

Concealment of Location of Victim Remains Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

3 September 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Concealment of Location of Victim Remains Bill (**Bill**). The Bill is a Member's Bill, proposing amendments to the Sentencing and Parole Acts so that homicide offenders who refuse to disclose the location of a victim's body may receive a more severe sentence and be denied parole.
- 1.2 This submission has been prepared with input from the Law Society's Criminal Law Committee and Human Rights and Privacy Committee.¹
- 1.3 The Law Society **wishes to be heard** on this submission.

2 General comment

- 2.1 The Bill amends:
- (a) Section 9(1) of the Sentencing Act 2002, to introduce new paragraph (ba). This addition to the list of aggravating factors that a sentencing court must take into account for an offender who has committed homicide refers to "any failure of the offender to reveal, or to co-operate in any efforts to identify, the location of the body or of any remains of the victim".
 - (b) The Parole Act 2002, by inserting new section 28A. This new section would require the Parole Board, when considering an offender for release on parole, to refuse parole unless the Board is satisfied the offender has co-operated satisfactorily (either before or after the offender was sentenced to imprisonment for the offence) in the investigation of the offence to identify the victim's location.
- 2.2 The Law Society has significant concerns about these proposals. In the Society's view, the Bill is fundamentally flawed and should not proceed. The main reasons for this conclusion are:
- (a) New Zealand Bill of Rights Act 1990 (**Bill of Rights**) issues, including:
 - (i) the Attorney-General's section 7 advice;
 - (ii) the right not to incriminate oneself; and
 - (iii) the application of the Bill to already-sentenced offenders, which arguably may be seen as retrospectively altering the penalty imposed.
 - (b) Incompatibility with legitimate purposes and statutory principles of parole under the Parole Act, and other concerns regarding reducing the discretion of the Parole Board and risks of increasing the Board's workload.
 - (c) The proposed new aggravating factor under the Sentencing Act addresses a point already provided for in the Sentencing Act, making it superfluous. In addition to this, integrating the Bill into the sentencing process appears problematic.
 - (d) Likely lack of efficacy, based on the experience of other jurisdictions.

¹ More information about the Law Society's law reform sections and committees is available on the Law Society's website: [NZLS | Law reform committees](#).

- 2.3 If this position is not accepted, and the Bill does proceed, the Law Society recommends, at a minimum:
- (a) amendments to make the Bill more rights compliant;
 - (b) clarifying its intended application in different charging scenarios that will arise under the Crimes Act; and
 - (c) addressing what (if any) drafting changes are available to address sentencing, parole and bail issues that it would be desirable to clarify.

3 Bill of Rights matters

Section 7 report: inconsistency with sections 22 and 14 of the Bill of Rights

- 3.1 The Attorney-General has advised Parliament that proposed new section 28A of the Parole Act, to be inserted by the Bill, appears to be inconsistent with two rights affirmed in the Bill of Rights Act:²
- (a) The right to be free from arbitrary detention, affirmed by section 22. This is because, while the new section 28A will not have broad application, it has the potential to become the sole basis for ongoing detention for the small subset of offenders who are within its scope. Prolonging detention because of an offender's failure to co-operate (or co-operate sufficiently) with identifying the location of a person's remains is a punitive measure, at odds with the public safety emphasis of the parole regime.³
 - (b) The same aspect of the Bill (imprisoning a person solely on the basis of their decision to maintain silence, rather than to confess guilt or answer questions, beyond the point of a criminal conviction) could be viewed as inconsistent with section 14 of the Bill of Rights (right to freedom of expression).⁴
- 3.2 The Law Society concurs in this view, and with the Attorney-General's analysis on these points.

