



**NSW Law Reform Commission –
Parole Question Papers 1-3**

October 2013

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Trade and Investment, Regional Infrastructure and Services NSW for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

The Homeless Persons' Legal Service and StreetCare

The Homeless Persons' Legal Service (HPLS) is a joint initiative of PIAC and the Public Interest Law Clearing House (PILCH) NSW. HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates ten clinics on a roster basis at welfare agencies in the greater Sydney area. These agencies provide direct services, such as food and accommodation, to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers from PILCH members acting pro bono. Since 2004, HPLS has provided free legal advice and representation to almost 8,000 people who are homeless or at risk of homelessness. During 2012-13, HPLS assisted 1,354 clients.

Since 2008, PIAC has employed an HPLS Solicitor Advocate to provide legal representation for people who are homeless and charged with relatively minor criminal offences. The role was developed to overcome some of the barriers homeless people face accessing criminal advice and representation, including: a lack of knowledge regarding how to navigate the legal system; rushed appointments leaving little time to obtain instructions; and, lack of capacity to address multiple and complex interrelated legal and non-legal problems.

Since commencing in 2008, the HPLS Solicitor Advocate has provided court representation to 362 individual clients in 554 matters. From January 2010 to December 2012, the HPLS Solicitor Advocate provided court representation to 241 individual clients facing criminal charges. Of these:

- 48 per cent disclosed that they had a mental illness;
- 63 per cent disclosed that they had drug or alcohol dependency;
- 41 per cent disclosed that they had both a mental illness and drug/alcohol dependency;
- 72 per cent had either a mental illness or drug/alcohol dependency;
- 46 per cent disclosed that they have previously been in prison.

HPLS believes that the active involvement of those who are or have been homeless leads to the development of more effective public policy in response to issues facing homeless people, as well as assisting in the empowerment of participants. HPLS also recognises the fundamental right of people to 'take part in the conduct of public affairs', as enshrined in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR).¹

HPLS seeks the views of homeless people through its homeless consumer advisory committee, StreetCare. StreetCare is made up of nine people who have recent experience of homelessness. The members reflect the diversity of homelessness in NSW, and include men, women, transgender people, young people, and representatives from inner Sydney, outer suburbs and rural and regional areas. StreetCare also provides a mechanism for HPLS to engage actively with other people who are homeless or at risk of homelessness, to facilitate their input into public policy and law reform initiatives.

In November 2011, PIAC decided to undertake a consultation project with homeless people who had recently exited the prison system. The project had two principal aims:

1. To identify the experiences of homeless people who have recently been released from prison; and
2. To identify the difficulties faced by generalist homeless services and agencies which assist homeless people in relation to providing services to homeless people recently released from prison, as perceived by consumers and agency employees.

One of the unique aspects of this project was the involvement of StreetCare in the design and implementation of this consultation project. During 2012, with support from the HPLS Senior Policy Officer, StreetCare members were involved in conducting 24 of the 26 interviews with homeless people in this project.

The project's report, *Beyond the Prison Gates – The experiences of people recently released from prison into homelessness and housing crisis*,² was released in August 2013. A copy of the report accompanies this submission. That report provides the evidentiary basis for much of the content of this submission.

¹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ratified by Australia on 13 August 1980 (entered into force for Australia on 13 November 1980, except article 41, which entered into force for Australia on 28 January 1993). The full text of the ICCPR is available at: <<http://www2.ohchr.org/english/law/ccpr.htm>>.

² Schetzer, Louis and StreetCare (2013), *Beyond the Prison Gates – The experiences of people recently released from prison into homelessness and housing crisis*, Public Interest Advocacy Centre, 2013.

