

Version  
as at 28 October 2021



## Parole Act 2002

Public Act 2002 No 10  
Date of assent 5 May 2002  
Commencement see section 2

### Contents

		Page
1	Title	9
2	Commencement	9
<b>Part 1</b>		
<b>Parole and other release from detention</b>		
Subpart 1—Preliminary provisions relating to parole and other release from detention		
3	Purpose	9
4	Interpretation	9
4A	Transitional, savings, and related provisions	15
5	Act binds the Crown	15
Subpart 2—Release		
<i>General provisions</i>		
6	Overview of release	15
7	Guiding principles	16
8	Part applies to all offenders	16
9	Application of Part to persons subject to term of imprisonment	17

---

#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Justice and the Department of Corrections.**

10	Application to offenders detained in hospital or secure facility	17
11	Application of Part to offenders detained in social welfare residence	18
12	This Part subject to other orders	18
13	General rules about information to be given to offenders	18
13AA	Application for confidentiality order	20
13AB	Making of confidentiality order	20
13AC	Effect of confidentiality order	21
13AD	If confidentiality order not made	22
13AE	Variation or rescission of confidentiality order	22
13A	Procedure of Board during epidemic	22
<i>Conditions</i>		
14	Standard release conditions	23
14A	Purpose of collecting biometric information under section 14(1)(fb)	24
15	Special conditions	24
15A	Electronic monitoring	26
16	Programmes	28
<i>Drug or alcohol conditions</i>		
16A	Imposition, and effect, of drug or alcohol condition	28
16B	Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring	29
16C	How notice of requirement to undergo testing or to submit to continuous monitoring may be given	30
16D	Where prescribed testing procedure may be carried out	31
16E	Information obtained from drug and alcohol testing or monitoring	31
<i>Release at statutory release date</i>		
17	Release at statutory release date	32
18	Conditions applying to release at statutory release date	32
19	Special provision for offenders sentenced to short-term sentences while on parole	33
<i>Parole</i>		
20	Parole eligibility date	34
21	Consideration for parole of offenders detained in prison	35
21A	Board must specify date by which offender must be further considered for parole	36
22	Date of hearings	36
23	No consideration for parole of offenders on compassionate release	37
24	Consideration of offenders unlawfully at large when due to be considered for parole	37
25	Early referral and consideration for parole	37

26	Other times when Board may consider offenders for parole	38
27	Board may make postponement order	38
27A	Procedure for making postponement order	39
27B	Consideration of offenders for parole during epidemic	40
28	Direction for release on parole	41
29	Standard release conditions	41
29AA	Special release conditions	42
29A	Release conditions for person to whom extended supervision order applies	42
29B	Board may monitor compliance with conditions	43
30	Release conditions applying to offenders detained in hospital or secure facility who are released on parole	44
31	When release conditions discharged or suspended	44
32	When parole ends	45
	<i>Residential restrictions</i>	
33	Residential restrictions	45
34	Prior report on suitability of residential restrictions	46
35	Residential restrictions only to be imposed if residence suitable and occupants consent	47
36	Chief executive may approve alternative residence pending determination of application for variation of residential restrictions	48
37	Expiry and revocation of direction for home detention <i>[Repealed]</i>	48
38	Residential restrictions do not affect entitlements under Social Security Act 2018	49
39	When detention conditions suspended or cancelled <i>[Repealed]</i>	49
40	When home detention ends <i>[Repealed]</i>	49
40A	Applications for home detention during epidemic <i>[Repealed]</i>	49
	<i>Compassionate release</i>	
41	Board may direct early release on compassionate grounds	49
	<i>Procedures for certain hearings</i>	
42	Application of procedures set out in sections 43 to 50	50
43	Preparation for hearings	50
43A	Consultation and disclosure necessary to provide reports	52
44	Information for victims	52
45	Decision on type of hearing <i>[Repealed]</i>	53
46	Review of decision on type of hearing <i>[Repealed]</i>	53
47	Interviews before hearings <i>[Repealed]</i>	53
48	Unattended hearings <i>[Repealed]</i>	53
49	Hearings	54
49A	Adjournment to obtain further information	55
49B	Hearing to impose release conditions	55
50	Decisions must be notified	55

50A	Submissions from, and interviews with, certain victims	56
50B	Decisions to be notified to certain victims	56
<i>Actual release</i>		
51	Date of release	57
52	Release of offenders released at statutory release date	57
53	Licence issued on release	58
54	Police must be advised	59
55	Offenders may be released early for deportation	59
55A	Implementation of early release for deportation	60
55B	Offenders released early remain offenders under New Zealand law	61
<i>Variation and discharge of conditions</i>		
56	Application for variation or discharge of conditions	61
56A	Application of section 56 during epidemic	62
57	Procedure for determining applications	62
58	Board determines application for variation or discharge	62
<i>Recall</i>		
59	Definition of recall application	63
60	Making recall application	63
61	Grounds for recall	64
62	Making interim recall order	65
63	What happens when interim recall order made	65
64	What happens if no interim recall order made	66
65	Procedure for determining recall applications	66
65A	Application of section 65 during epidemic	67
66	Board may make final recall order	68
66A	Protection of constables	69
<i>Reviews and appeals from decisions</i>		
67	Review of decisions	69
68	Appeal to High Court against postponement orders, section 107 orders, and final recall orders	70
69	Procedure on appeal against postponement orders, section 107 orders, and final recall orders	70
70	Powers of court on appeal	71
<i>Offences</i>		
71	Offence to breach conditions	72
71A	Offences related to drug or alcohol conditions	72
72	Offence to refuse entry to residence specified under residential restrictions	73
72A	Offence to refuse authorised person entry for certain purposes related to continuous monitoring	74

	<i>Arrest of offenders</i>	
73	Arrest without warrant	75
73A	Power to enter premises to arrest	75
	<i>Regulations</i>	
74	Regulations	76
	<i>Rules</i>	
74A	Rules about drug and alcohol testing and monitoring	77
74B	Further provisions concerning rules about drug and alcohol testing and monitoring	78
74C	Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012 [Repealed]	79
	Subpart 3—Sentence calculation	
	<i>Cumulative sentences</i>	
75	Cumulative sentences form notional single sentence	79
	<i>Start date of sentence of imprisonment</i>	
76	General rules about start date of sentence of imprisonment	79
77	Start date of notional single sentence	80
78	Deferred start date	80
79	Start date if later sentence replaces original sentence	80
80	Start date after temporary surrender to New Zealand	80
81	Start date of sentence of imprisonment when term imposed	80
	<i>Sentence expiry dates</i>	
82	Sentence expiry date	81
83	Sentence expiry date of pre-cd sentence	81
	<i>Non-parole periods</i>	
84	Non-parole periods	81
85	Pre-cd sentences do not have non-parole periods	82
	<i>Release dates</i>	
86	Release date of sentence	83
87	Release date of pre-cd sentence	83
	<i>Determining key dates</i>	
88	Chief executive must determine key dates, etc	83
	<i>Determining how much time has been served</i>	
89	Determining time served	84
90	Period spent in pre-sentence detention deemed to be time served	84
91	Meaning of pre-sentence detention	84
92	Procedure for recording length of pre-sentence detention	86
93	Definition of extradition offender and ICC offender and MACM offender	87

94	Time ceases to run in certain circumstances	88
95	Time on bail pending appeal does not count as time served	88
96	Period between quashed sentence and new sentence does not count as time served	88
	Subpart 4—Transitional arrangements for offenders subject to pre-cd sentences	
	<i>General rules</i>	
97	Application of this Part to offenders subject to pre-cd sentences	89
98	Transitional provisions for hearings within 3 months after commencement date	90
99	Chief executive may exercise certain powers before commencement date	91
100	Offenders subject to non-association orders	91
101	Corrective training deemed to be short-term sentence	91
102	Suspended sentences	91
	<i>Release at final release date</i>	
103	Purpose and effect of section 104	92
104	Release at final release date	92
105	Calculation of final release dates	93
106	Variation and cancellation of final release dates	93
107	Order that offender not be released	94
	<b>Part 1A</b>	
	<b>Extended supervision orders</b>	
	<i>Preliminary</i>	
107A	Overview of Part	95
107B	Meaning of relevant offence, relevant sexual offence, and relevant violent offence	96
107C	Meaning of eligible offender	99
107D	Meaning of sentencing court	99
107E	Obligation to assess eligible offenders [ <i>Repealed</i> ]	100
	<i>Application for, and making of extended supervision orders</i>	
107F	Chief executive may apply for extended supervision order	100
107FA	Sentencing court may make interim supervision order	101
107G	Procedure following application for extended supervision order	102
107GAA	Procedure where hearing contingent on outcome of PPO application	104
107GA	Application of section 107G during epidemic	105
107H	Hearings relating to extended supervision orders	105
107I	Sentencing court may make extended supervision order	106
107IAA	Matters court must be satisfied of when assessing risk	107
107IAB	Chief executive may apply for imposition of intensive monitoring condition	107

---

107IAC	Court may order imposition of intensive monitoring condition	108
107IA	Court may impose special conditions on interim basis	108
	<i>Nature of extended supervision order</i>	
107J	Conditions of extended supervision order	109
107JA	Standard extended supervision conditions	109
107JB	Purpose of collecting biometric information under section 107JA(1)(eb)	111
107K	Board may impose special conditions	111
107L	Commencement and expiry of extended supervision order	113
	<i>Cancellation, variation, and suspension</i>	
107M	Sentencing court may cancel extended supervision order	115
107N	Extension of short extended supervision order <i>[Repealed]</i>	116
107O	Board may vary conditions of extended supervision order	116
107P	Suspension of conditions of extended supervision order	116
107Q	Effect of new sentence on offender subject to extended supervision order	117
	<i>Appeals and reviews</i>	
107R	Appeals against decisions of sentencing court	118
107RA	Review by court	118
107RB	Biennial review of high-impact conditions	119
107S	Review of Board decisions	120
	<i>Miscellaneous provisions</i>	
107T	Offence to breach extended supervision order or interim supervision order	120
107TA	Offences related to drug or alcohol conditions	121
107U	Rules about court practice and procedure	121
107V	Additional victim notification	122
107W	Information about victims not to be disclosed	122
107X	Application of Legal Services Act 2000	122
	<i>Transitional measures</i>	
107ZA	Extension of certain orders that are in force before this section comes into force	122
107ZB	Modification of conditions on extended supervision orders in force before this section comes into force	123
107Y	Definitions <i>[Repealed]</i>	124
107Z	Applications in respect of transitional eligible offenders to be made within first 6 months after commencement <i>[Repealed]</i>	124

<b>Part 2</b>		
<b>New Zealand Parole Board and amendments to other enactments relating to parole and release generally</b>		
<i>Establishment of Board</i>		
108	New Zealand Parole Board established	124
109	Functions of Board	124
110	Department of Corrections to provide administrative and training support to Board	126
<i>Membership of Board</i>		
111	Membership of Board	126
112	Chairperson of Board	127
113	Delegation of chairperson's functions, powers, and duties	127
114	Panel convenors	127
<i>How Board performs its functions</i>		
115	Parole panels	128
116	Decisions of Board	128
117	Information before Board	129
117A	Board may regulate own procedure	129
118	Avoiding actual or perceived bias	129
<i>Summoning witnesses</i>		
118A	Power to summon witnesses	130
118B	Service of summons	130
118C	Protection of witnesses	131
118D	Offences	131
<i>Attendance at hearings</i>		
118E	Attendance at hearings	131
<i>General provisions about Board and members</i>		
119	Annual report	132
120	Term of appointment, and reappointment	132
121	Members ceasing to hold office	132
122	Remuneration and expenses of members	132
123	Immunity of members	133
124	Abolition of Parole Board and District Prisons Boards	133
<i>Acts amended</i>		
125	Acts amended	133
<b>Schedule 1</b>		134
<b>Transitional, savings, and related provisions</b>		
<b>Schedule 2</b>		136
<b>Amendments to other enactments</b>		



## 1 Title

This Act is the Parole Act 2002.

## 2 Commencement

- (1) This Act, except section 99, comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) Section 99 comes into force on the day after the date on which this Act receives the Royal assent.
- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

---

### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

---

Section 2(1): this Act (except section 99) brought into force, on 30 June 2002, by clause 2 of the Parole Act Commencement Order 2002 (SR 2002/177).

