GOVERNMENT OF
WESTERN AUSTRALIA

POLICY MANUAL

PRISONERS REVIEW BOARD

WESTERN AUSTRALIA

INDEX

1. THE SAFETY OF THE COMMUNITY AND THE RELEASE CONSIDERATIONS

A prisoner's **eligibility** to be considered for release on parole is decided by the Courts. The **decision to release on parole** is made by the Prisoners Review Board (the Board).

The *Sentence Administration Act 2003* (WA) (the Act) establishes and guides the Board. When it comes to parole and the administration of Parole Orders the only source of authority is the Act.

POLICY

The Board and any person performing functions under the Act must regard the safety of the community (a reference to the community includes any community and is not limited to the community of Western Australia) as the paramount consideration [s.5B].

The following constitute the release considerations set out in the Act under [s.5A]:

> ***(a)*** *the degree of risk (having regard to any likelihood of the prisoner committing an offence when subject to an early release order and the likely nature and seriousness of any such offence) that the release of the prisoner would appear to present to the personal safety of people in the community or of any individual in the community;*
>
> ***(b)*** *the circumstances of the commission of, and the seriousness of, an offence for which the prisoner is in custody;*
>
> ***(c)*** *any remarks by a court that has sentenced the prisoner to imprisonment that are relevant to any of the matters mentioned in paragraph (a) or (b);*
>
> ***(d)*** *issues for any victim of an offence for which the prisoner is in custody if the prisoner is released, including any matter raised in a victim's submission;*
>
> ***(e)*** *the behaviour of the prisoner when in custody insofar as it may be relevant to determining how the prisoner is likely to behave if released;*
>
> ***(f)*** *whether the prisoner has participated in programmes available to the prisoner when in custody, and if not the reasons for not doing so;*
>
> ***(g)*** *the prisoner's performance when participating in a programme mentioned in paragraph (f);*
>
> ***(h)*** *the behaviour of the prisoner when subject to any release order made previously;*

(i) *the likelihood of the prisoner committing an offence when subject to an early release order;*

(j) *the likelihood of the prisoner complying with the standard obligations and any additional requirements of any early release order; and*

(k) *any other consideration that is or may be relevant to whether the prisoner should be released.*

The Board is bound to take the release considerations into account when:

- reporting to the Attorney General about a prisoner when requested to do so [s.12(3)];
- reporting to the Attorney General on a life sentenced or indefinite sentenced prisoner [s.12A(3)];
- recommending a re-socialisation programme for such a prisoner [s.13(5)] or certain other prisoner [s.14(5)];
- deciding whether to release [s.20(2)];
- making a Re-Entry Release Order [s.52(2)].

RATIONALE

S.5A of the Act sets out the above as the release considerations for the Board. When considering whether a prisoner should be released to parole, the Board is required to make a decision that takes into account all of the above factors.

1.1 UNKNOWN LOCATION OF THE REMAINS OF DECEASED VICTIMS OF HOMICIDE OR HOMICIDE RELATED OFFENCES

POLICY

Pursuant to section 66B(1) of the Act, the Board must not make a release decision (including making a recommendation to the Governor to release a life or indefinitely sentenced prisoner) or take release action (i.e. make a parole order) in relation to a relevant prisoner (including prisoners sentenced to a homicide or homicide related offence such as counselling or procuring the commission of a homicide offence; inciting another person to commit a homicide offence; becoming an accessory after the fact to a homicide offence; or conspiring with another person to commit a homicide offence) unless:

- Following consideration of a report by WA Police which must be requested by the Board and is made pursuant to section 66C of the Act (section 66C report), the Board deems that the prisoner has cooperated with Police in identifying the location or last known location of the remains of the deceased victim of a homicide or homicide related offence; or
- A member of the WA Police already knows the location of the remains of the deceased victim.

In essence, in every case of a homicide or homicide related offender, the Board must either have confirmation from a member of the Police Force that Police know the location of the remains of a deceased victim, or in the absence of this, it must request a section 66C report, and from this, determine whether a prisoner has cooperated with Police with respect to locating the remains.

RATIONALE

Following the commencement of the *Sentence Administration Amendment Act 2018* (often referred to as the 'No Body, No Parole' laws) on 13 April 2018, an obligation fell upon the Board which required it to be satisfied that a member of the Police Force knows the location of the remains of a deceased victim, or in the absence of this, it must consider a report prepared by Police which addresses an offender's level of cooperation in assisting Police with locating the remains of the deceased victim or the last known location of those remains. From this report and any other information, it considers applicable, the Board must determine whether an offender did or did not cooperate with Police. Where it is found that a relevant offender did not cooperate, the Board must not release the offender via an early release order or recommend their release to the Governor in Executive Council. The Board must continue to review the offender's case in line with statutory review dates, but release is not an available disposition option in these circumstances. Of course, those offenders found to have cooperated with Police will be considered for parole upon review.

2. DECISION MAKING POLICIES

2.1 ACTION WHEN INTENSIVE TREATMENT PROGRAMMES ARE IN PLACE IN PRISON

POLICY

Generally, when a prisoner is undertaking an intensive treatment programme, a decision about parole should be adjourned for completion of the programme and receipt of the treatment completion report.

The adjournment date will usually be eight weeks after the end of the programme, to allow adequate time for the programme facilitators to prepare a report on the prisoner's participation, provided there are no extenuating circumstances such as the prisoner's maximum date being within that timeframe. The adjournment decision notice should always include the following advice:

"The Board advises that successful programme completion will not necessarily result in release on parole."

RATIONALE

It is not the role of the Board to ensure that a prisoner undertakes a treatment programme. Nevertheless, it is in the interest of the community for a prisoner's risk to the safety of the community and risk of re-offending to be reduced by allowing a prisoner to address his or her treatment needs. Denying release on parole whilst a prisoner is undertaking the programme could be seen as pre-judging the yet to be assessed benefits of the programme and also may lead to the prisoner exiting the programme early. Adjournment whilst a prisoner completes a programme is therefore appropriate in most circumstances.

Whilst the Board may be of a view that, due to the prisoner's previous history, significant treatment gains are unlikely, adjournment is likely to still be appropriate, as even a moderate gain may eventually be of some benefit to the prisoner and the community.

2.2 INTENSIVE TREATMENT PROGRAMMES IN THE COMMUNITY

POLICY

Participation in a community based intensive treatment programme may be considered by the Board as an alternative to an intensive treatment programme in custody when it is clear the prisoner would not otherwise have access to such a programme and the safety of the community is best assured by the prisoner completing such a programme.

In these circumstances, the conditions of parole must ensure the prisoner would be in breach of the Parole Order if they did not engage with the programme to its full extent.

RATIONALE

A prisoner may be eligible for release on parole, and either not yet addressed their treatment needs, or on the evidence of their prison conduct or the programme completion report, would benefit from further intensive treatment. On these occasions, the Board may consider the safety of the community would be best assured if the prisoner completed an intensive treatment programme in the community.