The right not to incriminate oneself

- 3.3 The Law Society is further concerned that the wording of proposed section 28A does not recognise that offenders may properly have refused to answer questions regarding the location of the victim's body or other remains in exercising their privilege against self-incrimination either prior to or at trial. It is fundamentally wrong in principle to create a position where invocation of the statutory right to avoid self-incrimination is later visited with penal consequences. Two different sections of the Bill of Rights are relevant:
- (a) Under section 23(4), the person arrested or detained on what will be, in this instance, a homicide charge has the "the right to refrain from making any statement and to be informed of that right". That right must extend to not

² "Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Concealment of Location of Victim Remains Bill" (18 July 2026).

³ Above n 2, [18]–[28].

⁴ At [36].

answering any questions as to the whereabouts of the alleged victim's body or remains.

- (b) Under section 25(d), when the matter gets to trial, the defendant has a right "not to be compelled to be a witness or to confess guilt". The defendant may also exercise the general right to refuse to answer questions which might incriminate them.
- 3.4 Section 4 of the Evidence Act 2006 defines "self-incrimination" as meaning "the provision by a person of information that could reasonably lead to, or increase the likelihood of, the prosecution of that person for a criminal offence". It is, therefore, not limited to charges currently faced, but extends to information that could result in prosecution for, or an increased likelihood of, prosecution for any criminal offence.
- 3.5 In the 'no body' homicide context, this may be a prosecution for an offence under either section 150 or 181 of the Crimes Act 1961:
- (a) Section 150(b) creates an offence, punishable by imprisonment for up to two years, for any person who "improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not". The scope of "indecently" in that provision was commented on by William Young J in *Rowe v R* as relating to actions inconsistent with public decency in the broader sense of appropriate respect for human remains.⁵ The scope of "improperly" appears not to have been judicially discussed. However, in likelihood, many forms of conduct toward the body of a victim of homicide which were designed to conceal the fact of a killing would be considered "improper" interference — for example (as in a recent case), placing the body in a wrapping of layers of rubbish bags, before depositing it in a harbour.⁶
 - (b) Section 181 provides a standalone offence, punishable by imprisonment for up to two years, for any person who "disposes of the dead body of any child in any manner with intent to conceal the fact of its birth, whether the child died before, or during, or after birth".
- 3.6 The significance of these offences is that, where it is suspected that a person has committed homicide but no body or remains have been discovered, a person questioned about the location and condition of a body would appear to be entitled to refuse to answer any questions regarding those matters on the basis that giving any answer might incriminate them in regard to a possible charge under section 150 or section 181. If that is so, it would appear wrong in principle to regard invocation of the privilege as amounting to failure to disclose the information requested, or non-co-operation with the authorities.

Retrospective penalty concerns

- 3.7 Under clause 6 of the Bill, section 28 of the Parole Act (direction for release on parole) will be made subject to new section 28A.

⁵ [2018] NZSC 55, [2018] 1 NZLR 875 at [89].

⁶ [Gulf Harbour body trial: Religious group leader, wife jailed over manslaughter, kidnapping | RNZ](#).

- 3.8 In the case of persons already serving sentences of imprisonment for homicide in ‘no body’ cases, there is a potential conflict between the proposed Parole Act amendment and section 25(g) of the Bill of Rights. Section 25(g) affirms “the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty”.
- 3.9 In the Law Society’s view, it is at least arguable that providing for a refusal of parole on a ground which did not exist at the time of the sentence is a variance in the penalty. As the Supreme Court held in *Attorney-General v Chisnall (Declarations of inconsistency)*,⁷ a statute may be inconsistent with the Bill of Rights if there is a viable and more rights-consistent alternative available. The retrospectivity of the provision can also lead to unfairness. In Queensland, the fact that an offender did not disclose the location of the body at trial but disclosed it later when told the ‘no body, no parole’ (**NBNP**) law would affect their parole has been considered insufficient co-operation. Effectively, this would seem to mean that already-sentenced offenders will be captured by the new law, either way.

