Contents

1 Introduction ........................................................................................................................................... 5

2 The Board ............................................................................................................................................... 6

3 General principles relating to parole .............................................................................................. 7
  3.1 The purpose of parole ...................................................................................................................... 7
  3.2 Principles for fixing a non-parole period .......................................................................................... 7
  3.3 Decision-making by the Parole Board .............................................................................................. 8
    3.3.1 Exclusion from the rules of natural justice and Charter of Human Rights and Responsibilities .................................................................................................................. 8
    3.3.2 Exclusion from judicial review under the Administrative Law Act 1978 ................................. 9
    3.3.3 Exclusion from the operation of the Charter of Human Rights and Responsibilities ................ 9

4 Risk assessment and prison-based treatment .................................................................................... 11
  4.1 Initial screening of prisoners ............................................................................................................ 11
  4.2 Substance abuse ............................................................................................................................... 12
  4.3 Serious violent offenders .................................................................................................................. 12
  4.4 Sexual offenders .............................................................................................................................. 13
  4.5 General offenders ............................................................................................................................. 14
  4.6 Inability to do required programs ................................................................................................... 14
  4.7 The use of risk assessments by the Board ....................................................................................... 14

5 The grant of parole .............................................................................................................................. 16
  5.1 Process for considering parole ......................................................................................................... 16
    5.1.1 Application for parole ................................................................................................................. 16
    5.1.2 Procedural requirements for release on parole of Serious Violent Offenders or Sexual Offenders ................................................................................................................................. 16
  5.2 Nature of the decision to grant parole .............................................................................................. 17
  5.3 Matters considered ........................................................................................................................... 17
    5.3.1 Formal risk assessments .............................................................................................................. 17
    5.3.2 Criminal history .......................................................................................................................... 17
    5.3.3 Performance on other supervised sentencing orders served in the community ................. 17
    5.3.4 Behaviour in prison ................................................................................................................... 18
    5.3.5 Ability to address factors underlying offending behaviour ..................................................... 18
    5.3.6 Victim submissions .................................................................................................................... 19
    5.3.7 Release planning ......................................................................................................................... 19
  5.4 Reaching a conclusion ...................................................................................................................... 19
  5.5 Prisoners serving sentences for both Victorian and federal offences ........................................... 20
  5.6 Parole conditions ............................................................................................................................. 20
    5.6.1 Mandatory conditions ................................................................................................................ 20
    5.6.2 Special conditions ....................................................................................................................... 21
    5.6.3 Intensive parole period ............................................................................................................... 22

6 Cancellation of parole ........................................................................................................................ 23
  6.1 General principles ............................................................................................................................ 23
  6.2 The offence of breach of a prescribed condition of parole .............................................................. 23
  6.3 Further offending while on parole .................................................................................................. 24
    6.3.1 Parolee charged with further offending .................................................................................... 24
    6.3.2 Parolee found guilty of further offending ............................................................................... 25
  6.4 Particular considerations regarding relapse into drug use ............................................................ 25
6.5  Cancellation when taken into custody in relation to previous offences .................. 26  
6.6  The provision of reasons for cancellation .................................................................... 26  
6.7  Directions regarding time served or ‘street time’ ...................................................... 26  
6.8  Re-parole after cancellation .......................................................................................... 27  
6.9  Revocation of parole ................................................................................................... 27  

7  Transfer of offenders ........................................................................................................ 29  
7.1  Young offenders ........................................................................................................... 29  
7.1.1  Transfers from a youth justice centre to adult prison ................................................. 29  
7.1.2  Transfers from adult prison to a youth justice centre ............................................... 29  
7.2  Transfers of parole between states and territories ....................................................... 29  
7.2.1  Parole orders national mutual recognition scheme .................................................. 29  
7.2.2  Parole transfers out of Victoria ................................................................................ 29  
7.2.3  Parole transfers to Victoria .................................................................................... 30  
7.3  Permission for parolees to travel overseas ................................................................. 30  
7.4  Extradition back to Victoria ....................................................................................... 30  
7.5  Removal from Australia ............................................................................................. 31  

Appendix 1  Serious Violent Offences (in alphabetical order) .................................................. 32  
Appendix 2  Sexual Offences ................................................................................................. 34
1 Introduction

The purpose of parole is to promote public safety by supervising and supporting the transition of offenders from prison into the community. The aim is to minimise their risk of reoffending (in terms of frequency and seriousness) while on parole and after they finish their sentence. This risk cannot be eliminated but the Adult Parole Board works to diminish it. The safety and protection of the community is the paramount consideration guiding Board decisions.

This manual provides guidance to members of the Board in relation to all aspects of parole. It also promotes transparency and accountability in the operation of the Board, in accordance with a recommendation of the 2013 Review of the Parole System in Victoria by Ian Callinan AC.

It provides a statement of the Board’s general policies on parole as at April 2015. The Board’s policies are subject to ongoing review and the manual will be revised periodically. The policies contained in this manual are advisory only: they create no enforceable rights and do not restrict the powers and functions as set out in the Corrections Act 1986 and any other relevant legislation.

In publishing this guidance, the Board seeks to assist prisoners, their families and supporters, victims of crime and members of the community more generally to gain a clearer understanding of the principles that the Board relies upon and the approach it uses in making its decisions.

The Hon. E. W. Gillard QC

Chair, Adult Parole Board

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1 Ian Callinan AC, Review of the Parole System in Victoria (2013), Measure 21B (pages 84 and 99)
The Board

The Adult Parole Board was established in 1957 to replace the Indeterminate Sentences Board, which had been in existence since 1908.

The Adult Parole Board is an independent statutory authority. Its operation is governed primarily by the Corrections Act 1986.

Members of the Board are appointed by the Governor in Council and are not subject to ministerial or bureaucratic direction in relation to their decisions in individual cases.

The Board’s functions are conferred on it by a series of Acts and associated regulations, including the Corrections Act 1986, the Children, Youth and Families Act 2005, the Serious Sex Offenders (Detention and Supervision) Act 2009 and the Sentencing Act 1991.

The Board has jurisdiction over:

- offenders for whom a court has ordered a prison sentence for an offence against Victorian law and has fixed a non-parole period
- any prisoner under the age of 21 (whom the Board may transfer to a youth justice centre)
- young persons transferred by the Youth Parole Board from a youth justice centre to a prison
- any person upon whom a court has imposed a supervision order or detention order under the Serious Sex Offenders (Detention and Supervision) Act 2009.

The Board does not have jurisdiction over prisoners in Victorian prisons who are serving a sentence for a federal offence unless the prisoner is also serving a sentence for an offence against Victorian law and has a non-parole period in relation to the Victorian offence.

This Parole Manual provides information about the Board’s powers and functions in relation to prisoners. The Board’s powers and functions in relation to supervision orders and detention orders are very different. They are governed by different principles and are exercised by the Detention and Supervision Order Division. Given the differences between that jurisdiction and the other three jurisdictions, this manual does not cover detention and supervision orders.
3 General principles relating to parole

3.1 The purpose of parole

The purpose of parole is to promote public safety by supervising and supporting the transition of offenders from prison back into the community in a way that seeks to minimise their risk of reoffending, in terms of both frequency and seriousness, while on parole and after they complete their sentence. The Board must treat the safety and protection of the community as its paramount consideration.

An offender serves parole on conditions fixed by the Board and under the supervision of a parole officer who is employed by the Department of Justice and Regulation. The offender must formally undertake to comply with the conditions of their parole for the duration of the order. While on parole, an offender is still serving their sentence of imprisonment.

At any time during the parole order, the Board can cancel the order and require the offender to serve the whole parole period (including the time that they have been in the community and the time remaining on the sentence) in prison.

No system can eliminate the risk of reoffending. The reasons for reoffending are complex. Underlying problems, such as a dependence on drugs and alcohol, poverty and mental illness or impairment, all play a significant role. In addition, prisoners face many practical obstacles to adjusting to life in the community, such as difficulties in finding appropriate accommodation and employment. These obstacles are compounded for the many prisoners who, even before entering prison, have been at the margins of mainstream society.

What a parole system can do is reduce the risk that prisoners will commit further offences when released into the community. It does this in two ways.

- When the Board is deciding whether (and, if so, when) to release a prisoner on parole, the Board will scrutinise the extent to which they have made any progress towards rehabilitation, and in particular will examine information available to it about their behaviour in prison and participation in any rehabilitative programs. This provides an incentive for prisoners to actively participate in such programs and to take steps to address factors that underlie their past criminal behaviour.
- If an offender is released on parole, they will have a supervised and supported transition into the community. Offenders who are not granted parole and are released at the end of their sentence are not subject to the supervision and support that the parole system can provide.

3.2 Principles for fixing a non-parole period

If a court imposes a sentence of imprisonment of:

- greater than two years (or life), it must fix a non-parole period, unless it considers that a non-parole period is not appropriate because of the nature of the offence or the past history of the offender;
- between one and two years, it may fix a non-parole period; and
- less than one year, it cannot fix a non-parole period.

The only express guidance that the Sentencing Act 1991 provides in relation to the length of a non-parole period is that it must be at least six months less than the length of the sentence of imprisonment.

In the early 1970s, there was debate as to whether in fixing a non-parole period a court would simply consider the minimum time necessary to enable a parole board to form a proper view of the prisoner’s prospects for rehabilitation. The NSW Court of Criminal Appeal took the view that other sentencing considerations such as punishment were not relevant in fixing a non-parole period. The Court considered that it would be incongruous for a court to fix one term of imprisonment (the head sentence) that was appropriate in all of the circumstances and then to fix another, shorter term of imprisonment (the non-parole period) that was appropriate in all of the same circumstances.

The High Court resolved this debate by deciding in Power v The Queen [1974] HCA 26 that the non-parole period does not simply need to be long enough for a parole board to form a proper opinion of the prisoner’s prospects of rehabilitation. Rather, the sentencing considerations of punishment,

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2 In accordance with its obligation under section 73A of the Corrections Act 1986.
4 R v Sloane (1973) 1 NSWLR 202 (at p.207). See also R v Portolesi (1973) 1 NSWLR 105.
denunciation, deterrence and community protection are also relevant to the length of the non-parole period.5

The High Court refuted the argument of the NSW Court of Appeal by stating that a non-parole period is not a separate sentence: it is merely a direction from the court as to how much of the sentence (or sentences, if the prisoner is serving concurrent sentences) the prisoner must serve before being eligible to be released on parole.6

In order to determine that period, the Court considered the purpose of parole, which it defined as being:

[T]o provide for mitigation of the punishment of the prisoner in favour of his rehabilitation through conditional freedom, when appropriate, once the prisoner has served the minimum time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence.7

By mitigating punishment in favour of rehabilitation, parole is important for hope, self-esteem and the incentive to reform. However, the fundamental purpose of doing so is not to confer a benefit on the offender: rather it is about recognising that the community benefits from the rehabilitation of offenders.8

The relationship between the head sentence and the non-parole period is often expressed in terms of the ‘usual non-parole period’ or common proportional range, generally considered to be between 60 and 75 per cent of the head sentence.

