

Regulatory Impact Statement

Parole Reform Bill

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Corrections.

It provides an analysis of options to introduce screening to reduce unnecessary parole hearings. Reducing unnecessary hearings will improve efficiency, alleviate stress on victims of crime who are concerned about the release of the offender and provide clearer incentives for prisoners to address their offending behaviour.

The proposed option is not intended or expected to impact on the prison population. Actual outcomes will depend on the decisions made by individual Parole Boards.

It is possible that these proposals may generate criticism in relation to arbitrary detention and coerced employment, however the Department is confident that there are sufficient safeguards in the parole system to address these concerns.

All of the policy options contained in this Regulatory Impact Statement align with the Government Statement on Regulation.

18 / 3 / 12

Jane von Dadelszen, General Manager, Strategy, Policy, and Planning,
Department of Corrections

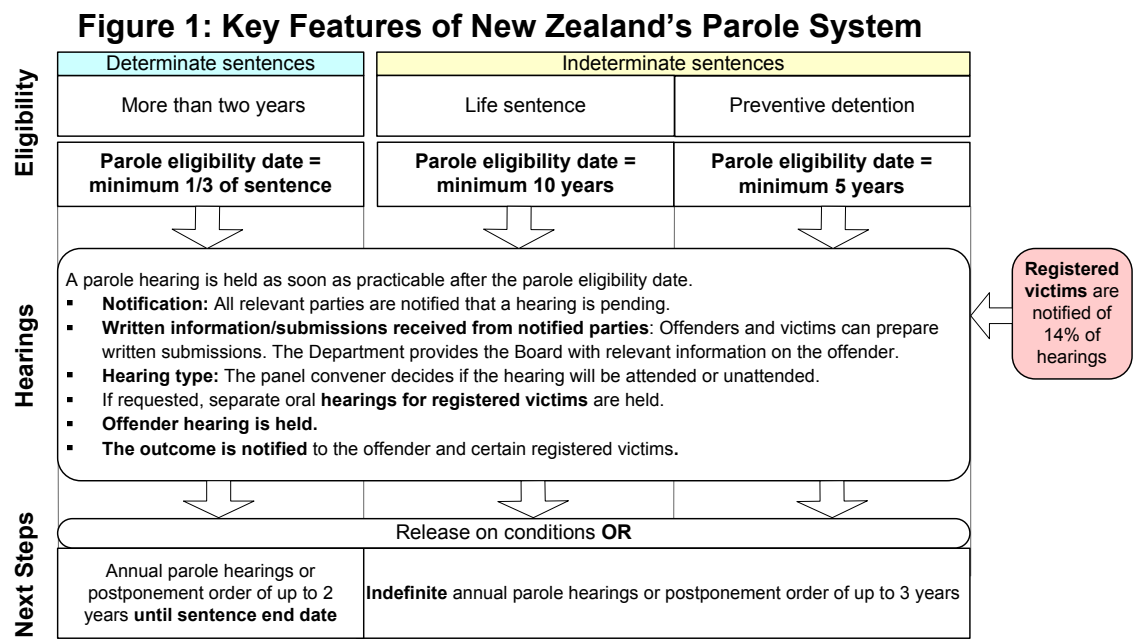
[Signature]

[Date]

Status quo

The New Zealand Parole Board

- 1 The New Zealand Parole Board (the Board) was created in 2002. Its primary function is to determine when and under what conditions long serving prisoners are released. The Board’s paramount consideration is the safety of the community, and it must therefore be satisfied that the release of a prisoner would not pose an undue risk to the public. The support and supervision available in the community is also considered. The key features of New Zealand’s parole system are identified in Figure 1.



- 2 The Parole Act 2002 requires that victims’ rights are upheld, and victims’ submissions and any restorative justice outcomes are given due weight. Registered victims receive notification whenever a prisoner is due to be considered for parole, and are given the opportunity to make submissions.
- 3 Since the Board’s establishment, its decisions have resulted in a greater number of individuals serving a higher proportion of their total imposed sentence in prison. As a result of longer prison stays and closer monitoring of offenders released on parole, the number of offences committed by prisoners in the period between release on parole and sentence end date has halved. A measure of the harm done as a result of those offences shows a similar level of reduction.

How the parole system works

- 4 The Board holds hearings for prisoners serving sentences of more than two years. Prisoners are automatically entitled to a parole hearing at their parole eligibility date. If they are denied parole, a review hearing must be held no more than twelve months after their last hearing, unless a postponement

order has been issued. The Board holds around 5,000 parole hearings each year.