In order to release the prisoner to parole, the Board would need to have evidence the programme is of sufficient intensity to meet the prisoner's needs, that the prisoner has been assessed by the relevant agency as suitable for the programme, has met the eligibility criteria, and that the Board is satisfied all other risk factors have been adequately addressed.

In order for the safety of the community to be assured to the extent the Board considers necessary, the conditions of parole would need to ensure the prisoner attends the programme immediately on release from custody, engages fully with the programme and completes the programme. A breach of these conditions of parole would suggest that the prisoner has not addressed his or her unmet treatment need.

2.3 TREATMENT COMPLETION REPORTS

POLICY

The Board is not to conclude that there have been gains from a treatment programme unless the treatment programme completion report specifies the gain and the evidence by which the gain has been confirmed. Alternatively, there must be some other independent evidence to indicate that a programme has been successful in addressing the prisoner's treatment needs. The prisoner's own assertions as to the gains made are not independent evidence.

RATIONALE

The Board must be satisfied that the risk to the safety of the community has been adequately reduced. The Board's decision must be based on evidence. The Board needs to be satisfied that the programme is of sufficient intensity to address the criminogenic needs and that it has been delivered in the manner in which it was designed. The Board must also be satisfied that the prisoner's criminogenic needs have been identified and there is evidence to support any gains made in addressing those needs. The Board must further decide whether the gains made are sufficient to reduce the prisoner's risk to a level that their release to parole would not constitute an undue risk to the safety of the community.

2.4 PERSONAL APPEARANCES BEFORE THE BOARD

POLICY

The Board can require a prisoner to appear before it if it would assist in its deliberations [s.109]. The Board would only require a prisoner to appear before it in exceptional circumstances. Generally, this would only occur after consultation with the Chairperson and would take place through a video conference from the Board to the prison. A prisoner does not have the right to make an appearance before the Board. In cases of life sentenced prisoners, in view of the length of their sentences and complexity of their cases, and the fact that the Board must prepare a report about them, which is not limited to a recommendation about parole, at regular intervals for the Attorney General, the Board may invite them to appear before the Board by video-link if the prisoner so requests, and if the Superintendent of the particular prison can facilitate it.

RATIONALE

There is no specific provision which entitles a prisoner to appear before the Board when the Board is considering release on parole. Further, the rules of natural justice (including any duty of procedural fairness) are specifically excluded by the Act in relation to the Board's consideration of Parole Orders and their suspension or cancellation.

S.109 of the Act provides that the Board may require a prisoner who is subject to a Parole Order (other than a parole order (unsupervised)), an RRO or a PSSO, to appear before the Board.

The Board has a general power to do all things necessary or convenient to be done in relation to performing its function [s.109]. This may include requiring the prisoner to appear before it in relation to a parole application.

When having regard to the release considerations contained in s.5A of the Act, the Board should rely on the documented evidence available to it (e.g. Criminal History, Judicial Sentencing Remarks, Community Corrections Officer Reports, Sentence Summary Sheets, Prison Reports, Treatment Completion Reports and any relevant specialist reports). The prisoner also has the opportunity to provide a written submission to the Board. It is unlikely that a verbal submission from a prisoner would be of any significant evidentiary value.

2.5 RISK ASSESSMENT TOOLS

POLICY

The Board should only give consideration to results provided by risk assessment tools if it is satisfied that the particular test has standing within the relevant profession, has been properly applied, and the results are relevant to the risk factors contained in s.5A and s.5B of the Act.

RATIONALE

It is important that the tests applied are recognised by the relevant profession, and that they have been applied to the appropriate population. Extreme care is to be taken if the test has been applied to a prisoner who does not fit the profile for the test. Professional Development presentations are made to the Board on this topic as and when it is appropriate.

2.6 DEFICIENT PAROLE PLAN

POLICY

If the parole plan put forward is deficient (e.g. no suitable accommodation, unmet treatment needs), then unless the Board concludes that the deficiency can be remedied within a reasonable period of time, the Board may deny release on parole. The matter can be adjourned whilst a parole plan is rectified or strengthened. In its reasons for either an adjournment or a denial of parole, the Board must make it clear why it considers the parole plan to be deficient. The Board may determine to release a prisoner even if the accommodation is unavailable and their release would present an acceptable risk to the safety of the community

If parole is denied due to a deficient parole plan, it does not prevent the prisoner making a re-application once the issues identified by the Board have been rectified.

RATIONALE

The Board is required to consider the merits of the proposed parole plan in determining the degree of risk the prisoner is likely to pose to the community, the likelihood of the prisoner re-offending whilst on parole, and the likelihood of the prisoner complying with parole requirements. An appropriate parole plan is one which is sufficiently robust such that the Board is satisfied that the risk of the prisoner re-offending can be adequately managed in the community.

2.7 DENY OWN PAROLE

POLICY

S.33(1) of the Act states that a prisoner may refuse to be released on parole. If the prisoner provides written notice that he or she does not want to be released to parole, the Board is not required to consider their release under an early release Order. The prisoner's written notice will be responded to by an Officer with Delegated Authority confirming the prisoner's intention and informing them that, consistent with s.35, they are able to re-apply for parole at any time by also providing written notice.

RATIONALE

This policy ensures compliance with the Act; however, precludes the Officer with Delegated Authority from denying a prisoner release on parole.

2.8 CONSIDERATION TO BE GIVEN TO AUSTRALIAN NATIONAL CHILD OFFENDER REGISTER (ANCOR) SUPERVISION

POLICY

The Board should not consider the fact that a prisoner will be subject to ANCOR supervision upon release as a factor that is likely to substantially reduce the risk to the safety of the community.

RATIONALE

ANCOR is a web-based system used by Police to register, case manage and share mandatory information about a registered person, as required by legislation. The system enables alerts to be generated when registered persons notify that they are planning to travel interstate or overseas and so assist Police in monitoring the movements of certain people who have been convicted of particular offences against both children and adults.

Importantly, ANCOR supervision does not contain a level of surveillance or supervision that is markedly superior to the supervision regime maintained by the Community Corrections Officer. As such, it might enhance but cannot replace normal supervision provided by a Community Corrections Officer.

2.9 INTERSTATE TRANSFER OF PAROLE

POLICY

When a prisoner from another Australian jurisdiction requests a transfer of their parole to WA, the Minister responsible for the administration of the *Parole Orders (Transfer) Act 1984 (WA)* or the Registrar of the Prisoners Review Board, who is the Minister's delegate, must be satisfied that it is in the best interests of the prisoner to whom the parole order relates for that parole order to be registered in WA.

