

Response to Notice for Commonwealth Parole Office
Office of the Independent National Security Legislation Monitor

General

The Attorney-General's Department previously noted that significant changes were made in 2012 to parole procedures for federal offenders. Please provide more information on the nature of this change to Commonwealth parole law and policy since section 19AG of the Crimes Act was introduced in 2004, and the expressed justification for the change.

Automatic parole was abolished to address concerns that the previous arrangements necessitated the release of federal offenders who are not considered suitable for reintroduction into the community. Prior to 2012, there was no discretion to refuse parole to a federal offender serving a sentence of imprisonment of less than 10 years, even if reports from corrective service agencies did not support the granting of parole. The introduction of discretionary release to parole¹ brought the Commonwealth in line with the general approach of the states and territories² and provides an important incentive for prisoners to engage in rehabilitation programs whilst in prison. Any decision to refuse to release an offender to parole must be reconsidered within 12 months of the date of that decision.

Additionally, other than a life sentence, the maximum supervision period for a person on parole was five years irrespective of the length of their sentence. Now, a federal offender's parole period ends on the same day as his or her sentence³ and the parole supervision period will extend to the end of the person's parole period, unless their parole order specifies an earlier date on which the supervision period will end.⁴ Supervision is an important aspect of parole, providing the mechanism through which state or territory community corrections, on behalf of the Commonwealth, are able to determine whether a parolee is complying with the conditions of parole.

Similar amendments were made in respect of the granting of a licence. A licence authorises the release of an offender earlier than the date on which he or she would have been eligible for release from prison under the terms of the sentence imposed by the court. The level of supervision that a person released on licence is subject to is dependent on whether they were sentenced to a recognisance release order or a term of imprisonment of more than three years.

What is the role and size of the CPO?

Under Part 1B of the *Crimes Act 1914* (the Crimes Act), the Attorney-General is responsible for the release of federal offenders on parole or licence, revoking an offender's parole order because of a breach of that order and considering applications from offenders and parolees for interstate transfer, early release on licence or permission to travel overseas. The Commonwealth Parole Office (the CPO) supports the Attorney-General in these roles. Unlike states and territories, which have independent parole boards, decisions relating to the making or revocation of a parole order or licence are made by the Attorney-General, or by an SES-level delegate appointed in accordance with the *Law Officers Act 1964*.

¹Subsection 19AL(1) of the *Crimes Act 1914*.

²At the time the reforms were introduced, the Commonwealth was the only jurisdiction that had automatic parole prescribed for sentences of imprisonment up to 10 years in duration. In other jurisdictions, discretionary parole was applied to all offenders apart from a few States that had automatic parole for sentences of less than 5 years (SA), 3 years (NSW) and 12 months (WA).

³ Subsection 19AMA(3) of the *Crimes Act 1914*.

⁴ Subsection 19AL(3) of the *Crimes Act 1914*.

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The Attorney-General or a delegate makes decisions regarding federal offenders who have been sentenced to a period of imprisonment of more than three years in respect of whom a non-parole period has been set. Where the court has imposed a sentence of three years' imprisonment or less, a person is released into the community on a recognisance release order on a date set by the court, which can either be immediately upon sentencing (without serving any period of imprisonment) or after serving a portion of the sentence of imprisonment. The CPO has no involvement with the release of federal offenders on recognisance.

Section 120 of the Constitution provides that '[e]very State shall make provision for the detention in its prisons of prisoners accused or convicted of offences against the laws of the Commonwealth...'. Consequently, the states and territories manage most aspects of the detention of federal offenders and their supervision on parole or licence. Jurisdictional corrections agencies generally assess and treat federal offenders in the same way as other offenders in their respective systems.

There are currently 903 federal offenders serving an actual term of imprisonment and 572 federal offenders on parole or licence. The CPO is staffed by one ASL at EL2 level, three ASL at EL1 level, three ASL at the APS6 level and one ASL at the APS4 level. These officers perform a variety of work including legislative reform, pardons, crimes superannuation matters, welfare transfer orders and parole matters. At any one time it is likely that the equivalent of two ASL at EL1 level and two ASL at APS6 level work on parole.

I note that under the Crimes Act (Cth), the Attorney-General or his delegate is responsible for parole decisions for federal offenders.

a. Over the last three years, how many parole decisions have been made by the Attorney-General?

The CPO's database indicates that since 2015, eleven parole matters have been considered by the Attorney-General or the then Minister for Justice. Six of those matters concerned offenders convicted of terrorism offences, of whom two were subject to two annual parole decisions by the Attorney-General.

b. Over the last three years, how many parole decisions have been on behalf of the Attorney-General?

Since January 2015, approximately 693 parole decisions have been made by a delegate of the Attorney-General.

c. Please provide a copy of the current delegation(s) from the Attorney-General for this purpose.

See attached.

d. Over the last three years, what has been the policy or practice concerning the circumstances in which the Attorney-General personally exercises this decision-making power? If in writing, please provide a copy.

