**The Mystery of Parole in the Northern Territory**

 **CLANT Conference Sanur, Bali 27 June 2024**

**Introduction**

Why *the mystery*? Your presenters came to the Board only comparatively recently and knew little of its work, despite having - between them – 50years experience of the criminal law in the NT. They have quickly realised they were not alone in having very little knowledge of its structure and operations. Nor did they fully realise the importance of the Parole Board in the criminal justice system. It is no surprise to them, then, that most criminal law practitioners in the Territory are similarly unfamiliar with it. Its work is done quietly without fanfare, by dedicated Members and an excellent small staff with first-class support by the permanent public servants in the Corrections Service.

This short presentation will hopefully give a helpful introduction to the parole system.

The Parole Board and its Chair, on a daily basis, are exposed to the notorious over-representation of indigenous people in NT prisons. The reasons are manifold and obvious. They have been the subject of learned and lay papers and discussion over many years. The responses to the plain issues revealed have been inadequate, unhelpful and ineffective. The occasional pouring of huge pots of Commonwealth money into Canberra-identified sinkholes, without consultation with Territory governments **and the community** is not a solution. It is not **pre**vention. It is an **inter**vention. There is no quick fix but a starting-point is surely to consult with the people most affected.

This paper will explore some of the issues and provide thoughts on how the specific problem relating to prison numbers might be better managed.

Consultation is the key, with the people of the NT providing their advice and voice to find the solutions. It is not just about money, but using the existing resources more appropriately. For example, the Elders visiting programme in prisons is very effective. It could be extended to provide further advice on parole and encouragement to apply. The terms and conditions of parole are sometimes a mystery to prisoners and parolees, and should (and, hopefully, will) be simplified. Prisoners on remand make up a disproportionate percentage of the gaol population and means must be found to reduce this.

This can all be achieved, with goodwill from - and consultation with - all stakeholders.

**The Role of Sentencing**

But first, some discussion about the process before prisoners are convicted and sentenced might be useful. This will not impinge on a separate argument about the significance of the conflict between bail and remand pending the final hearing. Rather it will be on the dilemma that faces the defence advocate in the preparation for the court. It took one of the presenters many years of criminal practice before realising that more of their efforts needed to be devoted to what might occur at the end of the hearing. That is, in a contested hearing, what needs to be done to ensure that everything possible emerges from the hearing before the Judge (who might have to consider a sentence at some point) in favour of the client. If the Advocate’s role, and it should be, is to achieve the best possible result for their client, then from the first day of instructions their thoughts should be directed not just to the possible acquittal but also to what will follow a finding of guilt. Obviously, considerations of plea negotiation and/or outright and early pleas of guilt need to be considered. Nowadays, most counsel are aware of the need to advise clients about the benefits of early pleas and, in any event, contested cases are not undertaken lightly and without some real defence strategy.

Let it be assumed, then, that counsel has done their best for their client; and that best results in a finding of guilt and a sentence with a non-parole period. Counsel shakes hands in the dock (worst case), says goodbye at the Court cells or (best scenario) visits the client at Holtze, Don Dale or in the new Women’s Prison (?) Do they then tell the client about the intricacies of the ***Parole Act*** and what the client needs to do to get the best possible chance of achieving parole at the first opportunity? Is counsel sufficiently aware of what is likely to happen in the prison system to give proper advice?

The suggestion in this presentation is that counsel needs to be able to give that advice to the client and they should inform themselves accordingly. An email sent (at the time of sentence) to Parole.Board@nt.gov.au with the advice of continuing representation, will ensure that counsel are provided with updates about relevant future parole matters, including listing dates for applications or revocations.

The document below is compiled from the most recently published annual report of the Office of the Director of Public Prosecutions. It is provided to support the premise above.