Section 2(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## Part 1

### Parole and other release from detention

#### Subpart 1—Preliminary provisions relating to parole and other release from detention

## 3 Purpose

The purpose of this Act is to reform the law relating to the release from detention of offenders serving sentences of imprisonment, and to replace the provisions of Parts 4 and 6 of the Criminal Justice Act 1985.

## 4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**biometric information** has the same meaning as in section 2(1) of the Customs and Excise Act 1996

**Board** means the New Zealand Parole Board established under section 108; and includes a panel of the Board, a panel convenor, and the chairperson acting within their respective jurisdictions

**bodily sample**, for a person, means—

- (a) a sample of the person’s blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

**chairperson** means the chairperson of the Board appointed under section 112

**chief executive** means the chief executive of the Department of Corrections

**commencement date** means the date specified in section 2(1)

**compassionate release** means release under section 41

**controlled drug** has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

**determinate sentence** means a sentence of imprisonment for a fixed term

**drug or alcohol condition** means a special condition of parole, a special condition on release under section 17 at the release date of a long-term sentence, or a condition of an extended supervision order—

- (a) that is imposed under section 15(3)(ba), 18(2)(b), or 107K(1); and
- (b) that prohibits an offender from doing 1 or more of the following:
  - (i) using (as defined in this section) a controlled drug;
  - (ii) using a psychoactive substance;
  - (iii) consuming alcohol

**drug or alcohol monitoring device** means a device, connected to a person’s body, that is able to detect the presence in the person’s body of 1 or more of the following:

- (a) a controlled drug used by the person;
- (b) a psychoactive substance used by the person;
- (c) alcohol consumed by the person

**epidemic management notice** means a notice under section 8(1) of the Epidemic Preparedness Act 2006 stating that the application of this Act is modified in order to deal with the practical effects of the outbreak of the disease referred to in the notice

**extended supervision order** means an order made under section 107I

**final recall order** means a final recall order made under section 66

**final release date** means the final release date of a pre-cd sentence, or the final release date of an offender who is subject to a pre-cd sentence, as determined under Parts 4 and 6 of the Criminal Justice Act 1985 and varied (if applicable) under section 106 of this Act

**hospital** means a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992

**indeterminate sentence** means a sentence of imprisonment that is imprisonment for life or preventive detention

**intensive monitoring condition** means the special condition described in section 107IAC(2)

**interim recall order** means an interim recall order made under section 62

**interim supervision order** means an order made under section 107FA

**key date**, in relation to a sentence of imprisonment, means the start date, sentence expiry date, and release date of the sentence

**long-term sentence** means a sentence of imprisonment that is—

- (a) a determinate sentence of more than 24 months imposed on or after the commencement date; or
- (b) a notional single sentence of more than 24 months; or
- (c) an indeterminate sentence imposed before, on, or after the commencement date; or
- (d) in the case of a pre-cd sentence, a sentence of more than 12 months

**medical laboratory technologist** means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

**medical officer** means—

- (a) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technologist

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

**non-parole period** means the term within, or proportion of, a long-term sentence during which the offender who is subject to the sentence is not eligible to be released on parole from the sentence

**non-release day** means a Thursday, a Friday, a Saturday, a Sunday, Christmas Day, Boxing Day, New Year's Day, the second day of January, Waitangi Day, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, and, in respect of release from a particular place, the anniversary day of the region in which that place is situated

**notional single sentence** means the notional single sentence of imprisonment that is created when one determinate sentence is directed to be served cumulatively on another determinate sentence (*see* section 75)

**nurse** means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the

Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

**parole eligibility date** means the date on and after which an offender who is subject to 1 or more long-term sentences of imprisonment is eligible to be released on parole (*see* section 20)

**postponement order** means an order made under section 27 that postpones the date of an offender's next parole hearing

**pre-cd sentence** means a sentence of imprisonment that is imposed before the commencement date

**prison** means a prison established or deemed to be established under the Corrections Act 2004

**psychoactive substance** has the same meaning as in section 9 of the Psychoactive Substances Act 2013

**release conditions** means the standard release conditions and any special conditions imposed by the Board or the sentencing court and that apply to an offender released from detention

**release date** means, in relation to a determinate sentence of imprisonment, the date on which the offender who is subject to the sentence ceases to be liable to be recalled to continue serving that sentence in a prison (*see* sections 86 and 87)

**relevant activity** is an activity or a programme for the rehabilitation or reintegration of offenders that is specified by the Board under section 21A

**residential restrictions** means the special conditions described in section 33

**secure facility** means a secure facility within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

**sentence expiry date** means the date on which the offender who is subject to the sentence has served its full term and therefore ceases to be subject to it (*see* sections 82 and 83)

**sentence of imprisonment**—

- (a) includes, in relation to a pre-cd sentence, preventive detention and corrective training; but
- (b) does not include a sentence of imprisonment imposed under the Armed Forces Discipline Act 1971, except in section 55

**short-term sentence** means a sentence of imprisonment that is—

- (a) a determinate sentence of 24 months or less imposed on or after the commencement date; or
- (b) a notional single sentence of 24 months or less; or
- (c) in the case of a pre-cd sentence, a sentence of 12 months or less

**special conditions** means conditions of a type referred to in section 15(3), and includes residential restrictions

**standard extended supervision conditions** means the standard extended supervision conditions set out in section 107JA

**standard release conditions** means the standard conditions of release set out in section 14

**start date**, in relation to a sentence of imprisonment, means the date on and from which an offender who is subject to the sentence begins to be subject to it (*see* sections 76 to 81)

**statutory release date** means the date on which an offender who is subject to 1 or more sentences of imprisonment—

- (a) must be released from detention (*see* section 17); and
- (b) ceases to be liable to be recalled to continue serving any sentence in a prison (*see* sections 59 to 66)

**testing** of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

**using**, in relation to a controlled drug and a person, excludes the person using the controlled drug as a prescription medication in accordance with section 8(2)(c) or (d) of the Misuse of Drugs Act 1975

**variation**, in relation to the variation by the Board of release conditions, includes the suspension and addition of conditions, and the variation of their duration

**victim** means (unless provided otherwise), in relation to an offender, a person who has asked for notice or advice and copies, and has given his or her address, under section 32B of the Victims' Rights Act 2002.

- (2) In this Act, a reference to section 2 of the Criminal Justice Act 1985, or to Part 4 or Part 6 (or any provision within those Parts) of the Criminal Justice Act 1985, is a reference to that section, Part, or provision as it was immediately before the commencement date.

Section 4(1) **biometric information**: inserted, on 22 August 2017, by section 50 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 4(1) **bodily sample**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **controlled drug**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **detention conditions**: repealed, on 1 October 2007, by section 4(4) of the Parole Amendment Act 2007 (2007 No 28).

Section 4(1) **drug or alcohol condition**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **drug or alcohol monitoring device**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **epidemic management notice**: inserted, on 19 December 2006, by section 4 of the Parole Amendment Act 2006 (2006 No 88).

Section 4(1) **extended supervision order**: inserted, on 7 July 2004, by section 3 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 4(1) **home detention**: repealed, on 1 October 2007, by section 4(4) of the Parole Amendment Act 2007 (2007 No 28).

Section 4(1) **intensive monitoring condition**: inserted, on 12 December 2014, by section 4 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 4(1) **interim supervision order**: inserted, on 8 September 2018, by section 68 of the Statutes Amendment Act 2018 (2018 No 27).

Section 4(1) **medical laboratory technologist**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **medical officer**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **medical practitioner**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **nurse**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **penal institution**: repealed, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **prison**: inserted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **psychoactive substance**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **release date**: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **relevant activity**: inserted, on 2 September 2015, by section 4 of the Parole Amendment Act 2015 (2015 No 4).

Section 4(1) **residential restrictions**: inserted, on 1 October 2007, by section 4(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 4(1) **secure facility**: inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 4(1) **special conditions**: amended, on 1 October 2007, by section 4(5) of the Parole Amendment Act 2007 (2007 No 28).

Section 4(1) **standard detention conditions**: repealed, on 1 October 2007, by section 4(4) of the Parole Amendment Act 2007 (2007 No 28).

Section 4(1) **standard extended supervision conditions**: inserted, on 1 October 2007, by section 4(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 4(1) **statutory release date** paragraph (b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **testing**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **using**: inserted, on 15 May 2017, by section 4 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 4(1) **variation**: amended, on 1 October 2007, by section 4(6) of the Parole Amendment Act 2007 (2007 No 28).

Section 4(1) **victim**: amended, on 6 December 2014, by section 4 of the Parole Amendment Act 2014 (2014 No 37).

Section 4(1) **victim**: amended, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

#### **4A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Section 4A: inserted, on 15 May 2017, by section 5 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

#### **5 Act binds the Crown**

This Act binds the Crown.

### Subpart 2—Release

#### *General provisions*

#### **6 Overview of release**

- (1) This section is intended to give a broad overview of how and when offenders are released from detention. It does not confer rights or impose obligations and, if there is an inconsistency between this section and any other, the other section prevails.
- (2) Unless an offender has been released earlier under this Part, he or she must be released from detention on his or her statutory release date, and after that is no longer subject to recall. However, offenders may be subject to release conditions after their statutory release date.
- (3) This subpart provides for 2 types of early release from a prison—
  - (a) parole:
  - (b) compassionate release.
- (4) Parole has the following characteristics:
  - (a) it is available only to an offender who is subject to a long-term sentence:
  - (b) it is granted by the Board, which also imposes release conditions:
  - (c) an offender on parole from a determinate sentence is subject to recall at any time until his or her statutory release date:
  - (d) an offender on parole from an indeterminate sentence is subject to recall for life.
- (5) *[Repealed]*
- (6) Compassionate release has the following characteristics:
  - (a) it may be granted by the Board in either of 2 specific circumstances:
  - (b) the Board may impose release conditions, and may recall the offender.

Section 6(3): substituted, on 1 October 2007, by section 5(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 6(5): repealed, on 1 October 2007, by section 5(2) of the Parole Amendment Act 2007 (2007 No 28).

## 7 Guiding principles

- (1) When making decisions about, or in any way relating to, the release of an offender, the paramount consideration for the Board in every case is the safety of the community.
- (2) Other principles that must guide the Board's decisions are—
  - (a) that offenders must not be detained any longer than is consistent with the safety of the community, and that they must not be subject to release conditions that are more onerous, or last longer, than is consistent with the safety of the community; and
  - (b) that offenders must, subject to any of sections 13 to 13AE, be provided with information about decisions that concern them, and be advised how they may participate in decision-making that directly concerns them; and
  - (c) that decisions must be made on the basis of all the relevant information that is available to the Board at the time; and
  - (d) that the rights of victims (as defined in section 4 of the Victims' Rights Act 2002) are upheld, and submissions by victims (as so defined) and any restorative justice outcomes are given due weight.
- (3) When any person is required under this Part to assess whether an offender poses an **undue risk**, the person must consider both—
  - (a) the likelihood of further offending; and
  - (b) the nature and seriousness of any likely subsequent offending.

Compare: 1985 No 120 s 107A(3)

Section 7(2)(a): amended, on 1 October 2007, by section 6(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 7(2)(b): amended, on 1 October 2007, by section 6(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 7(2)(d): amended, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

## 8 Part applies to all offenders

- (1) This Part applies to all offenders who are subject to a sentence of imprisonment, including (without limitation) offenders who, on the commencement date, are subject to a pre-cd sentence and who (for instance)—
  - (a) are eligible for parole; or
  - (b) are to be released under section 104 at their final release date; or
  - (c) are under consideration for release on parole; or



- (d) are on parole or have been given early release under section 94 of the Criminal Justice Act 1985; or
  - (e) are subject to an application for a recall order, or to an interim recall order or a recall order.
- (2) Every decision about, or in any way relating to, the release of an offender that is made after the commencement date must be made under this Part unless specifically provided otherwise.
- (3) This Part does not in itself affect the validity of any decision made under Parts 4 or 6 of the Criminal Justice Act 1985 about, or in any way relating to, the release of an offender.

Section 8(1)(c): amended, on 1 October 2007, by section 7(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 8(1)(d): amended, on 1 October 2007, by section 7(2) of the Parole Amendment Act 2007 (2007 No 28).

