



No. 251

Victim Submissions to Parole Boards: The Agenda for Research

Matt Black

A feature of criminal justice policy in the latter half of the twentieth century was a rise in the victims' rights movement. Various measures were introduced to improve the treatment of victims in the criminal justice system. One way in which victims became involved in correctional procedures was by making submissions to parole boards concerning release decisions affecting those who perpetrated offences against them.

This paper describes the use of victim submissions to parole boards in Australia, and focuses on how one state (Tasmania) has implemented the use of such submissions. Certain policy implications and the need for further research are also identified.

Adam Graycar
Director

The parole system involves releasing prisoners from gaol to serve the remainder of their sentence in the community in accordance with the terms of sentences imposed by the courts. The basis for parole release decisions has varied across both time and jurisdiction. For example, early systems in the United States used release as a reward for good behaviour (Proctor 1999) and some modern systems provide for parole as an entitlement after a specified minimum term of imprisonment has been served. Federal offenders serving sentences of between three and 10 years, for example, are entitled to release after the non-parole period has transpired.¹

Nevertheless, many offenders must be assessed by a parole board before being granted release on parole. In Australia, the state and territory parole boards are generally chaired by a judicial officer and may include corrections officials, medical and other experts, police officers and community representatives. The parole boards are created as authorities independent of the courts and corrections departments, however board membership is dominated by judicial officers and corrections officials, so just how independent they really are from those institutions is questionable.

When deciding parole, consideration is generally given to factors such as the offender's risk of reoffending, the degree to which the offender's behaviour has been addressed, and the adequacy of release plans (Hood & Shute 2000). While it has been common for parole boards to give consideration to the likely effect of an offender's release on the victim,² direct representations by such victims have become an increasingly common practice (Bernat, Parsonage & Helfgott 1994). Victim submissions are almost standard procedure in the United States, but very little is known about victim involvement in Australia.

A victim submission to a parole board is a statement, written or oral, that expresses a victim's views concerning the offence or the offender. Some jurisdictions allow only victim impact statements; that is, statements about the effect of the crime upon the victim. Other jurisdictions allow victims to express their further concerns

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Australian Institute
of Criminology
GPO Box 2944
Canberra ACT 2601
Australia

Tel: 02 6260 9221

Fax: 02 6260 9201

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about the offender, the likely effect of the offender's release or opinions about the offender, and whether parole should be granted at the time the parole board makes its decision.

Prior Research

In the United States, Parsonage, Bernat and Helfgott (1992) conducted a pilot study into the effect of victim submissions upon parole decisions. The authors studied parole data from 1989 in the state of Pennsylvania and divided the 3,559 parole decisions into two groups: cases in which a victim impact statement was present and cases in which one was not. The authors then randomly selected 100 cases from each group. Various data were collated, including offence variables (such as type, seriousness and plea) and offender variables (such as ethnicity, gender, occupation and education).

The study found that parole was refused in 43 per cent of the victim impact statement cases and seven per cent of the non-statement cases. This contrasted with the board's own decision-making guidelines that suggested parole should have been denied to 10 per cent of the victim impact statement cases and seven per cent of the non-statement cases.

In summary, the presence of a victim impact statement had a significant impact on the parole outcome across all types of offence, offender and victim. Apparently, the mere presence of a victim impact statement predisposed the board towards denying parole.

A later review by Bernat et al. (1994) suggests the following conclusions about victim involvement in the parole process in the United States:

- most states require victims to register a desire to be informed about the offender's parole;
- most states require that victims be informed of the hearing at some time beforehand;
- most states allow both oral and written submissions;

- some states allow the victim to make submissions via a representative;
- most states do not require victim submissions to be kept confidential; and
- less than half the states require the board to consider the victim submission.

A full model of victim involvement in parole decisions would include at least three parts:

1. the right to be informed of an upcoming parole hearing;
2. the right to make submissions in the hearing; and
3. the right to have those submissions considered in parole decisions.

To What Extent do Victims Make Use of this Process?

