



CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (NO BODY, NO PAROLE) BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

This Bill introduces stricter 'No body, no parole' laws in the *Crimes (Administration of Sentences) Act 1999* (CAS Act) by removing the existing discretion of the State Parole Authority (SPA) to grant parole to offenders who do not satisfactorily cooperate with authorities to identify the location of the remains of their victim.

The Bill is intended to provide a strong incentive to offenders to disclose the location of their victim's remains. Being unable to locate a loved one's body is extremely distressing and traumatising for victims' friends and families and prevents victims from being laid to rest appropriately.

The Bill aligns with community expectations and 'No body, no parole' laws enacted in other jurisdictions, including Queensland and Victoria. It aims to strike the correct balance between the rights of offenders to parole, and the rights of victims and their families to recover the remains of their loved ones.

Currently, offenders serving a term of imprisonment can be released on parole either under statutory order (for sentences of three years or under) or order of the SPA. Offences involving the death of a victim whose remains are not recovered due to lack of cooperation by the offender would almost certainly involve a sentence of over three years and therefore require a SPA decision for parole to be granted.

Under current section 135(1) of the CAS Act the SPA must not make a parole order directing release of an offender on parole unless it is satisfied that it is in the interests of the safety of the community. Section 135 sets out a number of mandatory considerations for the SPA when considering whether it is in the interests of the safety of the community to release an offender. One of factors is whether an offender has failed to disclose the location of the remains of a victim (section 135(3)(e) of the CAS Act). However, while this is a mandatory consideration, the SPA still retains discretion to release an offender on parole even where they do not assist or reveal information about the location of remains.

Schedule 1[1] of the Bill repeals section 135(3)(e) of the CAS Act, and schedule 1[3] of the Bill introduces a new section 135A. Section 135A removes the SPA's discretion to grant parole for offenders convicted of a homicide offence unless the SPA is satisfied that the offender has cooperated satisfactorily in identifying the location of the victim's remains. Under the Bill, a homicide offence is defined to include murder, manslaughter, infanticide, assault causing death, conspiring to murder and being an accessory after the fact to murder.

Notably, section 135A only requires that the offender cooperate to locate the victim's remains, not that the remains are actually found. This is consistent with 'No body, no parole' laws in other jurisdictions, and takes into account that, in some circumstances, it may not be possible to locate or retrieve the body (for example, if the remains were disposed of at sea).

In deciding whether an offender has cooperated, the Bill requires the SPA to consider a written report from the Commissioner of Police about the offender's cooperation. The report must be provided to the SPA at least 28 days before the SPA proposes to make a decision about a parole order, and:

- 1.1. state whether the offender has given cooperation, and

- 1.2. evaluate the:
 - 1.2.1. nature, extent and timeliness of the offender's cooperation
 - 1.2.2. truthfulness, completeness and reliability of any information or evidence provided by the offender in relation to the victim's location, and
 - 1.2.3. significance and usefulness of the offender's cooperation.

The SPA must also have regard to any information available to it about the offender's capacity to give cooperation. This could include information about whether the offender was suffering from mental illness or affected by drugs. The SPA may also consider any other relevant information.

The new section 135A applies retrospectively to offenders who were convicted or sentenced for the offence before the provision commences. It also applies to parole decisions currently under consideration by the SPA. This is intended to ensure that offenders who refuse to assist in locating their victim's remains and who are currently in prison, and may soon be, or are, eligible for parole, are also captured by the amendment.

Objectives: What is the policy's objective couched in terms of the public interest?

The purpose of this amendment is to incentivise offenders to disclose the location of their victim's remains for the benefit of the victim's friends and family, and the community generally. By incentivising offenders to reveal this information, it may be more likely that remains are found.

There is a strong public interest in ensuring that victim's remains are found. Friends and families of victims experience significant trauma when they are unable to locate the remains of their loved one and put them to rest appropriately. The uncertainty of not knowing where a loved one's remains are or whether their location will ever be revealed can be extremely distressing for victims' friends and family. It is also the community's expectation that everything possible should be done to identify the location of victims of crimes' remains.

Offenders who fall under this law and who may be eligible for parole can be considered for release as long as the SPA is satisfied they have cooperated satisfactorily in identifying the location of the victim's remains. This does not require that the victim's remains are, in fact, located. This ensures that offenders are not refused parole in circumstances where they have cooperated, but there is no possibility the remains can be found or retrieved.

Options: What alternative policies and mechanisms were considered in advance of the bill?

No alternative policies or mechanisms were considered, as the change in policy can only be enacted through legislative amendment of the *Crimes (Administration of Sentences) Act 1999*.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The benefit of introducing the Bill is to provide the strongest possible incentive for offenders to reveal the location of their victim's remains. While no law can force offenders to reveal this information it is envisaged that offenders will be more likely to cooperate with this amendment in force.

Conversely, a disadvantage of not introducing the Bill is that offenders who may be in a position to provide assistance in locating their victim's remains will not be provided with a strong incentive to do so prior to being granted parole.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill commences on the date of assent.

The relevant provisions of the legislation will be administered by the Minister for Corrections, and the reform would primarily be carried out operationally by SPA and NSW Police.

The SPA makes decisions about whether to make a parole order directing the release of an offender under the CAS Act. The new section 135A prevents the SPA from granting parole unless it is satisfied an offender to which the section applies has cooperated satisfactorily with authorities in identifying the location of the victim's remains. Under the amendment, the Commissioner of Police is responsible for providing a written report about the offender's cooperation to the SPA at least 28 days before the SPA proposes to make a decision about the relevant offender.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Yes. In drafting this Bill, the NSW Government consulted, on an urgent basis, the SPA, the NSW Police Force and Corrective Services NSW. We thank these stakeholders for their contribution to this urgent work in short timeframes.

The Government also had regard to previously expressed views of stakeholders, including in submissions to the Sentencing Council's 2021 Homicide review.