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| --- | --- | --- | --- | --- |
|  | **2021-22** | **2020-21** | **2019-20** | **2018-19** |
| **Supreme Court pleas** | 417 | 325 | 356 | 389 |
| **Supreme Court trials** | 65 | 72 | 50 | 55 |
| **Local Court hearings & pleas** | 5469 | 6386 | 6498 | 7037 |
| **Findings of guilt (including pleas)** |  |
| * **Supreme Court**
 | 95% | 95% | 97% | 98% |
| * **Local Court**
 | 98% | 99% | 98% | 97% |
| **Convictions after trial or hearing** | 89% | 91% | 91% | 92% |

The purpose of including these figures, over the four-year period ending in 2022, is to confirm the view that a very high proportion of cases result in convictions. This includes an average of 90% of defended cases, and much higher overall. Defence counsel need be prepared to advise accordingly.

**Parole in the NT**

Alleged offenders, upon being found guilty, may be subject to a variety of different sentences. Not all of these involve terms of imprisonment. We are talking today of those that do involve jail terms. It is generally automatic to include a non-parole period [NPP] in the sentence itself. But there will be cases in which the sentencing judge or justice determines that the offender should serve the whole of the term. If the sentence is less than 12 months, a NPP cannot be fixed. If the offence is one of murder, there will be a minimum of 20 years. In certain sexual offences, the NPP must be at least 70% of the head sentence. In other cases, where the sentence is in excess of 5 years, the NPP must be at least 50% of the head sentence.

How are prisoners considered for Parole? It is not automatic. The reason for having such a period at all is so that prisoners have something to work and strive for, to encourage good behaviour in prison, hopefully to assist in their rehabilitation and to reduce the likelihood of re-offending following the completion of their sentences.

The Parole Board [PB] is the body that considers all applications for parole. Until 2021, the Chair of the PB was the Chief Justice or one of the Justices appointed by him. For most of the last 10 years, Justice Southwood was the nominated Justice. He was very well regarded in that role. The NT was the last jurisdiction to have a sitting Justice fulfilling that role. There are good reasons for the Chair being a person independent of the Courts and, of course, of government. The ***Parole* *Act*** was amended in 2021 to provide for the appointment of a qualified legal practitioner as the Chairperson. Rex Wild was appointed as the Acting Chair in October 2021. In October 2022, he was appointed Chair for a term of 5 years.

The Board has 18 members, although these do not sit at the same time. The Act provides for the following categories:-

* The Chairperson
* The Commissioner of Corrections (or proxy)
* Two nominations of the Commissioner of Police
* Two medical practitioners or psychologists
* Two Victim’s representatives
* Ten representatives of the general community (to include Indigenous representatives)

There are presently two members of the Board with Indigenous heritage. There is a brief presently before the Government to increase the general community representatives of the Board to twelve. This is specifically aimed at adding further indigenous representatives without losing any of the existing excellent Members.

The Board members are appointed by the Administrator, on the advice of the Minister, for a period of three years. Expressions of interest are called for from time to time, although the *tap on the shoulder* method is also used occasionally. The membership of the Board is relatively stable at the moment.

Under the Act, the Board requires at least the Chair and three members as a quorum for parole applications, but with a larger group for Lifers.

The Board meets each month and generally holds three meetings in the last week of the month. Each Board is of different representation. Every three months, a special Board meeting will deal with Lifers’ matters.

Each month, prior to the meeting, a brief is provided to each of the Members dealing with the applications of prisoners to be dealt with. The applications are almost always dealt with *on the papers*. The Board receives a written report from the Parole Officers assigned to the case. This provides a full report of the offender’s history before and after the offence, but including details of their progress in prison along the path to rehabilitation. The effect on the victim of release to a period of parole is important, along with other factors. The protection of the community is crucial.

If it is decided to release the prisoner, stringent conditions will be imposed. These may include attendance at residential rehabilitation, electronic monitoring, curfews, exclusion zones, non-drinking and drug-taking, non-contact with victims [similar to DVO’s] and, obviously, no further breaches of the law.

