



Jane Argyle

What Is All The Controversy About?

In the article to follow, Jane Argyle, a solicitor with the Dunedin and Queenstown Lawlink firm of Anderson Lloyd, looks at the various aspects of parole and explains the role of the Parole Board.

In light of the recent controversy relating to the reoffending, whilst on parole, of Graeme Burton and William Bell, it seemed topical to examine the structure, functions and criteria for eligibility for parole in New Zealand.

WHAT IS PAROLE?

The functions of the New Zealand Parole Board are listed in the Parole Act 2002 ("the Act"). The key functions are:

- to consider offenders for parole and, if appropriate, direct offenders to be released on parole;
- to consider offenders for home detention and, if appropriate, to direct offenders to continue serving their sentences by way of home detention;
- to consider offenders for release on compassionate release and, if appropriate, to give a direction for their release on compassionate grounds;
- to set conditions for release;
- to consider and determine applications for variations to release conditions.

THE NEW ZEALAND PAROLE BOARD

The Board was established on 30 June 2002 under the Act, and replaced 17 District Prison Boards and the National Parole Board. It is an independent statutory body and therefore is not part of the government, the Department of Corrections, Ministry of Justice or the police.

The Board is made up of 20 judges and 17 non-judicial members. The Board meets in panels of three and is generally made up of two non-judicial members with a judge as its convenor. The Board meets at least

once each month at each of the public prisons throughout New Zealand.

Every three months an extended panel of up to five board members meets in each region to consider cases which involve offenders serving life sentences, sentences of preventative detention, or sentences of over seven years.

WHAT DOES THE BOARD DO?

The Board does not determine the release of all offenders serving terms of imprisonment. If an offender is serving a short term sentence of two years or less, under the Act they must be released after serving half of their sentence. They are not seen by the Board but may be subject to release conditions imposed by the court which sentenced them.

Offenders who are sentenced to imprisonment for more than two years must be released when they reach their release date (ie the end of their sentence). They become eligible for parole after serving one third of their sentence. If an offender reaches their sentence end date without being allowed parole, the Board's only role is to set conditions for release. All prison inmates must be seen by the Board at least once every 12 months after they have reached their parole eligibility date. The Board also has a discretion to consider an offender for parole before his or her eligibility date in exceptional circumstances.

In certain circumstances, the Department of Corrections may apply to have an offender kept in prison beyond their release date.

Everyone released on parole is given standard release conditions. These cover issues such as:

- maintaining contact with their probation officer;

- not living at an address prohibited by their probation officer;
- not engaging in employment prohibited by their probation officer;
- not associating with anybody the probation officer has prohibited.

The Board can also impose a range of special conditions, including alcohol and drug counselling.

In some cases offenders may apply for a hearing before the Board. This usually occurs where home detention may be offered or if the offender is seeking to have a compassionate release either on the grounds that they are to give birth or are suffering from a terminal illness.

CONSIDERATIONS OF THE BOARD

When making decisions concerning the release of an offender the paramount consideration for the Board is the safety of the community. The Act lists other principles that must guide the Boards' decisions:

- offenders must not be detained any longer than is consistent with the safety of the community;
- offenders must be provided with information about decisions that concern them and be advised how they may participate in that decision-making;
- decisions must be made on the basis of all the relevant information that is available to the Board at the time; and
- the rights of victims are upheld and the victims' submissions and any restorative justice outcomes are given due weight.

Prior to any hearing, the Board receives information from a range of sources including the Department of Corrections, Community Probation

Service, Psychological Services, victims and the police.

Practical considerations for the Board include the support and supervision available to the offender following release and the public interest in reintegrating the offender into society.

The Board may decline to release the offender on parole if it is not satisfied on hearing the information or the considerations in relation to the offender are not met. The offender will then remain in custody until the next eligible parole date or if the Board continues to decline release, until the completion of his or her sentence of imprisonment.

PAROLE ELIGIBILITY AFTER LIFE IMPRISONMENT

An offender who has been sentenced to life imprisonment is normally eligible for parole, after serving a minimum term of 10 years unless a minimum non-parole period is imposed by the court at the time of sentencing of the offender. If an offender who had been sentenced by the court to life imprisonment is released on parole, then they are subject to the standard parole conditions as discussed above, for the rest of their lives. Together with this, special conditions may be imposed for a period determined by the Board.

If an offender offends while on parole then an application may be made for them to be recalled to prison. This may be done if they have committed an offence which is punishable by imprisonment, or if they have breached their release conditions.

BREACH OF PAROLE CONDITIONS

It is an offence to breach any parole release conditions. The maximum penalty is a term of imprisonment not exceeding one year or a fine not exceeding \$2,000.

An application may also be made for the recall of an offender. This can only be done in circumstances where an offence may be committed by that offender on parole where the offence is punishable by imprisonment. Other grounds include breach of release conditions, that the offender is jeopardising the safety of another person or that an offender is not following through with the conditions of their parole.

Parole ends when an offender reaches his or her statutory release date (the end date of their sentence of imprisonment).

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