



RESEARCH, POLICY AND ADVOCACY UNIT

SUBMISSION

Sentencing Advisory Council: Review of Victoria's Adult Parole Framework

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Introduction

Jesuit Social Services welcomes the opportunity to make a submission to the Sentencing Advisory Council Victoria's (the Council) Review of Victoria's Adult Parole Framework. However, we do so with grave concerns for the direction that is being pursued by the Government with regard to the more general 'tough on crime' stance that it is taking in regards to the removal of Home Detention options for sentencing and the proposed introduction of Statutory Minimum Sentencing for certain offences.

Jesuit Social Services believes that there is mutual benefit to both the offender and the community as a whole when the emphasis in law and order is on crime prevention and diversion, rehabilitation and redirection away from incarceration. While there will always be a cohort of people who can only be dealt with through imprisonment, this should always been seen as the option of last resort.

The Victorian justice system is looked upon by the other Australian jurisdictions, and indeed other jurisdictions around the world, as being an enlightened and modern approach to keeping imprisonment and crime rates low. This approach has a strong crime prevention and diversionary aspect and does not rely solely on imprisonment as a means of dealing with offending behaviour. The principle of therapeutic jurisprudence lies at the heart of the existing approach and ought to be maintained and strengthened.

We see the operation of a flexible and dynamic parole system as being a cornerstone of both improving the ability of the justice system to lower the incidence of lifelong offending cycles and improving community safety.

This submission contains a brief description of Jesuit Social Services, who we are, and what we do, as well as real examples of the issues facing some of the people we work with. Jesuit Social Services has the mandate and the responsibility to contribute to the discourse about parole based on our 35 years of experience in this field of work and relationships with thousands of people who have contact with the justice system.

Who we are and what we do

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families and communities. Our service has its origins in work with disadvantaged young people involved with the youth and adult justice systems in Victoria.

We do this by intervening directly to address disadvantage and by influencing hearts and minds for social change. We strengthen and build respectful, constructive relationships for:

- Effective services - by partnering with people most in need and those who support them to address disadvantage
- Education – by providing access to life-long learning and development
- Capacity building – by refining and evaluating our practice and sharing and partnering for greater impact
- Leadership development – by partnering across sectors to build expertise and commitment for justice
- Advocacy – by building awareness of injustice and advocating for social change based on grounded experience and research.

Jesuit Social Services values every person and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential. Jesuit Social Services works where the need is greatest and where it has the capacity, experience and skills to make the most difference.

Jesuit Social Services works in the following areas:

- Justice & Crime Prevention - People involved with the justice system;
- Settlement & Community Building - Recently arrived immigrants and refugees and disadvantaged communities
- Mental Health Support & Wellbeing - People with multiple and complex needs
- Education, Training & Employment - People with barriers to sustainable employment.

Our services presently include:

- Brosnan Youth Services: Supporting young people and adults in the justice system, and assisting them to make a successful transition from custody back into the community.
- Artful Dodgers Studios: Providing pathways to education, training and employment for young people with complex and multiple problems associated with mental health, substance abuse and homelessness.
- Connexions: Delivering intensive support and counseling for young people with mental health, substance and alcohol abuse problems.
- Community Programs: Working with people, including the African Australian and Vietnamese communities, on public housing estates across metropolitan Melbourne.
- Support After Suicide: Supporting people bereaved by suicide.
- Jesuit Community College: increasing opportunities for people constrained by social and economic disadvantage to participate in education, work and community life and reach their full potential.

In addition to this, we have a presence in community development activities in the area of Mount Druitt, Western Sydney and Alice Springs. These activities involve our staff relating to a range of Commonwealth and state government departments and services providers.

An illustration of the depth of disadvantage experienced by some of the young people we work with is the case of Sam. Due to problems with his mother's drug use, he was removed from his mother's care from the age of one until he was seven years old. During this time he was sexually abused. By the time he was 14, he had experienced violence, periods of homelessness, problems at school and his first recorded criminal offence.

Adult Parole and Jesuit Social Services

Our focus in addressing the issue of adult parole is squarely on the reduction of crime and the improvement of community safety. We believe that the justice system should be driven by reducing crime - helping to break the cycle of lifelong offending and institutionalisation is the best way to lower crime. The vast majority of evidence and research supports this belief. Jesuit Social Services strongly argues that tax payers' resources should be directed towards focusing on the causes of crime – poverty, homelessness, mental health and addiction problems – rather than throwing billions of dollars at locking more people up.