Section 5A of the Act provides for conditions to be included in the parole order:-

*(1) It is a condition of a parole order that the person to whom the order relates, during the parole period:*

*(a) is subject to supervision by a probation and parole officer; and*

*(b) must comply with all reasonable directions of the probation and parole officer.*

*(2) A parole order is also subject to any other conditions specified in the order.*

*(3) Without limiting subsection (2), conditions specified in a parole order may include any of the following:*

*(a) that the person to whom the order relates must reside at a specified place;*

*(b) that the person is subject to monitoring (but not if the person is a youth, unless the person was found guilty of the relevant offence by the Supreme Court);*

*(c) that the sanctions regime applies in relation to instances of non-compliance with the conditions of the order.*

Sub-section (4) defines monitoring and its devices, colloquially known as *ankle bracelets*.

If the parolee breaches their conditions, then they may face revocation. This will depend on the seriousness of the breach, etc.

The Board generally looks to grant parole – even for a short period - so that the offender can have some time reintegrating and being supervised in the community, before reaching the full-time date.

**Natural Justice**

The Parole Board operates under the guidance of a ***Policy and Procedures Manual*** [PPM] developed for its members over a number of years and amended from time to time. It deals with the topic of *natural justice* in the following terms:-

*Section 3HA was inserted in the* ***Parole Act*** *following the decision of the Court of Appeal of the Northern Territory in* ***R v Chairman of the Parole Board; Ex parte Patterson*** *(1986) 43 NTR 13. The case involved judicial review of a decision of the Chairman of the Parole Board revoking the parole of a parolee. The purpose of section 3HA is to enable the Parole Board to operate without being bound by the rules of natural justice. It is a facultative provision, which recognises the exigencies under which the Parole Board is required to operate from time to time. The fact that the Parole Board is not bound by the rules of natural justice does not mean that the Parole Board cannot or should not accord prisoners and parolees natural justice when it is able to do so.*

*It is well recognised that decision makers will make better and more informed decisions if the party or parties affected by the relevant decision are accorded natural justice or procedural fairness.*

*The fundamental principles of natural justice are:*

*• The members of the Parole Board dealing with a parole matter are impartial and unbiased;*

*• An entitlement to a fair hearing. This means that (1) the prisoner should be informed about all of the material that is before the Parole Board when the prisoner’s matter is being considered; (2) the prisoner should be given an opportunity to be heard and to place information either orally or in writing before the Parole Board; (3) the prisoner should be given an opportunity to respond to any material or submissions that are adverse to the prisoner’s case; (4) any decision of the Parole Board must be based on the evidence or information before the Parole Board; (5) the Parole Board must act reasonably when making its decisions.*

*• The Parole Board must provide reasons for its decision and prisoners must be informed of the decision of the Parole Board.*

*Given the number and range of decisions that the Chairperson and the Parole Board are required to make, the variety of circumstances in which decisions are required to be made and time constraints, it is not always possible for a prisoner or parolee to be accorded natural justice to the extent identified above. However, over the past few years the Parole Board has made a number of changes to its practices and procedures in an endeavour to increase the extent to which natural justice and procedural fairness is accorded to prisoners and parolees, and improve prisoners’ understanding of the parole process.*

*The practice of the Parole Board is to accord natural justice in the following ways:*

*• The parole process is explained to prisoners by their probation and parole officer or by their legal representatives. Aboriginal prisoners are able to obtain assistance from lawyers and through care workers who are employed by NAAJA.*

*• Prisoners are read parole reports by the probation and parole officers before they are submitted to the Parole Board and their comments on the recommendations are recorded.*

*• A Memorandum of Understanding has been developed with NAAJA for a Prisoner Support Program. This allows Aboriginal prisoners to be legally represented and their legal representatives take instructions from prisoners and make written submissions to the Parole Board.*

*• Outcomes of Parole Board decisions are recorded and provided to both the prisoner and their legal representative.*

