SUBMISSION TO THE SENTENCING ADVISORY COUNCIL ON THE REVIEW OF ADULT PAROLE SYSTEM
ABOUT VLA

Victoria Legal Aid (VLA) has a mandate to promote social justice and protect legal rights in Victoria, particularly the rights of those who are marginalised or disadvantaged in our community, such as people in custody. We do this through our access and equity, civil, criminal and family law programs. In 2009–10 we assisted a total of 87,197 people with their legal problems at locations such as courts, prisons, and psychiatric hospitals as well as in our 15 offices across Victoria.

VLA is committed to improving referral pathways for clients seeking legal assistance. We assist more than 80,000 people each year through Legal Help, our free phone information service, as well as being proactive in delivering community legal education to disadvantaged communities, including those in custody.

VLA’s Prison Advice Service provides a regular advice and referral service in Victorian Prisons, including information on criminal, civil and family law matters and administrative hearings including parole and governor's hearings.

INTRODUCTION

Systems of parole have existed in Australia since the early days of European settlement. The purpose of parole has been enunciated by courts on many occasions. It is contended that:

in a society where imprisonment for the punishment of crime is accepted as being sometimes unavoidable, the parole system represents an important influence for the reform and rehabilitation of those in gaol.¹

Implicit in this is the idea that parole serves not only the interests of the person undergoing sentence but that of the whole of the community by preparing the prisoner for reintegration into society. This is an important consideration for Victoria Legal Aid (VLA) as the protection of vulnerable members of the community is one of our priorities. This includes not only prisoners but also their partners and children as well as the broader community.

While the current process of parole in Victoria is fundamentally sound, we propose a renewed focus on the individualised preparation of prisoners for release on parole. Many of the problems that prisoners face on release from prison have a legal component whether related to tenancy, housing, debt, child protection, family violence orders or benefit entitlements. These issues can significantly impede reintegration and if not addressed they can contribute to a cycle of ongoing involvement with the criminal justice system. Expert legal help is therefore an essential part of pre-release preparation.

The current criteria considered by the Parole Board are essentially sound, with some suggested amendments to reflect this re-orientation in favour of reintegration. The suggested change in approach centres on more individualised assessment of risk and takes into account a broader range of views about suitability for parole.

¹ *R v Shrestha* (1991) 173 CLR 48 per Deane, Dawson and Toohey JJ at 69
Legislative criteria are neither necessary or desirable. However, the Board should articulate the guidelines that it uses in its decision-making process and publish them on its website.

We propose a number of measures to address concern about a lack of understanding in the community about the purpose of parole and the decisions of the Board, and the concern that the effectiveness of Parole is adversely affected by a lack of prisoner participation in the decision-making process. Affording some aspects of procedural fairness to prisoners is a key element of the suggested approach to enhance the effectiveness of the parole system.

Reintegration

The successful reintegration of the prisoner into society is in the interest of the whole of the community. This should be the overriding principle when assessing whether to release a person on parole.

Canada’s focus on re-integration highlights the purpose of a successful parole system:

> to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration in to the community as law-abiding citizens.2

This approach strikes the right balance between the protection of the community and the goal of rehabilitating and reintegrating prisoners, given that achieving the latter necessarily contributes to the former.

After all, the real public interest is not in the denial of parole but in reducing the risk of reoffending, achieved through intensive case management and well-resourced support services. Releasing prisoners at the end of a sentence, without the support and supervision of parole is only very rarely in the public interest. The release of a prisoner without support in this time of significant risk increases the risk of harm to the prisoner and others.

A well designed and resourced parole system reduces the risk of harm to the community. Recent studies show that the period immediately after release from prison is of significant risk to the well being of prisoners3, which carries with it increased likelihood of a failure to reintegrate.

Many of the practical problems that prisoners face on release are either legal in nature, or have a legal solution. The sorts of problems commonly encountered include debts that continue to be pursued where the prisoner is in custody. Often prisoners can, with the right legal help, be made 'judgment proof'. The stress of debt is therefore removed

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as a risk factor in the critical post-release period. Equally, many prisoners have involvement in either family violence proceedings or child protection proceedings. Often those orders need to changed to reflect new circumstances. If they are not, parolees run the risk of breaching orders and being returned to custody when legal help may have resolved the issue. Other common legal problems relate to tenancy and access to benefits and therefore income. Parolees may also have outstanding infringements warrants and charges that, with legal help, can be sensibly managed so as to remove another stressor in the critical post-release period.