Parsonage et al. (1992) found that a victim impact statement was present in 10 per cent of all parole applications. This may be considered a substantial number, especially as the process had only been operating for two full years before the study was conducted. Recent media reports give the impression that many victims are making, or would make, submissions to parole boards, at least in some of the more serious and high profile cases (Anderson 2003; Sidoti 2003).

There are several factors that might influence the rate of victim participation. It is possible that victims of serious or violent offences may be more inclined to make submissions than victims of property offences. Other offences, of course, may have no specific victim (such as certain drug crimes) or have corporate victims (such as fraud). It is also possible that some victims who have made a statement to the sentencing court have no desire to make further statements.

Another factor influencing the extent to which victims may become involved is the actual process of victim participation. All Australian jurisdictions that impose a statutory obligation to inform victims of an upcoming parole hearing first require those victims to register their details.³

There is no reliable indication of the extent to which victims actually become registered, or how proactively victims are informed of their rights and the registration process. This is an important issue because without advance notice of a parole hearing there can be no real opportunity to make a submission.

Finally, the actual method of preparing a submission may have an influence. For example, in South Australia, victim impact statements are prepared for sentencing courts by police; over 90 per cent of higher court cases in that state include a victim impact statement (Erez & Roeger 1995). If victims are required to prepare their own submissions, even with the assistance of a victim support group, this may result in lower participation rates.

How Satisfied are Victims with the Process?

Victim satisfaction with parole board submissions often hinges on the defined purpose of those submissions. If victims expect too much from the process they may be disappointed. For example, Hinton (1995) concludes that victim statements to sentencing courts in South Australia have been a case of "expectations dashed". This is because victims have expected that their statement will influence the sentence given to the offender, yet may feel that this has not been the case (Erez & Roeger 1995).

Erez, Roeger and Morgan (1997) carried out a survey in South Australia with victims of major indictable offences. At best, the use of a victim impact statement in the sentencing process had a positive but "borderline significant effect on victim satisfaction". More striking was the expectation that the statement would influence the court's sentence. Victims who had this expectation were significantly more "dissatisfied with the sentence than victims who did not expect an impact".

Victim submissions to parole boards raise similar issues. If victims make submissions in the expectation that their input will influence parole decisions, dissatisfaction may result if this is not seen to occur. To avoid this, victims need to be informed clearly as to the manner in which their submission will be used, and whether it is merely an opportunity for them to express themselves.

Are Parole Boards Influenced by Victim Submissions?

The findings of the study conducted by Parsonage et al. (1992) suggest the potential for parole boards to be heavily influenced by victim submissions. Unfortunately, there has been little subsequent inquiry into the topic since that study (which was conducted in 1989).

If victim submissions are likely to have a large impact on parole decisions, disparity may arise between offenders whose victims make submissions and those whose victims do not. The mere presence of a victim submission seems small justification for treating an offender more harshly. It was noted that the parole board studied by Parsonage et al. (1992) subsequently reassessed its guidelines to clarify how victim submissions should be used (Bernat et al. 1994).

Australian Law

There is little consistency in Australian law regarding victim input into the parole process. Some jurisdictions make no provision for it, whilst others provide comprehensive arrangements. New South Wales, Tasmania, South Australia, and the ACT all have specific laws allowing victims to participate in the parole process, although the precise terms vary considerably. Table 1 summarises the current law in the various Australian jurisdictions.

Table 1: Australian laws on victim submissions to parole boards

Jurisdiction	Statutory provisions	Right to submission	Board must consider	Victim informed of hearing
New South Wales	Yes ¹	Yes	No ²	Must be
Tasmania	Yes ³	Yes	Yes	Must be
Australian Capital Territory	Yes ⁴	Yes	Yes	Must be
South Australia	Yes ⁵	Yes	No	May be
Victoria	No	No	No	No
Queensland	No	No	No	No
Western Australia	No	No	No	No
Northern Territory	No	No	No	No
Commonwealth	No	No	n/a ⁶	n/a

Notes:

- 1 These provisions only apply to “serious offenders”: *Crimes (Administration of Sentences) Act 1999* (NSW) ss 142 and 147.
- 2 Board must consider likely effect on victim: s148, *Crimes (Administration of Sentences) Act 1999* (NSW).
- 3 *Corrections Act 1997* (Tas), s 72.
- 4 *Rehabilitation of Offenders (Interim) Act 2001* (ACT), Part 3.3 generally.
- 5 *Correctional Services Act 1982* (SA), ss 77, 85D.
- 6 Parole decisions for federal offenders are made by the Attorney-General: *Crimes Act 1914* (Cth), s 19AL.