## **9 Application of Part to persons subject to term of imprisonment**

- (1) Unless specifically provided otherwise, this Part applies to every person who is subject to a term of imprisonment (whether by committal, sentence, or order) for non-payment of a fine or other sum of money, disobedience of a court order, or contempt of court, as if—
- (a) every reference to a sentence of imprisonment included a reference to a term of imprisonment; and
  - (b) every reference to an offender included a reference to a person who is subject to a term of imprisonment.
- (2) However, in relation to an offender who is subject to a term of imprisonment for non-payment of a fine or other sum of money, this Part is subject to section 19E of the Crimes Act 1961 and to section 91(1) and (5) of the Summary Proceedings Act 1957.

## **10 Application to offenders detained in hospital or secure facility**

- (1) This section applies to an offender who is detained in, or on leave from, a hospital or secure facility and who is liable to be detained—
- (a) in the hospital following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under an arrangement under section 46 of that Act; or
  - (b) in the secure facility following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
  - (c) in the hospital or the secure facility under an order under section 34(1)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

- (2) An offender to whom this section applies must be treated for the purposes of this Part and Part 1A as if he or she were detained in a prison, and a reference to an offender detained in a prison is a reference to an offender detained in, or on leave from, a hospital or, as the case requires, a secure facility.
- (3) However, nothing in subsection (2) derogates from any provision that applies specifically to offenders to whom this section applies, and the Board and the chief executive may make special arrangements for such offenders.
- (4) When an offender to whom this section applies is released under this Part, he or she must be treated in accordance with section 48(3) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or, as the case requires, section 69(3) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Compare: 1985 No 120 s 95

Section 10 heading: amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 10 heading: amended, on 7 July 2004, by section 4(1) of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 10(1): substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 10(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 10(2): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 10(2): amended, on 7 July 2004, by section 4(2) of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 10(4): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

## **11 Application of Part to offenders detained in social welfare residence**

This Part applies to every offender detained under section 34A of the Corrections Act 2004 in a residence approved for the purpose of that section as if the offender were detained in a prison, and a reference to an offender detained in a prison is a reference to an offender detained in such a residence.

Section 11: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 11: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

## **12 This Part subject to other orders**

For the avoidance of doubt, a requirement in this Part that an offender be released from detention at a certain time is subject to any order of a court or other authority of competent jurisdiction that the offender be detained.

## **13 General rules about information to be given to offenders**

- (1) The Board must take all reasonable steps to ensure that the information received by the Board on which it will make any decision relating to an offender is made available to the offender—

- (a) at least 5 working days before the relevant hearing; or
  - (b) if that is not possible, as soon as practicable before the hearing.
- (2) Despite subsection (1), the Board must ensure that—
- (a) no information is given to the offender that discloses the address or contact details of any victim (as defined in section 4 of the Victims' Rights Act 2002) of the offender; and
  - (b) if any written submissions by a victim (as so defined) or any victim impact statements are shown to an offender, they are not retained by the offender.
- (3) Despite subsection (1), the Board may, in exceptional circumstances, order that any information referred to in that subsection not be made available to an offender if, in the opinion of the relevant panel convenor, it would prejudice the mental or physical health of the offender, or endanger the safety of any person.
- (4) Subsections (2) and (3) apply despite anything in the Official Information Act 1982 or the Privacy Act 2020.
- (5) Information withheld under subsection (3) may be provided to the offender's counsel.
- (5A) Subsection (1) does not apply to any information that may not be disclosed under a confidentiality order made under section 13AB.
- (6) Information provided or shown to an offender under this section must be used only for the purpose of assisting the offender to make submissions to the Board.
- (7) The Board must give a written copy of every order or determination to the offender who is the subject of the order or determination, along with information about how the offender may exercise any review or appeal rights that he or she has in relation to the order or determination.
- (8) Any person who publishes information provided under this section in a form that identifies, or enables the identification of, a victim (as defined in section 4 of the Victims' Rights Act 2002) commits an offence and is liable on conviction to,—
- (a) in the case of an individual, a term of imprisonment not exceeding 3 months or a fine not exceeding \$2,000; and
  - (b) in the case of a body corporate, a fine not exceeding \$10,000.

Compare: 1985 No 120 ss 106A, 107

Section 13(2)(a): amended, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

Section 13(2)(b): amended, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

Section 13(4): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 13(5A): inserted, on 1 October 2007, by section 8 of the Parole Amendment Act 2007 (2007 No 28).

Section 13(8): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 13(8): amended, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

### **13AA Application for confidentiality order**

- (1) The Commissioner of Police or the chief executive may apply to the chairperson or to a panel convenor for an order under section 13AB (in this section and in sections 13AB to 13AE called a **confidentiality order**).
- (2) Despite any other enactment, the power conferred by subsection (1) may not be delegated.
- (3) Every application under subsection (1) must be supported by an affidavit sworn by the applicant.

Section 13AA: inserted, on 1 October 2007, by section 9 of the Parole Amendment Act 2007 (2007 No 28).

### **13AB Making of confidentiality order**

- (1) The chairperson or a panel convenor may make a confidentiality order if satisfied—
  - (a) that the information for which confidentiality is sought is relevant to a current matter concerning an offender; and
  - (b) that disclosure of the information may—
    - (i) endanger the safety of the person who is the source of the information or of any other person; or
    - (ii) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.
- (2) The order must identify the information that is to be kept confidential, and may do so by reference to 1 or more documents.
- (3) The order may—
  - (a) forbid the disclosure or publication of the information to any person other than—
    - (i) the members of the Board involved in considering and determining the current matter; and
    - (ii) any officials specified in the order by name or position, being officials who require access to the information to perform their functions in relation to the Board's determination of the current matter or the implementation of that determination:

- (b) forbid the disclosure or publication (other than to the persons mentioned in paragraph (a)) of any particulars that identify, or may lead to the identification of, any person who is the source of the information:
- (c) require the members of the Board involved in considering and determining the current matter to receive the information in the absence of any person other than—
  - (i) any officials who are permitted access to the information under paragraph (a)(ii) and whose presence the members consider necessary; and
  - (ii) if the members receive the oral evidence of the person who is the source of the information, that person.
- (4) To avoid doubt, anything that may not be disclosed or published under a confidentiality order may not be disclosed—
  - (a) to the offender; or
  - (b) to the offender’s counsel or other representative of the offender.
- (5) The chairperson or the panel convenor who makes the confidentiality order must give the order and the information to which it relates to the members of the Board who will determine the current matter.
- (6) In this section and in section 13AC, **current matter**, in relation to an offender, means a matter concerning the offender that is before the Board or is expected to come before the Board.

Section 13AB: inserted, on 1 October 2007, by section 9 of the Parole Amendment Act 2007 (2007 No 28).

### 13AC Effect of confidentiality order

- (1) A person commits an offence, and is liable on conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 3 months, or to both, who intentionally contravenes a confidentiality order.
- (2) Despite any other enactment, the Board may hear a person whose identity may not be disclosed under a confidentiality order only if it is satisfied that procedures are in place to ensure that the hearing will not result in the disclosure of the person’s identity to any person who is not, in terms of the order, permitted to have access to that information.
- (3) In any court proceeding that relates to the confidentiality order or to the related current matter, a person whose identity may not be disclosed under a confidentiality order has a privilege in information that discloses, or may lead to the disclosure of, the person’s identity.
- (4) This section has effect despite anything in section 13 or 65, the Official Information Act 1982, or the Privacy Act 2020.

Section 13AC: inserted, on 1 October 2007, by section 9 of the Parole Amendment Act 2007 (2007 No 28).

Section 13AC(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 13AC(4): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

### **13AD If confidentiality order not made**

- (1) If the chairperson or a panel convenor refuses to make a confidentiality order, he or she—
  - (a) must return to the applicant all documents constituting or relating to the application for the order; and
  - (b) must not disclose to any person, or give any person access to, any matter relating to the application.
- (2) This section has effect despite anything in section 13 or 65, the Official Information Act 1982, or the Privacy Act 2020.

Section 13AD: inserted, on 1 October 2007, by section 9 of the Parole Amendment Act 2007 (2007 No 28).

Section 13AD(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

### **13AE Variation or rescission of confidentiality order**

The chairperson or a panel convenor may, on the application of the person who applied for a confidentiality order or on the application of that person's successor in office, vary or rescind the order if satisfied that, because of a change in circumstances, the variation is necessary or, as the case requires, the order is no longer necessary.

Section 13AE: inserted, on 1 October 2007, by section 9 of the Parole Amendment Act 2007 (2007 No 28).

### **13A Procedure of Board during epidemic**

- (1) While an epidemic management notice is in force, any decision or action that may or must be made or taken by the Board under this Act may, if the chairperson or a panel convenor is satisfied that it is desirable,—
  - (a) be made or taken by the Board on the basis of documents only, without the presence or submission of any person who would otherwise have the right to be present or make a submission; or
  - (b) be made or taken by the chairperson or the panel convenor, acting alone, either—
    - (i) in the usual way; or
    - (ii) on the basis of documents only, without the presence or submission of any person who would otherwise have the right to be present or make a submission.

- (2) Subsection (1) overrides every provision of this Act to the contrary.
- (3) If the notice applies to only stated parts of New Zealand, subsections (1) and (2) apply within those parts only.
- (4) *[Repealed]*

Section 13A: inserted, on 19 December 2006, by section 5 of the Parole Amendment Act 2006 (2006 No 88).

Section 13A(3): replaced, on 2 September 2015, by section 5 of the Parole Amendment Act 2015 (2015 No 4).

Section 13A(4): repealed, on 2 September 2015, by section 5 of the Parole Amendment Act 2015 (2015 No 4).

### *Conditions*

#### **14 Standard release conditions**

- (1) An offender who is subject to the standard release conditions must comply with the following conditions:
  - (a) the offender must report in person to a probation officer in the probation area in which the offender resides as soon as practicable, and not later than 72 hours, after release:
  - (b) the offender must report to a probation officer as and when required to do so by a probation officer, and must notify the probation officer of his or her residential address and the nature and place of his or her employment when asked to do so:
  - (c) the offender must not move to a new residential address in another probation area without the prior written consent of the probation officer:
  - (d) if consent is given under paragraph (c), the offender must report in person to a probation officer in the new probation area in which the offender is to reside as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area:
  - (e) if an offender intends to change his or her residential address within a probation area, the offender must give the probation officer reasonable notice before moving from his or her residential address (unless notification is impossible in the circumstances) and must advise the probation officer of the new address:
  - (f) the offender must not reside at any address at which a probation officer has directed the offender not to reside:
  - (fa) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:
  - (fb) the offender must, if a probation officer directs, allow the collection of biometric information:

- (g) the offender must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the offender not to engage or continue to engage:
  - (h) the offender must not associate with any specified person, or with persons of any specified class, with whom the probation officer has, in writing, directed the offender not to associate:
  - (i) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer.
- (2) *[Repealed]*
- (3) In this section, **probation area** means an area designated by the chief executive for the administration of release conditions, community-based sentences, sentences of home detention (including post-detention conditions), or orders.
- (4) For the purposes of any provision of this Act relating to the imposition of standard release conditions, those conditions must be treated as if they were imposed by the Board.

Compare: 1985 No 120 ss 107A, 107B

Section 14(1)(fa): inserted, on 22 August 2017, by section 51 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 14(1)(fb): inserted, on 22 August 2017, by section 51 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 14(2): repealed, on 1 October 2007, by section 10(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 14(3): amended, on 1 October 2007, by section 10(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 14(4): inserted, on 2 September 2015, by section 6 of the Parole Amendment Act 2015 (2015 No 4).

#### **14A Purpose of collecting biometric information under section 14(1)(fb)**

Biometric information collected under section 14(1)(fb) may only be used for the purpose of helping—

- (a) to manage offenders to ensure public safety; and
- (b) to identify offenders before they leave New Zealand; and
- (c) to enforce the condition specified in section 14(1)(fa).