4 Parole Act and implications for Parole Board

Inconsistency with legitimate purposes of parole, and potential double counting

- 4.1 The Law Society notes, and endorses, the Attorney-General’s adoption of the statement by the Supreme Court that an initially lawful detention may subsequently become arbitrary, and so inconsistent with section 22 of the Bill of Rights, “if the detention has become disproportionate to its legitimate aim”.⁸ That raises the issue of the legitimate aim of the Sentencing and Parole statutes to which amendments are proposed. As earlier noted, there are particular concerns in regard to the Parole Act.
- 4.2 Under section 7 of the Parole Act, the guiding principles when considering parole are:
- (1) When making decisions about, or in any way relating to, the release of an offender, the paramount consideration for the Board in every case is the safety of the community.
 - (2) Other principles that must guide the Board’s decisions are—
 - (a) that offenders must not be detained any longer than is consistent with the safety of the community, and that they must not be subject to release conditions that are more onerous, or last longer, than is consistent with the safety of the community ...
- 4.3 Section 28A is incompatible with these guiding principles. It states that the Board “must” refuse to release an offender unless the Board is satisfied the offender has co-operated satisfactorily in the investigation. This therefore means that ‘safety’ is no longer the paramount consideration for parole, unless it can be shown that revealing the location is a ‘safety’ issue.

⁷ [2025] NZSC 126, [2025] 1 NZLR 619.

⁸ *J (Compulsory Care Recipient, by his welfare guardian, T) v Attorney-General* [2025] NZSC 103 at [92].

- 4.4 Generally, the Law Society considers that this is not the case. While revealing the location of the body might arguably indicate remorse or rehabilitation, a person is not more or less likely to reoffend because they reveal the location of the body. As illustrated in Queensland (where NBNP laws similar to the present Bill have been in force since 2017), in these types of cases it may be the case that an offender genuinely cannot reveal the information (as opposed to lying about what they knew). In the 10 reported decisions in Queensland from 2017–2022:
- (a) one gave inconsistent descriptions of the location, which might indicate forgetfulness;
 - (b) one gave the location, but the body had been subsequently moved;
 - (c) one gave the location, but the police could not find the body;
 - (d) two stated that they had not been involved in the hiding of the body, so did not know the location.
- 4.5 There will also be issues of applying the provisions to an offender who has, since the offence, suffered medical events or incidents (such a traumatic brain injury) which have caused memory loss, so that any knowledge which the offender may have once had is not available at the time of any investigation or prosecution.
- 4.6 In all of the above situations, the offender must be denied parole for reasons they cannot control, and which, as the Attorney-General identified, appear primarily and arbitrarily punitive.⁹ From the perspective of community safety, the consequence of not revealing the location of the body (meaning that the offender must or is more likely to be denied parole) also perversely prevents the offender from the rehabilitation opportunity that parole provides of gradually reintegrating into the community. In other words, the Bill may actively contradict the Parole Act’s paramount purpose.
- 4.7 While it might be argued that the proposed new scheme is relevant to the further general principle under section 7 of upholding the rights of victims of offending,¹⁰ analyses of outcomes from the NBNP regime in Queensland have considered that not only does little appear to have been achieved for victims, but that outcomes may have been made worse.¹¹
- 4.8 Lastly, if new section 28A must be classed as a punitive provision, which it appears to be, then the combination of this and the proposed section 9(1)(ba) of the Sentencing Act (a

⁹ See also Tracy Walker “No body, no parole? An argument against needless bright-line advocacy” (2024) 65 Boston College Law Review 279–316: “Overall, NBNP laws bring into question what the purpose of parole is in the criminal justice system. This Note argues that NBNP laws reframe the purpose of parole from a rehabilitative purpose to a punitive one.” Walker tracks the history and results of NBNP laws’ implementation in Australia, England, and the United States.

¹⁰ Parole Act 2002, s 7(2)(d).

¹¹ Monique Moffa, Michele Ruyters, and Greg Stratton “Still no bodies: Five years of ‘no body, no parole’ in Queensland, Australia” (2022) 55 Journal of Criminology 162–179 at 173: “Missing body homicide cases must carry an inherent risk that the remains will never be located, but there is little indication in parliamentary debates and public campaigns that legislators considered the impact of false hope and failed searches on co-victims.”

new aggravating factor to be inserted by the Bill), is to punish the person twice for their same failure to reveal the location.