Consultation questions to be addressed

PIAC welcomes the opportunity to comment on the NSW Law Reform Commission Parole Question Papers 1-3. This submission is informed by the information obtained through the 2012 consultations with homeless people who had recently exited prison into housing crisis or homelessness, as reported in the consultation report *Beyond the Prison Gates*. This submission will address the following questions from each of the three Question papers:

Question paper 1 – The design and objectives of the parole system

- Question 1.1: Retention and objectives of parole
- Question 1.2: Design of the parole system

Question paper 2 – Membership of the State Parole Authority and the Serious Offenders Review Council

- Question 2.1: Membership of the State Parole Authority (SPA)

Question paper 3 – Discretionary parole decision making

- Question 3.1: The public interest test
- Question 3.3: Specific issues given weight by the SPA
- Question 3.6: Planning for parole and assistance with parole readiness
- Question 3.16: Reasons for SPA's decisions
- Question 3.18: Reconsideration after refusal of parole

Question paper 1 – The design and objectives of the parole system

Question 1.1: Retention and objectives of parole

- (1) Should parole be retained?
- (2) If retained, what should be the objectives of the parole system in NSW?
- (3) Should there be an explicit statement of the objectives or purposes of parole in the *Crimes (Administration of Sentences) Act 1999* (NSW)?

PIAC strongly supports the retention of parole as a mechanism for the conditional release of an offender from prison to serve the remainder of their sentence in the community under appropriate and adequate supervision and with appropriate supports to facilitate her/his transition back into the community.

PIAC submits that the primary objective of the parole system is to promote community safety by supervising the release and integration of prisoners into the community, thereby minimising their risk of reoffending while on parole and after sentence completion. In order to achieve this objective, it is necessary that an offender released on parole is able to access necessary support services and stable accommodation, in order to facilitate her/his transition back into the community.

In addition to this primary objective, there are a number of secondary objectives for the NSW parole system, including:

- Providing an incentive for prisoners to address their offending behaviour while serving their sentence;
- Providing an incentive for prisoners to take constructive action by participating in prison-based activities that will improve the chances of release at the earliest eligibility date (assuming that such programs and activities are available and appropriately resourced in all NSW prisons); and
- Reducing the costs of imprisonment and reducing overcrowding in prisons.

It is submitted that an explicit statement of the objectives or purposes of parole should be included in the *Crimes (Administration of Sentences) Act 1999* (NSW), as this will facilitate greater community understanding about the nature of parole and its various purposes and objectives.

Question 1.2: Design of the parole system

(3) Does there need to be a mechanism to ensure supervised reintegration support for offenders serving short sentences? What should such a mechanism be?

PIAC submits that there are insufficient supports available for individuals released from prison after short sentences, or from remand, where there is no supervised parole arrangement. Moreover, the lack of reintegration support for those people released from prison after short sentences without parole leaves them vulnerable to homelessness and reoffending.

Responses to the *Beyond the Prison Gates* consultations, involving individuals who had recently been released from prison into situations of housing crisis or homelessness, suggest that there is a lack of accommodation options and suitable support services and agencies for those people who exit prison from remand or those who are not on parole. Nine of the 26 participants interviewed indicated that they ‘slept rough’ or were ‘on the streets’ the first night after being released from prison. Each of these nine participants who slept rough had been released after a short prison sentence (less than 12 months) or remand.³

I just got out of prison three weeks ago so... I was on the street for about a week. Then I rang up the homeless people and they sent me here. I wasn't quite happy being on the street, no...

Basically when I first came out the last time I was on the street, yes. I had to spend two weeks sleeping rough, so I did until there was a bed available, and then when the bed became available, I snapped it up.

I've been sleeping in the belly of frigging Moreton Bay fig trees and stuff, fending off possums and rats in the middle of the night. Because I've just got nowhere to go...⁴

In addition, several consultation participants commented on the lack of suitable support services and agencies for people exiting prison who are not on parole, or who exit prison from remand.⁵

³ Ibid, 33

⁴ Ibid.

⁵ Ibid, 44.