When considering a WA prisoner who wants to make an interstate transfer of parole to leave WA, the Minister or the Registrar shall not request that a parole order be registered in another jurisdiction unless satisfied that it is in the best interests of the prisoner to whom the parole order relates. The destination jurisdiction will determine if the application for interstate transfer of parole meets the relevant criteria in the destination State or Territory.

RATIONALE

Section 7(1) of the of the *Parole Orders (Transfer) Act 1984 (WA)* must be applied. There is no obligation to accept a prisoner from another State only because the State of origin has determined the prisoner is suitable for release on parole. The Minister or the Registrar may request information from Adult Community Corrections or the prison in WA in regard to claims made in the application and an assessment of suitability for supervision in WA. The person considering the application may also adjourn the decision for receipt of further information from the State of origin. Because the Minister or the Registrar, as the case may be, in evaluating an application for a parole transfer to WA is not performing a function under the Act, Sections 5A and 5B of that Act do not apply to their decision.

A prisoner who wants to serve a parole order in another Australian jurisdiction must first meet the threshold for release on parole in WA. The Board must apply the release considerations as set out in s.5A and 5B of the Act regardless of whether the parole order is likely to be served in WA or another part of Australia.

3. REASONS FOR DECISIONS

3.1 REASONS ARE TO BE PROVIDED FOR ALL DECISIONS

POLICY
The Board is to provide written reasons for each decision it makes.

RATIONALE
The Board must give a prisoner notice of any decision made under the Act in respect of the person as soon as practicable after the decision is made [ss.107B(1)]. The notice of reasons must include the reasons for the decision [ss.107B(4)], and if the decision is reviewable, the effect of the right to seek a review [ss.107B(5)], unless it would be in the interest of the prisoner, the victim or the public to withhold from the prisoner any or all of the reasons [s.114].

3.2 REASONS ARE TO CONTAIN SUFFICIENT DETAIL

POLICY
Reasons for decisions should contain sufficient information so that the prisoner is aware of the factors considered by the Board in its decision making. In particular, when denying release on parole, the factors the prisoner needs to address before parole could be considered in the future, must be made clear.

Sufficient detail is particularly important where the decision of the Board is adverse to the prisoner. For example, if the Board believes a prisoner has unmet treatment needs, despite having completed a relevant treatment programme, it must refer to the evidence supporting that finding.

In determining not to make a Parole Order, the Board is required to provide not only its conclusion (e.g. that there is not an appropriate parole plan, or that the prisoner is at high risk of reoffending), but also the material which led the Board to that conclusion and, if relevant, the criteria against which the Board judged the information available to it. The reasons should be sufficiently specific to enable a prisoner to understand what aspects of their previous offending, their conduct within prison, or plans which may have been made for their release, cause the Board to have the concerns which give rise to its determination.

In suspending or cancelling a Parole Order, similarly, the reasons should be sufficiently specific to enable the prisoner to know what aspects of their behaviour on parole or inadequacies in their parole plan or otherwise cause the Board to conclude that their parole should be suspended or cancelled, and why alternate responses, such as noting the material, or altering the parole conditions, were felt inappropriate.

Recitation of the statutory words which provide jurisdiction to the Board to make a particular decision is never an adequate expression of the reasons for a Board decision.

RATIONALE

Martin CJ stated the following regarding sufficient reasons in a decision by the Court of Appeal:

> *… The considerations which inform the required content are an evident legislative intent that the person the subject of the decision know, with sufficient particularity, the reasons why the decision was made against his or her interests, in order that they can understand why the decision was made, take any remedial action which might encourage a more favourable decision in the future, and exercise the right of review conferred by S115A of the Act. The specificity intended by the legislature is apparent from the express power to withhold some or all of the reasons in some circumstances."*

SEIFFERT-v-THE PRISONERS REVIEW BOARD [2011] WASCA 148 (8 July 2011)

4. VICTIMS

4.1 VICTIMS OF CRIME

When it was established in 2007, the Prisoners Review Board was created with various features to strengthen consideration of the interests of victims of crime. These included:

- the requirement for at least one community member of the Prisoners Review Board to have knowledge and understanding of the impact of offences on victims of crime [s.103(4)(b)(i)];
- a legislative basis for the Prisoners Review Board to receive and consider victims' submissions regarding the release of a prisoner prior to the prisoner having completed the full term of their sentence [s.5C]; and
- a requirement for the Prisoners Review Board to take into consideration any issues for the victim of an offence regarding early release, and any submission received from the victim, as part of its deliberations about a prisoner's suitability for early release [s.5C(4)].

The law provides victims of crime in Western Australia with the chance to be heard on these issues. Victims are not expected to be a silent bystander. The Prisoners Review Board welcomes written submissions from victims.

Under the *Victims of Crime Act 1994* (WA), victims are defined as:

- People who suffer injury or loss as a direct result of an offence.
- Any member of the immediate family where the offence results in death.

Under section 5D of the *Sentence Administration Act 2003* (WA), the definition of a victim of an offender or prisoner has been extended to also include:

(a) a person who has suffered injury, loss or damage as a direct result of an offence committed by the offender or prisoner, whether or not that injury, loss or damage was reasonably foreseeable by the offender or prisoner; or

(b) where an offence committed by the offender or prisoner resulted in a death, any member of the immediate family of the deceased; or

(c) a person protected by a family violence restraining order under the *Restraining Orders Act 1997* to which the offender or prisoner is a respondent; or

(d) a person who can demonstrate, to the satisfaction of the CEO that —

(i) the person is the victim of a violent personal offence previously committed by the offender or prisoner; and

(ii) the violent personal offence occurred in the context of a family relationship, as defined in the *Restraining Orders Act 1997* section 4, with the offender or prisoner.

The *Victims of Crime Act 1994* (WA) provides 12 guidelines to protect and support victims of crime. The guidelines apply to all State Government agencies and staff. The guidelines are as follows:

1. All victims should be treated with courtesy, compassion and respect for the victim's dignity.
Government agencies are required to treat victims with respect and understanding. A victim has the right to ask any government agency for information, advice and support, and feel comfortable throughout all proceedings. The *Victims of Crime Act 199*4 (WA) is designed to ensure that sensitive treatment of victims is actively encouraged and provided.

2. Victims should have access to counselling
Victims of crime should have access to counselling and advice about available medical and legal assistance, welfare services and criminal injuries compensation applications.

3. Protection by law
Victims should feel safe and protected from harm. The Victim-Offender Mediation Unit may help arrange protective agreements should a victim feel threatened by a person who is in prison or under a supervised community order.

4. Inconvenience to victims should be minimised
The process to resolve cases may be long and complex and may involve investigations, charges, a trial, sentencing and an appeal. Some inconvenience is inevitable, but victims should expect it to be kept to a minimum.

5. Privacy of victims is protected
Privacy of victims should be protected as they deal with Government agencies and staff. Victims should identify themselves as such when they feel it appropriate to do so.

