

Prisoners Review Board of Western Australia



PRISONERS REVIEW BOARD

Annual Report

For the year ended 30 June 2009





PRISONERS REVIEW BOARD

Foreword,

To Attorney General Christian Porter, MLA

In accordance with section 112 of the *Sentence Administration Act 2003*, I present to you the Annual Report of the Prisoners Review Board of Western Australia for the year ended 30 June 2009.

Justice Narelle Johnson
Chairman
Prisoners Review Board
2009

In line with State Government requirements, the Prisoners Review Board annual report is published in an electronic format with limited use of graphics and illustrations to help minimise download times.

Cover Page

The photograph is of a prisoner at Decca Project in Roebourne receiving job training sponsored by the Rio Tinto company and the Ready to Work program.



PRISONERS REVIEW BOARD

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PRISONERS REVIEW BOARD

Profile

The Prisoners Review Board is the authority that grants or refuses parole to prisoners who are eligible for consideration for release from jail to serve the balance of their sentence in the community.

In reaching its decisions, the Board considers the safety of the community, matters that affect the victims of the crime committed, and factors that affect the offender.

The Prisoners Review Board replaced the Parole Board in January 2007 following the passing of the Sentence Administration Act (2003) and the recommendations of the Mahoney Inquiry.

The Board also considers the matters of life sentenced prisoners and prisoners jailed indefinitely. The Board makes recommendations to the Attorney General on the management of these offenders. The Attorney General makes a decision which is endorsed by the Governor.

The Board is chaired by Supreme Court Justice Narelle Johnson, who started her 3 year term in March 2009. There are 9 other Board members; 3 Deputy Chairpersons, and 6 community members. Attending each Board meeting are representatives of the Department of Corrective Services and the WA Police Service.

A quorum of at least of two members and a chairperson sit every day, Monday to Thursday, to consider the cases of prisoners eligible for parole.

CHAIRPERSON AND BOARD MEMBERS.

There was a significant change in personnel at the PRB in the financial year 2008/09.

Inaugural Chair, District Court Judge Val French retired at the end of March 2009, and a new chair, Supreme Court Justice Narelle Johnson, was appointed by the Attorney General, Mr Christian Porter.

"Justice Narelle Johnson is an experienced, highly capable Supreme Court Judge," Mr Porter said. "With a Bachelor of Jurisprudence Honours, a Bachelor of Law and a Master of Law, her expertise spans across criminal law, civil law, personal injury matters, coronial enquiries and appeals, all of which will be of immense value to both Boards."

Extract from Attorney General's media release
Announcing Justice Johnson's appointment.





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Three new community members were also appointed; an academic, an aboriginal health researcher and a counsellor. As well, two Board members resigned.

Message From The Chairman

It has been a very busy but professionally rewarding time since my appointment as Chairperson of the Prisoner's Review Board in April of this year. After an initial period of identifying the Board's powers and obligations under the *Sentence Administration Act 2003*, and of understanding how the Board operated under that legislation, a number of changes have been implemented and further issues have been highlighted for consideration and improvement.

From the outset my primary focus has been on two areas of operation of the Board that I believed required attention. The first area was the application of the release considerations under s 5A and s 5B of the Act and the second area was the quality of communications with prisoners concerning the Board's decisions. To an extent, these two areas overlap.

In making the decision to release a prisoner on parole, the Board is required to apply the release considerations set out in s 5A of the Act. These are the factors that Parliament has identified as being relevant to the exercise of the power to release a prisoner on parole. They include factors such as the degree of risk that the release of the prisoner would appear to present to the safety of the community, the circumstances of the commission of the offence for which the prisoner is in custody, issues for any victim, the behaviour of the prisoner when in custody, participation and performance in rehabilitation programmes in prison, the prisoner's behaviour on previous release orders, the likelihood of the prisoner committing an offence on parole and the likelihood of the prisoner complying with the requirements of parole. Essentially, after considering all the information available to it, the Board is required to make a risk assessment applying the factors under s 5B. The Board is further required to consider whether the imposition of any conditions on release could appropriately deal with any risk factors identified. However, Parliament has also determined, as set out in s 5B of the Act, that the Board must regard the safety of the community as the paramount consideration. It can be seen that the legislation under which the Board operates requires it to consider the interests of the prisoner, the victim and the community. Often the interests of these three groups are not easily reconciled.