Section 14A: inserted, on 22 August 2017, by section 52 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

#### **15 Special conditions**

- (1) The Board may (subject to subsections (2) and (4)) impose any 1 or more special conditions on an offender.
- (2) A special condition must not be imposed unless it is designed to—
  - (a) reduce the risk of reoffending by the offender; or



- (b) facilitate or promote the rehabilitation and reintegration of the offender; or
  - (c) provide for the reasonable concerns of victims of the offender; or
  - (d) comply, in the case of an offender subject to an extended supervision order, with an order of the court, made under section 107IAC, to impose an intensive monitoring condition.
- (3) The kinds of conditions that may be imposed as special conditions include, without limitation,—
- (a) conditions relating to the offender’s place of residence (which may include a condition that the offender reside at a particular place), or his or her finances or earnings:
    - (ab) residential restrictions:
    - (b) conditions requiring the offender to participate in a programme (as defined in section 16) to reduce the risk of further offending by the offender through the rehabilitation and reintegration of the offender:
  - (ba) conditions prohibiting the offender from doing 1 or more of the following:
    - (i) using (as defined in section 4(1)) a controlled drug:
    - (ii) using a psychoactive substance:
    - (iii) consuming alcohol:
  - (c) conditions that the offender not associate with any person, persons, or class of persons:
  - (d) conditions requiring the offender to take prescription medication:
  - (e) conditions prohibiting the offender from entering or remaining in specified places or areas, at specified times, or at all times:
  - (f) conditions requiring the offender to submit to the electronic monitoring of compliance with any release conditions or conditions of an extended supervision order, imposed under paragraph (ab) or (e), that relate to the whereabouts of the offender:
  - (g) an intensive monitoring condition, which must, and may only, be imposed if a court orders (under section 107IAC) the imposition of an intensive monitoring condition.
- (3A) If the Board imposes on an offender special conditions relating to residential restrictions (specified under subsection (3)(ab)),—
- (a) the offender’s probation officer must define the area of the residence specified under section 33(2)(a) within which the offender must remain and show that area to the offender and advise every relevant occupant (as defined in section 34(4)) of the residence of that area; and
  - (b) the offender must remain within that area.

- (4) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—
- (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
  - (b) consents to taking the prescription medication.
- (5) An offender does not breach his or her conditions for the purposes of section 71 if he or she withdraws consent to taking prescription medication, but the failure to take the medication may give rise to a ground for recall set out in section 61.

Compare: 1985 No 120 ss 107C, 107D

Section 15(1): replaced, on 2 September 2015, by section 7 of the Parole Amendment Act 2015 (2015 No 4).

Section 15(2)(c): replaced, on 12 December 2014, by section 5(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 15(2)(d): inserted, on 12 December 2014, by section 5(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 15(3): amended, on 22 December 2016, by section 4(1) of the Parole (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 46).

Section 15(3)(ab): inserted, on 1 October 2007, by section 11(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 15(3)(ba): inserted, on 15 May 2017, by section 6 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 15(3)(e): added, on 7 July 2004, by section 5 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 15(3)(f): replaced, on 22 December 2016, by section 4(2) of the Parole (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 46).

Section 15(3)(g): inserted, on 12 December 2014, by section 5(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 15(3A): inserted, on 22 January 2014, by section 47 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

### **15A Electronic monitoring**

- (1) The purpose of an electronic monitoring condition imposed under section 15(3)(f) is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions.
- (2) For the purposes of the Privacy Act 2020, information about an offender that is obtained through electronic monitoring may be used both for the purposes referred to in subsection (1) and for the following purposes:
- (a) to verify compliance with any release conditions or conditions of an extended supervision order;
  - (b) to detect non-compliance with any conditions and the commission of offences:

- (c) to provide evidence of non-compliance with conditions and the commission of offences:
  - (d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.
- (3) An offender who is subject to an electronic monitoring condition—
- (a) may be required to have electronic monitoring equipment attached to his or her body; and
  - (b) must comply with written instructions from a probation officer that are reasonably necessary for the effective administration of the electronic monitoring (for example, an instruction to regularly charge the equipment); and
  - (c) breaches the electronic monitoring condition if he or she does not comply with those written instructions.
- (4) The annual report of the Department of Corrections must include the following information about the use of electronic monitoring in the year reported on:
- (a) the number of offenders who were at any time subject to an electronic monitoring condition:
  - (b) the average number of offenders who were subject to an electronic monitoring condition and the average duration of the condition:
  - (c) the percentage of offenders who, while subject to an electronic monitoring condition attaching to an extended supervision order, were—
    - (i) convicted for a breach of the condition; or
    - (ii) convicted of any other offence:
  - (d) a description of processes and systems relating to electronic monitoring that were in place during the year reported on.

Section 15A: inserted, on 7 July 2004, by section 6 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 15A(1): amended, on 1 October 2007, by section 12(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 15A(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 15A(2)(a): amended, on 1 October 2007, by section 12(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 15A(2)(d): added, on 1 October 2007, by section 12(3) of the Parole Amendment Act 2007 (2007 No 28).

Section 15A(3): replaced, on 22 December 2016, by section 5 of the Parole (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 46).

Section 15A(4)(c): substituted, on 1 October 2007, by section 12(4) of the Parole Amendment Act 2007 (2007 No 28).

## 16 Programmes

For the purposes of section 15, a **programme** means any of the following:

- (a) any psychiatric or other counselling or assessment:
- (b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative, or reintegrative programme:
- (c) placement in the care of any appropriate person, persons, or agency, approved by the chief executive, such as (without limitation)—
  - (i) an iwi, hapu, or whanau:
  - (ii) a marae:
  - (iii) an ethnic or cultural group:
  - (iv) a religious group, such as a church or religious order:
  - (v) members or particular members of any of the above.

Compare: 1985 No 120 s 2

### *Drug or alcohol conditions*

Heading: inserted, on 15 May 2017, by section 7 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

#### 16A Imposition, and effect, of drug or alcohol condition

- (1) This section applies if the Board imposes a drug or alcohol condition on an offender under section 15(3)(ba), 18(2)(b), or 107K(1).
- (2) The Board cannot direct, indicate, or require that the offender undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the offender to comply with all requirements arising from an authorised person giving the offender notice under section 16B(2).
- (3) The Board must advise the offender that the offender must do any 1 or more of the following things if required to do so by notice given by an authorised person under section 16B(2):
  - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:
  - (b) submit to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the offender's body:
  - (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.

Section 16A: inserted, on 15 May 2017, by section 7 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

**16B Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring**

- (1) This section applies to an offender who—
  - (a) is on parole with a drug or alcohol condition; or
  - (b) has been released under section 17, at the release date of a long-term sentence, with a drug or alcohol condition; or
  - (c) is subject to an extended supervision order with a drug or alcohol condition.
- (2) An authorised person may, by notice given to an offender to whom this section applies, require the offender to do any 1 or more of the following:
  - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under section 74A(a):
  - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under section 74A(d):
  - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under section 74A(a).
- (3) An authorised person exercising that person's discretion under subsection (2)—
  - (a) must comply with any rules made under section 74A; and
  - (b) may—
    - (i) select an offender to do what is specified in subsection (2)(a), (b), or (c) in any manner (including randomly); and
    - (ii) make a determination in respect of the offender with or without evidence that the offender has breached the condition; and
  - (c) must, if requiring the offender to do what is specified in subsection (2)(a) or (c), determine the prescribed testing procedure to be used for the testing required under subsection (2)(a), or required if the offender is selected to undergo testing by an automated system that the offender is required to contact under subsection (2)(c).
- (4) A notice given to an offender under subsection (2)(b) may include a requirement that the offender comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or

protect it from events, such as submersion in water, that may damage it or interfere with its functioning).

- (5) An automated system specified in a notice under subsection (2)(c) must include an automated selection method that determines, in any manner consistent with rules made under section 74A(b) (including randomly), whether the offender is required to undergo testing.
- (6) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section.
- (7) In this section and in sections 16C to 16E and 71A, **authorised person** means a person who is—
  - (a) a constable; or
  - (b) an employee of the Department of Corrections authorised by the chief executive of that department to require offenders to undergo testing, or submit to continuous monitoring, under this section.

Section 16B: inserted, on 15 May 2017, by section 7 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

#### **16C How notice of requirement to undergo testing or to submit to continuous monitoring may be given**

- (1) An authorised person may give an offender a notice under section 16B(2) in any of the following ways:
  - (a) by giving the notice personally and in writing to the offender;
  - (b) by giving the notice personally and orally to the offender, then, unless the notice requires the offender only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the offender;
  - (c) if the notice is given under section 16B(2)(a), by giving the notice to the offender by telephone or other means of electronic communication (as defined in section 209 of the Contract and Commercial Law Act 2017), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the offender.
- (2) An automated system must, in response to an offender contacting it as required by a notice given under section 16B(2)(c) and subsection (1), give the offender a spoken or written response notice specifying whether the offender is required to undergo testing.
- (3) A notice given by an authorised person under subsection (1)(c), or a response notice that is given by an automated system under subsection (2) and that requires an offender to undergo testing, must specify the name and location of a testing facility to which the offender is required to report to undergo testing, and the time or times when the offender is required to report, under section 16D.

Section 16C: inserted, on 15 May 2017, by section 7 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

**16D Where prescribed testing procedure may be carried out**

- (1) An authorised person may require an offender to whom section 16B applies to undergo testing at the place where the offender is given notice under section 16B(2) personally by the authorised person.
- (2) Subsection (1) applies even if the place where the offender is given notice personally by the authorised person is—
  - (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
  - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the offender’s residential address.
- (3) However, an offender cannot be required to undergo a prescribed testing procedure in a place specified in subsection (2)(a) or (b) if the testing procedure involves the collection of blood or urine.
- (4) An offender given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if subsection (3) applies or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing.
- (5) An offender given a notice under section 16C(1)(c) or (2) that requires the offender to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

Section 16D: inserted, on 15 May 2017, by section 7 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

**16E Information obtained from drug and alcohol testing or monitoring**

- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under section 16B(2)—
  - (a) may be used for all or any of the following purposes:
    - (i) verifying compliance by the offender with a drug or alcohol condition:
    - (ii) detecting non-compliance by the offender with a drug or alcohol condition, and providing evidence of that non-compliance:
    - (iii) verifying that the offender has not tampered or otherwise interfered with a drug or alcohol monitoring device:
    - (iv) any purpose for which the offender has requested to use the information or consented to its use; and

- (b) must not, except at the request or with the consent of the offender, be used—
  - (i) as evidence that the offender committed an offence, other than an offence against section 71, 71A, 107T, or 107TA; or
  - (ii) for any other purpose not listed in paragraph (a).
- (2) The Board or a court may, in the absence of evidence that is available to the Board or court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
  - (a) is accurate; and
  - (b) was obtained in the manner required by sections 16B to 16D.

Section 16E: inserted, on 15 May 2017, by section 7 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

### *Release at statutory release date*

#### **17 Release at statutory release date**

- (1) The statutory release date of an offender is the release date of the sentence to which the offender is subject (including any notional single sentences) that has the latest release date.
- (2) An offender who is detained in a prison on his or her statutory release date must be released from detention on that date.
- (3) Subsection (2) is subject to section 179A of the Corrections Act 2004.

Compare: 1985 No 120 s 90

Section 17(2): amended, on 1 October 2007, by section 13 of the Parole Amendment Act 2007 (2007 No 28).

Section 17(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 17(3): added, on 3 April 2009, by section 36(2) of the Corrections Amendment Act 2009 (2009 No 3).

#### **18 Conditions applying to release at statutory release date**

- (1) An offender who is released under section 17 at the release date of a short-term sentence is, on release, subject to any release conditions imposed by the court on that sentence unless subsection (3) or section 19 applies.
- (2) If an offender is released under section 17 at the release date of a long-term sentence,—
  - (a) the offender is subject to the standard release conditions for a period of 6 months from the offender’s statutory release date; and
  - (b) the Board may impose any special conditions for a period of up to 6 months from the offender’s statutory release date.

(2AA) Despite subsection (2)(a), if the Board imposes any special conditions on the offender that the Board considers incompatible with all or any of the standard



release conditions, the Board may suspend the incompatible standard release conditions during the period in which those special conditions are in force, and time runs on the suspended conditions during that period.

