

Giving Victims a Voice in Parole Hearings: South Australia's Experience

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Abstract

Much of the limited research on parole has focused on the prisoner perspective. There is a paucity of research on the victim perspective. This article draws on quantitative and qualitative information attained during semi-structured interviews of co-victims of murders that were conducted by the Commissioner for Victims' Rights, South Australia. This information offers an insight into co-victims' views on whether murderers should be released on parole; co-victims' safety concerns should murderers be released; and, co-victims' views on the parole process. The results confirm the importance of victim participation in the parole process.

Keywords

Victim, co-victim, victims' right, Commissioner for Victims' Rights, parole, victim participation

In most countries that inherited the British criminal justice system, parole evolved from several measures. These measures include conditional pardon; the advent of transportation, in particular that to penal colonies in Australia, and introduction of the English and Irish practice known as 'Ticket of Leave'. Elements of the latter resemble modern parole. For example, the English Penal Servitude Act of the mid-1850s authorized criminal courts to order transportation of criminals sentenced to imprisonment for 14 years or more but also to specify the length of time prisoners were required to serve before becoming eligible for release on 'Ticket of Leave'. The Irish Servitude Act of the same era also provided for the release of prisoners in the final stage of their sentence on 'Ticket of Leave'. While continuing their sentence on leave, these prisoners were supervised by a designated inspectorate or the police.

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In more recent times, prisoners advocates, penologists and others have promoted the concept of parole. They have drawn on several rationales (including a humanitarian approach, a medical approach and a rehabilitative model) for advance parole. They have in addition pointed to parole as a means for maintaining prison discipline and a way to reduce prison overcrowding.¹ Much of the recent debate on parole has been pitched in the context of crime prevention, that is, prisoners on parole are less likely to reoffend, at least while under supervision²; hence, in South Australia, for example, public safety is now the paramount consideration in determining whether to release a murderer on parole.

Whether parole achieves its purposes remains contentious. In Australia 'high profile' cases, such as the rape and murder of Jill Meagher by a 'sexual predator' who was on parole at the time of these crimes, have highlighted the disastrous consequences when prisoners on parole fail.³ Countering the media hype and stirred 'moral panic' is not easy. The empirical research is too scant and results too equivocal to satisfy critics; yet, parole is embedded in modern sentencing practice. It is, for the most part, portrayed as a prisoner's right; and what is known tends to be almost exclusively focused on the prisoner perspective. As a result, little empirical research has focused on the victim perspective, such as the victims' right to participate in parole hearings and their attitudes to parole.

This article seeks to address such omission. For this purpose, it reports on the results of semi-structured interviews conducted by Commissioner for Victims' Rights and Assistant Commissioner for Victims' Rights (here in referred to as the Commissioner) who are tasked with preparing co-victims' submissions to the Parole Board of South Australia whenever a murderer applies for release on parole. A co-victim is anyone (such as a spouse or partner, parent (including foster parent or guardian, child, sibling, extended family member, friend, witness or official, e.g., the police investigating officer)) who has been impacted by the death of a person by homicide. The trauma these people experience may be profound and prolonged. They may also endure a loss of a sense of safety and security.⁴ The possibility that the murderer of a loved one could be released on parole can rekindle the effects of the crime on the co-victim or magnify the effects if they have persisted. There is sparsity of research on co-victims involvement in the parole process.⁵ Using quantitative data, the article reveals, among other findings, the proportion of those bereaved by murder who did not oppose the prisoner's

¹ Gray Cavender, *Parole: A Critical Analysis* (Port Washington: Kennikat Press 1982).

² Richard W. Evans, *In Defence of Parole*. Arena, Issue No. 126, 22–26 (Melbourne, VIC: Arena Publications 2016).

³ *Supra* note 2 (For a United Kingdom example, see Ben Leapman, *Home Affairs Correspondent*. Reid: Give victims of crime a say on parole (21 May 2006), available at <http://www.telegraph.co.uk/news/uknews/1518963/Reid-Give-victims-of-crime-a-say-on-parole.html> (last visited 15 January 2018).

⁴ Basia Spalek, *Crime Victims Theory, Policy and Practice* (Basingstoke, Hampshire UK: Palgrave Macmillan 2002).

⁵ Matt Black, *Victim Submissions to Parole Boards: The Agenda for Research*. Criminology Trends & Issues in Crime and Criminal Justice, No.251 (Canberra: Australian Institute of Criminology 2003); Brent L. Smith, Erin Watkins & Kathryn Morgan, *The Effect of Victim Participation on Parole Decisions: Results From a Southeastern State*, 8(1), *Criminal Justice Policy Rev.*, 57–74 (1997). doi:10.1177/088740349700800103

release on parole, who did oppose the prisoner's release and who did not wish to comment on whether the prisoner should be released or not. Using qualitative data, the article gives an insight into the attitudes of those bereaved by murder on both the Parole Board's decision and the participation process.

It is widely known that a significant proportion of victims are dissatisfied with the way they are treated throughout the criminal justice process. It is also widely known that meaningful victim engagement and participation in decision-making that affects them are crucial in reducing dissatisfaction feelings of marginalization and exclusion.⁶ Giving victims a voice but also ensuring their voice is heard are crucial for there to be procedural justice⁷.

Black⁸ proffers that a full model of victim participation in parole decisions is premised on three rights: the right to be informed of an upcoming hearing; the right to make submissions; and, the right to have their submission considered in parole decision. These rights exist in South Australia and are integral to the parole process for murderers seeking release.

Parole in South Australia

Every state and mainland territory in Australia has a slightly different parole law and procedures; however, the rationales for parole are largely the same. As Evans⁹ (p. 6) says, 'Parole is not a shortening of a sentence, it is part of the sentence. It is a period towards the end of a sentence where a prisoner can, provided certain conditions are met, be released back into the community'.

South Australia's first parole laws came into operation in 1969 (refer section 42).¹⁰ At that time the law assigned all responsibility for deciding prisoners' release dates and conditions to the Parole Board. In other words, it took an 'indeterminate approach' unless the criminal court stated a 'non-parole period', which the court rarely did at that time. The Parole Board could vary a date of release according to the prisoner's conduct and other factors; however, most often the board approved the prisoner's release on them becoming eligible for parole.

