



**GOVERNMENT OF  
WESTERN AUSTRALIA**

**POLICY MANUAL**  
PRISONERS REVIEW BOARD  
WESTERN AUSTRALIA



# INDEX

<b>1. THE SAFETY OF THE COMMUNITY AND THE RELEASE CONSIDERATIONS</b>	<b>1</b>
1.1 UNKNOWN LOCATION OF THE REMAINS OF DECEASED VICTIMS OF HOMICIDE OR HOMICIDE RELATED OFFENCES	<b>2</b>
<b>2. DECISION MAKING POLICIES</b>	
2.1 ACTION WHEN INTENSIVE TREATMENT PROGRAMMES ARE IN PLACE	<b>3</b>
2.2 INTENSIVE TREATMENT PROGRAMMES IN THE COMMUNITY	<b>4</b>
2.3 TREATMENT COMPLETION REPORTS	<b>5</b>
2.4 PERSONAL APPEARANCES BEFORE THE BOARD	<b>5</b>
2.5 RISK ASSESSMENT TOOLS	<b>6</b>
2.6 TELEPHONE SUPERVISION	<b>6</b>
2.7 DEFICIENT PAROLE PLAN	<b>7</b>
2.8 DENY OWN PAROLE	<b>7</b>
2.9 CONSIDERATION TO BE GIVEN TO AUSTRALIAN NATIONAL CHILD OFFENDER REGISTER (ANCOR) SUPERVISION	<b>8</b>
2.10 INTERSTATE TRANSFER OF PAROLE	<b>8</b>
2.11 DEPORTATION AND REMOVAL FROM AUSTRALIA	<b>9</b>
<b>3. REASONS FOR DECISIONS</b>	
3.1 REASONS ARE TO BE PROVIDED FOR ALL DECISIONS	<b>10</b>
3.2 REASONS ARE TO CONTAIN SUFFICIENT DETAIL	<b>10</b>
3.3 EXPRESSING THE DECISION	<b>11</b>
<b>4. VICTIMS</b>	
4.1 VICTIMS OF CRIME	<b>12</b>
4.2 COMMISSIONER FOR VICTIMS OF CRIME	<b>15</b>
4.3 VICTIM NOTIFICATION REGISTER	<b>15</b>
4.4 VICTIM-OFFENDER MEDIATION UNIT	<b>16</b>
4.5 CONDITIONS IN RELATION TO VICTIMS	<b>16</b>
<b>5. CONDITIONS OF PAROLE</b>	
5.1 PREAMBLE	<b>17</b>
5.2 STANDARD OBLIGATIONS OF PAROLE	<b>17</b>
5.3 STANDARD REQUIREMENTS OF PAROLE	<b>18</b>
5.4 CONDITIONS IN RELATION TO VICTIMS	<b>18</b>
5.5 NOT TO CHANGE ADDRESS WITHOUT PRIOR APPROVAL OF THE BOARD OR COMMUNITY CORRECTIONS OFFICER	<b>18</b>
5.6 URINALYSIS CONDITIONS	<b>19</b>
5.7 ALCOHOL CONDITIONS	<b>19</b>