PIAC submits that additional resources need to be devoted to accommodation and support services for individuals released from prison following short sentences, and for individuals released who are not on parole. However, PIAC does not support a system of formalised supervision for individuals released from custody after serving a short sentence, if the period of supervision extends beyond the nominated end date of the head sentence. PIAC is concerned that such a supervision system places an individual at risk of further incarceration or penalty if they fail to adhere to the terms of their supervision, even if the period of their original sentence has finished.

PIAC submits that the real issue is the lack of community accommodation and support services for people released from prison, after completing a short sentence. The limited services available are usually prioritised for those offenders released on parole and subject to parole supervision arrangements.

Accordingly, PIAC submits that the most appropriate and effective strategy to reduce the likelihood of reoffending for individuals released from prison after completing a short sentence, is to invest in transitional accommodation and support services for this particular group within our community.

Question paper 2 – Membership of the State Parole Authority and the Serious Offenders Review Council

Question 2.1: Membership of SPA

- (1) Does the balance of members on SPA or SPA's divisions need to be changed in any way?
- (2) How can the selection and performance of SPA's community members be improved?
- (3) Should SPA's community members be representing the community at large or be representing specific areas of expertise?

PIAC strongly supports maintaining provision for at least ten community members on the SPA. PIAC also supports the SPA guiding principles for developing a membership that embraces diversity and is reflective of the community. PIAC submits that the SPA's guiding principles should be more strongly expressed to state that 'membership of the SPA must be reflective of community diversity'.

PIAC also submits that specific criteria should be developed to guide the development of diverse membership of the SPA, including minimum representation for:

- Women;
- People who identify as Aboriginal or Torres Strait Islander;
- People from a culturally or linguistically diverse background;
- People who identify as gay, lesbian, bisexual, transgender, intersex;
- People who work with people with mental illness;
- People who work with people with disabilities;
- People who work with homeless people.

In addition, in order appropriately resource community members of the SPA, it is essential that a comprehensive program of professional development is available for all community members,

including training in relevant legislation, SPA Operating Guidelines and recent developments in sentencing. In addition, ongoing training and professional development should be available for all community members.

Question paper 3 – Discretionary parole decision making

Question 3.1: The public interest test

Should the current public interest test in s 135(1) of the CAS Act be retained, or does the Queensland test, or something similar, better capture the key focus of the parole decision?

PIAC submits that the current public interest test in s 135(1) of the CAS Act should be retained. The issues to be considered when assessing the public interest are outlined in s 135(2) and indicate that decisions are to balance the issues of community safety, public confidence in the administration of justice, the nature and circumstances of the offence and the offender's criminal history, and the prospect of the offender satisfactorily reintegrating into the community without risk of reoffending. It is submitted that this test of 'public interest' incorporates the essential ingredients for consideration of parole in a balanced manner, while still giving priority to the issue of safety of the community.

PIAC does not support the Queensland test for parole, namely that the highest priority is the safety of the community. While such a test still requires a balancing of considerations of whether there is an unacceptable risk to the community if the offender is released, or whether the risk to the community would be greater if the offender does not spend time on supervised parole, it is submitted that by emphasising this particular aspect, insufficient attention will be given to the other issues that are highly relevant in terms of assessing the public interest of whether to grant or refuse parole. Moreover, the prospect of the offender satisfactorily reintegrating into the community without risk of reoffending is significant in terms of community safety, yet is deprioritised under the Queensland test for parole.

Question 3.3: Specific issues given weight by SPA

(1) Should any changes be made to the way SPA takes completion of in-custody programs into account when making the parole decision? If so, how?

(3) Should any changes be made to the way SPA takes homelessness or lack of suitable accommodation into account when making the parole decision? If so, how?

In-custody programs

While participation in an in-custody program is a relevant issue for the SPA to consider when determining the question whether to grant or refuse parole, PIAC submits that failure to participate in or complete such a program should not automatically result in a refusal of parole, given that there are problems with the availability of such programs, particularly for prisoners on shorter sentences.

