

Regulatory Impact Statement

Parole Amendment Bill – additional issues

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Corrections, and supplements the earlier RIS prepared for the Parole Amendment Bill.

The RIS provides an analysis of options to remove procedural requirements for unattended hearings. It also outlines proposed technical amendments to clarify that video conferences can be used for the full range of hearings that the New Zealand Parole Board conducts and to provide a default length of time for standard release conditions for offenders on determinate sentences.

The analysis undertaken on the options to reduce barriers to holding unattended hearings assessed the substantive options against a set of criteria to identify the option that would best address the problem.

The options contained in this RIS align with the Government Statement on Regulation.

10 / 7 / 12

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Status quo

The New Zealand Parole Board and the parole system

- 1 The New Zealand Parole Board (the Board) was established as an independent statutory body under the Parole Act 2002 (the Act). The Board's functions include considering offenders for parole, setting conditions for release and monitoring compliance with those conditions. The Board's paramount consideration is the safety of the community. Other principles guiding the Board's decisions include that:
 - offenders must be provided with information about decisions that concern them and be advised how they may participate in decision-making
 - victims' rights are upheld, and victims' submissions and any restorative justice outcomes are given due weight.
- 2 In 2010-11, the Board held around 5,000 parole hearings, 500 recall hearings, 200 variation of conditions hearings, and 500 hearings where the Board's only role was to set conditions on release as offenders reach their statutory release date.

Unattended hearings

- 3 A panel of three or five Board members conducts each parole hearing. The Act provides for a panel convenor to decide prior to hearing, if it will be attended or unattended by the offender. For this decision to be made the following legislative process must be followed.
 - The offender and victims (among others) are notified that a hearing is pending, and provided opportunity to make submissions on whether the hearing should be attended or unattended.
 - The panel convenor decides if the hearing is to be attended or unattended based on:
 - how often the offender has been considered by the Board for parole
 - the length of time since his or her last attended hearing
 - whether there are efficiencies to be gained by having an attended or unattended hearing
 - whether written submissions indicate there are matters that warrant consideration at an attended hearing
 - relevant cultural and personal factors
 - any other matter that the panel convenor considers relevant.
 - Offender and victims, among others, are notified in writing of type of hearing.
 - The offender can seek a review if the decision is to have an unattended hearing. If a review is sought, another panel convenor decides whether to uphold the decision.

- If the hearing is unattended, the offender must be given an opportunity to be interviewed by a panel member prior to the hearing.
 - At any time before or during the (unattended) hearing, the panel convenor can decide that the hearing must be attended.
- 4 The procedural steps outlined above add significantly to the time taken to prepare for a hearing. To allow sufficient time for each step in the process the Parole Board has advised that the initial call for submissions would need to be undertaken 26 weeks prior to a scheduled hearing, compared to 14 weeks for an attended hearing. As a result, the Board has found that any efficiencies gained by holding an unattended hearing are outweighed by the inherent inefficiencies in the process.
 - 5 In addition, the Board generally prefers to meet with offenders when substantive matters are being decided. Further, the proposals to reduce unnecessary hearings recently approved by Cabinet also mean that the Board is highly likely to want to continue to meet with offenders before making a parole decision. However, there are two exceptions which need to be addressed.
 - 6 The first is when at an attended hearing, the Board identifies additional information that is required before a release decision can be made, such as an updated release address. At present, the Board adjourns the hearing and then holds a further hearing at a later date. Due to logistical limitations this can be up to three months later even for a simple piece of information. There is no option within the legislation to adjourn the attended hearing and hold the remainder without the offender attending.
 - 7 The second exception is when a hearing is for the purpose of setting release conditions only. There are about 500 hearings per year where the only purpose of the hearing is to set release conditions. These hearings are not parole hearings as such because the offender is approaching their statutory release date and must be released so the Board's only role in these circumstances is to set conditions. However, the Act requires these hearings to be held in the same way as parole hearings. This is somewhat inefficient given there is no substantive matter of release to be considered, and release conditions will already have been discussed with the offender as part of the case management process.

Use of video conferences

- 8 Video conferences are a cost effective means for offenders to appear before the Board as they significantly reduce travel and accommodation costs for Board members. Video conferences are increasingly used for parole hearings, and the Act specifies that offenders may “attend other than in person (for instance, by telephone or video link).”
- 9 There are other types of hearings in the Act where offenders usually appear before the Board, but the Act is not explicit that the offender’s attendance may be by video or other means. These are:

- where offenders who are subject to a recall application have the right to appear before the Board when the matter is being determined
 - where an offender has requested to appear when the Board is considering variation and discharge of release conditions
 - where the Board is considering making an order to not release an offender at their release date (this applies only to offenders on a sentences imposed prior to the commencement date of the Parole Act).
- 10 There is a risk, therefore, that if an offender appears at these types of hearings by video or telephone link, the Board could be challenged that the hearing is without statutory authority.

