

17 February 2021

Sir Ron Young
Chairperson
New Zealand Parole Board
Wellington

By email: c/o Rajamba.Mani@corrections.govt.nz

Tēnā koe Sir Ron

Re: Draft Memorandum to counsel – remote appearances before the New Zealand Parole Board

Thank you for your email of 21 January 2021 inviting feedback on a draft *Memorandum to counsel appearing before the New Zealand Parole Board* which the New Zealand Parole Board is considering sending to counsel who undertake Parole Board hearings.

The New Zealand Law Society | Te Kāhui Ture o Aotearoa welcomes the opportunity to comment. The draft was provided to the Law Society's national Criminal Law Committee and Wellington Branch Parole Law Committee whose brief comments are set out below.

The draft memorandum sets out the Board's view that "the first and most important principle" is that counsel should appear with an offender at prison but that in "exceptional circumstances" the Board will allow counsel to appear at hearings via video link. The draft memorandum is intended to clarify what constitutes "exceptional circumstances". It states that a comprehensive definition is not possible and gives three examples of what might constitute exceptional circumstances:

- where counsel have a long-term relationship with an offender who is then transferred to another distant prison;
- where counsel, at the last moment, find themselves obliged to appear in court and cannot reasonably instruct other counsel; or
- other last-minute emergencies.

Lawyers' feedback

Those who provided feedback emphasised the need for flexibility when the Board is considering what amounts to "exceptional circumstances" in each case. The following specific concerns were raised:

1. Although the draft memorandum acknowledges the difficulty in defining "exceptional circumstances", the lack of definition is creating difficulty in practice with inconsistent decisions being made about who is allowed to appear remotely. It would be helpful if the Board provided more detail about the approach it takes in deciding these applications and added further examples – such as:

- a. where the lawyer has a long-standing relationship with the offender and has built up a significant level of trust which would be undermined if an agent was instructed (even if the offender has not been transferred to a distant prison);
 - b. where the offender is a highly vulnerable client (due to age, gender etc);
 - c. where counsel is delayed due to unforeseen circumstances and has not been in a position to prepare for the hearing (due to illness, delayed trial commitments etc).
2. The draft memorandum does not set out a process for counsel to challenge or seek review of a declined application for remote appearance. We recommend this is included in the memorandum, along with any timeframe for review.
 3. The draft does not specify that the Board will provide counsel with reasons for declining an application for remote appearance. This is important information for counsel to understand the decision-making process but, more importantly, to decide whether to seek a review.
 4. Parole lawyers also indicated they are often only informed of the hearing date and time one or two weeks prior to the hearing. As the Board will be aware, many parole lawyers also have very busy trial workloads, and the lack of advance notice can cause scheduling difficulties.

We recommend that more information is provided in the memorandum to address the above concerns and to avoid any further uncertainty about what amounts to “exceptional circumstances” justifying remote appearances before the Board.

Additionally, we suggest that “SVMR” is defined at the beginning of the memorandum and for the memorandum to cross-reference the Board’s Covid-19 protocol governing how hearings are to be conducted during a pandemic, for clarity.

We hope these comments are helpful. If further discussion would assist, please do not hesitate to contact the Law Society’s Law Reform and Advocacy Advisor Amanda Frank (amanda.frank@lawsociety.org.nz).

Nāku noa nā,



Jacqueline Lethbridge
NZLS Vice President