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**Parole: an overview**

by

**Rachel Simpson**

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# **Parole: an overview**

**by**

**Rachel Simpson**

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## EXECUTIVE SUMMARY

Parole refers to the conditional release of a prisoner from custody after the expiration of the minimum term of the sentence (the non-parole period) and is thus one form of **early release**. Other forms of early release, discussed in pages 7 to 11, include release on license, remission and pardon. The fundamental **aim of parole** is to provide the prisoner with an incentive for rehabilitation through the prospect of early release, and perceived benefits of parole stemming from this prospect include increased likelihood of reform of prisoners and better overall prisoner discipline. Other **benefits of parole** include easing the transition from prison to the community through supervision, which reduces the risk of recidivism (re-offending). There are also economic advantages to parole: a reduction in recidivism will reduce the burden on the criminal justice system at all levels, and the cost of community supervision is low compared to the cost of incarceration. The justifications of parole are discussed in pages 3 to 4.

**Criticisms of parole** include its perceived leniency on offenders, particularly those convicted of violent crimes. It is argued that it is unfair that an offender walk free while his or her victims must still suffer. Additionally, it is believed by some that parole weakens the general deterrent effect of incarceration by weakening the severity of imprisonment as punishment. There is also a fear that an offender released into the community on parole will pose a threat to public safety, and particularly former victims. Some of the strongest criticisms of parole relate to a perceived lack of due process in Parole Board hearings, a result of the discretionary nature of the process. It is also argued that the parole process usurps the role of the judiciary in sentencing offenders. Criticisms of parole are discussed in pages 4 to 5.

It has been suggested that parole be restricted or abolished for **dangerous offenders**, in the interests of community safety. This was in fact the aim of the *Sentencing Legislation Further Amendment Act 1997*, which applies to all prisoners who were given life sentences prior to 1990 and makes it extremely difficult for an offender to be granted parole where the original sentencing judge recommended the offender never be released. The issue of parole and dangerousness is discussed in pages 5 to 6, and the relationship between parole and life sentences in pages 6 to 7.

Parole in NSW was established by the *Parole of Prisoners Act 1966*. Major amendments were introduced by the *Probation and Parole Act 1983*. These early Acts are discussed in pages 11 to 13. Following numerous amendments, the *Probation and Parole Act 1983* was replaced by the ***Sentencing Act 1989***. This new Act abolished remissions and introduced the concept of 'truth in sentencing'. The presumption in favour of parole previously enjoyed by certain prisoners was removed and the '75% rule', where the minimum term (non-parole period) must equal at least 75% of the total sentence imposed, became the universal rule for all sentences where a minimum and additional term were imposed. The operation of the *Sentencing Act 1989* is discussed in detail in pages 14 to 19.

**Statistics** relating to parole in NSW are included in pages 19-21 and a **comparison** between parole in NSW and other Australian jurisdictions is summarised in pages 22 to 23 and Appendix 3.

**Changes** to parole in NSW, introduced by the Minister for Corrective Services in October 1999 in the Crimes (Sentencing Procedure) Bill 1999 and the Crimes (Administration of Sentences) Bill 1999 are canvassed in pages 23 to 24.

## 1.0 INTRODUCTION

The issue of release on parole resurfaced when John Lewthwaite was released on lifetime parole on June 22, 1999, after serving a minimum sentence of 20 years and an additional term of five years for murder. Commenting on the decision, the former head of the Parole Board, Prof Tony Vinson stated that “the Parole Board’s decision is fair, encourages reform in other prisoners, and upholds the non-vengeful and civilised foundations of our society”.<sup>1</sup> The decision to release Lewthwaite “has divided the community” wrote criminologist Mark Findlay in the *Sun-Herald* a week before Lewthwaite’s release.<sup>2</sup> Assoc Prof Findlay described the reaction of the media and the community to the Parole Board’s decision as going “well beyond the fear that he will kill again”, and “reveal[ing] a desire for vengeance which transcends victims’ interests”.<sup>3</sup> Piers Ackerman, on the other hand, argued that the Parole Board’s decision “is a serious affront to a justifiably concerned public”, and that “the risk posed by this man to the most vulnerable in our society outweighs all other ... considerations”.<sup>4</sup> More recently, the State government considered appealing the decision of the Parole Board to release Nicole Louise Pearce who, as Paul Luckman, kidnapped, sexually assaulted and murdered 13 year-old Peter Aston in 1982. The Department for Corrective Services hoped to appeal the decision on the basis of the ‘atrocious nature of the crime’ and the fears held by the victim’s family, however the Attorney-General advised there was no grounds for appeal.<sup>5</sup>

Early or conditional release from custody prior to the completion of a prison sentence is a common feature of criminal justice systems in all Australian jurisdictions. Parole is one method by which this occurs. Others include release on license, remission and pardon. NSW abolished release on license by the *Prisoners (Serious Offenders Review Board) Amendment Act 1989*, and remissions with the passage of the *Sentencing Act 1989*. Royal pardon is retained in section 53 of the *Sentencing Act 1989*.<sup>6</sup> These other forms of early release are discussed in Part 2.3 below. The substantive discussion in this Paper will, however, focus on parole as it relates to NSW offenders.

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<sup>1</sup> L Doherty, ‘Uncuffed - ready or not’, *The Sydney Morning Herald*, 11 June 1999, p. 11.

<sup>2</sup> M Findlay, ‘Why Lewthwaite won my support’, *The Sun-Herald*, 13 June 1999, p. 55.

<sup>3</sup> Ibid.

<sup>4</sup> P Ackerman, ‘Justice is blind’, *The Sunday Telegraph*, 13 June 1999, p. 149.

<sup>5</sup> P Trute, ‘Sex-change killer freed’, *The Daily Telegraph*, 28 October 1999, p. 15. For a discussion of appeal rights of prisoners and the Government, see further p. 18 and note 21 below.

<sup>6</sup> NSW Law Reform Commission, *Sentencing*, Discussion Paper No 33, April 1996, ¶7.1. Clause XI of the current Letters Patent Constituting the Office of the Governor of New South Wales, date 29 October 1990, provides that the Governor may grant to any offender convicted in any court of the State a pardon, whether free or subject to lawful conditions, or any remission of the sentence passed on such an offender, or any respite of the execution of such sentence of periods as the Governor thinks fit, and may remit any fines, penalties or forfeitures due or accrued to the Crown.

## 2.0 MEANING OF AND RATIONALE FOR PAROLE

Generally, parole refers to the procedure whereby a sentence imposed by a court may be varied by administrative action.<sup>7</sup> When sentencing an offender, a court may specify a minimum and maximum term of imprisonment.<sup>8</sup> 'Parole' refers to the discharge of a prisoner from custody after the expiration of the minimum term of the sentence, provided the prisoner agrees to abide by certain conditions. The intention is that the offender will serve the remaining portion of their sentence under supervision in the community. It is important to note that while parole tempers the severity of a sentence by reducing its custodial element, the sentence continues while the offender is on parole. The parolee remains subject to the authority of the Parole Board and must abide by the parole conditions. If parole is revoked by the Parole Board the parolee is re-imprisoned. A parole order may be revoked for a number of reasons, from breach of a condition of parole to the commission of another offence while on parole.<sup>9</sup> As stated by the NSWLRC in its discussion paper on sentencing, parole "is part of the continuum of punishment of the offender ..." and parole "is not an act of clemency, compassion, or, necessarily, a reward for good conduct". In fact, "some offenders regard the need to comply [with parole conditions] as a greater punishment and do not, in fact, seek release to parole even though they are eligible for consideration".<sup>10</sup>

The fundamental aim of parole is to provide the prisoner with an incentive for rehabilitation through the hope for early release. As stated in the High Court in *R v Shrestha* (1991)

[N]otwithstanding that a sentence of imprisonment is the appropriate punishment for the particular offence in all the circumstances of a case, considerations of mitigation or rehabilitation may make it unnecessary, or even undesirable, that the whole of that sentence should actually be served in custody.<sup>11</sup>

## 2.1 Justifications of parole

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<sup>7</sup> I Vodanovich, 'Has parole a future?', in I Potas (ed), *Sentencing in Australia, Issues, Policy and Reform*, proceedings of a seminar 'Sentencing: Problems and Prospects', 18-21 March, 1986, p. 285.

<sup>8</sup> For example sections 5-7 of the *Sentencing Act 1989* (NSW) provides that a sentencing court may specify a minimum term and an additional term which can not exceed one third of the minimum term for a sentence of six months or longer. The court may, however, decline to set a minimum term and an additional term and instead set only a fixed term of imprisonment.

<sup>9</sup> Australian Law Reform Commission, *Sentencing: penalties*, Discussion Paper No 30, September 1987, ¶202. For standard terms and conditions of parole in NSW see Appendix 1.

<sup>10</sup> NSWLRC, n 6, ¶ 7.4.

<sup>11</sup> 173 CLR 48 per Deane, Dawson & Toohey JJ at 67.

The perceived benefits of parole include the likelihood of better behaviour while in custody by a prisoner who is subject to a non-parole period, in anticipation of early release. This increases the likelihood of reform of prisoners, as well as overall prison discipline. The prospect of early release could serve to enhance a prisoner's self-respect and improve his or her prospects of rehabilitation because the length of imprisonment is at least partly within the prisoner's control.<sup>12</sup> Discretion in the timing of release from prison enables the Parole Board to choose a term which is suitable to the particular inmates who have vastly different backgrounds and expectations. Delaying the decision about the release date may enable the Parole Board to gather information about prisoners and to observe and assess their rehabilitative progress. Fixing a term at an early stage (the sentencing stage) may be more speculative than at this later stage.<sup>13</sup> A consequence of rehabilitation is a reduced risk of recidivism which reduces risks to the community.<sup>14</sup> Parole entails supervised release into the community at the end of a period of incarceration. Thus the transition from prison to the community will be eased, further reducing the risk of recidivism. This point was made by the then Minister for Justice in the second reading to the original *Parole of Prisoners Act 1966* (NSW):

[P]arole is a concession to the offender, but a concession which it is expected will benefit the community by bringing the life of the offender under the guidance and control of a skilled officer with the intention of assisting resettlement in the community and so providing the environmental influences which will militate against the offender committing further criminal activity.<sup>15</sup>

There are also economic advantages to parole. A reduction in recidivism will reduce the burden on the criminal justice system at all levels. The costs to the government and the community of incarceration are high compared to the cost of community supervision. The cost per inmate per day by security classification is compared to the cost per day of community supervision (which includes probation, parole and community service orders) in the table on the following page. The figures apply to NSW for the 1996-97 financial year:<sup>16</sup>

| Maximum security | Medium security | Minimum security | Community order |
|------------------|-----------------|------------------|-----------------|
|------------------|-----------------|------------------|-----------------|

<sup>12</sup> *The Laws of Australia*, sub-title 12.8, ¶5.

