

ANNUAL REPORT OF THE PAROLE BOARD FOR THE YEAR ENDED 30TH JUNE 2005

The Hon. Judy Jackson, MHA
Minister for Justice & Industrial Relations
Parliament House
HOBART 7000

Dear Minister

In accordance with the requirements of the Corrections Act 1997 ("the Act"), the Parole Board submits its annual report for the year ended 30th June 2005.

Section 64 of the Act requires the Board to report to the Minister on:

- a) The number of prisoners released on parole during the financial year and the number of prisoners returned to prison by reason of the revocation of their release on parole; and
- b) The general activities of the Board under the Act during the financial year and any matters affecting the operation of the Act that the Board thinks appropriate to include in the report.

1) INTRODUCTION

The purposes of parole has been outlined in past reports however I again do so.

Parole is the release of prisoners serving sentences on licence into the community. Those prisoners released on parole are deemed, by virtue of Section 78 of the Act, to be serving a sentence. Once the decision has been made to release a prisoner on parole (and the process which the Board adopts in relation to making such a determination will be dealt with later in this report), then the prisoner is subject to very close supervision and control. It is designed to allow for the reintegration of prisoners into the community, and specifically to address that fundamental requirement of the criminal justice system, rehabilitation.

The alternative to a system of parole is that every prisoner who is sentenced to a term of imprisonment serves all of that term of imprisonment in a correctional facility, subject to any reduction by remissions. At the conclusion of that sentence, the prisoner is immediately returned to the general community. Such a person would have no support and his or her prospects of a successful reintegration into the community would be substantially diminished without the professional support provided by Parole officers and a variety of Government and other agencies such as the Forensic Mental Health Service, various housing and accommodation institutions, church groups and the like. Few, if any, of these support mechanisms would be available to a prisoner released at the expiration of his sentence.

Moreover, such a person, having completed the totality of his or her sentence, would be perfectly entitled to live where he or she liked and take employment of any nature without any control. In the case of a convicted child sex offender, there would be nothing to preclude such a person from securing employment that would involve that person having daily contact with children. There would be no restraint from that person securing accommodation close to a school or other places frequented by children.

The reality of the criminal justice system in this State, and in this country, is that, with very, very few exceptions, all prisoners who have served a sentence will be released into the community. A system without Parole means that long term institutionalised prisoners will be returned to the community at the expiration of their sentence with no control over their conduct and no reasonable possibility of rehabilitation. Such a system would be, it is suggested, one that is an abhorrent to right thinking members of the community.

2) LEGISLATIVE FRAMEWORK

- 2.1 As in previous years, during the period to which this report relates, the activities of the Board were regulated by the Act.

Section 68 of the Act fixes a non-parole period in respect of any sentence of imprisonment as being equal to one half of the period of the operative sentence.

- 2.2 Section 69 (1) provides that a prisoner who has been sentenced to a term of imprisonment is not to be released on parole in respect of that sentence if the Court has ordered that the prisoner is ineligible for parole pursuant to Section 17 or 18 of the Sentencing Act 1997.

In addition, a court may order that a prisoner not be eligible for parole at all in respect of a sentence of imprisonment.

- 2.3 Section 70 provides the Board with power, in exceptional circumstances, to authorise a release on parole, without the prisoner having served the total non-parole period. The Board has continued its practice of dealing with such applications on the following basis:-

"The basic principle which is being adopted is that, if the considerations relied on by the prisoner were available for consideration by the Court imposing the sentence, the Board will not grant leave for an early application for parole to be made, for to do so would be tantamount to reviewing the sentence imposed".

In addition, the Board needs to examine the circumstances of each case. The legislation clearly provides that the circumstances must be *exceptional*. In other words consequences to a prisoner and his or her family which are "normal" or "foreseeable" hardships that would be reasonably expected to flow from a term of imprisonment are not accepted by the board, consistent with authority, as being exceptional.

- 2.4 Section 86 of the Act provides *"the Director may grant to a prisoner, a remission of the whole or any part of the prisoner's sentence, pursuant to Regulations made under Section 90 (2) (d)"*.

Section 90 (2) (d) provides a power to make regulations with respect to *"the mitigation or remission, conditional or otherwise, of the sentence of a prisoner as an incentive to, or award for good conduct whilst the prisoner is serving his or her sentence"*.

Regulations 23 and 24 of the Corrections Regulations 1998 provide for remission of sentence.