New South Wales allows victims of serious offences to have input into parole decision-making. The *Crimes (Administration of Sentences) Act 1999* (NSW) defines a serious offender as any inmate serving a non-parole period of greater than 12 years or any sentence for murder. Victims have a right to be informed of an upcoming hearing and to present written or oral submissions, although oral submissions are by leave of the board. The *Crimes (Administration of Sentences) Amendment Act 2002* includes changes that make oral submissions a right but is yet to come into force. At present in New South Wales, the content of submissions is not legislatively provided for although victims are entitled to legal representation and, with the leave of the board, can give evidence on oath. The board must consider the likely effect on the victim of the offender being released on parole, although not necessarily the victim submission itself.

The *Corrections Act 1997* (Tas) governs parole in Tasmania. When the board is about to consider the release of a prisoner, the victim must be notified and given the chance to make a written statement that “gives particulars of any injury, loss or damage suffered by the victim as a direct result of the offence” and “describes the effects on the

victim of the commission of the offence”. The board must consider the victim submission in its decision-making process.

Parole in the ACT is governed by the *Rehabilitation of Offenders (Interim) Act 2001* (ACT). When a court imposes a sentence of imprisonment with a non-parole period, it must forward the victim’s details to the board. The board must inform victims of their rights in relation to parole and seek their views. Victims may make written submissions regarding the likely effect on them (or their family) if parole is ordered, or about the need to be protected from the offender. The board considers victim submissions both in determining whether to grant parole and what conditions to impose.

In South Australia the *Correctional Services Act 1982* (SA) provides that when an application for parole is received, the board may notify the victim of the day and time of the parole hearing. At the hearing “any victim of the offence may make such submissions to the board in writing as he or she thinks fit”. There is no specific requirement that the board consider the victim submission in making a parole decision, although it may consider any matter it thinks relevant.

One noticeable aspect of parole law in Australia is the absence of legislative guidelines

on how victim submissions should be used in the parole decision-making process. It is often unclear whether parliament intended that victim submissions should be an important consideration in parole decisions or merely one factor to be taken into account.

Finally, although the focus here is on legislative frameworks for receiving victim submissions, this is not to deny the existence of the practice in the other jurisdictions. Parole boards generally have the discretion to consider a range of factors in parole decision-making and this could extend to consideration of victim submissions. For example, Western Australia has a Victim–Offender Mediation Unit⁴ that often reports victims’ views to the parole board in that state.

Tasmania: An Example of Australian Practice⁵

Tasmania has one of the most comprehensive legislative frameworks for the use of victim submissions in the parole process. Combined with some readily available data, this makes Tasmania an illustrative example of the practice of victim involvement in parole decisions in Australia. Information in this case study was gathered from personal communications with the Tasmanian Victims Assistance Unit and published parole board decisions.

The *Corrections Act 1997* (Tas) was introduced into the Tasmanian Parliament to consolidate legislation regarding prisons and parole. The original Bill contained no provisions for the submission of victim statements at parole hearings. In 2002 the Government introduced the *Sentencing Amendment Bill* that inserted the current victim submission provisions into the *Corrections Act*.

The Victims Assistance Unit (VAU) commenced operation on 1 July 2002 within the Department of Justice and Industrial Relations. The VAU is responsible for the

maintenance of the Victims’ Register. Eligible victims (and their family members) can be recorded on the register by completing a two-page registration form.

The board informs the VAU before considering an offender’s parole. The VAU then contacts registered victims with a letter explaining what a victim impact statement is, how it is used and when the parole hearing is being held.

The VAU encourages victims to produce the victim impact statement themselves or to contact the Victims of Crime Service operated by Lifeline, which is contracted to provide victim support services. Sometimes the VAU can also help the victim prepare the victim impact statement, although resources available for this are limited.