<sup>13</sup> ALRC, n 9, ¶203.

<sup>14</sup> NSWLRC, n 6, ¶7.7.

<sup>15</sup> Hon J Maddison, MP, second reading speech, NSWPD 20 September 1996, p. 975, quoted in NSWLRC, n 6, ¶7.5.

<sup>16</sup> NSW Department of Corrective Services, *Annual Report*, year ended 30 June 1997, p. 99 (for cost of incarceration); NSW Council on the Cost of Government, *Service Efforts and Accomplishments - Law, Order and Public Safety 1997*, p. 72 (for cost of community orders).

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| \$175.14 | \$147.85 | \$111.01 | \$5.34 |
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## 2.2 Criticisms of Parole

Parole has been criticised for its perceived leniency on offenders, particularly those convicted of violent crimes. In addition to providing insufficient punishment for offenders, the existence of parole is believed to weaken the deterrent effect of imprisonment by weakening the severity of a term of imprisonment as punishment.<sup>17</sup> The reaction to the Lewthwaite case is a good example of this criticism of parole. There is also the fear that an offender released on parole will pose a threat to the public safety, and the argument that it is not fair that an offender be allowed freedom while his or her victims must still suffer.<sup>18</sup> The parole process is said to amount to a subversion of judicial sentencing. Despite the fact that the courts retain control over minimum and additional terms, within that range the Parole Board exercises its discretion in determining the date of release and the conditions with which the parolee must comply. Again the Lewthwaite case offers a good example: the Parole Board refused Lewthwaite parole on six occasions before finally granting parole in June 1999.<sup>19</sup>

One of the strongest criticisms of parole relates to a perceived lack of due process in Parole Board hearings, a result of the discretionary nature of the process. A lack of adequate notice of hearings, failure to give, or give adequate reasons for decisions, lack of access by prisoners to reports being considered by the board, inability of prisoners to attend hearings, inability of prisoners to be represented at hearings, secrecy regarding the criteria considered by the board when making decisions are all examples. Such natural justice concerns also include delay, a lack of predictability of the Parole Board's decision and the limited availability of appeal of Parole Board decisions, by both the prisoner and the Government.<sup>20</sup> The lack of appeal by the Government was an issue in the Lewthwaite case, when the NSW Solicitor-General advised the Minister for Corrective Services that there was no basis upon which to lodge an appeal (see further page 18 below).<sup>21</sup> Further, it has been argued that the

<sup>17</sup> NSWLRC, n 6, ¶7.12.

<sup>18</sup> J Chan, 'Decarceration and imprisonment in New South Wales: a historical analysis of early release', *UNSW Law Journal*, vol 13(2), p. 396.

<sup>19</sup> This was despite the chairman of the Serious Offenders Review Council stating the council recommended parole "at least four times to the Parole Board" over two years prior to the final decision to release Lewthwaite on parole: 'Election 'delayed Lewthwaite's release'', *The Daily Telegraph*, 11 June 1999, p. 5.

<sup>20</sup> ALRC, n 9, ¶204; Victorian Attorney-General's Department, *Sentencing: Report of the Victorian Sentencing Committee*, vol 2, 1998, ¶18.6.16. In NSW, for example, a prisoner has a limited right of appeal to the Court of Criminal Appeal where the prisoner alleges that the decision of the Board was based on false, misleading or irrelevant information (*Sentencing Act 1989*, section 23). This is discussed further in section 3.0 below.

<sup>21</sup> The Government 'explored every possible avenue of appeal' but was unsuccessful, according the then Acting Premier, Mr Egan. Calls for specific legislation to keep Lewthwaite in prison were also considered, but in light of the Kable case where similar legislation was ruled invalid by the High Court on the grounds that it was unconstitutional, that option was

parole system may subject offenders to ‘double sentencing’ where the same criteria used by the trial judge in determining the initial sentence are again applied by the Parole Board when determining whether the offender is fit to be released at the expiration of the minimum term.<sup>22</sup>

### 2.3 Parole and dangerousness<sup>23</sup>

In the interests of community protection, it has been suggested that parole be restricted or abolished for dangerous offenders who have received sentences under which they may be released at some point. The legislature may tighten parole criteria for certain offenders, or limit the discretion of the Parole Board to determine who is suitable for parole (for example, by introducing a presumption against granting parole to serious offenders, similar to the presumptions against bail for certain offenders). The NSW *Sentencing Legislation Further Amendment Act 1997* is an example of limiting the discretion to grant parole. The Act was specifically aimed at a particular prisoner, Kevin Crump, but applies to all prisoners who were given life sentences prior to 1990, and whose life sentences have been redetermined by the Supreme Court to a minimum and additional term.<sup>24</sup> If the original sentencing judge recommended the offender never be released, the Act makes it extremely difficult for the offender to succeed in obtaining parole once they have served their minimum term. Section 13A(3A) states that

A person who is the subject of a non-release recommendation is not eligible for the determination of a minimum term and an additional term ... unless the Supreme Court, when considering the person's application ... is satisfied that special reasons exist that justify making the determination.

And section 13A(4A) states that

In considering such an application, the Supreme Court is to have regard to all the circumstances surrounding the offence for which the life sentence was

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also unavailable for fears that the High Court could ‘reduce the powers the States have even further’ if called upon to rule on another similar piece of legislation (see further Briefing Paper No 27/96, *The Kable case: implications for New South Wales*, by Gareth Griffith): J Baird, ‘Bid to stop killer’s parole’, *The Sydney Morning Herald*, 10 June 1999, p. 2; L Doherty, ‘Final bid fails to keep Lewthwaite jailed’, *The Sydney Morning Herald*, 12 June 1999, p. 7.

<sup>22</sup> P Carlen & D Cook, *Paying for Crime*, Philadelphia, 1989, p. 102.

<sup>23</sup> Sections 2.3 & 2.4 rely heavily on Briefing Paper No 14/97, *Dangerous Offenders Legislation: An Overview*, by Honor Figgis and Rachel Simpson, particularly pages 25 to 32.

<sup>24</sup> Kevin Crump’s life sentence was redetermined under section 13A of the *Sentencing Act 1989* to a minimum term of 30 years and an additional term of life. He will be eligible for parole in 2003. For more detail on the redetermination of life sentences, see Briefing Paper No 14/97, *Dangerous Offenders Legislation: An Overview*, by Honor Figgis and Rachel Simpson, pp. 29 to 32. Any legislation aimed at specific individuals must be assessed in the light of the High Court decision in the *Kable* case where legislation aimed at keeping a particular prisoner in gaol was found to be unconstitutional.

imposed, and all offences, wherever committed, of which the person has been convicted at any time (so far as this information is reasonably available to the Supreme Court).

## 2.4 Parole and life sentences

Currently in NSW, murder and certain drug trafficking offences carry a maximum sentence of life imprisonment.<sup>25</sup> 'Life' refers to the term of the person's natural life.<sup>26</sup> However, life imprisonment is only the *maximum* sentence, to be imposed only for the worst type of offence. In fact, section 431B does not prevent the sentencing court from imposing a lesser sentence where the level of culpability was not so high so that no other sentence would be sufficient punishment. If a person is sentenced to life imprisonment there is no scope for the court to set a minimum non-parole term. With the repeal of the release on license scheme, there is no means by which an offender sentenced to life imprisonment can be released except in the exercise of royal prerogative of mercy. The NSW Law Reform Commission recommended in its report on sentencing that, 'when imposing a life sentence, the court should have the discretion to determine the sentence with a minimum term at the end of which the offender will be eligible to be considered for release on parole'.<sup>27</sup> The minimum term would be set by the court, and the additional term would be the remainder of the offender's life. If the prisoner was never considered suitable for parole, he or she would never be released. The Law Reform Commission argued that the possibility of parole at some point would give life sentenced prisoners an incentive for good behaviour. It also argued that such an option would be appropriate for those offenders in the worst category of moral turpitude but where it can not be said that the prisoner will never during his or her lifetime have the capacity to rehabilitate.<sup>28</sup>

## 2.5 Other forms of early release

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<sup>25</sup> Murder carried a mandatory life sentence until 1982, when the sentence was amended by the *Crimes (Homicide) Amendment Act 1982* to allow judges to impose a less severe sentence where the offender's 'culpability for the crime is significantly diminished by mitigating circumstances'. Mandatory life sentences were re-introduced in 1996 by the *Crimes (Mandatory Life Sentences) Act 1996*. This Act inserted a new section 431B into the *Crimes Act 1900* imposing a life sentence for murder and offences involving the trafficking of commercial quantities of drugs, where the level of culpability in the commission of the offence is so extreme that the community interest can only be met through the imposition of a life sentence. For further discussion see *Crimes Amendment (Mandatory Life Sentences) Bill 1995*, Bills Digest No 3/95 by Gareth Griffith.

<sup>26</sup> Section 19A, inserted into the *Crimes Act 1900* by the *Crimes (Life Sentences) Amendment Act 1989*, which commenced on 12 January 1990. Prior to that amendment, a prisoner serving a life sentence was imprisoned on average 11 to 12 years: Hon J Fahey, MP, NSWPD, 14 October 1993, p. 3884.

<sup>27</sup> NSW Law Reform Commission, Report 79, *Sentencing*, December 1996, recommendation 47, p. 204.

<sup>28</sup> See further Briefing Paper No 14/97, *Dangerous Offenders Legislation: An Overview*, by Honor Figgis and Rachel Simpson, pp. 24-25.