The court must generally find positive prospects of rehabilitation before imposing a shorter than usual non-parole period. Situations where shorter non-parole periods have been considered appropriate are:

♦ to have regard to the youth of the offender and the desirability of rehabilitation10
♦ to reward established rehabilitation, and to reduce through extended supervision the risk of reoffending.11

Conversely, poor prospects of rehabilitation may elevate the need for community protection and result in a longer period before eligibility for parole.12

3.3 Decision-making by the Parole Board

The non-parole period determines the earliest date upon which the prisoner becomes eligible for parole. It does not mean that the prisoner will be released on parole on that date: it simply determines the time when the Board may decide if and when the offender is to be released on parole.13

The High Court has made clear that the authority of a parole board is to release a prisoner in accordance with the sentence imposed upon them:14 hence, the importance of the Parole Board having regard to the sentencing considerations set out above.

In Bugmy, Mason CJ and McHugh J observed that:

Release on parole is a concession made when the Parole Board decides that the benefits accruing by way of rehabilitation and the recognition of mitigating factors outweigh the danger to the community of relaxing the requirement of imprisonment.15

Given the broad discretion in the Corrections Act 1986 regarding cancellation, it follows that the Board may exercise its power to cancel parole if during the parole period the benefits cease to outweigh the risk – whether because the parolee’s attitude and behaviour mean that the anticipated benefits have failed to materialise and/or because the risk has escalated.

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7 Power v The Queen (1974) 131 CLR 623 at 628, per Barwick CJ, Menzies, Stephen and Mason JJ.
9 Judicial College of Victoria, Victorian Sentencing Manual, 12.7.2.2 (noting that this practice is the subject of some judicial debate).
10 Martin 7/11/1977 CCA Vic
11 Wright [2009] VSCA 27
12 Bugmy v The Queen (1990) 169 CLR 525
13 Chan (1994) 76 A Crim R 252
14 Power (1974) 131 CLR 623
15 Bugmy v The Queen [1990] HCA 18 at paragraph 20. (Note: Mason CJ and McHugh J were in the minority on the issue of whether the non-parole period in that case was excessive and on the extent to which the weight attributed to considerations such as poor prospects for rehabilitation should reduce as the length of the sentence under consideration increases). Cases where the offender’s poor prospects of rehabilitation contributed to a proportionately longer than usual non-parole period include: DP [2011] VSCA 1 (paragraphs 31-37); Milkins [2011] VSCA 93 (paragraph 106); Johnson [2010] VSCA 321 (paragraph 41); and Mokbel [2011] VSCA 106 (paragraph 52).
In the weighing of these risks and benefits, the safety and protection of the community is the paramount consideration (in accordance with section 73A of the Corrections Act 1986) for all of the Board’s decisions regarding the granting, revocation, and cancellation of parole.

### 3.3.1 Exclusion from the rules of natural justice and Charter of Human Rights and Responsibilities

Section 69(2) of the Corrections Act 1986 provides that in exercising its functions, the Board is not bound by the rules of natural justice.

The duty to act in accordance with those rules (also known as the rules of procedural fairness) ordinarily precludes a decision-maker from making decisions:

- arbitrarily, irrationally or unreasonably. It requires that regard be paid to material considerations and that immaterial or irrelevant considerations be ignored. It excludes the right to act on preconceived prejudice or suspicion.16

The rules of natural justice developed to ensure that decisions are made without bias and in a transparent manner, and that decision-makers take into account the views of those affected. The rules are based on the idea that decisions made in accordance with them are more acceptable to the parties involved and the community more generally, because they will be of a better quality as they will be fairer, more accurate and more consistent than decisions made in their absence.

The exemption is based on a recognition of factors such as the confidentiality and sensitivity of some of the information relied upon by the Board and the time-sensitive and risk-management nature of the Board’s decisions.17 In addition, section 64(2) of the Corrections Act 1986 provides that every Division of the Board (in other words, every time the Board convenes as a panel of three members to make decisions) must be chaired by a judicial member, being a judge, retired judge, associate judge, magistrate or retired magistrate. This ensures that each Division is chaired by a member who is familiar with the requirements of procedural fairness and hence the need to make decisions that are lawful, unbiased, reasonable and based upon the available evidence.

### 3.3.2 Exclusion from judicial review under the Administrative Law Act 1978

The Board’s exemption from the rules of natural justice means that its decisions are not subject to judicial review under the Administrative Law Act 1978. This is because that Act applies only to bodies that fall within the definition of ‘tribunal’ in section 2 of that Act:

- being a person or body of persons who, in arriving at the decision in question, is or are by law required, whether by express direction or not, to act in a judicial manner to the extent of observing one or more of the rules of natural justice.

### 3.3.3 Exclusion from the operation of the Charter of Human Rights and Responsibilities

Regulation 5 of the Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013 declares that the Board is not a public authority for the purposes of the Charter of Human Rights and Responsibilities. This has the effect of excluding the Board from the operation of the Charter. In particular, this means that the Board is not subject to the prohibitions against acting in a way that is incompatible with a human right or against failing to give proper consideration to a relevant human right in making a decision.

The justification given by the then Attorney-General for the exclusion of the Board (along with the Youth Parole Board and the Youth Residential Board) was that:

- The persons who would be affected by [the exclusion] are prisoners who have been convicted of a criminal offence by a court and sentenced to a term of imprisonment. The [exclusion] will remove the ability of prisoners to claim that they should be granted parole, that parole should not be cancelled or that a particular condition should not be imposed on their parole, on the grounds that it breaches their human rights. Prisoners affected by the [exclusion] have already had a fair hearing in an independent judicial process and the rights of the person have already been restricted by the fact that an offender has been sentenced to a term of imprisonment.18

The gravity of the Board’s decisions and the absence of the safeguards provided by the rules of natural justice, the Charter of Human Rights and Responsibilities and judicial review under the Administrative

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16 Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321 per Deane, J at p.367.
18 Section 38(1) of the Charter.
*Law Act 1978* mean that the Board must itself be careful to ensure that, as far as possible, its decisions are lawful, reasonable, unbiased, proportionate and are based only on relevant considerations and are not influenced by irrelevant considerations.

To assist in its decision-making and to ensure a consistency of approach, the Board has developed a series of detailed internal practice guidelines. The Board has also developed an induction process for new members and an ongoing seminar program for all members.
4 Risk assessment and prison-based treatment

As one of the purposes in setting a non-parole period is to provide an incentive to reform, the Board expects prisoners to use their time in prison productively. In particular, the Board expects prisoners to make use of the range of programs that are available to them in Victoria. (The Board recognises that there can be situations in which a prisoner who wishes to undertake a program has difficulty in doing so. This is addressed at the end of this chapter).

The programs available to prisoners can be divided into two broad categories:

- The first category is programs that are based on evidence into what works to reduce the risk of reoffending. These programs specifically target factors that have a proven relationship with reoffending. They are ordinarily based on the ‘risk, needs and responsivity’ principles, are available only following a clinical assessment of the offender’s suitability to undertake the program and are provided by trained clinicians. An example is the High Intensity Violence Intervention Program.

- The second category encompasses educational, vocational and personal development programs. These programs can be of particular benefit to prisoners who have experienced social and educational disadvantage prior to their imprisonment. While they do not specifically seek to reduce reoffending, they can assist in the development of a more law-abiding lifestyle upon return to the community.

The ‘risk, needs and responsivity’ principles are that:

- The intensity of a program should be tailored according to the assessed risk that the offender will reoffend.
- Programs should target treatment needs that are directly related to offending.
- Programs should be delivered in a style and mode that offenders will respond to and engage with.

All programs must be accredited through the Corrections Victoria Intervention Accreditation panel. This requires all programs to be based on empirical research on reoffending. Most are based on a cognitive behavioural framework. Some programs are only available in the community or at certain prisons, and are delivered by specially trained psychologists, social workers, drug and alcohol workers or psychiatric nurses. The intensity of the program is measured in the time taken to complete the program. All programs that target criminogenic behaviour have a completion or non-completion report available to the Adult Parole Board to advise on the effect that the program has had on an offender’s assessed risk factors for future offending.

4.1 Initial screening of prisoners

Accordingly, upon their reception into prison, the majority of prisoners are screened to ascertain their level of risk, their treatment needs and their likely responsiveness to treatment.

This is done using the Level of Service Risk Need Responsivity (LS-RNR) tool. From 2004 to January 2015, it was done using the Victorian Intervention Screening Assessment Tool (VISAT).

Both tools are standard questionnaires that are completed by corrections staff using information obtained through an interview with the prisoner and from independent sources such as sentencing remarks, police statements and the prisoner’s criminal history record. Each questionnaire is based on research into the factors that are most strongly correlated with reoffending. As such, the two questionnaires cover a similar set of information. Each tool generates an estimate of the prisoner’s risk of reoffending (expressed as a ‘low’, ‘moderate’ or ‘high’ risk of reoffending relative to other offenders, with a capacity for the staff member to record that they have overridden the initial estimate on the grounds of unusual features of the case) and recommendations about appropriate treatment.

The major difference between the tools is the calculation of the risk level posed by the prisoner and the size and breadth of the statistical sample of offenders used in developing and validating those calculations.

The VISAT calculations of the likelihood of reoffending, being the probability that an offender with the same characteristics will return to prison within two years, were calibrated using a sample of Victorian offenders.

The LS-RNR calculations were calibrated using a sample of Canadian offenders. However, unlike the VISAT, the LS-RNR is used in many countries and has been statistically validated many times subsequently. In other words, researchers have studied large samples of cases in a range of different jurisdictions in which the LS-RNR was used to calculate the likelihood of reoffending in order to assess how accurate those predictions were.
The initial screening separates offenders into a range of pathways, each of which involves more detailed assessments and treatment. These include streams for substance abuse, serious violent offenders, sexual offenders, general offenders (that is, those who are neither serious violent offenders nor sexual offenders) and a specialist stream for serious violent or sexual offenders who have a registered intellectual disability, confirmed acquired brain injury, or who have low cognitive functioning.

When considering parole, the LS-RNR is built into the Parole Suitability Assessment, with reference not only to overall risk of reoffending, but specific identification of issues which contribute to this risk. This will inform the Board of the suitability for parole as well as the conditions which can manage these issues and the subsequent risk of reoffending.