- 5 The Board can postpone hearings for up to two years for prisoners on fixed sentences and up to three years for prisoners on indeterminate sentences. The Board issued 18 postponement orders in 2009/10 and 33 in 2010/11.
- 6 Postponement orders can only be issued if the Board is satisfied that the prisoner will not be suitable for release at the time when he or she is next due to be considered for parole. The prisoner may apply at any time to be considered for parole if there has been a significant change in his or her circumstances.
- 7 Legislation allows for a postponement order to be made at a normal attended parole hearing or a separate special hearing. In practice, postponement orders are generally considered at a special hearing to allow time for prisoners to be notified 14 days prior to the hearing.
- 8 Registered victims are notified for approximately 14% of hearings and make submissions in approximately 7% of parole hearings.

The cost of the parole system

- 9 Table 1 summarises the costs of parole hearings for the 2010-11 financial year. Almost three quarters of the costs associated with Board processes related to supporting the parole consideration process rather than to the Board itself. The actual hearings and deliberation account for only a quarter of the total cost of the total system. The average cost of a parole hearing is approximately \$2,400.¹ When reducing the number of hearings, however, a significant proportion of the Department of Corrections' costs are not realisable as they are fixed overheads. On average, removing one hearing saves around \$850 in operating costs. This is discussed further in paragraph 28.

Table 1: Costs associated with Board processes

Rehabilitation and Reintegration Service: case managers	\$1.4m
Rehabilitation and Reintegration Service: psychologists	\$5.4m
Probation officers	\$2.9m
Total Departmental	\$9.7m
New Zealand Parole Board	\$3.6m
Grand total	\$13.4m

¹ This is an estimate based on the total number of Board hearings (8,998 in 2010/11) and including fixed costs and overheads. The actual cost of individual parole hearings varies according to the prisoner's background and offence type.

Problem definition

- 10 There are many parole hearings each year where the offender has little prospect of release because he or she has not yet addressed his or her offending behaviour. Hearings where the offender has no prospect of release can cause unnecessary stress and anxiety for victims of crime, as well as raise false hopes for offenders and their families. Postponement orders do not adequately address the problem as they lack incentives for offenders to address their offending behaviour.
- 11 The current statutory requirement for annual hearings, except where the Board makes a postponement order, has created the following problems.
 - Hearings often have to be brought forward to 11 months to meet the strict requirement that they be held within 12 months of the previous hearing.
 - A further hearing has to be scheduled in many cases because offenders have yet to complete core components of their offender plan².
 - The entitlement to an annual hearing provides little incentive for unmotivated offenders to address their offending behaviour.

Objectives

- 12 The purpose of the proposed regulatory change is to improve the efficiency of the parole system and reduce stress for registered victims by making it easier for the Board to prevent hearings where there is no prospect of release. The policy also aims to provide incentives for prisoners to comply with their offender plans and to improve their behaviour, which in turn will help to reduce re-offending.
- 13 There is no intention to change or impede the guiding principles under which the Board operates. These have proven value in upholding community safety, giving due weight to the interests of victims and ensuring prisoners are treated fairly.

Regulatory impact analysis

- 14 All options considered would require legislative change.

Option one: greater flexibility in scheduling (recommended)

- 15 This option would enable the Board to screen the suitability of offenders for a longer interval between parole hearings after an offender has first been considered for parole. The key components of this proposal are as follows:

² An offender plan is the key document used by case managers in prisons to identify appropriate activities and goals for prisoners and track their progress against them.

- The maximum interval between parole hearings would be increased from one to two years for all offenders.
- Postponement orders would be restricted to prisoners serving indeterminate sentences and fixed sentences of ten years or more, and the maximum postponement period would be extended from three to five years so that, in extreme cases, the Board has the flexibility to defer annual hearings further than is currently allowed. It is expected that the maximum of five years would be used on very rare occasions. The Board would be able to notify an offender at their first or subsequent hearing that they will be considered for a postponement at their next hearing.
- The Board would be enabled to direct that a scheduled hearing be brought forward where offenders meet certain expectations in a shorter timeframe, and empowered to identify what it expects the offender to have achieved prior to the next hearing and schedule that hearing to align with the likely timetable for meeting those expectations.
- If the offender achieved those milestones in a shorter timeframe than expected, the Department of Corrections would be required to notify the Board administrators of the completion of those milestones as soon as practicable. The Board would then schedule a hearing for the offender.
- The Department of Corrections would be given the authority to refer cases to the Board for consideration for a parole hearing where, for example, there has been a significant change in circumstances for an offender relating to release on parole.
- The authority to consider cases for an earlier hearing would be transferred from the Board to the Chairperson or designated panel convenors.