VLA can provide expert legal help in these areas. A critically important factor in successful reintegration is the implementation of pre release initiatives, which can be described as ‘early intervention’ or ‘preventative’ services, and are broadly recognised as effective and cost efficient. Under the National Partnership Agreement on Legal Assistance Services⁴, an agreement between the Commonwealth government and the State of Victoria, VLA has an explicit mandate to provide early intervention and preventative legal services.

In accordance with this mandate, VLA is reviewing access to its services for ‘harder to reach’ clients, including prisoners and parolees, to ensure that legal help can be delivered in a timely and accessible way. Assisting members of the community, including prisoners and parolees, to address and manage existing and potential legal issues through legal education initiatives, is also an increased focus of VLA. Collaborative and coordinated service design between VLA, Corrections and other service providers is integral in ensuring improved pre release and reintegration programs for prisoners.

Working together, VLA, Corrections and other service providers will be better able to facilitate streamlined access to this help at the earliest possible opportunity. For example, VLA and Corrections could enter into a referral arrangement whereby Corrections could refer consenting prisoners and parolees to our Legal Help line when legal issues are identified either by the prisoner/parolee, by Corrections, by case managers or by other service providers. VLA is committed to exploring these and other opportunities to work with Corrections and other service providers.

Recent experience of improving support and risk assessment around parole in New South Wales (NSW) has shown early signs of success. The approach has included programs providing pre-release assessment and post-release support for those in custody with a history of drug use. A report of the Connections Project shows that 80% of those still in the community after 12 months had not returned to custody at 24 months.⁵

While these results are encouraging, there is evidence to suggest that the critical period for intervention and support is immediately following release. A renewed focus on case management is a key strategy in minimising the risk of re-offending. A strengthening of resources in this area would also help address the widespread issue of lack of suitable housing, in itself a significant risk factor in re-offending.

Key features of planning for reintegration should include release plans and accommodation support. While release plans are currently taken into account in the determination of the Parole Board, prisoners should have the opportunity to be more actively involved in their development supported by integrated and intensive case management.

Housing is a major difficulty for prisoners. Incarceration is a significant contributor to the break down of relationships and generally results in the loss of housing. A lack of stable housing can increase the risk of reoffending. Uncertainty about release dates and the restrictions on some offenders (persons on the sex offender register and those from small or indigenous communities) means prisoners face further difficulty in obtaining suitable accommodation. A focus on improving the stock of housing available to released prisoners is essential to reducing the risk of re-offending on parole.

A difficulty exists in relation to parole for people convicted of sexual offences. It appears that completion of the sex offenders program is generally necessary before parole is granted in these matters. This presents several difficulties. Firstly, the course is usually only available to prisoners in the final months prior to release and it may be that the prisoner has not completed the course by the time the parole board considers their matter. Secondly, the course is not offered at all prisons; it is only available at low security facilities. Thirdly, the course is very difficult to follow and comply with for people with intellectual disabilities or for whom English is a second language. Although there is a modified program for prisoners with an intellectual disability (ID), this relies on both a recognition of the ID and availability of the amended program. Finally, there are occasions where the prisoner refuses to complete the program. VLA has encountered this issue when the prisoner continues to deny the offending or where the prisoner was a victim of sexual abuse themselves in the past and therefore not comfortable interacting with other convicted sex offenders. Where a prisoner has refused to complete the program, for whatever reason, parole is usually refused.

Criteria considered by the Adult Parole Board

The criteria currently considered by the Adult Parole Board, and published on the website are appropriate and complete. We consider that it would be counterproductive to articulate these factors in legislation.

There are no practical advantages in such legislation and there may be a risk that decision-making becomes too rigid. Further, enshrining factors for its consideration in legislation risks undermining the perception of independence of the Adult Parole Board.