On my appointment I saw a need to emphasise to the Deputy Chairpersons and the members of the Board their obligation to consistently apply these release considerations and not to give undue or inappropriate consideration to factors which, although they may be relevant to any consideration, do not over-ride the statutory requirements. This involved carrying out professional development days identifying for the members the relevant statutory provisions, as well as any legal rulings on relevant issues, and addressing the relevance of other factors historically taken into consideration. As I do not chair every sitting of the Board, a practice has been adopted



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of meeting with the Deputy Chairpersons on a monthly basis to reinforce the need to apply the statutory provisions and to address any issues which have arisen in relation to the decision making process. Whilst there can never be true consistency in outcome because of the greatly varied circumstances of each prisoner, it is nevertheless a requirement that the same considerations are applied in each case.

Considered debate within each Board has also been encouraged. Each Board member is not only required to identify his or her view of the appropriate outcome but also to identify the reasons for that view. In that way, the other members are made aware of factors that they may not, themselves, have considered.

Of course, the Board is not only required to make a decision with respect to parole, it is also required to give its reasons for so doing. This is one area in which improving the quality of the work of the Board crosses over with the desire to improve the quality of communication with the prisoners. In my view, it is incumbent on the Board to identify every matter which has led to the decision to deny or to release on parole and not simply to rely on one or some of those matters. Further, as it is the release considerations which are applied to the issue, where possible the decision should be expressed in those specific terms. It is also vitally important that those reasons can be readily understood by the prisoner to whom they are directed. Much effort has gone in to ensuring that the reasons given, and the Notices which communicates those reasons to the prisoner, are of a suitable standard.

The information available to the Board when making its decision comes from a number of sources. However, attempts are currently being made to obtain the information which is currently unavailable to the Board, such as the prosecution's statement of facts, which in the superior courts is often not identical in content to the police Statement of Material Facts with which the Board is provided. It is also hoped that, in the future, psychiatric or psychological reports obtained with respect to a prisoner will be available to the Board to ensure that it has the optimum amount of material available to it when considering release on parole.

Soon after the Board was established in January 2007, a process of video link interviews with prisoners was commenced. It was thought that these interviews would have the benefit of providing the Board with an opportunity to hear what a prisoner has to say about his or her plans for parole and about the benefits the prisoner may have gained from any rehabilitation programme in which he or she had participated. Board members then had the opportunity to ask questions in relation to offending patterns and explore any issues that arise from the reports and other information provided to the Board. The stated intention was also for the Board to speak to prisoners about what was required of them whilst on parole.

Unfortunately, it became apparent from a consideration of various occasions on which video links had been utilised, in particular in relation to cases where there had been a breach of parole orders granted following a video-link interview, that appearances by prisoners by video-link had the unfortunate consequence of undermining the objectivity necessary for sound decision making. Decisions were being made out of an understandable but inappropriate sympathy for the position of the prisoner and his



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or her family, rather than from a clear understanding of the prisoner's conduct and an application of the requirements under the Act. That this does occur when making decisions on a face to face basis is supported in the relevant literature. Consequently, the video-link interviews have been brought to an end, however, with prisoner's retaining the right to provide as much information as they wish in writing, either personally, or through a third party writing on a prisoner's behalf.

In the past it has been the practice for the Board to make regular visits to all prisons in Western Australia and to conduct a Board meeting at the prison in the presence of prisoners, media and interested persons from the community. The opportunity was also taken to speak to local agencies. However, the decision has been made to cease holding Board meetings in the presence of third parties. This is because the Act makes it an offence for any member, deputy chairperson or registrar to disclose to a third party any information obtained because of the position they hold: s 119 of the Act. In any event, I consider that prisoners are entitled to some degree of privacy and it is not appropriate to reveal their personal details without good reason. The Act does allow the Chairperson to approve the release of the Board's decision and its reasons if it is in the public interest: s 107C. In that regard, I have determined that certain Community Corrections Officers who actually have the responsibility for supervising prisoners on parole may attend a Board meeting, with prior approval, in order for them to be fully aware of the considerations relevant to the Board's decision making.

