



*REINFORCING THE NSW GOVERNMENT'S
COMMITMENT TO VICTIMS OF CRIME WITH THE
VICTIMS RIGHTS ACT 1996*

SUBMISSIONS
CONCERNING
OFFENDERS IN CUSTODY
INFORMATION PACKAGE



Victims of Crime Bureau



Jointly produced by
Victims of Crime Bureau and Department of Corrective Services

FURTHER INFORMATION

Victims Register

For information about registering with the Victims Register for advice concerning any of the processes mentioned in this information package please contact the: Victims Register Liaison Officer
Ph: (02) 9289 1374

Parole Board

For general enquiries Ph (02) 9289 1125

For specific enquiries concerning an offender's public hearing, contact the Manager, Reviews
Ph (02) 9289 1168

Victims of Crime Bureau

The Victims of Crime Bureau can be contacted 24 hours a day, 7 days a week and can provide victims of crime with information, referral and support.

Ph 9374 3000 (metropolitan callers) or 1800 633 063 (for non metropolitan calls) or TTY (02) 9374 3175 (for people who use a TTY)

Telephone Interpreter Service

If you need an interpreter when making enquiries by telephone Ph 131 450

Victim Support Groups

Enough is Enough

Support including education programs, support for victims of road trauma and development of cooperative justice.
Ph (02) 9542 4029

Homicide Victims Support Group

A support group for individuals who lose someone as a result of murder.
Ph 8274 8900 or 1800 191 777 (tollfree)

Mission Australia Victim Support Service

Telephone support, information and referral, in conjunction with the Victims of Crime Bureau, court support and face to face counselling for victims of crime.
Ph 9374 3000 or 1800 633 063 (tollfree)

VOCAL - Hunter

Support for all victims of crime in the Hunter region including road trauma, court support, community education and referral.
Ph 4926 5826

VOCAL - Sydney

Support for victims of crime.
Ph (02) 9743 1636

SUBMISSIONS CONCERNING OFFENDERS IN CUSTODY

Introduction

This information package is provided to assist victims of crime who are considering whether or not to make a submission regarding an offender to the Parole Board or the Department of Corrective Services. The purpose of the package is to explain the roles of the NSW Department of Corrective Services and the Parole Board and to develop an understanding of the processes involved. Victims of crime are encouraged to contact the relevant agency, which will be determined after reading this information package, to discuss the information or to ask any questions.

A submission concerning offenders in custody relates to the feelings a victim of crime expresses in writing or orally about the proposed release or release on unsupervised external leave about the offender. This information package aims to answer some questions about the process to assist a victim in deciding whether or not to make a submission and, if so, to provide information about making the submission.

The Charter of Victims Rights is part of the Victims Rights Act 1996. It works towards the rights of victims of crime and attempts to ensure that they are cared for properly. The Charter outlines how Government Departments should treat victims of crime and states that victims should be treated with courtesy, compassion and respect.

The Charter refers to two specific points concerning victims rights when offenders are in custody as follows:

The Charter provides that victims "should, on request, be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody."

The Victims Register at the Department of Corrective Services addresses this point. The Victims Register enables the Department to keep victims informed if the offender:

- is due for release;
- has escaped from custody; or
- has a change in security classification which would result in the offender being eligible for unescorted leave of absences eg pre-release leave.

The Charter also states that "a victim should, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody". This means that victims of 'serious offenders' may make submissions concerning an offender's eligibility for parole or unescorted absence from custody.

The term 'serious offender' refers to an inmate who:

- is serving a sentence of natural life;
- was serving a sentence of natural life but has had that sentence redetermined by the Supreme Court;
- is serving a sentence of any length following a conviction of murder; or
- is serving a non-parole period of 12 years or more for an offence.

If victims are considering making a submission they need to register with the Victims Register at the Department of Corrective Services.

The Victims Register records the names and contact addresses of registered victims and is strictly controlled with limited authorised access.

GLOSSARY OF TERMS USED IN THIS DOCUMENT

Adversarial

Refers to opposing parties in a law suit.

Charter of Victims Rights

Part of the Victims Rights Act 1996. It outlines how victims of crime should be treated by Government Departments.