Participants in the *Beyond the Prison Gates* consultations reported that there was not sufficient access to training courses or in-custody programs. Some indicated frustration at only being

offered basic courses or programs. Criticisms included not being able to access courses when serving a short sentence, and starting a course only to be reclassified and sent to another prison where the same course was not available.⁶

Some jails it's very hard to get into a course and most of them they will only fund it for basic literacy and basic IT... I spent two and a half years in jail the first time. I could have finished a degree in that time and I couldn't even get started on it because of the turnover and because you're going to get sent to this jail and this jail they don't want to start people off, start helping them and then a week later they are gone or the person doesn't want to do it. It's very hard. If you were a lifer you will get to do it. Otherwise don't even bother.

Sometimes you go to a jail and you get that comfortable you're doing a course and then next minute it gets hitched you know what I mean. So, really you've got to be stable in a jail where they do run courses because not many jails do run courses.

They usually generally don't do much with you when you're only short term.

There's not that many courses in jail you'd be able to do... like I done nothing in New South Wales because they wouldn't offer me nothing because of me time.⁷

Several participants stated that they would have benefited from being able to attend courses and workshops which addressed offending behaviour, as well as provided basic information about living skills, how to set up a home, how to budget, how to access essential services such as housing, social security and how to adjust to life in the community.⁸

Well I think even more programs in jail I think. Not programs but mini skill things... like living skills.

Run courses for blokes so they can get out and adapt outside... just trying to adapt outside so you communicate with other people.⁹

One of the commonly expressed difficulties faced by consultation participants in reintegrating back into the community was the lack of basic skills and the ability to function in the community. Basic living skills – such as how to shop, how to cook, how to budget, how to find accommodation, how to set up a home, how to think for oneself, and how to navigate crowded places – were all identified as major challenges for someone who has been released from the controlled prison environment.¹⁰

Some people come out, three years in jail this poor bugger is dysfunctional. He doesn't know where these things are. For three years he's been like a trained robot and then he comes out.

The every day simple things is what used to get me. I'd get overwhelmed with things. You come out and you're worried about this.¹¹

⁶ Ibid, 23-24.

⁷ Ibid.

⁸ Ibid, 28.

⁹ Ibid.

¹⁰ Ibid, 49, 51-52.

¹¹ Ibid, 49.

While PIAC recognises the value of participation in in-custody programs as an important preparation for release, and therefore an important consideration in determining whether to grant parole, this value is undermined by the lack of availability of such programs on a consistent basis for all prisoners in NSW. Accordingly, it is submitted that substantial investment in such programs is vital if it is to form a significant part of the SPA decision-making processes in regard to whether to grant or refuse parole.

Homelessness and parole

PIAC is concerned that lack of suitable accommodation is a key factor that can cause the SPA to refuse parole, or may result in inflexible parole conditions setting up an individual released on parole for inevitable breach and return to prison. PIAC recognises that releasing parolees into situations of homelessness is not an acceptable outcome. However, it is equally unacceptable if prisoners having satisfied other key criteria in assessing the public interest of granting parole, and having addressed their offending behaviour, are denied the opportunity to reintegrate into the community solely for the reason that they are unable to access suitable accommodation and do not have appropriate family supports to accommodate them. This means that the issue can only be addressed by an investment in additional social housing and non-government/community-based transitional accommodation.