As no Board meetings are now being held in regional areas, it was considered that the expense of taking a fully constituted Board and administrative support staff to regional areas could not be justified. This practice has now been replaced with the Chairperson and the Registrar attending each regional prison for a shorter period and meeting with interested parties to discuss the work of the Board and to build relationships which are beneficial to the respective organisations. The interested parties currently being met on these regional visits are prison staff dealing with parole, the local CJS officers, the local magistrate, the police and, where possible, an agency dealing with prisoners released on parole.

Indeed, there has been a concerted effort in the recent months to attempt to build better relationships with key agencies on which the Board relies for the provisions of information and assistance. Because of the volume of work it is easy to let such relationships lapse but they are vital to improving the quality of service provided by the Board. Without exception these attempts have been welcomed and the Board has definitely benefited from the exchange of information and the provision of assistance which has resulted.

Overall there has also been an attempt to improve the quality of the administrative assistance provided to the Board both in the correspondence produced and also in dealings with people who contact the Board. The aim is that all such people, be they prisoners, victims or members of the community, can be assured they will be dealt with politely and efficiently and any information provided by them will be treated appropriately. The Board has experienced some delays in responding to inquiries because of an increase in correspondence, however, in recent times, the turn around time has improved.



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In addition to using days set aside for professional development for raising the understanding of members and Deputy Chairpersons of the statutory framework of their positions, the opportunity has also been taken for them to participate in a training sessions on accountable and ethical decision making which raised some interesting issues in relation to conflict of interest. On another occasions the opportunity was taken to better inform the members about the content of a number of prison based programmes.

In terms of the future, there are two main “projects” on the horizon. One is a push to increase the involvement of victims by encouraging their input into the decision making process as well as encouraging victims to identify conditions which might assist them to cope with a prisoner’s release on parole. It is the Board’s intention to achieve this by working together with Victims Support Services, the officers of which have the necessary expertise, rather than by replicating available services. However, the Board intends to take a pro-active role in encouraging victims to come forward with their views. One method earmarked to achieve an increased level of contact is to use the email contact on the Board’s website as a means for victims to contact the Board and for the Board to provide information and encouragement.

The other “project” is creating a separately constituted Board to consider parole applications in relation to prisoners serving life or indefinite terms. At the moment, the parole applications of these prisoners are dealt with in the course of the regular Board meetings. As they require the provision of statutory reports and the making of recommendations, it is often the case that dealing with early release for these prisoners takes considerable time and very careful consideration of a large amount of material. In my view, the seriousness of the offending and the consequent potential for risk is such as to justify a separate Board constituted by experienced members specifically selected for work on such a Board. As required by the Act, the Board will have a chairperson and representatives from DOCS and the Police Service. However, the Board will also sit with two members, including one indigenous member. It is also hoped that this approach will allow for a better quality of administrative support to ensure that all time frames are regularly met and all correspondence is of the highest quality.

It is unfortunate that my appointment has come at a time of unprecedented overcrowding in Western Australian prisons. The decrease in the numbers of prisoners granted parole, and the increase in the number of prisoners returned to prison for breach of parole, which has resulted from requiring compliance with the relevant legislation has, unfortunately, added to that overcrowding. Whilst the Board greatly regrets that any prisoner is confronted with the impact of overcrowding, it is not entitled to take that factor into account when carrying out its functions because it is not a release consideration.

Finally, I would also like to thank the Registrar who has accepted the responsibility and increased workload of making the change from a predominantly administrative role to undertaking the full statutory responsibilities of a registrar. I would also like to thank the Deputy Chairpersons and the members of the Board, as well as the staff of



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the Secretariat who provide the Board with administrative support, for their support throughout that part of the year for which I have been responsible for the Board.

The Hon. Justice N Johnson
CHAIRMAN

Executive Manager's Report

The Executive Manager of the State Review Board Secretariat, the body that supports the PRB in its work, is Dianne Bateman. Ms Bateman took long service leave in the middle of June, and in her place was Mr Richard Stevenson, formerly the Manager of Courts in Kalgoorlie and the Goldfields.