6. Staying informed as a victim
Victims of crime may request to be kept informed about the progress of the investigation into the offence, charges laid, bail applications and any variations to the charges.

7. Staying informed as a witness
Victims who are also witnesses in the trial of the offender should be informed about the trial process and their role as a witness in the prosecution of the offence.

8. Sentence and appeals
Victims may ask to be informed about any sentence or order imposed on the offender, as a result of the trial and about any appeal and the result of any appeal. This guideline will only be provided if a request is made to the Victim Notification Register.

9. Return of Property
A victim's property held by the State or the police for the purposes of investigation or evidence should be returned as soon as possible. Alternatively, victims can make

arrangements with the police for disposal of the property if they would prefer not to have it returned to them (for instance, if it is traumatic to see that property again).

10. Supervised release
A victim's views and concerns may be considered when a decision is being made about whether to release the offender from custody, unless the prisoner has completed the full term of the sentence.

11. Offender release
Victims may ask to be informed about the impending release of an offender from custody and about the Community Justice Centre branch where the offender is required to report. Victims may arrange to be informed of these matters by contacting the Victim Notification Register.

12. Offender escape
Victims may ask to be informed of any escape from custody by the offender. Victims may arrange to be informed of these matters by contacting the Victim Notification Register.

Victims are entitled to complain if they feel they have not been treated in accordance with these guidelines by public officers and bodies, including the the Board. The Ombudsman is an independent and impartial person who investigates complaints about Western Australian Government departments, statutory authorities and local governments.

4.2 COMMISSIONER FOR VICTIMS OF CRIME

The office of Commissioner for Victims of Crime (CVOC) was established in 2013 to advocate for the interests of victims of crime across the State Government. The Commissioner is responsible for raising awareness of the *Victims of Crime Act 1994* (WA).

The Commissioner monitors and reviews all elements of the justice system with a particular focus on police and court practices and procedures, develops policy and legislative initiatives to improve outcomes for victims of crime in Western Australia.

In July 2021 the Department of Justice undertook a structural change which now sees the Victim Offender-Mediation Unit (VMU) and the Victim Notification Register (VNR) fall under the umbrella of the CVOC.

A wide range of information for victims of crime in Western Australia is available on the following website: www.victimsofcrime.wa.gov.au

4.3 VICTIM NOTIFICATION REGISTER

Under the *Victims of Crime Act 1994* (WA), victims may request to be informed about the impending release or escape of an offender in custody.

The Victim Notification Register (VNR) is the ongoing link between the justice system and a victim of crime if the person who offended against them is serving a term of imprisonment. That is, VNR is the agency responsible for providing information to victims about the court and correctional management of an offender once the offender is under the supervision of the Department, including offenders released to parole.

Information from VNR is not automatically received by victims of crime. Some victims do not want to receive information about the offender once they are imprisoned. Therefore, if a victim of crime does want to receive information, the victim must register with VNR.

VNR does not make any decisions relating to the sentencing and/or correctional management of an offender.

Upon the release of an offender to parole, VNR can provide victims with information about the location of the Adult Community Corrections Centre where the offender will be required to report for their period of supervision. Victims are notified in writing of any changes to the offender's circumstances, usually within 5 days of that change occurring. Personal information about the offender is not available. Registering with VNR is voluntary and subject to eligibility.

Victims registered with VNR will be notified of any decisions made by the Board relating to the relevant offender. In addition, victims may make a submission or submit a Victim Impact Statement to the Board through VNR.

VNR can be contacted by telephoning (08) 9425 2870, or Freecall 1800 818 988.

4.4 VICTIM-OFFENDER MEDIATION UNIT

The Victim-Offender Mediation Unit (VMU) is responsible for arranging protective agreements on behalf of victims that may feel threatened by an offender who is in prison or under a supervised community order. The VMU provides a mediation service between victims of crime and offenders and is available to both adult and juvenile offenders and the respective victims of their crimes. The mediation is free, impartial and private.

The protective conditions process enables offenders and victims to reach an agreement about the level and nature of contact (if any) between them. A mediator from the VMU will liaise with both parties during this process meaning victims and offenders do not need to meet to reach an agreement. Following the completion of the protective conditions process, a report is written and forwarded to the Board for consideration.

The VMU is notified of any decisions made by the Board relating to offenders engaged with its process.

4.5 CONDITIONS IN RELATION TO VICTIMS

POLICY

Where there is an identified victim, the Board must consider whether or not to include the following condition:

"To have no direct or indirect contact with the victim."

This condition may be placed on a Parole Order even without the recommendation being made in a VMU Report.

Any further conditions requested by a victim should be included if it is reasonable to do so. Such conditions may include preventing the offender attending a suburb, town or other locale (e.g. school or shopping centre) which the victim may frequent. In some circumstances, the Board may refuse release to parole where the prisoner proposes living in close proximity to the victim, even in the absence of a victim submission.

A parole plan generally would not be considered viable where the prisoner intends to reside in the same home as the victim.

In circumstances of family violence, a victim's request that the prisoner be allowed to return to live with him or her should not, other than in exceptional circumstances, be acceded to, as it puts the victim at risk.

The conditions of release should not be of detriment to the victim.

RATIONALE

The release considerations require the Board to take into account and give appropriate weight to:

- The victim's opinion of the effect the release of the prisoner would have on the victim [s.5C(a)]; and
- Any suggestions that the victim makes about the conditions that should apply to the prisoner if released [s.5C(b)].

5. CONDITIONS OF PAROLE

5.1 PREAMBLE

The Board's power to impose conditions (or requirements as they are called under the Act) to protect victims and facilitate the prisoner's rehabilitation is unfettered and is not limited to addressing those factors which relate to the current conviction. The purpose of parole is to protect the public (including the victim) and to facilitate rehabilitation of the prisoner.

5.2 STANDARD OBLIGATIONS OF PAROLE

S.29 of the Act sets out three standard obligations for prisoners released by the Board on a Parole Order. A prisoner:

a) must report to a community corrections centre within 72 hours after being released, or as otherwise directed by a CCO;

b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change; and

c) must comply with section 76 of the Sentence Administration Act 2003.

5.3 CONDITIONS IN RELATION TO VICTIMS

See section 4.5.

5.4 NOT TO CHANGE ADDRESS WITHOUT PRIOR APPROVAL OF THE BOARD OR COMMUNITY CORRECTIONS OFFICER

POLICY

If the Board believes that residing at the parole address is a significant protective factor in reducing the prisoner's risk to the safety of the community and risk of re-offending, the following condition may be added:

"Not to change address without prior approval of the [INSERT Community Corrections Officer]."

RATIONALE

The standard conditions of parole provide that a prisoner must advise the Community Corrections Officer of any change of address or place of employment within two clear working days after the change.