A victim impact statement is normally one or two pages long. The VAU has found that most victims are not retributive, but merely want the offender located in some place where they will not come into contact with the victim. The VAU does not monitor the statements to ensure that they only cover material contemplated by the legislation.

If the victim wishes to make a submission, the VAU then forwards that submission to the board. The board is required to wait until a victim submission has been received or until 30 days have passed since the victim was contacted before proceeding with the parole hearing.

The VAU estimates that there are registered victims for about 35 per cent of serious offences. Approximately 95 per cent of these registered victims make a statement to the parole board. That equates to victim impact statements being submitted in about one-third of serious offence parole hearings.

Since October 2002, subsection 7(b) of section 72 of the *Corrections Act 1997* (Tas) has required the parole board to publish its reasons for granting parole. Out of 24 published

decisions since September 2002 there have been two cases in which a victim impact statement was presented and considered. One of those cases involved assault, rape and aggravated sexual assault; the other case involved dishonesty and driving offences. This suggests victim statements were present in about ten per cent of cases. It should be noted, however, that this sample is very small and is limited to cases in which parole was granted. And of course, the system has only been operating for a short period of time. Interestingly, at least eight of the 22 cases in which no statement was provided included offences such as armed robbery, robbery, assault and attempted murder—offences that might be expected to elicit victim participation. In 10 of the cases the offence was not listed.

The Tasmania Parole Board’s (2001) view is that “in nearly all cases it would be wrong to refuse parole solely because of the objection of a victim”. However, it does see victim submissions as “relevant to the sort of conditions which would be imposed on [a] parole order”. For example, the board commonly imposes freedom of movement restrictions in order to ensure the offender does not come into contact with the victim.

Anecdotal evidence suggests that victims are generally satisfied with their dealings with the VAU. Some victims indicate that the right to make parole submissions gives them a feeling of being more “in control”. However, there are signs of early difficulties.

In one case, an offender convicted of attempted murder was initially denied parole in March 2002 at a hearing at which the victim and her mother made submissions. When the offender was reconsidered for parole in December, the victim was not informed until after parole had been granted and the offender was about to be released. The victim’s mother was quoted as saying “I don’t think the parole

board pays enough attention to what victims want" (Anderson 2003).

This highlights the need for care to be taken in the design and operation of victim input procedures so that victim satisfaction is not adversely affected. Of course, it is possible that a number of victims are not going to be satisfied with any outcome that includes early release of the offender.

Issues and Future Directions

In those jurisdictions that allow victim submissions to parole boards there is an implicit assumption that victim input is a positive development. However, Michael Tilbury (1996), formerly Commissioner of the New South Wales Law Reform Commission, has written that the "principal difficulty with [victim impact statements] is to fathom what their necessity or relevance is in most cases". This view, supported by some Australian judges, holds that sentencing courts already take into account the effect of the crime on the victim at the time of sentencing and that further consideration during the parole decision-making process is not warranted (see, for example, *R v RKB*, NSW Court of Criminal Appeal, No. 60344/1990, 30 June 1992, unreported).

Other commentators, particularly from a civil liberties perspective, see victim involvement as a step backwards. Anderson (1995) argued that allowing victims a say in the punishment of offenders "damage[s] our already tattered criminal justice system. By institutionalising revenge, we have been guaranteed more anomalies and serious violations of human rights."

Another argument is that victim submissions "introduce an unfair bias to the proceedings" by not allowing the "parole board to make a neutral decision" (Young 1987). From this perspective, parole decisions should be based

upon the characteristics of the offender rather than the victim. Reliance upon victim submissions, then, arguably reduces the objectivity of decisions.

Of course, these objections rest on the premise that victim submissions actually influence parole decisions. Legislators may need to specify more clearly the way in which parole boards should use victim submissions. As there are no current Australian data to indicate what influence victims have had in the parole process, further research is called for.

The content of victim submissions is equally unclear. In Tasmania, victim submissions are legislatively limited to describing the impact and effect of the offence. Curiously, the Tasmania Parole Board (2001) sees these statements only as relevant to the conditions imposed upon parole. It is difficult to understand the direct relevance that the impact of the offence has upon the offender's parole conditions.