- (2A) If an offender in respect of whom an extended supervision order is made is released at his or her statutory release date, or released early under section 52, the Board may impose special conditions, the duration of which are determined by section 107L(2A).
- (3) If an offender who is subject to a long-term sentence is, while not on parole or compassionate release, sentenced within the year preceding his or her statutory release date to a short-term sentence whose release date is after that statutory release date, then, if the offender is released at the release date of the short-term sentence, that release date must be treated as if it were the release date of a long-term sentence.
- (4) A prisoner to whom section 179A of the Corrections Act 2004 applies—
- (a) is not, during the period between the statutory release date and the date of actual release, subject to any release conditions that will apply on or after his or her statutory release date; but
  - (b) from the statutory release date the time begins to run on the prisoner's release conditions.

Compare: 1985 No 120 s 99

Section 18(2): replaced, on 2 September 2015, by section 8 of the Parole Amendment Act 2015 (2015 No 4).

Section 18(2AA): inserted, on 1 October 2007, by section 14 of the Parole Amendment Act 2007 (2007 No 28).

Section 18(2A): replaced, on 22 January 2014, by section 48 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 18(4): added, on 3 April 2009, by section 37 of the Corrections Amendment Act 2009 (2009 No 3).

## **19 Special provision for offenders sentenced to short-term sentences while on parole**

- (1) If an offender who is on parole is sentenced to a concurrent short-term sentence whose release date is before the offender's statutory release date, then (provided the offender is not recalled) the offender must be released from detention on the release date of the short-term sentence.
- (2) If subsection (1) applies except that the offender is subject to more than 1 short-term sentence, the offender must be released on the release date of the short-term sentence (including any short-term notional single sentence) that has the latest release date.
- (3) To avoid doubt, subsection (2) does not apply in respect of any short-term sentences that are imposed cumulatively if the resulting notional single sentence is a long-term sentence.
- (4) If an offender is released in accordance with subsection (1) or subsection (2),—

- (a) the offender is released on parole and the Board may—
    - (i) specify a period for which the standard conditions are in force; and
    - (ii) impose special conditions under section 29AA (if any); but
  - (b) the actual date of release is determined under sections 51(2) and 52 as if the offender were being released at his or her statutory release date.
- (5) If for any reason an offender is released in accordance with subsection (1) or subsection (2) before the Board has made a determination required under subsection (4)(a), then,—
- (a) if the offender was, at the start date of the sentence (or earliest applicable sentence), subject to any release conditions, the Board is deemed to have reimposed those release conditions for the remainder of the period for which they were originally imposed; and
  - (b) if the offender was not, at the start date of the sentence (or earliest applicable sentence), subject to release conditions, the offender is not subject to release conditions when he or she is released under subsection (1) or subsection (2).

Section 19(4)(a): replaced, on 2 September 2015, by section 9(1) of the Parole Amendment Act 2015 (2015 No 4).

Section 19(5): amended, on 2 September 2015, by section 9(2) of the Parole Amendment Act 2015 (2015 No 4).

### *Parole*

#### **20 Parole eligibility date**

- (1) The parole eligibility date of an offender who is subject only to 1 or more sentences imposed on or after the commencement date is the date on which the offender—
- (a) has finished serving the non-parole period of every long-term sentence to which he or she is subject; and
  - (b) has passed the release date of every short-term sentence to which he or she is subject.
- (2) The parole eligibility date of an offender who is subject only to 1 or more pre-d sentences is the later of—
- (a) his or her parole eligibility date as determined under sections 89 and 92 of the Criminal Justice Act 1985; and
  - (b) if the offender does not have a parole eligibility date under those sections, his or her final release date as determined under section 91 of the Criminal Justice Act 1985.

- (3) The parole eligibility date of an offender who is concurrently subject to both 1 or more pre-cd sentences and to 1 or more sentences imposed after the commencement date is the later of—
  - (a) the offender’s parole eligibility date as it would be under subsection (1) if he or she were subject only to the sentence or sentences imposed after the commencement date; and
  - (b) the offender’s parole eligibility date as it would be under subsection (2) if he or she were subject only to the pre-cd sentence or sentences.
- (4) Despite anything in this section, an offender who is subject only to 1 or more short-term sentences does not have a parole eligibility date (unless the short-term sentences are cumulative and form a long-term notional single sentence, in which case subsection (1) applies to the notional single sentence and the offender will have a parole eligibility date under that subsection).
- (5) If an offender is required, by an order under section 86C(4) or 86D(3) of the Sentencing Act 2002, to serve a sentence without parole, the offender—
  - (a) does not have a parole eligibility date in respect of the sentence; and
  - (b) may not be released on parole in respect of that sentence.
- (6) If an offender is required, by an order under section 86E(2) or 103(2A) of the Sentencing Act 2002, to serve a sentence of imprisonment for life without parole, the offender may not be released on parole.
- (7) This subsection applies to an offender who is subject to a sentence (**sentence A**) in respect of which an order under section 86C(4) or 86D(3) of the Sentencing Act 2002 has been made and who is also subject to 1 or more other sentences (**sentence B**) in respect of which no such order has been made.
- (8) For the purpose of determining the parole eligibility date (if any) of sentence B of an offender to whom subsection (7) applies, the full term of sentence A must be treated as the non-parole period of sentence A.

Compare: 1985 No 120 s 92(7), (8), (9)

Section 20(5): added, on 1 June 2010, by section 15 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 20(6): added, on 1 June 2010, by section 15 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 20(7): added, on 1 June 2010, by section 15 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 20(8): added, on 1 June 2010, by section 15 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

## 21 Consideration for parole of offenders detained in prison

- (1) The Board must, as soon as practicable after the parole eligibility date of an offender who is detained in a prison, consider the offender for release on parole.

- (2) The Board must consider for parole every offender who is detained in a prison at least once in every 2 years after the offender's last parole hearing unless, when the offender is due to be considered,—
- (a) the offender has a new parole eligibility date that is more than 12 months after his or her last parole hearing (in which case subsection (1) applies); or
  - (b) the offender is subject to a postponement order; or
  - (c) the offender is detained following an application for a recall order, or under an interim or final recall order.
- (3) If subsection (2)(c) (but not subsection (2)(a)) applies to an offender, the Board must consider the offender for parole within 12 months of any final recall order that is, or is subsequently, made.

Compare: 1985 No 120 ss 92, 97, 100

Section 21 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 21(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 21(2): amended, on 2 September 2015, by section 10 of the Parole Amendment Act 2015 (2015 No 4).

Section 21(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

## **21A Board must specify date by which offender must be further considered for parole**

When the Board declines to release an offender on parole, the Board in its decision—

- (a) must specify a date (the **specified date**) by which the offender must be further considered for parole; and
- (b) where the date specified in paragraph (a) is more than 12 months after the date of the current hearing, may specify the relevant activities (if any) that the Board expects will be completed by the specified date; and
- (c) may specify that the next parole hearing may be brought forward if the manager of the prison in which the offender is detained considers that all of the relevant activities have been completed earlier than the specified date; and
- (d) may give notice to the offender that the Board may consider making a postponement order at the next parole hearing.

Section 21A: inserted, on 2 September 2015, by section 11 of the Parole Amendment Act 2015 (2015 No 4).

## **22 Date of hearings**

For the sake of administrative efficiency, the Board may consider an offender for release on parole at any time within the month preceding the date on which the offender is due to be considered by the Board; but in no case may an

offender who is considered early under this section be released on parole before his or her parole eligibility date.

**23 No consideration for parole of offenders on compassionate release**

An offender who is released on compassionate release may not be considered for parole by the Board.

Section 23: substituted, on 1 October 2007, by section 15 of the Parole Amendment Act 2007 (2007 No 28).

**24 Consideration of offenders unlawfully at large when due to be considered for parole**

An offender who is unlawfully at large on the date on which he or she is due to be considered for parole must be considered by the Board for parole on the later of—

- (a) the date that is 12 months after his or her return to custody (or as soon as practicable after it); or
- (b) if the offender, after being returned to custody, has a new parole eligibility date, the offender's parole eligibility date (or as soon as practicable after it).

**25 Early referral and consideration for parole**

- (1) The chairperson may, in exceptional circumstances, refer an offender who has not yet reached his or her parole eligibility date for consideration by the Board for parole.
- (2) A referral under this section must be in writing and set out the reasons why the chairperson is making the referral.
- (3) The Minister of Justice may designate a class of offenders who have not yet reached their parole eligibility dates for early consideration by the Board for parole.
- (4) The Board must, as soon as practicable, consider for parole any offender referred to it under subsection (1) and every offender belonging to a class designated under subsection (3).
- (5) Despite subsection (4), the Board may not consider under this section an offender who is subject to any of the following orders:
  - (a) an order made under section 80 or section 105 of the Criminal Justice Act 1985:
  - (b) an order made under section 86, section 89, or section 103 of the Sentencing Act 2002:
  - (c) an order made under section 107.
- (6) The Board may direct the release on parole of an offender considered under this section if—

- (a) the Board is satisfied on reasonable grounds that the offender, if released on parole, will not pose an undue risk to the safety of the community or any person or class of persons within the term of the sentence, having regard to the matters set out in section 28(2)(a) and (b); and
  - (b) in the Board's opinion, the interests of justice require that the offender be released before his or her parole eligibility date.
- (7) An offender released on parole under this section is to be treated for all purposes as an offender released on parole under section 28(1).
- Compare: 1985 No 120 ss 97(5)–(9), 100(5)–(9)

## **26 Other times when Board may consider offenders for parole**

- (1) The Board may, at any time after an offender's parole eligibility date, consider the offender for release on parole at a time other than when the offender is due to be considered for parole, and may make an order under section 28(1) directing his or her release on parole.
- (2) An offender may apply to the Board at any time for consideration for parole and the chairperson or a panel convenor may refer an offender for consideration for parole under subsection (1).
- (3) If the manager of the prison in which the offender is detained considers that all of the relevant activities specified under section 21A(b) have been completed earlier than the date specified under section 21A(a) or considers that there has been a significant change in the circumstances of an offender that are relevant to release of the offender on parole,—
- (a) the manager must notify the Board as soon as practicable; and
  - (b) the chairperson or a panel convenor may refer the offender for consideration for parole under subsection (1).

Compare: 1985 No 120 ss 97(3), 100(3)

Section 26(2): replaced, on 2 September 2015, by section 12 of the Parole Amendment Act 2015 (2015 No 4).

Section 26(3): inserted, on 2 September 2015, by section 12 of the Parole Amendment Act 2015 (2015 No 4).

## **27 Board may make postponement order**

- (1) The Board may make an order postponing consideration of an offender for parole if—
- (a) the offender is serving—
    - (i) an indeterminate sentence; or
    - (ii) a determinate sentence of 10 years or more; and
  - (b) the Board is satisfied that, in the absence of a significant change in the offender's circumstances, the offender will not be suitable for release for the duration of the postponement order.

- (2) The postponement order must specify a date (the **specified date**) by which the next parole hearing must be held.
- (3) The specified date must be within 5 years of the offender's most recent parole hearing.
- (4) In making a postponement order, the Board may specify the relevant activities (if any) that the Board expects will be completed by the specified date.
- (5) If the manager of the prison in which the offender is detained considers that all of the relevant activities specified under subsection (4) have been completed earlier than the specified date or considers that there has been a significant change in the circumstances of an offender subject to a postponement order that are relevant to release of the offender on parole,—
  - (a) the manager must notify the Board as soon as practicable; and
  - (b) the chairperson or a panel convenor may refer the offender for consideration for parole at a date earlier than the specified date.
- (6) An offender subject to a postponement order may at any time apply to the Board requesting consideration for parole on the grounds that there has been a significant change in his or her circumstances.

Section 27: replaced, on 2 September 2015, by section 13 of the Parole Amendment Act 2015 (2015 No 4).

#### **27A Procedure for making postponement order**

- (1) The Board may make a postponement order if the Board—
  - (a) has given the offender notice that complies with subsection (3); and
  - (b) has given the offender an opportunity to make written submissions to the Board about whether the postponement order should be made; and
  - (c) at a hearing, has given the offender (in person or through counsel) an opportunity to make oral submissions.
- (2) For the purposes of subsection (1)(c), the hearing may be—
  - (a) a parole hearing, at which the Board also considers the offender for parole; or
  - (b) a special hearing convened for the purpose of considering whether to make a postponement order.
- (3) Notice by the Board of its intention to consider making a postponement order—
  - (a) must be in writing; and
  - (b) must be given to the offender at least 14 days before the hearing referred to in subsection (1)(c); and
  - (c) may be given to the offender in the Board's decision from a prior parole hearing.