Cross examination

Close examination of a witness after they have given evidence either for the purpose of disproving or checking the testimony.

C3 Security classification

The lowest of the minimum security classifications. Only an offender holding this classification will be allowed to participate in unsupervised external leave.

Determination

Coming to (and announcing) a decision after investigation.

Inmate

Person in the custody of the Department of Corrective Services (see also Offender).

NSW Department of Corrective Services

The Department responsible for holding adult offenders in custody.

Offender

As in Inmate above.

Oral submission

A submission spoken by the victim or their approved representative at a public hearing of the Parole Board.

Parole Board (or the Board)

A statutory body with functions conferred or imposed on it by or under State legislation.

Parole Consideration

The process by which the Parole Board comes to a decision to order or refuse parole.

Public hearing

A hearing of the Parole Board held in a public court to further consider an offender's case; to enable the offender and/or their legal representative to make further submissions; and to enable to Board members to ask questions of the offender.

Review Hearing

The formal name for a public hearing of the Board.

Serious Offender

An offender

- who is serving a sentence of natural life;
- who was serving a sentence of life but has had that sentence redetermined by the Supreme Court;
- who is serving a sentence of any length following a conviction of murder;
- who is serving a non-parole period of 12 years or more for any offence; and
- who may be any other determined offender.

Submission

A document written by or on behalf of a victim. May also be spoken at a public hearing with permission of the Board (see Oral Submission above).

Unsupervised External Leave Programs

Part of a rehabilitative program in which the offender may participate, subject to approval and strict conditions. May include Day Leave, Weekend Leave, Education Leave and a Works Release Program.

Victim

The primary victim of an offence or a family member of the victim where the victim died as a result of the offence or is under any incapacity.

Victims Register

A register maintained by the NSW Department of Corrective Services which records the names and contact details of victims who have requested registration to gain information on offenders.

Victims Rights Act 1996

An Act of Parliament that contains the Charter of Victims Rights. It also has legislation about the Victims of Crime Bureau, the Victims Advisory Board and Victim Impact Statements.

Parole Consideration

It is the role of the Parole Board to determine whether certain offenders should be released to parole in the community and, if so, to determine the conditions of parole.

The Parole Board's role is to consider the cases of offenders where a court has imposed a sentence (including a non-parole period) of greater than three years.

The Board must decide if the release of the offender is appropriate, after considering the public interest and relevant documentation concerning the offender. This includes any submission from a victim of crime.

The Parole Board also deals with the revocation of a parole order where the offender has not complied with the conditions of the parole order, and the revocation of Home Detention Orders and Periodic Detention Orders where conditions of such orders have not been met.

Who can make a submission to the Department of Corrective Services concerning an offender participating in Unsupervised External Leave Programs?

If you are on the Victims Register, you will be informed if the Department is considering a reduction in an offender's classification. This may enable an offender to participate in external leave programs. You will be notified if you are registered and given the opportunity to make a written submission. There is no provision for victims to attend a hearing or to make oral submissions to the Department of Corrective Services.

Who can make a submission to the Parole Board?

If you are a victim of crime, you can make a submission to the Parole Board if:

- the offender is an inmate of the Department of Corrective Services; and
- if their sentence is governed by the Parole Board.

As a victim, you must register with the Department of Corrective Service's Victims Register before lodging a submission. You will only receive timely information if you are registered on the Victims Register.

What happens if I am not registered?

If you are not registered, then you will not be contacted about the parole hearing or any proposed change in the classification of the offender.

If I am registered, when will I be informed so I can make a submission to the Parole Board?

Usually you will be given 4-6 weeks notice by the Victims Register. In addition, if the offender is classified as a 'serious offender', the Parole Board will inform you as soon as possible after formulating its initial intention regarding a parole order. You will then be invited to make a submission if you have not already done so.

Do I have to make a submission?

No. The Parole Board will make a decision with or without a submission from you. The decision to make a submission is up to you as the victim. It is a voluntary process from you that the Board will use in its consideration of the offender's parole application.

What should I say or write about in my submission?

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. It is important to understand that the purpose of the submission is to give the Parole Board information for its consideration. Any submission should be brief and to the point. The submission should reflect your own feelings.