### ***Release on Licence***

Initially, release on licence in NSW was a modification of the *ticket of leave* system, by which prisoners were excused from compulsory labour and were allowed to work all the time on their own. Tickets of leave were granted by the Governor at his discretion and were usually a reward for good behaviour. However, tickets of leave also came to be given to convicts who were able to earn their own living and thus save the government the expense of keeping them incarcerated.<sup>29</sup> Release on licence was also a reward for good behaviour and was originally provided for by section 409 of the *Criminal Law Amendment Act 1883*. Under that section, the Governor was empowered to grant remission of a sentence in whole or part by issuing a licence to the offender. This licence allowed the offender to be at large within specified limits and could also prescribe further conditions for release. It did not reduce the prisoner's sentence, but simply enabled the prisoner to serve the sentence in the community rather than in gaol and in this sense it was very similar to the modern understanding of parole. Under 1886 regulations which gave effect to the 1883 amendment, prisoners became eligible for release on licence towards the end of their sentence, from six to eighteen months prior to release, depending on the length of sentence. The licence provision was retained in the *Crimes Act 1900* in section 463.

After the passage of the *Habitual Criminals Act 1905* release on licence was the only means by which those prisoners sentenced to life imprisonment or detained at the Governor's pleasure could be released.<sup>30</sup> After a system of parole was introduced in 1966 this became the primary use of release on licence. 1982-83 saw a Release on Licence Program established in NSW following the recommendations of the Indeterminate Sentence Committee which was formed in 1981. The scheme saw a large-scale release of prisoners after serving only a fraction of their sentence before it was terminated following allegations of corruption. The Release on Licence Board was established in 1983 and was reconstituted and renamed the Serious Offenders Review Board following the passage of the *NSW Sentencing Act 1989*.<sup>31</sup>

### ***Remission***

The term 'remission' refers to the reduction of the sentence by administrative action after the sentence has been imposed by the court. It can be given either automatically by the prison authorities or can be earned by the prisoner. A sentence can also be remitted by the Governor as an exercise of his prerogative of mercy.<sup>32</sup> This form of windfall remission is unrelated to the prisoner's behaviour or public policy and was usually the result of an external factor such as strike action by prison warders or a Royal visit. For example, prisoners were granted remissions as a result of the visits of Her Majesty The Queen to new South Wales in 1970, 1973 and 1977, at a rate of one day for each month of their total

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<sup>29</sup> Chan, n 18, p. 398, quoting from A Shaw, *Convicts and the Colonies* (1977) at 18.

<sup>30</sup> *Ibid*, p. 403.

<sup>31</sup> *Ibid*.

<sup>32</sup> Nygh, P & Butt, P (eds), *Butterworths Australian Criminal Law Dictionary*, 1997, p. 175.

sentence, up to a total of 120 days on each occasion.<sup>33</sup> These remissions did not necessarily result in the immediate release of a prisoner, but operated to reduce his or her prison term.

In NSW regulations regarding remissions were formalised following the enactment of the *Prisons Act 1840*. Prior to that, remission of sentence was only available by petition to the Governor and tended to be restricted to certain classes of prisoners. In 1858 further regulations were issued which abolished partial remission for good conduct and which had the effect of greatly increasing prisoner discontent and prison numbers. Following amendments in 1867 prisoners again were able to earn remission by good conduct although another amendment in the same year denied remission to prisoners serving sentences of less than 12 months.<sup>34</sup> Remissions were calculated at a sliding scale proportionate to the length of imprisonment and number of prior convictions. In 1904-5 remissions again became available to those serving short sentences from three to twelve months, and distinctions came to be made between 'remedial' prisoners, 'recidivists' and 'habitual' criminals, with the earning of remissions favouring first offenders over those with prior convictions. Following the commencement of the Prison Regulations in 1968, remissions became automatic. Part XV granted remission of one-third of sentence to prisoners who had been classified as remedial, serving a sentence of three months or more; one-quarter to those defined as a recidivist who were serving a sentence of one month or more, and a prisoner classified as a habitual criminal was entitled to a reduction of one-sixth of the total period to which he or she had been sentenced.<sup>35</sup>

The Report of the 1978 Royal Commission into NSW Prisons (the Nagle Commission) identified some criticisms which had been levelled at the remission system as operating at that time. These included that the system was deceptive to the layperson who assumed, when a judge sentenced a prisoner to a term of imprisonment, that would be the amount of time the prisoner would serve. Prisoners, on the other hand, understood the reduced sentence to be their maximum sentence, with any loss of remission as a result of disciplinary action an extra punishment. In effect, it was believed that the remission system no longer provided any real incentive for good behaviour as remissions did not apply to the non-parole period of the sentence.<sup>36</sup> Consequently, the Nagle Commission recommended the adoption of the Victorian system of earned remissions, which applied to both the head sentence and the non-parole period. This recommendation was supported by the Muir Committee, which was appointed to review the *Parole of Prisoners Act 1966* and later adopted by the government.<sup>37</sup> Remissions were abolished by the *Sentencing Act 1989*, by which time the difference between the head sentence imposed and the actual time served by a prisoner had become substantial. One effect of the elimination of all forms of remission is that sentences

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<sup>33</sup> Report of the Royal Commission into New South Wales Prisons (the Nagle Report), March 1978, p. 461.

<sup>34</sup> Chan, n 18, p. 401.

<sup>35</sup> *Report of the Royal Commission into New South Wales Prisons* ("The Nagle Report"), March 1978, p. 458.

<sup>36</sup> *Ibid*, p. 459.

<sup>37</sup> Chan, n 18, p. 402.

have become longer and overcrowding in prisons has worsened since, in removing remissions, the Government has severely limited its options for managing the size of the prison population.<sup>38</sup>

Section 19AA(1) of the **Commonwealth Crimes Act 1914** provides that where the law of a state or territory allows for the remission of sentence, that law will apply in the reduction of a deferred sentence of imprisonment. Remission is available in respect of the parole period only, provided that under the relevant state or territory's parole law there is a provision deeming an offender subject to a parole order still to be under sentence of imprisonment for the duration of the parole period.<sup>39</sup>

No remissions are available to prisoners sentenced in the **Australian Capital Territory** as prisoners sentenced in the ACT are imprisoned in NSW goals and are therefore subject to the **NSW Sentencing Act 1989** which abolished remissions.<sup>40</sup> The *Sentencing Act 1989* does not affect any prisoner sentenced prior to its commencement. Furthermore, a prisoner may be credited with anticipated future remissions as well as the remission to which the prisoner had already become entitled when remissions were abolished. Sentencing courts in NSW are not permitted to take the abolition of remission into account when sentencing an offender to a period of imprisonment.<sup>41</sup> In this respect, NSW differs from other jurisdictions in which remissions have been abolished.

Remissions were abolished in the **Northern Territory** by section 6 of the *Prisoners (Correctional Services) Amendment Act (No 2) 1994* which repealed section 92 of the *Prisoners (Correctional Services) Act 1980*. However there is still some scope for remission in section 93 of the Act which permits the Director of the Department of Corrective Services to grant a remission of up to 30 days per year of the sentence in such circumstances as the Director thinks fit. Furthermore, section 114 of the *NT Crimes Act 1995* provides that the Administrator may order the remission of a sentence under a law of the Northern Territory (with or without conditions) and may also order release in the exercise of the prerogative of mercy.<sup>42</sup>

**Queensland** is the only State in which remissions are still available to offenders sentenced to a term of imprisonment. Part III of the *Corrective Services Regulation 1989 (QLD)* governs the availability of remissions in Queensland. A prisoner who is 'of good conduct and industry' serving a sentence of at least two months imprisonment is generally entitled to a remission of one-third of the sentence, plus any further remission the prisoner may

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<sup>38</sup> Ibid, p. 413.

<sup>39</sup> *The Laws of Australia*, vol 12, 'Criminal Sentencing', subtitle 12.8, 'Post-Custodial Orders', ¶113.

<sup>40</sup> Ibid, ¶114.

<sup>41</sup> Ibid, ¶115-117.

<sup>42</sup> Ibid, ¶118.

earn.<sup>43</sup>

Remissions were abolished in **South Australia** in 1994 by the *Statutes Amendment (Truth in Sentencing) Act 1994*. However, under transitional provisions remissions will still be credited to those prisoners sentenced prior to the commencement of that Act. After the commencement of the 1994 Act, a sentencing court must take into account the abolition of remissions when fixing a sentence of imprisonment or a non-parole period.<sup>44</sup> Similarly in **Tasmania** prisoners sentenced to imprisonment prior to 1 January 1994 may be granted up to one-third remission of sentence. Prisoners sentenced after this date may only be granted a maximum three months' remission. Additionally, special remissions not exceeding 14 days may be granted in exceptional circumstances.<sup>45</sup> Likewise, in **Victoria**, while remissions are generally no longer available, they are still available in respect of sentences imposed before the commencement of the *Corrections (Remissions) Act 1991* (which commenced in April 1992). As in South Australia, Victorian courts must take the abolition of remissions into account when sentencing an offender to a term of imprisonment. **Western Australia** is the most recent state to abolish remission and did so with the *Sentencing (Consequential Provisions) Act 1995* which commenced in November 1996.<sup>46</sup>

### ***Pardon***

The Governor's power to pardon in NSW is contained in the Letters Patent constituting the office of the Governor. The right to pardon is the Governor's exclusively:

Where any crime or offence has been committed within the State against the laws of the State, or for which the offender may be tried therein, the Governor may as he shall see occasion, in our name and on our behalf ... grant to any offender convicted in any court of the State ... a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender.<sup>47</sup>

The prerogative of mercy is maintained in the *Criminal Appeal Act 1912* and in section 53 of the *Sentencing Act 1989*:

Nothing in this Act limits or affects in any manner the Royal prerogative of mercy or any entitlement of a prisoner to be discharged or released from

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<sup>43</sup> Ibid, ¶119.

<sup>44</sup> Ibid, ¶124-125.

<sup>45</sup> Ibid, ¶126.

<sup>46</sup> Ibid, ¶129.