Since the appointment of the new chairperson of the Board, the Executive Manager's focus has been on assisting with the implementation of new processes and guidelines that reflect Justice Johnson's vision for the PRB.

In accordance with the Government's wishes to make parole more stringent and Justice Johnson's strict adherence to the legislation, sentenced prisoners who break the law while on parole will have their parole cancelled. Non compliance with the law whilst on parole is totally inconsistent with the being on parole. With this philosophy in mind, there was an increase in the number of parole orders cancelled. The average monthly order to cancel parole prior to Her Hon. Justice Johnson's chairmanship was 22. In the first month of Her Honour's tenure, 91 orders were cancelled. In the next two months, on average 74 parole orders were cancelled.

In another policy development, there are new procedures for prisoners who wish to appeal against a denial of release on parole. Prisoners are now restricted to one review, as legislated, which is conducted by the Chairperson or one of the three Deputy Chairpersons. There has been a reduction in the number of appeals that go before the full Board for consideration. If an offender gets an adverse decision on their application for review they can no longer apply for another review, however they can re apply for parole on the basis that they are able to show a change in their circumstances since the original Board decision. The average monthly number of requests for a review between July 2008 and March 2009 that were refused was 29. The average denied between April and June 2009 was 77. The average monthly number of reviews referred to the Board between July 2008 and March 2009 was 19, while the average number referred between April 2009 and June 2009 was 3.

Richard Stevenson
ACTING EXECUTIVE MANAGER



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The year at a glance

The Board sat 511 times considering the case of 3581 individuals. It made 8505 decisions. 3051 prisoners were eligible for release on parole. 1957 were released, 855 were denied release.

A Year in Statistics

	<u>2008</u>	<u>2009</u>
The number of prisoners who became eligible to be released under a parole order. <i>(This figure reflects the number of prisoners given parole eligibility date in between July 2008 and June 2009 by a sentencing court)</i>	2732	3051
The number of prisoners who applied to be released under a Re-entry Release Order. <i>(Prior to 2007 prisoners eligible for parole could also apply for an earlier release under a re entry release order. Those sentenced after 2007 are now only eligible for release on parole.)</i>	172	68
The number of prisoners who were refused an early release order. <i>(This figure reflects the number of prisoners who were denied release on parole.)</i>	493	855
The number of prisoners released under an early release order	2323	1957
The number of prisoners who completed an early release order. <i>(This figure represents the number of prisoners who completed their parole orders without breaching the order or facing new charges)</i>	708	588
The number of early release orders suspended or cancelled <i>*(This figure represents the number of paroles who violated their parole conditions and were returned to prison. The figure for 2007/08 includes the number of prisoners who were 'suspended'. A suspension means the prisoner continued their parole, and was not returned to prison.)</i>	530	468*
Main Reasons for the cancellation of parole and return to prison		
Reoffending		166
Failure to comply with order		135
Failure to report		90
Drug Use		69



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The number of prisoners for whom participation in a Re-socialisation program was approved. 16 12
(Prisoners serving life or indefinite sentences can be placed on a resocialisation program after approval from the Attorney General and the Governor)

The number of prisoners who completed a re-socialisation program. 8 4
(Please note re-socialisation programs can run beyond the financial year)

All of the above requirements are bounded by the statement
 "during the previous financial year".