The Board may specify where a prisoner is to reside [s.30A]. If the particular address is seen to provide a significant protective factor (such as pro-social family support) the Board should require a prisoner to seek prior approval before changing address.

The protective factor may also be in relation to a victim (e.g. in a family violence situation) or potential victims (e.g. for a person who has sexually offended against children, consideration should be given to residences in close proximity to a school).

It is at the Board's discretion whether the condition should require the Community Corrections Officer or a further sitting of the Board to approve a change of address.

5.5 URINALYSIS CONDITIONS

POLICY

The Board must consider the benefit of including urinalysis conditions on every prisoner who has or has had an illicit drug habit, irrespective of whether substance abuse has been treated by programmatic intervention. It is generally not appropriate to include urinalysis as a condition where illicit drug use has not been a factor in either the current offences or the prisoner's offending history. The existence of an illicit drug habit can be identified from the prisoner's criminal history or by an admission from the prisoner or assessment of a psychologist or psychiatrist.

RATIONALE

In determining suitability for release, the Board is required to consider, amongst other matters, the risk of re-offending and the likelihood of compliance. Where a prisoner has an established history of illicit drug use which may affect either of these issues, it is the responsibility of the Board to address them by imposing conditions of this type.

The completion of a treatment programme can never guarantee that the prisoner's substance abuse issue is resolved. Whilst it is understood there is a difference between a lapse and relapse to drug use, the Board may consider that a return to illicit drug use may be a pre-cursor to other offending. At the very least, a prisoner will have been in contact with anti-social peers to obtain illicit drugs. Further, the knowledge that illicit drug use is likely to be detected with the real prospect of a swift return to prison may serve as a deterring factor to the prisoner.

5.6 ALCOHOL CONDITIONS

POLICY

The Board must consider including conditions restricting alcohol use on every prisoner who has or has had an alcohol use problem which is in any way associated with the current or previous offending, irrespective of whether alcohol use has been treated by programmatic intervention. The existence of an alcohol use problem can be identified from the prisoner's criminal history or by an admission of the prisoner or assessment of a psychologist or psychiatrist.

Where such a restriction is appropriate, the Board can apply three alcohol conditions to a Parole Order:

1) Not to consume alcohol.

2) Not to enter licensed premises, except cafes and restaurants and sporting venues or grocery stores which may have a liquor licence, but no purchase of liquor permitted at any venue.
3) Submit to random breath testing as required by Police.

RATIONALE

In determining suitability for release, the Board is required to consider, amongst other matters, the risk of re-offending and the likelihood of compliance. Where a prisoner has an established history of alcohol use which may affect either of these issues, it is the responsibility of the Board to address them by imposing appropriate conditions.

The completion of a treatment programme can never guarantee that the prisoner's alcohol use problem is resolved. Whilst it is understood there is a difference between a lapse and a relapse to alcohol use, the Board may consider that a return to alcohol use may be a pre-cursor to other offending.

5.7 CONDITIONS TO COMPLY WITH TREATMENT FOR GENERAL OR MENTAL ILLNESS

POLICY

When a prisoner's compliance with their treatment, determined by a nominated medical practice, General Practitioner (GP), Psychiatrist, Mental Health Team or other medical specialist is considered to be a protective factor for the safety of the community and likely to reduce the risk of re-offending, the Board must consider imposing a condition which requires the prisoner to comply with their treatment regime. Where it is also a protective factor that the prisoner remains the patient of one particular GP or nominated medical practice or other specialist, it is appropriate the Board state the name of the practitioner or nominated medical practice in the conditions of parole.

Where such action is appropriate, the Board could generally apply the following condition to the Parole Order:

1) To comply with mental health treatment as directed by a medical practitioner or a Community Mental Health Team member.

RATIONALE

In determining suitability for release, the Board is required to consider, amongst other matters, the impact on the safety of the community of the prisoner's compliance with their medical treatment. This can include treatment for a mental illness, drug replacement therapy, sexually transmitted diseases or any other condition which could either affect the prisoner's general ability to comply with all requirements of parole or pose a risk to public safety, including public health. To guard against the prisoner "treatment shopping" the Board can consider stating the name of the particular treating specialist who is currently aware of the prisoner and their treatment needs.

The Board may consider requesting information of this nature through the Release of Information (ROI) process.

In the event a condition of this nature is added to the Parole Order, it will be removed at the point of publication to ensure patient confidentiality about the nature and source of any treatment.

5.8 OTHER CONDITIONS

POLICY

The Board's ability to impose conditions is fettered only by the duty to ensure the safety of the community and facilitate the rehabilitation of the prisoner. It is appropriate to impose any conditions that are likely to reduce the prisoner's risk to the safety of the community by providing protective factors.

The following are some examples of other conditions which the Board may choose to impose, but are in no way an exhaustive list:

- If there is a history of gambling, although having no relevance to the current offence, and the gambling addiction may affect the prisoner's risk to the safety of the community or likelihood of compliance, then it is appropriate to impose conditions addressing the gambling problem, such as to refrain from gambling or entering premises where gambling is conducted.
- Family violence is a factor which can affect a prisoner's risk to the safety of the community and likelihood of compliance and it may be appropriate to impose relevant conditions, such as the requirement for compliance with a Violence Restraining Order, even though the current conviction does not relate to family violence.
- Where a prisoner has undergone an intensive treatment programme, it may be appropriate to impose a condition that they continue to undergo related programmes or counselling in the community for the duration of their Parole Order.
- Research has demonstrated that prisoners with structured daily activity are less likely to reoffend and/or return to substance abuse. Conditions promoting employment, training, lore or study should always be considered.

RATIONALE

The Board's obligation is to protect the safety of the community and to facilitate the rehabilitation of the prisoner [s.5B]. Any condition which addresses these aims is within the authority of the Board [s.30].

6. APPLICATION TO VARY CONDITIONS

6.1 REMOVAL OR ALTERATION OF SPECIFIC CONDITIONS

POLICY

An application to remove or alter a condition of parole may be considered by the Board at any time before the Parole Order expires and in considering the amendment the Board must have regard to the safety of the community.

RATIONALE

Conditions imposed on a prisoner by the Board are aimed at reducing that prisoner's specific risk of re-offending and aiding his or her rehabilitation. In contemplating whether to remove or alter one of those conditions, the Board needs to be satisfied that, due to a change in the circumstances, the risk or benefit the particular condition was aimed at addressing is no longer present and that removing or altering the condition will not negatively affect the overall risk to the safety of the community and risk of re-offending.

6.2 DETRIMENT SHOULD NOT BE TO THE VICTIM

POLICY

If an application is made to vary or change the conditions of parole, the Board must ensure that there is no detriment to the victim by altering those conditions. For example, a prisoner's request to change address to live with his or her parents may not be considered appropriate if it placed him or her in close vicinity to the victim's residence and the victim had requested a no contact condition.

