



Parole Manual

Adult Parole Board of Victoria

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Adult Parole Board

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1 The Adult Parole 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* and the *Sentencing Act 1991*.

The Board has jurisdiction over:

- Prisoners who are serving a sentence of imprisonment with a non-parole period for a Victorian offence. (This also includes prisoners who are serving a sentence for both federal and Victorian offences. However, the Board does not have jurisdiction over prisoners in Victorian prisons who are serving a sentence for a federal offence only.)
- Prisoners who are serving a sentence of imprisonment with a non-parole period imposed by a court in another state or territory who are transferred to a Victorian prison.
- Prisoners who have been released on parole in another Australian state or territory and whose parole is transferred to Victoria.

The Youth Parole Board is a separate entity established under the *Children Youth and Families Act 2005*. That Board is responsible for making decisions about the paroling of young people who are sentenced to detention in a youth residential centre or a youth justice centre. The Youth Parole Board has the power to transfer a young offender from a youth justice centre to prison. If a young offender is transferred to prison, any decisions regarding their parole are made by the Adult Parole Board. Conversely, the Adult Parole Board has the power to transfer a prisoner who is under the age of 21 from prison to a youth justice centre, in which case any subsequent decisions regarding their parole are made by the Youth Parole Board.

Prior to 2018, the Board exercised certain powers in relation to serious sexual offenders who were subject to an order under the *Serious Sex Offenders (Detention and Supervision) Act 2009* following the expiry of their sentence. The replacement of that scheme by the *Serious Offenders Act 2018*, which includes serious violent offenders, has resulted in the establishment of a separate Post Sentence Authority and the transfer of the Board's functions to that Authority.

The Adult Parole Board is a decision-making body. It considers information provided to it by a range of people and organisations, including Corrections Victoria, Victoria Police, victims of crime and the prisoner. While the Board scrutinises the information before it, and may seek additional information, the Board is not an investigative body.

The Board does not case manage offenders in prison or on parole. This is done by staff employed by Corrections Victoria.

2 General principles relating to parole

2.1 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.¹

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 Community Safety. 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 parole 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. In particular, the Board 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, unless the County Court or Supreme Court is satisfied that they pose such an unacceptable risk to the community that they should be subject to a post sentence order under the *Serious Offenders Act 2018*.

2.2 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 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.²

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 *Power v The Queen* [1974] HCA 26 determined 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, denunciation, deterrence and community protection are also relevant to the length of the non-parole period.³

In order to determine that period, the Court in *Power* 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

¹ In accordance with its obligation under section 73A of the *Corrections Act 1986*.

² *Sentencing Act 1991*, section 11.

³ See also *Bugmy* (1990) 169 CLR 525; *Krasnov & Shlakht* (1995) 82 A Crim R 92; *VZ* (1998) 7 VR 693; *Davy* [2011] VSCA 98 (at paragraphs 26-28).

time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence.⁴

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.⁵

A small number of Victorian offences are specified as ‘standard sentence offences’. These are subject to requirements regarding the ratio between the head sentence and the non-parole period. For all other offences, the relationship between the head sentence and the non-parole period is generally considered to be between 60 and 75 per cent of the head sentence, unless the head sentence is in the order of 10 years or more in which case a non-parole period in that range of percentages may not adequately reflect the gravity of the offending, comply with sentencing principles or meet the sentencing purposes.⁶

Situations where shorter non-parole periods have been considered appropriate are:

- to have regard to the youth of the offender and the desirability of rehabilitation⁷
- to reward established rehabilitation, and to reduce through extended supervision the risk of reoffending.⁸

Conversely, poor prospects of rehabilitation may elevate the need for community protection and result in a longer period before eligibility for parole.⁹

2.3 Decision-making by the Adult 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.¹⁰

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:¹¹ 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.¹²

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.

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.

Exclusion from the rules of natural justice

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. Those rules include, for example, the right of a person whose interests will be adversely affected by a decision to be heard by the decision-maker.

⁴ *Power v The Queen* (1974) 131 CLR 623 at 628, per Barwick CJ, Menzies, Stephen and Mason JJ

⁵ *Power v The Queen* (1974) 131 CLR, 623, *R v Currey* [1975] VR 647, *R v Oancea* (1990) 51 A Crim R 141, *Bugmy v The Queen* (1990) 169 CLR 525, *R v Shrestha* (1991) 173 CLR 48, *R v Krasnov* (1995) 82 A Crim R 92, *R v Yates* (1998) 99 A Crim R 483.

⁶ Judicial College of Victoria, *Victorian Sentencing Manual*, 8.3.2.

⁷ *Martin* 7/11/1977 CCA Vic

⁸ *Wright* [2009] VSCA 27

⁹ *Bugmy v The Queen* (1990) 169 CLR 525. 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).

¹⁰ *Chan* (1994) 76 A Crim R 252

¹¹ *Power* (1974) 131 CLR 623

¹² *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).

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 [...].

Exclusion from the operation of the *Charter of Human Rights and Responsibilities*

Regulation 5(a) 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 prohibitions¹³ 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.

Exclusion from *Freedom of Information Act 1982*

The *Freedom of Information Act 1982* creates a general right for members of the community to gain access to information in the possession of government agencies; however, the Act does not apply to the Adult Parole Board as it is not a 'prescribed authority' as defined in section 5 of the *Freedom of Information Act 1982*.

2.3.2 Reasoning and safeguards

The duty to act in accordance with the rules of natural justice (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.¹⁴

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 Board's 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.¹⁵ In addition, section 64 of the *Corrections Act 1986* has the effect that every time the Board convenes as a division of three members to make decisions, the Divisional Chairperson must be a member of the Board who is a judge, retired judge, associate judge, magistrate, retired magistrate or Australian lawyer of at least 10 years' standing. 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 and reasonable and are based upon the available evidence.

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) from the Charter 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.¹⁶

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 Law*

¹³ Section 38(1) of the Charter.

¹⁴ *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 per Deane, J at p.367.

¹⁵ Sentencing Advisory Council *Review of the Victorian Adult Parole System* (2012), pp.58-59.

¹⁶ Exemption Certificate under section 8 of the *Subordinate Legislation Act 1994* for the *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013* dated 8 October 2013.
http://www.parliament.vic.gov.au/file_uploads/s15_-_SR_129_4D9gdNhc.pdf (accessed 16 June 2020)

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 this Parole Manual as well as internal practice guidelines. The Board has also developed an induction process for new members and an ongoing seminar program for all members.

Internal review of Board decisions

Prisoners can write to the Board to request a review of a Board decision. If the Board determines that there is a proper basis for the review, it may review the original decision. In some instances, the Board may not need to conduct a review, but might be able to deal with the request in another way, for example by providing more information to the prisoner about its decision.

There is no limit on the number of times a prisoner can apply for parole. This means that a prisoner who has had a previous parole application denied or deferred, or has had parole cancelled, can apply for release on parole again. They will improve their chances of being granted parole if they can demonstrate that they have addressed the factors that led to the denial, deferral or cancellation. For further information about re-parole, see section 7.7 of this manual.