However, there would be advantages in a greater level of transparency by the Board in the way in which it approaches the application of those criteria. In particular, public and prisoner confidence in the system would be enhanced by greater transparency in the form of guidelines or similar as to how the Board approaches the respective weight to be given to certain factors, the sort material taken into account and the method adopted for assessment of risk to the community.
In relation to the methodology for risk assessment we consider that the Board should ordinarily be expected to have regard to:

- the plan for the reintegration of the prisoner, including the availability of supports upon release
- the views of those who have an interest in the prisoner, including the remarks of the sentencing judge as these will often provide an insight into the assessment of the prisoner at the time of sentence and provide a point of comparison;
- the prisoner’s conduct in custody: this would involve factors such as general behaviour in custody, willingness to participate in programs and courses, the results of drug screens and the like.
- a comprehensive assessment of the prisoner’s history, including previous involvement, if any, in supervision programs in the community. It may also consider the offenders circumstances at the time of offending and to what extent they have changed;
- the risk to the community if the prisoner were to serve the whole of their sentence in custody and be released without supervision or support.

There are a number of statistical tools designed to assess the risk of future offending. These tools assess groups of offenders who share certain characteristics representing a certain likelihood of offending. While these tools may be useful in determining the allocation of resources for therapeutic treatment, it is not appropriate to conclude from these assessments that a particular person has a specific likelihood of re-offending.

VLA therefore recommends that in addition to the criteria considered by the Board being published on its website, the guidelines used by the Board to assist in decision-making should also be published. This would enable more informed public debate about the decisions of the Board, and would go some way towards affording procedural fairness to prisoners. For prisoners experiencing difficulty understanding the decision-making process of the Board, it is considered unlikely that legislative criteria would assist. It would be of greater assistance to allow prisoners greater support, such as access to interpreters or caseworkers to explain the process.

**Procedural Fairness**

The provision of legal representation at the trial or sentencing stage is considered vital to ensure that the person is dealt with fairly and that all relevant factors are brought to the attention of the court. Whilst the introduction of such representation before the Board would carry benefits, it would necessarily increase cost and may impact on delay in decision making if applied uniformly.

However, a significant proportion of the prison population face difficulty in participating in complex processes. This may be due to illiteracy, intellectual disability, mental illness or language barriers. Providing adequate support services to prisoners is vital so that they may participate in parole proceedings which are necessarily of profound importance to
them. This may include the provisions of interpreters or other support persons to assist
the prisoner to understand the process and any material to be considered by the Board.

In addition to support persons being available at hearings, parolees could be better
equipped to understand and prepare for parole proceedings through targeted information
and education initiatives. VLA is well placed to develop and support initiatives in this
area, in consultation with Corrections.

Many of the factors considered by the Board also lend themselves to the application of
various aspects of procedural fairness as that concept is understood in administrative law
terms. For instance, reports, assessments and recommendations made by professionals
are taken into account and prisoners should be able to comment on and if necessary
challenge the contents of such material.

Providing prisoners with the opportunity to view material to be put before the Board, and
make submissions on these, particularly where an adverse finding is anticipated, not only
improves a prisoner’s understanding of the decision-making process, but may also
improve the quality of information available to the Board.

The Board should also publish its (de-identified) decisions and reasons, as is the case in
New Zealand and Western Australia. This has the potential not only to improve prisoners’
understanding of the system, but will instil public confidence in the system and enhance
the perception of the Board’s independence.

**Improved Communication**

VLA recommends that the process for the revocation or cancellation of parole be
clarified. VLA also recommends that a protocol for communication and information-
sharing between agencies should be developed, bearing in mind overarching privacy
principles.

A frequent problem arises where a person on parole is taken into custody for new
offences. Uncertainty and delay could be avoided if the Board were to indicate what
course it intended to adopt once a person had entered a plea of guilty to the new
charges.

Improved communication between the Parole Board, the courts, and agencies including
Victoria Police would ensure the more effective operation of the courts by avoiding delays
when new charges are considered.
RECOMMENDATIONS

1. That the desirability and benefits of a strong reintegration program as a critically important foundation of a successful adult parole system be re-affirmed;

2. That greater resources, such as accommodation support be made available to support a renewed focus on reintegration, including a legal help component to pre-release preparation;

3. That VLA and Corrections work together to support better pre release and reintegration programs;

4. That the Adult Parole Board:
   a. Publish the guidelines it uses to assist in its decision-making process;
   b. Inform prisoners of its decisions and provide reasons to prisoners in a readily accessible format, prior to publication
   c. Publish its (de-identified) decisions and reasons for its decisions, where it is in the public interest to do so;

5. That the process of the revocation or cancellation of parole be clarified; and

6. That a protocol be developed to ensure more effective communication between the Board and other agencies, in accordance with overarching principles of privacy.