We take the view that this is best achieved by utilising the experience and expertise of Parole Board members and Corrections officials to provide individualised treatment recommendations and post-release conditions and not by inserting statutory criteria that will hamper the ability of the Parole Board and restrict the use of discretion. Not only does this type of intervention improve community safety and reduce crime but it also has significant benefit for the economy and the taxpayer. The prevailing view in the media that harm minimisation is driven by a focus on tougher 'law and order' settings that revolve around incapacitating offenders is both myopic and largely baseless – discussion of this theme will be explored more later in this document.

Jesuit Social Services' experience and main focus is on young people and the justice system. Our focus is on young people in the justice system (both youth and adult justice systems) and we 'walk with them' to help them turn the corner and get their lives back on track. Our staff have repeatedly noted the affect the transition from the youth justice system to the adult system has on young offenders and how that transition can have a very negative effect on these young people. We often see progress halted or reversed.

We take the view that, just as Corrections Victoria treats those under 25 years of age as youths in their statistics, this same cohort should be dealt with differently by the Adult Parole Board in order for the best possible outcomes to be achieved both for these young people and the community.

Recommendation:

Offenders in custody in the adult system up to the age of 25 should be dealt with by the Adult Parole Board through a specialised approach modelled on the Youth Parole Board. This will provide continuity of treatment, drive improved community outcomes and reduce the incidence of parole breaches.

Parole – Defining the purpose of parole

In addressing the articulated purpose of the review, that is, ensuring 'that the parole system best serves the Victorian community, including promoting public safety and reducing reoffending', it is worthwhile defining what parole is and how it can be used.

The Department of Justice website states that "[t]he purpose of parole is to supervise the reintegration of offenders into the community, for at least six months before the end of their total sentence." (Department of Justice). In the view of Jesuit Social Services, this

reintegration process is extremely important in the process of supporting offenders leaving custodial settings in their reintegration into their communities, and in effect, preventing further crime. It is vital that offenders leaving custodial facilities are given the chance to function as valued and productive members of society.

It is also extremely important in the context of parole that it is not confused with the sentencing debate. We have seen from statements made by the media and the Victorian Government in relation to the impending completion of the sentence of Julian Knight, convicted of the Hoddle Street massacre, some concern levelled at the use of parole in this case. This case must be viewed as unique and revolves around the relevant sentence rather than the appropriateness of parole.

In the main, parole can be an extremely powerful tool in combating crime. Statistics of the post release period consistently demonstrate that it is the period immediately upon re-entry to the community that the highest risk of re-offending is present. Payne (2007, p. xi) observed that about one in four prisoners will be reconvicted within three months of being released from prison and between 35 and 41 percent of prisoners will be reimprisoned within two years of being released.

An observation by a staff member at Jesuit Social Services gives an indication of what those at the coal face see as the purpose of parole,

“Engagement and relationships with offenders are what fosters change in behaviour and change to individual circumstances and parole is a classic mechanism for that engagement and relationship building, parole is a classic mechanism for change” – Brosnan Youth Services Staff Member.

It makes sense then that these relationships are fostered both pre and post release from prison and that aside from being a tool to foster change in the offender’s behaviour, parole offers a mechanism for post release supervision. Workers within the parole network can monitor the progress of an offender to ensure that they are meeting the obligations or conditions of the parole, while at the same time keeping track of the parolee.

Challenges at Post-Release

In rejoining the community, offenders are faced with significant challenges. Some of these challenges are brought about due to the time spent in custody including social dislocation and the increased difficulty in obtaining employment; while others are more inherent and may well have been a contributor in the offending behaviour in the first place.

The makeup of the current prison population shows a bleak picture of people who have come from extremely disadvantaged and, at times, abusive backgrounds. The recently published work by

At the most practical level, imprisonment may mean an offender must rebuild their lives post-release from little or no material base. Personal belongings may be lost because of an inability to store possessions whilst in custody. The deprivation of liberty, the close proximity of violent and other anti-social individuals, and the lack of purpose, may also influence mental health. (Borzycki, 2005, p. 36)

Jesuit Social Services, *Young people in remand in Victoria*, carried out by Professor Tony Vinson and Doctor Matthew Ericson reported that:

- a. less than 6% of those in prison have completed secondary school or its equivalent.
- b. Of all Victorian prisoners aged 18-24 years in May 2007, 43% of females and 71% of males had a history of drug and alcohol addiction. (Vinson & Ericson, 2010)
- c. more than 40% of those incarcerated had experienced mental illness in the 12 months prior to being locked up (ABS)

These statistics do not take in to account the number of individuals with co-morbidities. Mullen (2001, p. 17), notes that there is an increase in frequency of those with mental illness resorting to the abuse of drugs or alcohol and that substance abuse is a major risk factor for violence and aggression in patients with mental disorders, particularly schizophrenia.