<sup>47</sup> R D Lumb, *the Constitution of the Australian States*, 3rd ed, 1971, p. 120, extracted in B Schurr, *Criminal Procedure (NSW)*, 1996, ¶31.600.

prison under the *Crimes Act 1900* or any other Act.<sup>48</sup>

Where a pardon is granted, the person is cleared of all the consequences of the offence for which the pardon was granted. A person who has been pardoned for a Commonwealth offence is treated as if he or she was never convicted and does not have to disclose the conviction and may deny ever having been convicted.<sup>49</sup> According to the *Criminal Records Act 1991* (NSW), the conviction of a person pardoned in this State will be treated in the same way as a spent conviction with the exception that it is not subject to the exemptions which apply to ordinary spent convictions. For example, a court may take the conviction into account when sentencing; and the conviction must be disclosed in certain employment applications.<sup>50</sup>

### 3.0 PAROLE IN NEW SOUTH WALES

#### 3.1 Parole under the *Parole of Prisoners Act 1966*

Parole was established in NSW by the *Parole of Prisoners Act 1966*, as part of an individualised approach to sentencing, the aim being to reconcile the ‘objective’ (the crime) with the ‘subjective’ (the offender) elements of punishment.<sup>51</sup> The rationale for parole was stated in the second reading speech:

Parole is based on the belief that within the period of the sentence of any prisoner, there comes a time when he is more ready to return to society and to make a satisfactory adjustment than at any other time ...<sup>52</sup>

and the purpose of parole was stated to be

... to restore a measure of freedom to the prisoner and to give him guidance and supervision during the period of transition from controlled to uncontrolled living: to give him at that particular moment when there is the best chance of his returning to the community, fitting into its pattern and becoming a useful member.<sup>53</sup>

The Act reconstituted the Parole Board as an independent body with powers to grant, refuse, defer or revoke parole. The Parole Board had been originally established in 1950 by

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<sup>48</sup> The prerogative of mercy is retained in clause 102 of the Crimes (Sentencing Procedure) Bill 1999, introduced into the Legislative Assembly on 28 October 1999, and which repeals and replaces provisions of the *Sentencing Act 1989* relating to sentencing procedure.

<sup>49</sup> *Crimes Act 1914* (Cth), sections 85ZR; 85ZS.

<sup>50</sup> Schurr, n 47, ¶31.600.

<sup>51</sup> Chan, n 18, p. 405, referring to JA Morony, *A Handbook of Parole in New South Wales*.

<sup>52</sup> J Maddison, NSWPD 20 September 1966, pp. 972.

<sup>53</sup> *Ibid*, pp. 972-3.

section 464A of the *Crimes Act 1900* however it was in fact a ‘release on licence board’ whose job it was to recommend whether a prisoner should be granted release on licence and any limits or conditions which should be endorsed on the licence.<sup>54</sup> Section 464A was repealed by the *Parole of Prisoners Act 1966* and the Parole Board no longer had any direct involvement with the release of prisoners on licence.<sup>55</sup>

The Act also allowed a sentencing court to set a non-parole period of not less than six months which the prisoner must serve.<sup>56</sup> The court was not bound to set a non-parole period in cases where the nature of the offence or character of the offender made it undesirable to do so. In fact, the Board was empowered to determine that the prisoner not be released from prison at the expiration of the non-parole period<sup>57</sup>. Consistent with the rehabilitative rhetoric of the time, non-parole periods were not linked to the head sentence by any formula and were generally relatively short, from 25 per cent to half of the head sentence.<sup>58</sup>

### 3.2 Parole under the *Probation and Parole Act 1983*

The *Probation and Parole Act 1983* was based largely on the recommendations of the Muir Committee, appointed in 1978 following the Report of the Nagle Royal Commission into prisons to review the *Parole of Prisoners Act 1966*. The Muir Committee was constituted by representatives from the magistracy, the Attorney-General’s Department, Departments of Justice and Corrective Services and the Parole Board. It was given just two months to submit its report which meant it was not able to consider a proposal by the Probation and Parole Service to abolish parole altogether and adopt a system of determinate sentencing. Instead, the Committee suggested extensive amendments to the 1966 Act in an attempt to balance the conflicting interests of those employed within the criminal justice system: prisoners, interested organisations and members of the public it was said that recommendations of the Muir Committee contained “something for everyone”.<sup>59</sup>

In his second reading speech, the Minister for Corrective Services summarised the purpose

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<sup>54</sup> *Crimes Act 1900*, section 464A(4), inserted by *Crimes (Amendment) Act 1950*.

<sup>55</sup> After the commencement of the *Parole of Prisoners Act 1966*, section 463 (release on licence) was primarily used to release life-sentence or Governor’s pleasure prisoners. These cases were considered by the Life Sentence and Governor’s Pleasure Review Committee, which reported to the Minister who should be released. The Minister then referred them on to the Parole Board, upon whose recommendation release was referred to the Executive Council. In 1981 the Indeterminate Sentence Committee was established to review life-sentences and make recommendations for release on licence. After the termination of the 1982-83 large-scale release on licence scheme following allegations of corruption, the Release on Licence Board was established in 1983. Under the *Sentencing Act 1989* this Board was reconstituted and renamed the Serious Offenders Review Board.

<sup>56</sup> *Parole of Prisoners Act 1966*, section 4(2).

<sup>57</sup> *Parole of Prisoners Act 1966*, section 6(2)(b).

<sup>58</sup> Chan, n 18, p. 405.

<sup>59</sup> *Ibid*, p. 408.

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of the *Probation and Parole Act 1983* and cognate Acts:

... these bills will eliminate any provision for the exercising of ministerial or individual discretion to effect a prisoner's release. Rather, they will put into place a system whereby a prisoner's release from gaol will only result either from the termination of his court imposed sentence, or following the majority decision of an independent body that the prisoner should be granted conditional release.<sup>60</sup>

The Act abolished parole for sentences of three years or less and introduced instead the concept of 'after-care probation'. In these cases, the portion of an offender's sentence to be served in gaol and the proportion to be spent on conditional release in the community under a probation order was specified by the courts. A court could refuse to specify a non-probation period so long as the court's reasons for doing so were stated. However, it has been claimed that 'basically this provision means an automatic release to after-care supervision or an unsupervised probation order instead of a Parole Board decision'.<sup>61</sup> Interestingly, public perception of the 1983 Act was of a tightening of early release - that abolishing parole for prisoners sentenced to three years or less was a crackdown when in actual fact the Act resulted in virtually guaranteed early release for those prisoners.<sup>62</sup>

Non-parole periods for prisoners sentenced to more than three years' gaol were also set by the courts. The reconstituted Parole Board was to consider all cases where a prisoner's non-parole period had expired. While there was no automatic release on parole at the expiration of the non-parole period, if the Board was satisfied that a prisoner's release would not endanger the public and that he or she could be rehabilitated into the community, there was a presumption in favour of parole being granted.<sup>63</sup> The Board was vested with absolute discretion in respect of to whom probation or parole should be awarded and what conditions if any should be attached to the order: a prisoner whose application was refused had a limited right of appeal to the Court of Criminal Appeal on the basis that the Board's decision was founded on false or distorted information. Where the Board refused an application for parole the Act required it to give clear and specific reasons for its decision and, where refusal was likely, entitled the prisoner to provide to the Board fresh or additional information before the Board made its final decision.<sup>64</sup> The Regulation to the Act specified a formula for reducing non-probation and non-parole periods as well as head sentences, based largely on the 1968 Prison Regulations, which the Minister stated 'provide[d]

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<sup>60</sup> NSWPD, 24 November 1983, p. 3461.

<sup>61</sup> N Stoneman, 'Probation and Parole Australian Capital Territory, New South Wales: more problems than prospects', in Potas, n 7, p. 283.

<sup>62</sup> Chan, n 18, p. 414.

<sup>63</sup> NSWPD, 24 November 1983, p. 3462.

<sup>64</sup> Ibid.

incentives for prisoners to be of good behaviour in gaol'.<sup>65</sup>

### 3.3 Parole under the *Sentencing Act 1989*

Soon after it commenced, the *Probation and Parole Act 1983* was found to be wanting in many areas. For example, a paper presented at the Australian Institute of Criminology Seminar "Sentencing in Australia: Issues, Policy and Reform" claimed that the *Probation and Parole Act 1983* "does not have the clear rationale and practicality upon which to organise the sentencing and correctional systems of the next two decades".<sup>66</sup> Amendments to the Act were frequent until it was replaced by the *Sentencing Act 1989* (hereafter "the Act").<sup>67</sup> Parole is governed by Part 3 of the Act. The new Act reflected the politically popular "truth in sentencing" concept. It completely abolished the notion of remission and removed the presumption in favour of parole for certain prisoners. The 75 per cent rule, introduced in relation to certain offences in 1987 became the universal rule for all sentences where a non-parole and parole period was imposed.

#### *Eligibility for parole*

Where the sentencing court imposes a sentence consisting of a minimum and additional term, a prisoner becomes eligible for release on parole at the expiration of the minimum term, where a parole order directing release has been made and has taken effect. The Parole Board can not make an order to release a prisoner on parole before the expiration of the minimum term unless the prisoner is dying or the Board is satisfied that there are exceptional extenuating circumstances necessitating early release (this exception does not apply to a prisoner serving a life sentence).<sup>68</sup> The procedures followed by the Parole Board when determining an application for parole are discussed below at page 16.

The additional term must not exceed one third of the minimum term unless the court decides there are 'special circumstances' warranting a variation from the 75 per cent rule. NSW follows a 'bottom-up' approach to sentencing: unless the court decides to exercise its discretion and fix the minimum and additional terms, the court is merely required to fix the minimum or non-parole period. Unless special circumstances exist the additional term is then applied automatically by section 5(2) making up the head sentence. The minimum and additional terms together must not exceed the maximum period of imprisonment that may be imposed for the offence, or be less than the minimum period of imprisonment that must

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<sup>65</sup> Ibid. In his address to the AIC Seminar, N Stoneman stated that 'remissions tend to reduce head sentences and non-probation/parole periods by at least one third and often by as much as 40 per cent': see n 61, p. 283.

<sup>66</sup> Stoneman, n 61, p. 267.

<sup>67</sup> For example a 1987 amendment made it mandatory for the non-parole period to be at least 75 per cent of the head sentence for certain offences defined as 'serious'.

<sup>68</sup> Sections 25(1) & (6). Sections 18 (non-serious offenders) and 22C (serious offenders) require the Board to consider whether the prisoner is to be released on parole at least 60 days before the day on which the prisoner becomes eligible for release. This period may be shortened to not less than 21 days if the Board believes itself unable to make the decision prior to that time.

be imposed for the offence. (Under the Crimes (Sentencing Procedure) Bill 1999, introduced in October 1999, the manner in which courts will impose a sentence is altered: the court is required to firstly set the term of the sentence, and secondly set a non-parole period. The 75% rule remains, and the court must specify reasons for imposing a non-parole period less than 75% where it thinks there are special reasons for doing so. For further discussion see Part 6.0, Current Developments, at p. 22, below.) Fixed terms must be imposed for sentences of six months or less. A court may decline to set a minimum and additional term and set instead a fixed term where it considers it appropriate, because of the nature of the offence or the antecedent character of the offender, because of other sentences already imposed on the offender or for any other reason. A court which decides to impose a fixed term is required by section 6(3) to state its reasons for doing so.