3 Risk assessment and prison-based treatment

As one of the purposes of 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. Ordinarily, the Board will not grant parole to a prisoner who is serving a sentence for a sexual offence or a serious violent offence unless the prisoner has satisfactorily completed relevant programs. (The Board recognises that there can be limited 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 followed by programs designed to reduce the risk of reoffending:

- 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 and in the degree to which the program explores and challenges the participant's specific offending behaviour. 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.

3.1 Initial screening of prisoners

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.

This involves the use of a standard questionnaire which is completed by Corrections Victoria 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. The questionnaire is based on research into the factors that are most strongly correlated with reoffending. The tool generates an estimate of the prisoner's risk of reoffending, expressed as a 'low', 'medium' or 'high'¹⁷ risk of reoffending relative to other offenders, with a capacity in rare cases for the staff member to record that they have overridden the initial estimate on the grounds of unusual features of the case. The assessments are used when staff of Corrections Victoria make decisions about appropriate treatment.

The LS-RNR scales were originally calibrated using a sample of Canadian and United States offenders. In 2019, Corrections Victoria recalibrated its 'low', 'medium' and 'high' scale using a sample of Victorian offenders.

When considering parole, the LS-RNR is incorporated into the Parole Suitability Assessment, with reference not only to overall risk of reoffending, but specific identification of issues which contribute to this

¹⁷ The LS-RNR uses five risk levels (Very low, low, medium, high and very high). Corrections Victoria converts these into just 3 levels (Low, medium, high).

risk. This informs the Board of the suitability for parole as well as the conditions which can manage these issues and the subsequent risk of reoffending.

3.2 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 run for between 40 and 130 hours and target the link between drug use and offending. At the conclusion of each of these programs, the clinician prepares for the Board a brief completion report on each participant.

3.3 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 has 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.

If they are assessed as suitable for a program, they will first complete a preparatory program such as Talking Change program.

The programs relating to violent offending include the Moderate Intensity Violence Intervention program, which involves 2-3 sessions per week for 4 months and the High Intensity Violence Intervention program, which involves 3 sessions per week for 7 months. There are also specialised programs that target family violence or offenders with cognitive impairments.

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

- are **low** risk on the 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 LS-RNR are directed into the general offender pathway for a general offender assessment rather than a serious violent offender assessment.

3.4 Sexual offenders

Male offenders who are serving a sentence for a sexual offence¹⁸ (see **Appendix 2**) are assessed using the Static-99 assessment tool. 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.

¹⁸ 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.

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 assessment tools can be used. The assessment tool most commonly used in Victoria 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 most common group-based program for male sexual offenders in prison is the Better Lives program, which varies in length and intensity from 3 to 9 months depending on the risk category.

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

3.5 General offenders

General offenders (prisoners who are serving a sentence for offences that are not classified as serious violent offences or sexual offences) may be eligible for substance abuse programs but are ordinarily not eligible for offence-focused programs, such as violence intervention programs.

However, if they are housed in a prison managed by a private organisation, general offenders may be assessed for and 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).

3.6 Offenders who have committed family violence

Offenders who have been convicted of family violence offences, whether Serious Violent Offenders or General Offenders, can be assessed separately for their risk of committing further family violence and can receive specific treatment for this type of offending. This assessment is made by the clinician who determines the most appropriate treatment pathway for the offender. By its nature, family violence occurs within a very specific context and the reasons that violence occurs in this setting need to be targeted in both the risk assessment and treatment process to be valid.

The risk assessment tool that is used is the Spousal Assault Risk Assessment (SARA), which predicts the likelihood of family violence can help determine the degree to which an individual poses a threat to his spouse, children, family members, or other people involved. Unlike the Static 99 or Violence Risk Scale, the SARA is not an actuarial tool but is rather a Structured Professional Judgement tool. Specifically, the SARA is a quality-control checklist that determines the extent to which a professional has assessed 20 risk factors of crucial predictive importance, according to clinical and empirical literature covering spousal abuse history, criminal history, alleged/most recent offence and psychosocial adjustment. A risk rating of low, moderate or high is generated after completing the tool using a review of file material and an interview with the offender.

The Changeabout program specifically targets factors associated with family violence. It typically runs for 4 months.

When released on parole, prisoners can be referred to the Men's Behaviour Change program. This program is for men who have been violent and controlling towards a current or previous partner and are now starting to think about change. The programs can include members of the community who participate voluntarily as well as offenders who are required to attend under a condition of their parole order. The program focusses on processes and practices for participants to take responsibility for their use of violent and controlling behaviour and to change these behaviours. CCS is notified when an offender completes this program; however detailed completion reports are not provided.

3.7 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 paroling 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.

3.8 The use of risk assessments by the Board

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

A risk assessment does not represent a prediction of the likelihood that an individual offender will reoffend

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 individual offender who is being assessed will reoffend; however, the assessment does not *itself* constitute a prediction that the individual offender will reoffend. This is because that can depend on characteristics that are not accounted for in the assessment tool.

Assessment depends on availability and accuracy of information about the individual offender

In order to produce a valid assessment, the staff who are administering the assessment have strict limits on the number of items that can be left blank and are directed to obtain as much collateral information about the offender as possible (e.g. from official documents such as criminal history, sentencing remarks, medical records, etc.) to avoid the need to omit items or to rely solely on information provided by the offender. Nevertheless, on some items (e.g. relating to substance use) it may be necessary to rely on self-reporting by the offender, which may be subject to minimisation or exaggeration.

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.

Timing, updating and rescoring of assessments

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.

The LS-RNR has a system of re-scores and updates, which are intended to identify positive or negative changes in an offender's circumstances after the initial assessment.

CCS are required to update an offender's LS-RNR whenever there has been a significant change in the offender's circumstances or if there has been a significant shift in a dynamic risk.

Re-scores are more extensive than updates and must be done as part of the Parole Suitability Assessment process. A further re-score must be done within 6 weeks of the prisoner's release on parole. After that, a re-score must be done annually for the duration of the parole order.

4 The grant of parole

4.1 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.

4.1.1 Application for parole

The Board will consider a prisoner for parole only if the prisoner makes an application to the Board.

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.

In most cases, if a prisoner applies for parole Community Correctional Services will proceed to prepare a detailed report to the Board about the prisoner.

In limited circumstances, the Board may decide to defer the application for a specified period. The circumstances where this would occur include:

- If the prisoner has been responsible for serious incidents in prison;
- If the prisoner has refused to participate in relevant assessments or treatment; or
- If the prisoner is facing outstanding charges which may result in the imposition of a further sentence of imprisonment (particularly if the charges are alleged to have been committed while the prisoner was on an earlier parole and the prisoner has applied to be re-paroled – for further information about re-parole, see section 7.7 below).

4.1.2 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 primary function of the SVOSO Division is to decide whether to release on parole an offender who is serving a sentence of imprisonment for a 'serious violent offence', a 'sexual offence' or a 'terrorism or foreign incursion offence'. Those categories of offence are defined in section 3(1) of the *Corrections Act 1986*. Those definitions incorporate offences listed in schedules to the *Sentencing Act 1991* and the *Serious Offenders Act 2018*. It is important to note that the definitions of 'serious violent offence' and 'sexual offence' include the offences of conspiracy to commit, incitement to commit or attempt to commit any of the other listed offences. They also include any other offence, whether committed in Victoria or elsewhere, the necessary elements of which constitute any of the listed offences.

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.