Other options considered

- 16 A number of other options were considered and discarded during the development of this proposal.

Option two: deferred first hearings combined with greater flexibility in scheduling

- 17 This option would defer an offender's first parole hearing beyond their parole eligibility date until:
- they are re-classified to low-medium, low or minimum security, or
 - they are in the final year of their sentence, or
 - it is five years after their parole eligibility date.
- 18 This option would be *in addition* to the recommended option, that is, once an offender gained their first hearing, the Board would set a hearing interval of up to two years or, if postponed, up to five years.

- 19 This option was discarded because the additional gains over the recommended option were not sufficient to warrant the significant risk of legal challenge to the removal of the right to a parole hearing at parole eligibility date.

Option three: greater use of unattended hearings

- 20 At present, the panel convenor decides if a hearing will be attended or unattended (by the offender). In practice all hearings are attended, unless the offender refuses to attend, as the legislative mechanisms for unattended hearings are relatively complex to apply. This option was discarded as it would not reduce the number of hearings and it would therefore not reduce the impact on victims as they would need to face the prospect of an offender's release regardless if the hearing is attended or unattended.

Other variations to the proposed option

- 21 Other variations on the proposed option were considered. These included:
- extending the standard interval between parole hearings to 18 months or three years
 - extending the standard interval between parole hearings to five years and abolishing postponement orders
 - extending postponement orders to four years.
- 22 These options are not further analysed here as the proposed option represents the best combination of variations when considered against the criteria used for the analysis below.

Comparative analysis of options

- 23 The following table provides a summary evaluation of the three options outlined above against the problem definition and objectives of the proposal, as well as considering how well the option upholds fairness and natural justice.

Table 1: Summary evaluation of options

	1. Greater flexibility in scheduling (preferred)	2. Deferred first hearings	3. Greater use of unattended hearings
Reducing unnecessary stress for the victims of crime	<ul style="list-style-type: none"> • Reduction of hearings where approximately 100 registered victims would have been notified. 	<ul style="list-style-type: none"> • Reduction of hearings where approximately 120 registered victims would have been notified. 	<ul style="list-style-type: none"> • No reduction of hearings.
	Small-moderate improvement	Moderate improvement	No improvement
Improved efficiency/ cost effectiveness	<ul style="list-style-type: none"> • Estimated annual savings of \$700,000 from 800 fewer hearings due to more flexible scheduling arrangements and the 	<ul style="list-style-type: none"> • Estimated savings of \$800,000 from 950 fewer parole hearings for high and maximum security prisoners, combined with 	<ul style="list-style-type: none"> • No savings • Some costs likely from reviews of decisions.

	1. Greater flexibility in scheduling (preferred)	2. Deferred first hearings	3. Greater use of unattended hearings
	option for longer intervals between hearings.	more flexible scheduling arrangements.	
	Small-moderate saving	Moderate saving	Small cost
Incentivises positive behaviour	<ul style="list-style-type: none"> Will provide incentives for some prisoners to meet conditions set by the Board in the interval between hearings. 	<ul style="list-style-type: none"> Will provide incentives for high security prisoners to improve their conduct in order to gain a first hearing. Will provide incentives for some prisoners to meet conditions set by the Board in the interval between hearings. 	<ul style="list-style-type: none"> No change to current incentives.
	Small-moderate improvement	Small-moderate improvement	No improvement
Upholds fairness and natural justice	<ul style="list-style-type: none"> Prisoners would continue to have a parole hearing at their parole eligibility date. Potentially controversial as right to annual hearing lost for all prisoners. Option for a hearing to be brought forward if milestones achieved favourable for those less likely to apply for an earlier hearing (including Māori)³. Potential legal challenge regarding arbitrary detention on the basis of five year maximum intervals and extension of maximum interval between parole hearings from one to two years for all offenders. Risk mitigated by ensuring sufficient rights of regular review. 	<ul style="list-style-type: none"> Removing high security prisoners' right to be heard at their parole eligibility date could be seen as incompatible with the concept of parole eligibility as prescribed by the Courts and statute. Hearings dependent on a process managed by the Department could be seen as undermining the independence of the parole system. Risk of potentially costly unlawful detention claims and habeas corpus applications against the Department. No direct mitigation identified for this risk. 	<ul style="list-style-type: none"> Potentially controversial as right to annual attended hearing lost for all prisoners.
	Low-Medium risk	High Risk	Low risk
CONCLUSION	Small-moderate benefits with low to medium risk	Moderate benefits with high risk	No benefits with low risk

³ Under the current system, early consideration is based on an application process. Research shows that some prisoners including Māori were less likely to apply for Home Detention even when they would be likely to qualify. It is reasonable to assume that a similar group of prisoners would also be less likely to apply for early consideration for parole.

