



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

PAROLE (EXTENDED SUPERVISION ORDERS) AMENDMENT BILL

28/10/2014

SUBMISSION ON THE PAROLE (EXTENDED SUPERVISION ORDERS) AMENDMENT BILL

- 1 The New Zealand Law Society appreciates the opportunity to submit on the Parole (Extended Supervision Orders) Amendment Bill.
- 2 The Law Society acknowledges the important social objectives the Bill seeks to advance and the need to protect the public from the risk of sexual offending – particularly against children and young persons – as well as serious violent offending.
- 3 The Law Society welcomes the provision in sections 107M and 107O for biennial review by the Parole Board of the ongoing need for high impact conditions. The requirements that before an order is made a court be satisfied that there is a "pervasive pattern" of serious violent or sexual offending, and that the risk of reoffending is "high" for sexual offending and "very high" for violent offending, also go some way to protect against extended supervision orders (ESOs) being imposed oppressively. As with previous submissions¹ on the ESO regime, however, the Law Society is concerned that the Bill is inconsistent with the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990.
- 4 The restrictions to which a qualifying offender may be subject through an ESO are a form of criminal penalty, notwithstanding that their purpose is to protect the public from the risk of offending in the future rather than to punish offending in the past. The penalty is in addition to that imposed on conviction and hence inconsistent with section 26(2) of the Bill of Rights Act which provides that no one who has been finally convicted of an offence shall be tried or punished for it again.
- 5 Section 107C(2) of the Parole Act as currently enacted provides that an offender may be subject to an ESO where the relevant offending pre-dated the commencement of the ESO regime in July 2004. That is inconsistent with the right to be free from retroactive punishment affirmed by section 26(1) of the Bill of Rights Act. The Bill would also extend the regime by permitting an ESO to be renewed for consecutive 10-year periods, which in effect permits a kind of indeterminate punishment (that is, a sentence or penalty potentially without end). The Bill therefore extends a regime of retroactive penalties to a wider class of offences for which offenders are effectively punished twice, and in some cases consecutively.

¹ New Zealand Law Society submission dated 20.2.04 on the Parole (Extended Supervision) and Sentencing Amendment Bill

- 6 The Attorney-General's report under s 7 of the Bill of Rights Act² is the third such report finding the ESO regime to limit fundamental rights and freedoms to an extent that is not justified in a free and democratic society. The Law Society agrees with the Attorney-General. It is true that the Bill of Rights Act does not prevent the House from enacting legislation that the Attorney-General has reported to be inconsistent with the Bill of Rights. But the House should not do so unless it is persuaded that the Attorney-General was wrong in his assessment. It ought not to enact legislation believing it to be unjustified in a free and democratic society. The Committee should advise the House accordingly.
- 7 Rights against retroactive penalties and double jeopardy are fundamental constitutional safeguards within New Zealand's system of criminal justice. These rights ought not to be eroded through incremental amendment. Accordingly, the Law Society agrees with the Attorney-General and submits that the Bill should not be passed in its current form. Instead, consideration should be given to whether the Bill's policy objectives can be advanced in a manner less restrictive of fundamental rights and freedoms (for example, where applicable, through the sentence of preventive detention at the time of sentencing).



Chris Moore
President
28 October 2014

² Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision Orders) Amendment Bill, 27.3.14