RATIONALE

It is implicit in s.5C of the Act that conditions of release for a prisoner must take into account the needs of the victim. The safety of the victim and conditions to minimise any adverse effect of the prisoner's release should never be subservient to the prisoner's preferences or needs.

7. BREACH OF CONDITIONS OF PAROLE

7.1 ACTION WHEN RE-OFFENDING OCCURS

7.1.1 ACTION IN TYPICAL CIRCUMSTANCES

POLICY

If a prisoner re-offends on parole and is sentenced to a term of imprisonment, the Parole Order is cancelled. If the prisoner has been charged with an offence but is not in custody, the Registrar or the Board should review the matter as soon as reasonably practicable, regardless of whether the Community Corrections Officer has already issued a suspension warrant.

RATIONALE

As per s.67(1)(a), being charged with an offence indicates that the prisoner may be a risk to the community. The risk is heightened, even if the charge is yet to be heard. Even if the prisoner is given bail on the charge, the Board must still review the circumstances of which it is aware and make its assessment as to whether the risk to the community has increased, and if so, what response is appropriate.

7.1.2 ACTION WHEN THERE IS AN IMMINENT RISK

POLICY

If the prisoner is considered to be of high risk to the safety of the community, the Board must issue an Imminent Risk Return to Prison (RTP) Warrant.

RATIONALE

As the safety of the community is paramount to the Board's decision making, it is imperative that prisoners assessed as an imminent risk of re-offending are returned to prison as soon as possible.

The Board has certain arrangements in place with the WA Police by which such warrants are accorded priority.

7.2 ACTION WHEN PAROLE CONDITIONS ARE BREACHED

POLICY

There must always be some evaluation when conditions of parole are breached. The Board can; note the information, request that the Community Corrections Officer issue a warning letter, adjourn to receive further specified information, Suspend Parole for a fixed period, Suspend Parole until further information is received, Cancel Parole or amend the Parole Order to strengthen the protective factors of the parole plan.

Caution should be used to ensure that the Board is aware of the full circumstances

that led to the breach prior to making a decision to cancel rather than suspend a Parole Order. Unless the breach advice provides the Board with sufficient background information, it will be appropriate (if the alleged breach is sufficiently serious) to suspend rather than cancel parole for a period of time and review again once all information can be received and considered.

When cancelling or suspending parole, the Board must decide whether to also issue an arrest warrant. Of course either cancelling or suspending a parole order results in a return to custody which immediately alleviates risk.

The reasons supporting the Board's decision must be detailed and clear, setting out the facts found and describing how the breach has increased the risk to the safety of the community and the risk of re-offending and why cancellation or suspension, as the case may be, was determined to be necessary.

RATIONALE

Due to the responsibility of the Board to have regard to the safety of the community there must always be some review of a prisoner's parole if he or she has breached a parole condition. If the Board takes no action this infers that conditions do not need to be complied with. The severity of the consequence should reflect the increase in the risk arising from the breach.

7.3 BOARD ACTION IN THE EVENT OF A SECOND OR SUBSEQUENT BREACH OF PAROLE

POLICY

The Board should consider a second or subsequent breach of parole in the context of any previous breaches. A second or subsequent breach of parole may represent a pattern of non-compliance rather than a lapse in behaviour and the significance of this must form a part of the Board's consideration of the risk to the safety of the community and the risk of re-offending.

In the event of a second or subsequent breach the Board can: note the information, suggest the Community Corrections Officer issue a warning letter, adjourn to receive further specified information, Suspend Parole for a fixed period, Suspend Parole until further information is received, Cancel Parole or amend the Parole Order to strengthen the protective factors of the parole plan.

There are many factors which will determine the Board's response to a second or subsequent breach of parole. Any response must be based on information which the Board is satisfied is the necessary information to justify the action. Some of the factors used to determine the Board's decision include: how long the prisoner has been on parole, seriousness of the breach, the prisoner's compliance with parole prior to the breach, evidence of reintegration to the community and the proximity of the sentence maximum date.

RATIONALE

The safety of the community is the paramount consideration of the Board when determining action following a breach of parole. Any single breach is to be considered for its potential to increase the risk to the safety of the community and it must also be

considered in relation to any previous breach particularly to determine any indication of a pattern of non-compliance or establish a trend in diminished compliance. The Board may request further information from the Community Corrections Officer to address any questions it has in order to have the information it considers necessary to make this determination to the Board's satisfaction.

7.4 SUSPENSION OF PAROLE

POLICY

The Board may suspend a Parole Order for a fixed term or for an indefinite period in order to obtain further information or for an alternative parole plan which will reduce the risk to the safety of the community resulting from the breach which resulted in the suspension of parole. The Board should not suspend parole for a fixed term to simply punish the prisoner for the behaviour resulting in the breach of parole.

Following a decision to suspend a Parole Order, a date to review the requested information should be set by the Board. The review date is at the Board's discretion and should allow sufficient time for all relevant information to be provided to it.

RATIONALE

The Act does not create an offence of breaching parole. The Board has no role in imposing a punitive measure for the breach.

The Board may consider a breach of parole suggests such an unacceptable increase in the prisoner's risk to the safety of the community as to require a return to prison and to use the period of imprisonment as the opportunity to gain further information that the risk to the safety of the community is not elevated by the prisoner living in the community under the terms of the current Parole Order, to facilitate the prisoner accessing intensive treatment interventions or to ensure the protection of the community.

7.5 ACTION WHEN THERE IS A POSITIVE TEST TO ILLICIT DRUG USE

POLICY

Should a positive urinalysis test establish a breach of a parole condition, in identifying what, if any, response is appropriate; the Board must be guided by the extent to which the breach incident increases the prisoner's risk to the safety of the community. Consideration should be given to all of the circumstances including whether the breach was an isolated lapse, its relevance to the previous offending, whether additional or altered parole conditions could reduce the prisoner's risk and whether further treatment programmes are desirable in either a community or custodial setting.

RATIONALE

Substance abuse is often a significant factor in increasing the risk of a prisoner re-offending, particularly if their previous history was related to the use of illicit

substances. Illicit drug use may suggest a dependency of such a level that a prisoner will resort to crime to maintain access to the illicit substance, and illicit substance use is often associated with a deterioration in the user's decision making ability and participation in anti-social behaviour. Illicit substance use also reveals that the prisoner has had some contact with anti-social peers. As per s.5B of the Act, the prisoner's risk to the safety of the community is the paramount consideration of the Board in this circumstance.

7.6 POWER TO SUSPEND OR CANCEL A SUPERVISED PAROLE ORDER IS UNFETTERED

POLICY

The Board can suspend or cancel a supervised Parole Order even if the prisoner has not re-offended or breached a condition of parole. This is likely to occur if the Board has received credible information that the prisoner's behaviour is increasing their risk of re-offending and/or their risk to the safety of the community.

