



**UNIVERSITY OF
CANBERRA**
AUSTRALIA'S CAPITAL UNIVERSITY

10 February 2012

Standing Committee on Social Policy and Legal Affairs

By email

To Whom It May Concern

RE: Inquiry into the Crimes Legislation Amendment (Powers and Offences) Bill 2011

Thank you for the opportunity to provide a submission on the above Bill.

I write in relation to the amendments proposed under Schedule 7 and, in particular, the proposed new section 19AL.

Although it is well overdue that the Government respond to the Australian Law Reform Commission (ALRC) report *Same crime, same time*, this represents an incomplete response to the recommendations made there. Most significantly, there is no attempt to implement Recommendation 23-1 to 'establish a federal parole authority to make decisions in relation to parole of federal offenders'.¹ The ALRC noted that '[i]n consultations and submissions there was almost universal support for the principle that decisions in relation to parole should be made by a body independent of the executive'.² In making its recommendation, the ALRC was

of the view that the existing arrangements whereby the Attorney-General or departmental delegate make parole decisions in relation to federal offenders are not appropriate. Because these decisions affect an individual's liberty, they should be made through transparent and accountable processes in accordance with high standards of procedural fairness and independently of the political arm of

¹ Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report no 103 (Sydney, 2006).

² *Ibid* [23.7].

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government. The current arrangements lack adequate transparency and independence.³

Importantly, it was in the context of such an agency being established that the ALRC made the recommendation the provisions granting automatic parole to federal offenders should be repealed,⁴ which the proposed section 19AL now seeks to implement. Specifically, the ALRC commented that 'the federal parole authority would be required to exercise its discretion in relation to the release of all offenders serving sentences of 12 months or more'.⁵ Similarly, in the following section headed 'Guidance for parole decision makers', it referred to the role played by parole authorities in other jurisdictions. Nowhere in its discussion, does it appear to have envisaged expanding the power to be wielded by the Minister, as the Crimes Legislation Amendment (Powers and Offences) Bill 2011 now seeks to do.

Accordingly, there is a real concern that the operation of the proposed section 19AL would be open to abuse in terms of the power to be wielded by the Minister. As recognised in the submission to this Inquiry by the Council for Civil Liberties,

The concern is that this power could be used to delay the release of unpopular prisoners, for example sex offenders, who have served their sentences but are deemed insufficiently punished by sectors of the community. This is especially likely around election times when "tough on crime" becomes a popular political catch-cry. Also this could be used to further detain a person who maintains his or her innocence. If a sentence has been passed and served, justice – and inalienable human rights provisions to which Australia is signatory – requires that the offender be released without being subject to indefinite surveillance.⁶

The concerns expressed in some submissions to the ALRC that automatic parole provides certainty for the offender and the offender's family and ensures the timely release of offenders should also be noted.

³ Ibid [23.10].

⁴ Ibid Recommendation 23-4.

⁵ Ibid [23.67].

⁶ Submission by the Civil Liberties Australia to the Inquiry into the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (Submission 2) 8-9.

In conclusion, I would submit that although there may be arguments for the abolition of automatic parole, as set out in the Explanatory Memorandum accompanying the Bill, it is inappropriate that this power be granted to the Minister, rather than an independent authority. Accordingly, the proposed provisions should be removed from the Bill until such time as the Government commits to a more transparent process for the administration of parole decisions in relation to federal prisoners.

Yours sincerely,

Lorana Bartels