In the ACT, victims are permitted to make a statement about the likely effect upon them of the offender's release as well as any concerns about the need for protection. This type of statement seems to have more utility in decisions regarding both granting of parole and conditions of parole.

The other jurisdictions do not specify content at all, although New South Wales has an information package that indicates that the "submission should state how you, as the victim, feel about the impending release of the offender. The submission should not include any additional evidence" (Victims of Crime Bureau 2001).

The issue of additional evidence is important. What should be done with new allegations against an offender? How should inflammatory or prejudicial material be dealt with and how should the veracity of victim submissions be determined? Should an offender have a right of rebuttal? These questions have serious

ramifications, particularly if victim submissions are influential in parole decision-making.

Another important issue concerns victim satisfaction. In South Australia, it was found that the use of a victim impact statement in sentencing was more likely to lead to victim dissatisfaction (Erez et al. 1997). This was mostly because of unfulfilled expectations. The same danger exists in the parole process. Victims of crime may be further alienated if the framework for using victim submissions is not clear and well managed.

There is currently a need for empirical research into victim involvement in the parole process. There are important questions regarding the impact of victim submissions on release decisions, the satisfaction of victims with the process and the actual content of victim submissions. The issue of the offender's opportunity to respond to a victim's submission or new allegations also needs attention. Further, given the differences that exist between the various Australian jurisdictions, a comparison of the strengths and weaknesses of each system would be valuable.

Policy Implications

Several important policy issues arise from this discussion. The first concerns the level of disparity between jurisdictions. There are already inconsistencies in how offenders in different jurisdictions serve their period of incarceration. As some jurisdictions move ahead with victim participation in the parole process, the potential for arbitrary variations in punishment increases. Justice to offenders and victims alike could be improved through harmonisation of laws and procedures across jurisdictions. Although a slow and difficult process, Australia has witnessed improved national coordination of law enforcement recently and a similar approach would be valuable in parole and corrections.

Another policy issue concerns the extent to which victims become involved in the parole process. Because of the potential impact of a victim submission on the punishment of an offender, there is a need to consider how the selective involvement of victims will be dealt with. One suggestion is that victim submissions be prepared by a victim advocate to ensure that "victim input occurs in virtually all cases" and that there is standardisation in the presentation of a submission (Bernat et al. 1994).

The role that victim submissions actually play in the parole process is another important policy consideration. No jurisdiction in Australia has provided a clear legislative statement of how victim submissions should be used in parole decision-making. Consideration should be given to both the content of submissions and to what degree those submissions should influence release decisions or parole conditions.

Legislators may also need to consider what should happen in cases in which the legal requirements for victim input have not been observed. In the Tasmanian case referred to earlier, the legislative requirements for victim involvement were not complied with. In the United States, at least some jurisdictions allow victims to veto parole if their input was not sought (Bernat et al. 1994). Should this type of situation be grounds for revocation of parole?

Finally, the issue of victim satisfaction needs careful attention. As this paper has shown, if victim involvement is not planned and coordinated carefully there is the potential for increased levels of victim dissatisfaction. Victims should be clearly informed of the role of their input so as to minimise the likelihood of disappointment.

Notes

- 1 *Crimes Act 1914* (Cth), s 19AL.
- 2 For example *Crimes (Administration of Sentences) Act 1999* (NSW), s 148.
- 3 *Crimes (Administration of Sentences) Act 1999* (NSW), s 145; *Corrections Act 1997* (Tas), s 72; *Rehabilitation of Offenders (Interim) Act 2001* (ACT) s 85D. Also compare *Corrective Services Act 2000* (Qld), s 242.
- 4 See further: <http://www.justice.wa.gov.au/displayPage.asp?structureID=97274159&resourceID=37200249>
- 5 Information in the following section was kindly provided by the Tasmanian Victims Assistance Unit.

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At the time of writing, Matt Black was an intern at the Australian Institute of Criminology



General Editor, Trends and Issues in Crime and Criminal Justice series:
Dr Adam Graycar, Director
Australian Institute of Criminology
GPO Box 2944
Canberra ACT 2601 Australia

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