4.1.3 Specific legislative provisions for considering parole

The *Corrections Act 1986* contains detailed provisions (sections 74AAA to 74AAG) regarding the parole of:¹⁹

- Any prisoner who is serving a sentence for the murder of a police officer
- The prisoner Julian Knight, who was sentenced in November 1988
- The prisoner Craig Minogue, who was sentenced on 24 August 1988
- The prisoner Paul Denyer, who was sentenced on appeal on 28 July 1994

¹⁹ Some of these provisions have been considered by the High Court in *Knight v Victoria* [2017] HCA 29 and *Minogue v Victoria* [2018] HCA 27.

- Prisoners who have been imprisoned for certain fatal offences (regarding disclosure of the location of the body or remains of the victim)
- Prisoners in relation to whom the Board has received ‘terrorism risk information’²⁰
- Prisoners who are serving life imprisonment with a non-parole period
- Prisoners who are restricted prisoners and the requirement for the Board to consider making a declaration where the prisoner is not eligible for parole for five to 10 years (for more information, see <https://www.adultparoleboard.vic.gov.au/parole-process/restricted-prisoners>).

Under section 74AAD of the *Corrections Act 1986*, the Board must specify a no-return period of up to five years when denying parole to a prisoner who was sentenced to life imprisonment with a non-parole period. For more information, see <https://www.adultparoleboard.vic.gov.au/parole-process/applying-parole>.

4.2 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).

Aside from the specific categories listed in section 5.1.3 of the Manual above, which apply to a very small number of prisoners, 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 most 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 parole supervision or support (although it must be noted that some prisoners may be subject to a community correction order or a post sentence order²² following release from prison).

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.

4.3 Matters considered

When deciding whether to grant parole, the Board considers a large volume of information from a range of sources. This may include detailed reports from Community Correctional Services, clinical assessments and treatment reports, correspondence from the prisoner and his or her family or supporters, victim impact statements and correspondence or submissions from victims or their families, psychological or psychiatric reports, intelligence reports, sentencing remarks and other court documents, the prisoner’s Victorian and interstate criminal history.

²⁰ ‘Terrorism risk information’ is defined in section 3B of the *Corrections Act 1986*.

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)

²² Under the *Serious Offenders Act 2018*.

When preparing their report to the Board, the parole officer assigned to the prisoner will conduct at least one lengthy interview with the prisoner. This interview will to gather information about the prisoner's attitude towards his or her offending, motivation for being released onto parole, goals for release and management of his or her risks in the community.

The Board does not itself routinely interview prisoners when deciding whether to grant parole. The Board may choose to interview the prisoner if the Board considers it appropriate, for example if:

- 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 specific information, such as information about the prisoner's proposed accommodation on release.

4.3.1 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.

4.3.2 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.

4.3.3 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:

- previous cancellations of such orders
- the reasons for such cancellations
- how long the prisoner was on the order prior to the events that resulted in the order being cancelled
- whether there has been any improvement or deterioration in performance on supervised orders.

4.3.4 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.

4.3.5 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.

Considerations regarding the failure of a prisoner to complete a relevant program in prison are set out in section 4.7. As explained in that section, the Board would only consider paroling 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.

The Board receives detailed program completion reports as attachments to the Parole Suitability Assessment Report. The Board will consider not just whether the prisoner completed the program, but also their level of engagement, any progress they have made in addressing treatment targets and whether their level of risk, which is re-assessed at the conclusion of the program, has reduced.

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 or symptoms of the condition (such as paranoia) inhibit 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.

4.3.6 Victim submissions

A victim of the prisoner's offending is entitled to register with the Victim Support Agency. This enables the victim to receive information about the prisoner's application for parole and, if the victim wishes to do so, to make a formal submission to the Board.²³

Victim submissions 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 request a condition restricting geographical areas that the offender may enter while on parole.

In addition to formal submissions from registered victims, the Board will also consider any victim impact statements made to the court at the time of sentencing and any correspondence to the Board from a victim.

4.3.7 Accommodation and release planning

After a prisoner applies for parole, Corrections Victoria staff will discuss accommodation options with the prisoner. If the prisoner does not have suitable options to propose, Corrections Victoria staff will refer the prisoner to relevant accommodation agencies for assistance.

Once an accommodation option is identified, Corrections Victoria staff will inspect the property, interview any proposed co-residents, investigate whether there is a history of intervention orders or family violence

²³ Sections 74A and 74B of the *Corrections Act 1986* provide for the making of victim submissions and require the Board to consider any such submission before making a parole order.

between the prisoner and the proposed co-residents. If there are children, Corrections Victoria staff will liaise with the Department of Health and Human Services to assess any child protection risks.

The Board and Corrections Victoria pay close attention to the proposed accommodation because 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.

4.4 Reaching a conclusion

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

In many cases, there is a degree of uncertainty about the particular risks and benefits to the community of granting parole.

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 individual 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.

The Board is required under section 73A of the *Corrections Act 1986* to treat the safety and protection of the community as its paramount consideration. In practice, this means that in situations of uncertainty, the Board must err on the side of caution.

There are two ways that the Board manages the risk of reoffending.

- 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 at a specified 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.²⁴ 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 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

²⁴ Under Corrections Regulations 2019 r.115, 116 and 119.

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.

4.5 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 in a Victorian prison solely 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, the 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.

4.6 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 sign a copy of the parole order and 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.

4.6.1 Mandatory conditions

Every parole order must contain the following ten mandatory conditions:²⁵

- 1) You must not break any law.
- 2) You must report to the community corrections centre specified in this Order within 2 clear working days after this Order comes into force.

²⁵ *Corrections Act 1986* s.74(4)(a) and *Corrections Regulations 2019* regulation 112.

- 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 except with the written permission, granted either generally or in a particular case, of the Regional Manager or the Adult Parole Board.
- 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.

4.6.2 Special conditions

In addition, the Board may, although is not required to, impose any one or more of the following conditions:²⁶

- 11) You must not consume any alcohol, unless otherwise approved in writing by the Regional Manager or the Adult Parole Board.
- 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 and Community Safety.
- 14) You must report to your supervising community corrections officer at a specified reporting frequency until the specified end of reporting period.
- 15) You must not enter in or be within a specified vicinity of a specified area unless otherwise approved in writing by the Regional Manager or the Adult Parole Board.
- 16) You must remain in a specified area, unless otherwise approved in writing by the Regional Manager or Adult Parole Board.
- 17) You must remain at a specified place between specified hours each day unless otherwise approved in writing by the Regional Manager or Adult Parole Board.
- 18) You must not use or access the Internet unless your use or access is for specified purposes approved in writing by the Regional Manager or Adult Parole Board.
- 19) You must not contact, directly or indirectly, a specified person or class of person, unless otherwise approved in writing by the Regional Manager or the Adult Parole Board.
- 20) You must not enter in or be within a specified vicinity of a specified place unless otherwise approved in writing by the Regional Manager or 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 any suitable program or training that addresses factors specific or related to your 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 a program or training specified under term and condition 21.

²⁶ Corrections Act 1986 s.74(4)(b) and Corrections Regulations 2019 regulation 114.