Section 27A: inserted, on 2 September 2015, by section 13 of the Parole Amendment Act 2015 (2015 No 4).

## **27B Consideration of offenders for parole during epidemic**

- (1) This subsection applies to a requirement in any of sections 21 to 27 for the Board to consider an offender for parole that (but for this section) would have the effect of requiring the Board to consider an offender for parole—
  - (a) while an epidemic management notice is in force; or
  - (b) after an epidemic management notice has expired, but while (in the Board's opinion) there remains as an effect of the outbreak of the disease referred to in the notice a backlog of offenders who, by virtue of one of those requirements, should have been considered for parole before the offender.
- (2) It is a sufficient compliance with a requirement to which subsection (1) applies if the Board considers the offender concerned for parole as soon after he or she should have been considered as is reasonably practicable in the circumstances.
- (3) The circumstances include—
  - (a) the number of appropriately qualified employees of the chief executive available to produce reports for the Board;
  - (b) the number of appropriately qualified employees of the chief executive available to participate in hearings of the Board;
  - (c) the number of Board members available to conduct hearings;
  - (d) the number of offenders who have not yet been considered for parole as required by any of sections 21 to 27;
  - (e) the number and seriousness of the other matters pending before the Board.
- (4) In deciding the order in which it should consider for parole offenders who, by virtue of subsection (2), may be considered for parole as soon after they should have been considered as is reasonably practicable in the circumstances, the Board—
  - (a) must first consider how much time has passed since each of them should have been considered; but
  - (b) may then consider them for parole in any order it thinks appropriate.
- (5) If the notice applies to only stated parts of New Zealand, subsections (1) to (4) apply within those parts only.

Section 27B: inserted, as section 27A, on 19 December 2006, by section 6 of the Parole Amendment Act 2006 (2006 No 88).

Section 27B section number: replaced, on 2 September 2015, by section 14 of the Parole Amendment Act 2015 (2015 No 4).



## **28 Direction for release on parole**

- (1AA) In deciding whether or not to release an offender on parole, the Board must bear in mind that the offender has no entitlement to be released on parole and, in particular, that neither the offender's eligibility for release on parole nor anything else in this Act or any other enactment confers such an entitlement.
- (1) The Board may, after a hearing at which it has considered whether to release an offender on parole, direct that the offender be released on parole.
  - (2) The Board may give a direction under subsection (1) only if it is satisfied on reasonable grounds that the offender, if released on parole, will not pose an undue risk to the safety of the community or any person or class of persons within the term of the sentence, having regard to—
    - (a) the support and supervision available to the offender following release; and
    - (b) the public interest in the reintegration of the offender into society as a law-abiding citizen.
  - (3) If the Board directs the release of an offender on parole, it must specify the date on which the offender is to be released, which must be a date that is—
    - (a) not later than 6 months after the hearing; and
    - (b) not a non-release day.
  - (4) Despite subsection (3)(b), the Board may, in exceptional circumstances, specify a date for release that is a Thursday or a Friday.
  - (5) The Board may revoke or amend any direction under this section at any time before the offender is released on parole, but, if it does so, the Board must hold another parole hearing as soon as practicable.

Compare: 1985 No 120 ss 97(9), (10), 100(9), (10)

Section 28(1AA): inserted, on 1 October 2007, by section 17 of the Parole Amendment Act 2007 (2007 No 28).

## **29 Standard release conditions**

- (1) The standard release conditions apply to every offender who is released on parole.
- (2) In the case of an offender who is subject to 1 or more determinate sentences, the Board may specify a period for which the standard release conditions are in force.
- (3) However, the period specified under subsection (2) may not be less than 6 months and may not extend for more than 6 months after the offender's statutory release date.
- (4) The standard release conditions that apply under subsection (1) are in force,—
  - (a) in the case of an offender who is subject to 1 or more determinate sentences,—

- (i) if the Board specifies a period under subsection (2), for the specified period:
  - (ii) if the Board imposes any special conditions on the offender under section 29AA(1), for the period that the special conditions are in force:
  - (iii) if the Board does not specify a period, and does not impose any special conditions, for 6 months:
- (b) in the case of an offender who is subject to an indeterminate sentence, for the rest of the offender's life, unless the release conditions are varied or discharged by the Board under section 58.

Section 29: replaced, on 2 September 2015, by section 15 of the Parole Amendment Act 2015 (2015 No 4).

### **29AA Special release conditions**

- (1) In releasing an offender on parole, the Board may impose any special conditions on that offender that the Board specifies.
- (2) Special conditions imposed under subsection (1) are in force for the period that the Board specifies.
- (3) However, special conditions imposed on an offender who is subject to 1 or more determinate sentences may not be in force for a longer period than the offender's standard release conditions are in force.
- (4) Despite section 29(1), if the Board imposes any special condition on the offender that the Board considers incompatible with all or any of the standard release conditions imposed under that section, the Board may suspend the incompatible release conditions during the period in which those special conditions are in force, and time runs on the suspended conditions during that period.

Section 29AA: inserted, on 2 September 2015, by section 15 of the Parole Amendment Act 2015 (2015 No 4).

### **29A Release conditions for person to whom extended supervision order applies**

The Board, when directing the release on parole of an offender in respect of whom an extended supervision order is made must—

- (a) take into account, when setting any special conditions, the nature of the conditions to which the offender will be subject under the extended supervision order, when those conditions are reactivated under section 107P(2) on his or her statutory release date; and
- (b) direct that the release conditions imposed last until the offender's statutory release date.

Section 29A: inserted, on 1 October 2007, by section 19 of the Parole Amendment Act 2007 (2007 No 28).

**29B Board may monitor compliance with conditions**

- (1) If the Board is satisfied that, because of the special circumstances of an offender (other than an offender subject to an extended supervision order), it is desirable for the Board to do so, the Board may determine to monitor, during the specified period, the offender's compliance with the release conditions imposed on the offender.
- (2) In monitoring the conditions, the Board may on each occasion do either or both of the following:
  - (a) ask the Department of Corrections for a progress report on the offender's compliance with the conditions:
  - (b) require the offender to attend a hearing notified to the offender in writing.
- (3) Each power specified in subsection (2) may be exercised on 1 or more occasions during the specified period, but may not be exercised more frequently than at 3-monthly intervals.
- (4) A hearing that an offender is required to attend under subsection (2)(b)—
  - (a) is a special condition imposed on the offender; and
  - (b) is conducted in accordance with any directions given by the Board; and
  - (c) is not subject to sections 43 to 50B; but
  - (d) is subject to section 13 (which is about the information to be given to, or withheld from, the offender).
- (5) At a hearing that an offender is required to attend under subsection (2)(b), the Board may, if it considers it appropriate to do so, take 1 or more of the following actions:
  - (a) vary any special conditions previously imposed on the offender:
  - (b) impose new special conditions on the offender:
  - (c) if the offender is on parole or compassionate release, and if the Board is satisfied of the matters stated in section 62, make an order in respect of the offender that has the same effect as an interim recall order under that section.
- (6) Sections 57 and 58 apply, with any necessary modifications, to any action taken under subsection (5)(a) or (b).
- (6A) Sections 63 and 65 to 66A apply, with any necessary modifications, in respect of an order made under subsection (5)(c) as if—
  - (a) the order were an interim recall order made under section 62; and
  - (b) a recall application had been made.
- (7) In this section, **specified period**, in relation to an offender released from detention, means a period of—

- (a) 12 months from the date of release, if the offender is released on parole or compassionate release:
- (b) 6 months from the date of release, if the offender is released at the statutory release date.

Section 29B: inserted, on 1 October 2007, by section 19 of the Parole Amendment Act 2007 (2007 No 28).

Section 29B(4)(b): replaced, on 2 September 2015, by section 16 of the Parole Amendment Act 2015 (2015 No 4).

Section 29B(6A): inserted, on 22 January 2014, by section 50 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

### **30 Release conditions applying to offenders detained in hospital or secure facility who are released on parole**

- (1) The Board may, when directing the release on parole of an offender who is detained in, or on leave from, a hospital or secure facility, vary any standard release conditions, or waive the obligation to comply with any or all of them.
- (2) The offender's release conditions do not take effect until the offender is actually released from the hospital or the secure facility.
- (3) However, for the purpose of determining when the release conditions are discharged, time starts to run from the date on which the offender would have been released if he or she had been detained in a prison.

Section 30 heading: amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 30(1): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 30(2): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 30(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

### **31 When release conditions discharged or suspended**

- (1) The release conditions of an offender who is on parole (other than an offender who is subject to an indeterminate sentence) are discharged—
  - (a) when the period for which they were imposed expires; or
  - (b) if the offender resumes detention in a prison under a new sentence; or
  - (c) when the Board discharges all release conditions under section 58.
- (2) The release conditions of an offender who is on parole are suspended during any period that the offender spends in custody under a court order (for instance, on remand) or an interim recall order, and time runs on the conditions during any period that they are suspended.

Compare: 1985 No 120 s 107J(5)

Section 31(1)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

### 32 When parole ends

An offender who has been released on parole ceases to be on parole—

- (a) when the offender reaches his or her statutory release date (as determined under section 17(1)); or
- (b) if the offender resumes detention in a prison under a final recall order.

Compare: 1985 No 120 s 107L(8)

Section 32(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

#### *Residential restrictions*

Heading: substituted, on 1 October 2007, by section 20(1) of the Parole Amendment Act 2007 (2007 No 28).

### 33 Residential restrictions

- (1) The Board may impose on an offender the special conditions referred to in section 15(3)(ab) (**residential restrictions**) if the residence in which it is proposed that the offender reside is in an area in which a residential restriction scheme is operated by the chief executive.
- (2) An offender on whom residential restrictions are imposed is required—
  - (a) to stay at a specified residence:
  - (b) to be under the supervision of a probation officer and to co-operate with, and comply with any lawful direction given by, that probation officer:
  - (c) to be at the residence—
    - (i) at times specified by the Board; or
    - (ii) at all times:
  - (d) to submit, in accordance with the directions of a probation officer, to the electronic monitoring of compliance with his or her residential restrictions:
  - (e) to keep in his or her possession the licence issued under section 53(3) and, if requested to do so by a constable or a probation officer, must produce the licence for inspection.
- (3) Any conditions imposed under subsection (2)(c)(ii) may not be imposed for longer than the shortest of the following periods:
  - (a) the period for which the standard release conditions apply:
  - (b) 12 months:
  - (c) if those conditions have previously been imposed on the offender in respect of the same release from detention, 12 months less the time for which those conditions have previously been imposed.
- (4) An offender may, despite any conditions imposed under subsection (2)(c), leave the residence to which the residential restrictions relate—
  - (a) to seek urgent medical or dental treatment; or

- (b) to avoid or minimise a serious risk of death or injury to the offender or any other person; or
  - (c) for humanitarian reasons approved by a probation officer.
- (5) In any case where the conditions are of the kind specified in subsection (2)(c)(ii), the offender may, with the approval of a probation officer, leave the residence to which the residential restrictions relate—
- (a) to comply with any special conditions; or
  - (b) to seek or engage in employment; or
  - (c) to attend training or other rehabilitative or reintegrative activities or programmes; or
  - (d) to attend a restorative justice conference or other process relating to the offender's offending; or
  - (e) to carry out any undertaking arising from any restorative justice process; or
  - (f) for any other purpose specifically approved by the probation officer.

Section 33: substituted, on 1 October 2007, by section 20(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 33(2)(e): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **34 Prior report on suitability of residential restrictions**

- (1) Before the Board imposes residential restrictions on an offender, the Board must request and consider a report from the chief executive on the matters specified in subsection (2).
- (1A) Nothing in subsection (1) prevents the chief executive from providing a report on the matters specified in subsection (2) without receiving a request from the Board.
- (1B) Despite subsection (1), if the chief executive provides a report on the matters specified in subsection (2) without a request from the Board, the Board must consider that report as if it were a report requested by the Board under subsection (1).
- (2) The matters are as follows:
  - (a) the nature of the offence or offences for which the offender is currently serving a sentence of imprisonment or has previously been convicted;
  - (b) the likelihood that the residential restrictions will prevent further offending on the part of the offender;
  - (c) the likelihood that the offender's rehabilitation and reintegration will be assisted by residential restrictions;
  - (d) the suitability of the proposed residence, including the safety and welfare of the occupants of the residence where the offender is to reside.