The interaction between recent prison experience, housing crisis, homelessness, and socio-economic disadvantage has been confirmed in several Australian studies over the last ten years.¹² According to Matthew Willis of the Australian Institute of Criminology and Toni Makkai of the Australian National University, people exiting prison face considerable barriers and problems in securing and maintaining accommodation. They identified a number of factors that present as barriers for ex-prisoners integrating into the wider community, including:

- discrimination and stigmatisation as offenders;
- the effects of institutionalisation;
- accumulated debt prior to and during the term of imprisonment;
- loss of tenancy or relationship breakdown while in custody;
- recidivism and repeated episodes of imprisonment;
- social isolation after exiting prison, and returning to pro-criminal associations; and
- lack of access to and eligibility for public housing.¹³

Participants in the *Beyond the Prison Gates* consultations reported experiencing the following difficulties in relation to trying to find accommodation when they came out of prison:

- the lack of social housing, problems with Housing NSW, and frustration negotiating processes and procedures to access social or community housing;

¹² For example, Willis, Matthew (2004), *Ex-Prisoners, SAAP, Housing and Homelessness in Australia, Final Report to the National SAAP Coordination and Development Committee*, Australian Institute of Criminology, May 2004; Baldry, Eileen, McDonnell, Desmond, Maplestone, Peter and Peeters, Manu (2003), *Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?*, Australian Housing and Urban Research Institute, AHURI Final Report No. 46, August 2003; Baldry, Eileen, Ruddock, Jackie and Taylor, Jo (2008), *Aboriginal Women with dependent children leaving prison project: needs analysis*, Homelessness NSW, University of NSW, 2008.

¹³ Willis, Matthew and Makkai, Toni (2008), 'Ex-Prisoners and Homelessness: Some Key Issues', *PARITY*, Volume 21, Issue 9, October 2008, 6-7.

- lack of availability of short-term and crisis accommodation;
- inability to afford private rental or boarding house accommodation;
- being denied accommodation on the basis of criminal record or having recently been in prison;
- the temporary nature of most accommodation options for ex-prisoners;
- not having proof of identification;
- inflexible parole conditions; and
- lack of support services, in particular for people not on parole.¹⁴

Several participants recounted difficulties when they were subject to inflexible parole conditions, either on previous occasions when they had been released from prison, or following their most recent sentence, during the period of their parole. The lack of stable accommodation presented as a barrier for getting released on parole, often forcing them into unsatisfactory accommodation options, temporary accommodation, or crisis accommodation, placing them in situations where they were at risk of re-offending. One participant indicated that during his last term of imprisonment, his preference was to complete his full sentence and not have to deal with probation and parole.¹⁵

The problem is parole won't let you out unless you've got a stable address. So it's very hard to get an address in jail, you know, if you haven't got support outside, someone trying to find it for you, or to help you or whatever. So basically you're either going to end up at a COSP or you're going to end up in a homeless shelter for support.

And parole service is a joke because everyone that gets out on parole right they're normally got to have somewhere to live before you can get granted parole. That's why the last time I said 'no I don't want parole, you can have it. I'll just do me full time.'

So they give them parole if they've got a family to go to but if they haven't got a family to go to they'll give 'em parole but they'll put 'em in a half way house and then as soon as the parole's finished you go. And they say 'Oh you've got to find yourself a place before'.¹⁶

One participant said that, in relation to a previous sentence, the fact that he had stable accommodation available through an offer of social housing from Housing NSW was not considered satisfactory for his parole conditions. Housing NSW was unwilling or unable to make an alternative offer in another location. Accordingly, his release on parole was denied.

I've been on housing lists for 30 years. I've had one offer, that was about seven or eight years ago and probation and parole had that knocked on the head. They didn't want me to be in Redfern.¹⁷

Some participants indicated that in the past they had been released on parole on the condition that they reside in a particular service that provided temporary or supported accommodation. However, when they arrived at the service, they were informed that there were no beds available, leaving them no option but to sleep rough, placing them immediately in breach of their parole accommodation conditions. For others, once the period of temporary accommodation expires,

¹⁴ See n 2 above, 36.

¹⁵ Ibid, 42-43.

¹⁶ Ibid.