*• Community Corrections endeavours to provide the parolee with an opportunity to comment if a revocation is being considered and there is no imminent perceived risk to community safety.*

*• When a parolee’s parole is revoked the parolee is informed that they may re-apply for parole and that they may make submissions about the circumstances in which they came to breach their conditions of parole and any other matter they wish to address.*

*• The Parole Board has conducted a number of oral hearings at which the prisoner has been permitted to appear either in person or by way of video conferencing when the Parole Board is considering applications for parole by prisoners who are serving a sentence of imprisonment for life for the crime of murder or are considered to be at high risk of violent re-offending.*

**Preparing Prisoners for Parole**

In one sense, prisoners should be preparing themselves for parole from the time of their arrest. This is the area in which the practitioners’ advice to their client might be quite valuable. That is, if the client has a drinking or drug problem [or gambling, or whatever] their cause will prosper come sentencing day, if they are able to claim a voluntary self-referral to an appropriate treatment facility. Similarly, in assessing the chances of rehabilitation, both at sentencing and at the time of the parole application, the undertaking of treatment will put them in good stead.

A major problem in the remand situation, as opposed to bail, is the non-availability of treatment programs until sentencing. There is commitment by Corrections to improving this, and work is underway to increase access to them. Overall, however, programs are inadequate to cater for all who need them, and a triage system is in place. Un-sentenced prisoners go to the bottom of the list. This is another reason to expedite pleas where possible, acknowledging that this can often require strong negotiation between prosecution and defence. Remand prisoners in recent times have soared as a percentage [over 40% of prisoners are on remand. This is a consequence of tougher bail arrangements – unlikely in days of law and order to change anytime soon] It is understood that prosecution and defence are seeking ways to rationalise these problems.

Prisoners are encouraged to undertake programs, and every effort is made to facilitate their requests. Once again, practitioners should encourage clients who wish to obtain liberty as soon as possible, accordingly.

It is the case that a percentage [too high] of prisoners will decline the opportunity for parole. Sometimes this is because of a concern that conditions on parole are too tough and they are set up to fail. Certainly, that is not the intention but it’s true that parolees may have difficulty in complying with – for example – non-drinking conditions. They prefer not to have the restriction[s].

The Parole Board website [https://paroleboard.nt.gov.au] provides much information about the Board and the operation of parole. Practitioners should be familiar with it. There is an excellent short video on obtaining parole, ***Parole Stories***, recommended particularly for indigenous clients.

Other information can be found in the Board’s Annual Reports, which is also on the website.

**Victims**

Something needs to be said about the important place that victim’s interests, expectations and protection plays in the Parole space. Two things stand out. Firstly, very few victims regard sentence packages as adequate and, in particular, regard the giving of any non-parole periods as an insult. Almost without exception, they believe offenders should serve the whole sentence. But, secondly, in fixing those NPP’s, the sentencing court has already considered the victim’s point of view, responding to the *Victim Impact Statement* (and other material before the Court) in what it regards as an appropriate manner. It is not for the Parole Board to go behind that exercise of discretion, except to give effect to its own brief. In that connection, the Board will always have regard to the Court’s reasons for sentence, which often include suggestions as to how the offender should commence their rehabilitation in prison and thereafter in the community.

The ***Parole Act*** has special provisions relating to victim’s family members in cases of murder (s.4B) The Board must consider *the likely effect of the prisoner’s release on the victim’s family*. The *protection of the community*, in such cases, is said to be *the paramount consideration*.

In practice, the Board applies the same considerations to every case before it. With this in mind, it seeks information from the victim and their view about the early release of prisoners. Although not determinate, the submissions are considered and taken into account. It’s very helpful, of course, if the victims can be located at the time parole is being considered. There is a Victims’ Register to which recourse is had. But not every victim bothers to register.