In 1983, amendments to the Prisons Act, 1936–83, which was repealed by the Correctional Services Act 1982, removed the Parole Board's power to decide

⁶ Joanna Shapland, Jon Willmore & Peter Duff, *Victims in the Criminal Justice System* (Aldershot, England: Gower Publishing 1985); Julie Gardner, *Victims and Criminal Justice*. Series C, No. 5 (Adelaide, SA: Attorney-General's Department 1990); Michael O'Connell, *Victimology: An Introduction to the Notion of Criminal Victimization*, in *Key Issues in Criminal Justice 192–241* (2nd ed.) (R. Sarre & J. Tomaino eds, Unley, SA, Australia: Australian Humanities Press 2005).

⁷ Malini S. Laxminarayan, *The Heterogeneity of Crime Victims: Variations in Procedural and Outcome Preferences* (Nijmegen: Wolf Legal Publishers 2012); Michael O'Connell, *Violence in Australia and Its Victim: A Case for Victims' Rights and Victim Assistance*, in *Preventing Violence In Australia: Policy, Practice And Solutions 6–24*. (A. Day & E. Fernandez eds, Leichhardt, NSW, Australia: The Federation Press 2015a); Michael O'Connell, *The Evolution of Victims' Rights and Services in Australia*, in *Crime, Victims And Policy International Contexts, Local Experiences 240–277* (D. Wilson & R. Ross eds, Basingstoke, Hampshire, UK: Palgrave Macmillan 2015b).

⁸ *Supra* note 5.

⁹ *Supra* note 2.

¹⁰ Prisons Act 1936–76 (SA) (Austl.).

whether or not a prisoner sentenced to a year or more in gaol would be released at the end of the non-parole period. Instead, the new law allowed parole release dates to be brought forward by up to a third through remissions. This was consistent with other reforms taken toward 'determinate' modes of sentencing. Such reform lasted less than a decade. In the 1990s, 'Truth in Sentencing' law disallowed 'remissions' of up to a third of the non-parole term originally set by the court. To standardize the impact of the new law on prisoners already serving their sentences, a 'sentencing discount' of up to one third of the court set non-parole period was granted to all. Thus, a murder sentenced to mandatory life imprisonment and a non-parole term of, for example, 20 years received a discount of 5 years; so a new non-parole term of 15 years took effect on the law becoming operational.

The current parole law (s. 66)¹¹ provides that a prisoner imprisoned for less than 5 years for whom the court has set a non-parole period will be released on parole automatically (with some exceptions), but subject to conditions the Parole Board sets. Other prisoners, including murderers, must apply to the Parole Board to be released on parole once they have completed the non-parole period (s. 67)¹²

In 2015, the parole process for life-sentenced prisoners in South Australia underwent major reform. Prior to this date, while the Parole Board would make a recommendation on whether to release the prisoner on parole the final decision rested with the Governor in Executive Council. If both the Parole Board and the Governor agreed that a murderer should be released on parole, the murderer would serve a period of 10 years on parole then his or her sentence would be complete.

Until 2002, this executive power to refuse a murderer parole was rarely used. On the election of the Rann Labor Government in 2002, criminal justice policy took a more punitive-minded approach. Ministers of the Government in Executive Council with the Governor recommended contrary to the Parole Board's recommendation that many murderers should not be released. The Labor Government introduced law to set a 20 year minimum non-parole period for murderers and about a decade on introduced law that requires murderers to reveal the whereabouts of a deceased victim's body and to co-operate with the police on matters pertaining to the murder (such as revealing where the murder weapon was hidden or disclosing the identity of an accomplice) before they are eligible for release on parole. This article does not discuss the efficacy of such law.

It is appropriate at this point to acknowledge that the Parole Board has not been immune from the pressures exerted on politicians to change parole laws.¹³ Further, the board has responded to greater scrutiny and increased public attention.

The 2015 reform of the parole process for murderers was implemented in 2016 in an effort to de-politicize the process and provide greater transparency.¹⁴

¹¹ Correctional Services Act 1982 (SA) (Austl.).

¹² *Supra* note 16.

¹³ Frances P. Bernat, William H. Parsonage & Jacqueline Helfgott, *Victim Impact Laws and the Parole Process in the United States: Balancing Victim and Inmate Rights and Interests*, 3 Int. Rev. Victimol. 121-40 (1994).

¹⁴ Peter Malinauskas, *Inaugural Parole Administration Review Commissioner Appointed*, Media Release, Adelaide (12 February 2016), available at www.premier.sa.gov.au/index.php/peter-malinauskas-news-releases/198-inaugural-parole-administration-review-commissioner-appointed (last visited 29 January 2018)

The reform solidifies victim participation in the Parole Board's decision-making (s. 67 (4) (ca))¹⁵ and further empowers the Commissioner for Victims' Rights to appeal the board's decision to release a murderer (s. 77E).¹⁶ It is considered to be a rebalancing of the parole process, which was seen as slanted towards murderers at the expense of victims' families and the public's interest.

The law now dictates, the paramount consideration of the Parole Board, when making a decision to release a murderer must be the safety of the community (s. 67 (3a)).¹⁷ The Board also considers the prisoner's general behaviour while in custody, efforts in addressing offending behaviour, the likelihood of compliance with parole conditions, any reports on social background, physical health, psychological or psychiatric condition and any insights the prisoner does or does not have in relation to the offence. Importantly, the Parole Board must consider the impact of the release on the deceased victim's family and other co-victims as well as any safety concerns they may have (s. 67(4)(ca))¹⁸.

Since the late 1980s, correctional service staff have been obliged to inform victims who request to be kept informed of an upcoming parole hearing. An inventory of the victims requesting this information is kept on the Victim Register. Victims' contact details kept on the Victim Register are confidential and any public official who misuses the register can be prosecuted and, on a guilty finding, fined up to \$10,000 (Australian) (s. 85C)¹⁹.

While victims had the right to make written or oral submissions since the 1990s, it was not until about 2010 that the Minister for Correctional Services asked the Commissioner for Victims' Rights to ensure that co-victims' views were sought whenever murderers applied for release of parole. Since the operation of the 2015 reform, this process has been formalized both in law and practice (s. 77(2)(ba); s. 10(2)).²⁰

Although the law requires the Parole Board consider the views of registered victims, the Commissioner for Victims' Rights also seeks to identify non-registered victims and interested parties, including next-of-kin, extended family members, friends of the deceased, witnesses or other relevant persons. This is considered particularly important given the number of registered victims is small compared to the number of 'potential' registered victims. The reasons for the low number of registered victims are unsubstantiated by sound research but include public officials failing to tell victims about the registration process²¹; and, that many of the murder cases presently within the parole domain pre-date the establishment of a formal victim register in Correctional Services. It is also widely recognized that people who suffer trauma often experience a sense of powerlessness as well as difficulty concentrating, retaining information and making decisions.²²

¹⁵ *Supra* note 16.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Supra* note 16.