¹⁷ Ibid, 43.

unless there is suitable and approved medium-term accommodation to move to, they are also at risk of being in breach of their parole conditions.¹⁸

I came through this place through jail the last time through my probation and parole officer at Silverwater jail... they were full up when I first applied so I had to spend two weeks sleeping rough. Because I was on parole I was trying to get off the street, get into accommodation, because of my parole conditions. I didn't want to get breached.¹⁹

A dominant theme that came through the *Beyond the Prison Gate* consultations from both ex-prisoners and community workers was the need for more accommodation stock – ie, more supported non-government transitional accommodation for ex-prisoners, more crisis accommodation, more affordable accommodation, and more social housing. For community workers, the positive results achieved through intensive case management and post-release support relied on the person having a stable accommodation base.²⁰

As a result of the *Beyond the Prison Gate* project, PIAC has recommended that:

1. The NSW Government should take immediate steps to increase the available stock of crisis, transitional and short-term accommodation options for people exiting prison.
2. The NSW Government should provide funding to increase the availability of community-based transitional accommodation options for people being released from prison and remand, which is administered by non-government, community organisations with expertise in providing accommodation and other supports for people exiting prison.²¹

Question 3.6: Planning for parole and assistance with parole readiness

What changes (if any) are needed to improve parole planning and ensure that suitable offenders can demonstrate their readiness for parole?

Lack of information and pre-release exit planning

Based on the consultations conducted as part of the *Beyond the Prison Gates* project, PIAC is concerned that there is insufficient attention given to the needs of prisoners who are eligible for parole, in terms of providing those prisoners with adequate information in order to adequately prepare them for parole and release into the community. The consultations also suggested that there was a lack of appropriate pre-release exit planning and case management, with continuity post-release, to facilitate transition and reintegration back into the community.²²

As stated above, several participants in the consultations expressed concerns about the lack of training courses and programs for prisoners to equip them and prepare them for parole, and the consequent difficulty in being released with a lack of basic skills and abilities to function in the community. In addition, several participants reported their experiences of little or no information

¹⁸

Ibid.

¹⁹

Ibid.

²⁰

Ibid, 78-79.

²¹

Public Interest Advocacy Centre (2013), Briefing Paper: *Beyond the Prison Gates – The experiences of people recently released from prison into homelessness and housing crisis*, PIAC, 2013, 6.

²²

See n 2 above, 77.

being made available leading up to release, and that they had to be proactive in seeking support, assistance or information, or needing to have some prior knowledge of what's available.²³

No, nothing... they said, 'look your time's up here's your papers, here's your money' and walked me to the gate and they said, 'don't worry, your bed will still be there for you next time...' If they can't help us at least give us something to steer us in the right direction ... give me some options instead of just saying "no can't help you, see you later."

There is nothing for an inmate being released from jail... Your release date comes up, your money's already there, you go from your cell to the reception room, you put on your civvies you turn around and sign your release papers and then they tell you where to go and pick up your money and off you go out the gate.

Nothing. It was pretty much 'Hooroo on your way. Here's the door, sign this, get your money, piss off.'²⁴

Readiness for parole and for release into the community can also involve a need for better access to legal advice, information and education.

Pre-existing legal need upon release from prison

In a 2008 report on the legal needs of prisoners, the Law and Justice Foundation of NSW noted that in addition to the obvious criminal law problems that prisoners face, many also face a range of other civil and family law issues, such as outstanding debt, unpaid fines, unresolved family issues, tenancy problems and issues in relation to social security payments.²⁵ These legal problems, if not adequately addressed, can reinforce and exacerbate the already entrenched economic and social disadvantage that many prisoners face, can hinder their effective and positive reintegration into the community upon release and may lead to increased rates of recidivism.

While there are some legal services available to prisoners to address these problems, many prisoners are either not aware that they have a legal problem or do not know how or when to access legal help or information.

PIAC is coordinating a pilot education project at Silverwater Women's Correctional Centre, called the Legal Literacy in Prison Project. This is a joint pilot project between PIAC, Corrective Services NSW, Women's Legal Services NSW, Warringa Baiya Aboriginal Women's Legal Centre, Hawkesbury Nepean Community Legal Centre, and Legal Aid NSW.