The majority of parole decisions are made by a delegate of the Attorney-General. However, all terrorism related parole decisions are made personally by the Attorney-General. In respect of federal offenders where particularly difficult matters arise or where the offender is particularly notorious, it is the CPO's practice to seek the views of the Attorney-General as to whether he wishes to personally consider the parole case.

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e. Does the policy differ in the case of offenders:

i. Who are now under 18 or who were under 18 at the time of offending?

No.

ii. Who are convicted of terrorism offences or who have demonstrated support for, or have links to, terrorist activity?

See above description of the general policy regarding the types of parole decisions that are personally exercised by the Attorney-General.

Process

Please provide information on the general process involved in a parole decision administered by the Commonwealth Parole Office (CPO) including:

a. How and from whom does the CPO gather relevant information and reports concerning a federal prisoner?

The Office of the Commonwealth Director of Public Prosecutions (the CDPP) will generally provide the following documents:

- prosecution report
- indictment/information
- criminal history (if any)
- statement of facts
- sentencing remarks
- appeal judgments (if any).

State and Territory Correctional Services will provide:

- pre-release report (which may include psychological reports, depending on the needs of the offender)
- any treatment reports.

b. What materials would generally be provided to the decision-maker to support his or her decision?

Generally, the following information is provided to the decision maker to assist them make a parole decision:

- sentencing remarks and appeal judgment (if any)
- pre-release report provided by state or territory correctional services, which may also include psychological reports
- any information provided by or on behalf of the prisoner.

c. To what extent is the CPO assisted by State or Territory parole authorities in relation to the parole of federal prisoners?

The CPO liaises with state and territory parole boards in respect of joint offenders (persons convicted of both Commonwealth and state or territory offences).

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d. What kinds of expert advice are relied on by the CPO, e.g. criminological or psychological analysis of offenders? How is this advice sourced?

The CPO relies on reports prepared by state and territory corrective services, which use a variety of risk/needs assessment tools to determine an offender's risk of reoffending and inform the development of pre-release reports. An assessment tool, called the Revised Level of Service Inventory, is used to determine an offender's risk of re-offending, how likely they are to re-offend when they are at liberty, as well as the risk factors associated with their offending.

The assessment includes areas such as education and employment, drug and alcohol history and effects, criminal attitudes, mental health, criminal associates and history of crime. Results from the assessment indicate which areas need to be targeted to reduce the risk of re-offending. More specialised assessment tools are used for serious offenders, such as the Violent Extremism Risk Assessment for terrorism offenders and the Static 99 which is the most widely used sex offender risk assessment instrument in the world.

In some cases, drug/alcohol treatment reports may be provided by counsellors in charge of prisons programs. Sex offender treatment reports are provided by the clinicians in charge of the sex offender treatment program undertaken by the offender. Psychological reports are generally those provided by an independent psychologist for consideration by the sentencing court. Where a person has ongoing psychological problems, a report may be provided by a Corrective Services psychologist.

e. What involvement do other Commonwealth agencies, including the Department of Home Affairs, the AFP and intelligence agencies have in the CPO's administration of parole decisions?

The Department of Home Affairs provides advice on whether a federal offender is liable for removal from Australia upon their release from prison. The Australian Federal Police and Joint Counter Terrorism Teams provide advice in respect of offenders charged with terrorism offences.

Please provide a copy of all documents comprising or evidencing a submission (and all attachments thereto) to the decision maker, and any extant reasons for the decision on parole, for the release on parole of:

a. A federal offender over the past three years;

We understand that it is the INLSM's intention to visit to the CPO for the purposes of reviewing parole cases, and we would be happy to facilitate this at your convenience.

b. A federal juvenile offender, i.e. someone who was a juvenile at the time of the parole submission, or who was a juvenile when the offence in question was committed.

We understand that it is the INSLM's intention to visit to the CPO for the purposes of reviewing parole cases, and we would be happy to facilitate this at your convenience.

To what extent, if any, does the CPO monitor the status of federal prisoners who are not yet or will not soon be eligible for parole? How is that done?

The day to day management and administration of offenders is a matter for state and territory correctional authorities. However, if a federal prisoner appeals their conviction and is successful, the CPO is notified by the CDPP and will assess the implications of that decision in terms of the management of that prisoner's parole eligibility date.

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The CPO receives reports if a federal prisoner applies to transfer from a prison in one state to a prison in another state—decisions on interstate transfers are made at ministerial level. The CPO also receives reports on prisoners who make applications for early release before their non-parole periods expire. From time to time prisoners write to the CPO seeking information about the parole process. The CPO responds to such enquiries in writing.

How often do CPO officials attend prisons or detention centres where federal offenders are held? Is there a legal right of access by the Attorney-General or CPO officials on reasonable notice to all places of detention (however described) where federal prisoners are being held? If not, would such a right be useful and utilised? Would it be useful for sentencing judges to have a similar right of access to all places where federal offenders are held along the lines of s 229 of the *Crimes (Administration of Sentencing) Act 1999* which allows any Judge of the Supreme Court or District Court and any Magistrate to visit and examine any correctional complex?