2.5 The Parole Board

Section 62 of the Act provides:-

- "(1) The Parole Board is established.*
- (2) The Board consists of 3 persons appointed by the Governor, of whom –*
- (a) one is to be a person who has practised as a legal practitioner or barrister of the Supreme Court or of a Supreme Court of any part of the Commonwealth other than this State for at least 7 years and has never been suspended from practice, had his or her name removed from, or struck off, the roll of that Court or been disbarred; and*
 - (b) 2 are to be persons who the Governor is satisfied are experienced in matters associated with sociology, criminology, penology or medicine or who possess any other knowledge or experience that the Governor considers is appropriate for the purpose.*
- (3) The chairperson of the Board is to be appointed by the Governor from among the members of the Board.*
- (4) Schedule 2 has effect in respect of the membership and meetings of the Board."*

- 2.6 In addition Schedule 2 of the Act deals with the membership and meetings of the Board. Members are appointed for a period not exceeding three years and the appointment of a Deputy Chairperson and Deputy Members is authorised. Three members constitute a quorum at a meeting and questions arising are determined by a majority of votes of the members present and voting. The Board is not bound by rules of evidence and may inform itself in any manner it thinks fit.

7 The Role of the Parole Board

The Board makes independent decisions in relation to the release of prisoners on supervised conditions. In doing so the Board is required, as a matter of law, to have regard to the interests of the public and the interests of the prisoner.

As has been pointed out in previous Annual Reports, the victim or victims of the particular conduct which brought about the prisoner's sentence are part of "the public" to whose interests the Board must pay regard.

The Board must also have regard to Section 4 of the Act which provides:

- "4. The powers conferred by this Act are to be exercised with proper regard to the following principles:*
- (a) the community is entitled to an appropriate level of protection from illegal behaviour by people subject to this Act;*
 - (b) people who are subject to this Act retain their normal rights and responsibilities as citizens, except as these are limited in accordance with law;...*
 - (c) services and procedures should be fair, equitable and have due regard to personal dignity and individuality, as far as is consistent with the need for appropriate levels of security and control;*
 - (d) individuals are capable of change;*
 - (e) people subject to this Act continue to be members of the community and should be assisted to become socially responsible. Whilst their liberty is restricted to various degrees, demonstrated social responsibility should lead to less intrusive control and intervention."*

As reported in previous year's reports, the Board has in place a working protocol with the Victims Assistance Unit for the proper exchange of information. That exchange of information has been useful to allow the Board to properly conduct its functions. As stated in the previous reports "the Board does not lose sight of the impact of crime in the community and personal level", but recognises also that the views of victims are but only one of the factors the Board must have regard to.

The Board considers it would be wrong and contrary to the requirements of the Act to refuse parole solely because of the objection of a victim or relative, such objections are relevant in the overall decision making process and are certainly relevant to the sort

of conditions which would be imposed on any parole order that might be made. For instance the Board almost always imposes limits on the freedom of movement of parolees in order to eliminate or at least reduce the risk of the prisoner coming into contact with a victim of his criminal behaviour.

2.8 The Decision Making Process

As previously the Board is required to act in accordance with the matters referred to in Section 72 (4) of the Act. That sub-section provided, during the year the subject of this report:

“(4) In determining whether or not a prisoner should be released on parole, the Board is to take into consideration –

- (a) the likelihood of the prisoner re-offending; and*
- (b) the protection of the public; and*
- (c) the rehabilitation of the prisoner; and*
- (d) any remarks made by the court in passing sentence; and*
- (e) the likelihood of the prisoner complying with the conditions; and*
- (f) the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment; and*
- (g) the behaviour of the prisoner while in prison; and*
- (h) the behaviour of the prisoner during any previous release on parole; and*
- (i) the behaviour of the prisoner while subject to any order of a court; and*
- (j) any reports tendered to the Board on the social background of the prisoner, the medical, psychological or psychiatric condition of the prisoner or any other matter relating to the prisoner; and*
- (k) the probable circumstances of the prisoner after release from prison; and*
- (l) any other matters that the Board thinks are relevant.”*

The Board is particularly conscious of the fact that it has no role in the sentencing process, but as in the past the nature of the offence is a significant factor which regard must be had to, to determine the risk of re-offending. Indeed, Section 72 (4) (a), (d) and (f) expressly

require the Board to have regard to the nature and circumstances of the offence, but the Board does not re-sentence. It does not reduce or add to sentences.