²⁰ *Id.*; Victims of Crime Act 2001 (SA) (Austl.).

²¹ *Supra* note 5.

²² Susan Herman, *Parallel Justice for Victims of Crime* (Washington, DC, United States: National Centre for Victims of Crime 2010); *Supra* note 9.

Therefore, even if provided with the necessary information, victims may not be registered. Hence, the Commissioner takes concrete steps to communicate with co-victims and afford them with the opportunity to participate either solely through him or to make their own submission direct to the Parole Board as well as contribute to the Commissioner's submission.

To facilitate the submission of co-victims' views, a protocol was agreed whereby, at the time a murderer lodges an application, the Parole Board requests a submission from the Commissioner for Victims' Rights outlining the victims' views. This approach is consistent with Bernat, Parsonage and Helfgott's²³ (p. 135) suggestion that victims' submissions should be prepared by a victim advocate in order to ensure 'victim input occurs in virtually all cases'. Black²⁴ also highlights the importance of the process of participation, suggesting that fewer victims are likely to participate if required to make their own submissions. Mindful of such observations, the Commissioner directly approaches registered co-victims and unregistered co-victims and personally offers assistance. With the consent of the co-victims, information is also gathered to assist the Commissioner in making a submission to the Parole Board.

In addition to its responsibilities governed by victims' rights law, the Parole Board must be satisfied that the murderer has satisfactorily cooperated in the investigation of the offence (whether the cooperation occurred before or after the murderer was sentenced to imprisonment) (s. 67(6)).²⁵ For such purpose, the Board seeks a report tendered to it from the Commissioner of Police evaluating the murderer's cooperation in the investigation of the offence. The report includes the nature and extent of the murderer's cooperation; the timeliness of the cooperation; the truthfulness, completeness and reliability of any information or evidence provided by the murderer; and the significance and usefulness of the murderer's cooperation (s. 67(7)).²⁶ The requirement to cooperate is colloquially referred to as 'no body, no parole' law.

The 2015 parole reforms well introduced a new process of review including the appointment of a Parole Administration Review Commissioner (Subdivision 2).²⁷ On his appointment, the first Parole Administration Review Commissioner, the Honourable David Bleby QC said, 'It is of great importance to both the prisoner and the community that parole decision reviews regarding the release of life-sentenced prisoners should be objective, impartial and not driven by emotional or partisan considerations' (p. 1).²⁸ Notably, the Honourable Bleby QC does not mention the victim. The significance of his omission on the weight he might give to victims' interest should he be called on to review a Parole Board decisions is unclear. However, the law, as mentioned, obliges consideration of the impact of the release on the victim's family. Furthermore, the victim's family's interest served as foremost in the mind of the drafters of the new law.

²³ *Supra* note 13.

²⁴ *Supra* note 5.

²⁵ *Supra* note 16.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Supra* note 19.

The new law in addition repealed the 10 year on parole for murderers and replaced it with parole for life (s. 69(2) Correctional Services Act 2918). On the change, the Commissioner for Victims' Rights stated that the murderer sentenced his or her victim to death and imposed a life sentence on the victim's family; it is right therefore that the murderer should serve a true life sentence.

Parole Process for Life-sentenced Prisoners in South Australia

As outlined in Table 1, on receipt of a murderer's application for release on parole, the Parole Board notifies the Commissioner for Victims' Rights. The Commissioner, in consultation with staff for the Victim Register in Correctional Services, identifies the registered victims and contacts each. The Commissioner also, in consultation with staff for the South Australia Police, identifies people with a likely interest in the matter (for instance, a non-registered family member, or a witness for the prosecution whose well-being might be at risk should the murderer be released) and also contacts each. The Commissioner's endeavour to contact as many co-victims as reasonably practical has involved searches to find people throughout Australia and internationally.

The Commissioner uses a pro-forma questionnaire (refer Appendix A) as a guide to conduct semi-structured interviews with each co-victim willing to participate. For each murderer, the co-victim's, or co-victims', answers are collated, summarized then incorporated into the commissioner's submission to the Parole Board.

A typical submission will include the following

- On-going issues relating to the impact of the murder on the deceased victim's family, which often illustrate the 'life-sentence' those bereaved by murder endure.
- Details about perceived safety concerns or other worries as well as information that might help the Parole Board assess the impact of the murderer's release on the, for instance, victim's family.
- Requests for 'exclusion zones' (co-victims can request that certain locations or areas be noted in the conditions as restricted areas that the murderer is prohibited from entering for any reason).
- Reasons for or against a 'no contact condition', which prohibits the murderer contacting co-victims either directly or indirectly. The Parole Board tends to default to the inclusion of this condition but the commissioner does not assume that a co-victim wants no contact; some in fact do and several have queried the possibility of meeting the murderer at a restorative practice victim-prisoner conference.

The board takes the submission into account during its deliberations on the murderer's application for release on parole. Co-victims can also make their own submissions (either in writing, which is most common, or orally) and the board must take these into account.