Conclusion

- 24 Greater flexibility in scheduling (option 1) would deliver significant benefits without undermining the fairness and natural justice of the parole system. The system retains the integrity of the current system of regular hearings and postponement orders, but it provides greater flexibility for the Board to set appropriate hearing intervals and increase the incentives for prisoners to address their offending behaviour. The result would be a more efficient and cost-effective parole system that spares more victims the stress of Board hearings when a prisoner is not suitable for release.
- 25 Deferred first hearings (option 2) offers a slightly greater reduction in stress for victims and slightly greater savings than greater flexibility in scheduling alone. This option is likely to be strongly opposed because it would remove a fundamental right for prisoners to be heard at a key point in their sentence, their parole eligibility date, without yielding sufficient benefits to warrant this.
- 26 Greater use of unattended hearings would reduce the number of times that offenders appear before the Board, but would not reduce the impact on victims each time a hearing is held. While a relatively low risk option, it is not recommended as it does not meet the primary objectives of this legislative change.
- 27 In summary, option one, greater flexibility in scheduling, is preferred as it best meets the objectives.

Benefits, costs and risks of preferred option

Benefits

Savings

- 28 The overall saving from the proposed option is estimated at \$700,000 per annum resulting from a reduction of around 800 parole hearings per year. This will reduce the number of hearing days required and preparation of reports for the Board. Around 60% of the savings relate to reduced Board costs, and 40% relate to reduced report preparation. It should be noted that the extent to which the Board would deviate from the current system of annual parole hearings cannot be predicted, so these figures are estimates based on plausible scenarios. Table 2 outlines the savings.

Table 2: Estimated savings from longer maximum intervals

Rehabilitation and Reintegration Service – Case Managers	\$0.150m
Rehabilitation and Reintegration Service - Psychologists	\$0.120m
Probation officers	\$0.150m
Total Departmental	\$0.420m
New Zealand Parole Board	\$0.270m
Grand total	\$0.690m

Efficiencies

- 29 In 2010, the Department of Corrections established a new rehabilitation and reintegration service. The service uses a case management approach to ensure that throughout their sentence offenders are engaged in activities that will make the biggest positive difference to their likelihood of re-offending.
- 30 Under this new approach, offender plans are becoming increasingly comprehensive, with each step (such as drug and alcohol treatment, participation in a rehabilitative programme or transfer to a self care unit) designed to reinforce and maximise progress. This approach will give the Board a very clear picture of how far advanced a prisoner is with their rehabilitation.
- 31 Extending the statutory interval to two years provides the opportunity for parole hearings to be much more closely aligned with the completion of key offender plan activities. This will mean that the Board only sees prisoners once they have made clear progress and therefore have a realistic chance of release. This in turn will reduce the number of adjournments due to incomplete programmes, allowing for more efficient use of the Board's time and resources.

Reduced Stress for Registered Victims

- 32 Postponement orders are the existing means of preventing unnecessary hearings, and by extension limiting undue stress for victims. Providing the option for longer intervals for both ordinary hearings and postponement orders would benefit victims because:
- the Board will have the power to schedule hearings according to when a prisoner has a realistic chance of release, resulting in longer intervals between hearings for offenders who are not at that stage safe to release
 - better alignment between the completion of key offender plan programmes and hearing dates will reduce the number of adjourned hearings.
- 33 The reduction in stress for registered victims will largely depend on how often the Board chooses to set longer intervals between hearings beyond the current norm of around 12 months. However, based on the assumptions set out in this paper, we estimate that around 100 registered victims would benefit from the greater flexibility in scheduling proposal.

Costs

- 34 There is the potential for an increase in legal challenges to Board decisions where, for example, the Board decides to apply more than a one year interval between parole hearings or imposes specific conditions to be completed before an offender can reappear before the Board at an earlier time. In addition, there is the potential that extending the time between parole hearings may lead to an increase in applications by offenders for an

earlier hearing under section 26 of the Parole Act 2002. Whilst these are recognised risks, as they would incur additional cost for the Department, it is not possible to quantify the potential financial impact at this time. It is anticipated that the Department would absorb any additional costs from within current baseline.