Parole Board decision-making

- 4.9 While not entirely removing the discretion of the Parole Board in cases where the body has not been located, new section 28A reduces the Board's discretion by making it subject to an evaluation of whether there has been satisfactory co-operation.¹² It is not clear whether a Parole Board will have the information or expertise needed to make this decision. Requiring the Parole Board to investigate and determine whether the offender has met the criteria under new section 28A(3) can certainly be expected to add to the workload of the Parole Board. Particularly where there is no evidence that NBNP laws do achieve their aim of closure for victims by finding the body, it appears doubtful to the Law Society whether such impacts on the work of the Board will be justified. The experience in Queensland — as further discussed below — has been that they do not achieve this aim.

5 Sentencing: new aggravating sentencing factor is unnecessary, and other problems

Co-operation already considered

- 5.1 New section 9(1)(ba) of the Sentencing Act in clause 4 of the Bill proposes to introduce a further aggravating sentencing factor to section 9, of failing either to reveal, or co-operate in any efforts to identify, the location of the body or any remains.
- 5.2 This is a factor that is already considered in sentencing. When an offender does reveal the location of the body, they are often given substantial discounts for co-operation. The fact that a person does not reveal the location of the body, therefore, is already reflected in the end sentence, although it is not currently specifically recognised in the way that the Bill would achieve.
- 5.3 In addition to this concern, other practical issues are likely to arise in the sentencing context. In the Law Society's view, coupled with the concerns in principle above relating to rights issues and to parole, these are indicative of the fundamentally flawed nature of the Bill. In particular, the timing of disclosure for sentencing purposes appears significantly problematic.

Timing of disclosure for sentencing purposes

- 5.4 The Bill requires the sentencing judge to take non-disclosure or non-co-operation into account at sentencing. Defendants who have, as they are entitled to do, defended the charge are unlikely to have provided any evidence as to the possible location of the victim's body or remains prior to or at trial.
- 5.5 If, after conviction, they make disclosure of that location or co-operate with efforts to locate the body or remains which are then located, there will be no problem for the judge in taking that into account in setting the non-parole period. However, it is not clear what

¹² Clause 7, new section 28A(3).

will happen where there is no such offer of co-operation because the convicted defendant intends to appeal against conviction (especially where there are good prospects of the appeal being successful). A post-conviction admission would be very likely to satisfy the appellate court that there had been no miscarriage of justice. Sentencing would have to proceed on the basis that there had been no disclosure or co-operation. If the convicted defendant's appeal against conviction fails, the question must be whether the defendant can disclose and then seek to have the sentence amended. It is difficult to see how this could happen. Seeking to appeal against the sentence would require both leave to appeal out of time and to introduce new evidence on appeal. Leave is not normally given where the "new" evidence was known to the party seeking its admission at the time of the trial and could have been adduced there.

- 5.6 As noted earlier (discussing the right not to incriminate oneself and relevant Bill of Rights protections),¹³ there will often be sound legal reasons why offenders have refused to answer questions regarding the location of the victim's body or their remains. Both prior to and at trial, defendants are entitled to exercise their privilege against self-incrimination.

6 NBNP regimes have been ineffective in other jurisdictions

- 6.1 Proposed section 28A appears to closely follow the model of the Queensland law, which was enacted in 2017.¹⁴ An academic analysis published in 2022 of the ten reported parole decisions in the first five years in which the NBNP requirement was considered in Queensland concluded that in none of those cases was a body recovered (although the offender was determined to have co-operated sufficiently in six of the cases). The authors conclude that the NBNP laws were enacted "in haste with little debate, consultation or consideration of their proposed effectiveness".¹⁵ As no bodies were recovered, the argument of providing closure to victims' families was not achieved.¹⁶
- 6.2 The experience appears to have been similar in other jurisdictions. "From Australia to England to the United States, NBNP laws have come into existence, but legislatures should reevaluate the efficacy of these laws and limit their spread."¹⁷
- 6.3 The lessons from overseas about the seeming inefficacy of NBNP legislation underscore the real concerns in principle that we have noted. However, if the position that the Bill should not proceed is **not** accepted, the Law Society advises the Committee to consider multiple matters relating to the workability of the Bill, before recommending that it goes forward.
- 6.4 At a minimum, the proposed amendments need further and better justification and revision to improve their integration and consistency with the Bill of Rights and existing

¹³ At [3.3]–[3.6] above.