The Register is established by the ***Victims of Crime Services Act*** 2006. This provides that the Parole Board must give notice of anticipated parole applications by prisoners, *where they are* *registered*, and other details as specified. Registration is therefore an important feature of the legislation and practitioners should advise clients of its existence. Contact can be made with the Crime Victims Services Unit [*CVSU*], also established by the Act to oversee the Register.

In this connection, a *Victim Survivor Form* has recently been introduced and should be provided to victims during the course of criminal proceedings. It includes a request to be included on the Register. The Witness Assistance Service [*WAS*] of the Office of the Director of Public Prosecutions can provide this document. The simple form has been developed by WAS, in conjunction with Community Corrections, CVSU and Police. It is designed to capture victim-survivor information at the sentencing stage of the justice process. It will facilitate the transfer of information from prosecution services to Community Corrections and the NT Victims Register. The focus of the form is to directly enhance victims-survivor safety while offenders are subject to community-based orders.

Just as the legal practitioner’s brief and commitment to the offender seems to expire shortly after the imposition of sentence, experience shows that victims’ interests also seem to have been neglected. Some improvement in this area should flow from the increased cooperation between those bodies representing victims. Nevertheless, it remains very difficult in many cases for the Parole Board to establish contact with victims and ascertain their views in respect of the prisoner and their possible release.

**COMMIT Parole**

**[Compliance Management or Incarceration in the Territory]**

**Background**

The NT COMMIT program was a response to the so-called HOPE strategy trialled in Hawaii from 2004. The strategy involved clear predetermined sanctions for non-compliance with parole conditions, with the nature of such sanctions being known to parolees beforehand, and which were to be applied swiftly. It relied on random drug testing (for those with drug conditions).

A Steering Committee was established in the NT in 2016 and a 12months Darwin-based trial commenced in June 2016. It was to apply initially to offenders subject to suspended sentences.

The HOPE [and COMMIT] strategy aimed to -

* Help community-based offenders get through their sentence without restoration
* Improve offender compliance
* Reduce drug and alcohol abuse
* Reduce rate of re-offending
* Reduce time spent in custody

The Assessment Criteria included the following –

* Risk level seen as medium to high
* Misuse of drugs and/or alcohol present
* Previous non-compliance
* Previous imprisonment
* Responsivity Limitations

 It was expected that a Warning Hearing would take place before a judge on the first day of COMMIT.

Initially, only Suspended sentence prisoners were subject to COMMIT. Warning Hearings only applied to such offenders.

The COMMIT program was extended to parolees in September 2017. A Sanctions Matrix\* was developed for parolees. This was determined by the Chairperson on behalf of the Board (section 4C of the ***Parole Act***). This was described by the Attorney-General, at the time, as a *tough new Parole Sanctions Matrix.*

Any breach of conditions, it was said, would lead to -

* Swift action with an appearance in court
* Certain punishments as in the Matrix
* Fair, predictable and immediate sanction

The Matrix was determined on 21 September 2017. It was the subject of formal gazettal on 27 September 2017. It has remained unchanged since that time. No corresponding section appears in the ***Sentencing Act*** in respect of sanctions applied by the Court for breaches of suspended sentences.

When announcing the extension of the scheme to parolees, in the media release of 28 September 2017, the Attorney said –

 *The program will be monitored closely and evaluated over the coming years.*

The COMMIT program was introduced in 2017 partly to minimise the unfair results for parolees who had minor breaches of parole conditions but there was no alternative but to revoke their parole. That is, they received no benefit from the time spent successfully rehabilitating in the community, and remained under sentence for the longer period.

There is a continuing proposal (or, suggestion, at least) to allow street time to count for all parolees (subject, perhaps, to a discretionary power with the Parole Board or its Chair). If that was successfully legislated for, it is possible the need for the more expensive COMMIT model of parole would be reduced (?). This will be discussed below.