Figure 1.0 is an extract from the report by the Australian Institute of Criminology, *Interventions for Prisoners Returning to Community* outlines the full range of challenges that prisoners are faced with on their release.

Figure 1.0 - Challenges Confronting Prisoners (Borzycki, 2005)

Historical factors

- History of social isolation (ie, raised out of the family unit, and/or dislocation from relationships in later life, such as an absence of long-term relationships and support).
- History of criminal involvement by the family.
- History of poor employment or unemployment.
- History of welfare reliance.
- History of sexual, physical, and/or emotional abuse.

Health

- Abuse of licit and illicit substances.
- High rates of mental illness.
- Poor physical health, including blood borne and other communicable diseases, in addition to poor general health and lifestyle.
- High rates of suicide.
- High rates of mortality, especially violent death.
- Co-morbidity of conditions, including dual diagnosis (mental illness plus drug abuse) and triple diagnosis (mental illness, substance abuse, plus blood borne or communicable disease, such as HIV).
- Unknown (although assumed to be high) rates of physical disability.
- Unknown (although assumed to be high) rates of learning disabilities.

Life skills

- Poor education, literacy and numeracy.
- Poor cognitive functioning.
- Poor everyday life skills, including time management.
- Poor financial management.

Parole as a mechanism for change – the power of hope

One of the most notable observations of Jesuit Social Service staff is the power that hope has on an people in custody and the way that they respond to treatment and to making positive steps towards getting their lives back on track post release. This hope is observed to be driven by the proverbial carrot, that is the opportunity for parole before the completion of the full sentence. As noted earlier, parole is a mechanism for change in behaviour and circumstances. “The opportunity for an offender to be granted parole based on their own behaviour means that they can set their own destiny in a way. The most important thing is that it means that it keeps them invested in their own freedom. A lot of these guys have never had that before” – Brosnan Youth Services Staff Member

While there appears to be little research or evidence available within the Australian domain, Canadian researchers have noted that:

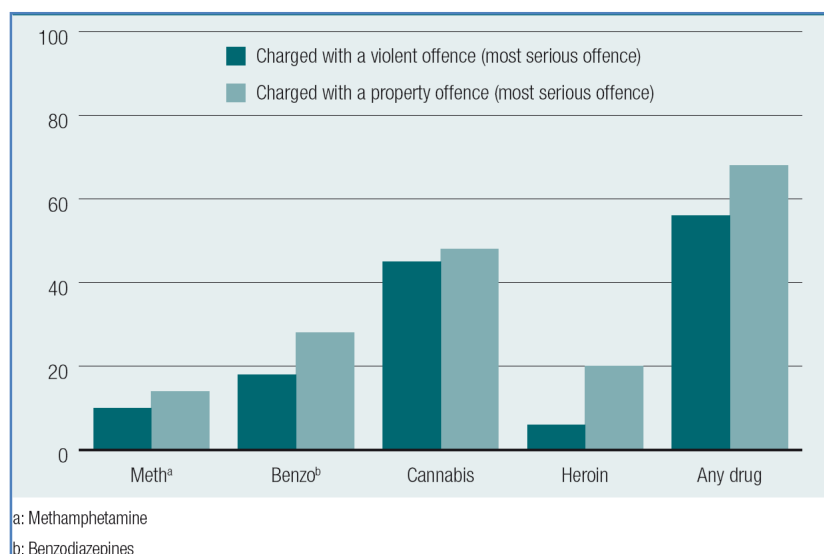
Motivation may be operationally defined as “the probability that a person will enter into, continue, and adhere to a specific strategy” (Serin & Kennedy, 1997, p. 10)

But what seems to vindicate the statements made by our staff:

“Failure rates varied across the seven criminogenic domains and motivation was significantly related to conditional release outcome. Those offenders rated by staff as low on motivation failed sooner.” (Serin & Kennedy, 1997, p. 13)

In investing in their own future, our staff have also noted that offenders who have the prospect of parole are more likely to be more fully engaged in treatments relating to alcohol and other drugs. Given the strong correlations that have been demonstrated to exist between alcohol and other substance abuse and offending behaviour, this type of engagement must be seen as further evidence of the effect that parole can have on reducing crime and improving community safety.