¹⁴ Corrective Services (No Body, No Parole) Amendment Act 2017 (Qld). See also Tom Rutherford (Concealment of Location of Victim Remains Bill, [1R, Hansard, 20 May 2026](#)), noting the Bill has been directly influenced by legislation passed in the United Kingdom in 2020 and in New South Wales in 2022.

¹⁵ Moffa, Ruyters, and Stratton, above n 11 at 164.

¹⁶ Moffa, Ruyters, and Stratton, above n 11 at 173.

¹⁷ Walker, above n 9 at 316.

Crimes, Sentencing, Parole, and Bail legislation. The drafting and workability issues next discussed are further illustrations that there will be real concerns with the Bill's efficacy, even if it can be revised. For some of the issues, it may be that drafting improvements can be attempted to cure or clarify some of the concerns.

7 Improving the Bill if it proceeds

Amendments to make the Bill more rights-compliant

- 7.1 With a view to making the Bill more rights-compliant, the Law Society recommends amendment of the proposed section 28A, as suggested by the Attorney-General.¹⁸ That is, that offender co-operation be made *a factor for the Parole Board to consider* when deciding whether to direct the release of an offender on parole, alongside the other factors specified in section 28 of the Act. The Board should also be required, when considering offender co-operation, to take into account any factors which would have lessened the ability of the offender to co-operate with attempts to locate the body or remains of the victim (for example injuries or illnesses affecting the offender's memory).
- 7.2 In the Law Society's view, this approach is preferable to the alternative suggested by the Attorney-General, of inserting a "manifest injustice" exception.¹⁹

Clarifying intended application in different types of homicide cases

Application to all three forms of homicide, including infanticide?

- 7.3 Both proposed amendments are intended to apply where the offender has been convicted of "homicide as defined in s 158 of the Crimes Act 1961". That section defines homicide as "the killing of a human being by another, directly or indirectly, by any means whatsoever". Under sections 171 and 178, culpable homicide under the Crimes Act is murder, manslaughter or infanticide.
- 7.4 The Explanatory Note to the Bill does not allude to these different forms of homicide, or consider whether the suggested Sentencing and Parole Act amendments should apply to all three forms of homicide. Infanticide, as provided for in section 178, addresses a unique type of case. A woman may be found guilty of infanticide, rather than manslaughter or murder, where she:
- (a) causes the death of any child of hers under the age of 10 years; and
 - (b) at the time of the offence, the balance of her mind was disturbed to such an extent that, although the level of mental disturbance falls short of insanity, she should not be held fully responsible by reason of:
 - (i) not having fully recovered from the effect of giving birth to that or any other child, or
 - (ii) the effect of lactation, or
 - (iii) any disorder consequent upon childbirth or lactation.

¹⁸ Above n 2 at [27](a).

¹⁹ Above n 2 at [27](b).

- 7.5 We invite the Committee to consider whether the suggested amendments should apply to infanticide — being a homicide by a person whom the jury must have found was suffering from a significant psychological disturbance at the time of their actions.