### 4.2 Substance abuse

Prisoners who are identified through the screening process as having a history of alcohol or drug abuse receive a more thorough clinical assessment, which involves an interview with a clinician and the administration by the clinician of a range of psychometric tests. Based on that assessment, they are then directed into two streams:

**Health stream** – this is for prisoners who are assessed as having a low risk of reoffending but a moderate to high need for treatment for alcohol or other drugs. The programs in the health stream aim to reduce the prisoner’s use of alcohol or drugs and to reduce the harms associated with ongoing alcohol or drug use.

**Criminogenic stream** – this is for prisoners who are assessed as having a moderate to high risk of reoffending that is related to alcohol or drug abuse.

The programs available vary in intensity. The most significant are:

- 24 hour program
- 40 hour program
- 44 hour program.

At the conclusion of each of these programs, the clinician prepares for the Board a brief completion report on each participant.

### 4.3 Serious violent offenders

Prisoners who are serving a sentence for a serious violent offence (see Appendix 1) are directed into the serious violent offender pathway for screening.

A clinician will review the prisoner’s file, interview the prisoner and will ordinarily administer:

- the Violence Risk Scale–Screening Version (VRS-SV) if the prisoner is male; or
- the Historical, Clinical, Risk Management-20 (HCR-20) if the prisoner is female or is suffering from an intellectual disability.

Both are actuarial instruments that measure risk factors and produce a score which is then expressed as a ‘low’, ‘moderate’ or ‘high’ risk that the offender will commit further violent offences.

Offenders who are assessed as moderate or high risk using the screening version are referred for a full clinical assessment and appropriate treatment. The most common programs are:

- the Making Choices Program (100 hours, delivered in 2.5 hour group sessions three times per week over approximately three and a half months),
- the Moderate Intensity Violence Intervention Program (82.5 hours, delivered in 2.5 hour group sessions twice weekly over approximately five months); and
- the High Intensity Violence Intervention Program (155 to 300 hours, delivered in 2.5 hour group sessions two to three times per week for approximately six to nine months).

Offenders assessed as **low** risk of violent reoffending on the VRS-SV and who:

- are **low** risk on the VISAT or LS-RNR, will be found unsuitable for further Offending Behaviour Programs assessment and intervention unless the clinician overrides the actuarial assessment because of particular, unusual features of the case. If the offender's circumstances change over time (for example, due to new offences or an escalation in risk factors), a new referral should be made to Offending Behaviour Programs.
- are **high** or **moderate** risk on the VISAT or LS-RNR are directed into the general offender pathway for a general offender assessment rather than a serious violent offender assessment.
A number of new programs have recently been implemented to further meet the requirements of the prison system. The See Change Program targets violent behaviour and was implemented for offenders who have relatively short custodial sentences which would not allow them to complete the Violence Intervention Program. The U-Turn Program is designed for offenders who experience significant barriers to engagement in offending behaviour programs, and has an explicit focus on engaging offenders, before more intensive programs are delivered.

4.4 Sexual offenders

Male offenders who are serving a sentence for a sexual offence\(^{20}\) are assessed using the Static-99. As its name makes clear, the ten factors included in the assessment (such as age and offending history) are all static, or historical, risk factors.

It produces an estimate of the probability that a person with the same characteristics as the offender in relation to those ten factors will sexually reoffend.

The estimates produced by the Static-99 need to be used with some caution as they do not constitute a prediction of the likelihood that the particular offender will sexually reoffend, as that will depend on additional risk factors to those accounted for by the tool.

The Static-99 should not be used to estimate the probability of further sexual or violent offending for female sexual offenders, young offenders (under 18 at the time of release), or offenders who have only been convicted of non-contact sexual offences.

In these cases, other tools can be used. The tool most commonly used by the Specialist Offender Assessment and Treatment Service of Corrections Victoria (SOATS) is the RSVP (Risk of Sexual Violence Protocol).

The RSVP provides structured professional guidelines regarding both the procedure and areas of focus when assessing risk of sexual violence. It identifies both static and dynamic factors across five domains: sexual violence history, psychological adjustment, mental disorder, social adjustment, and manageability. Each factor’s relevance to risk in the past, the present and the future is considered. The RSVP aims to assist in the development of clinical and forensic decision-making relating to placement, treatment and/or management of an individual.

The RSVP has been validated in overseas studies. The RSVP and related schemes are intended to go beyond the group-based information of purely actuarial tools, and provide a more individualised assessment that addresses the nature, imminence, severity and frequency of someone’s future risk of sexual violence. Finally, the RSVP is used to highlight possible future scenarios to provide greater context to someone’s risk and from which to develop risk management strategies.

The Risk Matrix 2000 (RM2000) is a statistically derived risk classification system intended for adult male sexual offenders. It has been endorsed for use with offenders convicted of internet offences. At SOATS, the RM2000/S is a prediction scale for sexual offending in order to guide risk management. Overall, research has demonstrated that the RM2000 demonstrates moderate predictive accuracy in a sample of those convicted of child pornography offences.

The most common group-based programs for male sexual offenders in prison are:

- The High Intensity Modular Management Intervention Program (MMIP) (150 hours): This is a rolling modular program, where offenders can commence in the program at any time.
- The Moderate-High Intensity Modular Management Intervention Program (MMIP) (120 hours): This program targets the same 34 focus areas as the High Intensity program. It is also provided in a rolling modular approach. The only difference between the two programs is the level of intensity within each of the modules.
- Moderate-Low Sex Offender Treatment Program (72 hours): This program is a closed program that targets specific skills to reduce the risk of sexual reoffending.
- Crossroads (42.5 hours): This program focuses on offenders’ dysregulated states (including emotional, interpersonal, cognitive and sexual) that contributed to their sexual offending. Directly addresses dysfunctional behaviours whilst simultaneously increasing the behavioural skills and motivation to replace offending behaviours.

Female sexual offenders are treated in prison through individual rather than group-based programs.

\(^{20}\) Or certain other offences, such as stalking or arson, which are assessed as having been committed with a sexual motivation, or in certain situations if the offender has prior sexual offences.
4.5 **General offenders**

This stream is for prisoners who are assessed as **high or moderate** risk of general reoffending based on the VISAT or LS-RNR but who are not high or moderate risk of sexual or violent reoffending or who are not suitable for a specialist sexual or violent offending program.

The general offender assessment process includes a screening and, if found suitable, a full clinical assessment. The assessment process is intended to complement information gained in the initial screening by gathering more detailed information about an individual’s offending behaviour and overall psychosocial functioning.

The general offender pathway screening involves a clinician reviewing the offender’s Corrections Victoria Individual Management Plan file (which includes information from the prisons and Community Correctional Services) and their Offending Behaviour Programs file to ensure that all possible information is considered. A screening does not involve a face-to-face interview with the offender.

Depending on the outcome of the screening, the prisoner may proceed to a full general offender pathway clinical assessment. This assessment involves a semi-structured interview with the offender.

General offenders can be referred to a range of programs, including the Making Choices Program (100 hours, delivered in 2.5 hour group sessions three times per week over approximately three and a half months).

Some general offenders may present with significant violent risk factors, despite not currently serving a sentence for a serious violent offence. In such cases, Offending Behaviour Programs can at their discretion arrange to assess the offender’s violence risk and can refer them to do a violence intervention program.

4.6 **Inability to do required programs**

There can be situations where a prisoner who is motivated to do a program is unable to do so before their earliest eligibility date for parole, or at all.

This can be due to placement issues: for example, if the prisoner is being held in a prison, or part of a prison, where the program is not available. It can also be due to language barriers, intellectual disability or waiting lists for the program.

The Board consults with Corrections Victoria in such cases to ensure that where possible a program can be provided; however, the provision of programs is the responsibility of Corrections Victoria.

If a prisoner has been assessed as needing a program but is unable to do the program in prison, the Board will consider the reason for that (for example, whether the prisoner is being held in protection due to threats from other prisoners or is in a long term management unit due to dangerous behaviour towards other prisoners or staff) and whether the prisoner’s risk can be mitigated in other ways, such as the provision of an appropriate program in the community.

The Board’s paramount consideration is always the safety and protection of the community. The Board would only consider releasing on parole a prisoner who had been assessed as requiring treatment but has not done that treatment if there were significant factors to mitigate the risk to the community.

4.7 **The use of risk assessments by the Board**

It is crucial to note the following aspects of risk assessments provided to the Board.

**Not an individual prediction**

Risk assessments are based on a set of measured characteristics, such as age at first offending. The selection of characteristics that are taken into account in a risk assessment tool is based on extensive research and they have been shown generally to produce reliable estimates of risk.

When an offender is assessed using a risk assessment tool, the tool produces an estimate of the likelihood that a person with the same set of measured characteristics as the offender will reoffend.

This can be used to infer the likelihood that the particular offender who is being assessed will reoffend; however, the assessment does not itself constitute a prediction that the particular offender will reoffend. This is because that can depend on characteristics that are not accounted for in the assessment tool.

**Likelihood not absolute but relative to other offenders**

The categories of ‘low’, ‘moderate’ or ‘high’ are relative to other offenders in the relevant category: they are not relative to the general population.
For example, an offender who is assessed as falling within the low risk category of violent reoffending may still present a higher risk of violent reoffending than a member of the community who has never committed a violent offence.

**Risk assessments for purpose of determining treatment**

The risk assessment may have been done for the purpose of determining the appropriate treatment in prison.

In some cases, a formal reassessment of the risk will have been done following treatment (if so, it will usually be stated in the treatment completion report).

It is important for Board members to note when the assessment was done and whether there has been any subsequent treatment and reassessment.
5 The grant of parole

5.1 Process for considering parole

The expiry of the non-parole period simply marks the earliest point at which the prisoner may be released on parole: it does not mean that the prisoner should or will be released on that date.

Prior to 1 March 2015, the automatic calculation of a prisoner’s earliest eligibility date for parole triggered an advance alert for Corrections Victoria to collate and provide relevant information to the Board.

5.1.1 Application for parole

Since 1 March 2015, the Board has considered parole only if the prisoner applies for parole (unless the prisoner was already under consideration at that date).

While prisoners are expected to be proactive in applying for parole, the Case Management Review Committee (CMRC) in each prison must ensure that prisoners who are serving a non-parole period are given information about the application process well in advance of their earliest eligibility date (ordinarily this will be at least 12 months in advance of the earliest eligibility date, depending on the length of the sentence). The CMRC is also responsible for encouraging prisoners to address their rehabilitation needs and for assisting prisoners to complete their application, particularly if the prisoner has language or literacy difficulties.

Upon receipt of a parole application and a report from the CRMC about the prisoner, the Board will consider whether:

- The application should proceed to parole assessment. This means that Community Correctional Services will prepare a detailed Parole Suitability Assessment report for the Board. The Parole Suitability Assessment will contain all necessary information that the Board requires in order to make an informed decision.