### ***Parole orders***

The parole order is the mechanism by which a prisoner may be released from custody at the expiration of the minimum term. When a court imposes a sentence of imprisonment of three years or less that has a minimum term, section 24 requires the court to make an order directing the release of the prisoner on parole at the end of the minimum term. In other words, release on parole is automatic for offenders sentenced to a period of imprisonment of three years or less. For prisoners who are serving a sentence of more than three years, for which a minimum term has been set, release on parole at the expiration of the minimum term is at the discretion of the Parole Board. Unless revoked, a parole order continues until the sentence of imprisonment to which the order relates has expired. A parole order is subject to such terms and conditions as specified in the Regulations, and any terms and conditions that are specified in the order when the order is made.<sup>69</sup> The Parole Board may vary the order at any time during its term and may revoke the order if it has reasonable cause to believe that a person has contravened a term or condition, for the contravention of which the order may be revoked. The standard terms and conditions of parole orders have been reproduced in Appendix A. They are copied from the NSW Parole Board *Annual Report 1997*. The first 3 conditions reflect those prescribed in clause 10 of the Sentencing (General) Regulation 1996. A term or condition of a parole order must not require the offender to be subject to supervision for a period of more than three years after the date on which the offender is released unless the offender is classified as a serious offender, in which case the Parole Board may, before the expiration of a period of supervision, extend the period of supervision for a further period of up to three years. This may be done more than once.<sup>70</sup>

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<sup>69</sup> An example of additional conditions are those imposed on Lewthwaite's parole: he is to be under strict supervision for three years; he must report to a case officer at least weekly (daily at the beginning of his parole); he must undertake psychiatric counselling; he will be visited by parole officers twice a month and will receive regular telephone calls to check his whereabouts; he will be the subject of monthly progress reports and an annual psychiatric examination; he is barred from going within 10km of the murder scene and is banned from contact with anyone under 16 years of age unless supervised; he must undergo regular urine tests for alcohol and other drugs, and he must not change address without the permission of his case officer: R Morris & T Barlass, 'Lewthwaite walks free within a week', *The Daily Telegraph*, 10 June 1999, p. 5.

<sup>70</sup> Regulations 10A(2) & (3). Prior to clause 10A being inserted in April 1997, there was no scope for extended supervision. The amendment reflects the recommendation of the NSW Law Reform Commission that the Parole Board should be able to order longer supervision in respect to serious offenders. Canada, for example, has provision for long-term community

Before the court or Parole Board makes a parole order containing terms or conditions relating to residence or treatment, the court or Board must consider a report from a probation and parole officer as to the offender's circumstances and must be satisfied, having regard to that report, that it is feasible to secure compliance with the terms or conditions.<sup>71</sup>

### ***Parole Board***

The Parole Board is constituted under Part 5 of the Act. The Board was originally established under the *Sentencing Act 1989* as the Offenders Review Board, however amendments to the Act in 1996 changed the name to the Parole Board. The Board consists of up to 21 members (and a minimum of 9), 19 of whom are appointed by the Governor and two *ex-officio* Members, one of whom is a police officer nominated by the Police Commissioner and the other a member of the Probation and Parole Service nominated by the Commissioner of Corrective Services. Of the appointed members, three are to be judicial members and the others are to reflect, as closely as possible, the composition of the community at large. Judicial members may be judges or retired judges of a NSW or Federal Court, magistrate or retired magistrates, or persons qualified to be appointed as a judge of a NSW court. Although up to sixteen community members may be appointed, only four may sit at any one time. A statement of the functions and responsibilities of the Parole Board, extracted from the Parole Board's 1997 *Annual Report* is attached in Appendix 2.

### ***Determination of release on parole***

The procedures followed by the Parole Board in determining whether to release a prisoner on parole depends on whether the prisoner is classified as a serious offender. In respect to prisoners who are **not** serious offenders, the Board is required to consider whether the prisoner should be released on parole at least 60 days prior to the prisoner becoming eligible for release. The Board must take into account the following when making its determination (section 17):

- the principle that the public interest is of primary importance;
- relevant comments (if any) made by the court when sentencing the prisoner;
- the antecedents of the prisoner and any special circumstances of the case;
- whether the prisoner, if released from custody, would be able to adapt to normal lawful community life;
- any other relevant matter, which has been described as including: the nature or the offence; the existence and nature of any prison offences; prison work records; reports of relevant officers with respect to industry, attitudes to officers and fellow prisoners and cleanliness and tidiness of personal effects; contacts with family and

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supervision of dangerous offenders under Part II of the *Corrections and Conditional Release Act*. Under that Act, the supervision orders continue for the period the Parole Board specifies, and the Board may establish whatever conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.

<sup>71</sup> Regulation 10(4).

other communities, and prospects for stable employment on release.<sup>72</sup>

After considering the above matters, the Board must either make an order that the prisoner be released on parole, or advise the prisoner in writing that it intends to make an order refusing parole. If the Board considers that it should not release the prisoner, that decision automatically becomes subject to review prior to a final decision being made. The Board must inform the prisoner of the date on which it will meet to reconsider the decision and the prisoner must inform the Board at least seven days prior to the meeting date if he or she intends to make representations to the Board. The Act abolished the presumption in favour of parole, and so the onus is on the prisoner seeking conditional release.

Some prisoners are defined as **serious offenders**. A serious offender is defined in section 59 of the *Correctional Centres Act 1952* to be:

- a) a person serving a sentence of penal servitude for life, or
- b) a person serving any sentence for which a minimum term and an additional term have been set by the Supreme Court under section 13A of the *Sentencing Act 1989*, or
- c) an offender who is serving a minimum term of imprisonment of 12 years or more, (it is proposed that this definition be amended by the Crimes (Administration of Sentences) Bill 1999 to include those offenders who are serving a **fixed** term of 12 years or more and those whose **cumulative** terms of imprisonment total 12 years or more, as well as those who are serving a **minimum** term of 12 years or more), or
- d) a person who is to be managed as a serious offender in accordance with a decision of the Commissioner until such time as the Commissioner revokes that decision, or
- e) a person who is being managed as a serious offender in accordance with a decision made by a sentencing court or the Parole Board, or
- f) a person convicted of murder and who is subject to a minimum term and an additional term of imprisonment, or a fixed term of imprisonment, in respect of the conviction, or
- g) an offender who belongs to a class of offenders prescribed by the regulations as serious offenders.

The procedures followed by the Parole Board with respect to a serious offenders are much the same as with respect to other prisoners, with a few exceptions: the Board's

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<sup>72</sup> *Halsbury's Laws of Australia*, vol 21(2), ¶335-1120.

consideration 60 days prior to the release of the offender is only a preliminary consideration regardless of whether or not the Board is disposed to release the prisoner. If the Board is disposed to grant parole, it will merely form an intention to do so at this initial stage without actually making a parole order. The prisoner's victims are required to be informed of the Board's intention and the victims are given the opportunity to make submissions. A hearing date is fixed at which the prisoner is also entitled to make submissions to the Board. For the purposes of the submission, the prisoner is required to be given copies of the reports and other documents intended to be used by the Board in reaching its decision. It is after this hearing that the Board makes its decision and, if appropriate, makes a parole order. The Serious Offenders Review Council (SORC), constituted under section 60 of the *Correctional Centres Act 1952* makes reports and provides advice to the Parole Board with respect to the release of serious offenders. The SORC has no deliberative powers with respect to the release of serious offenders, but is responsible for the management of serious offenders while they are in prison.

### ***Appeal***

Prisoners have a limited right of appeal under section 23 of the Act. Where the Board has decided that a prisoner should not be released on parole and the prisoner alleges that the decision of the Board was made on information which was false, misleading or irrelevant, the prisoner may apply to the Court of Criminal Appeal for a direction to be given to the Board as to whether the information was in fact false, misleading or irrelevant. The Court may give such directions with respect to the information as it sees fit. At the hearing or determination of the application, the prisoner is not entitled to appear in person, except by leave of the court. No avenue of appeal lies for a prisoner who has been refused leave to appeal as discussed above.

Where the Board has decided that a prisoner who is a serious offender should be released on parole and the Attorney-General or Director of Public Prosecutions alleges that the decision was made on information that was false, misleading or irrelevant, they possess a similar right of appeal as do prisoners, above. Again, in this hearing or determination the prisoner is not entitled to appear in person, except by leave of the court, and again there is not further right of appeal (in relation to the Lewthwaite case, see note 21 above).

### ***Revocation of parole***

The Parole Board is empowered by section 34 of the Act to revoke a parole order in any case where the parolee has breached any term or condition of the parole order (see Appendix 1) for which breach the order permits revocation. The Board may also revoke a parole order where it is satisfied that the parolee has been sentenced to a further term of imprisonment for an offence committed during the parole period. Where the Board has reasonable cause to believe that the parolee has contravened a term or condition of the parole order, the Board may give notice requiring the parolee to attend a hearing, or may issue a warrant for the arrest of the parolee, without revoking the parole order, for the purpose of determining whether the suspected breach has in fact occurred. If the parolee fails to appear at the hearing, the Board may issue a warrant for his or her arrest or revoke the parole order. A decision of the Board to revoke a parole order is subject to review similar to those which apply to the Board's initial decision to refuse parole discussed above. Again, the Board is required to notify the parolee of any material upon which it will be

relying in making its decision, and the parolee must inform the Board if he or she intends to make representations at the review meeting. A court sentencing an offender for an offence committed while on parole is also empowered by section 35 of the Act to revoke the existing parole order.