2.9 Membership

The present Parole Board consists of:

Christopher Webster (Chairperson) – a legal practitioner;
Andrew McKee (Deputy Chairperson) – a legal practitioner;
Liz Hawkes – a legal practitioner;
Leon Kemp – a retired police officer;
Anne Faulds – a registered nurse;
Margaret Murray – a registered nurse.

2.10 Meetings

The Parole Board continues to meet at Her Majesty's Prison Risdon.

As in the past, the Board has, from time to time requested the attendance at its meetings of people who the Board regard as important to the successful outcome of the prisoner on parole. These have included spouses or partners, parents and parole officers.

3. RELEASE ON PAROLE

Any prisoner who is released on parole, is required by Section 72 (5) to be on such terms and conditions as the Board considers necessary and are specified in the order.

The conditions to which parole orders are subject in Tasmania, continue to be those that have proved successful in the past and have been outlined in previous reports of the Board.

Typically, those conditions are:-

"The Parolee shall:

REPORTING

1. Upon release immediately report in person to the Manager, Community Corrections at XXX.
2. Be subject to supervision on parole of a Parole Officer who shall be such person as is appointed for that purpose from time to time by the State Manager, Community Corrections.
3. Report to the Parole Officer, or other person nominated by the Parole Officer, in the manner and at the places and times directed by the Parole Officer and shall be available for interview at such times and places as the Parole Officer or nominee may from time to time direct.

EMPLOYMENT AND RESIDENCE

4. *Reside at any address arranged or approved by the Parole Officer.*
5. *Only engage in employment which is approved by the Parole Officer.*
6. *Not change address or employment without first obtaining the permission of the Parole Officer, or, if that is not practicable, then the parolee shall inform the Parole Officer of any change of address or employment within 48 hours after its change.*

DIRECTIONS

7. *Obey all reasonable directions of the Parole Officer including such directions as the Parole Officer may see fit to give as to counselling in relation to gambling, alcohol or drug use.*
8. *Obey the Parole Officer's direction in relation to associates.*
9. *Not frequent or visit any place or district specified in a direction by the Parole Officer.*
10. *Not leave the State of Tasmania without the prior written approval of the Manager Community Corrections.*
11. *Be of good behaviour and not violate any law and in particular not commit any offence involving:*
 - (a) *intoxication;*
 - (b) *dishonesty;*
 - (c) *sex;*
 - (d) *actual or threatened personal violence;*
 - (e) *the possession or use of firearms or weapons;*
 - (f) *possession or use of prohibited drugs; or*
 - (g) *traffic laws, incl. the Road Safety (Alcohol & Drug) Act.*

MEDICAL AND OTHER COUNSELLING

12. *Attend as directed by the Parole Officer any rehabilitation program nominated by the Parole Officer and not, without the permission of the Parole Officer, be discharged from or do anything to bring about a discharge from that program.*
13. *Do whatever is necessary to authorise all medical or other professional or technical advisers or consultants to make available to the Parole Officer relevant reports as to the parolee's medical or other conditions at all reasonable times.*

DRUGS

14. *Not, other than in strict accordance with the directions given by a legally qualified medical practitioner, use, possess or administer any narcotic or psychotropic drug or any drug or substance which cannot be legally obtained without prescription from a legally qualified medical practitioner unless the parolee has such a prescription.*

15. *Present for urine testing as and when required by the Parole Officer and is to do all things and sign all such documents as may be necessary to enable such an analysis.*

NON MOLESTATION

16. *Not follow XXX or loiter outside the place of residence of XXX or any other place frequented by XXX or keep XXX under surveillance or act in any other way that could be expected to arouse XXX's apprehension or fear.*
17. *Not remain in the presence of any person under the age of XXX unless the Parole Officer is present or a person nominated by the Parole Officer is present.*
18. *Not contact or attempt to contact or associate in any way with XXX without first obtaining the approval of the Parole Officer and an order enabling that contact or association from the Family Court of Australia.*
19. *Not loiter, without reasonable excuse, at or in the vicinity of a school, public toilet or other place at which children are regularly present while children are present at the school, toilet or place.*
20. *Not to enter into remunerative or voluntary work with children or at a place used for the education, care or recreation of children; or be involved in any social recreational or any other club or associations at which children attend.*
21. *Not provide or offer to provide accommodation to a child.*
22. *Not to leave the place of residence or employment between the hours of XXX*