**The Matrix**

It is clear to all those who are involved, on a day-to-day basis, with the application of the Matrix, that it is complicated and difficult to interpret. This is not meant as a criticism of the original draughtsman. It is only when it needs to be applied to unusual or complicated factual situations, that its deficiencies are exposed. The Board Secretariat regularly receives requests from PPO’s for assistance in interpreting the Matrix and applying its terms to the particular facts. There are some breaches which are not covered; for example, parolees are required to undertake testing for drug taking, but there is no sanction for failure to take a presumptive test. The emphasis is on urinalysis. The common parole condition reads –

*The parolee shall submit to random testing for the purpose of detecting the presence of dangerous drugs, providing samples as directed.*

There are no Sanctions dealing with a breach of that condition, other than those relating to urinalysis (This example is probably of doubtful utility as the condition is being removed).

As already noted, the Matrix in respect of Suspended Sentences is much simpler. It doesn’t require legislative imprimatur and originated, presumably, from the Steering Committee in 2016. It is a two page document, compared to the ten pages of the COMMIT Matrix. How can the two documents be reconciled without doing violence to the intention of the scheme? That is, to ensure knowledge by the parolees of the sanctions apropos the parole conditions, so they can more easily understand and comply with them.

**Parole Conditions**

The Board support and promote the simplification of the wording of parole orders and lessening of the volume of conditions. A project has been under way for some time with these objects. It now will complement the introduction of the new simpler conditions in the ***Sentencing Act*** amendments, of which Community Corrections have carriage.

In this connection, practitioners should be aware that Aboriginal Language Resources are available to assist with explanation to parolees of conditions, and other explanatory aides are provided. These include simple *passports* and stickers with appropriate graphics.

It should not be thought that the PPOs recommend, and the Board accepts, a plethora of conditions without consideration of what is appropriate in the circumstances. All the matters relevant to the circumstances are closely scrutinised in the individual cases to see what conditions best fit. The interests of the community, victim and offender are all considered. The conditions are explained to the parolees, and they are provided with a copy of those. Cards and other explanatory guides are also provided at the time of signing the parole order. These conditions have already been explained to the parolee at the time of the final interview before release, when they sign their order.

It is at the heart of the matter, then, to ensure the parolee understands those conditions and their responsibilities thereunder. A parolee’s explanation for a breach will be considered before any revocation or sanction is recommended to, or acted upon by, the Board. As part of this enquiry, an explanation of misunderstanding the effect of a condition will be considered. It is important that conditions be framed in plain English, and where possible plain Aboriginal.

The PPO, and Team Leader, responsible for the parolee’s rehabilitation – along with the Board - are most anxious that the parolee successfully completes parole. It is disappointing to all concerned when they fail.

**Revocations and Sanctions**

Revocations of parole and sanctions (and revocations) under the COMMIT program are dealt with by instruments signed by the Chairperson of the Parole Board. Sometimes these are approved by the Board itself but more commonly arise from a decision by the Chair acting alone, following recommendations by PPO’s and Team Leaders.

Section 5F (8) of the ***Parole Act*** - in respect of sanctions – and section 7 – in respect of revocations – provide that the Local Court **must** issue a Warrant of Commitment in respect of a parolee’s sanction or revocation if satisfied, inter alia, that the relevant instrument has been executed by the Chair.

This has led to difficulties from to time where Local Court Judges have not given effect to the relevant sanction but, in one instance, reduced it. In other cases, a Judge has adjourned the matter – rather than issuing the appropriate Warrant – in circumstances where the parolee’s legal representative has made application for such an adjournment, but where the Prosecution or Corrections Officer has not been represented. It would be improper, of course, for counsel to argue for a proposition which they knew to be incorrect at law, leading the court into error.

Sometime matters come before the Board or Chair, where although the behaviour of a parolee requires prima facie a sanction/revocation, it seems that they might have an argument to put for a more lenient disposition. In such a case, the Chair may recommend to the legal practitioner – where known - that by putting submissions to the Board, a better result may be achieved. In fact, in one case where there was no practitioner listed on the court file - there would not usually be in a revocation matter – the Board contacted NAAJA and suggested someone speak to the parolee, get instructions and then make the submissions; akin to an *amicus curiae* situation. The subsequent submissions, not surprisingly, were successful!