- 23) You must not reside at a specified place unless otherwise approved in writing by the Regional Manager or Adult Parole Board.
- 24) You must reside at a specified place, and must not temporarily reside at another address, unless otherwise approved in writing by the Regional Manager or Adult Parole Board.
- 25) You must not contact, directly or indirectly, a specified person or class of person without being under the supervision of a person or persons approved in writing by the Regional Manager or Adult Parole Board.
- 26) You must provide to the Adult Parole Board information pertaining to your financial affairs, if directed by the Adult Parole Board.
- 27) You must submit to the auditing of data held in computers and any other devices in your possession or under your control, if directed by the Adult Parole Board.

The Board has a general power to impose a condition not specified above and to add and vary conditions after they have been imposed.²⁷

The Board may also order that the parolee's compliance with a condition be electronically monitored.²⁸ For example, the Board may order that compliance with a curfew or geographical restriction be monitored by a Global Positioning System device. The Board may also 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).

4.6.3 Intensive parole period

Finally, the Board may specify that one or more of the parole conditions are subject to an intensive parole period.²⁹

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.

Because the transitional needs and risks tend to be greatest in the months immediately after release from prison, the intensive parole period is ordinarily for the first three months of the prisoner's parole.

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.

Depending on the prisoner's progress on parole, the Board can extend or re-impose the intensive parole period. For example, if a prisoner had completed their intensive parole period, had gained employment and had been making progress on parole, but then lost their job and relapsed into drug use, an option for the Board to consider in an appropriate case is to re-impose intensive parole to provide greater structure, support and supervision for a period to enable the prisoner to stabilise and overcome the relapse.

4.7 Notification to registered victim of release of prisoner on parole

The victim of a relevant offence may apply to the Secretary to the Department of Justice and Community Safety to be placed on the Victims Register.

Once a victim is registered in relation to an offence for which a prisoner is serving a sentence of imprisonment, they are entitled to be notified of a decision to release, or not to release, that prisoner on

²⁷ Corrections Act 1986 s.74(4) and (5).

²⁸ Corrections Act 1986 s.74(4), (5A) and (5B).

²⁹ Corrections Regulations 2019 r.116.

parole. If the decision is to release the prisoner on parole, ordinarily the registered victim must be notified at least 14 days in advance of that release.³⁰

4.8 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 that affects the prisoner's suitability for parole. This could include 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)
- 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.

³⁰ Section 30A, *Corrections Act 1986*.

5 Prisoners on parole

A prisoner who is released into the community on parole continues to be a 'prisoner' because they are still serving a sentence of imprisonment. The parole order provides them with a licence to serve part of that sentence in the community, but the Board can revoke that licence by cancelling the parole order and issuing a warrant authorising police to arrest and immediately return them to prison.

Prisoners on parole are supervised by a parole officer from Community Correctional Services. The parole officer will have regular contact with the prisoner throughout the parole period. They may conduct home visits and, in some cases, may have contacts with the prisoner's partner, family or employer.

5.1 Reports to the Board about prisoners on parole

The situations in which a parole officer will provide a report to the Board include if:

- It is necessary or desirable to vary the parole conditions. This can occur if, for example, the prisoner needs to change their accommodation or if the hours of a prisoner's curfew need to be adjusted to enable them to attend work outside standard business hours. The conditions may also be varied if the prisoner is progressing well on parole to have a stepped-down transition by removing the most restrictive conditions, such as a curfew or electronic monitoring, in a supervised manner towards the end of the parole period, rather than having an abrupt end to all of the conditions at the end of the parole period.
- The Board has sought information about the prisoner's progress on parole. The Board classifies some prisoners (for example prisoners who are serving a sentence for a homicide offence, or who are serving unusually long sentences or who present particular risks) as regular reporters and seek periodic updates about their progress on parole.
- There are concerns about failures to comply with conditions. These could include concerns regarding drug testing (positive drug tests, diluted drug tests, attempts to tamper with or avoid drug testing), repeated failures to attend community work or appointments with the parole officer without reasonable excuse, breaches of curfew or geographical exclusions.
- There is an increase in risk. Many failures to comply with conditions will also constitute an increase in risk, but there can be an increase in risk even if the prisoner has not breached any specific parole condition. For instance, if the prisoner is serving a sentence for an offence that they committed in the context of a relationship breakdown and while on parole they are in a new relationship which breaks down, even if the prisoner was complying with their parole conditions the parole officer would notify the Board and would report what they are doing to address any relevant risks.
- The parolee is arrested or charged by police. This situation raises complex issues which are addressed in more detail in Chapter 7.

5.2 Options for responding to concerns about risk or poor compliance

The Board has a range of options to respond to concerns about compliance and risk. Those options include:

- Extending or re-instating the intensive parole period.
- Varying the parole conditions.
- Directing community correctional services to formally warn the prisoner.
- Requiring the prisoner to attend a meeting of the Board, at which the Board may warn the prisoner in person.
- Cancelling the parole order and issuing a warrant for police to arrest the prisoner and return them to prison. Issues regarding cancellation are dealt with in more detail at Chapter 7.

The safety and protection of the community is the Board's paramount consideration when deciding which of those options to use.

5.3 The offence of breach of a prescribed condition of parole

A separate mechanism for responding to a breach of certain parole conditions is for the prisoner to be charged with 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 prescribed parole conditions are:³¹

- 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 written permission.
- 11. You must not consume any alcohol unless otherwise approved in writing.
- 15. You must not enter in or be within a specified vicinity of a specified area unless otherwise approved in writing.
- 16. You must remain in a specified area unless otherwise approved in writing.
- 17. You must remain at a specified place between specified hours each day unless otherwise approved in writing.
- 19. You must not contact, directly or indirectly, a specified person or class of person.
- 20. You must not enter in or be within a specified vicinity of a specified place unless otherwise approved in writing.
- 23. You must not reside at a specified place unless otherwise approved in writing.
- 24. You must reside at a specified place, and must not temporarily reside at another address, unless otherwise approved in writing.
- 25. You must not contact, directly or indirectly, a specified person or class of person without being under the supervision of a person or persons approved in writing.

The Board has no role in any prosecution of the parolee for the offence of breach of parole: it is a matter for Community Correctional Services and police. This is because the Board's function is to decide how to manage risks. It is not involved in punishment for breach of conditions.

If a prisoner is prosecuted for breach of parole, the court is bound by the rules of evidence and procedural fairness. If the prisoner is found guilty, the prisoner or his or her lawyer is entitled to make a plea in mitigation. The court decides on an appropriate sentence based on sentencing purposes which include deterrence, denunciation, punishment and proportionality.

Different considerations apply if the Board is considering whether to cancel parole. The Board is required to respond promptly to an increase in risk to the community and may need to reach a decision based on uncertain information. It is not bound by the rules of evidence or procedural fairness. Considerations of denunciation and punishment are not relevant to the Board's role.

Therefore, decisions about the prosecution and punishment for the offence of breach of parole are independent from decisions about cancellation of parole. There can be situations in which prosecution of a prisoner for breach of parole would be appropriate even if the Board does not cancel parole, and conversely cancellation may be appropriate even if a prosecution for breach of parole is not pursued.

5.4 Particular considerations regarding illicit drug use

Concerns about breaches of conditions and increases in risk are most commonly associated with illicit drug use.

If a parolee uses illicit drugs, they breach the first condition of their parole order (you must not break any law), as use of a drug of dependence is an offence under the *Drugs Poisons and Controlled Substances Act 1981*. In many cases, drug use was directly or indirectly associated with the offending that resulting in their imprisonment.

