VOCAL

Victims Of Crime Assistance League Inc NSW

Parole in New South Wales

Parole in New South Wales is administered through the Crimes (Administration of Sentences) Act, 1999 and can roughly be divided into three areas, all of which have anomalies.

The first of the categories relate to prisoners whose sentence is less than three years and under those circumstances, release to Parole is automatic, even in circumstances where a prisoner has failed to complete a program targeted at their offending behaviour.

The second category is those prisoners serving sentences where the Non Parole Period is less than 12 years in length and haven't been convicted of Murder.

The third category is referred to as Serious Offenders, those serving sentences where the Non Parole period exceeds 12 years, have committed Murder, or have been deemed a threat to the community, by the Commissioner for Corrective Services. Prisoners deemed Serious Offenders are supervised by the Serious Offenders Review Council (SORC)

The latter two categories of prisoner, when eligible for release to Parole, must appear before the State Parole Authority (SPA) where an initial intention to either release or refuse is made. Where an intention to refuse is issued, the prisoner has a right to seek a public hearing at which time Victims of the crime have a right to make submissions concerning that release. The intention process is completed by way of a private meeting of the Authority, prior to the Public Hearing.

In cases of non- Serious Offenders, the Authority has to consider the reports of the NSW Probation and Parole Service and any Psychological reports relating to the prisoners progress through the system and based on those reports generally makes their decision.

In the event that the prisoner is a Serious Offender, the Authority must consider all the above matters as well as the reports of SORC and base their decision on those reports.

[redacted]

Should SORC oppose release but SPA elects to release they MUST provide reasons for the release.

One of the major flaws in the system is the manner in which Victims make submissions to SPA. In the event of a Serious Offender, the Victim has the right to access redacted reports, detailing the prisoners' participation in rehabilitation programs (s194 of The Act). However if the prisoner is not a serious offender, the victim has no such right, the net result being that it is very difficult to provide probative reasons against release. A further result is that often the Authority classifies the submission of the Victim as being overly emotional and therefore not of value to the process.

The Authority, when making a determination is required to comply with S 135 of the Act, relating to Victims', together with the provisions of S198(2A) but if the Victim has no idea what programs a prisoner has completed, it is difficult to argue that he needs to do VOTP (Violent Offender Therapy Program) when an examination of the reports shows that the prisoner was classified as unsuitable, based on his prison classification.

As a result, during the course of a hearing the Victim has the right to make oral submissions, but without the proper experience and understanding of the law, is more often than not, incompetent to argue their case, on the spot. As an organisation I often appear before the Authority and speak on behalf of the victim, but even with my experience, it is disadvantageous to me, when the prisoner has legal representation, who has full access to the prisoner's records.

Another difficulty arises when the State elects to exercise its' right to a public hearing if they are of the view that a prisoner should not be released. In these cases the Crown instructs the Crown Solicitor to oppose release, who in turn instructs Counsel to conduct the matter. Although it is not stipulated in the Act or in the regulations, when the Crown intervenes, we lose the right to make oral submissions, or at least that has been our experience in these matters.

I am of the view that often Counsel adopts an approach against release which is not always based on the same reasons that I provide against release and in the case of Chiew Seng Liew, the approach of the Crown was rejected by the Supreme Court, yet the view of the Victims, through me, was not even addressed in that decision.

A further major problem with the operation of Parole relates to the Classification of Serious Offender. I have already outlined the criteria but one obvious flaw in this process is using the length of sentence as a determination of seriousness.

I would cite two examples as to why I believe this system to be flawed.

[redacted]

The first relates to the prisoner [redacted] who was sentenced to a non- Parole period of four year with an additional term of two and a half years [redacted], following a conviction of Malicious Injury with intent to commit GBH. The brief facts are that the defendant whilst separated from the Victim, during an access visit, stabbed the Victim twenty one times [redacted]. The attack would have continued except for the brave actions of a group of men who rendered the Defendant unconscious. The Victim survived the attack, but regrettably her daughter who was five at the time, witnessed the attack and has been psychologically wounded by the attack.

Because the sentenced imposed was only four years non- parole, the prisoner was not classified as a serious offender. Because of this Corrective Services deemed that he was not suitable for VOTP and so did not complete the program. As I was not entitled to see his reports as to what he had done in prison, when I appeared and requested that he complete VOTP, I was advised that he was not seen as a Violent Offender in the generic definition of Serious. I contend that anyone who has the capacity to commit such a violent act, clearly has an issue and he should have been so categorised.

The second relates to a 53 year old Male, [redacted], who I am assisting with the current Royal Commission into Systemic Child Abuse.

[redacted] was placed at the Mittagong Boys Home when he was fourteen years old, where he was abused. After he left Juvenile care, he went onto a career in Armed Robbery, although he prides himself on the fact that he never shot anyone.

From the age of nineteen to forty nine he served various terms of imprisonment varying in length from seven to three years. He has spent all but twenty seven months of his adult life in Gaol. At no time during his terms of imprisonment did he ever complete VOTP, because he was not seen to be a serious offender. By his own admission he was a violent offender. In all he has served seven various terms of imprisonment, but the classification system did nothing to address his offending behaviour.

He eventually was accepted into VOTP due to intervention by Lawyers from the Prisoners Legal service and since his last release, some twenty months ago he has not committed any further offences (that we know of)

Generally speaking I believe the Parole Process works well, however in any system there are exceptional circumstances and the system is a little too rigid to deal with exceptional matters.

[redacted]

As a further example, may I direct your attention to the process of revocation of Parole.

Often prisoners fail to comply with one or two minor conditions of release which lead to revocation, for failing to comply. Under normal circumstances after a formal warning has been issued the revocation order is rescinded and the prisoner is re-released. This is a system, which in my experience has proved to be an efficient way of dealing with minor breaches.

When however the breach relates to the commission of further offences, Parole is generally revoked at first instance and the prisoner brought back to the Authority. At hearing, the principle of “innocent until proven guilty” is the predominant view and the offender is normally released pending the outcome of the new criminal matters.

The difficulty with this process is that if there is only a short period remaining, the prisoner’s actions resulting in the breach is not dealt with and often this centres on offending behaviour. The prisoner manipulates the legal process so that his new matters are delayed as long as possible and in one instance involving a child killer [redacted], the matters were delayed 20 months so that by the time he was convicted of breaches of the Child Protection Act, his term for the murder of the child had expired.

My view on this situation is that the current process adopted by the Authority is flawed. With a standard breach, the Authority relies on the reports of P & P and if satisfied by those reports, Parole is revoked and the offender is returned to custody. The rationale here is that the prisoner is still serving a sentence and therefore, release is conditional. For reasons which are unclear to me, if the breach results from the commission of a new offence, the Authority adopts a completely opposite approach. I cannot accept that the Authority is constrained by Judicial Fairness and it is my view that provided, “on the balance of probabilities’ (the civil burden) that he has breached then revocation should occur, even if the indictable matters are unlikely to result in a further gaol term.

There has also been a situation where, if a prisoner is convicted of further matters, even if they are unrelated to his offending behaviour, and is imprisoned, for one day or more, the Authority had to revoke and return the offender to custody of 12 months or the remainder of his sentence, whichever is the lesser, which was not always in the best interest of the offenders rehabilitation. I understand that the government is aware of this difficulty and has drafted amendments to give greater flexibility to the Authority and we would certainly support such a move.

[redacted]

I trust that the information in this submission is of assistance to the Commission but would advise that the author is more than happy to provide additional oral assistance, should you feel that it may be of assistance.

Yours faithfully

Howard W Brown

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