The preferable method applied is to encourage the practitioner to make submissions ***before*** the decision by the Chair is finalised.

Having said that, there is some difficulty reconciling the differences in the legislation dealing with the Chair’s revocations and sanctions. Although in both cases, the Local Court **must** act on the relevant instruments, and issue a warrant of commitment, there is the possibility of adjourning *revocations, either on remand or on bail* [see s 8]. However, there is a very limited purpose in such an adjournment, because the Court must still issue the warrant. It is merely delaying the inevitable, except in the most exceptional circumstances.

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**Street Time**

*Street time*, referred to above, is the term given to the period spent by a parolee on parole in the community [although the name varies in different jurisdictions]. It is a significant issue and justifies separate and close analysis.

It was discussed in the Report of the Australian Law Reform Commission delivered in December 2017, ***Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples.***

In submissions to the Inquiry, reference was made to the operation of some parole revocation schemes in Australian jurisdictions that required time served on parole to be served again in prison if parole is revoked. At that time, the Northern Territory was said to be one of these, along with the ACT, Tasmania and Victoria.

The ALRC concluded:-

*Statutory provisions that stipulate that time spent on parole does not count as time served if the parolee returns to prison due to a breach can greatly increase a person’s time under sentence. Accordingly, it can act as a disincentive for (ATSI) people – who can find compliance with standard conditions difficult – to apply for parole. The ALRC recommends the* *immediate abolition of the relevant provisions, and the adoption of regimes that count time on parole as time served if parole is revoked.* [Para 123]

The Northern Territory ***Parole Act*** provides, vide SS 13B and 14, that time spent in the community on parole is not counted as part of the served sentence if the parole is subsequently revoked. The prisoner returns to prison and must serve the whole of the original term of imprisonment. The effect is that the prisoner may remain under sentence for many months, even a year or more, beyond the original full time date of the sentence. This result is one of the reasons given for prisoners not applying for and taking parole if and when it is otherwise available. The NT had introduced the COMMIT protocol during the course of the ALRC Inquiry, by amendments to the Parole Act passed in August 2017. Although the COMMIT scheme, with its use of Sanctions rather than outright revocation, sought to decrease the severity of the existing scheme, it did not credit street time as against the total sentence to be served.

Every Australian jurisdiction, with the exception of the NT, now has some form of credit for street time (by whatever name it is described).

The Victorian legislation has an inbuilt flexibility. The ***Corrections Act*** 1986 (Vic) s 77 B (2) (b) provides:-

Any period during which the parole order was in force is not to be regarded as time served in respect of the prison sentence unless a direction under section 77C applies.

Section 77C provides:-

The Board may direct that some or all of the period during which a parole order that is cancelled or taken to be cancelled was in force is to be regarded as time served in respect of the prison sentence.

The **Annual Report** of the Victorian Adult Parole Board (2021-22) describes the manner in which this direction is determined.

*Time to Count*

*The Board may direct that some or all of the period during which a parole order that is cancelled or taken to be cancelled was in force is to be regarded as time served in respect of the prison sentence.*

*When a prisoner’s parole is cancelled, none of the time that the prisoner spent in the community on parole is counted towards their sentence unless the Board directs that some or all of it should be counted.*

*For every parole cancellation, the Board will consider whether to direct any time to count after the prisoner has returned to custody.*

 *In making this decision, the Board will consider the prisoner’s performance over the whole time they were on parole. For example, a prisoner may have made progress while on parole, but relapsed into drug use, resulting in cancellation.*

*If a prisoner becomes concerned that their parole may be cancelled, the prospect of time to count can motivate the prisoner to comply with parole conditions, knowing that the effort they have put in* *and the progress that they have made over an extended period will be recognised and will not be lost even if their parole is eventually cancelled.*

Clearly enough, because of the Board’s discretion, street time in Victoria was not an automatic allowance. However, as the legislation and protocol has an inbuilt discretion, it may be more palatable to law and order proponents – on both sides of politics – for introduction in the NT. It is important to note that we are now the only jurisdiction in Australia which makes no allowance for street time.

