

Sentencing Advisory Council  
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27 July 2009

Thank you for the opportunity to comment on the Committee's inquiry into Sentencing, Parole Revocation and Confiscation Orders discussion and options paper.

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. Liberty works to defend and extend human rights and freedoms in Victoria.

We make the following comments in relation to your report →

1. Although this issue is outside of the terms of reference of this particular inquiry, Liberty Victoria would like to note that we hold concerns that the decision making process and the decisions of the Adult Parole Board are neither transparent, nor in most cases appealable. We believe that this is an issue which warrants future scrutiny, particularly in light of the yet untested way in which Charter Rights might apply to Parole Board decisions.
2. The starting position is that proportionality and totality should always apply, both to sentences imposed by a Court and to decisions of the Adult Parole Board. These

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principles have evolved as part of our justice system's fundamental commitment to the notion that "punishment should fit the crime".

3. In an ideal system, or a system funded ideally, where a person is alleged to have committed an offence while on parole, the Adult Parole Board should be fully apprised of the allegation and the upcoming court dates. It would be presumptive and inviting unfairness if the Parole Board was to consider the revocation of an individual's parole before that person has either entered a plea of guilty or been found guilty by a court. However, as soon as either event occurs, the Parole Board should be in a position to consider the revocation of parole before a sentence is imposed. This should be able to occur swiftly, minimising delay in the sentencing process.
4. Due to time constraints Liberty Victoria is not in a position to make submissions on the detail of how such a system should be formally structured or the legislative amendments necessary. However, in our submission, the preferable scenario is that the sentencing judge, at first instance, is able to sentence with full knowledge of the person's parole status and to therefore apply totality and proportionality appropriately.
5. The issue of the interplay of confiscation and sentencing is, as the Sentencing Advisory Council is no doubt well aware, complex. Liberty Victoria's position is that, save for property which is clearly derived entirely from the criminal activity, confiscation of assets must be taken into account in sentencing, as it is real and tangible punishment. As with breaches of parole, the ideal system would allow for confiscation and forfeiture matters to be completed expeditiously post conviction or

plea of guilty and pre-sentence. This would require significant resources to be allocated to the Court and to the wider legal system.

6. It is worth noting that, as the legislature introduces more and more complex requirements in sentencing and other aspects of the criminal justice system, it must also be prepared to allocate commensurate resources. Without adequate resources, with the best will in the world, the Courts, the Adult Parole Board, the Police, Corrections, Legal Aid and the Office of Public Prosecutions will not be able to operate so that the system is effective, fair and efficient.

Should you require any further comments please feel free to contact myself on 9914 2702 or Aggy Kapitaniak on 9225 8746.

Yours faithfully

Peta Murphy  
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Committee Member, Liberty Victoria

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