A large percentage of prisoners who are eligible for parole have a history of drug problems. Their time in prison can provide an enforced break in their drug use. Yet the availability of illicit drugs in the community can provide a strong temptation to resume use upon their release from prison. Even if a prisoner is motivated to maintain abstinence from illicit drugs, the stresses of re-adjusting to life in the community can prompt a relapse into drug use, particularly if their family and friends are drug users.

Overcoming a longstanding drug addiction can involve cycles of relapse and recovery.

Regular drug testing combined with drug treatment, counselling and other assistance to deal with underlying sources of stress can help a prisoner to avoid lapsing into drug use or, in the event of such a

³¹ By r.125 of the Corrections Regulations 2019

lapse, to prevent it from becoming a downward spiral into more frequent and heavier use and a corresponding risk of committing further crimes.

Deciding how to respond to 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 may 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 or erratic behaviour. The Board will also consider the level of use, if known, at the time of their offending (e.g. if they were known to be using a large quantity of methylamphetamine daily for a prolonged period prior to committing their offences) compared with their current use.
- *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 moderate or cease their drug use for a significant period.
- *The existence of any protective factors.* If the parolee is 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 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.

5.5 Request for permission to change name

If a prisoner who has been released on parole wants to apply to the Registrar of Births Deaths and Marriages to change his or her name, the prisoner must first obtain written approval from the Board under Division 6 of Part 8 of the *Corrections Act 1986*. It is an offence if the prisoner, or someone on behalf of the prisoner, applies to the Registrar without first obtaining that approval.

Section 79C(1) of the *Corrections Act 1986* provides that the Board may only approve a change of name application if the Board is satisfied that the change of name is in all the circumstances "necessary or reasonable".

In his second reading speech for the Bill which added Division 6 to the *Corrections Act 1986*, the Corrections Minister gave as examples of this "if the prisoner wishes to adopt a different name for cultural reasons or seeks to adopt a spouse's name after marriage".³² Those examples do not bind the Board's discretion but give an indication of Parliament's intention.

Section 79C(2) provides that the Board must not approve a change of name application if the Board is satisfied that the change of name would, if registered, be reasonably likely—

- to be regarded as offensive by a victim of crime or an appreciable sector of the community; or
- to be used to evade or hinder supervision of the prisoner on parole during the parole period.

³² Victoria, *Parliamentary Debates*, Assembly, 7 June 2006, Holding (Minister for Corrections), p.1815.

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.³³

The paramount consideration for the Board in deciding whether to cancel parole is the safety and protection of the community.³⁴

As explained in section 5.2 of this Manual, 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. It follows that 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 risks and benefits will have become apparent because the offender has failed to comply with one or more conditions of the parole order; but the Board may cancel parole if it becomes aware that the risk has escalated to an unacceptable level, even if the offender has not technically contravened any particular condition. The increase in risk must, however, be due to the actions of the prisoner. The Board's obligation to treat the safety and protection of the community as its paramount consideration does not permit or require it to cancel parole if the prisoner's presence in the community could place the prisoner or members of the community at risk from actions taken by a third person or persons (for example, if the Board becomes aware that the prisoner is the target of a potential shooting).³⁵

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 contravened one or more parole conditions but the benefits to the community of the parolee remaining on parole continue to outweigh the risks.

Particular considerations arise if a prisoner is arrested and charged while on parole.

6.2 Arrest of prisoner while on parole

If police suspect that a prisoner has committed an offence on parole (including the offence of breach of parole), police may arrest the prisoner.³⁶ If they arrest the prisoner, police must³⁷ 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 a division of 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. At that meeting, the Board must decide whether to cancel the 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 cancel parole prior to the filing of charges if the information indicates a serious and imminent risk to the community.

³³ *Marrogi v Secretary to the Department of Justice* [2015] VSC 429, para.31-33, *Abdulrahim v Adult Parole Board and anor* [2019] VSC 570 para.39.

³⁴ Section 73A of the *Corrections Act 1986*.

³⁵ *Abdulrahim v Adult Parole Board and anor* [2019] VSC 570

³⁶ *Corrections Act 1986*, s.78B

³⁷ or, in the case of a suspected breach of condition 8, may.

6.3.1 Parolee *charged* with further offending

If a parolee is on parole in respect of a 'serious violent offence', a 'sexual offence' or a 'terrorism or foreign incursion offence', each of which are defined in section 3(1) of the *Corrections Act 1986*, 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, violent offence (note: this is broader than the definition of 'serious violent offence') or 'terrorism or foreign incursion 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.³⁸

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.³⁹

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 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 following an application for re-parole and a re-parole suitability assessment.

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).⁴⁰

If the parolee was on parole in respect of a serious violent offence or a sexual offence or had a terrorism record and a court finds them guilty of a new offence, which is a sexual offence, violent offence or terrorism or foreign incursion offence that was committed on parole, the parole is cancelled automatically.⁴¹ 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.⁴²

³⁸ *Corrections Act 1986*, s. 77(2).

³⁹ Sentencing Advisory Council, *Review of the Victorian Adult Parole System* (2011), paragraphs 3.89-3.92.

⁴⁰ *Corrections Act 1986*, s.77(2)

⁴¹ *Corrections Act 1986*, s.77(6)

⁴² *Corrections Act 1986*, s.77A(2)

Automatic cancellation of parole also operates in relation to any parolee who is sentenced, while on parole, to another prison sentence.⁴³

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.⁴⁴

For example, Nick is released on parole on 1 January 2016. His parole expires on 1 July 2016. However, in August 2016 police discover that he committed an offence in June 2016 (during his parole period). On 15 August, they charge him with that offence and in February 2017, 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 Cancellation when taken into custody for historical charges or for interstate matters

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 following an application for re-parole and a re-parole suitability assessment.

6.5 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.

6.6 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.⁴⁵ In other words, every day in the community on parole is treated as having been equivalent to a day in prison.

⁴³ *Corrections Act 1986*, s.77(6A)

⁴⁴ *Corrections Act 1986*, s.77(7)

⁴⁵ *Corrections Act 1986*, s.76

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.⁴⁶

The *Corrections Act 1986* does not specify any procedures or criteria for deciding whether or when to make such a direction.

The practice of the Board is to consider each case after the prisoner has been arrested and returned to prison.

Each case is decided on its particular facts.

In exercising its discretion, the Board takes into account that many prisoners face significant difficulties in making the transition from prison back into the community. They may have a long history of drug addiction, institutionalisation and isolation from mainstream society. Even a well-motivated prisoner will have difficulty in resisting temptations to drift back to drug use and criminal associates.

Parole systems developed to provide support to, and supervision of, prisoners during this difficult transition, in order to reduce the risk to the community of reoffending. Parole conditions are designed to promote positive behaviour (for example, performing community service, engaging in counselling, etc.) and to detect and deter negative behaviour (such as illicit drug use).

A parolee who makes little or no use of the support provided and demonstrates limited or no effort towards his or her rehabilitation may not merit any time to count.

By contrast, a parolee who does make use of the supports provided (for example, attending and actively engaging in supervision, programs and community work) as well as making steps towards rehabilitation but who relapses into drug use and is unable to remain abstinent and is cancelled, may merit a substantial period of time to count to acknowledge the efforts that he or she has made, even if they were ultimately unsuccessful in completing parole.