#### 4.0 PAROLE STATISTICS

Offenders who are being supervised on parole are often included in the general category of 'community corrections' for statistical purposes. 'Community corrections' in NSW usually includes community service orders, bail supervision and all post-prison early release orders (including parole, release on license and partially suspended prison sentences). 'Community corrections' does also include home detention although it is usually counted separately for statistical purposes. 'Prisons' includes secure prisons, open prisons and periodic detention.<sup>73</sup>

**Number of offenders incarcerated in prison and supervised under a parole order  
as at 30 June<sup>74</sup>**

|  | 1994  | 1995  | 1996  | 1997  | 1998  |
|--|-------|-------|-------|-------|-------|
| <b>Prison inmates</b>                    | 7,753 | 7,816 | 7,779 | 8,020 | 7,862 |
| <b>% total prisoner pop<sup>75</sup></b> | 30.1  | 29.3  | 27.7  | 30.5  | 31.9  |
| <b>Parolees</b>                          | 1,933 | 2,257 | 2,515 | 2,557 | 2,557 |
| <b>% total prisoner pop</b>              | 7.5   | 8.5   | 9.0   | 9.7   | 10.4  |

<sup>73</sup> Steering Committee for the Review of Commonwealth/State Service Provision, *Report on Government Services 1999*, volume 1: Education, Health, Justice, table 8A.19, p. 683.

<sup>74</sup> New South Wales Department of Corrective Services, Probation and Parole Service Facts and Figures, <http://www.dcs.nsw.gov.au/probation/stats.asp> (for parole statistics); Corrective Services NSW, *1997/98 Statistical Supplement*, p. 9 (for imprisonment statistics 1994-1997).

<sup>75</sup> Other forms of custody included to make up 100% prisoner population include community service order, probation supervision and fine substitution. Note that 'prison inmates' includes those on periodic detention.

Release to parole, 1996-97<sup>76</sup>

|                | Cases Considered | Released | Serious offenders | Special Circumstances | Refused | Serious Offenders |
|----------------|------------------|----------|-------------------|-----------------------|---------|-------------------|
| <b>1996 No</b> | 991              | 808      | (9)               | (1)                   | 183     | (12)              |
| <b>1996 %</b>  | 100              | 82       | (9)               | (1)                   | 18      | (1.2)             |
| <b>1997 No</b> | 1205             | 1025     | (22)              | (7)                   | 180     | (16)              |
| <b>1997 %</b>  | 100              | 85       | (1.8)             | (0.6)                 | 15      | (1.3)             |

**Note:** 'Special circumstances' refers to release pursuant to section 25A of the *Sentencing Act 1989* which allows for release before the minimum term if the prisoner is dying or if it is necessary to release the prisoner owing to 'exceptional extenuating circumstances'.

Successful completion of supervision orders 1997-98 (per cent)<sup>77</sup>

|         | NSW  | Vic  | Qld  | WA   | SA   | Tas  | ACT  | NT   | Aust |
|---------|------|------|------|------|------|------|------|------|------|
| 1996-97 | 81.0 | 73.5 | 68.4 | 68.1 | 60.3 | 93.3 | 82.9 | 61.6 | 66.3 |
| 1997-98 | 83.8 | 76.5 | 66.8 | 63.2 | 60.6 | 89.0 | 87.1 | 66.0 | 74.9 |

From the above table, it is evident that NSW achieved successful completion rates for community based orders well above the Australia-wide average. The NSW completion rate was only surpassed by the small jurisdictions of the ACT and Tasmania in both years covered by the statistics.

Revocation of Parole orders 1996-97<sup>78</sup>

|             | Number revoked | Revoked due to further conviction |      | Revoked due to breach of condition |      |
|-------------|----------------|-----------------------------------|------|------------------------------------|------|
|             |                | No                                | %    | No                                 | %    |
| <b>1996</b> | 909            | 385                               | 42   | 524                                | 58   |
| <b>1997</b> | 881            | 423                               | 48.5 | 458                                | 51.5 |

**Note:** 'Breach of condition' included failure to maintain contact with supervising Probation and Parole officer; changing address without permission; leaving the state without permission; failure to attend drug and alcohol rehabilitation centre, and failure to abstain from alcohol.

<sup>76</sup> NSW Parole Board, *Annual Report for 1996*, pp. 7-8 (for 1996 figures); NSW Parole Board *Annual Report for 1997*, p. 10 (for 1997 figures).

<sup>77</sup> Steering Committee for the Review of Commonwealth/State Service Provision, *Report on Government Services 1998*, volume 1: Education, Health, Justice, Emergency Management, table 7A.14, p. 450; Steering Committee, n 73, table 8A.12, p. 580.

<sup>78</sup> NSW Parole Board, *Annual Report for 1996*, pp. 8-9 (for 1996 figures); NSW Parole Board *Annual Report for 1997*, p. 11 (for 1997 figures).

### Daily cost of community supervision 1997-98

| NSW    | Vic    | Qld    | WA     | SA     | Tas    | ACT    | NT      | Aust   |
|--------|--------|--------|--------|--------|--------|--------|---------|--------|
| \$5.34 | \$8.04 | \$3.83 | \$7.98 | \$4.42 | \$4.66 | \$8.01 | \$11.62 | \$5.55 |

The daily cost of community supervision in NSW is lower than the average cost of community-based programmes Australia-wide, although higher than in Queensland, South Australia and Tasmania. Community corrections accounted for 10% of recurrent corrective services expenditure nationally during 1997-98. NSW spent \$84.45 per adult population on recurrent corrections expenditure. Of this, \$6.89 was spent on community corrections.<sup>79</sup> The Department of Corrective Services oversees 69 probation and parole offices in locations across the State. During the 1996-97 financial year, the Probation and Parole Service (with a total staff of 600 throughout New South Wales) was responsible for supervising or reporting upon over 38,000 offenders. Parole officers supervise offenders released under a parole order. Under the parole order, parolees are required to report to an officer as directed, and the officer will visit the parolee's residence and make enquiries in the community to establish whether the parolee is meeting the parole conditions.<sup>80</sup>

## 5.0 PAROLE IN OTHER AUSTRALIAN JURISDICTIONS <sup>81</sup>

Parole is a feature of the criminal justice system in every Australian State or Territory. Offenders who are convicted of a **federal** offence are subject to the laws of the state or territory in which the offender is sentenced. The sentencing judge must take into account the local laws when sentencing the offender.<sup>82</sup> Where a person is convicted of a federal offence in respect of which a sentence of imprisonment of three years or less is imposed, the court must make a recognizance release order. Where the offender is sentenced to imprisonment in excess of three years, the sentencing judge must either fix a non-parole period or make a recognizance release order. The court can decline to do either if it is satisfied neither is appropriate in view of the nature of the offence and the antecedents of the offender. The authority to release a prisoner on parole in respect of a federal offence comes from the Commonwealth Attorney-General rather than a federal parole body. Sections 19AL(1), (2) & (5) of the Commonwealth *Crimes Act 1914* compels the Attorney-General to direct the release of the prisoner on parole at the expiration of the non-parole period upon the acceptance by the prisoner of the conditions contained in the parole order. These conditions are provided in section 19AN of the *Crimes Act 1914* (Cth).

<sup>79</sup> Ibid, table 8A.6, p. 574.

<sup>80</sup> NSW Department of Corrective Services, n 74.

<sup>81</sup> This section relies heavily on *The Laws of Australia*, vol 12, subtitle 12.8 - Non-Custodial Orders.

<sup>82</sup> *Crimes Act 1914* (Cth), section 16E. For example, if a federal sentence is to be served in a prison of a state or territory where there is no remission, the court imposing the sentence must take that fact into account in determining the length of the head sentence, and must adjust the sentence accordingly (section 16G).

Although the fundamental nature of parole is consistent in all jurisdictions, the manner in which parole is determined and administered does vary. In summary, the main differences between the States fall into the following areas.

- **the determination of non-parole periods:** Most jurisdictions have a provision whereby short sentences do not attract a non-parole period. In respect of longer sentences, the non-parole period may either be left to the discretion of the sentencing court, as in Victoria, or determined by a statutory formula, as in Queensland;
- **eligibility for release on parole at the expiration of the non-parole period:** in some jurisdictions a prisoner *automatically* becomes eligible for parole at the expiration of the non-parole period. Queensland is an example. However, in most jurisdictions, release on parole is at the discretion of the relevant parole board. Some jurisdictions, including NSW and Victoria, adopt a two-tiered approach where offenders serving short sentences (3 years in NSW, 5 in Victoria) are released automatically and those serving longer sentences are released at the discretion of the Parole Board.
- **parole conditions:** most jurisdictions include a combination of standard conditions and additional conditions which may be imposed at the discretion of the Parole Board. Tasmania is the only State where conditions are totally at the discretion of the Parole Board. Western Australia employs a formula to determine the length of parole supervision. South Australia and Western Australia will not release a prisoner on parole until he or she has signed an undertaking to comply with parole conditions.
- **revocation of parole:** Most jurisdictions provide for the automatic revocation of parole following conviction and imprisonment for an offence committed while on parole. Discretionary revocation by the Parole Boards for breach or suspected breach of parole conditions is also common. Where the States differ is with respect to the length of time which must be served following breach and return to gaol. Some States specify the offender must serve the sentence remaining at the time of release on parole, and others that the offender must serve the sentence remaining at the date of the breach.

For more detail, see the comparative table in Appendix 3.

## 6.0 CURRENT DEVELOPMENTS

On 28 October 1999 the Minister for Corrective Services introduced a package of bills into the Legislative Assembly; the Crimes (Sentencing Procedure) Bill 1999; the Crimes (Sentencing of Sentences) Bill 1999 and the Crimes Legislation Amendment (Sentencing) Bill 1999. Together, the bills contain a number of reforms to sentencing law and practice, and implement a number of recommendations made by the NSW Law Reform Commission in its report on sentencing released in April 1997. Much of the reform package is aimed at consolidation of sentencing laws, rather than implementing major change. Features of the package, many aimed at increasing sentencing options available to the courts, include:

- 
- re-introduction of suspended sentences where the sentence is two years or less and where the offender is unlikely to re-offend;
  - giving the courts the discretion to allow naming of juvenile offenders convicted of serious offences such as murder or violent sexual assault;<sup>83</sup>
  - broadening the power of the courts to order restitution of stolen, embezzled or received property to its rightful owner;
  - requiring courts to give reasons for imposing a sentence of six months or less, including reasons as to why a non-custodial sentence is inappropriate;
  - extending sentencing guidelines legislation to cover summary offences such as high range drink driving, as well as indictable offences, and
  - giving the Community Services Commissioner the power to extend Community Service Orders (CSOs) for minor breaches of CSOs.<sup>84</sup>

Some reforms are particularly relevant to parole. They include:

- **Crimes (Sentencing Procedure) Bill 1999:** Courts are required to set the total sentence to be served by the prisoner first, before setting the non-parole period. The minimum period is renamed the non-parole period which better reflects the practice of sentencing. Practically, the reforms do not make substantial changes to the way in which sentences are determined. The 75% rule is maintained, as is the court's discretion to decline to fix a non-parole period. The provision that a court must set a fixed term for a sentence of 6 months or less is also retained, as is the provision requiring a court to make a parole order in respect of an offender sentenced to a term of imprisonment of 3 years or less.
- **Crimes (Administration of Sentences) Bill 1999:** The obligations of the offender while on parole are spelt out in section 129 of the proposed Act. They are: to comply with such requirements of the Act and the regulations as they apply to the offender; to comply with the requirements of any conditions to which the offender's parole is subject, and to inform the Parole Board of any change in his or her residential address. The factors which the Parole Board must take into consideration in making a decision to release an offender on parole have been extended. They now include: the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole; the offender's conduct to date while serving his or her sentence, including the attitudes expressed by the offender and the offender's willingness to participate in rehabilitation programs, and the availability

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<sup>83</sup> For further discussion, see *Juvenile justice: some recent developments*, Briefing Paper No 5/99 by Honor Figgis, particularly Part 6, pages 29-31.