5.8	CONDITIONS TO COMPLY WITH TREATMENT FOR GENERAL OR MENTAL ILLNESS	20
5.9	OTHER CONDITIONS	21
<b>6.</b>	<b>APPLICATION TO VARY CONDITIONS</b>	
6.1	REMOVAL OR ALTERATION OF SPECIFIC CONDITIONS	22
6.2	DETRIMENT SHOULD NOT BE TO THE VICTIM	22
<b>7.</b>	<b>BREACH OF CONDITIONS OF PAROLE</b>	
7.1	ACTION WHEN RE-OFFENDING OCCURS	23
7.1.1	ACTION IN TYPICAL CIRCUMSTANCES	23
7.1.2	ACTION WHEN THERE IS AN IMMINENT RISK	23
7.2	ACTION WHEN PAROLE CONDITIONS ARE BREACHED	24
7.3	BOARD ACTION IN THE EVENT OF A SECOND OR SUBSEQUENT BREACH OF PAROLE	25
7.4	SUSPENSION OF PAROLE	25
7.5	ACTION WHEN THERE IS A POSITIVE TEST TO ILLICIT DRUG USE	26
7.6	POWER TO SUSPEND OR CANCEL A SUPERVISED PAROLE ORDER IS UNFETTERED	26
<b>8.</b>	<b>REVIEWS AND RE-APPLICATIONS</b>	
8.1	REVIEWS	27
8.2	RE-APPLICATIONS	28
8.3	HOW TO DEAL WITH CHANGED INFORMATION AFTER THE BOARD HAS ALREADY MADE A DECISION AND ISSUED REASONS	29
<b>9.</b>	<b>PUBLICATION OF DECISIONS</b>	
9.1	PUBLICATION OF DECISIONS ON THE BOARD'S WEBSITE	29
9.2	PUBLICATION OF DECISIONS RELATING TO SEXUAL OFFENDERS	30
9.3	PUBLICATION OF CONDITIONS OF PAROLE	30
<b>10.</b>	<b>POST SENTENCE SUPERVISION ORDERS</b>	
10.1	PSSO ELIGIBILITY	31
10.2	PSSO CONSIDERATIONS	32
10.3	PSSO REQUIREMENTS	33

# 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 (being the community of the Commonwealth of 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:

- deciding whether to release [s.20(2)];
- 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)];
- 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. It 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 TELEPHONE SUPERVISION**

### **POLICY**

A parole plan that involves supervision by telephone (e.g. due to the remoteness of the community) should not always be considered as a viable parole plan. Each case must be considered on its merits and in terms of the risk to the safety of the community, accepting that supervision will be at a lower level than when it is

undertaken face to face.

## **RATIONALE**

Supervision by telephone may be inadequate on several accounts. It does not play a surveillance function because the prisoner could be telephoning from any location. It does not give the Community Corrections Officer the opportunity to fully engage with the parolee as there are no non-verbal signs to indicate how the parolee is coping.

Further, if the location is remote enough to require telephone supervision, it is unlikely that there will be any programmes or counselling available to assist the parolee's rehabilitation, nor urinalysis testing. Evidence shows that supervision is more likely to reduce recidivism when supervision is combined with rehabilitative programmes (e.g. maintenance programmes for treatment gains).

Lastly and importantly, placing a parolee in a remote community without effective supervision puts that particular community at a heightened risk.

The exception to this is if the community has By Laws which are enforced and there is a Community Supervision Agreement in place between the Adult Community Corrections and the Community.

## **2.7 DEFICIENT PAROLE PLAN**

### **POLICY**

If the parole plan put forward is deficient (e.g. no suitable accommodation), then unless there is a reasonable basis to conclude that the deficiency will be remedied within a short period of time, the Board should deny release on parole. The matter should not be adjourned whilst the parole plan is rectified. In its reasons, the Board must make it clear why it considers the parole plan to be deficient.

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 is adequately managed.

## **2.8 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.

## 2.9 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.

## 2.10 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.

## 2.11 DEPORTATION AND REMOVAL FROM AUSTRALIA

### POLICY

Imminent deportation often provides an adequate basis for releasing a prisoner, as the paramount consideration of the risk to the Australian community will be effectively eliminated. In these instances, a prisoner should only be released to the custody of the Department of Home Affairs (DHA) and specific conditions of release may need to be added to ensure this.

An example of a Board decision releasing a prisoner to DHA custody is as follows:

#### *Reasons*

The Prisoners Review Board (the Board) reviewed [PRISONERS NAME] case on [DATE] and considered all available documentation. In reaching its decision, the Board has taken into account the release considerations of the *Sentence Administration Act 2003 (WA)*.