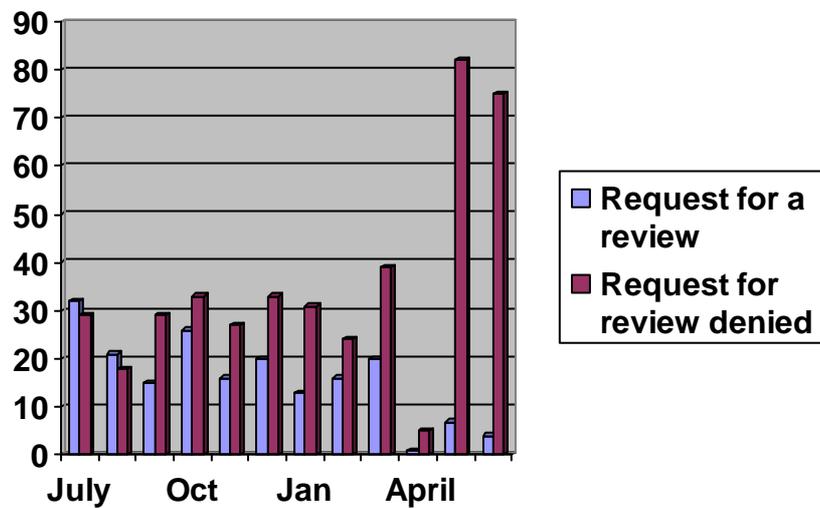
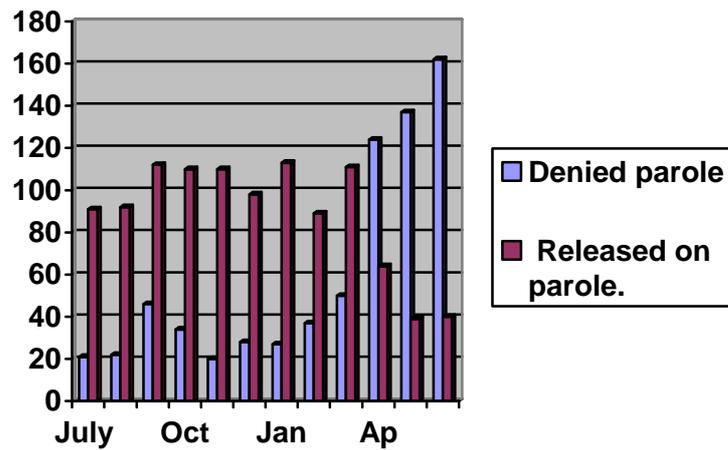
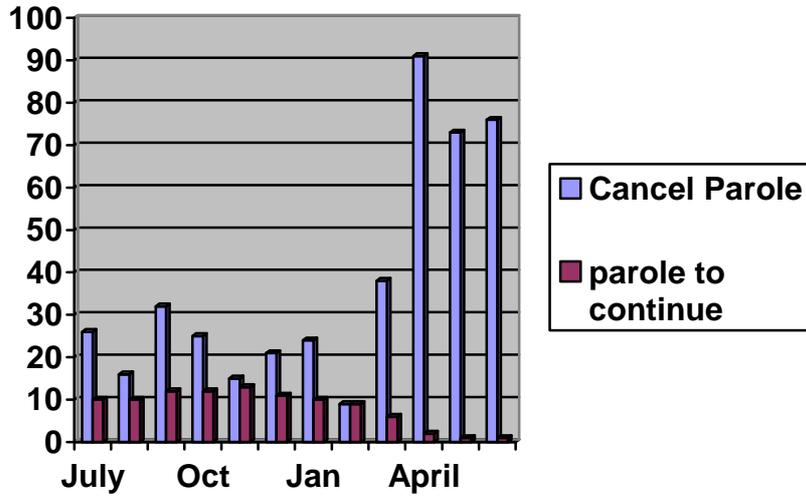
The Act asks for information regarding the activities of Community Corrections Officers as they relate to early release orders. The PRB does not have statistical data to provide an analysis.

TOTAL PERFORMANCE INDICATORS PRISONER REVIEW BOARD

	2007-08	2008-09
Adjourned	132	129
Arrest Warrant Issued		3
Boards Report Forwarded To Ag	19	8
Cancel Order	437	474
Cancel Suspension	96	96
Chairman To Prepare Report	23	28
Chairman's Report Adopted	14	11
Defer Action	61	82
Defer Re-Entry Release Order	3	1
Defer Release On Short Term Parole	37	16
Deferred For Further Review	954	817
Deny Parole	380	791
Deny Re-Entry Release Order	96	45
Deny Release On Short Term Parole	17	19
Information Received And Noted	702	736
No Action Taken	89	97
Number of decisions made by the PRB	7109	8505
Number of individual cases before the PRB		3581
Permit To Leave State Approved	70	42
Permit To Leave State Not Approved	6	10
Pre Release Programme Approved	7	
Previous Decision Changed	31	21
Referred To Board By Registrar	316	674
Release On Parole	1691	1458
Release On Re-Entry Release		29
Release On Short Term Parole – Supervised	256	269
Release On Short Term Parole - Unsupervised	285	201
Request For Review Deferred To Board	194	172
Request For Review Denied	247	391
Request For Review Granted – Decision Amended	17	31
Suspend Order	479	613
Suspension To Remain	230	252
Variation to order	135	



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Case Studies

Offender D.T.

