

Parole and the State Parole Authority

Parole

Prisoners are eligible to be released on parole if their sentence includes a non-parole period. The procedure differs depending on whether the total sentence is more or less than three years. If the sentence does not have a non-parole period, the prisoner is not eligible for parole and must serve the whole of the term in prison.

Sentence of three years or less

A court that imposes a prison sentence of three years or less with a non-parole period must make an order directing release on parole at the end of the non-parole period (*Crimes (Sentencing Procedure) Act s.50*). Subject to some limited exceptions, the prisoner will automatically be released when the non-parole period expires.

Sentence more than three years

Prisoners sentenced to more than three years with a non-parole period can only be released when the State Parole Authority makes a parole order (*Crimes (Administration of Sentences) Act s.134*).

What the Parole Authority must take into account

Initially, the Authority considers parole in a private meeting and decides either to grant or refuse parole. The Authority must do this at least 60 days before the prisoner becomes eligible (s.137).

The Authority must consider a number of factors in making a parole order (s.135). The Authority can only grant parole if it decides that release of the prisoner is appropriate in the public interest. The Authority must believe that the prisoner will be able to adapt to ordinary lawful community life; and, it must consider, comments made by the sentencing court, prison and criminal records and the likely effect on victims of the crime.

If parole is granted

If the Authority decides to grant parole, it makes an order directing release on parole, and specifying the conditions.

If parole is not granted

If the Authority decides not to make a parole order, it will usually fix a hearing at which the prisoner can attend and be legally represented. Please note, the Authority has power to refuse to give a hearing if it is of the opinion that a hearing is not warranted (s.139).

Parole hearing

Prisoners appear by video link and may be legally represented. Usually evidence is given by the prisoner and Probation and Parole.

At the end of the hearing, the Authority must decide if parole is refused or granted.

If parole is refused, there is no right of appeal (see below).

If parole is refused, the prisoner is not eligible for parole again until they have served another 12 months from the expiry date of the non-parole period.

Parole in exceptional circumstances

The Authority may release a prisoner on parole who is not otherwise eligible if the prisoner is dying, or the authority is satisfied that there are exceptional extenuating circumstances (s.160).

Revocation of orders by the Parole Authority

The Parole Authority has jurisdiction to revoke parole orders and also sentences of home detention, periodic detention and intensive correction orders.

Issue of a warrant for arrest

When the Authority revokes an order for parole, home detention, periodic detention or an intensive correction order, it does so on the basis of a breach report and, without notice to the offender. The Authority will issue a warrant authorising police to arrest the offender and take them to prison (s.181).

When the revocation becomes effective

The Authority backdates the revocation to the day the breach occurred. This means that the period in the community up to the date of the breach counts towards the completion of the person's sentence, but any period in the community after the breach does not.

Hearing to reconsider the revocation

After the warrant is executed and the offender is in jail, the Authority must hold a hearing to reconsider the revocation of parole, home detention, periodic detention or intensive correction order (s.173). The prisoner may appear by video link and be legally represented. There is a waiting period of four to six weeks between the date the person is apprehended on the warrant and the date of the hearing.

At the end of the hearing, the Authority must decide whether or not it will rescind (that is, cancel) the revocation (s.175). There is no right of appeal (see below).

If the revocation is rescinded, the order for parole, home detention, periodic detention or intensive correction order is revived.

If the revocation is not rescinded, the revocation is confirmed. In relation to a revocation of parole this means that the offender cannot apply for parole again until they have served 12 months. In relation to revocation of the other orders, the offender can seek reinstatement of home detention and periodic detention after served three months; and, seek reinstatement of an intensive correction order after served one month. In relation to revocations of periodic detention and intensive correction orders, instead of reinstatement, the offender can also seek to have the balance converted into home detention.

Procedure in relation to hearings at the Parole Authority

Hearings takes place at Parramatta and prisoners appear by video link and may be legally represented. Usually evidence is given by the prisoner and Probation and Parole. At the end of the hearing, the Authority 'retires' to consider the case and returns a short time later with the decision.

Notifying the prisoner of the hearing

The Authority notifies the prisoner in writing of the hearing date approximately a month before and supplies a copy of reports and other relevant documents. This will include a notice which the prisoner must return to the Authority advising whether they would like to appear at the hearing and be legally represented.

Legal Aid at the hearing

The Legal Aid Commission's Prisoners Legal Service (PLS) provides solicitors (free of charge) to appear at hearings before the Parole Authority. When the notice of hearing is returned by the prisoner to the Parole Authority, prisoners can insert 'Legal Aid' or 'PLS' as the name of their legal representative and a copy of the papers will be sent to PLS who will arrange a conference with the prisoner during the week before the hearing.

Appeal

There is no right of appeal. A prisoner who alleges that the Authority's decision was based on false, misleading or irrelevant information may apply to the Supreme Court asking for a direction to be given to the Authority (s155 for parole/s176 for revocations). This is not very effective. It is difficult to prove, and if proved, all the court can do is direct the Authority to rehear the case.