Many parolees encounter setbacks during their parole, often in relation to family or relationship difficulties or stresses relating to employment or housing. The Board's approach to time to count is intended to operate in a way that can motivate parolees to persevere with their parole conditions when they encounter such setbacks.

A parolee who fears that he or she will inevitably be cancelled and that his or her efforts to comply will not be recognised through time to count is less likely to persevere when encountering a setback than one who feels that his or her efforts will be recognised with at least some time to count.

However, there may be circumstances where even positive efforts over a lengthy period will not merit any time to count. This will generally be where parole has been cancelled due to serious offending on parole.

6.7 Re-parole after cancellation

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

Consistently with its practice in relation to parole (see section 5.1.1 above), the Board will only consider 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

⁴⁶ *Corrections Act 1986*, ss.77B(2) and 77C

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 (at which point the Board would determine whether the re-submitted application should proceed to the preparation of a Parole Suitability Assessment – Re-parole Report or should be further deferred or denied).

- *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.⁴⁷

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.

⁴⁷ *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.

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 Health and 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 Health and 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.⁴⁸ 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 2019.

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

⁴⁸ The Secretary of the Board also acts in the capacity of Registrar – Transferred Parole Orders.

- nature of the offence or offences for which the parolee was serving a sentence
- the parolee's criminal history (in Victoria and interstate)
- 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 Parole and prisoners who are subject to deportation

The information below is an overview of the Board's approach to deportation. The information is for guidance only and should not be relied upon as legal advice or a statement of the law, nor as an indication of policy or the Board's commitment to a particular course of action in any specific case. The Board considers each case on its individual facts and circumstances.

When making parole decisions, the Board considers whether an offender sentenced by the court to a term of imprisonment with a non-parole period may be subject to immigration detention and/or removal from Australia at the end of their imprisonment.

When the Department of Home Affairs (DHA) cancels a prisoner's visa, DHA will notify the Department of Justice and Community Safety's Corrections and Justice Services. Community Correctional Services (CCS) will include relevant information in the Parole Suitability Assessment for the Board to consider, such as the prisoner's proposed accommodation and community supports in their country of nationality.

If the Board grants parole to a prisoner who does not have a valid visa, the prisoner may be removed from Australia by Australian Border Force, even though they still have a substantial portion of their sentence remaining to serve on parole. Alternatively, the prisoner may be held in immigration detention, pending arrangements for removal from Australia or a hearing of any application for review of the visa cancellation decision.

The Board will consider each case on its merits by applying the reasoning of the High Court of Australia in *R v Shrestha [1991] HCA 26 (173 CLR 48)*, including the considerations of risk and community safety in the prisoner's country of nationality in the context of practical limitations on supervision and enforcement of parole conditions in that country.

In considering a parole application from a prisoner who is subject to deportation, the Board is mindful of the purposes of parole - as with any application for parole - namely to promote public safety by supervision and supporting the transition of prisoners from prison back into the community in a way that seeks to minimise the risk of re-offending.

A prisoner on parole who is removed from Australia:

- is not subject to monitoring and supervision by CCS
- is not subject to parole conditions, as those conditions would be effectively unenforceable
- cannot be returned to custody if their risk to the community is escalating
- will not benefit from parole to support their successful transition back into the community.

There are two exceptions to an absence of any monitoring and supervision when deported:

- 1) Prisoners who will be deported to New Zealand (NZ) may be subject to NZ's *Returning Offenders (Management and Information) Act 2015* with conditions and supervision for eligible prisoners on parole by the NZ Department of Corrections and NZ Police for a maximum of two years.
- 2) Sex offenders returning to the United Kingdom may be subject to notification requirements pursuant to provisions in the *Sexual Offences Act 2003 (UK)*.

7.5.1 Determining whether to grant parole to a prisoner who will be deported

The Board's paramount consideration is the safety and protection of the community, in accordance with section 73A of the *Corrections Act 1986*. Based on the High Court of Australia's decision in *R v Shrestha [1991] HCA 26 (173 CLR 48)*, the Board's view is that the "community" is not limited to the Victorian community, and it must give its paramount consideration to the safety and protection of the community in the prisoner's country of nationality.

In determining whether to grant parole, the Board will consider:

- the judge's sentencing remarks

- the nature and seriousness of the offending
- any victim submissions
- the prisoner's assessed risk of re-offending
- any past offending and performance on previous supervised sentences in the community
- the current offences and the circumstances in which the prisoner committed them
- the prisoner's behaviour in prison
- any assessments or treatment the prisoner has undertaken in prison
- parity with any co-offender
- the prisoner's plans for release, such as opportunities for employment or education.

The Board will also consider:

- the prisoner's proposed accommodation in their country of nationality
- the prisoner's community supports in their country of nationality
- relevant treatment that the prisoner may be able to access in their country of nationality.

The Board is mindful that CCS will be unable to assess or verify the prisoner's proposed accommodation, community supports or access to treatment in the prisoner's country for the Board to consider.

The Board considers each case on its individual merits. For example, a prisoner who is classified as a General Offender (a prisoner who has not been convicted of Serious Violent Offences or Sexual Offences) and assessed as a low risk of re-offending may be granted parole and deported earlier in their sentence than a prisoner who is classified as a Serious Violent Offender and assessed as a medium risk of re-offending.

The Board does not consider the fiscal benefits of deporting prisoners at the earliest opportunity.

7.5.2 Determining whether to grant parole for a prisoner to reside in immigration detention

In limited circumstances, the Board may permit a prisoner to be detained in immigration detention, pending arrangements for their removal from Australia or a hearing of any application for review of the visa cancellation decision. The Board will grant parole and impose parole conditions, including a condition that the prisoner must reside in immigration detention. Prisoners in immigration detention are under the DHA's jurisdiction and cannot be monitored and supervised by CCS.

In addition to the considerations listed above, the Board will consider:

- the prisoner's risk to the safety and protection of the persons in immigration detention
- the potential for the prisoner to have increased access to legal support and assistance as well their review application being considered more quickly in immigration detention as opposed to being in prison
- the prospects of a successful outcome of an appeal in favour of the prisoner (for example, whether the prisoner has prosocial and strong family relationships in Australia)
- the likelihood of the prisoner reporting to CCS if released from immigration detention
- whether the prisoner has suitable accommodation if released from immigration detention.

Appendix 1: Serious Violent Offences (in alphabetical order)

This table has been prepared for the convenience of readers. While every effort has been made to ensure that it is accurate, reliance should not be placed upon it. For any official or legal purposes, reference should be made to the legislation.