- (3) Before completing the report under this section, the chief executive must—
- (a) ensure that every relevant occupant of the residence where it is proposed that the offender reside is aware of the nature of the offender’s past and current offending; and
  - (b) tell every relevant occupant that the reason for giving that information is to enable the occupant to make an informed decision about whether to consent to having the offender reside at the residence; and
  - (c) tell every relevant occupant that the information provided about the offender must not be used for any purpose other than that described in paragraph (b); and
  - (d) obtain the consent of every relevant occupant to having the offender reside at the residence; and
  - (e) inform every relevant occupant of their right to withdraw their consent, at any time, to having the offender reside at the residence.
- (4) In subsection (3), **relevant occupant** means, in relation to a residence that the chief executive is considering as a suitable residence for an offender subject to residential restrictions,—
- (a) in the case of a family residence, every person of or over the age of 16 who ordinarily lives there; and
  - (b) in the case of any other residence, every person whom the chief executive identifies as being a relevant occupant for the purpose of subsection (3).

Section 34: substituted, on 1 October 2007, by section 20(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 34(1): amended, on 22 January 2014, by section 51(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 34(1A): inserted, on 22 January 2014, by section 51(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 34(1B): inserted, on 22 January 2014, by section 51(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 34(3): amended, on 22 January 2014, by section 51(3) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 34(4): amended, on 22 January 2014, by section 51(4) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 34(4)(b): amended, on 22 January 2014, by section 51(4) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

### **35 Residential restrictions only to be imposed if residence suitable and occupants consent**

The Board may impose residential restrictions only if satisfied on reasonable grounds that—

- (a) the residence in which it is proposed that the offender reside is suitable; and

- (b) the relevant occupants (as defined in section 34(4)) of the residence in which the offender will reside—
  - (i) understand the residential restrictions that will apply to the offender; and
  - (ii) consent to the offender residing in the residence in accordance with those conditions; and
  - (iii) have been informed of their right to withdraw their consent, at any time, to having the offender reside in the residence; and
- (c) the offender has been made aware of and understands the residential restrictions, and he or she agrees to comply with them.

Section 35: substituted, on 1 October 2007, by section 20(2) of the Parole Amendment Act 2007 (2007 No 28).

### **36 Chief executive may approve alternative residence pending determination of application for variation of residential restrictions**

- (1) This section applies if an offender who is subject to residential restrictions or a probation officer intends to apply or has applied to the Board under section 56 for a variation of residential restrictions.
- (2) If this section applies, the chief executive may approve an alternative residence at which the offender must stay at all times or at times specified by the Board, pending the determination of the application.
- (3) If the chief executive approves an alternative residence before the application has been made, a probation officer must apply to the Board under section 56 within 5 working days of the chief executive's approval being given.
- (4) Subsection (3) does not apply if an offender makes the application within the 5-day period specified in subsection (3).
- (5) If the chief executive considers there is no suitable alternative residence available,—
  - (a) a probation officer must apply to the Board under section 56 at the earliest opportunity; or
  - (b) the chief executive must make a recall application to the Board under section 60.
- (6) In subsections (2) to (4), an **application** means application to the Parole Board under section 56 for a variation of residential restrictions.

Section 36: replaced, on 22 January 2014, by section 52 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

### **37 Expiry and revocation of direction for home detention**

*[Repealed]*

Section 37: repealed, on 1 October 2007, by section 20(2) of the Parole Amendment Act 2007 (2007 No 28).



**38 Residential restrictions do not affect entitlements under Social Security Act 2018**

The fact that a person is subject to residential restrictions does not, of itself, affect any entitlement the person may have under the Social Security Act 2018.

Section 38: substituted, on 1 October 2007, by section 21 of the Parole Amendment Act 2007 (2007 No 28).

Section 38 heading: amended, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

Section 38: amended, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

**39 When detention conditions suspended or cancelled**

*[Repealed]*

Section 39: repealed, on 1 October 2007, by section 21 of the Parole Amendment Act 2007 (2007 No 28).

**40 When home detention ends**

*[Repealed]*

Section 40: repealed, on 1 October 2007, by section 21 of the Parole Amendment Act 2007 (2007 No 28).

**40A Applications for home detention during epidemic**

*[Repealed]*

Section 40A: repealed, on 1 October 2007, by section 21 of the Parole Amendment Act 2007 (2007 No 28).

*Compassionate release*

**41 Board may direct early release on compassionate grounds**

- (1) The Board may, on referral by the chairperson, direct that an offender be released on compassionate release on either of the following grounds:
  - (a) the offender has given birth to a child:
  - (b) the offender is seriously ill and is unlikely to recover.
- (2) Every referral by the chairperson for consideration for compassionate release must be in writing and set out the reasons why the chairperson is making the referral.
- (3) The Board may, as part of a direction for compassionate release, impose the standard release conditions and any special conditions on the offender, and may vary, or waive the obligation to comply with, any standard release conditions if necessary in the circumstances.
- (4) Before an offender is released, the Board may cancel a direction for release or vary any of the conditions of release.

- (5) After an offender is released, the Board may vary or discharge any release conditions under section 58.
- (6) An offender released on compassionate release is liable to recall as if he or she had been released on parole.
- (7) When an offender is released under this section, a copy of the order for release, along with any conditions imposed on the offender, must be supplied to—
  - (a) the offender; and
  - (b) every victim of the offender; and
  - (c) the chief executive; and
  - (d) the Police.

Compare: 1985 No 120 s 94(1)(a), (d), (4)–(9)

### *Procedures for certain hearings*

#### **42 Application of procedures set out in sections 43 to 50**

Sections 43 to 50 apply to every hearing of the Board concerning an offender who—

- (a) is due to be released from detention on his or her statutory release date; or
- (b) is to be considered for parole.
- (c) *[Repealed]*

Section 42(b): amended, on 1 October 2007, by section 22 of the Parole Amendment Act 2007 (2007 No 28).

Section 42(c): repealed, on 1 October 2007, by section 22 of the Parole Amendment Act 2007 (2007 No 28).

#### **43 Preparation for hearings**

- (1) When an offender is due to be released at his or her statutory release date, or to be considered by the Board for parole, the Department of Corrections must provide the Board with—
  - (a) copies of all relevant information relating to the offender’s current and previous convictions, including (for example) sentencing notes and pre-sentence reports; and
  - (b) if the offender has engaged in any restorative justice processes, any reports arising from those processes; and
  - (c) in the case of an offender detained in a prison, a report by the Department of Corrections; and
  - (d) *[Repealed]*
  - (e) in the case of an offender currently detained in, or on leave from, a hospital, a report from the responsible clinician (or the most suitable other health professional to provide such a report) concerning the offender and

- any care programmes that the hospital has put, or intends to put, in place for the offender; and
- (ea) in the case of an offender currently detained in, or on leave from, a secure facility, a report from the compulsory care co-ordinator concerning the offender and the care and rehabilitation plan that has been, or is to be, put in place for the offender; and
  - (f) in the case of an offender currently detained in a social welfare residence (as described in section 11), a report from the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989.
- (2) The Board must take all reasonable steps to give notice to the following people that a hearing is pending:
- (a) the offender:
  - (b) every victim of the offender:
  - (c) the manager of the prison in which the offender is detained (if applicable):
  - (d) *[Repealed]*
  - (e) the Director of Area Mental Health Services (in the case of an offender currently detained in, or on leave from, a hospital):
  - (ea) the compulsory care co-ordinator (in the case of an offender currently detained in, or on leave from, a secure facility):
  - (f) the Police.
- (2A) When, under subsection (2)(b), the Board gives notice to a victim that a hearing is pending, the Board must also prepare and send to the victim an explanation of the hearing process and how the victim may participate in that process.
- (3) If the hearing relates to an offender who is subject to a long-term sentence, any victim who is notified must be advised that he or she may request information on the offender under section 44.
- (4) A failure to notify any person listed in subsection (2)(b) to (f), and a failure to obtain all the information referred to in subsection (1)(a), does not invalidate a hearing.
- (5) Any person notified under subsection (2) may write to the Board, by a given date, making submissions on, or giving information relevant to, the substantive matter to be decided.
- (6) For the purpose of providing the reports required under subsection (1)(e) and (f), the responsible clinician (or other health professional) referred to in subsection (1)(e), or the chief executive referred to in subsection (1)(f) (as the case may be), must, on request by the chief executive, supply a report on the relevant offender to the chief executive as required.

Compare: 1985 No 120 s 106

Section 43 heading: replaced, on 2 September 2015, by section 17(1) of the Parole Amendment Act 2015 (2015 No 4).

Section 43(1): amended, on 1 October 2007, by section 23(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 43(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 43(1)(d): repealed, on 1 October 2007, by section 23(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 43(1)(ea): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 43(1)(f): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 43(2)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 43(2)(d): repealed, on 1 October 2007, by section 23(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 43(2)(e): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 43(2)(ea): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 43(2A): inserted, on 6 December 2014, by section 5 of the Parole Amendment Act 2014 (2014 No 37).

Section 43(5): replaced, on 2 September 2015, by section 17(2) of the Parole Amendment Act 2015 (2015 No 4).

#### **43A Consultation and disclosure necessary to provide reports**

To avoid doubt, if a person providing a report referred to in section 43 considers that it is or may be necessary to do so in order to provide the report, he or she—

- (a) may consult with any other person (for example, with any victim (as defined in section 4 of the Victims' Rights Act 2002)) who is or may be able to provide information relevant to the matters that the report must address (**relevant information**); and
- (b) may, so far as it is or may be necessary to do so in order to ascertain from the other person relevant information, disclose to the other person information—
  - (i) about why the report must be provided; and
  - (ii) about the nature and purpose of the report.

Section 43A: inserted, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

#### **44 Information for victims**

- (1) If a victim requests information on an offender under section 43(3), the Department of Corrections must prepare and send to the victim the following:

- (a) a list of any programmes that the offender has attended since commencing his or her sentence, and a list of any programmes that the offender has completed:
  - (b) a statement of the offender's current security classification:
  - (c) a list of any convictions received by the offender since commencing his or her sentence:
  - (d) *[Repealed]*
  - (e) a statement that the purpose of providing the victim with information about the offender is to assist the victim to make submissions, and that the information is not to be used for any other purpose.
- (2) The Department of Corrections must prepare and send to the victim the information specified in subsection (1) before—
- (a) the parole hearing; and
  - (b) each subsequent parole hearing, if at the earlier parole hearing the Board does not direct that the offender be released on parole.

Section 44(1)(d): repealed, on 1 October 2007, by section 24 of the Parole Amendment Act 2007 (2007 No 28).

Section 44(2): inserted, on 6 December 2014, by section 6 of the Parole Amendment Act 2014 (2014 No 37).

#### **45 Decision on type of hearing**

*[Repealed]*

Section 45: repealed, on 2 September 2015, by section 18 of the Parole Amendment Act 2015 (2015 No 4).

#### **46 Review of decision on type of hearing**

*[Repealed]*

Section 46: repealed, on 2 September 2015, by section 18 of the Parole Amendment Act 2015 (2015 No 4).

#### **47 Interviews before hearings**

*[Repealed]*

Section 47: repealed, on 2 September 2015, by section 18 of the Parole Amendment Act 2015 (2015 No 4).

#### **48 Unattended hearings**

*[Repealed]*

Section 48: repealed, on 2 September 2015, by section 18 of the Parole Amendment Act 2015 (2015 No 4).