- The application should be deferred due to outstanding issues. The Board may do so if there are serious concerns about the prisoner’s behaviour in prison particularly during the second half of the sentence in the case of serious violent or sexual offenders, or if the prisoner has refused to participate in assessments or treatment or if the prisoner has performed very poorly in such treatment. If the Board decides to defer the application, it will specify a time after which the prisoner may re-submit their application and the preparation of a Parole Suitability Assessment report will be deferred until after that time.

When deciding whether to grant parole, it is not necessary for the Board to hear directly from the prisoner and in many cases the Board makes its decision in the absence of the prisoner. The Board may choose to interview the prisoner if the Board considers it appropriate. Examples of when this may occur include:

- The Board is setting an order for release on parole and wants to speak to the prisoner about the conditions.

- The Board has specific concerns about the apparent attitude of the prisoner (for example, as evident from a program completion report) and wants to assess their attitude for itself.

- The Board wants to test particular information, such as information about the prisoner’s proposed accommodation on release.

5.1.2 Procedural requirements for release on parole of Serious Violent Offenders or Sexual Offenders

Section 74AAB of the Corrections Act 1986 creates a Serious Violent Offender or Sexual Offender Division (SVOSO Division) of the Board.

The sole function of the SVOSO Division is to decide whether or not to release on parole an offender who is serving a sentence of imprisonment for a serious violent offence (see Appendix 1) or a sexual offence (see Appendix 2).

An order releasing such an offender on parole may be made only by the SVOSO Division, which may do so only after considering a recommendation to that effect from an ordinary division of the Board.

The SVOSO Division is constituted by the Chairperson of the Board and one or more members of the Board selected by the Chairperson. A member of the SVOSO Division cannot have sat as a member of the ordinary division that made the recommendation for release on parole to the SVOSO Division.
5.2 Nature of the decision to grant parole

Section 74 of the Corrections Act 1986 provides the Board with the power to order that a prisoner, who is serving a prison sentence in respect of which a non-parole period is fixed, be released on parole at the time stated in the order (not being before the end of the non-parole period).

The Corrections Act 1986 does not prescribe specific criteria governing the decision to release a prisoner on parole. The only statutory guidance on the exercise of the discretion is set out in section 73A, which states that the Board must give ‘paramount consideration to the safety and protection of the community in determining whether to make or vary a parole order’.

The High Court has also provided some useful guidance in Bugmy, where Mason CJ and McHugh J observed that:

Release on parole is a concession made when the Parole Board decides that the benefits accruing by way of rehabilitation and the recognition of mitigating factors outweigh the danger to the community of relaxing the requirement of imprisonment.21

Bugmy was a case involving a prisoner who was serving a life sentence. The issue in that case was the length of the non-parole period. The risk/benefits balancing exercise in deciding whether or not to release on or after that date would be affected by the fact that the alternative to release on parole was for the prisoner to remain in prison indefinitely.

By contrast, in the overwhelming majority of cases, the prisoner is serving a sentence that has a determinate end date. In these cases, the risk/benefit calculation is different, because the alternative to release on parole is straight release at the end of the sentence, without any supervision or support.

The transition from prison to freedom in the community can be difficult and the risk of reoffending is commonly highest in the months following release. Denying parole does not remove that risk; it simply postpones it until the prisoner leaves prison at the end of their sentence. In most cases, a supervised and supported transition on parole will present a lower overall risk to the community than the risk presented by release straight from prison at the end of the sentence.

Ordinarily, the question for the Board is not whether or not to release the prisoner on parole at all, but how long the parole period should be. The Board would deny parole altogether only in cases where the benefits are slight or very speculative and the risks of reoffending are unacceptably high and not susceptible to mitigation by parole conditions.

5.3 Matters considered

5.3.1 Formal risk assessments

The starting point for any parole assessment is any formal risk assessment of the prisoner. The Board also considers when the assessment was performed, with less emphasis being placed on assessments conducted more than two years previously.

Although such risk assessments generally incorporate the following factors, the Board gives separate qualitative consideration to each of them.

5.3.2 Criminal history

The Board considers a prisoner’s offending history to be a strong predictor of future behaviour. The Board will have particular concern about:

- involvement in crime from a young age
- the commission of very serious offences (for example, the infliction of serious and gratuitous injuries)
- the prisoner’s motives for offending
- any absence of long periods in the community without offending
- any pattern of escalation in offending.

5.3.3 Performance on other supervised sentencing orders served in the community

The Board also pays close attention to a prisoner’s performance on any previous paroles or other supervised sentencing orders served in the community. In particular, it will look at:

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21 Bugmy v The Queen [1990] HCA 18 at paragraph 20 (Note: Mason CJ and McHugh J were in the minority on the issue of whether the non-parole period in that case was excessive and on the extent to which the weight attributed to considerations such as poor prospects for rehabilitation should reduce as the length of the sentence under consideration increases)
previous cancellations of such orders
the reasons for such cancellations
how long the prisoner was on parole prior to the events that resulted in the parole being cancelled
whether there has been any improvement or deterioration in performance on supervised orders.

5.3.4 Behaviour in prison

There is not necessarily a close correlation between behaviour in prison and behaviour following release into the community. Some prisoners who are co-operative and compliant in the prison environment may present significant risks of reoffending.

Nevertheless, violent or aggressive behaviour in prison or a pattern of drug use or serious non-compliance while in the very structured and controlled environment of a prison are all strong indicators that the prisoner poses a substantial risk of reoffending and may struggle to comply with the requirements of parole in the community.

In addition, in order for the prospect of release on parole to function as an incentive for good behaviour in prison, it is important that the Board recognise and highlight poor behaviour in prison as a reason for delaying or denying release on parole.

For serious violent or sexual offenders, specific advice is provided by the prison as part of the parole application process and then later as part of the Parole Suitability Assessment. Generally, parole will not be granted for this category of prisoner unless their behaviour is considered satisfactory.

5.3.5 Ability to address factors underlying offending behaviour

Factors such as substance abuse, impulsivity, a failure to consider consequences, poor problem solving skills, an exaggerated sense of entitlement, callousness, criminogenic beliefs, self-justifications and rationalisations are common to much, although not all, criminal behaviour.

Many of these factors are amenable to appropriate treatment in prison. The Board will consider:

- the extent to which any such factors are related to the prisoner’s offending
- the extent to which the prisoner has engaged in treatment of such factors
- any progress (based on treatment completion reports and post-treatment behaviour) in relation to these factors
- any further treatment needs and whether they can be provided in the community.

Advice on offending behaviour treatment program participation will be provided along with the Parole Suitability Assessment. Generally, parole will not be granted for serious violent or sexual offenders when they have been assessed as requiring treatment, but have not completed the identified treatment program or suite of programs. General offenders with a moderate or high risk of reoffending may also not have their parole granted without completing the required treatment programs. Offenders whose treatment outcome reports suggest that their participation in programs was poor, disengaged or presenting behaviour requiring significantly more treatment to reduce the risk of reoffending may not have their parole granted. Any demonstrable reduction in risk is determined by the treatment facilitators.

Special considerations arise in the case of offenders whose offending is related to an underlying psychological or psychiatric condition. While conditions such as schizophrenia or bipolar disorder do not necessarily cause criminal behaviour (as many people who suffer from those conditions do not commit offences), if a prisoner does suffer from such a condition it may present a significant risk factor if not treated effectively. The Board will consider formal diagnoses and psychological or psychiatric reports.

The Board’s primary focus is on the relationship between the psychiatric condition and offending behaviour.

The Board will also consider:

- how stable the prisoner’s condition is and the extent to which it is likely to improve (or to deteriorate)
- the prisoner’s compliance with (or resistance to) treatment for the condition
- the extent to which the nature of the condition itself (such as paranoia) inhibits the prisoner’s willingness to engage in treatment
treatment that may be available in the community and the extent to which the condition and the prisoner are likely to respond positively to treatment.

5.3.6 Victim submissions

The Board must consider any victim submissions made under section 74A of the *Corrections Act 1986*. A victim submission can provide the Board with a deeper insight into the effect of the offence on the victim and their family. It can also provide important information for the Board to consider when deciding on the conditions to impose. For example, the victim may make a reasonable request for a condition restricting geographical areas that the offender may enter.

5.3.7 Release planning

Not having stable accommodation, associating with people who are taking illicit drugs and committing offences, being bored and having a lot of unstructured time create an environment that is conducive to further offending.

If these factors were associated with the prisoner’s past offences, returning to a similar environment upon release may mean that they may present a substantial risk of reoffending, even if they behaved well in prison, engaged productively in treatment and are motivated not to reoffend.

The Board will consider whether the prisoner’s proposed accommodation and other plans upon release are realistic and appropriate. However, in doing so, the Board recognises that prisoners can face significant barriers in relation to accessing accommodation and employment and may have very limited options available. The Board will assess the suitability of a prisoner’s release plan in light of the nature and gravity of their risk level. The Board may be more ready to accept less than ideal accommodation in the case of a low risk offender than it would be for a moderate or high risk offender, particularly if the risks can be mitigated by other conditions such as drug testing.

5.4 Reaching a conclusion

The Board obtains information on these factors from a wide range of sources and evaluates that information critically and objectively.

Nevertheless, in most cases, a substantial degree of uncertainty will remain in relation to the particular risks and benefits of parole in the individual case being considered by the Board.

For example, formal risk assessments provide an estimate of the likelihood that an offender with the same set of measured characteristics as the offender in question will reoffend; they do not provide a prediction that the particular offender will in fact reoffend. An offender with an extensive criminal record and a poor history of compliance may reach a turning point in their life and may desist from further offending. Conversely, it is possible for an offender with a limited criminal record to commit an offence that is much more serious than anything in their past. The support and supervision provided by parole may substantially reduce the risk for some offenders but have less effect on others.

There are two ways that the Board manages these risks.

- The first is through the imposition of conditions and the supervision of the offender throughout parole. Each parole order is subject to a set of standard conditions. The Board has the power to add additional conditions, including drug testing, assessment and treatment, a requirement to reside each night at a particular address, a curfew, electronic monitoring and a prohibition on contacting a specified person or class of person. These have the benefits of enabling the Board to monitor the parolee. For an offender who is higher risk, the Board has the capacity to increase the frequency of supervision by parole officers and the duration of the intensive parole period. The Board can require the parolee to periodically attend before it, so the Board can interview the parolee and assess their progress for itself.

- The second is in the Board’s approach to cancellation of parole. As set out in more detail later in this manual, the Board’s power to cancel parole is very broad. Provided that the Board is notified in a timely manner, the Board can act quickly to cancel parole and have the parolee returned to custody, even on the basis of limited information. The benefit of this is that the Board can be less risk averse in its decisions to release a prisoner on parole than the Board could be if the power to cancel parole were more constrained by legal or procedural restrictions.