Current as at 16 June 2020

Offence	Statutory reference for offence	Reference within definition of 'serious violent offence' in s.3 of the <i>Corrections Act 1986</i>
Accessory to murder	Crimes Act 1958, s.325(1)	(b)(ix)
Aggravated burglary	Crimes Act 1958, s.77	(b)(iii)
Aggravated carjacking	Crimes Act 1958, s.79A	(b)(vii)
Aggravated home invasion	Crimes Act 1958, s.77B	(b)(v)
Armed robbery	Crimes Act 1958, s.75A	(b)(ii)
Arson causing death	Crimes Act 1958, s.197A	(b)(viii)
Attempt (to commit any SVO)	Crimes Act 1958, s.321M	(ah) and (d)
Attempting to choke, etc. in order to commit an indictable offence	Crimes Act 1958, s.20 (repealed)	(ae)(iii)
Carjacking	Crimes Act 1958, s.79	(b)(vi)
Causing serious injury intentionally	Crimes Act 1958, s.16	(ad)(iii)
Causing serious injury intentionally in circumstances of gross violence	Crimes Act 1958, s.15A	(ad)(i)
Causing serious injury recklessly	Crimes Act 1958, s.17	(ad)(iv)
Causing serious injury recklessly in circumstances of gross violence	Crimes Act 1958, s.15B	(ad)(ii)
Child homicide	Crimes Act 1958, s.5A	(ac)
Conspiracy (to commit any SVO)	Crimes Act 1958, s.321	(ah) and (d)
Defensive homicide	Crimes Act 1958, s.9AD	(b)(i)
Extortion with threat to kill	Crimes Act 1958, s.27	(b)(ia)
False imprisonment	Common law	(c)
Home invasion	Crimes Act 1958, s.77A	(b)(iv)
Incitement (to commit any SVO)	Crimes Act 1958, s.321G	(ah) and (d)
Inflicting grievous bodily harm	Crimes Act 1958, s.19A (repealed)	(ae)(ii)
Intentionally causing a very serious disease	Crimes Act 1958, s.19A (repealed)	(af)
Intentionally causing grievous bodily harm or shooting, etc with intention to do grievous bodily harm or to resist or prevent arrest	Crimes Act 1958, s.17 (repealed)	(ae)(i)
Kidnapping	Crimes Act 1958, s.63A	(ad)(vii)
Kidnapping	Common law	(ag)
Making demand with threat to kill or injure or endanger life	Crimes Act 1958, s.35B (repealed)	(ae)(iv)
Manslaughter	Common law	(ab)
Murder	Common law	(a)
Threats to inflict serious injury	Crimes Act 1958, s.21	(ad)(vi)

Offence	Statutory reference for offence	Reference within definition of 'serious violent offence' in s.3 of the <i>Corrections Act 1986</i>
Threats to kill	Crimes Act 1958, s.20	(ad)(v)

The definition of 'serious violent offence' in section 3 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 (in alphabetical order)

This table has been prepared for the convenience of readers. While every effort has been made to ensure that it is accurate, reliance should not be placed upon it. For any official or legal purposes, reference should be made to the legislation.

Current as at 16 June 2020

Offence	Act	Section	Item no. in Schedule 1 of Serious Offenders Act 2018
Abduction and detention	Crimes Act 1958	56 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xxii))
Abduction or detention for a sexual purpose	Crimes Act 1958	47(1)	9
Abduction or detention of a child under the age of 16 for a sexual purpose	Crimes Act 1958	49P(1)	21
Accessing child abuse material	Crimes Act 1958	51H(1)	31
Act of gross indecency with girl under the age of 16	Crimes Act 1958	69(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xxi))
Administering a website used to deal with child abuse material	Crimes Act 1958	51E(1)	28
Administration of an intoxicating substance for a sexual purpose	Crimes Act 1958	46(1)	8
Administration of drugs, etc	Crimes Act 1958	55 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xxi))
Aggravated burglary (entry as trespasser with intent to commit a sexual offence)	Crimes Act 1958	77	45
Aggravated deceptive recruiting for commercial sexual services	Crimes Act 1958	53G(1)	41
Aggravated home invasion (entry as trespasser with intent to commit a sexual offence)	Crimes Act 1958	77B	47
Aggravated sexual servitude	Crimes Act 1958	53E(1)	39
Agreement for provision of sexual services by a child	Sex Work Act 1994	7(1)	50
Allowing a child to take part in sex work	Sex Work Act 1994	11(1)	51
Assault with intent to carnally know female mentally ill or intellectually defective person	Crimes Act 1958	54 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xiv))
Assault with intent to commit a sexual offence	Crimes Act 1958	42(1)	3
Assault with intent to commit rape	Crimes Act 1958	45(2) (historical)	53 (Sentencing Act

Offence	Act	Section	Item no. in Schedule 1 of Serious Offenders Act 2018
			1991 Sch.1, cl.1 (c)(v))
Assault with intent to commit rape with aggravating circumstances	Crimes Act 1958	45(4) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(viii))
Assault with intent to rape	Crimes Act 1958	40 (historical)	52C
Assault with intent to rape	Crimes Act 1958	45 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(iv))
Assault with intent to rape	Common law		53 (Sentencing Act 1991 Sch.1, cl.1 (e)(iii))
Assault with intent to take part in act of sexual penetration with child aged between 10 and 16	Crimes Act 1958	48(2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xiv))
Assault with intent to take part in act of sexual penetration with child under the age of 10	Crimes Act 1958	47(2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xi))
Assault with intent to take part in act of sexual penetration with mentally ill or intellectually defective person	Crimes Act 1958	51 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xviii))
Assault with intent to unlawfully and carnally know and abuse girl aged between 10 and 16	Crimes Act 1958	48(2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(x))
Assault with intent to unlawfully and carnally know and abuse girl under the age of 10	Crimes Act 1958	47 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(vii))
Assisting a person to avoid apprehension	Crimes Act 1958	51(1)	32
Attempted carnal knowledge of female mentally ill or intellectually defective person	Crimes Act 1958	54 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xiii))
Attempted rape	Crimes Act 1958	45(2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(iv))
Attempted rape	Crimes Act 1958	45 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(iii))

Offence	Act	Section	Item no. in Schedule 1 of Serious Offenders Act 2018
Attempted rape	Common law		53 (Sentencing Act 1991 Sch.1, cl.1 (e)(ii))
Attempted rape with aggravating circumstances	Crimes Act 1958	45(4) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(vii))
Attempted sexual penetration of child aged between 10 and 16	Crimes Act 1958	48(2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xiii))
Attempted sexual penetration of child under the age of 10	Crimes Act 1958	47(2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(x))
Attempted sexual penetration of mentally ill or intellectually defective person	Crimes Act 1958	51 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xvii))
Attempting to unlawfully and carnally know and abuse girl aged between 10 and 16	Crimes Act 1958	48(2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(ix))
Attempting to unlawfully and carnally know and abuse girl under the age of 10	Crimes Act 1958	47 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(vi))
Bestiality	Crimes Act 1958	54A(1)	42
Buggery	Crimes Act 1958	68(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xix))
Burglary (entry as trespasser with intent to commit a sexual offence)	Crimes Act 1958	76	44
Carnal knowledge of female mentally ill or intellectually defective person	Crimes Act 1958	54 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xii))
Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity	Crimes Act 1958	49I(1)	15
Causing a child under the age of 16 to be present during sexual activity	Crimes Act 1958	49H(1)	14
Causing a person with a cognitive impairment or mental illness to be present during sexual activity	Crimes Act 1958	52E(1)	35
Causing another person to provide commercial sexual	Crimes Act 1958	53C(1)	37