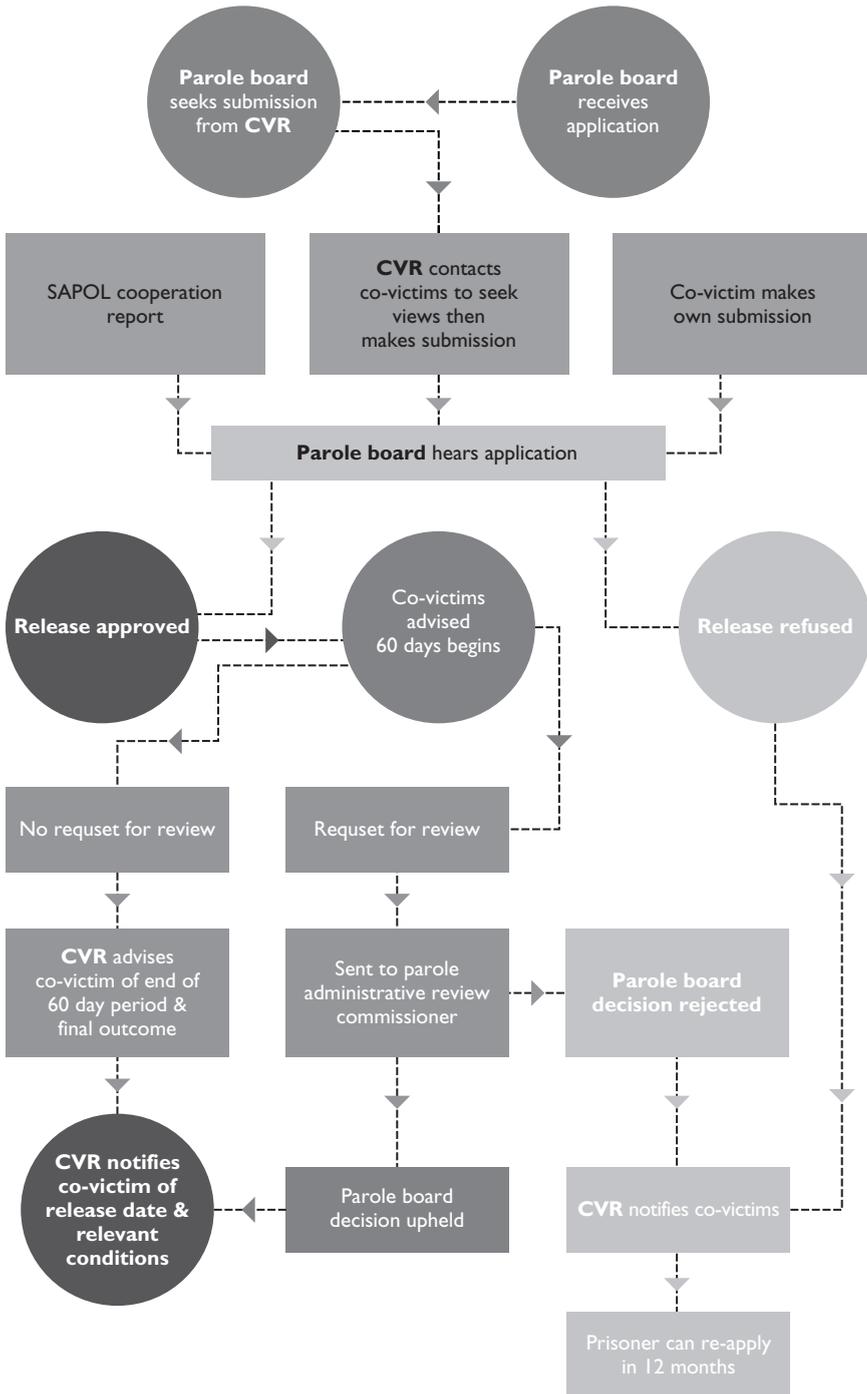


Table I. The parole process
Source: Authors' own.

Should the Parole Board determine to order the release of a murderer, the board must then provide a copy of the order and a written statement of the reasons for making the order to the Chief Executive of the Department for Correctional Services, the prisoner, the Attorney-General, the Commissioner of Police and the Commissioner for Victims' Rights (s. 67(7a)).²⁹ This also marks the commencement of a 60-day period in which the Attorney-General, the Commissioner of Police and the Commissioner for Victims' Rights may lodge a request for a review of the decision to release a murderer (s. 77E).³⁰

At the commencement of the 60-day period the Commissioner for Victims' Rights again contacts any co-victims to advise them on the decision, the reasons for the decision and the parole conditions as then proposed by the Parole Board. If no request for review is lodged, the co-victims are contacted at the conclusion of the 60-day period and advised of the release date. If a request is lodged, the Parole Administration Review Commissioner conducts a review of the decision. Co-victims are again kept informed. During the 60-day period, the commissioner and the chair of the Parole Board often exchange correspondence on the parole conditions. Mostly, the correspondence is about how to address the co-victim's safety concerns and to give reasonable effect to the co-victim's requests for an 'exclusion zone' (that is a geo-graphically defined area that the murderer on release is prohibited for entering for any reason).

Critics of laws governing victims' right to participate in the parole process assert that such laws often fail to 'clearly articulate what weight, if any' would be attributed to such information (p. 125).³¹ The South Australia law partially addresses this by requiring the board to consider the impact of the murderer's release on registered victims, who especially include the victim's family. The law, however, is silent on the weight given to such compared to, for instance, the murderer's right to be released on completing the non-parole period. Some co-victims find this an affront.

The commissioner has occasionally encountered on-going concerns expressed by the co-victims. The commissioner has tackled some of these by providing practical or material help, such as installing household security devices (e.g., a monitored alarm, security-screen doors and closed circuit television system) on the co-victims' homes. By delegation pursuant to section 31 of the Victims of Crime Act 2001, the commissioner debits the costs for these devices to the Victims of Crime Fund.

Evaluation of the Current Process for Murderers Seeking Release on Parole

The commissioner has kept transcripts of all the semi-structured interviews conducted since the current process for murderers seeking release on parole commenced on 1 July 2016. The first motive for collecting the information was a legal one. In other words, the transcripts were not made for research purposes. At the same time,

²⁹ *Supra* note 16.

³⁰ *Id.*

³¹ *Supra* note 30.

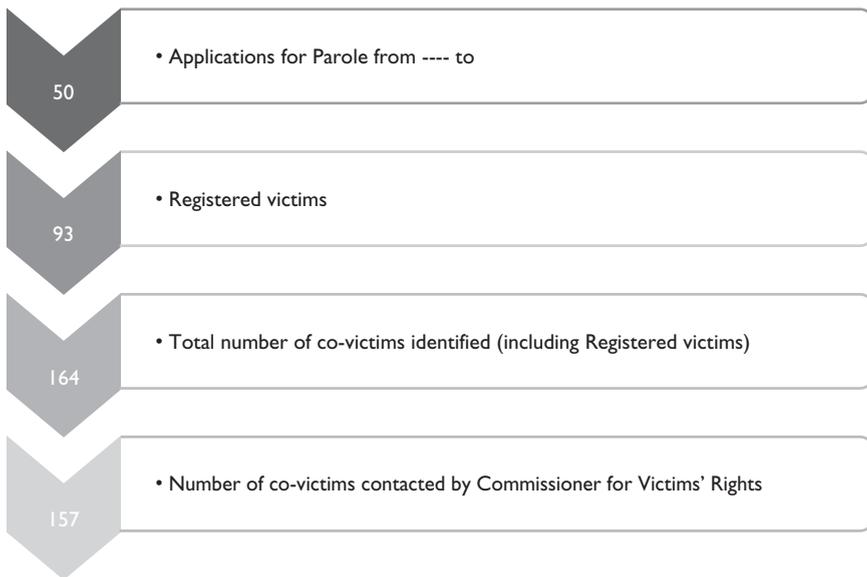


Table 2. Number of murders' applications and number of co-victims contacted

Source: Authors' own.

however, an analysis of the content of the transcripts makes an important contribution to the understanding of victims' views on parole decisions that affect them.