The effectiveness of these two techniques is greatest in cases where the nature of the risk is susceptible to monitoring. An example is if the prisoner’s pattern of offending is to commit property offences in order to finance a drug addiction. In such cases, indicators of a slide back into drug addiction (positive drug tests, unacceptable absences from supervision or testing, loss of employment

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22 Under Corrections Regulations 2009 r.83B(1)(d) and 83C
or housing) provide warning signs that enable the Board to reassess the risk and if necessary to cancel parole before the risk becomes too great. Another example is if the offender’s violence is closely linked to abusing alcohol in high-risk situations (late at night in or around nightclubs or venues with high concentrations of other intoxicated males). This risk can be managed through conditions such as abstinence, a curfew and electronic monitoring.

The effectiveness of these techniques is more limited in cases where the precursors to the offending are less visible and the offending is more unpredictable. In such cases, the Board adopts a conservative approach consistent with the paramount consideration of community safety. This is particularly so in the case of offenders who present a moderate or high risk of violent or sexual offending.

In every case, the Board’s sole task is to weigh the benefits of parole against the risks of release on parole. If objectively that calculation favours release on parole, the Board cannot decide to require the prisoner to remain in prison for a longer period simply because the Board considers that the prisoner has not served long enough for the offence committed. This is because issues of punishment, denunciation and deterrence in relation to the offence committed are matters for the courts and not for the Board.

5.5 Prisoners serving sentences for both Victorian and federal offences

The Board has no jurisdiction over the release on parole of prisoners who are serving a sentence for a federal offence. Decisions about parole in such cases are the responsibility of the Commonwealth Attorney-General or their delegate.

If a prisoner is serving sentences for both Victorian and federal offences, the sentence structure must be examined carefully.

In some cases, the federal prison sentence may commence immediately upon the expiration of the state non-parole period and may consume the whole of the Victorian sentence. In such cases, the Board would not make a decision to release on parole as the release would be negated by the federal prison sentence.

In other cases, there may be a period of overlap between eligibility for Victorian parole and eligibility for federal parole.

In such cases, Board will make a decision about parole in accordance with ordinary principles and procedures set out elsewhere in this manual. However, the prisoner will not actually be released on parole unless the prisoner is also granted federal parole. (Conversely, if the prisoner is granted federal parole but the Board decides not to grant parole, the prisoner cannot be released from prison to serve the federal parole).

While the Board and the federal parole authorities each make independent decisions in such cases, the secretariat of the Board will liaise with the federal Attorney-General's Department to minimise inadvertent inconsistencies.

5.6 Parole conditions

Parole is served on conditions fixed by the Board and under the supervision of a parole officer.

The conditions serve two purposes:

- To enable the Board to continue to monitor the parolee’s risk of reoffending. This is principally done through conditions such as supervision by a parole officer, but can also be done, for example, through a condition requiring electronic monitoring.

- To minimise the risk that the parolee will reoffend. They do this by addressing factors that may lead to reoffending, such as by prohibiting the parolee from moving away from appropriate stable accommodation or by requiring the parolee to undergo relevant treatment for drug or alcohol abuse. They can also minimise the risk by encouraging pro-social behaviour, such as through participation in paid or unpaid employment or community work.

The offender must formally undertake to comply with the conditions of their parole for the duration of the parole order. While on parole, an offender is still serving a sentence of imprisonment.

5.6.1 Mandatory conditions

Every parole order must contain the following ten mandatory conditions:

1) You must not break any law.

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23 Corrections Act 1986 s.74(4)(a) and Corrections Regulations 2009 r.83A.
2) You must report to the community corrections centre specified in this Order within 2 clear working days after this Order comes into force.

3) You must notify a community corrections officer of any change of address at least 2 clear working days before the change of address.

4) You must notify a community corrections officer of any change of employment within at least 2 clear working days of the change of employment.

5) You are under supervision of a community corrections officer.

6) You must report to, and receive visits from, a community corrections officer as and when directed by the community corrections officer.

7) You must be available for interview by a community corrections officer, the Regional Manager or the Adult Parole Board at the time and place as directed by the community corrections officer or the Regional Manager or Adult Parole Board.

8) You must attend in person at a community corrections centre as directed in writing by a community corrections officer.

9) You must not leave Victoria without the written permission of the Regional Manager.

10) You must comply with any direction given by a community corrections officer or the Regional Manager or the Adult Parole Board that is necessary for a community corrections officer or the Regional Manager or the Adult Parole Board to give to ensure that you comply with this Order.

5.6.2 Special conditions

In addition, the Board may, although is not required to, impose any one or more of the following conditions:

11) You must not consume any alcohol.

12) You must undergo assessment, as directed by a community corrections officer or the Regional Manager, to determine whether you are suitable for treatment for abuse of or dependency on alcohol or any drug of dependence or prohibited poison, or medical, psychological or psychiatric treatment, AND, if you are assessed as suitable, undergo or submit to that treatment.

13) You must submit to testing for alcohol consumption or use of a drug of dependence or prohibited poison as directed by the Secretary to the Department of Justice.

14) You must report to your supervising community corrections officer [specify reporting frequency] until [specify end of reporting period].

15) You must not enter in or be within [specify vicinity] of [specify area] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].

16) You must remain in [specify area] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].

17) You must remain at [specify place] between [*am/pm] and [*am/pm] each day unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].

18) You must not use or access the Internet.

19) You must not contact, directly or indirectly, [specify person or class of person or both].

20) You must not enter in or be within [specify vicinity] of [specify place] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].

21) You must undergo assessment, as directed by a community corrections officer or the Regional Manager, to determine whether you can satisfactorily participate in [specify any suitable program or training that addresses factors specific or related to the prisoner’s offending behaviour or any other suitable program or training for any purpose including for employment, educational, cultural or personal development purposes] AND, if you are assessed as suitable, participate in that program or training.

22) You must undertake unpaid community work as directed by a community corrections officer or the Regional Manager, unless you are employed or participating in [program or training specified under term and condition 21].

23) You must not reside any night at [specify place of excluded residence] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].

24) You must reside each night at [specify place of required residence] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].

24 Corrections Act 1986 s.74(4)(b) and Corrections Regulations 2009 r.83B.
25) You must not contact, directly or indirectly, [specify person or class of person or both] without being under the supervision of a person or persons approved in writing by the [*Regional Manager/Adult Parole Board].

The Board has the power to impose a condition not specified above. This is done by the insertion of a free text condition as condition 26.25 The Board may also order (as condition 27) that the parolee’s compliance with a condition be electronically monitored.26 For example, the Board may order that the parolee’s compliance with abstinence from alcohol (under condition 11) be monitored by the use of Secure Continuous Remote Alcohol Monitoring (SCRAM). The Board may also order that compliance with a geographical restriction be monitored by the use of Global Positioning System monitoring.

5.6.3 Intensive parole period

Finally, the Board may specify that one or more of conditions 11 to 27 are subject to an intensive parole period.27 The conditions in relation to which this is most commonly done are:

- Condition 14. This condition requires the parolee to report to their supervising community corrections officer. The Board must specify the frequency of such reporting, which is typically twice weekly, and the duration, which is commonly three to four months.

- Condition 21. This condition requires the parolee to undergo assessment for, and if they are assessed as suitable, to participate in any suitable program or training.

- Condition 22. This condition requires the parolee to undertake unpaid community work as directed by a community corrections officer or the Regional Manager, unless the parolee is employed or is participating in a program or training under condition 21.

The intensive parole period can be for any length of time. It is commonly for three to four months. While no single factor is decisive, a shorter or longer period may be appropriate depending on:

- the nature and level of the parolee’s risk
- the parolee’s level of compliance with any previous parole order or other order supervised by Community Correctional Services (such as a community corrections order, a community based order or an intensive correction order).
- the degree of the parolee’s transition needs.

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25 Corrections Regulations 2009 Schedule 4, Form 1.
26 Corrections Act 1986 s.74(4), (5A) and (5B) and Corrections Regulations 2009 Schedule 4, Form 1.
27 Corrections Regulations 2009 r.83C.
6 Cancellation of parole

6.1 General principles

Section 77(1) of the Corrections Act 1986 provides the Board with the power to cancel parole at any time before the end of the parole period. On cancelling parole, the Board will issue a warrant for Victoria Police to arrest the parolee and to return them to custody.

Importantly, the power to cancel parole is independent of the existence of a breach of a parole condition.

The paramount consideration for the Board in deciding whether to cancel parole is the safety and protection of the community.

As explained earlier, release on parole is a concession made when the Board decides that the benefits accruing to the community by way of rehabilitation and the recognition of mitigating factors outweigh the danger to the community of relaxing the requirement of imprisonment. Accordingly, the Board should cancel parole if the risks of the offender remaining on parole have come to outweigh the benefits of the offender remaining on parole.

In many cases, this change in the risk/benefit equation will have become apparent because the offender has breached one or more conditions of the parole order; but the Board should cancel parole if it becomes aware that the risk has escalated to an unacceptable level, even if the offender has not technically breached any particular condition.

In some cases, a parolee’s failure to comply with parole may be sufficiently serious to merit cancellation even in the absence of any evidence of an escalation of risk. The non-compliance may indicate that the community is deriving no benefit from the parole as the offender is making no effort to further their rehabilitation and their persistent or serious failure to comply is undermining the credibility of the parole system.

Conversely, there can be cases in which the parolee has breached one or more parole conditions but the benefits to the community of the parolee remaining on parole continue to outweigh the risks.

6.2 The offence of breach of a prescribed condition of parole

Section 78A of the Corrections Act 1986 makes it a summary offence (punishable by up to three months’ imprisonment) to breach a prescribed term or condition of a parole order without reasonable excuse.

The conditions that are prescribed for the purposes of this offence are:

Mandatory conditions

1. You must not break any law (by the commission of an offence punishable by imprisonment).
8. You must attend in person at a community corrections centre as directed in writing by a community corrections officer (except if the direction to attend is in relation to a variation of the parole order).
9. You must not leave Victoria without the written permission of the Regional Manager.

Special conditions

11. You must not consume any alcohol.
15. You must not enter in or be within [specify vicinity] of [specify area] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].
16. You must remain in [specify area] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].
17. You must remain at [specify place] between [*am/pm] and [*am/pm] each day unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].
19. You must not contact, directly or indirectly, [specify person or class of person or both].
20. You must not enter in or be within [specify vicinity] of [specify place] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].
23. You must not reside any night at [specify place of excluded residence] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].
24. You must reside each night at [specify place of required residence] unless otherwise approved in writing by the [*Regional Manager/Adult Parole Board].

25. You must not contact, directly or indirectly, [specify person or class of person or both] without being under the supervision of a person or persons approved in writing by the [*Regional Manager/Adult Parole Board].