ALCOHOL

23. *Refrain from the consumption of intoxicating liquor; or*
24. *Refrain from the excessive consumption of intoxicating liquor.*
25. *Not enter upon or remain upon any licensed premises."*
26. *Not enter upon or remain upon any licensed premises/during the parole period/during the first XXX months of the parole period unless specifically authorised in writing in advance by the Parole Officer.*

DIRECTIONS

27. *The Board directs that it be provided with a report by the Parole Officer as to the parolees progress on parole/after XXX months/every XXX months and when otherwise considered appropriate by the Parole Officer".*

Obviously not all the conditions will be imposed on every prisoner released on parole. For example, clauses 16 through 21 would be commonly imposed in cases of sex offenders, particularly child sex offenders.

4. RELEASES AND REFUSALS

TABLE 1
Applications - Fixed Sentence Prisoners

YEAR ENDING 30 JUNE	CONSIDERED	GRANTED	REVOKED	REFUSED
1990	44	35	6	3
1991	59	46	5	8
1992	55	37	2	16
1993	46	33	2	11
1994	79	49	4	26
1995	62	44	4	14
1996	76	61	6	9
1997	134	56	3	75
1998	105	60	4	41
1999	132	81	6	45
2000	140	84	3	53
2001	146	83	9	54
2002	150	76	14	60
2003	116	54	23	39
2004	115	65	21	29
2005	155	86	25	44
Total 1990 – 2005	1646	965	144	547

What will be seen from the table above is that there has been a substantial increase in the last decade in relation to the workload of the Board. The number of applicants for Parole has in fact actually trebled.

TABLE 2
Section 70 Applications (Exceptional Circumstances)

YEAR ENDING 30 JUNE	APPLICATIONS	GRANTED	REFUSED
1990	8	1	7
1991	18	0	18
1992	16	2	14
1993	6	0	6
1994	5	1	4
1995	11	2	9
1996	10	1	9
1997	13	0	13
1998	7	0	7
1999	6	1	5
2000	20	1	19
2001	9	1	8
2002	2	0	2
2003	0	0	0
2004	1	1	1
2005	4	0	4
Total 1990 – 2004	136	11	126

TABLE 3
Parole Performance - Fixed Term Prisoners

Year ended 30 June	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Released on parole	33	49	44	61	56	60	81	84	83	72	54	65	86
Revoked by Board	8	7	11	12	12	10	17	21	23	39	20	20	25
Revoked by conviction	0	0	0	3	2	3	0	2	4	2	3	1	2
Parole completed	21	26	50	54	38	29	59	53	52	67	38	74	38
On parole as at 30 June	28	57	40	39	67	79	89	111	119	180	267	193	68

5) REVOCATION OF PAROLE

5.1 Supervision of Offenders Released on Parole

In Tasmania, supervision of parolees continues to be undertaken by Parole Officers of the Community Corrections Division of the Department of Justice & Industrial Relations.

As will have been seen from earlier in this report, upon release on parole the prisoner is required to report forthwith to Community Corrections office nearest to that person's place of residence during parole.

The Board often seeks progress reports from Parole officers. Parole officers report any concerns about the behaviour of parolees to the Board. This is

particularly so in any case where it is suggested that one of the terms and conditions of the parole order has been breached, or *may be* breached. In the event of an allegation of misbehaviour or breach of the terms and conditions which the parole order is made the Board will, depending on the circumstances:

- (a) issue a warning to the parolee;
- (b) issue a notice to the parolee requiring him to attend a Board meeting to discuss the situation; or
- (c) issue a warrant requiring the parolee's return to prison.

5.2 Breach of Parole

A breach of parole is constituted by a failure to comply with any of the terms and conditions imposed on the parole order. Section 79 of the Act provides:-

- (1) Subject to subsection (2), the Board may, at any time, of its own motion or on receiving a report from a probation officer or any other person -*
- (a) revoke a parole order; or*
 - (b) vary, amend or confirm a parole order; or*
 - (c) suspend a parole order on such terms as it thinks fit; or*
 - (d) exercise in relation to a parole order more than one of its powers under paragraph (b).*
- (2) Unless the Board considers it impracticable to do so, the Board is not to revoke or suspend a parole order granting parole to a prisoner unless it has first called on the prisoner to show cause why any of those powers should not be exercised.*
- (3) If a person is sentenced to imprisonment for an offence committed during the period of his or her release on parole, the parole order is revoked whether or not, at the time of his or her conviction for that offence, the period of that release had expired.*
- (3) Subsection (3) does not apply where the execution of the whole of a sentence referred to in that subsection is suspended under the Sentencing Act 1997.*
- (5) If a prisoner's release on parole is revoked -*
- (a) in the case of a prisoner who is not a life prisoner, the prisoner is liable to serve the remainder of his or her sentence and the period of that release is not to be taken into account in determining how much of the term of his or her sentence remains to be served unless the Board otherwise directs; and*