<sup>84</sup> J Shaw, MLC, Attorney-General, 'Sentencing Reforms', *Press Release*, 26 October 1999.

to the offender of family, community or government support.<sup>85</sup> The definition of 'serious offender' has been widened to include those offenders who are serving a series of sentences, which together have a non-parole period of 12 years or more. The effect of this amendment is to make more offenders subject to the provisions relating to serious offenders, described in Part 3.3 above (p. 17).

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<sup>85</sup> It has been reported that these changes have been made 'in the wake of the controversial release of convicted child killer John Lewthwaite'. The aim of the change is to 'clarify' the Board's obligation to take these factors into account, and means the concept of 'public interest' is not open to interpretation: R Morris, 'Juvenile criminals to be named', *The Daily Telegraph*, 27 October 1999, p. 19.

## **APPENDIX 1**

### **Standard Terms and Conditions of Parole**

**NSW Parole Board *Annual Report 1997***

## **TERMS AND CONDITIONS**

The standard terms and conditions of parole are:-

1. The offender is to be of good behaviour and must not, during the term of the order, commit any offence.
2. The order may be revoked if the offender contravenes any of the terms and conditions of the order.
3. The order may be revoked if the Board determines that it has sufficient reason to believe that the offender, having been released from custody, has not adapted to normal lawful community life.
4. The offender must, \*until the order ceases to have effect or for a period of 3 years from the date of release (whichever is the lesser); \*until supervision ceases in accordance with condition 9; submit to the supervision and guidance of the Probation and Parole Service Officer assigned for the supervision of the offender for the time being and obey all reasonable directions of that officer and, in particular, the offender-
  - h) is to report to the Probation and Parole Service Officer or another person nominated by that officer in the manner and at the times directed and be available for interview at such times and places as that Officer or nominee may from time to time direct; and
  - i) is to reside at an address agreed upon by the Probation and Parole Service Officer and receive visits at that address by the Probation and Parole Service Officer on such occasions as the Probation and Parole Service Officer considers necessary; and
  - j) is not to travel outside the boundaries of the State of New South Wales without the express approval of the Officer-in-Charge of the District Office of the NSW Probation and Parole Service to which the Probation and Parole Officer is attached; and
  - k) is not to leave Australia without the permission of the Parole Board.
5. The offender is to enter into employment arranged or agreed on by the Probation and Parole Service Officer or make himself or herself available for employment as instructed by that Officer; and
6. The offender is to notify the Probation and Parole Service Officer of any intention to change his or her employment, if practicable before such change occurs, or otherwise at his or her next interview by the Probation and Parole Service Officer.
7. The offender is not to associate with any person or persons specified by the Probation and Parole Service Officer.
8. The offender is not to frequent or visit any place or district designated by the Probation and Parole Service Officer.
9. The terms and conditions of this Order relating to supervision by the Probation and Parole Service Officer shall cease to have effect if the probation officer has notified the offender, in writing, with the concurrence of the Officer-in-Charge of the District Office of the NSW Probation Service to which the probation and Parole Service Officer is attached, that the

offender is not required to be subject to supervision.

10. The terms and conditions of this order relating to supervision by the Probation and .....Parole Service Officer shall cease to have effect after ..... if the Probation and Parole Service Officer has notified the offender, in writing with the concurrence of the Officer-in-Charge of the District Officer of the NSW Probation Service to which the probation officer is attached, that the offender is not required to be subject to supervision.

11. The offender shall totally abstain from intoxicating liquor.

12. The offender shall, if so directed by his/her Probation and Parole Service Officer, seek assistance in controlling his/her abuse of alcoholic liquor.

The offender will, in writing, authorise and direct all his/her medical, and other professional and/or technical advisers or consultants to make available to the New South Wales Probation and Parole Service a relevant report on his/her medical, and/or other conditions at all reasonable times.

13. The offender shall, following his/her release, undertake and maintain a program directed towards controlling his/her abuse of alcoholic liquor which has been or shall be arranged by his/her Probation and Parole Service Officer.

14. The offender shall, if so directed by his/her Probation and Parole Service Officer, seek assistance in controlling his/her abuse of drugs.

The offender will, in writing, authorise and direct all his/her medical, and other professional and/or technical advisers or consultants to make available to the New South Wales Probation and Parole Service a relevant report on his/her medical, and/or other conditions at all reasonable times.

15. The offender shall, following his/her release, undertake and maintain a program directed towards controlling his/her abuse of drugs which has been or shall be arranged by his/her Probation and Parole Service Officer.

16. The offender will undertake urinalysis, where facilities are available, at the discretion of the Probation and Parole Service Officer. If it is established by such urinalysis that the parolee has illegally used a drug it shall be considered a breach of the Parole Order.

17. The offender shall undertake urinalysis, where facilities are available, for and thereafter at the discretion of the Probation and Parole Service Officer. If it is established by such urinalysis that the parolee has illegally used a drug it shall be considered a breach of the Parole Order.

18. The offender shall entirely refrain from gambling.

19. The offender shall seek assistance in such manner as his/her probation officer may direct in controlling his/her gambling.

20. The offender shall seek assistance in controlling his/her gambling.

21. The offender shall enter a rehabilitation/residential centre as directed by his/her Probation and Parole Service Officer and shall not discharge himself/herself without the consent of the Probation and Parole Service Officer.

22. The offender shall enter ..... rehabilitation centre and shall satisfactorily complete the

program and shall not discharge himself/herself without the prior permission of the supervising officer.

23. The offender shall attend at such place as the probation officer may direct for the purpose of undergoing psychological assessment and/or counselling, and/or other medical assessment and/or treatment.

The offender will, in writing, authorise and direct all his/her medical, psychological and other professional and/or technical advisers or consultants to make available to the New South Wales Probation and Parole Service a relevant report on his/her medical, psychological and/or other conditions at all reasonable times.

24. The offender shall attend at such place as the Probation and Parole Service Officer may direct for the purpose of undergoing psychiatric assessment and/or counselling, and/or other medical assessment and/or treatment.

The offender will, in writing, authorise and direct all his/her medical, psychiatric and other professional and/or technical advisers or consultants to make available to the New South Wales Probation and Parole Service a relevant report on his/her medical, psychiatric and/or other conditions at all reasonable times.

25. Parole supervision shall be in conjunction with the ..... Community Corrections (Correctional) Service/ Probation and Parole Service provided that should he/she return to New South Wales before the date of expiration of the Parole Order, the offender shall report to the New South Wales Probation and Parole Service within seven (7) days of his/her arrival.

26. The offender may reside in ..... pending formal arrangements being finalised to transfer the Parole Order interstate in accordance with the provisions of the Parole Orders (Transfer) Act, 1983.

27. The offender shall not contact, communicate with, intimidate, watch or beset .....

28. The offender shall not contact nor communicate with ..... without the express prior approval of the supervising Probation and Parole Officer.

29. Parole supervision shall be undertaken by the New South Wales Probation and Parole Service until such time as the parolee has been deported. During the time that the offender is absent or is residing in another country, supervision by the Community Corrections (Correctional) Service/Probation and Parole Service of that country to be arranged where possible. Should the parolee return to Australia before the date of expiration of the Parole Order, the offender shall report to a Probation and Parole Service Officer within seven (7) days of his/her arrival.

30. The offender is to report to the Officer-in-Charge, Witness Security Unit. If the offender is removed or for any reason ceases to be on the Witness Security Program of any Police Force or agency prior to the expiration of the Parole Order he/she shall report within seven (7) days to the nearest New South Wales Probation and Parole Service Office. The offender will then be subject to Standard Conditions 1-8 for the duration of the Parole Order.

31. The offender shall not be in the company of any person under the age of 16 unless accompanied by a responsible adult.

32. The offender shall not be in the company of any person under the age of 18 unless accompanied by a responsible adult.

33. The offender shall not change residence without the approval of the supervising officer.

## **APPENDIX 2**

### **Functions and Responsibilities of the Parole Board**

**NSW Parole Board *Annual Report 1997***

## **FUNCTIONS AND RESPONSIBILITIES OF THE PAROLE BOARD**

The Parole Board's role is to consider:-

- l) those offenders' cases for whom the courts have specified a minimum and additional term which together exceed 3 years; to determine their suitability for release from custody, at the expiration of the minimum term and return to the community, under supervision for the term of a parole order. Offenders include those whose life sentences have been redetermined by the Supreme Court, pursuant to S13A of the Sentencing Act (1989).
- m) parolees' cases, where the person has not complied with the terms and conditions of the parole order, or where matters have arisen requiring the attention of the Board; thereafter to determine if the parole order issued should be revoked and a warrant issued for the offender's apprehension and return to lawful custody.
- n) revocation of a parole order prior to the offender's release, if there is then sufficient reason to believe that the offender, if released from custody, would not be able to adapt to normal lawful community life.
- o) home detention detainees' cases, where the detainee has not complied with the terms and conditions of the home detention order, or where matters have arisen requiring the attention of the Board; thereafter to determine if the home detention order issued should be revoked and a warrant issued for the offender's apprehension and return to lawful custody.