- 35 There is a possibility that greater flexibility in scheduling could have an impact on the prison population. The ability of the Board to set hearings in relation to the completion of programmes on an offender plan could, in theory, lengthen the time before some prisoners appear before the Board, and therefore lengthen his or her imprisonment. This would only have an impact on the prison population if, under the current system he or she would have been released despite not completing a programme on his or her offender plan.
- 36 Any increase to the prison population would be likely to be offset by shorter prison times where prisoners are motivated to meet the conditions set by the Board to enable an early hearing. In addition, the alignment of hearing dates with offender plans may also result in shorter prison durations for some offenders.
- 37 On balance, the impact on the prison population is expected to be negligible or slightly reduce the population.

Risks

Legal challenges

- 38 Under the options discussed in this paper, automatic annual parole hearings would no longer be the norm. This may raise concerns about potential breaches of section 22 of the New Zealand Bill of Rights of Act and article 9(1) and (4) of the International Covenant on Civil and Political Rights, both of which states that no person should be subjected to arbitrary arrest or detention.
- 39 Concerns are likely to centre on the lengthening of the maximum interval from one to two years, and the extension of postponement orders to up to five years, which is two years longer than under the current system of postponement orders.
- 40 The Department considers that the following proposed mitigations will be sufficient to address these concerns.
 - The Board will continue to review cases on a regular basis.
 - The Board will continue to be bound in its decision-making by the guiding principle set in legislation that offenders must not be detained any longer than is consistent with the safety of the community.
 - Prisoners will retain their entitlement to appeal Board decisions and to have their cases reviewed.

- The Department of Corrections would be given the authority to refer cases to the Board for consideration for a parole hearing if they assess that there has been a significant change in circumstances for an offender, where those circumstances materially influenced the Board's decision to decline parole.

41 It should also be noted that the Board has on occasion issued successive three year postponement orders, suggesting that a maximum interval of five years would be appropriate in exceptional cases. The nature of the offending involved is generally so serious that the reduction in stress for registered victims in these cases should not be underestimated.

Table 3: Summary of costs, benefits and risks of preferred option

Costs	Benefits	Risks
Preferred option: greater flexibility in scheduling		
<u>No quantifiable costs</u>	<p><u>A more efficient parole system:</u> Parole hearings can be more closely aligned with prisoners' rehabilitative progress, as demonstrated by completion of core offender plan programmes.</p> <p><u>Significant savings:</u> Overall savings of up to \$700,000 per year anticipated from more flexible scheduling arrangements and the option for longer intervals between hearings.</p> <p><u>Reduction in stress for registered victims:</u> Up to 100 fewer notifications per year.</p>	<p><u>Concerns may be raised about consistency of approach with international treaty obligations and domestic law</u> – although proposed criteria and protections will mitigate this risk.</p> <p><u>Risk of demotivating prisoners on longer sentences</u>, though not significantly greater than under the present system.</p>

Consultation

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.

Conclusion and recommendations

42 The introduction of the current parole system has led to a demonstrable improvement in public safety, and it works very well overall. However, the current system of annual parole hearings and postponement orders is resulting in a large number of hearings where the prospect of release is highly unlikely as prisoners are unwilling to address their offending behaviour or have not yet completed core programmes on their offender plan.

- 43 Parole is rarely granted at these hearings and as a result they can cause unnecessary stress for victims. Giving the Board greater flexibility to screen prisoners to determine the appropriate interval between hearings will minimise these unnecessary hearings and strengthen prisoner motivation.
- 44 Greater flexibility in scheduling is estimated to deliver savings of \$700,000 due to the reduced number of parole hearings. We estimate that around 100 registered victims would benefit from the proposal.
- 45 The alternative options either provide fewer benefits or have greater risks. The introduction of legislation to give effect to introduce greater flexibility in scheduling is therefore recommended.

Implementation

- 46 If approved, the proposals in this paper will be included in a Parole Amendment Bill. Consequential amendments to the Sentencing Act 2002 will be required. The proposed legislation would be retrospective, and there is no expectation or intention that postponing intervals between hearings will necessarily result in prisoners serving longer periods of imprisonment.
- 47 The benefits of greater flexibility in scheduling would begin to accrue within one year and the maximum reduction in hearings would be achieved after two to three years.
- 48 The main implementation risk is that the Board will continue to set intervals of approximately 12 months between parole hearings, despite the flexible approach to hearing scheduling available to them through the new legislation. This is unlikely because the Board has made clear that it would like a better mechanism for preventing unnecessary hearings.

Monitoring, evaluation and review

- 49 The Department will monitor the way in which the Board applies the greater flexibility in scheduling and the Department's performance in referring cases for earlier hearings. Examples of information used to monitor the changes may include the average number of days between hearings and the average proportion of sentence served in prison. The analysis will include break downs by ethnicity and other key demographics.