Between 1 July 2016 and 31 December 2017, the commissioner received notice on 50 murderers' applications for release on parole. As Table 2 shows, the commissioner identified 164 co-victims whom he tried to contact, however, of these the commissioner contacted 157.

The difference in the number of register victims ($n = 93$) and the total number of co-victims identified ($n = 164$) confirms the importance of the enquiries made by the commissioner to afford as many co-victims as practical their right to participate.

The number of co-victims contacted for each matter was flexible and dependent upon who was initially identified as having an interest in the matter. Following the initial contact, the number of co-victims often increased on a chain referral basis. The number of co-victims contacted ranged from one to seven with an average of 3.1 co-victims per parole application.

Figure 1 shows the relationship between the co-victim interviewed by the Commissioner and the murder victim. Totally, 121 co-victims were 'immediate family' that includes partner, children, parents, grandparents and siblings. Four co-victims are labelled 'victim' because they were the direct victim of another offence perpetrated by murderer either separate to the murder (e.g., the murderer committed a robbery on a separate occasion) or during the course of the murder (e.g., the murderer assaulted the victim before murdering that victim's housemate). 'Other' includes the foster parents of a child whose mother was murdered by the child's father; and, 'related to the offender' includes that child who is now an adult. 'Extended family' includes kinfolk, which is a consideration when dealing with culturally and linguistically diverse as well as Indigenous people bereaved by murder.

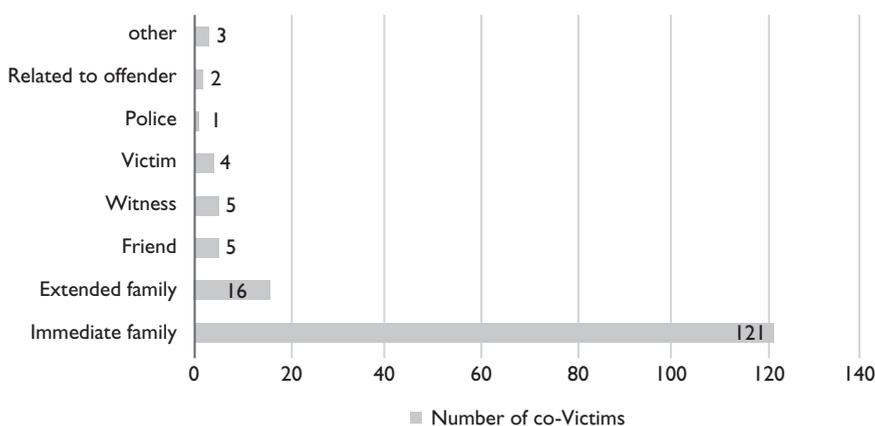


Figure 1. Number of co-victims by relationship to the murderers

Source: Authors' own.

In the next section of this article, the results of an analysis of both the quantitative data and qualitative data attained during the semi-structured interviews are presented. Each interview was conducted one-on-one mostly by telephone; however, the interview might not have happened on the first contact as some co-victims were not ready to speak at that time. An interview on average took approximately 30 minutes to an hour, although some interviews took longer or might have taken several communications. The actual time taken for each interview was not recorded. Mindful of the hearing date, the format and time of the interviews were driven by the needs and wishes of the co-victims.

The Commissioner first introduced him or herself then explained the reason for the contact. If the co-victim was prepared to listen further, the Commissioner explained the parole process and the co-victim's right to participate. If the co-victim stated that he or she wanted to participate, the semi-structured interview happened, guided by the pro-forma questionnaire.

Results of Semi-structured Interviews

Co-victims were asked whether they opposed the murderer's release on parole. Of the 157 co-victims who responded, as Figure 2 shows, 57 per cent ($n = 89$) opposed the murderer's release; 33 per cent ($n = 52$) did not oppose the murderer's release; and 10 per cent ($n = 16$) offered no comment or did not want any involvement in that decision.

On being asked why they opposed the murderer's release, co-victims stated a variety of reasons:

- The murderer was not and is not remorseful, nor has the murderer been contrite.
- The murderer gave up their right to freedom when they killed.
- The murderer has been imprisoned so long, he or she is likely to be institutionalized and probably unable to cope outside the prison.

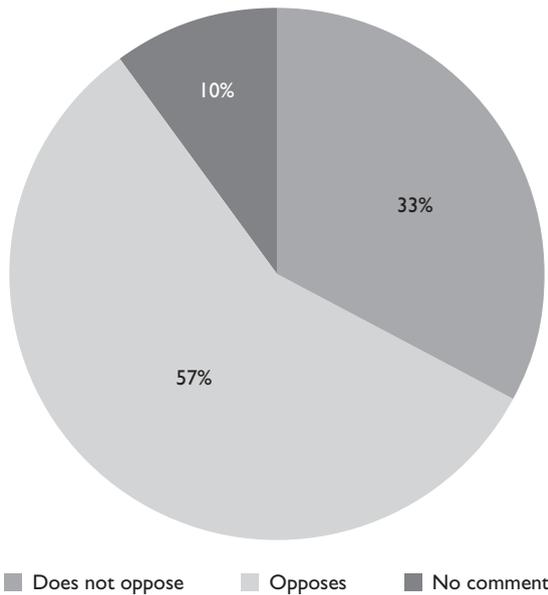


Figure 2. Co-victims' answer on whether they oppose, or not, the murderer's application for release

Source: Authors' own.

- The murderer is incapable of being rehabilitated.
- The murder will re-offend (and several co-victims added their opposition was justified to protect others from becoming victims of violent crime).
- The murderer was sentenced to life imprisonment and to serve less the life is unjust—life should mean life.
- The murderer if released will pose too great a risk to community safety.
- The murderer's release will reignite feelings of injustice (the co-victim added the murderer should serve his sentence in its entirety).
- The murderer's application is deeply offensive as the victim's family continues to live with their loss, so the murderer should not have the right to start new life.
- The non-parole term imposed by the court was inadequate (a child-murderer who the court sentenced to life imprisonment but set a non-parole term of 5 years)

Many of these responses are consistent with the conjecture and popular commentary on victims' participation in parole hearings. Some co-victims offered thought-provoking explanations for their opposition to the murderer's release on parole. One opposed the murderer's release but also conceded that the murderer is entitled 'in the eyes of law' to be released if he has completed the non-parole term and taken steps to rehabilitate. Several in one family were worried about the double-murderer's release but became more accepting as they engaged in the process, especially on being given information

about the murderer's mental health, his admissions and replies to their long-standing queries about his reasons for his crimes. They conceded that his release would happen eventually and ultimately the Parole Board was better able to determine when that should happen than them. A co-victim from an African nation opposed the murderer's release but stated that she might have forgiven the murderer if he and his family had fulfilled their customary responsibilities in accordance with their lore. The co-victim explained that she and the murderer's mother had known each other but the mother 'never once picked up the telephone to say sorry'. If the murder had happened in their home country, the murderer's family would have visited the victim's family, made an apology and to show their apology was genuine given a cow or like 'offering'. None of this occurred, so the murderer should continue to be punished for his crime.