Standard and special release conditions

- 11 When releasing an offender on parole, the Board is required to impose standard release conditions which require the offender to report to a probation officer within a certain period of time, among other things. The Board may also impose special conditions which can include conditions relating to where the offender lives, who they can associate with, and where they can go.
- 12 The Board is required to specify the period of the standard release conditions for offenders on determinate (fixed term) sentences, which cannot be for less than six months, or extend for more than six months after the offender's statutory release date. If an offender is on an indeterminate sentence, standard release conditions apply for the rest of the offender's life. When applying special conditions, the Board must specify the period but they cannot apply for a longer period than the standard release conditions.
- 13 Problems have arisen where the Board either fails to impose standard release conditions or imposes special conditions for a specified period but fails to specify the term of the standard release conditions. This creates administrative difficulties in having to amend the Board's decision and creates a risk that the supervision of paroled offenders will be compromised.

Relevant decisions

- 14 In March 2012, Cabinet agreed to amend the Act to implement the Government's Post-Election Action Plan to introduce screening to enable the New Zealand Parole Board (the Board) to reduce the number of unnecessary parole hearings. The changes outlined in this paper are proposed to be incorporated within the same Bill.
- 15 The Victims of Crime Reform Bill, which is due to be reported back to the House in early July this year, also includes amendments to the Parole Act. These amendments restore provisions that were inadvertently removed by the Parole Amendment Act 2007. The provisions, among other things, restore equivalency between victims' and offenders' rights in relation to unattended hearings.

- 16 While the current framework for unattended hearings is in place, it is important that the amendments in the Victims of Crime Reform Bill are made to restore victims' rights. However, if implemented, the changes proposed in this paper will repeal some of the restored provisions as part of removing the procedural requirements for unattended hearings including. The provisions that will be repealed relate to enabling victims to seek a review of the decision to hold an unattended hearing and to be interviewed by a panel member. Similar provisions relating to offenders will also be repealed.
- 17 In summary, victims will retain their rights in relation to the substantive issues considered at a parole hearing. The proposed changes are, in effect, neutral towards victims as, in practice, parole hearings are generally held as attended hearings.

Objectives

- 18 The purpose of the proposed regulatory change is to improve the efficiency of the parole system by simplifying the process for hearings where an offender may not need to be present. In addition, it seeks to make two technical amendments to:
- confirm that video conferencing can be used for all types of hearings, and
 - automatically impose standard release conditions on all offenders being released on parole and, for offenders on determinate sentences, introduce a default period for standard release conditions to apply that is either
 - the same length as any special conditions imposed, or
 - six months, where no special conditions are imposed.
- 19 The changes are proposed to be incorporated in the Parole Amendment Bill, which is category 3 on Government's 2012 legislative programme (to be passed if possible in 2012).
- 20 There is no intention to change or contravene the guiding principles under which the Board operates. These have proven valuable in upholding community safety, giving due weight to the interests of victims and ensuring prisoners are treated fairly.

Regulatory impact analysis

Streamlining unattended hearings

- 21 Two options were considered for simplifying the process for holding unattended hearings, and both would require legislative change. The two identified options are as follows.

Option one: Remove the existing procedural requirements for unattended parole hearings and make specific provision to enable unattended hearings in situations where they would have clear advantages (preferred option)

- 22 This option would remove the existing procedural requirements for unattended hearings from the Act. This would mean offenders would generally be required to be present at parole hearings, unless he or she declines to attend, or in specific situations allowed for under the Act.
- 23 This option would also make specific provision for two situations where unattended hearings would have clear advantages.
- 24 Firstly, the Board would be enabled, where a parole hearing is adjourned for the purpose of gathering further information, to advise the offender that the remainder of the hearing will be held without the offender being present. This will allow minor outstanding matters, such as the confirmation of a post-release address, to be dealt with without needing to arrange for the offender to be present. Offenders will, however, have the right to appear at that adjourned hearing if they wish.
- 25 Secondly, this option would amend the Act so that offenders need not be present at hearings held solely for the purpose of setting release conditions. The panel convenor would, however, be able to invite the offender to attend, and offenders could opt to appear if they wished to do so.
- 26 These proposals are consistent with international practice, where unattended hearings are most commonly used when a prisoner is likely to be released.

Option two: Simplify the procedural steps for unattended parole hearings and make specific provision to enable unattended hearings in situations where they would have clear advantages

- 27 This option would simplify the existing procedural steps for deciding if a hearing is to be unattended so that the convenor would have discretion to determine if a hearing is attended or unattended solely on the basis of the guidelines set out in the Act. The provision for prisoners, victims and others to make submissions on whether the hearing is attended or unattended would be removed, as well as the provision for the prisoner and victims to review the decision to hold an unattended hearing or be interviewed prior to the hearing.
- 28 This option would also make specific provision for the two situations outlined in paragraphs 24 and 25 where unattended hearings would have clear advantages.