1. The Board is satisfied that the prisoner's removal from Australia will ensure the protection of the Australian community;
2. Despite not having completed any relevant programmes, the prisoner has demonstrated exemplary behaviour in prison and his failure to complete the [PROGRAMME] has been satisfactorily explained to the Board as not being the fault of the prisoner; and
3. The Board is satisfied with the arrangements in place in ([COUNTRY]) for psychiatric and psychological support and pro-social family support.

#### *Conditions*

1. Not to have any direct/indirect contact with the victim.
2. To be available to be taken into the custody of the Department of Home

- Affairs (DHA) for his/her removal to ([COUNTRY]).
3. Not to challenge, resist or contest efforts for his/her removal from Australia.

In some instances, release considerations other than release consideration s.5A(a) may still prevent the prisoner from being suitable to be released on parole.

## RATIONALE

S.5B of the Act provides that the safety of the community is the paramount consideration with regards to any decision made by the Board. In the event that a prisoner is being deported from Australia, the risk to the safety of the Australian community is effectively eliminated.

# 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 written 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 written 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)

## 3.3 EXPRESSING THE DECISION

### POLICY

When the Board chooses to deny release on parole, the decision should be prefaced with one of the following:

In making this decision the Board took into account the release considerations in s.5A of the *Sentence Administration Act 2003 (WA)*, giving paramount consideration to the safety of the community. The Board decided that your release would present an unacceptable risk to the safety of the community due to;

OR

In making this decision the Board took into account the release considerations in

s.5A of the *Sentence Administration Act 2003 (WA)*, giving paramount consideration to the safety of the community. The Board decided that your release would present an unacceptable risk to the safety of the community and that there is a likelihood of you committing an offence whilst subject to a Parole Order due to;

OR

In making this decision the Board took into account the release considerations in s.5A of the *Sentence Administration Act 2003 (WA)*, giving paramount consideration to the safety of the community. The Board decided that your release would present an unacceptable risk to the safety of the community, in that there is a likelihood of you committing an offence whilst subject to a Parole Order and there is a likelihood that you will fail to comply with the conditions of a Parole Order due to;

OR

The Board reviewed your case on (insert date) and considered all available documentation. In reaching its decision, the Board has taken into account the release considerations of the *Sentence Administration Act 2003 (WA)*.

When the Board chooses to release on parole the decision should be prefaced with the following:

In making this decision the Board took into account the release considerations in s.5A of the *Sentence Administration Act 2003 (WA)*, giving paramount consideration to the safety of the community. The Board decided that his release would present an acceptable risk to the safety of the community due to;

OR

The Board reviewed (insert name of prisoner) case on (insert date) and considered all available documentation. In reaching its decision, the Board has taken into account the release considerations of the *Sentence Administration Act 2003 (WA)*.

## RATIONALE

The reasons for a decision to grant parole or to deny release on parole must confirm that the Board has taken into account all relevant release considerations as required by the Act. The specific reasons that follow should reflect the outcome, followed by the particulars.

# 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 therefore 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:

- Persons protected by a family violence restraining order in which the offender or prisoner is the or a respondent.
- A person who was the victim of a previous personal violent offence committed by the offender or prisoner, including in the context of a family relationship.

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. A brief summary of the guidelines is as follows:

### **1. All victims should be treated with courtesy, compassion and respect**

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 1994* (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 PRB. 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 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, and develops policy and legislative initiatives to improve outcomes for victims of crime in Western Australia.

A wide range of information for victims of crime in Western Australia is available on the following website: [www.victimsofcrime.wa.gov.au](http://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 Corrective Services, 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 offenders 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 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.*

### 5.3 STANDARD REQUIREMENTS OF PAROLE

In addition to the standard obligations set out under s.29, the following three standard requirements appear on all Parole Orders:

- a) *You must not commit an offence.*
- b) *You must not use or be in possession of any illicit drug including cannabis.*
- c) *You must not leave or remain out of the State of Western Australia without first obtaining written permission from the Board.*

As a result, the Board is not required to specifically add these conditions as a part of their decision on any particular prisoner.