Contrary to the conjecture and popular commentary on victims' views on parole, there is some evidence that victims generally do not hold particularly punitive views of offending.³² The responses of co-victims who did not oppose the murderer's release lend favour to such evidence. These co-victims answers included the following:

- No opposition so long as the murderer poses no risk to others.
- If rehabilitated and the murderer is given appropriate support to reintegrate then he should be released.
- If rehabilitated then everyone deserves a 'second chance' (and the co-victim, who is the son of the murder victim, added he might one day meet the murderer to get answers to questions that have haunted him since his father's death).
- Should the murderer remain in prison they will continue to be a burden on society.
- 'Hopes he is released and is able to get on with his life'.
- 'I will not forgive but I need to move on'.
- 'I do not oppose so long as the Parole Board is satisfied he is adequately rehabilitated. It is their decision'.
- 'Let bygones be bygones' the murderer should be given a chance 'to get on the straight and narrow' (and the co-victim asked that their views be communicated to murderer).
- 'Not my place to determine. I am afraid but I do not hate'

The sister of a murder victim perpetrated by youths stated that 'The murderers have sacrificed the prime stages of their lives—they have done their time—so I must accept the law'. She also, however, asserted that if the murderers are not Australian citizens they should be deported because they had by their crime surrendered any entitlement they might have held to live in 'our wonderful country'. Thus, she added with respect to one of the murderers that she had no opposition

³² *Supra* note 4.

so long as the murderer will be deported, which the Commissioner was able to confirm will happen.

The issue of responsibility was raised by another co-victim. The co-victim did not oppose the murderer's release because they felt sorry for the murderer as 'he was the only one held responsible despite others involvement'.

The qualitative data would suggest that many of those who did not oppose the release of a murderer comprehended the need in parole hearings to strike a balance between their own interests, the murderer's interests and the interest of the public at large.

Among those who wanted no involvement or offered no comment on whether the murderer should be released four pointers stood out:

- The co-victim did not wish to influence the Parole Board.
- The co-victim believes in forgiveness (which is not minimizing or excusing the crime).
- The co-victim is ill-placed to comment as she has 'no way of knowing' if the murderer is rehabilitated.
- The co-victim was adamant 'Not my job' to make the decision on whether to release or not.

Co-victims were next asked whether they had any safety concerns. This question was put no matter whether the co-victim opposed the murderer's release, or not. No assumption was made regarding victims safety. Figure 3 shows almost 60 per cent of co-victims stated that they did not have any safety

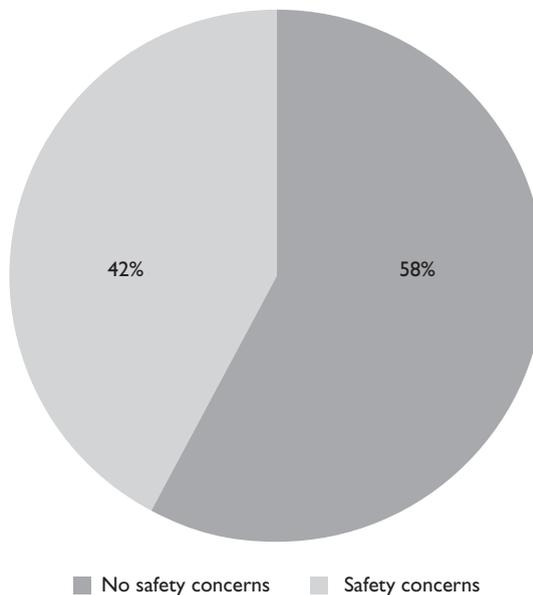


Figure 3. Co-victims safety concerns

Source: Authors' own.

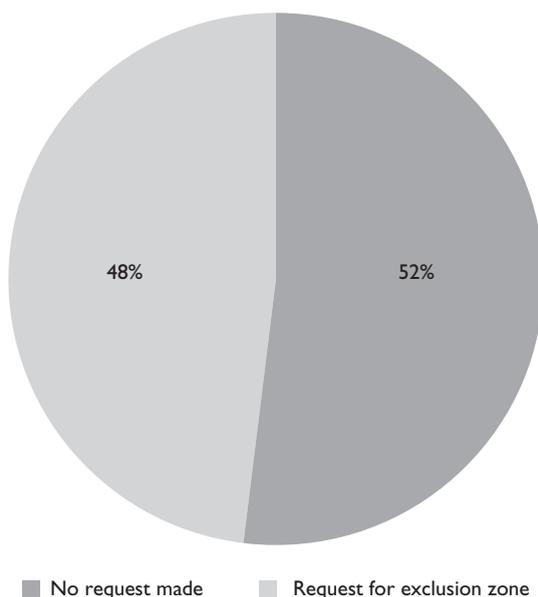


Figure 4. Co-victims requesting an exclusion zone

Source: Authors' own.

concerns, whereas about 40 per cent stated their safety concerns, such as a fear of retribution.

Figure 4 shows just over one-half of the co-victims asked for an 'exclusion zone' that is a defined area that the murderer is, as a condition of parole, prohibited from entering for any purpose. It is evident from the semi-structured interviews that co-victims requests for exclusion zones are not always about safety. Some victims who did not express safety concerns asked for an exclusion zone. Consistent with this, many victims request an exclusion zone because they want to be able to go about their daily lives without fear of (to quote a co-victim) 'bumping into the parolee'. Co-victims frequently asserted that there should be a place of sanctuary where the murderer cannot intrude. In all cases when a co-victim requested an exclusion zone, the Parole Board inserted such zone into the murderer's conditions on release. The exclusion zones, however, did not always match victims' initial requests. The Commissioner rarely encountered difficulties in consulting the co-victim and the Parole Board to attain compromise. In one case that required extensive negotiation as the requested exclusion zone included the address to which the murderer was to reside on release. The address was deemed as an important element of the murderer's reintegration as it was a sibling's home where he would be supported mentally and practically. Instead, the murderer was released to a nearby address outside the exclusion zone but permitted to enter the exclusion zone to visit his sibling. It was further agreed to review that prohibition on his residing with his sibling should he comply with all other conditions during the first year on parole.