There is no doubt the NT position on street time exacerbates the problem with gaol numbers. Significantly, of course, the NT has the greatest proportion of ATSI offenders of all Australian jurisdictions.

**FINANCIAL IMPLICATIONS OF STREET TIME**

The following statistics calculated over the last two years, from the Board’s statistics, illustrate the actual additional time spent in custody by those Territory prisoners who have lost street time. It assumes, for the sake of argument, that none of them would lose the benefit of that time by reason of a negative exercise of Board discretion.

- In 2022, 98 Parole Orders were revoked after commencement;

- For those 98 parolees, the total street time **not** credited totals 33 years, 4 months and 5 days [12,172 days].

If the average cost to the community of imprisoning a prisoner for one day is, say $330,\*\*then the cost to the community of the non-credited street time in 2022 was $4,016,760.

Actually, double expenditure was incurred in respect of these parolees. For each day they were on parole, a cost of $62.35 was already outlaid by Corrections in providing appropriate monitoring, etc.

- In 2023, 116 Parole Orders were revoked after commencement.

- For those 116 parolees, the street time **not** credited totals 36 years, 10 months and 15 days [13,469 days]. Using the same daily cost, as above, that amounts to $4,444,770.

The cost to the community of not allowing street time on returning prisoners to gaol in the years 2022 and 2023 is remarkably consistent.

2022…$4,016,760

 2023…$4,444,770

Apart from the obvious cost in providing the necessary infrastructure and services for the returned prisoners, there is the actual number itself. That is, approximately 100 extra prisoners in each year, inflating the problems presently being experienced in the Corrections space.

Clearly the advantages of legislating for discretionary loss of street time will be confronted by political issues. Nevertheless, the Northern Territory is now the only jurisdiction with a street time regime of a kind regarded by the ALRC as inappropriate.

**Some Statistics**

It is well-known that jail numbers are over the limit at this time. Record numbers are being reached each week. In the PB Annual Report of 2022, it was seen that prison numbers increased by 7% from the previous year. The total jail population as at 31 December 2022 was 2037. This was made up of males (1882), females (115) and youths (40). Of this number, 847 were prisoners on remand – that is, un-sentenced alleged offenders - representing approximately 40% of the total. These were alleged offenders who were, for whatever reason, were refused (or didn’t seek) bail. This is a topic worthy of further consideration.

During 2022, 464 prisoners had applications for release considered by the Board. These were either in initial parole applications or in supplementary reports. Of these, 162 were granted at the early stage and another 80 of them on deferral. That is, 242 of the 464 applications were approved, or 52%. Of the remainder, 169 were refused and 53 prisoners declined parole. That means, they preferred not to pursue an application and did their full time. There are reasons for this. During the year, 100 paroles were revoked; about 40% of those granted.

Prison numbers increased by 9.4% for 2023. The total jail population as at 31 December 2023 was 2238. This was made up of males (2114), females (124). Youths numbered 46. Of the adult total, 989 were prisoners on remand – that is, un-sentenced *alleged* offenders - representing approx. 44.2% of the total.

During 2023, 480 prisoners had applications for release considered by the Board. These were in initial parole applications and/or in supplementary reports. Of these, 162 were granted o initial application and another 92 of them on deferral. That is, 254 of the 480 applications were approved, or 53%. Of the remainder, 188 were refused and 38 prisoners declined parole. During the year of 2023, 129 paroles were revoked; again, about 40% of those granted.

Rex Wild Chair Josephine Down Secretary

Parole Board of Northern Territory