Parole decisions are made with regard to pre-release reports prepared by state and territory corrections, who interview the federal offender as part of the process for compiling their reports. The Crimes Act does not provide for a legal right of access by the Attorney-General or CPO officials to correctional centres where federal prisoners are held.

CPO officials do however visit correctional centres for the purposes of meeting with Corrections staff, most recently in April 2018 when officials visited the Custody-Based Sex Offender Treatment centre in Long Bay Correctional Centre to seek further advice about the treatment programs available to such offenders.

Regarding the question whether a right of access for sentencing judges to all places where federal offenders are held would be useful, the CPO notes that such a right may be of limited utility given that decisions regarding which correctional facility a person is housed are determined by state and territory correctional services and not by a sentencing judge (except in cases where they are juveniles and the court makes a decision on whether they should be held in adult custody or juvenile detention).

How often do CPO officials seek to interview or correspond with federal prisoners in relation to their parole?

In circumstances where it is considered that there is a possibility that the Attorney-General or a delegate may decide not to release a person on parole, CPO officials will write to the prisoner advising them of the matters which may adversely affect their release to parole and invite them to respond in writing. In practice, this happens with all terrorism offenders and child sex offenders and otherwise with offenders who have a demonstrated history of behavioural issues.

Please provide further information on how the CPO monitors compliance of paroled federal prisoner's with parole conditions. When there is evidence that a parole condition has been breached, who provides instructions and to whom for the purpose of making any application to court in that regard?

A parolee may breach their parole order by either committing a further criminal offence while on parole or by failing to comply with the conditions set out in the parole order.

The first category of breach is dealt with by the courts as part of proceedings for the new offence. If the parolee receives a sentence of more than three months' imprisonment for an offence that they committed while on parole, their parole is automatically revoked on the day that the new sentence is imposed. The offender is then liable to serve the outstanding balance

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of the original sentence as well as the sentence for the new offence. The sentencing court decides the sentence of imprisonment to be served by the offender.

The second category of breach is dealt with by the Attorney-General or a delegate upon advice by state and territory community corrections. The CPO will assess the breach report provided by community corrections, and prepare a submission for the delegate who will issue a notice to the parolee setting out the conditions that the offender has not complied with. The parolee is given the opportunity to provide reasons why their parole should not be revoked. After considering the response, the delegate may issue a warning and allow the parolee to continue to serve out their sentence in the community under parole supervision, or revoke the parole order.

Once a parole order has been revoked, the CDPP obtains a warrant for the arrest of the parolee who is then taken before a magistrate. At the breach hearing the person is legally represented and the CDPP represents the delegate of the Attorney-General. The magistrate decides whether the parolee will serve a sentence of imprisonment for the breach. If a person's parole is revoked without notice because their whereabouts is unknown and they are subsequently located and arrested, they are given the opportunity to respond to the notice of revocation.

In relation to questions 9 and 11-14, please advise whether the situation differs significantly between States and Territories and if so how?

There are some differences between jurisdictions but generally speaking the processes are similar. State and territory parole boards use the same sources of information in their decision-making processes as the CPO. In most jurisdictions, the majority of parole decisions are made on the papers rather than face to face hearings. Victoria is the only jurisdiction where the Board used to make regular visits to prisons. Rules of natural justice (i.e. the right to be heard by a decision maker, the right to be represented by a lawyer, the right to the information or evidence relied on by the decision maker in reaching a decision) do not apply in Victoria, Northern Territory or Western Australia.

The CPO takes up opportunities to visit state and territory parole boards and most recently visited the parole boards in New South Wales and Victoria to get a sense of how they operate.

Parole of juvenile federal offenders

Over the past 10 years, how many offenders who were under the age of 18 at the time of their offence ('juvenile offenders') have to date been subject to parole decisions administered through the Commonwealth Parole Office?

The CPO database indicates that since 2008, the CPO has considered one offender who was convicted of a terrorism offence and was 17 years old at the time of the offence but 19 years old at the time of sentencing. Two other persons, who were convicted of people smuggling offences and released on parole, were subsequently determined to have been under 18 years of age at the time of the offending.

How many federal juvenile terrorism offenders (ie terrorism offenders who are juveniles, or were so when the terrorism offence in question was committed) are the CPO aware of?

The CPO is aware of five federal offenders convicted of terrorism offences who were juveniles at the time they committed the offences.

To what extent, if any, does the process discussed above differ for juvenile offenders?

The process above does not differ for juvenile offenders, except that the parole report will come from Juvenile Justice rather than Corrective Services.

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Please provide a copy of any specific policy the CPO applies to parole decisions involving:

a. juvenile offenders.

Given the small number of juvenile federal offenders and the fact that specific difficulties in the parole management of juveniles have not arisen, the CPO has not developed a specific parole policy for juvenile federal offenders.

b. terrorism offenders who are juveniles, or were so when the terrorism offence in question was committed

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