Notwithstanding the need for consultation and negotiation, overwhelmingly the Parole Board agreed with the co-victims' requests. Moreover, it is evident from co-victims' comments on being told the conditions on release that the inclusion of an exclusion zone is often considered by the co-victim as the Parole Board's acknowledgement of their 'voiced' concerns. Such acknowledgment has proven 'fertile ground' for further discussion with co-victims on variations to their requests, which has happened several times during the 60-day review period. With respect to at least two cases, co-victims have either agreed via the Commissioner in consultation with the Parole Board to reduce the number of exclusion zones or to reduce the size of exclusion zones. In another case, the co-victims agreed with the Commissioner on the impracticality of the exclusion zone as initially set in the murderer's condition for release, so a fresh boundary was negotiated that favoured the murderer rather than the co-victims. Each of these cases, and others, less significant in terms of the amendments made, confirm that many co-victims' want to influence the Parole Board's decisions but also when they evaluate the decision-making process as fair they are willing to negotiate and 'give ground' on their desired outcome, even when they do not perceive the murderer as deserving of such. Hence, victim engagement in decision-making does not necessarily equate with unduly impacting on the murderer's right to parole if all other considerations are met.

As shown in Figure 5, over three quarters of co-victims requested the murderer be prohibited from contacting them directly or indirectly by any means. Co-victims mostly felt that they should be able to 'go about their daily' lives without the worry that the murderer will communicate with them. Only four co-victims

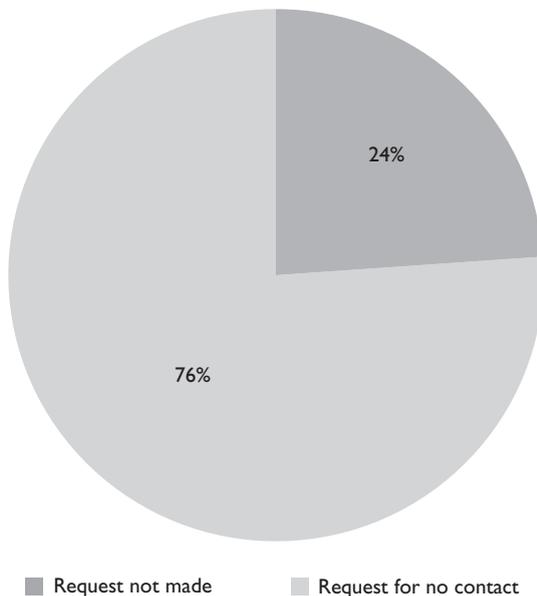


Figure 5. Co-victims' request for a non-contact condition on the murderer's release
Source: Authors' own.

specifically stated that they would like to communicate with the murderer, and of these one wrote to the person who murdered her sister and the murderer replied. All four victims suggested that communicating with the murderer might be 'restorative' or beneficial for personal reasons. Three, including the co-victim who exchanged letters, specifically mentioned restorative justice.

Several of the co-victims who did not request a non-contact condition held concern that in order for the condition to be effective they would be named in the murderer's parole document. Some of these co-victims stated that the murderer would not know them, or if the murderer did learn their name during the criminal proceedings, that murderer is likely to have forgotten their name while in prison.

Co-victims' Reactions on being Told the Parole Board's Decision

As explained in the outline of the parole process above, the second point of contact for the Commissioner with co-victims happens soon after the Parole Board states its decision and should that be to release the murderer on parole, provides its reasons for release. The Commissioner recorded co-victims' reactions on being told the board's decision.

Co-victims' reactions are mixed. Some who opposed the murderer's release are upset; some are accepting. Some reactions give an insight into co-victims' difficulty grappling with their inner most feelings. The sister of a murder victim, for instance, welcomed the release of one of the murderers because, on release, the murderer will be deported but also hoped the murderer would seize the second chance given in her country of birth. She as well expressed hope that the co-murderers, who will not be deported, achieved future success. She worried that they might reoffend, which would be a betrayal of the Parole Board's and her trust.

Consistent with the observation on co-victims' sense of procedural justice, those co-victims who felt the Parole Board had listened to their views were generally more accepting of the decision to release. One co-victim conceded that the murderer served more time in prison than the 14-year non-parole period, so the decision was expected. Many co-victims expressed gratitude for steps taken to keep them informed as well as the quality of the information. One co-victim in particular pointed to the information on the murderer's rehabilitation. Several co-victims were accepting of the decision because the Parole Board approved the exclusion zones they requested. One co-victim stated that they were glad the board approved the exclusion zones. Knowing that the murderer should not enter the zone gave them a sense of satisfaction. Also satisfied, another co-victim expressed their faith in the board's decision to require the murderer to spend up to 1 year in the Pre-release Centre. The co-victim understood the murderer would have day leave but also be required to return to the centre every night. They hoped this transitional step-down approach to the murderer's release would improve his

chance of compliance and reduce the likelihood of reoffending. While another co-victim stated they were pleased the matter was finally resolved and hoped that all, including the murderer, could now 'move on'.

Conversely, a bereaved family were aggrieved after the Parole Board listened to their oral submissions then on the same day, during the same session, made a decision to release the murderer. They stated that the board's act suggested the board had made its decision before hearing them and that the board did not give adequate weight to their submissions, which included unanswered questions. Further, consultation between the Commissioner and the family resulting in supplementary submissions to the Parole Board alleviated but did not ameliorate the co-victims' grievance.

A co-victim held on-going concerns and felt these were valid in spite of the conditions imposed on the murderer. Yet, another co-victim (the estranged partner of the murderer who killed their child) asserted that the Parole Board had put the murderer's freedom ahead of her personal safety; and that now she would live in constant fear. She suggested that she would have to resign from her work that required her to travel alone and likely become a recluse in her home. The Commissioner addressed her on-going safety concerns by arranging household security for her home as well as putting a supplementary submission. The Parole Board responded by requiring the murderer to serve up to 1 year in the Pre-release Centre, rather than reside with a sibling. The aforementioned household security will be installed while the murderer is in the Pre-Release centre.