D.T. is a 30 year old woman who has been in and out of prison 17 times since 1979. She is a glue sniffer with psychiatric problems.

- August last year was the first review date for parole on Ms DT's latest sentence. Due to her poor prison conduct and high risk of re-offending her, consideration of her release was deferred.
- DT appealed against that decision one month later, her appeal was denied 15 days later.
- Two weeks later Ms DT requested another review, it was again rejected.
- In March this year, Ms DT's case was again reviewed, and in April she was denied parole due to continued bad behaviour in prison.
- DT's file was viewed 7 times by the Board during the financial year.

Offender TS.

TS was jailed for 11 months and 29 days in March 2008. As an offender with a sentence of less than one year, he was eligible for parole after ?.

- TS's first review occurred on the 22nd of August, 12 days before his earliest eligibility date.
- The Registrar referred TS's file to the full Board, unwilling to allow his automatic release on parole.
- On 2 September the Board deferred its decision, as a victim mediation report was not ready, and it wanted more information regarding TS's parole plan.
- On 5 September the Board received a letter from the prisoner.
- On 18 September the prisoner was released on parole.

Offender RB

An amphetamine user, RB was jailed for aggravated burglary, assault and car theft.

- In July 2008 RB was denied release on a re entry release order.
- In November 2008 RB was released on parole.
- In January 2009 his parole was suspended for failing to report and failing to comply with his parole conditions.
- In late January the Board decided RB's parole could remain suspended and not cancelled, calling for more information on why he failed to comply
- Variations were made to his parole order in late February 2009
- On March 31st RB's parole was again suspended, this time for a positive drugs test, and a warrant for arrest was issued.
- 9 days later RB's parole was cancelled.



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Sittings

The Board convened on 511 occasions during the year. The majority of sittings occurred between Mondays to Thursdays at the office of the State Review Board Secretariat. The Board held 21 hearings in prisons, seeing 140 prisoners face to face. That practice was suspended in March 2009. Video link conferences were also held however this practice was suspended in March 2009 also.

By virtue of their appointment to this Board, community members are also appointed as members of the Mentally Impaired Accused Review Board. That Board sits in the office of the State Review Boards Secretariat, one Friday per month with additional meetings as required.

Regional Prison Visits.

The Prisoners Review Board regularly carried out a circuit visit to regions that have a local prison. Board members met with local staff from Community Corrections, appropriate community groups, aboriginal communities, the police and prison staff and judicial officers. The Board no longer circuits however the Chairperson and on some occasions the Registrar circuit to those regions and meet with stakeholders.

In 2008/09 visits were made to

- Geraldton and Greenough Regional Prison,
- Kalgoorlie and the Eastern Goldfields Regional Prison,
- Bunbury Regional Prison,
- the Pilbara and Roebourne Regional Prison.

A five day visit to the West Kimberley included the town of Fitzroy Crossing, seven aboriginal communities and Broome Regional Prison.

Stories about the visits are run on the website in the news section.



The road trip to Yandeyarra, an aboriginal community on the road to Newman, that is serviced by the Port Hedland CJS branch. The visiting Board members toured the community and met with community coordinator Mr Lim.



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Visits to the Board

During the financial year 103 people attended Board hearings to observe the Board in action. The highest number of attendees was 42 in May and June, mainly community corrections officers and program facilitators who were keen to experience the style and direction of Justice Narelle Johnson

The PRB hearings are confidential, not just anyone can walk in and listen to a case. However, the Board encourages the attendance of community corrections officers and senior case work supervisors who manage offenders and work for the Department of Corrective Services. It gives the officers who write reports for the Board first hand experience on how important their work is and how to do it better.