The pilot project supplements existing civil legal education services provided by community-based organisations and Legal Aid NSW, and the widely used Back on Track DVD series produced by Legal Aid which dramatises common civil law problems and the steps that can be taken to deal with them while in custody. These exist within the framework of the existing Adult Basic Education curriculum offered to prisoners in NSW Correctional Centres by Corrective Services NSW's Adult Education and Vocational Training Institute.

²³ Ibid, 19.

²⁴ Ibid, 19-20.

²⁵ Grunseit, Annie, Forrell, Suzie and McCarron, Emily (2008), *Taking Justice into Custody: the legal needs of prisoners*, Law and Justice Foundation of NSW, 2008

The pilot project was delivered as a result of the recognition that many people in prison face difficulty in accessing legal advice and legal services. The classes aim to provide information about areas of law relevant to prisoners at the same time as enhancing general literacy and numeracy skills.

The pilot project has received excellent feedback from women in prison undertaking the classes at Silverwater Women's Correctional Centre. PIAC considers that the Legal Literacy in Prison Project provides the vital information that people in prison need to address their legal problems and in so doing, assists prisoners to address some of the issues that contribute to disadvantage and increase the likelihood of re-offending.

Lack of access to welfare support in prison

In addition, most participants in the *Beyond the Prison Gates* consultation identified problems in accessing prison welfare services for support and information, prior to release. Commonly identified problems with prison welfare services included difficulties and delays in accessing the services, lack of availability of welfare services, and perceptions of incompetence or inefficiency.²⁶

You put in to see welfare. You don't see them for three to four weeks. By the time you see them you're released.

But every time I go in it's the same thing. I mean some days like when I put in to see welfare or someone, some days I'd be waiting three days and some days it doesn't even happen. They don't even bother to come and see you.

But the reality of it is you're getting sent from jail to jail, there's waiting lists and at the end of the day all they can really help you with is offer you homeless shelters and boarding houses.

Well it is pretty hard to get to see welfare. Like you put a form in, it takes weeks. You've basically got to tell them, like you've just got to keep persisting.²⁷

A common theme that emerged from the consultations was the importance of pre-release exit planning for prisoners, and the need for consistent, integrated case-management for people released from prison that commences pre-release and continues post-release. In addition, the need for access to appropriate welfare support prior to release, as well as comprehensive information regarding available accommodation and support services post-release, were common suggestions for improvement from consultation participants.

Pre-release exit-planning, combined with continuous case management either conducted by non-government support agencies, or in close partnership with those agencies, was seen as a valuable service in terms of accessing immediate and medium-term accommodation, support services to deal with mental illness or substance abuse problems and other medical issues such as medication needs, counselling or other treatment. In addition, appropriate, pre-release case planning was seen as a basis to help secure identification upon release, providing assistance in setting up bank accounts and securing social security upon release, accessing education or job-

²⁶ See n 2 above, 20-21.

²⁷ Ibid.

training courses upon release, accessing employment services and accessing life-skills training prior to release.²⁸

Especially blokes that have done a long time in jail. Like when I done four and a half years in jail you think at that time they will be trying to help me and get me ready, prepare me to come back out in the community, find me work and somewhere to live and that sort of stuff, but no, you get totally nothing. So they've got to set up some services to help ex-prisoners for when they get out of jail...²⁹

As a result of the *Beyond the Prison Gate* project, PIAC has recommended that Corrective Services NSW undertake a review of all processes and policies in respect of exit planning for prisoners to ensure that:

1. Prisoner release dates are identified and planned for;
2. Identification of prisoner post-release accommodation and support needs to facilitate appropriate exit-planning;
3. Appropriate early intervention support services, and crisis and transitional accommodation options for people being released from prison who do not have safe accommodation options;
4. Early contact with community-based support and accommodation services, to ensure continuous case management commencing prior to release, and continuing post-release; and
5. All released prisoners have adequate proof of identity, and that such proof of identity is not branded with Correctional Services NSW logos or information.³⁰

Question 3.16: Reasons for SPA's decisions

Should any changes be made to the manner or extent to which SPA provides reasons for its decisions?