The majority of co-victims welcomed that the law now required murderers to remain on parole for life rather than the previous 10 years. Several compared the murderer's life sentence as a prisoner in the community with their life sentence without their loved one. Several co-victims commented favourably on the fact that the murderers of their loved ones served longer terms because all parole decisions were deferred during the consultation and parliamentary debate on the new law governing the release of murderers.

Co-victims' Attitudes on the Process

Black³³ concludes that victim satisfaction with the parole process often hinges on how clearly the purpose of their making submissions is articulated. Similarly, Spalek³⁴ suggests victims might have higher expectations about their level of influence over a prisoner's release than in practice happens. Both Black³⁵ and Spalek³⁶ warn whether victims expect too much from the process they probably will be disappointed if their expectations are unmet. Co-victims' expectations were a prime consideration in the Commissioner's dealings with co-victims throughout the parole process.

³³ *Supra* note 5.

³⁴ *Supra* note 4.

³⁵ *Supra* note 5.

³⁶ *Supra* note 4.

On telling co-victims that the murderer will be released and the release date, the Commissioner noted that most victims stated positive attitudes on the process. Only one co-victim complained about the process but after enquiry it became evident that the person's grievance was about the decision to release, rather than the process.

All who participated felt that being heard was important. Following are paraphrased statements indicative of co-victims' positiveness:

- Thank you for the opportunity to have input into the board's decision and for keeping me informed.
- I appreciate all the assistance you have given and that you kept me informed.
- Thank you and the Parole Board for listening.
- I am so very grateful to have a voice at this stage as it feels that my voice was somewhat silenced during other stages of the criminal justice process.
- Thank you for searching for me. You have given me for the first time information about my father's death and the chance to find out more.
- I am grateful that you asked for my views and present them to the board.
- I am grateful that you consulted and the board's decision suggests they listened, at least to some of my concerns.
- I appreciate you speaking with me. Your explanation was comprehensive and follow-up timely.
- I know he will be released eventually. I do not want to be seen as preventing that happening but rather I want the board to understand that I am taking all reasonable steps to ensure that if he is released, he has the best chance of successfully becoming as a law-abiding citizen.
- I genuinely appreciate that you gave us an insight into his mental health, his treatment and the steps he has taken to rehabilitate. I still have some doubt. It is hard to forget what he has done to our family.
- I felt supported throughout and safe to say how I felt. I appreciate the support, advice, empathy and understanding. I am also glad that he has taken step towards accepting responsibility for his crime, which I learnt by being involved.

Conclusion

The real question in the debate over co-victims' participation in the parole process is not whether they should be treated with fairness, dignity and respect. Nor is it about their right to be protected from the murderer, or to be notified of the Parole Board's decision. Rather, it is about whether procedural justice can be achieved for victims without unduly impacting on murderers' entitlement to a fair and just hearing on their application for release on parole.

Black³⁷ asserts that in those jurisdictions that allow victim submissions to parole boards, there is an implicit assumption that victim input is a positive

³⁷ *Supra* note 5.

development. Although the results presented in this article show it is practical to consult co-victims, make submissions for them and for their concerns in the main to be addressed, further research is required. For example, one of the most important developments in making parole for murderers appear fairer seems to be the introduction of 'life on parole'. The strength of the influence of such law on co-victims' appraisal of the process is unclear.

Victims' satisfaction with the outcome of criminal proceedings is known to influence their satisfaction with the criminal justice system; however, their dissatisfaction can be alleviated by keeping them informed throughout the investigation, adjudication and prosecution³⁸ as well as given a voice on decisions that affect them.³⁹ Hence, distributive justice and procedural justice appear to be necessary considerations when exploring victim satisfaction. The data presented in this article suggest that even when dissatisfied with the Parole Board's decision, co-victims were mostly satisfied with the process itself.

Again and again co-victims expressed positive comments on knowing that the Commissioner for Victims' Rights appreciated their reasons for opposing or not opposing murderers release on parole. Although talk was considered an important form of support, the talk was not therapeutic in a treatment sense but rather co-victims sometimes mentioned that by telling and the Commissioner listening that they felt the experience was helpful in spite of the hurt the conversations stirred.

Some co-victims had felt powerless until they participated in the parole process. On being told that the Parole Board took their safety concerns into account and responded by setting conditions, victims' reactions confirm that validation is paramount.

Co-victims seem better able to accept the murderer will be released on parole knowing that he or she will be on parole for the rest of their life. Moreover, the results suggest that it is not only the law reform and changes in process that have impacted co-victims' sense of justice but also the quality of the Commissioner's treatment of and engagement with these victims.

Although it is evident that co-victims' requests for exclusion zones and non-contact are heard and acted on by the Parole Board, it is difficult to fathom what elements of co-victims' submissions the board considers relevant to its assessment on the impact of a murderer's release on the victim's family. It might be argued that courts take into account, if relevant, the effects of the crime on the victim and the victim's personal circumstances at the time of sentencing, so further consideration during the parole decision-making process is not warranted. The findings demonstrate but do not conclusively prove this is not the case. Rather, the disregard for the co-victim in the parole process often caused him or her a 'second injury'. The findings suggest that victims' participation can improve victim satisfaction, and mitigate the causes of secondary victimization. Further, the findings support the argument for procedural justice for victims.

³⁸ *Supra* note 7; *Supra* note 8

³⁹ *Supra* note 10; *Supra* note 11; Robyn Holder *Satisfied? Exploring Victims' Justice Judgments*. RegNet Working Paper, No 28, *Regulatory Institutions Network* (Canberra: ANU 2014).

Appendix A - Co-victim questionnaire

Prisoner's Name:

Deceased's Name:

Co-victim's name:

Confirm relationship to the deceased.

Confirm most appropriate contact details.

Would you like to make a submission to the Parole Board about the application for release on parole?

Do you intend to make your own submission?

Would you like your views included in the submission made by the Commissioner for Victims' Rights?

How do you feel about the possibility that 'prisoner's name' will be released on parole?

Do you have any safety and/or security concerns if he/she is released?

What sort of things might assist you to feel more comfortable?

Would you like to request an exclusion zone or prohibition on a place you frequent such as your place of work or study?

Would you like to request a condition that the prisoner's is not to communicate with you either directly or indirectly?

Is there any other information or considerations you would like included in the submission to the Parole Board?

Would you like to be kept informed throughout the parole process?

If not registered, was the co-victim provided with information about the Victims' Register?

Is there anyone else you think should be contacted for the purpose of making a submission?