Pursuant to s.39(1) of the Act, the Board may at any time during the parole period suspend the parole order, irrespective of whether it was made by the Board or the Governor. This does not apply to an unsupervised parole order.

Under s.44(4) of the Act, the Board may only cancel an unsupervised Parole Order if the prisoner is charged with or convicted of an offence. Pursuant to Division 4 of the Act, only a Short Term Parole Order can be unsupervised.

RATIONALE

The Board can suspend or cancel a Parole Order whenever it considers it appropriate to do so. Generally, this will occur when the Board becomes aware that the prisoner's behaviour has demonstrated an increase in his or her risk to the safety of the community, the prisoner has re-offended or breached a condition of parole. The safety of the community is paramount to the Board's decision making, and, if the Board is of the view that the prisoner's behaviour begins to pose an unacceptable increased risk to the safety of the community, the Board may suspend or cancel the Parole Order if no appropriate alternate option exists to satisfactorily protect the community.

8. REVIEWS AND RE-APPLICATIONS

8.1 REVIEWS

POLICY

A prisoner may apply for a review of the Board's decision under s.115A(6) of the Act. The only grounds under which a prisoner may make a written application for review are that the Board, in making its decision:

a) did not comply with the Act or the regulations; or
b) made an error of law; or
c) used incorrect or irrelevant information or was not provided with relevant information.

To apply for a review, a prisoner must write to the Board giving reasons why they believe one or more of the above grounds applies in their case.

Under s.115A(8), The Chairperson must review the decision, and:

- Confirm, amend or cancel the decision;
- Make another decision; or
- Refer the decision to the Board for reconsideration.

Any decision made under s.115A(8) is not a reviewable decision (including a decision by the Board after reconsideration).

A prisoner is only entitled to one review of a particular parole decision. A second request for review should be treated as a re-application and dealt with accordingly. The rules of natural justice apply to the determination of a review.

RATIONALE

The Board may unknowingly make a decision that does not comply with the Act, relies on information that is not correct or does not take into account certain information that was not provided at the time or was overlooked in error. In any such instance, it is appropriate for the matter to be referred back to the Board for reconsideration.

8.2 RE-APPLICATIONS:

POLICY

If the Board decides it is not appropriate to release a prisoner on parole, it is not precluded from subsequently reconsidering whether the prisoner should be released on parole. This process is called re-application.

If a prisoner provides new information (e.g. an improved parole plan, advice of completing a programme or any change in circumstances that could potentially improve the prisoner's prospects for parole), that information may be considered in terms of a re-application for parole. Any new information should address concerns the

Board previously had in making a Parole Order and outline any positive changes to the prisoner's circumstances before it will be referred to the Board as a re-application.

If a prisoner requests a review of a parole decision that has already been reviewed, the request may be dealt with as a re-application if it contains new information that improves the prisoner's prospects for parole.

If the re-application contains no new information or the new information does not improve the prisoner's prospects for parole, then the re-application may not proceed and the prisoner is advised accordingly. There is no right of review in this circumstance.

RATIONALE

The Board has a statutory responsibility to consider, prior to their earliest eligibility date, whether a prisoner serving a parole term is to be released on parole. Once the Board has discharged this responsibility, it is not required to do so again. A prisoner may re-apply for parole at any time. If the prisoner's circumstances have changed in such a manner that the prospects for parole have improved, the re-application may be granted and the Board can reconsider the prisoner benefitting from a period parole.

The decision to deny a re-application is not a decision defined in s.115A of the Act and is therefore not subject to review.

8.3 HOW TO DEAL WITH CHANGED INFORMATION AFTER THE BOARD HAS ALREADY MADE A DECISION AND ISSUED REASONS

POLICY

Occasionally, after it has considered a matter and published its decision and reasons, the Board receives new information from a Community Corrections Officer or other source. It is not appropriate to simply note the new information, the Board must first consider whether the new information is in conflict with or materially adds to the information available to the Board when it made the original decision. If so, the Board should reconsider the original matter on the basis of all information then available to it.

If the original decision was not to make a Parole Order, the Board should consider whether a Parole Order should now be made based on the information then available to it.

If the original decision was to make a Parole Order, the Board should consider whether it is still appropriate to make a Parole Order, and if so, whether the terms should be amended because of the new information.

If the decision was to suspend or cancel parole, the Board should reconsider the appropriate response based on the new information and make a new decision based on the information then available. To simply note the new information without reconsidering the original matter in light of the new information is a poor process and it exposes the Board to a successful request for a review of the original decision based upon an allegation that the original decision used incorrect information or was not supplied with relevant information.

RATIONALE

S.20(5) allows the Board to subsequently reconsider releasing a prisoner to parole if it had earlier determined it was not appropriate to release a prisoner.

S.36 and S.37 allow the Board to amend a Parole Order before a prisoner has been released on it or after his or her release.

S.39 allows the Board to suspend a Parole Order at any time.

S.43 and S.44 allow the Board to cancel a Parole Order at any time.

8.4 EARLY RELEASE REVIEWS – PRISONERS WITH TERMS OF MORE THAN 4 YEARS

POLICY

For prisoners who are sentenced to terms of imprisonment of four (4) years or greater, and are made eligible for parole but are denied parole prior to their EED by the Board, and do not subsequently re-apply for parole, or do not subsequently deny their own parole, they will be reviewed again by the Board six (6) months prior to their MAX date.

To facilitate this review, the Board will write to prisoners who fall into this category approximately 8 months prior to their MAX and advise them of a parole review in approximately 8 weeks' time unless they expressly wish not to be considered again and deny their own parole.

This process applies to any prisoners within this cohort who were considered for parole and denied parole after 1 July 2020. Section 93 of the *Sentencing Act 1995* (WA) refers.

RATIONALE

Prisoners who fall into this category will be given the opportunity to be considered for parole in an application process initiated by the Board designed to increase the safety of the community by providing this cohort of prisoners supervised support when re-entering the community rather than being released unsupervised at their MAX date.

9. PUBLICATION OF DECISIONS

9.1 PUBLICATION OF DECISIONS ON THE BOARD'S WEBSITE

POLICY

Decisions to either release a prisoner on a Parole Order or cancel a prisoner's Parole Order who has been sentenced to a term of imprisonment of 5 years or more for a serious offence are published on the Board's website.

The serious offences and serious violent offences as they are contained in Schedule 2 of the *Sentence Administration Act 2003* (WA). Schedule 2 provisions are outlined below -

- Homicide
- Offences endangering life or health
- Assaults
- Sexual offences
- Offences against liberty
- Threats
- Stalking
- Robbery; Extortion by threats
- Facilitating sexual offences against children outside WA
- Breach of Violent Restraining Orders and Police Orders.

Serious Offences are defined in Schedule 1 of the *High Risk Serious Offenders Act 2020* (WA) (HRSO).

