under the dangerous acts provisions, on the face of it could and should have gone for a murder charge."

Professor Paul Fairall, Dean of Adelaide University Law School is conducting the manslaughter and dangerous act offences review on behalf of the Department of Justice.

The review will focus on:

- * Whether the offence of dangerous act should be abolished;
- * Whether standard minimum non-parole periods should be introduced for manslaughter, if dangerous act is abolished, given many dangerous act offences would move into the manslaughter offence;
- * Whether a form of manslaughter resulting from recklessness as to serious harm should be introduced;
- * Whether an offence of dangerous driving causing serious death should be introduced; and
- * Whether other offences need to be introduced to cover the elements of the current dangerous act offence which relates to grievous harm rather than death.

Submissions to the review close at the end of February 2004, however there is still no time line for the results to be released.①

Complaints (and how to avoid them) Part 2 cont...

aid) explain how it works and offer suggestions as to whom they might complain eg the Attorney-General, Chief Justice or their local Member of Parliament.

When the client complains:

* Do not ignore the client. Offer a face-to-face interview to discuss the complaint.

* Accept the complaint whatever its apparent merit. It can tell you a lot about how your personal performance is perceived or point out office procedures which may need re-assessment.

* Assess your handling of the file objectively. Ensure objectivity by involving another person who had no connection with the matter. If you are satisfied the file was appropriately handled there may have been a communication failure, either on your part or that of your client.

* Where the complaint is without merit or its cause is personality based, consider whether it makes commercial sense to resolve it sooner rather than later. You could apologise, offer a reduction in the bill or suggest the client find alternative representation.

Remember: satisfied clients tell a few people (about three) how good you were. Dissatisfied clients tell everyone they know (about 23) how bad you were. In small communities word of mouth referrals are important.

Please feel free to comment on this article or make suggestions about future articles. I welcome an open debate on any of the issues raised. The next article will refer to some of the Law Society's more recent Ethics Rulings.

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