Figure 2.0 below illustrates the extent of the drug problem and its prevalence, taken from the Australian Institute of Criminology’s, Australian Crime Facts and Figures 2010 (p. 75). It shows the numbers of Adult male police detainees testing positive to a drug by type of offence. This underlines the importance of the success of treatments



This hope or motivation is also more likely to be driven by parole conditions that can be truly individualised. On this basis, Jesuit Social Services strongly advocates the need for Parole Board members to be able to exercise their considerable experience and expertise in the field. This can only be properly utilized through discretionary powers.

Kyle is a 25 year old young man with an extensive criminal history graduating to the Prison system at the age of 18. His relationship with family had deteriorated and he had little contact with them until approximately 2 years ago. Due to a number of incidents in prison Kyle* was advised by the Adult Parole Board he would not be released on his earliest release date. The prospect of being denied parole made “pull his head in”, in his own words, in the hope of being released at the next available date which would give him a 5 month Parole period. Although Kyle* had to serve more of his Parole time in prison than he expected he remained motivated and there were no further incidents. Whilst serving this extra time he reconnected with family and was able to return home when released. He has also maintained employment. The day he was released he visited his previous workplace and was offered a job which he commenced the next week.*

Constraints on parole efficacy

The most common observation from our staff at the coal face is that of adequate resourcing. Resourcing issues take various forms throughout the justice system and those specific to post-release treatment and parole can be seen in:

- Caseload ‘overload’ – many of our staff have commented on limits on their ability to truly make a difference immediately pre and post release due to the sheer volume of parolees that require our help.
- Availability of accommodation- many staff reported that there was a lack of adequate housing for transitional and longer term use.
- Access to ongoing treatment – many parolees make good progress through drug and alcohol treatments pre and immediately post release from prison. However, this is noted by our staff as being short lived after the mandated parole period, which may be 6 months, leaving the parolee often in surroundings that are conducive to relapse without ongoing support.
- Access to employment – our staff have also noted that the lack of meaningful activity in prison as well as the lack of availability of employment or training options post release leads to regression in ‘change’ made by prisoners and parolees.
- Lack of understanding of parole conditions – our staff have noted the prevalence of parolees breaching conditions without intent to do so, rather they have not understood the conditions or their requirements, especially younger adults who may have had a different experience in the youth justice system by having more contact from case workers.

To pick up on the issue of housing and accommodation, Jesuit Social Services believes that this is key to the success or failure of parole as a process for changing offending behaviour.

You get a young guy who's just come out of prison and is put in a s@#\$ hole for accommodation. Its dirty, there's a hierarchy and bullying in the joint and no real chance of actually getting a proper nights rest and then you wonder why he's loitering in public places making the public feel unsafe or not able to hold down employment – we've gotta actually give the guy a chance to break the cycle not set him up to fail – Brosnan Youth Services Staff Member

This lack of housing manifests itself in several ways; it can mean that those eligible for parole are left to wait in custody while parole officials seek adequate housing this in itself can cause the loss of hope and with it the aforementioned consequences, parolees can be sent to housing that is 'unsafe'

Overall our staff have noted that the lack of resources is having a very negative effect on the efficacy of parole. This seems to be at odds with the purpose and outcomes that can be achieved by a properly resourced parole and post-release system. As mentioned earlier, parole can be a highly effective tool for fostering change in individuals and turning lives around from the lifelong cycle of offending. Intervene and interrupt this cycle by reconstituting normative behaviour and significant gains will be achieved in quelling recidivism. This can only be of benefit in improving community safety. Properly resourced parole and post release programs also come at a fraction of the cost of the alternative of more prison time, which means:

- They are more likely to re-offend
- More court costs
- More prison costs
- More policing costs.

Steve had received a straight sentence and had difficulty accessing accommodation on release because parolees are given priority to transitional housing due to the limited number of properties available; being on straight release means Corrections Victoria transitional housing is not provided. When released Steve* quickly returned to custody. Although referrals had been made to assist reintegration it was not mandated that he attend and he did not*

According to the 2010-11 State Budget, the Victorian Government spent \$640m on running the prison system to house less than 5,000 detainees (Department of Treasury and Finance, 2011, p. 237) , and that is before the cost of prison infrastructure is taken into consideration. In addition, according to the 2011 Report on Government Services (Australian Productivity Commission) in 2009/10 the Victorian Government spent \$19.50 per offender per day on community corrections offenders and \$293.93 per offender per day on offenders in prison. It is easy to see how the redirection of just a fraction of the money spent on holding offenders in custody to efforts in community corrections could have a lasting effect on reducing crime, improving community safety and breaking the cycle of reoffending.

In drawing these comments to the Terms of Reference of the Parole Review it is the view of Jesuit Social Services that issues pertaining to the effectiveness of the parole system and the proper management of parolees are less to do with the legislative and administrative framework or information sharing and far more a consequence of the system being under resourced.