Schedule 1 of the HRSO Act also provides for the *Bush Fires Act 1954*, specifically s.32(2) – Offences of lighting or attempting to light fire likely injure.

Further, Schedule 1 provides for the *Road Traffic Act 1974*, specifically s.59 – Dangerous driving causing death or grievous bodily harm.

In addition, all decisions to release or cancel where an offender has a sentence of 10 years or more will be published, regardless of whether the offence is serious as outlined above.

Decisions to release or cancel relating to terms of imprisonment of less than 5 years, or greater than 5 years for an offence not contained within Schedule 2 of the Act, for which there is a level of public interest, will be identified and approval sought from the Chairperson for publication.

The Prisoners Review Board website is: www.prisonersreviewboard.wa.gov.au

RATIONALE

Decisions are published for the purpose of transparency and accountability. S.107C of the Act provides that the Chairperson of the Board may make public a decision of the Board, including the reasons for it, if he/she considers it is in the public interest to do so, taking into account circumstances including the interests of the prisoner and any victims. It is in the public interest that the Board is seen as accountable for its decisions and that the community has confidence in the Board and its decisions to release to parole those prisoners whose release on conditions does not pose an undue threat to the safety of the community, and to cancel the parole of prisoners who fail to comply with conditions or otherwise act in a manner which elevates their risk to the safety of the community.

9.2 PUBLICATION OF DECISIONS RELATING TO SEXUAL OFFENDERS

POLICY

In the event that a victim's name has been used in a decision relating to the release or cancellation of a sexual offender's Parole Order, the name of the victim will generally be blanked out and not appear on the published version of the decision. In addition, if the name of the sexual offender may lead to the identification of the victim, the prisoner's name must be blanked out to protect the identity of the victim.

RATIONALE

As per s.5A of the Act, the Board is required to take into account any issues relating to victims when making its decisions. As sexual offences are of a highly sensitive nature, it is the Board's duty to not publish names of victims, and in many cases offenders, in these circumstances. S.36C of the *Evidence Act 1906* prohibits the publication of any matter likely to lead to the identification of the victim of a sexual offence.

9.3 PUBLICATION OF CONDITIONS OF PAROLE

POLICY

In general, all conditions of a Parole Order will be published along with the decision to release the prisoner to parole. The exceptions are when a condition reveals the identity or location of the victim; breaches the prisoner's confidentiality about their mental or general health status; or breaches the limitations of information received under the Release of Information (ROI). In these circumstances the specific conditions can be withheld from publication.

RATIONALE

All the conditions of parole are stated on the Parole Order which the prisoner signs prior to release and are therefore available to the Community Corrections Officer and Police through the Western Australia Police and Corrective Services databases. In the case where withholding publication of specific conditions of parole from the public domain maintains compliance with legislation and or privacy for the prisoner, without

adversely affecting the safety of the community, then it is the appropriate course to pursue.

10. POST SENTENCE SUPERVISION ORDERS

10.1 PSSO ELIGIBILITY

POLICY

The Board must consider whether a PSSO should be made in respect of each eligible prisoner before the end of the prisoner's term of imprisonment or period of parole. The Board is required to consider every prisoner serving a term of imprisonment for a serious violent offence, defined as being:

- An offence specified in Schedule 2 of the *Sentence Administration Act 2003* (WA);
- An offence declared by a court under section 97A(3) of the *Sentencing Act 1995* (WA) to be a serious violent offence.
- An offence as determined by the *High Risk Serious Offenders Act 2020* (WA)

An offence declared under section 97A(3) of the *Sentencing Act 1995* (WA) to be a serious violent offence applies if the sentencing court has declared the offence, based on the nature of the offence and/or offending history of the offender, to be a serious violent offence.

RATIONALE

A PSSO enables the Board to impose an order with community supervision obligations on certain offenders for a strict period of between 6 months and two years from the expiry of their imprisonment or parole period. A PSSO does not extend the prisoner's original sentence, rather is imposed to provide protection to the community by supervising the prisoner following to completion of their sentence. A PSSO is not part of the punishment for the offence for which the prisoner has just completed a prison sentence.

10.2 PSSO CONSIDERATIONS

POLICY

The Board and any person performing functions under the Act must regard the safety of the community (s.4 A reference in this Act to the ***community*** includes any community and is not limited to the community of Western Australia) as the paramount consideration [s.5B].

The following constitute the PSSO considerations set out in the Act under [s.74B]:

a) issues for any victim of a serious violent offence for which the prisoner is in custody, including any matter raised in a victim's submission;

b) the behaviour of the prisoner when in custody insofar as it may be relevant to

determining how the prisoner is likely to behave if released;

c) whether the prisoner has participated in programmes available to the prisoner when in custody, and if not the reasons for not doing so;

d) the prisoner's performance when participating in a programme mentioned in paragraph (c);

e) the behaviour of the prisoner when subject to any PSSO made previously;

f) the likelihood of the prisoner committing a serious violent offence when subject to a PSSO;

g) the likelihood of the prisoner complying with the standard obligations and any additional requirements of any PSSO;

h) subject to subsection (2), any other matter that is or may be relevant to whether the prisoner should be subject to a PSSO after the prisoner's release.

RATIONALE

S.74B of the Act sets out the above as the considerations for the Board. When considering whether a prisoner should be placed on a PSSO, the Board is required to make a decision that takes into account all of the above factors.

10.3 PSSO REQUIREMENTS

POLICY

The decision to release on a PSSO is made by the Board. Section 74D sets out the parameters the Board must have regard to when determining the appropriateness of a PSSO. A PSSO must be in place for a period of not less than 6 months and not more than 2 years beginning on:

a. if the supervised offender is not released on parole, the day on which the offender is released after serving the offender's term or;
b. if the supervised offender is released on parole, the day after that day on which the offender's term ends.

The Board is required to impose standard obligations which are detailed in section 74F of the Act.

A PSSO may contain additional requirements as the Board deems fit, which may include:

- a requirement relating to where the supervised offender must reside;
- requirements relating to the protection of any victim of an offence committed by the supervised offender from coming into contact with the offender;
- a requirement that the supervised offender must wear any device for monitoring purposes;
- a requirement that the supervised offender permit the installation of any device or equipment at the place where the offender resides for monitoring purposes;

- a requirement that, if the CEO so directs, the supervised offender –
    - wear any device for monitoring purposes;
    - permit the installation of any device or equipment at the place where the offender resides for monitoring purposes;
- a requirement that the supervised offender must not leave Western Australia except with and in accordance with the written permission of the CEO;
- requirements to facilitate the supervised offender's rehabilitation;
- prescribed requirements.

RATIONALE

The *Sentence Administration Act 2003* (WA) (the Act) establishes and guides the Board. When it comes to PSSO's and the administration of PSSO's the only source of authority is the Act.

This document is regularly reviewed and is current as at February 2023.