PIAC submits that that the SPA should be required to record the reasons for any decision to grant or refuse parole, based on the matters it is required to take into account under s 135 of the CAS Act. In addition, it is submitted that the SPA provide a copy of these detailed reasons to the offender, and that these reasons, with appropriate de-identification, be published on the SPA website.

PIAC submits that publishing the reasons for its decisions and making them available to the offender and the broader public, will result in improved understanding of the parole system for the offender, and will instil public confidence in the parole system and enhance the perception of the SPA's independence. In particular, published reasons for decisions to refuse parole enable an offender to identify areas that need to be addressed in order to secure parole, and ultimately facilitate an offender's preparation for release into the community, and then reintegration into the community post-release.

²⁸ Ibid, 77-78.

²⁹ Ibid, 69.

³⁰ See n 21 above, 6.

Question 3.18: Reconsideration after refusal of parole

(1) Should the 12 month rule (as it applies to applications for parole after parole refusal) be changed in any way? If so, how?

PIAC submits that the 12-month rule should be changed as it operates in a manner that can undermine some of the objectives of the parole system for offenders serving shorter sentences. PIAC agrees with comments from Legal Aid NSW and the Aboriginal Legal Service (NSW/ACT), referred to in Question paper 3,³¹ that the effect of the 12-month rule is that for prisoners serving shorter sentences, there may be only one chance of being released on parole, with the associated support and supervision services that come with a parole release.

Responses to the *Beyond the Prison Gates* consultations with individuals who had recently been released from prison into situations of housing crisis or homelessness, suggest that there is a lack of support services for individuals who are released after completing their full sentence, and not on parole.³²

... because you're not on parole you're not a statistic... you are finished, you're finishing they don't need you because you're not on parole. If I was on parole and out here they would have a house for me.

For people who aren't being released on parole there is nothing.

I have also heard plenty of stories of guys that have been released from a rural correctional, given a train fare to get to the city and that's it. Yeah, so there seems to be a lack of support services, planning and resources for these guys.

There is nothing set up there for where they go and especially if there are crimes and the reason they're in prison is related to their homelessness, it is just going to be a cycle and they're going to end up back in there.³³

For prisoners on shorter sentences, who are refused parole, and who then have to serve their full sentence, the opportunities for reintegration into the community post-sentence become more limited, increasing the risk of re-offending, and ultimately presenting a greater risk to the community. This was the experience of several participants in the *Beyond the Prison Gates* consultations.

And it's like, I mean, I think to myself I might as well be back in jail... Well it's almost like they are setting you up to fail, right.

A bloke's suddenly let out of jail, no money, nowhere to go, no idea what to do, no home, no clothing, no accommodation, no family support, ... no support. They get out and they are just dumped on the street like a piece of flotsam. What do they do? They commit a crime and go back to jail because at least they get four walls and a roof and a meal.

³¹ NSW Law Reform Commission (2013), Parole – Question paper 3, Discretionary parole decision making, September 2013, paragraph 3.145.

³² See n 2 above, 44.

³³ Ibid.

I came here and ended up going from here to on the street, you know, just round and round in circles, boarding houses, back to here until I reoffended and ended up using drugs again, back in jail... and this is the third time.³⁴

PIAC submits that the 12-month rule should be replaced by a system in which the SPA specifies a reconsideration date, which it announces at the time it notifies the offender that parole has been refused and the reasons for the refusal. This would provide the prisoner with an opportunity and incentive to address the reasons for refusal of parole, and access appropriate pre-release support programs and services in the intervening period, as well as providing a further opportunity to access the support and supervision facilities available through the parole system.

³⁴ Ibid, 47-48.