If police suspect on reasonable grounds that a parolee has breached any of these conditions, the police may arrest the parolee. The police must (or, in the case of a suspected breach of condition 8, may) detain the parolee in custody and notify the Board within 12 hours.

On receiving this notification, a member of the Board who is rostered to be on call must decide whether the detention should cease or should continue pending consideration of the breach by the Board.

If the decision is that the detention should continue, the Board requests Community Correctional Services to prepare a report about the parolee and the alleged breach for the Board’s consideration. Ordinarily the Board will consider the breach on the first business day after the detention in order to decide whether or not to cancel the parole.

The Board has no role in any prosecution of the parolee for the offence of breach of parole.

6.3 Further offending while on parole

The Board will occasionally be advised that police are investigating a parolee in relation to suspected further offending, but that police have not yet charged the parolee with any offence. In such cases, the Board will request to be advised of any further developments in the investigation. Depending on all of the circumstances, the Board may consider whether to cancel parole prior to the filing of charges if the information indicates a serious and imminent risk to the community.

6.3.1 Parolee charged with further offending

If a parolee is on parole in respect of a serious violent offence (see Appendix 1) or a sexual offence (see Appendix 2) and:

- they are charged with a new offence that is alleged to have been committed while on parole; and
- the alleged offence is a sexual offence or violent offence (note: this is broader than the definition of serious violent offence)—

the Board must cancel the parole unless it is satisfied that circumstances exist that justify the continuation of the parole.

In any other case, if a parolee is charged with an offence that is punishable by imprisonment and is alleged to have been committed during the parole period, the Board must consider whether to cancel the parole order or to vary its terms and conditions.

In its 2011 *Review of the Adult Parole System*, the Sentencing Advisory Council explained that:

By cancelling parole, the Board is not determining guilt and punishing the parolee for the further offence. Rather, the existence of new charges is a factor that the Board should take into account in reassessing the risk of the offender remaining on parole.

In doing so, the Board must make an assessment that is analogous to the assessment that a court must make in deciding whether to refuse bail to a person charged with an offence on the basis that the person poses an unacceptable risk of committing further offences while on bail.

In that context, the assessment of whether the risk is unacceptable depends on not just the likelihood that the person will commit further offences but also the length of time before the charges will be determined and the strength of the prosecution case in relation to those charges.

In the context of allegations of further offending against a parolee, an additional consideration is that, unlike an applicant for bail, the parolee is not starting from a point of being fully at liberty, but is already under supervision and conditions for serious prior offending.

Accordingly, the new charge or charges require the Board to reassess the relative risks and benefits of the offender remaining on parole in light of the new information available at the time (ordinarily this will be the police statement and any report from Community Correctional Services). This decision will depend heavily on the prior level of risk, the gravity of the new charge or charges and the plausibility of the charges based on the information available to the Board. However, the paramount consideration of community safety means that it may be appropriate to cancel parole even if there is a chance that at a later stage the charges may be withdrawn or that the parolee may have a defence. If that were to

29 *Corrections Act 1986*, s. 77(2).
occur, the Board could consider directing that some or all of the time spent on parole be counted as
time served (see the section on time served later in this chapter) and/or re-paroling the offender.

6.3.2 Parolee found guilty of further offending

If a parolee is found guilty of an offence that is punishable by imprisonment and that was committed
during the parole period, the Board must cancel the parole order unless it is satisfied that
circumstances exist that justify the continuation of the parole (in which case, the Board must consider
whether to vary its terms and conditions).

If the parolee was on parole in respect of a serious violent offence or a sexual offence and a court finds
them guilty of a new offence, which is a sexual offence or violent offence and was committed on
parole, the parole is cancelled automatically.\(^{31}\) This does not require any decision by the Board;
although the Board has the power to revoke the cancellation if it considers that there are exceptional
circumstances.\(^ {32}\)

Automatic cancellation of parole also operates in relation to any parolee who is sentenced, while on
parole, to another prison sentence.\(^ {33}\)

Ordinarily the Board’s jurisdiction over a person expires once their sentence expires; however, the
Board has the power to cancel parole after the sentence to which it relates has expired if the person is
sentenced to a prison term in respect of one or more offences that were committed during the parole
period.\(^ {34}\)

For example, Nick is released on parole on 1 January 2014. His parole expires on 1 July 2014. However, in August 2014 police discover that he committed an offence in June 2014 (during his parole
period). On 15 August, they charge him with that offence and in February 2015, the court finds him
guilty of the offence and sentences him to a term of imprisonment. Even though his parole expired
seven months earlier, the Board can now consider whether to cancel his parole. If the Board decides to
cancel the parole, none of the six months he spent on parole will count as having been served, and
(unless the Board exercises its discretion to declare some or all of it time to count) he will have to serve
it again in prison in addition to the sentence for the new offence.

6.4 Particular considerations regarding relapse into drug use

The most common situation in which the Board cancels parole is when the parolee has relapsed into
drug use.

If a parolee uses illicit drugs, they breach the condition not to break any law, as use of a drug of
dependence is an offence under the Drugs Poisons and Controlled Substances Act 1981. However,
overcoming a longstanding drug addiction can involve cycles of relapse and recovery. Deciding
whether to cancel upon evidence of a relapse involves consideration of:

- **The nature and gravity of the parolee’s risk generally.** If the parolee’s risk is moderate or high and
  there is a close relationship between their drug use and offending behaviour, the Board is very
  likely to conclude that the risk outweighs the potential benefit of seeking to assist the parolee to
  recover from the relapse while still in the community, particularly if the parolee is not productively
  engaging in drug treatment.

- **The severity of the relapse.** The Board will consider the type or types of drugs that the parolee
  appears to be using, how frequently the parolee appears to be using and the apparent effect on
  the parolee of the drug use. In particular, the Board will examine whether the use appears to be
  associated with an escalation of other risk factors, such as tension in or breakdown of the
  parolee’s personal relationships, financial stress, housing instability, erratic behaviour and
  increasing carelessness about personal grooming.

- **The parolee’s motivation to engage in drug treatment and ability to recover from the relapse.**
  Remaining on parole is likely to be futile if the parolee is unable to recover from the relapse and to
  cease use for a significant period.

- **The existence of any protective factors.** If the parolee is productively employed and has stable
  housing, cancellation of parole may mean that they will lose that employment or housing. This will
  have limited relevance if the nature and level of risk posed by the parolee is high but will be
  significant considerations in a case where the risk is lower. This is because the overall risk to the
  community may be greater if the parolee is returned to prison, losing their employment and
  housing, and is then unemployed and homeless or in accommodation that presents substantial

\(^{31}\) Corrections Act 1986, s.77(6)
\(^{32}\) Corrections Act 1986, s.77A(2)
\(^{33}\) Corrections Act 1986, s.77(6A)
\(^{34}\) Corrections Act 1986, s.77(7)
risks (for example, with other offenders) on subsequent release from prison at the end of their sentence.

- The capacity to continue to monitor the parolee. If a parolee has lost contact with Community Correctional Services, the Board will usually have no option but to cancel the parole. But if the parolee is continuing to attend appointments and drug testing and is engaging with drug treatment, the Board may consider that in all of the circumstances the benefits of remaining on parole outweigh the risks.

### 6.5 Cancellation when taken into custody in relation to previous offences

If a parolee is taken into custody for other matters (for example, if the parolee is remanded to face a charge for a prior offence in Victoria or is extradited to another state or territory to face charges there), the Board will consider whether to cancel their parole order under section 77(1) of the Corrections Act 1986.

Each case is decided on its merits.

If the charge or offence becomes known after the Board had decided to release the prisoner on parole, the new information may require a reassessment of the risk posed by the prisoner. If the Board does not cancel the parole prior to the resolution of the charge, parole will automatically be cancelled under section 77(6A) of the Corrections Act 1986 if the charge results in a new sentence of imprisonment in Victoria.

In some cases, prior to deciding to release the prisoner on parole, the Board will be informed that the prisoner may be extradited to face charges interstate, or to serve an outstanding sentence interstate. In such cases, if the Board decides to release the prisoner on parole, the Board will await the outcome of any extradition proceedings. If the parolee is extradited, the Board may decide to cancel the parole.

The effect of cancelling parole in such cases is to prevent the Victorian sentence from operating while the offender is in custody interstate.

Once the interstate matters are finalised and the offender is released from custody in relation to them, they are liable to be arrested and taken into custody for the cancelled parole, at which time the Board can consider whether to re-parole the prisoner.

### 6.6 The provision of reasons for cancellation

Section 74(8) Corrections Act 1986 provides that as soon as possible after cancelling a parole order the Board must give a copy of the determination to the offender and that the determination must include the reasons for the cancellation.

### 6.7 Directions regarding time served or ‘street time’

A prisoner who is released on parole is treated as still serving a sentence of imprisonment while on parole.

As explained in Chapter 3 of this manual, a prisoner obtains the privilege of serving part of their sentence of imprisonment in the community because:

- they have served the minimum period that a court has determined that justice requires in order to satisfy sentencing purposes such as punishment, denunciation and deterrence; and

- the Board has determined that the benefit to the community of a supported and supervised transition back to life in the community outweighs the risk of reoffending during the parole period.

Once the parole order expires, they are treated as having served the sentence.\(^{35}\) In other words, every day in the community on parole is treated as having been equivalent to a day in prison.

However, if the parole order is cancelled, none of the period spent on parole is regarded as time served in respect of the sentence unless the Board specifically directs that some or all of that period (commonly referred to as ‘street time’) is to be regarded as time served.\(^{36}\)

The Corrections Act 1986 does not specify any criteria for deciding whether or when to make such a direction. The practice of the Board is not to make any direction unless, on request by the prisoner or on a review of the file by the Board, it is satisfied that the prisoner had been compliant for a significant period and that it is appropriate to do so in all of the circumstances of the case.

\(^{35}\) Corrections Act 1986, s.76

\(^{36}\) Corrections Act 1986, ss.77B(2) and 77C
6.8 Re-parole after cancellation

Section 78 of the *Corrections Act 1986* enables the Board to release an offender on parole after cancellation.

Since 1 March 2015, the Board has only considered re-paroling a prisoner if the prisoner makes an application for re-parole.

When the parolee returns to prison, they will be given an application form and information about the process for applying.

As with the process for applying for parole, the Case Management Review Committee in the prison will meet with the prisoner to discuss the application for re-parole. The Case Management Review Committee will encourage the prisoner to reflect on the factors that led to the parole being cancelled and on what the prisoner may be able to do to avoid such factors arising again (for example, further drug treatment in prison to avoid relapse into drug use again) and on the appropriate timing of an application for re-parole.