### 5.4 CONDITIONS IN RELATION TO VICTIMS

See section 4.5.

### 5.5 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 Board or 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.

## 5.6 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 of 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.

## 5.7 ALCOHOL CONDITIONS

### POLICY

The Board must consider including conditions restricting alcohol use on every prisoner who has or has had an alcohol abuse problem which is in any way associated with the current or previous offending, irrespective of whether alcohol abuse has been treated by programmatic intervention. The existence of an alcohol abuse 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.

A condition of 'not to enter licensed premises' limits the parolee's attendance at many sporting activities, concerts, etc, which may be viewed as pro-social activities because often some or all of the venue is subject to a liquor license. The Board should consider whether to impose a restriction under condition 2 in any particular case.

## **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 abuse 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 abuse 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 abuse may be a pre-cursor to other offending.

## **5.8 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.

## 5.9 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, leisure, community work 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 Board should review the matter as soon as reasonably practicable, regardless of whether the Community Corrections Officer has already issued a suspension warrant.

The reasons for the Board's decision must be detailed and clear, describing how the circumstances from which the charge has arisen of which the Board is aware, have increased the risk to the safety of the community.

#### **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 Regional Investigations Unit 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 full 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. No action 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 re integration 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 the 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.

Under s.44(4) of the Act, the Board may only suspend or 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 should 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 of the Act. The only grounds under which a prisoner may make an 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.

The Chairperson (or a Deputy Chairperson as delegated by 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 significant new information to the Board (e.g. a new parole plan, a programme completion report), that information may be treated as a re-application. The information must directly address the risk factors that have the potential to make a Parole Order possible before being 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 significant new information in relation to a possible reduction of the prisoner's risk factors.

If the re-application contains no new information or the new information is not related to reducing risk factors, then the re-application is denied by the Chairperson or Deputy Chairperson and the prisoner 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. If the Board considers it is not appropriate at the time to release a prisoner on parole, it does have the ability to subsequently reconsider whether the prisoner is released on parole, but it is not required to do so.

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.

# 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 2 years or more for a serious offence are published on the Board's website.

The serious offences are contained in Schedule 2 of the *Sentence Administration Act 2003* (WA). Those 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.

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 2 years, or greater than 2 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](http://www.prisonersreviewboard.wa.gov.au)

## RATIONALE

Decisions are published for the sake 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 4 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.

Offences included in Schedule 4 of the Sentence Administration Act 2003 (WA) are as follows:

- Murder
- Manslaughter
- Unlawful assault causing death
- Attempt to unlawfully kill
- Act intended to cause grievous bodily harm or prevent arrest
- Grievous bodily harm
- Sexual offences against a child under 13
- Sexual offences against a child of or over 13 and under 16
- Aggravated incident assault
- Sexual penetration without consent
- Sexual coercion
- Sexual offences against incapable person
- Robbery, if the offence is committed in circumstances described in section 392(c) or in circumstances of aggravation

- Criminal damage if the offence is committed in circumstances described in s. 444(1)(a)
- Breach of s. 444A duty
- Lighting or attempting to light a fire likely to injure
- Dangerous driving causing death or grievous bodily harm

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 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 (being the community of the Commonwealth of 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) any other matter that is or may be relevant to whether the prisoner should be subject to a PSSO after the prisoner's release.

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

- deciding whether to release [s.20(2)];
- 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)];
- determining the parole conditions for prisoners with mandatory release on parole [s.23(2a)]; or
- making a Re-Entry Release Order [s.52(2)].

## 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 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;
- a requirement that the supervised offender must, in each period of 7 days, do the prescribed number of hours of the community corrections activities;
- a requirement that the supervised offender must –
  - seek or engage in gainful employment or in vocational training; or
  - engage in gratuitous work for an organization approved by the CEO;
- 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 24 December 2018.*