However, you may wish to consider contacting a victim support group to assist you.

WHO CAN MAKE A SUBMISSION?

Victims of ‘serious offenders’ have a legal right to make submissions. However, the Department of Corrective Services also believes that any victim, or a family representative of a victim, should have a similar opportunity to make submissions to the Department concerning an offender’s eligibility for absence from custody. They may also make submissions to the Parole Board where it is the Board’s role to determine whether an offender is to be released to parole.

There are two circumstances where a victim of crime can make a submission:

1. Unsupervised External Leave

Offenders who have been in custody may apply for Unsupervised External Leave Programs. In these cases, the Department of Corrective Services makes the final decision. Submissions regarding offenders applying for Unsupervised External Leave Programs will need to be made to the Department of Corrective Services.

2. Applications for Parole

If offenders are applying for parole, the Parole Board makes the final decision. Submissions about parole need to be made to the Parole Board.

It is important to understand that any submission made by a victim to either the Department of Corrective Services or to the Parole Board forms one part of the agency’s deliberations only. There are many other considerations that these bodies must take into account, for example, the judge’s remarks, the report on behaviour and progress in custody, post release plans etc. Victims need to take this into consideration when deciding whether or not to make a submission.

So that victims, or family representatives of victims, can receive timely advice concerning such considerations they need to register with the Victims Register at the Department of Corrective Services.

The role of the Victims Register

The Victims Register Liaison Officer will assist you by providing details about the submission process and answering any questions you may have. This will help you to make an informed decision about whether or not you want to make a submission to the Department about external leave programs or to the Parole Board about release to parole.

MAKING SUBMISSIONS TO THE PAROLE BOARD OR TO THE DEPARTMENT OF CORRECTIVE SERVICES

Applications for Unsupervised External Leave Programs

It is the role of the Department of Corrective Services to determine whether an offender can participate in unsupervised external leave programs.

The Department of Corrective Services sets criteria about offenders applying for external leave programs. An offender will generally be within the last 18 months of their effective date of release and will usually have served half their non-parole period to be eligible to apply for unsupervised external leave programs. Offenders serving a fixed or non-parole period of 12 months or less are ineligible to participate.

The Department of Corrective Services’ C3 security classification may allow the offender, with approval, to participate in one or more of the following programs:

- Day Leave;
- Weekend leave;
- Education Leave and
- Work Release.

Detailed information about the decisions made will be given to you by the Victims Register Liaison Officer at your request.

CHARTER OF VICTIMS RIGHTS

VICTIMS RIGHTS ACT 1996

Courtesy, compassion and respect

A victim should be treated with courtesy, compassion, and respect for the victim's rights and dignity.

Information about services and remedies

A victim should be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.

Access to services

A victim should have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

Information about investigation of the crime

A victim should, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim should be informed accordingly.

Information about prosecution of accused

A victim should, on request, be informed of the following:

- (a) the charges laid against the accused or the reasons for not laying charges,
- (b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision for the accused to accept a plea of guilty to a less serious charge in return for a full discharge with respect to the other charges,
- (c) the date and place of hearing of any charge laid against the accused,
- (d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.

Information about trial process and role as witness

A victim who is a witness in the trial for the crime should be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.

Protection from contact with accused

A victim should be protected from unnecessary contact with the accused and the defence witnesses during the course of court proceedings.

Attendance at preliminary hearings

A victim should be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.

Protection of identity of victim

A victim's residential address and telephone number should not be disclosed unless a court otherwise directs.

Return of property of victim held by State

If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim should be minimised and the property returned promptly.

Protection from accused

A victim's need or perceived need for protection should be put before a bail authority by the prosecutor in any bail application by the accused.

Information about special bail conditions

A victim should be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family.

Information about outcome of bail application

A victim should be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.

Victim impact statement

A relevant victim should have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.

Information about impending release, escape or eligibility for absence from custody

A victim should, on request, be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

Submissions on parole and eligibility for absence from custody of serious offenders

A victim should, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

Compensation for victims of personal violence

A victim of a crime involving sexual or other serious personal violence should be entitled to make a claim under a statutory scheme for victims compensation.