Upon receiving the application for re-parole, the Board may decide:

- **To proceed to parole assessment.** This may be done if there is appropriate time remaining on the prisoner’s sentence (that is, not unduly long given the prisoner’s past performance on parole) and the prisoner does not have any outstanding treatment in prison or is close to completing relevant treatment. If the Board decides that the case should proceed to parole assessment, Corrections Victoria will prepare a Parole Suitability Assessment – Re-parole Report for the Board to consider.

- **To defer the application.** This may be done if the Board considers that the prisoner needs to remain in prison longer in order to complete further programs or to demonstrate improved behaviour (for example, a sufficient period of negative drug test results), or to provide for a realistic period of parole having regard to all of the circumstances in the case, including the prisoner’s parole history. If the Board decides to defer the application, it will specify a time after which the prisoner may re-submit their application and the preparation of a Parole Suitability Assessment – Re-parole Report will be deferred until after that time.

- **To deny re-parole.** This may be done if there is insufficient time remaining on the sentence for parole; or if the prisoner’s parole history is very poor and there is insufficient time to mitigate this through positive performance in programs, a sustained period of good behaviour in prison and appropriate release planning.

If parole was cancelled and the prisoner was convicted of an offence that is punishable by imprisonment and that was committed during the parole period, the Board must not re-parole the prisoner until they have served a further term of imprisonment equal to half of the parole period remaining at the time the parole was cancelled, unless the Board is satisfied that circumstances exist which justify releasing at an earlier time.

As with the decision to grant parole, the safety and protection of the community is the paramount consideration for the Board in deciding whether to re-parole a prisoner. The Board must consider whether the benefit to the community of a further release on parole and any relevant mitigating factors outweigh the risk to the community of relaxing the requirement of imprisonment.

In deciding whether to re-parole a prisoner, the Board will have regard to the same range of considerations as set out in Chapter 5 above in relation to the initial grant of parole. However, at the re-parole stage even greater weight is placed on the prisoner’s past performance on parole. The Board will carefully consider the level of the prisoner’s compliance, the reasons why the parole was cancelled and the extent to which plans for re-parole sufficiently address those factors.

6.9 Revocation of parole

Section 74(2) of the *Corrections Act 1986* provides that the Board may revoke a parole order before the prisoner is released under the order.

This can occur if, in the time between when the Board makes the order and when the prisoner is to be released, the Board receives new information, such as:

- that the prisoner has produced a positive drug test in prison
- that the prisoner has been involved in a serious incident in prison (for example, an assault on a prison officer or another prisoner)

37 *Corrections Act 1986*, section 78(2) and (3). If the prisoner was serving a life sentence, the minimum period is three years from the time the parole was cancelled.
that the accommodation to which the prisoner is to be released is no longer available or appropriate.

Section 74(8) provides that as soon as possible after revoking a parole order the Board must give a copy of the determination to the offender, which must include the reasons for the revocation.
7 Transfer of offenders

7.1 Young offenders

Victoria has a unique approach to sentencing young offenders. Under the ‘dual track’ system, offenders aged 18 or over at the time of their offence and under 20 at the time of their sentence may be sentenced to detention in an adult prison or in a youth justice centre in certain circumstances.

This means that Youth Justice Centres, which are managed by the Department of Human Services, can contain offenders between the ages of 10 and 21 (depending on the length of their sentence and whether arrangements are made to transfer them to adult prison).

The Children Youth and Families Act 2005 provides the Board with jurisdiction to transfer offenders aged under 21 who are detained in an adult prison to a youth justice centre and to receive young offenders aged 16 or above from the youth justice system.

7.1.1 Transfers from a youth justice centre to adult prison

Section 467 of the Children Youth and Families Act 2005 provides that:

The Youth Parole Board may, on the application of the Secretary to the Department of Human Services, direct a person aged 16 years or more, sentenced as a child by the Children’s Court or any other court to be detained in a YJC, be transferred to a prison to serve the unexpired portion of the period of their detention as imprisonment.

The Youth Parole Board notifies the Board of any impending transfers from a youth justice centre to a prison and provides the Board with a copy of the Youth Parole Board’s file on the offender.

Upon transfer, the offender falls within the jurisdiction of the Board and is immediately eligible for parole, unless they are concurrently serving an adult prison term that does not have a non-parole period.

7.1.2 Transfers from adult prison to a youth justice centre

Section 471 of the Children Youth and Families Act 2005 provides that:

If the Adult Parole Board considers it appropriate in the interests of a person under the age of 21 years imprisoned in a prison, to transfer that person to a youth justice centre, the Adult Parole Board may, if satisfied, after considering a report from the Secretary to the Department of Human Services that—

(a) that person is suitable for detention in a youth justice centre and

(b) a place is available in a youth justice centre—

direct that person be transferred to a youth justice centre.

7.2 Transfers of parole between states and territories

A mandatory condition of every parole order is that the prisoner must not leave Victoria without the written permission of the Regional Manager.

If the prisoner wishes to travel elsewhere in Australia for a temporary period, the Regional Manager may grant permission to do so. However, if the prisoner wishes to move to another state or territory for an indeterminate period or for the remainder of their order, it is necessary to obtain a formal transfer of the parole order to that state or territory.

7.2.1 Parole orders national mutual recognition scheme

Under a national scheme, Australian states and territories have enacted complementary legislation to enable the transfer of parole orders from one state or territory to any other state or territory that is part of the scheme.

The Parole Orders (Transfer) Act 1983 is the relevant legislation in Victoria.

7.2.2 Parole transfers out of Victoria

In order for any Victorian parole order to be transferred to another state or territory, Community Correctional Services must submit a report to the delegate of the Minister for Corrections recommending the transfer.

The Minister’s delegate may then request that the relevant authority in the receiving state or territory approve a formal transfer. Parolees should not travel from Victoria prior to that formal approval.
Once a transfer has been approved and registered in the receiving state or territory, the order ceases to be a Victorian parole order and becomes a parole order of that state or territory. The relevant community correctional service of that state or territory is responsible for supervision of the order, and in the event of non-compliance or further offending, the parole authority in that state or territory is responsible for decisions about whether to cancel the order.

An agreement between the states has been made to process all transfers as soon as possible. Transfers may be delayed if the offender has:

- indicated they may relocate again
- committed additional offences
- repeatedly failed to comply with conditions or directions
- failed to report as required.

In the event that the receiving state or territory refuses to formally register a Victorian parole order, the parolee must remain in Victoria, although that does not preclude the parolee from making further applications in the future.

7.2.3 Parole transfers to Victoria

When an offender requests a transfer to Victoria, it is the responsibility of the interstate authority to make arrangements with Corrections Victoria for the transfer to occur.

For a transfer from interstate to Victoria to be formalised, and for Victoria to assume jurisdiction over the offender, the interstate parole board is required to initiate the process. This process is achieved by forwarding a written request to the Transfers Coordinator, Corrections Victoria, and sending all the relevant documentation relating to the offender. Upon receipt of a transfer request the secretariat forwards all the necessary documentation to the delegate (Commissioner, Corrections Victoria) for approval.

Upon approval by the delegate, the Registrar – Transferred Parole Orders prepares documentation and submits it to the Board for noting.

Section 9 of the Parole Orders (Transfer) Act 1983 provides that when a parole order originating interstate is registered, Victorian law applies as if the sentence was imposed by a Victorian court and the parole order was made in Victoria. The Board will exercise its power under section 74(5) of the Corrections Act 1986 to replace the existing conditions with the relevant Victorian conditions as set out in the Corrections Regulations 2009.

7.3 Permission for parolees to travel overseas

If a parolee wants to travel overseas, they must obtain the permission of the Board. Community Correctional Services will submit a report to the Board containing travel details, including an itinerary and the reason for the trip. If the Board grants permission to travel, it will specify the date by which the parolee must return.

In deciding whether to grant such permission, the Board will consider factors such as (but not limited to):

- the parolee’s history of complying with parole orders and court orders
- any outstanding court matters
- the basis for the request
- whether there are any exceptional circumstances (such as the death or sudden very serious illness of a family member).

7.4 Extradition back to Victoria

If a Victorian parolee absconds interstate, the Board will cancel the parole and will decide whether to request that Victoria Police extradite the offender back to Victoria.

The Board considers each case of extradition independently and bases its decisions on the following:

- length of the unexpired portion of parole
- nature of the offence or offences for which the parolee was serving a sentence
- the parolee’s criminal history (in Victoria and interstate)

38 The Secretary of the Board also acts in the capacity of Registrar – Transferred Parole Orders.
the parolee’s performance on any previous parole orders.

If in all of the circumstances of the case the Board decides not to request the extradition of the offender, the warrant for arrest issued by the Board when cancelling the parole would remain in force and could be executed if the offender were to return to Victoria.

7.5 **Removal from Australia**

If a person is not an Australian citizen and is in Australia in reliance on a visa, the Minister for Immigration and Border Protection (or their delegate) has the power to cancel the visa and to remove the person from Australia.

A visa may be cancelled on the ground that the presence of the person in Australia is or may be a risk to the health, safety or good order of the Australian community or a segment of the Australian community or to the health and safety of an individual. In addition, since December 2014, in certain circumstances a visa can be cancelled if the holder of the visa has been convicted of an offence.

If the Minister or their delegate proposes to cancel a visa, they must notify the visa holder and give that person an opportunity to respond. If the visa is cancelled, the person who held the visa has certain rights to have the decision reviewed or to appeal against the decision.

If the person whose visa is cancelled is currently serving a sentence in prison, they will not ordinarily be removed from Australia until they are released from prison.

If they are released from prison on parole, they can be removed from Australia even though they still have a substantial portion of their sentence still to serve on parole.

When the Department of Immigration and Border Protection is considering whether to cancel the visa of a prisoner, the Department will ordinarily contact Corrections Victoria and/or the Board to advise that the prisoner is or may be liable to cancellation of their visa.

The Board will consider each such case on its merits.

If it is otherwise appropriate to release the prisoner on parole, having regard to the considerations set out in Chapter 5 of this manual (for example, the prisoner has satisfactorily completed all necessary programs in prison), the Board may make an order for release on parole even though the removal from Australia means that the prisoner would not be in a position to complete the requirements of parole.

In such cases, the Board would not ordinarily require the prisoner to provide an address for parole as upon release the prisoner will be taken to the Maribyrnong Immigration Detention Centre pending removal. The Board requires Corrections Victoria to report to it to confirm that the person was in fact removed from Australia.