Intended application in the event of alternative charges

- 7.6 While section 66 of the Crimes Act distinguishes between persons who “actually commit” an offence and those who are parties to that offending (and are thus liable to punishment for the relevant offence), it is not uncommon for prosecutors to frame charges in the alternative — that the person either “actually committed” the offence or was a party to the offence. This is seen as appropriate in homicide cases where acts by multiple persons have caused the death of the victim, and it is not possible to identify the act which was the proximate cause of death (if there was one) and/or the person responsible for committing that act.
- 7.7 This can occur in murder cases but is perhaps more common in manslaughter cases. In such cases, the jury may return a verdict of “guilty” without stating the basis for the decision (in other words, the jury may be satisfied beyond reasonable doubt that the defendant was *either* the principal offender *or* a secondary party).
- 7.8 We recommend clarifying whether it is intended that in such cases the proposed amendment will apply.

Involvement of an accessory after the fact

- 7.9 The intended practical effect of the Bill is also unclear where it is alleged that a person other than the person who actually committed the homicide was responsible for concealing the body of the victim.²⁰ Persons connected with an offender who has committed manslaughter or murder — for example, by ties of family, gang membership or simply friendship — may seek to deflect responsibility from the offender by concealing or destroying the victim’s body.
- 7.10 In such cases, the proposed changes to the Sentencing and Parole Acts may have little or no effect. The offender may not be informed of what has been done with the body, or only informed in general terms, which would not assist in locating the body or any remains. The offender may also not be informed of the identity of the person or persons seeking to conceal the body or remains. The proposed amendments will not apply to the accessory after the fact, as the accessory did not commit the homicide.
- 7.11 An offender who truthfully (or at least not provably falsely) states that they know someone intervened to remove or destroy the body, but knows neither the identity of that person nor what was done with the body, will also fall outside section 9(1)(ba) as presently drafted (“any failure or refusal by the offender ... to reveal, or to co-operate ...”).
- 7.12 Again, the Committee may wish to clarify whether this is of concern.

²⁰ Crimes Act 1961, s 71 (accessory after the fact).

*Sentencing and parole drafting amendments****Amendments referring to “the location of the body or of any remains”***

- 7.13 Each of the proposed amendments to the Sentencing Act and the Parole Act uses the phrase “the location of the body or of any remains of the victim”. In the Law Society’s view, two aspects of this phrase are less than clear and may impact the effectiveness of the proposed amendment.
- 7.14 First, the phrase appears to assume, incorrectly, that there will always be a body or recoverable remains of the victim. If a body has been destroyed completely (for example, by fire or chemical treatment), there is no body and perhaps even no “remains” (for instance, usable DNA) which can be identified. Where the offender — either before or after conviction — simply says “the body was completely destroyed; there is nothing to find”, the application of the new provision is unclear. Such a statement will not “reveal” the location of the body, but it would be hard not to characterise it as “co-operating” in any effort to identify remains. To some degree, such a statement might provide some closure for the relatives of the victim — which is the ostensible purpose of the Bill. Equally, it might be seen as aggravating the hurt that the death of their loved one has caused.
- 7.15 Second, it is unclear what meaning is to be given to “the location” of the body or remains. Doubtless there will be cases where the offender admits concealing the body or remains, but cannot give sufficient guidance to allow for any reasonable prospect of their recovery, as overseas examples have shown. For example, has an offender who says “I wrapped the body in a plastic sheet, drove around the city until I saw a rubbish skip and deposited the body in the skip. I was panicking and cannot remember — if I ever knew — exactly where the skip was” provided a sufficient description of the “location”? Or would, for example, a statement suffice such as “I buried the body in a field which has since been sealed over as a parking lot for a shopping centre, but I don’t know exactly where”? In one Australian case, the body had been placed in a river, which had caused it to move.
- 7.16 The Law Society acknowledges that the Bill’s drafting accords closely with other jurisdictions’ models.²¹ However, we would advise consideration of these issues and whether revision of the drafting is appropriate. Without this, it appears likely that, as in Queensland, the effectiveness of the amendments may be doubtful.