Will it be a public hearing?

If the Board indicates that it intends to refuse an application for Parole, then the matter will be listed for a public hearing, known as a 'Review Hearing'. In the case of a 'serious offender', where the victim wants to make a submission, there will be a public hearing regardless of whether the intention of the Board is to refuse the application or to grant it.

Do I have to attend the hearing?

It is your decision to attend the hearing whether you have made a submission or not. The decision to attend is very personal. For some victims of crime attending, the hearing is an important step to recovery. Others may decide not to attend as they feel this is the best decision in their own personal circumstances. The decision is yours. If you decide to attend, you should check with the Victims Register or Parole Board whether the offender will be attending the hearing (they have the option to decline). If you do decide to attend, the officer from the Victims Register may be able to make arrangements for you to visit the Parole Board hearing room prior to the hearing if requested. This may assist you to gain familiarity with the hearing room surroundings prior to the actual hearing.

Will the offender be at the hearing?

The offender has the right to attend and usually exercises that right. As stated above, you should check with the Victims Register or Parole Board several days prior to the hearing to know if the offender will be attending.

Can I make an oral submission?

An oral submission means that you will speak in person at the hearing. Oral submissions may be made at a public hearing but only where you, as the victim of a serious offender, have lodged a notice of intention to make an oral submission and only when given approval from the Parole Board. You can ask permission from the Parole Board to have another person speak on your behalf. However, the submission to the Board is about your

feelings as a victim of crime and if you decide you want to make an oral submission to the Board, you should consider the merits of making this submission yourself. A support person can always be by your side.

What do I do if I need an interpreter?

If English is your second language, or you are speech or hearing impaired and you believe that you may need assistance in understanding the proceedings, or if you have been given permission to make an oral submission and need assistance, you may ask for an officially accredited interpreter to be available. An interpreter can also assist you in translating any written submission you may wish to make. The Parole Board can arrange to pay for the costs of an interpreter.

Some people feel more secure if family or friends also attend the hearing. If you wish for a family member or friend to attend, you should consider asking them to act as a support person for you and make use of an official interpreter.

Can I have a support person attend with me?

Yes. Parole Board hearings are open to the public. You may wish to bring a relative, friend or victims support group representative with you.

What if the offender was not classed as a serious offender?

The Department of Corrective Services classifies offenders. This means the Parole Board is not legally required to receive submissions from a victim of an offender who is not classified as a serious offender.

However, as stated earlier, any victim registered with the Victims Register will have the opportunity to make written submissions to the Board.

Can I be cross examined on my submission?

If the submission contains evidence, the person making the submission will be sworn in and placed on the witness stand. This would only occur if the victim wanted to make an allegation, for example, allegations of continuing harassment by the offender or significant events concerning the offender that may have happened since the conviction.

A victim who only wanted to express how they felt about the pending release of the offender would not normally give evidence, and therefore would not be open to cross examination.

Will the offender see my submission?

The offender and their legal representative may have access to the submission either on the day of the hearing or prior to the hearing. There is a provision in the legislation by which a judicial member of the Parole Board may withhold all or part of a submission or document from the offender and/or their legal representative. For example, the address of a victim may be withheld while the contents of the submission will be made available.

Can I have legal representation?

Parole Board hearings are not adversarial in nature. The purpose is not to rehear the original trial, but to make a decision regarding parole, therefore the Board does not have to allow a lawyer to represent the victim. It is important to know that as a general rule a submission made by the victim personally is likely to have more impact than one made by a lawyer.

If, after careful consideration, you still wish to have a lawyer represent you, you must seek permission from the Parole Board and be fully aware of the costs that you will be required to pay.

When will a decision be made?

The decision is usually made by the Parole Board at the hearing. Immediately after all the submissions are made, the members of the Board will adjourn to their chambers to formulate a decision which will be announced by the Judicial Chairman upon their return to the hearing room.

What do I do if I have disability-related requirements?

Some victims of crime who have a disability may need a guardian or family member to assist. You may find it useful to discuss your requirements (or the requirements of the person you are assisting) with the Victims Register Liaison Officer.

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