Feedback from the visitors
*'It improved my understanding of their decision-making process...
I can give better information to prisoners about the board....
I received some good specific Information regarding criteria for parole
The PRB appear to look for the positives in a case.'*

Sharing solutions at the New Zealand conference.

In October the former Chair of the Prisoners Review Board, Judge Val French and the Executive Manager Dianne Bateman attended a two day conference in New Zealand of the Australasian Heads of Parole Boards.

Topics covered included information sharing between countries who agree to deport and receive offenders, policies regarding sex offenders and the needs of indigenous people.

At the time Ms Bateman commented 'We hope this leads to a resolution concerning the transfer of parole orders between Australian States and Territories and New Zealand. It will go a long way to ensuring some form of supervision is in place whenever a parolee is deported.'

Judge French said, "All parole authorities benefit from an exchange of ideas and initiatives to improve parole decisions and procedures. Although each jurisdiction is governed by different legislation, we share the same problems in assessing risk of re-offending and the same difficulties of insufficient rehabilitation programs and re-entry supports."



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Website

The Prisoners Review Board continues to make public its operations via its dedicated website, www.prisonersreviewboard.wa.gov.au

The website was used to announce, along with a media release from the Attorney General, the appointment of new chairperson The Hon Justice Narelle Johnson.

Decisions made by the Board are published on the site to demonstrate to the public and stake holders the issues and details that the Board considers when reaching a conclusion regarding an offender.

An example of a high profile decision published on the website to inform the public was the case of Jack Benjamin Hall.

74 decisions were published during the year. Between December and March the Board functioned without a media officer, so no decisions or news stories were published.

A total of 27 news stories were published, including monthly statistical reports and accounts of the Boards regional visits.

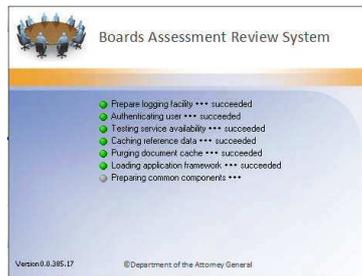
The website is currently undergoing further development and no recent articles have been published.

The decision by the PRB in the case of high profile offender Jack Benjamin Hall was published on the website. Hall was jailed for the manslaughter of Bunbury teenager Lawrence Dix, who was shot and killed. The media were intensely interested in the case. The decision in the case, to release Hall on parole, was released to the website and therefore to the media and the wider community. The PRB made sure that the family of Mr Dix and the offender were aware of the decision before it was publically released.



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Customised Computer System called BARS



D day for switching on the Prisoners Review Board's designed computer information system will be achieved by the end of 2009.

BARS or the 'Boards Assessment Review System' has been developed by staff from the State Review Board Secretariat and Courts Technology Group.

Currently when staff create offender files that Board members refer to in their deliberations, they access two Department of Corrective Services systems. BARS will integrate those systems into one, with other input specific to the needs of the Prisoners Review Board. As well, it is intended that BARS will interface with CHIPS, a courts computer system, so that the Board gets the most up to date and accurate information regarding any outstanding charges against a potential parolee.

BARS will streamline staff work load, they won't have to navigate a number of computer systems to find the information the Board needs. For staff, BARS will result in the reduction of tedious manual checking and re checking, allow greater flexibility in the production of paperwork and more detailed responses for prisoners and various organisations that need to be informed about Board decisions. Answers to parliamentary and other questions about Board statistics will be generated using BARS.

Programs

The Board is pleased that the provision of programs to offenders has been improved by the Department of Corrective Services. While all of the Board's expressed concerns over the previous years have not been alleviated, there has been a significant increase in the number of programs offered in WA prisons.

The Board understands that increasing the offender programs on offer was a priority for the Department of Corrective Services during 2008-09 and significant resources, including increased staff and contractors, were committed to achieving this.

- Between 2007/08 and 2008/09, the number of offenders enrolled in programs increased by 45%.
- Importantly, programs for Aboriginal offenders increased in the period 2007/08 and 2008/09 by 61%,
- Addictions programs grew by 123%,
- Violence program participation grew by 163%
- Aboriginal sex offending program participation grew by 483%.