



Main points

- The State Parole Authority does not have jurisdiction over offenders serving sentences under Commonwealth law.
- Parole decisions for these offenders are made by the Commonwealth Parole Office at the Attorney General's Department in Canberra.
- There is no right to a hearing (matters are determined on the papers) and there is no right of appeal. (Judicial review is available in limited circumstances.)
- For sentences over 3 years, a non-parole period must be set. (Section 19AB, Crimes Act 1914 (Cth)). Release on parole is discretionary under section 19AL of the Crimes Act (Cth) 1914.
- It is extremely important that private practitioners give their clients realistic advice about their prospects of release on parole and what they can do to maximise their chances.
- Commonwealth Crimes Unit (CCU) staff at Legal Aid NSW can provide assistance to inmates to make submissions to the Commonwealth Parole Office in support of their release on parole.
- Parole decisions for these offenders are made by the Commonwealth Parole Office at the Attorney General's Department in Canberra.

Legislative framework

Section 19AL provides that the Attorney General must, before the end of a non-parole period, either make or refuse to make an order directing that an offender be released from prison on parole. If the Attorney General refuses to make a parole order, written notice must be given to the offender within 14 days of the refusal with a statement of reasons for the refusal. The decision must be reviewed within 12 months.

Section 19ALA sets out the matters that may be considered in decisions about parole orders. They include:

- The risk to the community of releasing the person on parole.
- The person's conduct while serving his or her sentence.
- Satisfactorily completion of programs ordered by a court or recommended by Corrective Service.
- The likely effect on the victim or victim's family of releasing the person on parole.
- The nature and circumstances of the offence.
- Any comments made by the sentencing court.
- The person's criminal history.
- Any pre-release report from Corrective Services in relation to granting of parole.
- The offender's behaviour under previous parole orders.
- The likelihood the person will comply with the conditions of parole.
- Whether releasing the person on parole is likely to assist the person to adjust to lawful community life.
- Whether the length of the parole period is sufficient to achieve the purposes of parole.
- Special circumstances, including the likelihood the person will be subject to removal or deportation upon release.

Commonwealth Parole

The process

Several months before the end of the non-parole period Corrective Services will prepare a pre-release report about a federal offender's behaviour in prison. This report will either recommend the offender not be released or indicate that release is recommended. This report will be provided to the Commonwealth Parole Office and will be influential in their decision.

The Commonwealth Parole Office will send a 'Notice of Likely Refusal of Parole' or 'Adverse Comments Letter' to offenders at risk of refusal and request a response from them. This letter will be sent to the Parole Unit or the SAPO at the gaol to be given to the offender. The offender may be given very little time to respond (sometimes only 2 days). The parole unit or SAPO may simply give them a pen and paper and ask them to write their response on the spot.

In the experience of CCU staff, some gaol staff underestimate the risk of parole refusal in Commonwealth matters. They may give the inmate the impression that their response is not particularly important, or even actively discourage them from seeking legal advice.

In turn, many inmates believe their parole interview went well and they are not at realistic risk of parole refusal.

Commonwealth Crime Unit parole practice

CCU solicitors have found that the Commonwealth Parole Office routinely refuse parole in circumstances where the State Parole Authority would most likely grant parole for equivalent offenders under State law.

CCU solicitors have become concerned that there are categories of offenders who are routinely being refused parole simply due to the nature of their offences, even when they have excellent behaviour records in custody. A particular issue is the availability of sex offender programs in custody. The Commonwealth Parole Office regularly refuse parole due to a perceived failure to undertake programs in custody, even where no programs are available to the inmate due to their assessed risk level, and even where appropriate programs are available to them in the community.

Where an inmate does not have a valid visa and will be deported upon their release, the CPO have been known to refuse parole on the basis that the inmate has not established a plan for their return to the community in their country of origin.

The CPO place great emphasis upon any comments by Community Corrections about "insight" or any extent to which an inmate is perceived to have "minimised" their offending. These types of comments are frequently made in the pre-release reports prepared by Community Corrections and become the basis for refusal of parole. Inmates often complain of being misunderstood or verballed by Community Corrections staff. There have been instances where an interpreter was not used for non-English speaking inmates.

Other categories of offender cannot be granted parole unless exceptional circumstances have been established. Under s19ALB, any offender who has committed a Terrorism offence, is subject to a control order or who has made statements or carried out activities supporting or advocating support for terrorist acts cannot be granted parole unless exceptional circumstances exist. CCU staff are not aware of any inmates who have been able to establish exceptional circumstances.

Commonwealth Parole

What happens when parole is refused?

The CPO are obliged to reconsider parole within 12 months and the process outlined above begins again.

In some cases the CPO might refuse parole, but undertake to reconsider parole at a date earlier than 12 months upon completion of an appropriate course or program. It is also possible to request an early reconsideration if the refusal was on the basis of lack of completion of a program which is then completed before the 12 month anniversary.

On occasion CCU have requested a review of a decision to refuse parole by another delegate of the Attorney General. The CPO will agree to do this if:

- There was a procedural error or denial of procedural fairness in the making of the decision, or
- There has been a material change in the offender's circumstances or there is a significant consideration which is directly relevant to the material reasons for which the decision was made, which was not considered by the decision maker.

However, the difficulty with this process is that the CPO can take 6 months or longer to consider a review application. The CCU is aware of several cases which are still awaiting decision on whether a review will be allowed after more than 6 months. In our experience, if there is no statutory deadline, (as there is for the 12 month reconsideration after refusal), there will be considerable delay.

There are options available under administrative law for judicial review of refusal of parole decisions. The time limit applicable for filing proceedings in these matters is 28 days. Some recent matters where the parole provisions have been considered are:

- *Stephens v Attorney-General* [2021] FCA 204
- *Lodhi v Attorney-General (Cth)* [2020] FCA 1383

When a federal offender is sentenced what advice should they be given?

Release on parole is not automatic.

- Likely reasons for being refused parole are failure to participate in rehabilitation programs, poor conduct in prison or absence of an appropriate plan in the community upon their release.
- The offender should do all they can to obtain a favourable report from Corrective Services about their behaviour in prison. They should endeavour not to incur any internal charges.
- If they had a drug addiction before their arrest, they should undertake all courses available to them to show they have been proactive to address their addiction. They should ensure they have clean urinalysis results.
- If relevant courses are not available to them in prison, they should document all efforts at undertaking courses. For example documents regarding cancellation of courses.
- If they receive a notice from the Commonwealth Parole Office at any time they should seek legal advice immediately, either by contacting the Commonwealth Crime Unit on 9219 5076 or by requesting a visit from the Prisoners' Legal Service.

Legal Aid is available through the CCU for advice and assistance in making submissions to the Commonwealth Parole Office.