

The Australian Law Reform Commission recommends changes to the NT parole framework

Last month the Australian Law Reform Commission (ALRC) report on Indigenous incarceration rates was tabled in Federal Parliament. The report, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, makes thirty-five recommendations for reform, including reforms to the NT parole scheme that aim to encourage eligible Aboriginal and Torres Strait Islander (ATSI) prisoners to apply for parole.

The ALRC reports that some ATSI prisoners who are eligible for parole are instead serving out their entire head sentence in prison. Most of these prisoners are on sentences of less than two years. The result is that ATSI prisoners spend a greater proportion of their sentence in prison than is required under the relevant legislative schemes; that correctional facilities are put under additional strain due to the increased prison population; and that these ATSI prisoners are then released into the community without supervision at the end of their head sentence.

Parole can be a critical part of a sentence

Parole does not commence upon the completion of a sentence. Rather, parole is part of the sentence.

When a person is sentenced to a term of imprisonment above a prescribed length, a court generally imposes a non-parole period as well as a head sentence. The setting of a parole date is seen to incentivise good behaviour and rehabilitation while an offender is in prison and parole is seen to facilitate prisoner reintegration back into society.

Upon the expiration of the non-parole period, the offender may be conditionally released as a parolee, subject to parole conditions as set by the parole authority. Parolees are supervised by community corrections services and must follow their reasonable directions. Breach of parole may result in a return to prison.

Parole generally involves case management to provide suitable accommodation, referrals to required services and helping parolees manage financial, personal and other problems. Parole provides critical support for offenders to reintegrate back into society: prisoners who receive parole have significantly lower rates of recidivism or commit less serious offences than those released unsupervised. As observed in the *Review of the Parole System of Victoria* (2013), parole benefits not just the offender but also the wider community by ‘recognising that the wider community benefits from the rehabilitation of offenders’ through a decrease in recidivism and crime rates.

ATSI prisoners may not apply for parole, even when eligible

Some ATSI prisoners who are eligible for parole instead serve out their entire head sentence in prison. This was particularly the case in jurisdictions with high ATSI prison populations, as highlighted by the Commonwealth *Prison to Work* (2016) report which noted that in 2014–15, 53 per cent of prisoners in the NT served their full sentence in prison (meaning they were released unsupervised).

The ALRC identifies two key reasons why eligible ATSI prisoners may not apply for parole. First, eligible ATSI



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prisoners may believe that they are unlikely to be granted parole by the parole authority; this may be due living arrangements, previous offending, or lack of attendance in prison programs. It may also be related to a complex history in dealing with government representatives. Second, in jurisdictions that do not count time served on parole in the case of revocation, being granted parole creates too great a risk of increased prison time. To remedy this, the ALRC recommends that state and territory governments, including the NT Government, should:

- introduce statutory regimes of automatic court-ordered parole for sentences of under three years, supported by the provision of prison programs for prisoners serving short sentences; and
- abolish parole revocation schemes that require the time spent on parole to be served again in prison if parole is revoked.

Court-ordered parole

The granting of parole takes one of two forms: ‘court-ordered’ parole and discretionary parole. Court-ordered parole permits automatic release on parole on the date set by the court at the time of sentencing without application to the parole authority at the end of the non-parole period. Discretionary parole requires that offenders sentenced to parole-eligible sentences must make an application to the relevant parole authority prior to the expiration of the non-parole period for specific authorisation for parole.

NSW, Qld., and SA have legislative frameworks for court-ordered parole. These jurisdictions operate under a mixed

system of parole where prisoners on short sentences receive automatic court-ordered parole and prisoners on longer sentences are subject to discretionary parole. An order for court-ordered parole does not guarantee release on the prescribed date. There are means to revoke the non-parole period when ‘exceptional circumstances’ arise after sentencing or where the prisoner would represent a ‘sufficiently significant danger’ to the community if released on parole. A prisoner will not be released on parole if they do not accept the conditions of his or her parole.

NSW introduced court-ordered parole in 1983, SA in 1984 and Qld. in 2006, with the objective of diverting low risk offenders from custody while ensuring post-release supervision. There is a form of court-ordered parole in WA.

The NT is one of four jurisdictions without court-ordered parole. Instead, all offenders who are sentenced to parole-eligible sentences must apply for parole to the relevant parole authority prior to the expiration of the non-parole period, regardless of the length of the head sentence.

The introduction of court-ordered parole to the NT was supported by criminal justice stakeholders to the ALRC inquiry, who advised the ALRC that court-ordered parole was ‘urgently needed’—often relevant prison programs are not available in the NT and parole is not granted to ATSI prisoners, through no fault of the offender.

The ALRC considers that court-ordered parole could increase the numbers of low-level offenders who are released on parole and limit the number of offenders who are released to the community unsupervised. However, the ALRC also acknowledges that court-ordered parole

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may not be appropriate in systems that do not count parole as sentence when parole is revoked, which is the system in the NT. For this reason, and reasons of fairness and proportionality, the ALRC also recommends the amendment of the current NT parole revocation scheme.

Amend parole revocation scheme

Parole conditions can be arduous. Standard conditions of parole, such as reporting and place restrictions can be difficult for ATSI people to comply with, especially where conditions of release clash with cultural obligations and prevent reconnection with family and community. Factors that particularly impact on ATSI parolees have been identified to include:

- remoteness;
- substance abuse issues;
- mental health issues;
- poor literacy skills;
- lack of access to appropriate programs;
- difficulty in obtaining suitable long-term housing;
- difficulty in finding stable employment; and
- issues around family violence, particularly for women.

The decision to return a parolee to prison following a breach of parole usually sits with the parole authority and not all breaches of parole will result in a return to prison. Where breaches of parole do result in a return to prison, the length of the remaining prison term can be affected depending on the parole revocation scheme operating. There are two options:

- Time spent on parole, beginning on the date of release on parole and ending on the date of breach (or date of revocation), counts towards the head sentence (as in NSW, Qld, SA and WA); or

- Time spent on parole, beginning on the date of release on parole and ending on the date of breach (or date of revocation), does not count towards the head sentence and must be served again in prison upon the parolee's return (as in the ACT, the NT, Tas. and Vic.).

The NT system has potential adverse consequences. It extends the time a person serves under sentence and it operates as a disincentive for eligible people to apply for parole, increasing the prison population and the number of people released from prison without supervision. It is also unnecessarily punitive.

The Attorney-General and Minister for Justice of the NT reported that the rate of eligible people declining parole was growing, and that up to 47 per cent of people who declined parole between January 2016 and February 2017 did so because conditions on parole were considered too onerous and parole was too hard. The NT Government sought to address this by amending the *Parole Act* (NT) in August 2017 so that an offender whose conduct breaches the conditions of their parole may be reimprisoned for a short term as a sanction. This term of imprisonment does not revoke parole, so that when completed, the person picks up their parole where they left off. If the breach is serious or repetitive however, the person still returns to prison and any parole period is not counted as time served (except for any previous term of imprisonment as a sanction).

Conclusion

Release on parole assists prisoners to reintegrate and lowers recidivism rates. Many ATSI prisoners are serving short sentences of imprisonment, and are not applying for parole when eligible. Parole is preferred to release without supervision at the end of a prison sentence and as such the ALRC has made recommendations to encourage release on parole in the NT so to lower recidivism and incarceration rates, and to increase community safety.

For more information see *Pathways to Justice—An Inquiry into the Incarceration Rate of ATSI Peoples* (2017), Chapter 9 at www.alrc.gov.au/publication