The Board may not make a parole order for an offender unless it has:-

- a) determined that the release of the offender is appropriate, having regard to the principle that the public interest is of primary importance.
- b) considered the sentencing judge's comments. antecedent nature of the offender, correctional centre, medical and other reports from various authorities and any special circumstances.
- c) determined that it has sufficient reason to believe that the offender, if released from custody, would be able to adapt to normal lawful community life.

The Act provides for an offender to be given the right to appear in person and/or be represented before the Board, in cases where the Board has indicated an intention to refuse parole, to revoke a parole order prior to release, or to revoke a parole order after an offender has been released to parole. This process is achieved at the public review hearings, which the Board conducts. It provides the offender with the opportunity of submitting a case for either release to parole or rescission of a revocation of parole order.

These proceedings are conducted in public and interested parties are able to attend and give evidence. The hearings are not bound by the rules or practice as to evidence and are not conducted in an adversarial manner.

Where the Board determines to refuse parole, after hearing evidence at a review hearing, its decision and the offender's case, are reviewed at least yearly, with the exception of those offenders who are classified as serious offenders. In those matters the Board may defer consideration for up to three (3) years.

Where the Board has reasonable cause to believe that a parolee has breached a term or condition of the parole order, the Board may inquire into the alleged breach (Section 32 Sentencing Act 1989). Should

it be determined that a breach has been committed, the Board may revoke the parole order or direct that no action be taken. Parolees have the right to be present and to have legal representation at the inquiry.

If the offender is a home detention detainee the Board has the same powers to consider these offenders as if they were offenders on parole. The power of the Board is pursuant to the provisions of the Home Detention Act 1996. The Board may revoke or vary an order issued to an offender on home detention.

## **APPENDIX 3**

### **Parole in Australian jurisdictions: a detailed comparison**

| GOVERNING LEGISLATION |   |
|-----------------------|---|
| NSW                   | <i>Sentencing Act 1989, Part 3</i>                                  |
| Victoria              | <i>Sentencing Act 1991, Part 3 Div 2</i>                            |
| Queensland            | <i>Corrective Services Act 1988, Part 4</i>                         |
| South Australia       | <i>Criminal Law (Sentencing) Act 1988, Part 3 Div 2</i>             |
| Western Australia     | <i>Sentencing Act 1995, Part 13 Div 2, 3</i>                        |
| Tasmania              | <i>Corrections Act 1997, Part 8; Sentencing Act 1997, ss 17-18.</i> |
| Northern Territory    | <i>Sentencing Act 1995, Part 3 Div 5 Subdiv 3</i>                   |
| ACT                   | <i>Parole Act 1976</i>  |

| NON-PAROLE PERIOD  |   |
|--------------------|---|
| NSW                | <p>Sentence &lt; 6 months, NO parole.</p> <p>Sentence &gt; 6 months, sentencing court MAY set minimum and additional terms or may set a fixed term (no non-parole period)</p> <p>Additional term must not exceed 1/3 of the minimum term (non-parole period)</p>  |
| Victoria           | <p>Sentence &lt; 12 months, NO parole</p> <p>Sentence &gt; 24 months, court MUST set non-parole period</p> <p>Sentence 12-24 months, non-parole period at court's discretion</p> <p>Non-parole period is no fixed proportion of sentence- minimum 6 months between head sentence and non-parole period</p>  |
| Queensland         | <p>Set by statute:</p> <p>Life sentence - non-parole period = 15 years</p> <p>All other sentences - non-parole period = 50% of sentence</p> <p>Sentences for violence offences - non-parole period = 80% of sentence</p> <p>Prisoner may apply to Community Services Commission for a reduction in parole period, which depends on behaviour during parole</p>  |
| South Australia    | <p>Sentence &gt;12 months, court MUST set non-parole period</p> <p>Sentencing court must set date on which non-parole period commenced - usually date offender taken into custody, not date of sentencing</p>   |
| Western Australia  | <p>Sentence &gt;12 months, court MAY make parole eligibility order.</p> <p>Where parole eligibility order is made, non-parole period set by statute: sentence ≤ six years, non-parole period = 1/3 head sentence; sentence &gt; six years, non-parole period = two-years less than 2/3 head sentence.</p> <p>Where no parole eligibility order is made, non-parole period = 2/3 head sentence</p> <p>Life sentence - non-parole period MUST be set by court - at least 7 but not more than 14 years. Life sentence for wilful murder - at least 15 but not more than 20 years. Strict security life sentence - at least 20 but not more than 30 years</p> |
| Tasmania           | <p>Sentencing court MAY set a non-parole period or order offender is not to be eligible for parole. Where court does not set non-parole period it is fixed according to statute at 1/2 sentence or 5 months, whichever is greater. Court can not set a non-parole period less than statutory minimum. Court may declare a prisoner to be <i>dangerous</i> in which case the prisoner can not be considered for release until declaration is discharged. Court must decide whether offender sentenced to life is to be eligible for parole or not, and if so, must set a non-parole period</p>   |
| Northern Territory | <p>Sentence ≥ 12 months, court MUST set non-parole period.</p> <p>Minimum non-parole period is 1/2 sentence or 8 months, whichever is greater. Certain sexual offences - non-parole period is 70% sentence.</p>   |

|            |   |
|------------|---|
| <b>ACT</b> | Sentence $\geq$ 12 months, court <b>MUST</b> set non-parole period unless it considers it inappropriate in all the circumstances of the case. |
|------------|---|

| <b>RELEASE ON PAROLE</b>  |   |
|---------------------------|---|
| <b>NSW</b>                | Sentence < 3 years - release is automatic on expiration of non-parole period<br>Sentence > 3 years - release is at discretion of Parole Board   |
| <b>Victoria</b>           | At discretion of Adult Parole Board   |
| <b>Queensland</b>         | At discretion of relevant Community Corrections Board   |
| <b>South Australia</b>    | Sentence < 5 years - release is automatic on expiration of non-parole period<br>Sentence > 5 years - release is at discretion of Parole Board<br>Life sentence - release by Governor on recommendation of Parole Board which must also specify length of parole period (not less than 3 or more than 10 years)      |
| <b>Western Australia</b>  | Where parole eligibility order has been made - prima facie obligation on Parole Board to release at expiration of non-parole period.<br>Life sentence - release only by Governor once prisoner has served minimum period set by court. Parole period must be at least six months but no more than 5 years duration. |
| <b>Tasmania</b>           | At discretion of Parole Board   |
| <b>Northern Territory</b> | At discretion of Parole Board   |
| <b>ACT</b>                | At discretion of Parole Board. Board may specify release prior to expiration of non-parole period if prisoner exhibits excellence in general behaviour and endeavours in respect of rehabilitation that it is appropriate.  |

| <b>PAROLE CONDITIONS</b> |   |
|--------------------------|---|
| <b>NSW</b>               | Standard conditions specified in regulations. Additional conditions may be specified in parole order. Can not require supervision for a period of more than three years after release date unless serious offender.   |
| <b>Victoria</b>          | Standard conditions specified in regulations. Intensive conditions may also be imposed on parolee, usually for first three months of release.   |
| <b>Queensland</b>        | Standard conditions specified in statute. Parole Board may impose additional conditions it considers necessary to prevent repetition of offences for which parolee was imprisoned.  |
| <b>South Australia</b>   | Standard conditions specified in statute. Parole Board may impose any other condition. Parole Board required to consider imposing special conditions on child sexual offenders. Release is subject to prisoner accepting in writing the parole conditions.  |
| <b>Western Australia</b> | Length of parole supervision governed by statute - lesser of the period beginning on release date and ending when 2/3 of parole period has elapsed and the period calculated by deducting from the 'prescribed period' (1/3 parole term, at least 6 months and not more than 2 years) the 'pre-release period' (the period, if any, that began when the non-parole period began and ended when the prisoner was released on parole). Standard conditions specified in statute. Parole Board or Governor may impose additional provisions. Release is subject to prisoner giving a written undertaking to comply with parole conditions. |
| <b>Tasmania</b>          | At discretion of Parole Board. Only in exceptional circumstances may Board direct that parolee is not required to be under supervision of probation officer for whole or part of parole period.   |

|                           |   |
|---------------------------|---|
| <b>Northern Territory</b> | Mandatory condition - supervision during parole period. Other conditions at discretion of Parole Board. |
| <b>ACT</b>                | At discretion of Parole Board.  |

| <b>REVOCATION OF PAROLE</b> |  |
|-----------------------------|--|
| <b>NSW</b>                  | Parole Board may revoke where parolee has breached any term or condition of parole order or where parolee has been sentenced to further term of imprisonment for an offence committed while on parole. Offender to serve remaining sentence at date of revocation.   |
| <b>Victoria</b>             | Parole Board may cancel parole order at any time before expiration. Offender to serve remaining sentence at date of release on parole. Board may revoke cancellation at any time - parole order revives and prisoner released on parole for remaining term.  |
| <b>Queensland</b>           | Parolee who fails to comply with requirement of parole commits an offence - Magistrate's Court may impose a penalty not exceeding 10 penalty units and parole order continues. Where parolee is sentenced to further term of imprisonment for an offence committed while on parole, automatic cancellation of parole order. Further term of imprisonment not reduced by time prisoner spent on parole. |
| <b>South Australia</b>      | Breach of a designated condition results in automatic revocation of parole order. Breach of any other condition - Parole Board may either cancel order or introduce a community service component (40 to 200 hours) and additional conditions without cancelling order.  |
| <b>Western Australia</b>    | Automatic revocation where parolee is sentenced to further term of imprisonment for an offence committed while on parole. Offender to serve remaining sentence (less time spent on parole).  |
| <b>Tasmania</b>             | Automatic revocation where parolee is sentenced to further term of imprisonment for an offence committed while on parole. Parole Board may vary, revoke, amend or suspend parole order at any time on such terms as it sees fit.   |
| <b>Northern Territory</b>   | Automatic revocation where parolee is sentenced to further term of imprisonment for an offence committed while on parole. Chairman of Parole Board may revoke order at any time prior to expiration of parole order. Where suspected breach, a Court of Summary Jurisdiction may cancel parole. Offender to serve sentence remaining at commencement of parole period.                                 |
| <b>ACT</b>                  | Automatic revocation where parolee is sentenced to further term of imprisonment for an offence committed while on parole. Parole Board may revoke an order where parolee is apprehended for failing to comply with parole conditions. Offender to serve sentence remaining at time parole order commenced.   |