Determining the presence or absence of relevant disclosure or co-operation

- 7.17 Where there is no trial, because the defendant has pleaded guilty, the court will hear no evidence as to the circumstances surrounding the homicide. Under section 24(1) of the Sentencing Act, the court, when determining the sentence for homicide, may accept as proved any fact that was disclosed by evidence at the trial and any facts agreed on by the prosecutor and the offender; and must accept as proved all facts, express or implied, that are essential to a plea of guilty or a finding of guilt. Under that section the court may also consider as an aggravating factor any matters the prosecutor asserts as a fact that

²¹ See further n 14 above.

justifies a greater penalty or other outcome than might otherwise be appropriate for the offence; and any facts the court accepts may, if established, have that effect on the sentence or other disposition of the case.

- 7.18 In such cases the prosecution must establish any disputed aggravating sentencing fact beyond a reasonable doubt. Accordingly, if the prosecution wishes to invoke section 9(1)(ba), evidence will need to be called to establish beyond reasonable doubt that the offender possessed information which would have assisted in the location of the victim's body or remains, or deliberately failed to co-operate with the investigation. For the same reasons as previously given, we anticipate this will be a difficult exercise. Further, it is virtually inevitable that any disputed facts hearing will occur before any appeal against conviction is heard, and the defendant will have good reason not to co-operate with the authorities at this stage.²²
- 7.19 These issues invite real questions as to the workability of the Bill, which we commend to the attention of the Committee. Similar concerns with the challenges of determining whether there has been relevant disclosure or co-operation arise in the parole context, and we have earlier noted the Law Society's concern about the need that may arise for additional investigations and hearings by the Parole Board.²³ An amendment of the Bill may be possible to reduce the concern on that point, as follows.

Parole: reducing the potential for unnecessary investigations and hearings

- 7.20 Proposed section 28A(1)(a) of the Parole Act means that the section will apply in every case where the body or remains of the victim of the homicide have not been located. In every such case, the Parole Board will have to call for, receive and consider the material in subsection 28A(3), regardless of whether there is any realistic basis for believing that the offender is or has been in a position to provide information or assistance to locate the body or remains.
- 7.21 To address this, the Law Society suggests deleting the words "or (b)" in subsection 28A(1) and replacing them with the phrase "and there are reasonable grounds to believe that". This would require there to be some evidential basis for investigating the possibility that the offender has withheld information.
- 7.22 If this change were made, there might be a need to provide that the categories of information listed in proposed subsection (3) may be taken into account both in deciding whether there are reasonable grounds for such a hearing and in deciding whether there was a lack of co-operation.

Bail: consequential issues with bail for persons charged with homicide

- 7.23 Lastly, the implications of the amendments for bail decision-making should be considered. Under the Bail Act 2000, persons charged with any form of homicide may apply for bail, either pending trial, or after conviction while awaiting sentence or appeal. One of the matters which must be considered under section 8(2) of the Bail Act is the seriousness of the punishment to which the defendant is liable, and the severity of the

²² At [3.3]–[3.6] and [5.4]–[5.6] above.

²³ At [4.9].

punishment that is likely to be imposed. This is relevant to the primary consideration under section 8 of whether the defendant will answer bail (that is, attend future court hearings and trial). The higher the probable penalty, the greater the risk of absconding.

- 7.24 If a defendant charged with murder or manslaughter is likely to be denied parole if convicted, or to serve a longer sentence prior to release, it may be more likely that bail will be refused. To put this another way, the Law Society considers that it would be concerning and unjust if the threshold for bail in 'no body' cases is raised arbitrarily and inadvertently by reason of this Bill's proposed changes, compared to outcomes for other defendants with similar history and recidivism risk profiles who will, if convicted, be released earlier under the standard parole regime.
- 7.25 It is not clear that this possibility has been foreseen by the proponents of the Bill. One answer may be to exclude new sections 9(1)(ba) of the Sentencing Act and 28A of the Parole Act from consideration under sections 8 and 9A of the Bail Act, if the Bill proceeds. However, if the point remains unaddressed, it adds to the objections we have earlier raised.
- 7.26 The Committee is urged to consider this and other collateral issues that may arise if the Bill is passed in its current form.

Nāku noa, nā



Misha Henaghan
Vice President