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39 *Migration Act 1958* (Cth), s.116(1)(e).
40 *Migration Act 1958* (Cth), s.116(1)(g) and *Migration Regulations 1994* (Cth) 2.43(1)(oa). In the case of a bridging visa, *Migration Regulations 1994* (Cth) 2.43(1) (p)(ii) and (q) provide for cancellation in certain circumstances if the visa holder is charged with or is under investigation for an offence.
41 *Migration Act 1958* (Cth), ss 119-121 and Part 5.
### Appendix 1  
**Serious Violent Offences (in alphabetical order)**

<table>
<thead>
<tr>
<th>Offence</th>
<th>Statutory reference for offence</th>
<th>Provision defining it as a serious violent offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attempt (to commit any SVO)</td>
<td>Crimes Act 1958, s.321M</td>
<td>Corrections Act 1986, s.77(9)(d)</td>
</tr>
<tr>
<td>Attempting to choke, etc. in order to commit an indictable offence</td>
<td>Crimes Act 1958, s.20 (repealed)</td>
<td></td>
</tr>
<tr>
<td>Aggravated burglary</td>
<td>Crimes Act 1958, s.77</td>
<td>Corrections Act 1986, s.77(9)(b)(ii)</td>
</tr>
<tr>
<td>Armed robbery</td>
<td>Crimes Act 1958, s.75A</td>
<td>Corrections Act 1986, s.77(9)(b)(i)</td>
</tr>
<tr>
<td>Arson causing death</td>
<td>Crimes Act 1958, s.197A</td>
<td>Corrections Act 1986, s.77(9)(b)(iii)</td>
</tr>
<tr>
<td>Causing serious injury intentionally in circumstances of gross violence</td>
<td>Crimes Act 1958, s.15A</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Causing serious injury recklessly in circumstances of gross violence</td>
<td>Crimes Act 1958, s.15B</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Causing serious injury intentionally</td>
<td>Crimes Act 1958, s.16</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Causing serious injury recklessly</td>
<td>Crimes Act 1958, s.17</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Child homicide</td>
<td>Crimes Act 1958, s.5A</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Conspiracy (to commit any SVO)</td>
<td>Crimes Act 1958, s.321</td>
<td>Corrections Act 1986, s.77(9)(d)</td>
</tr>
<tr>
<td>Defensive homicide</td>
<td>Crimes Act 1958, s.4 (repealed)</td>
<td>Has now been omitted from Sentencing Act 1991 Sch.1 cl.2(b) and hence from Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>False imprisonment</td>
<td>Common law</td>
<td>Corrections Act 1986, s.77(9)(c)</td>
</tr>
<tr>
<td>Incitement (to commit any SVO)</td>
<td>Crimes Act 1958, s.321G</td>
<td>Corrections Act 1986, s.77(9)(d)</td>
</tr>
<tr>
<td>Inflicting grievous bodily harm</td>
<td>Crimes Act 1958, s.19A (repealed)</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Intentionally causing grievous bodily harm or shooting, etc. with intention to do grievous bodily harm or to resist or prevent arrest</td>
<td>Crimes Act 1958, s.17 (repealed)</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Intentionally causing a very serious disease</td>
<td>Crimes Act 1958, s.19A</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>Common law</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>Crimes Act 1958, s.63A</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Making demand with threat to kill or injure or endanger life</td>
<td>Crimes Act 1958, s.35B (repealed)</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
<tr>
<td>Manslaughter</td>
<td>Common law</td>
<td>Corrections Act 1986, s.77(9)(a)</td>
</tr>
</tbody>
</table>
## Offence

<table>
<thead>
<tr>
<th>Offence</th>
<th>Statutory reference for offence</th>
<th>Provision defining it as a serious violent offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>Common law</td>
<td>Corrections Act 1986, s.77(9)(a) (Sentencing Act 1991 Sch.1 cl.2(a))</td>
</tr>
<tr>
<td>Threats to inflict serious injury</td>
<td>Crimes Act 1958, s.21</td>
<td>Corrections Act 1986, s.77(9)(a) (Sentencing Act 1991 Sch.1 cl.2(c)(v))</td>
</tr>
<tr>
<td>Threats to kill</td>
<td>Crimes Act 1958, s.20</td>
<td>Corrections Act 1986, s.77(9)(a) (Sentencing Act 1991 Sch.1 cl.2(c)(iv))</td>
</tr>
</tbody>
</table>

The definition of ‘serious violent offence’ in section 77(9)(e) of the *Corrections Act 1986* also includes any other offence that has the same elements as any of these offences (this would include comparable offences committed against interstate or overseas laws).
## Appendix 2  Sexual Offences

### Victorian sexual offences

<table>
<thead>
<tr>
<th>Offence</th>
<th>Statutory reference for offence</th>
<th>Provision defining it as a sexual offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any offence against the <em>Crimes Act 1958</em> that involves sexual penetration</td>
<td>n/a</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (1)</td>
</tr>
<tr>
<td>Compelling sexual penetration</td>
<td><em>Crimes Act 1958 s.38A</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (2)</td>
</tr>
<tr>
<td>Indecent assault</td>
<td><em>Crimes Act 1958 s.39</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (5)</td>
</tr>
<tr>
<td>Assault with intent to rape</td>
<td><em>Crimes Act 1958 s.40(1)</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (6)</td>
</tr>
<tr>
<td>Indecent act with child under 16</td>
<td><em>Crimes Act 1958 s.47(1)</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (7)</td>
</tr>
<tr>
<td>Persistent sexual abuse of child under 16</td>
<td><em>Crimes Act 1958 s.47A</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (7A)</td>
</tr>
<tr>
<td>Indecent act with 16 or 17 year old child</td>
<td><em>Crimes Act 1958 s.49(1)</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (8)</td>
</tr>
<tr>
<td>Facilitating sexual offences against children</td>
<td><em>Crimes Act 1958 s.49A</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (8A)</td>
</tr>
<tr>
<td>Grooming for sexual conduct with child under 16</td>
<td><em>Crimes Act 1958 s.49B(2)</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (8B)</td>
</tr>
<tr>
<td>Indecent act with person with a cognitive impairment by providers of medical or therapeutic services</td>
<td><em>Crimes Act 1958 s.51(2)</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (9)</td>
</tr>
<tr>
<td>Indecent act with person with a cognitive impairment by providers of special programs</td>
<td><em>Crimes Act 1958 s.52(2)</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (10)</td>
</tr>
<tr>
<td>Administration of drugs, etc.</td>
<td><em>Crimes Act 1958 s.53</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (11)</td>
</tr>
<tr>
<td>Occupier etc. permitting unlawful sexual penetration</td>
<td><em>Crimes Act 1958 s.54</em></td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (11)</td>
</tr>
<tr>
<td>Offence</td>
<td>Statutory reference for offence</td>
<td>Provision defining it as a sexual offence</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Abduction or detention</td>
<td>Crimes Act 1958 s.55</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (12)</td>
</tr>
<tr>
<td>Abduction or detention under the age of 16</td>
<td>Crimes Act 1958 s.56</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (13)</td>
</tr>
<tr>
<td>Procuring sexual penetration by threats or fraud</td>
<td>Crimes Act 1958 s.57</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (14)</td>
</tr>
<tr>
<td>Procuring sexual penetration of a child</td>
<td>Crimes Act 1958 s.58</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (15)</td>
</tr>
<tr>
<td>Bestiality</td>
<td>Crimes Act 1958 s.59</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (16)</td>
</tr>
<tr>
<td>Sexual servitude</td>
<td>Crimes Act 1958 s.60AB</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (17)</td>
</tr>
<tr>
<td>Aggravated sexual servitude</td>
<td>Crimes Act 1958 s.60AC</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (18)</td>
</tr>
<tr>
<td>Deceptive recruiting for commercial sexual services</td>
<td>Crimes Act 1958 s.60AD</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (19)</td>
</tr>
<tr>
<td>Aggravated deceptive recruiting for commercial sexual services</td>
<td>Crimes Act 1958 s.60AE</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (20)</td>
</tr>
<tr>
<td>Loitering near schools etc.</td>
<td>Crimes Act 1958 s.60B(2)</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (21)</td>
</tr>
<tr>
<td>Production of child pornography</td>
<td>Crimes Act 1958 s.68(1)</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (22)</td>
</tr>
<tr>
<td>Procurement of minor for child pornography</td>
<td>Crimes Act 1958 s.69</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (23)</td>
</tr>
<tr>
<td>Possession of child pornography</td>
<td>Crimes Act 1958 s.70(1)</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (24)</td>
</tr>
<tr>
<td>Sexual performance involving a minor</td>
<td>Crimes Act 1958 s.70AC</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (25)</td>
</tr>
<tr>
<td>Offence</td>
<td>Statutory reference for offence</td>
<td>Provision defining it as a sexual offence</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>---------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Burglary (in circumstances where the offender entered the building or</td>
<td>Crimes Act 1958 s.76</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (27))</td>
</tr>
<tr>
<td>part of the building as a trespasser with intent to commit a sexual or</td>
<td></td>
<td></td>
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<tr>
<td>indecent assault)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aggravated burglary (in circumstances where the offender entered the</td>
<td>Crimes Act 1958 s.77</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (28))</td>
</tr>
<tr>
<td>building or part of the building as a trespasser with intent to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>commit a sexual or indecent assault)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Causing or inducing a child to take part in sex work</td>
<td>Sex Work Act 1994, s.5(1)</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (29))</td>
</tr>
<tr>
<td>Obtaining payment for sexual services provided by a child</td>
<td>Sex Work Act 1994, s.6(1)</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (30))</td>
</tr>
<tr>
<td>Agreement for provision of sexual services by a child</td>
<td>Sex Work Act 1994, s.7(1)</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (31))</td>
</tr>
<tr>
<td>Allowing child to take part in sex work</td>
<td>Sex Work Act 1994, s.11(1)</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (32))</td>
</tr>
<tr>
<td>Publication or transmission of child pornography</td>
<td>Classification (Publications,</td>
<td>Corrections Act 1986, s.77(9) (Serious Sexual Offenders (Detention and Supervision) Act 2009 Sch.1 (33))</td>
</tr>
<tr>
<td></td>
<td>Films and Computer Games)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Enforcement) Act 1995, s.57A</td>
<td></td>
</tr>
</tbody>
</table>

Note: the definition of ‘sexual offence’ in s.77(9) of the Corrections Act 1986 also includes a range of offences against Commonwealth law listed in Schedule 1 of the Serious Sexual Offenders (Detention and Supervision) Act 2009.

It also includes any offence against a provision of an Act that was amended or repealed before the commencement of the Serious Sexual Offenders (Detention and Supervision) Act 2009 of which the necessary elements at the time it was committed consisted of elements that constitute any of the offences listed in the table above.

Finally, it also includes:

- any offence an element of which it to commit any of the offences defined as a sexual offence
- any offences of attempting to commit, or of conspiracy or incitement to commit, any of the offences defined as sexual offences.
- any offences committed outside of Victoria the necessary elements of which consist of elements that constitute an offence defined as a sexual offence.