Recommendation:

Corrections Victoria funding should be directed away from increasing the prison bed capacity towards properly resourcing post-release and parole programming.

Engaging the Community

Just as engagement of parolees in their freedom is important to the individual and the broader community, so too is the engagement of the community with the rehabilitation and reintegration of prisoners upon release from prison. Jesuit Social Services has direct experience in how this benefits both the offender and the community.

When the community is engaged our staff note a number of outcomes that are positive:

Removal of the fear factor – where our facilities are located in the mainstream community that deal directly with offenders on parole or immediately release we have a good relationship with those around us. This has the effect of removing fear from the community around the facility and also lowers the anxiety of and stigma towards offenders, making them more productive and contributing citizens who are far less likely to re-offend.

More productive citizens – offending behaviour and disadvantage have been identified through many studies as having a strong correlation - for example, the Jesuit Social Services study conducted by Professor Tony Vinson, entitled *Dropping off the Edge* found that the most disadvantaged three per cent of Australia's localities have:

- double the rate of unemployment and
- more than 2.5 times the rate of long term unemployment of the remaining places in Australia
- almost double the rate of disability support and psychiatric admissions
- more than double the rate of criminal convictions
- approaching three times the rate of imprisonment.
- their proportion of confirmed child maltreatment cases is more than 3.5 times that of the remaining localities.

This in itself confirms the idea of the cycle of reoffending, but is also relevant to the discussion about engaging the community in the reintegration of offenders into the community. It suggests that where offenders can be brought back into less disadvantaged socio-economic geographic areas they are more likely to succeed in breaking the cycle and in becoming contributing, tax-paying citizens.

Satisfaction for Victims – through our programs such as Community Group Conferencing a formal review has confirmed that victims of crime are far more likely, when involved in the process of the rehabilitation of offenders, to complete the process with some level of satisfaction. This is contrasted with being subjected to what can be an intimidating and emotionally distressing courtroom ordeal and being held at arm's length from the process, leading to a situation whereby no sentence will ever repair the damage caused.

The KPMG (2010) study into Community Group Conferencing found that

- Half of the victims agreed or strongly agreed with the statement “Group Conferencing helped repair the damage caused by the offence”
- The majority (90%) agreed or strongly agreed with the statement “Overall I was satisfied with process and the conduct of the Group Conference”
- The majority (90%) agreed or strongly agreed that the offender would improve their behaviour in the short term
- The majority (80%) indicated that they believed the offender would be less likely to offend in the future as a result of attending this Conference.

The Community Group Conferencing Program is one example of a successful intervention. It brings young offenders, victims and other community members together to talk about a crime and its impacts. It encourages young offenders to take responsibility for their actions and gives those affected a chance to be heard and be involved in developing a plan to make amends.

Statutory Criteria

While it has been referenced on more than one occasion throughout this submission, it is important that Jesuit Social Services’ view in reference to proposed statutory criteria to guide decision making in relation to the granting and revocation of parole is made clear. Just as we have argued strongly in our recent submission to the Sentencing Advisory Council’s study on Statutory Minimum Sentence, we again argue strongly in this submission that the capacity for discretion within the justice system is vital. The Parole Board members have similar expectations to the rest of the community. They are also highly qualified and experienced. They hear all the evidence – they get the complete story.

And the facts tell us that most people would impose a lesser sentence than the judge gave. Research into jurors in Australia found that 90 per cent agreed the judge’s sentence was very or fairly appropriate, with more than half of those surveyed leaning towards greater leniency than the judge’s sentence (Warner, 2011).

It is the view of Jesuit Social Services that far from enhancing the decision-making process or indeed improving the efficacy of the parole system, introducing statutory criteria can only be seen as an infringement on the discretion of the Parole Board and lead to poorer outcomes.

Jesuit Social Services does argue that if the Government decided to legislate for statutory criteria, then statutory obligations must also be legislated for to promote procedural fairness in relation to Parole Board Hearings. The Parole Board has the ability to exercise executive power and on this basis parole applicants ought to be provided with statutory protections afforded to the accused in a regular court. These protections should include:

- The right to a fair hearing
- The right to legal representation
- The right to reasons for the decision
- The right to a review of the decision.

Unlike statutory criteria in relation to the decision making process, these suggested insertions to the statute would in no way fetter the decision making power or the discretion of the Parole Board.

Recommendation

In the event that the government pursues the idea of including the statutory criteria in relation to the granting and revocation of parole, then, statutory obligations in regard to procedural fairness should be inserted into the legislation to ensure fairness and greater transparency.

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