(b) *in the case of a life prisoner, the prisoner is liable to be imprisoned for the remainder of his or her natural life.*

(6) *Where the Board revokes a parole order applying to a prisoner after his or her release from prison, the Board may, by warrant signed by the chairperson of the Board or the secretary of the Board at the chairperson's direction, authorise a police officer to apprehend the prisoner and return the prisoner to prison."*

If it is deemed necessary to issue a warrant for the arrest of the parolee, Section 80 (4) provides that *"on the issue of the warrant under this section for the apprehension of a prisoner on parole, the prisoner's parole is extended equal to a period commencing on the day on which the warrant is issued and ending on the day on which it is executed"*.

Section 80 (5) provides:

"If a prisoner is returned to prison after the execution of a warrant against the prisoner under subsection (1), the following provisions apply:

- (a) *the Board, within 14 days after the prisoner is so returned to prison, is to give the prisoner an opportunity to be heard;*
- (b) *the Board may, after complying with paragraph (a), exercise in relation to the prisoner the powers conferred on it by subsection (1) of section 79 as if he or she were a prisoner to whom that subsection applies;*
- (c) *if the Board revokes the prisoner's release on parole pursuant to section 79(1), the provisions of section 79(5) apply to the prisoner accordingly."*

Of significance is the requirement to give the parolee the right to be heard, however, it will be noted that there is no requirement on the part of the Board to be satisfied beyond a reasonable doubt, nor indeed that any offence has been committed, or that if an offence has been committed, it is a serious one.

It should be noted that parole orders are also cancelled automatically if the parolee is sentenced to a term of imprisonment during the currency of the parole order. During the 2004 –2005 year two parolees had their parole revoked as a result of conviction.

6) SEX OFFENDERS

The sex offender treatment program was introduced into the Prison last financial year.

Prisoners convicted of sexual offences are now invited to have their eligibility determined to undergo treatment within this program and willing eligible prisoners receive treatment.

This has resulted in a significant number of prisoners who would otherwise be eligible for parole withdrawing their parole applications so as to undergo treatment within the program.

Other prisoners have refused to have their eligibility for the program assessed or have refused to take part in the program.

Whilst every case is considered on its merits by the Parole Board, the Board has generally taken a negative view of prisoners refusing to have their eligibility for the scheme assessed or refusing to take part in the scheme. This has been reflected in the Board's decision regarding Parole and this attitude by the Board has in turn encouraged eligible prisoners to participate in the program.

The Parole Board notes that there is not a similar scheme outside the prison and encourages the establishment of such a scheme to which paroled prisoners could continue to receive treatment; monitoring; and counselling.

The Board has not yet had to consider applications for parole for prisoners who have successfully completed the Sexual Offenders Treatment Program but the Board will shortly have to face this challenge.

7) REHABILITATION IN THE PRISON SYSTEM

Education and Drug and Alcohol Treatment Programs are to be encouraged for any prisoner within the prison system as a means to assist in the rehabilitation of the prisoner back into the community and ensuring the safety of the public.

Suitable prisoners attend educational and vocational courses outside the Prison however not all prisoners are suitable to be released for studies outside the prison. Suitable education should be available for all prisoners within the prison.

Prisoners with alcohol and drug problems are presently not receiving sufficient assistance with these problems within the prison system. This is a major concern to the Parole Board as the Board believes that unless such problems are overcome prisoners with drug and alcohol problems will continue to re-offend.

8) ACKNOWLEDGMENTS

Mr David Bliss was Secretary to the Board throughout 2004 and Mr Jae McCarthy, Administrative Assistant. The Board thanks both for their assistance.

The Board acknowledges the continued assistance and co-operation of the Office of the Director of Public Prosecutions and Tasmania Police.

The Board expresses its appreciation to all the Parole Officers throughout the State for their professionalism and assistance to the Board.

A handwritten signature in black ink, appearing to read 'Chris Webster', written in a cursive style.

Chris Webster
CHAIRPERSON

xDated: 31 August, 2005