Enabling video conferencing for all types of hearings

- 29 This proposal would amend the Act to make it clear that an offender's attendance at all types of hearings may be other than in person, for example by telephone or video link. The Act will be amended to make this clear for interim or final recall hearings, variation or discharge of conditions hearings, and hearings to consider an order than the offender may not be released.

These changes will ensure that all hearings where the offender may attend are able to be held by video conference, if appropriate. The proposal is intended to remove the risk of legal challenge where these types of hearing are held with the offender attending via video conference. No other options were considered.

Standard and special release conditions

- 30 It is proposed to amend the Act so that standard release conditions are automatically imposed on all offenders being released on parole, and that a default period for those conditions is provided for offenders on determinate sentences. The proposed default period, unless the Board specifies another term is:
- the same term as any special conditions that are imposed, or
 - six months, where no special conditions are imposed.
- 31 Other options were considered, such as extending the default for standard release conditions to sentence end date, or to 12 months. These options were discarded as they were inconsistent with the guiding principle that the Board must not impose release conditions that are more onerous or last longer than is consistent with the safety of the community.

Comparative analysis of options (unattended hearings)

- 32 The following table provides a summary evaluation of the two options for modifying unattended hearings against the problem definition and objectives of the proposal, as well as considering how well the option upholds fairness and natural justice, and victims' interests.

Table 1: Summary evaluation of options¹

	1. Remove the procedural requirements for unattended parole hearings	2. Simplify the procedural requirements for unattended hearings
Simplifies process for setting unattended hearing	Process significantly simplified as unattended hearings would be reserved for limited types of hearings with the decision about the offender's attendance made by the panel convenor or Board.	Some reduction in the time required to prepare for an unattended hearing, although panel convenors are still likely to need to seek information on which to base their decision which would not completely eliminate the additional time required. Process for other limited types of hearings simplified with the decision about the offender's attendance made by panel convenor or Board.
	4	3
Maintains or improves parole hearing efficiency	Potential for reduced costs unless offenders regularly opt in for release on conditions and adjourned	Some efficiency if convenors choose to hold unattended parole hearings but still offset by some additional

¹ Options were graded against criteria using a scale where 1 = does not meet the criteria and 5 = meets the criteria completely.

	1. Remove the procedural requirements for unattended parole hearings	2. Simplify the procedural requirements for unattended hearings
	hearings.	procedural steps; potential for reduced costs unless offenders opt in for release on conditions and adjourned hearings.
	3	3
Upholds fairness and natural justice for prisoners	Offenders retain right to decline to attend. Offenders retain right to attend for release on conditions hearings and adjourned hearings.	Offenders' ability to submit or review on whether parole hearing is unattended removed. Offenders retain right to attend for release on conditions hearings and adjourned hearings.
	5	2
Victims interests upheld	Victims' ability to submit or review on whether parole hearing is unattended removed, but no change to ability to submit on substantive matters.	Victims' ability to submit or review on whether parole hearing is unattended removed, but no change to ability to submit on substantive matters.
	3	3
	15/20	11/20

Consultation

- 33 The following agencies have been consulted and their comments taken into account in the preparation of this paper: Crown Law, Ministries of Foreign Affairs and Trade, Health, Pacific Island Affairs, Social Development, Women's Affairs, New Zealand Parole Board, New Zealand Police, Te Puni Kōkiri and Treasury. The Department of Prime Minister and Cabinet has been informed.

[withheld under section 9(2)(h) of the Official Information Act 1982]

Conclusion and recommendations

- 34 Option two, simplifying procedural requirements for unattended hearings, provides a significantly simplified process for unattended hearings. However, this simplification opens the Board to the potential risk of provoking applications for judicial review of the decision to hold an unattended hearing. This option also does not address some of the administrative complexity, as the panel convenor may still need to seek information so as to be able to make an informed decision on whether a hearing is attended or not. This will mean the process to prepare for an unattended parole hearing may still take some weeks longer than for an attended hearing.

- 35 Option one, which removes the procedural requirements for unattended hearings, significantly reduces the administrative complexity associated with deciding whether a parole hearing is attended or unattended. Offenders will generally be required to be present at parole hearings, unless he or she declines to attend, or in specific situations allowed for under the Act. This will ensure that the legislation supports current and future practice (that is, that parole hearings are generally held as attended hearings) while enabling efficiencies to be gained for specific types of hearings (enabling an offender not to be present at adjourned hearings and hearings for the purpose of setting release conditions).
- 36 Option one is preferred over option two as it meets the objectives of increasing the efficiency of the parole system by simplifying the process for hearings where an offender may not need to be present. The other amendments proposed provide better alignment and clarity within the legislation about the use of video conferencing, and the default period for standard release conditions.

Implementation

- 37 If approved, the proposals in this paper will be included in the Parole Amendment Bill.
- 38 No implementation risks have been identified.

Monitoring, evaluation and review

- 39 The Board reports annually on the number and type of hearings held. It is expected that, following these changes, the Board would break down this information to include the number and proportion of hearings where the offender was not present. The Department will monitor the trends in hearings including breaking down this information by ethnicity and other key demographics where possible.