Offence	Act	Section	Item no. in Schedule 1 of Serious Offenders Act 2018
services in circumstances involving sexual servitude			
Causing or allowing a sexual performance involving a child	Crimes Act 1958	49Q(1)	22
Causing or inducing a child to take part in sex work	Sex Work Act 1994	5(1)	48
Compelling sexual penetration	Crimes Act 1958	38A (historical)	52A
Conducting a business in circumstances involving sexual servitude	Crimes Act 1958	53D(1)	38
Deceptive recruiting for commercial sexual services	Crimes Act 1958	53F(1)	40
Distributing child abuse material	Crimes Act 1958	51D(1)	27
Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity	Crimes Act 1958	49L(1)	18
Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity	Crimes Act 1958	49K(1)	17
Encouraging use of a website to deal with child abuse material	Crimes Act 1958	51F(1)	29
Facilitating a sexual offence against a child	Crimes Act 1958	49S(1)	24
Felonious indecent assault	Crimes Act 1958	55(3) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xvi))
Forcible abduction of woman	Crimes Act 1958	62 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xviii))
Grooming for sexual conduct with a child under the age of 16	Crimes Act 1958	49M(1)	19
Gross indecency with child under the age of 16	Crimes Act 1958	50(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xv))
Home invasion (entry as trespasser with intent to commit a sexual offence)	Crimes Act 1958	77A	46
Incest (but not s.52(3) or (4) if the woman or girl is the sister of the offender and both are aged 18 or older and the carnal knowledge or attempt or assault with intent to have unlawful carnal knowledge was or was made with the consent of the sister)	Crimes Act 1958	52 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xi))

Offence	Act	Section	Item no. in Schedule 1 of Serious Offenders Act 2018
Incest (but not section 52(4) or (5) if both people are aged 18 or older and each consented to taking part in the act of sexual penetration)	Crimes Act 1958	52 (historical)	53 (Sentencing Act 1991 Sch. 1, cl. 1 (c)(xix))
Incest by sexual penetration of a parent, step-parent or lineal ancestor	Crimes Act 1958	44(3) (historical)	5
Incest by sexual penetration of a sibling or half-sibling	Crimes Act 1958	44(4) (historical)	6
Indecent assault	Crimes Act 1958	39 (historical)	52B
Indecent assault	Crimes Act 1958	44(1) (historical)	53 (Sentencing Act 1991 Sch. 1, cl. 1 (c)(i))
Indecent assault	Crimes Act 1958	55(1) (historical)	53 (Sentencing Act 1991 Sch. 1, cl. 1 (d)(xv))
Indecent assault on male person	Crimes Act 1958	68(3A) or (3B) (historical)	53 (Sentencing Act 1991 Sch. 1, cl. 1 (d)(xx))
Indecent assault upon a male person	Crimes Act 1958	68(3) (historical)	53 (Sentencing Act 1991 Sch. 1, cl. 1 (ca))
Indecent assault with aggravating circumstances	Crimes Act 1958	43 (historical)	53 (Sentencing Act 1991 Sch. 1, cl. 1 (b)(iii))
Indecent assault with aggravating circumstances	Crimes Act 1958	44(2) (historical)	53 (Sentencing Act 1991 Sch. 1, cl. 1 (c)(ii))
Inviting or offering a sexual performance involving a child	Crimes Act 1958	49R(1)	23
Involving a child in the production of child abuse material	Crimes Act 1958	51B(1)	25
Loitering near schools etc	Crimes Act 1958	60B(2) (historical)	43
Loitering near schools etc. by sexual offender	Crimes Act 1958	49N(1)	20
Obtaining payment for sexual services provided by a child	Sex Work Act 1994	6(1)	49
Persistent sexual abuse of a child under the age of 16	Crimes Act 1958	49J(1)	16
Possession of child abuse material	Crimes Act 1958	51G(1)	30

Offence	Act	Section	Item no. in Schedule 1 of Serious Offenders Act 2018
Procuring defilement of woman by threats or fraud or administering drugs	Crimes Act 1958	57(1) or (2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(xvii))
Procuring persons by threats or fraud	Crimes Act 1958	54 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xx))
Procuring sexual act by fraud	Crimes Act 1958	45(1)	7
Procuring sexual act by threat	Crimes Act 1958	44(1)	4
Producing child abuse material	Crimes Act 1958	51C(1)	26
Rape	Crimes Act 1958	40 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (b)(i))
Rape	Crimes Act 1958	45(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(iii))
Rape	Crimes Act 1958	44(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(i))
Rape	Common law		53 (Sentencing Act 1991 Sch.1, cl.1 (e)(i))
Rape with aggravating circumstances	Crimes Act 1958	41 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (b)(ii))
Rape with aggravating circumstances	Crimes Act 1958	45(3) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(vi))
Rape with mitigating circumstances	Crimes Act 1958	44(2) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(ii))
Sexual activity directed at another person	Crimes Act 1958	48	9A
Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority	Crimes Act 1958	49G(1)	13
Sexual activity in the presence of a child under the age of 16	Crimes Act 1958	49F(1)	12
Sexual activity in the presence of a person with a cognitive impairment or mental illness	Crimes Act 1958	52D(1)	34
Sexual assault	Crimes Act 1958	40(1)	2
Sexual assault by compelling sexual touching	Crimes Act 1958	41(1)	2

Offence	Act	Section	Item no. in Schedule 1 of Serious Offenders Act 2018
Sexual assault of a child aged 16 or 17 under care, supervision or authority	Crimes Act 1958	49E(1)	11
Sexual assault of a child under the age of 16	Crimes Act 1958	49D(1)	10
Sexual assault of a person with a cognitive impairment or mental illness	Crimes Act 1958	52C(1)	33
Sexual penetration of child aged between 10 and 16	Crimes Act 1958	46(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (ac))
Sexual penetration of child aged between 10 and 16	Crimes Act 1958	48(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xii))
Sexual penetration of child under the age of 10	Crimes Act 1958	47(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(ix))
Sexual penetration of mentally ill or intellectually defective person	Crimes Act 1958	51 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xvi))
Sexual penetration of child under the age of 10	Crimes Act 1958	45(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (ab))
Threat to commit a sexual offence	Crimes Act 1958	43(1)	3
Unlawful detention for purposes of sexual penetration	Crimes Act 1958	61 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (c)(xxiii))
Unlawfully and carnally knowing and abusing a girl under the age of 10	Crimes Act 1958	46 (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(v))
Unlawfully and carnally knowing and abusing girl aged between 10 and 16	Crimes Act 1958	48(1) (historical)	53 (Sentencing Act 1991 Sch.1, cl.1 (d)(viii))
Using force, threat etc. to cause another person to provide commercial sexual services	Crimes Act 1958	53B(1)	36

Note: the definition of 'sexual offence' also includes, in accordance with items 54 to 55 and 65 to 67 of Schedule 1 of the *Serious Offenders Act 2018*:

- Any offence referred to in paragraphs (dab) to (dap) or paragraph (dar) of clause 1 of Schedule 1 to the Sentencing Act 1991 that involves sexual penetration;

- An offence referred to in paragraph (daq) of clause 1 of Schedule 1 to the *Sentencing Act 1991*
- An offence referred to in paragraphs (iv) to (xviii) of clause 1(a) of Schedule 1 to the *Sentencing Act 1991*, as in force immediately before its substitution
- An offence an element of which is an intention to commit an offence of a kind referred to in this Schedule.
- An offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in this Schedule.
- Any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute an offence of a kind referred to in this Schedule.