**49 Hearings**

- (1) A hearing must be run in the manner of an inquiry, and in an atmosphere that encourages persons appearing before the Board to speak for themselves, and as freely and frankly as possible.
- (2) Within that context, the Board may conduct the hearing as it thinks appropriate and, subject to this section, has the following powers:
  - (a) to determine who may attend;
  - (b) to determine who may speak;
  - (c) to impose limits on what a person may talk about and for how long;
  - (d) to require any person to leave the hearing, either temporarily or for the remainder of the hearing;
  - (e) to adjourn the hearing.
- (3) The offender who is being considered is entitled to—
  - (a) appear and make oral submissions to the Board; and
  - (b) attend while any other person is making submissions, provided that the offender may not be present at the hearing when any victim is present unless the victim, the offender, and the Board agree; and
  - (c) with the leave of the Board, be represented by counsel; and
  - (d) be accompanied by 1 or more support persons (subject to any limitation on numbers imposed by the Board) who may, with leave of the Board, speak in support of the offender.
- (4) Every victim of the offender is entitled to—
  - (a) appear and make oral submissions to the Board for the purpose of assisting the Board to reach a decision; and
  - (b) with the leave of the Board, be represented by counsel; and
  - (c) be accompanied by 1 or more support persons (subject to any limitation on numbers imposed by the Board), who may, with the leave of the Board,—
    - (i) speak in support of the victim; and
    - (ii) with the permission of the victim, speak on behalf of the victim.

Compare: 1985 No 120 ss 106A, 107

Section 49 heading: replaced, on 2 September 2015, by section 19(1) of the Parole Amendment Act 2015 (2015 No 4).

Section 49(1): amended, on 2 September 2015, by section 19(2) of the Parole Amendment Act 2015 (2015 No 4).

Section 49(2)(a): replaced, on 2 September 2015, by section 19(3) of the Parole Amendment Act 2015 (2015 No 4).

#### **49A Adjournment to obtain further information**

- (1) This section applies if the Board adjourns a hearing to obtain further information before making its decision.
- (2) The Board may conduct the remainder of the hearing (including making its decision) without the offender attending, but the offender is entitled to attend and make oral submissions.

Section 49A: inserted, on 2 September 2015, by section 20 of the Parole Amendment Act 2015 (2015 No 4).

#### **49B Hearing to impose release conditions**

- (1) This section applies if the Board conducts a hearing solely to impose special release conditions on an offender under section 18 or 19.
- (2) The Board may conduct the hearing without the Board hearing from any person orally unless—
  - (a) the offender has asked to attend and make oral submissions; or
  - (b) the Board wishes to hear from any other person.

Section 49B: inserted, on 2 September 2015, by section 20 of the Parole Amendment Act 2015 (2015 No 4).

#### **50 Decisions must be notified**

- (1) After a hearing, every person who was notified under section 43(2) must be advised of—
  - (a) whether, and, if so, when, the offender is to be released from detention; and
  - (b) any release conditions applying to the offender; and
  - (c) if the Board has declined to direct the release of the offender on parole,—
    - (i) the date by which the offender must be further considered for parole; and
    - (ii) the relevant activities (if any) specified under section 21A(b); and
    - (iii) notice that the hearing may be brought forward if all of the relevant activities have been completed earlier than expected; and
  - (d) if the Board has made a postponement order,—
    - (i) the date by which the offender must further be considered for parole; and
    - (ii) the relevant activities (if any) specified under section 27(4); and
    - (iii) notice that the hearing may be brought forward if all of the relevant activities have been completed earlier than expected.
- (2) When advising a victim under this section of any release conditions applying to an offender, the Board may withhold advice of a particular condition if disclos-

ing the condition would unduly interfere with the privacy of any other person (other than the offender).

Section 50(1)(a): amended, on 1 October 2007, by section 28(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 50(1)(b): amended, on 1 October 2007, by section 28(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 50(1)(c): replaced, on 2 September 2015, by section 21 of the Parole Amendment Act 2015 (2015 No 4).

Section 50(1)(d): inserted, on 2 September 2015, by section 21 of the Parole Amendment Act 2015 (2015 No 4).

Section 50(2): substituted, on 7 July 2004, by section 21 Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 50(2): amended, on 1 October 2007, by section 28(2) of the Parole Amendment Act 2007 (2007 No 28).

#### **50A Submissions from, and interviews with, certain victims**

- (1) This section applies to a person who—
  - (a) is not a victim as defined in section 4(1) of this Act; but
  - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) To avoid doubt, the person—
  - (a) may, by writing to the Board, make submissions on, or give information relevant to, the substantive matter to be decided at a hearing referred to in section 42; and
  - (b) may, with the leave of the Board, attend and make oral submissions to the Board, in accordance with section 49(4).
- (3) If the person seeks information from the Board in order to take a step in subsection (2)(a) or (b), the Board may—
  - (a) advise the person of the relevant hearing date; and
  - (b) give the person any other information that is reasonably necessary to enable the person to take the step.
- (4) Neither the Board nor any other person has any liability for any act done in pursuance, or intended pursuance, of the Board's functions under this section or section 50B, unless the act was done in bad faith.

Section 50A: inserted, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

Section 50A(2): replaced, on 2 September 2015, by section 22(1) of the Parole Amendment Act 2015 (2015 No 4).

Section 50A(3): amended, on 2 September 2015, by section 22(2) of the Parole Amendment Act 2015 (2015 No 4).

#### **50B Decisions to be notified to certain victims**

- (1) The following persons must, after the hearing concerned, be advised of the matters in section 50(1)(a) to (c):



- (a) a person who, by writing to the Board, makes submissions or gives relevant information as referred to in section 50A(2)(a):
  - (b) *[Repealed]*
  - (c) a person who appears and makes oral submissions as referred to in section 50A(2)(b).
- (2) When advising a person under this section of any release conditions, the Board may withhold advice of a particular condition if disclosing the condition would unduly interfere with the privacy of any other person (other than the offender).
- Section 50B: inserted, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).
- Section 50B(1)(b): repealed, on 2 September 2015, by section 23(1) of the Parole Amendment Act 2015 (2015 No 4).
- Section 50B(1)(c): amended, on 2 September 2015, by section 23(2) of the Parole Amendment Act 2015 (2015 No 4).
- Section 50B(2): substituted, on 7 July 2004, by section 22 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).
- Section 50B(2): amended, on 1 October 2007, by section 29 of the Parole Amendment Act 2007 (2007 No 28).

### *Actual release*

#### **51 Date of release**

- (1) This section applies to an offender who is serving a sentence of imprisonment in a prison.
- (2) An offender who is due to be released at his or her statutory release date must be released from the prison on that date, unless he or she is released earlier under section 52.
- (3) An offender who has been directed by the Board to be released on parole or compassionate release must be released from the prison on the date specified by the Board.

Section 51(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 51(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 51(3): amended, on 1 October 2007, by section 30 of the Parole Amendment Act 2007 (2007 No 28).

Section 51(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

#### **52 Release of offenders released at statutory release date**

- (1) This section applies only to an offender who is serving a sentence of imprisonment of more than 14 days and who is due to be released from a prison at his or her statutory release date.
- (2) If the offender's statutory release date falls on a non-release day, the offender must be released on the nearest preceding date that is not a non-release day.

- (3) The chief executive may direct that an offender who is detained in a prison and whose statutory release date falls within the period commencing on 15 December in one year and ending on 5 January in the next year is to be released on a date that is—
- (a) not earlier than 1 December immediately preceding the offender's statutory release date; and
  - (b) not a non-release day.
- (4) A direction under subsection (3) may be revoked at any time before the offender is released.
- (5) If an offender is released early under subsection (2) or subsection (3), the offender, during the period between the date of actual release and his or her statutory release date,—
- (a) is subject to any release conditions that will apply on his or her statutory release date as if he or she had been released on his or her statutory release date (but time does not begin to run on any conditions until the offender's statutory release date); and
  - (b) is liable to recall.

Compare: 1985 No 120 s 94(1)(b), (3)

Section 52(1): amended, on 1 October 2007, by section 31 of the Parole Amendment Act 2007 (2007 No 28).

Section 52(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 52(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 52(3): amended, on 7 July 2004, by section 23 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### **53 Licence issued on release**

- (1) When an offender is released from detention in a prison, he or she must be issued with a licence that sets out—
- (a) the release conditions that apply to the offender; and
  - (b) the date or dates on which the conditions, or any of them, cease to apply; and
  - (c) details about liability to recall.
- (2) Subsection (1) does not apply to an offender who is released from a short-term sentence if, on release, the offender is not subject to any release conditions.
- (3) An offender subject to residential restrictions must, before the restrictions come into force, be issued with a licence that sets out—
- (a) the residential restrictions; and
  - (b) the date or dates on which they, or any of them, come into force and cease to be in force; and

- (c) the obligations to comply with the directions given by a probation officer; and
  - (d) the consequences of non-compliance with the conditions; and
  - (e) the statutory provisions under which the conditions may be varied or discharged.
- (4) If an offender's release conditions are varied or discharged, the offender must be given a new or amended licence that shows the conditions as varied or discharged.

Compare: 1985 No 120 s 107F(1), (2)

Section 53(1): amended, on 1 October 2007, by section 32(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 53(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 53(1)(a): amended, on 1 October 2007, by section 32(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 53(3): substituted, on 1 October 2007, by section 32(3) of the Parole Amendment Act 2007 (2007 No 28).

Section 53(4): amended, on 1 October 2007, by section 32(4) of the Parole Amendment Act 2007 (2007 No 28).

#### **54 Police must be advised**

- (1) Before an offender is released from detention in a prison, the chief executive must advise the Police of—
- (a) the date on which the offender is to be released; and
  - (b) the offender's release conditions; and
  - (c) the offender's statutory release date.
- (2) Before an offender becomes subject to residential restrictions, the chief executive must advise the Police of the date on which the restrictions commence and the date on which they cease to apply.

Section 54: substituted, on 1 October 2007, by section 33 of the Parole Amendment Act 2007 (2007 No 28).

#### **55 Offenders may be released early for deportation**

- (1) The Minister of Immigration may, in the Minister's absolute discretion as defined in section 11 of the Immigration Act 2009, give the manager of a prison a written notice ordering the release of an offender into the custody of a constable or immigration officer if subsections (3) to (7) apply to the offender.
- (2) The chief executive may give the manager of a prison a written notice ordering the release of an offender into the custody of a constable or immigration officer at a time within 28 days preceding the offender's statutory release date if subsections (3) to (6) apply to the offender. This subsection does not limit subsection (1).
- (3) The offender must be serving a sentence of imprisonment in the prison.

- (4) The offender—
- (a) must have been sentenced to 2 years or less; or
  - (b) must have—
    - (i) been sentenced to more than 2 years; and
    - (ii) served either 2 years or one-third of the sentence, whichever is shorter; or
  - (c) must have—
    - (i) received an indeterminate sentence; and
    - (ii) served at least 2 years.
- (5) The offender must be—
- (a) liable for deportation under section 154 of the Immigration Act 2009; or
  - (b) the subject of a deportation order under section 163 of the Immigration Act 2009; or
  - (c) the subject of a deportation liability notice under the Immigration Act 2009; or
  - (d) the subject of a removal order under the Immigration Act 1987; or
  - (e) the subject of a deportation order under the Immigration Act 1987.
- (6) The offender must be described by one of the following:
- (a) he or she has no right of appeal against his or her liability for deportation;
  - (b) he or she has a right of appeal but has not made an appeal and the time for making an appeal has expired;
  - (c) he or she made an appeal that has been determined by the upholding of the liability for deportation.
- (7) The offender must not pose an undue risk to the safety of the community into which he or she is to be deported, as established to the Minister's satisfaction.

Section 55: substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

### **55A Implementation of early release for deportation**

- (1) A notice under section 55(1) or (2) is sufficient authority for the manager,—
- (a) if requested by an immigration officer, to release the offender and deliver him or her into the custody of an immigration officer for detention under section 312 of the Immigration Act 2009; or
  - (b) if requested by a constable, to release the offender and deliver him or her into the custody of a constable for arrest and detention under section 313 of the Immigration Act 2009.
- (2) The offender must be returned to the custody of the manager if the circumstances in section 336(1) of the Immigration Act 2009 arise.

- (3) The warrant by which an offender was originally committed to the prison is deemed to be still in force for the purpose of his or her return to custody under subsection (2).
- (4) This section applies to an offender returned to custody under subsection (2) until he or she is finally deported.

Section 55A: inserted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

#### **55B Offenders released early remain offenders under New Zealand law**

The following apply to an offender released and deported under sections 55 and 55A:

- (a) his or her sentence continues to run; and
- (b) he or she is liable to resume serving the sentence if he or she returns to New Zealand before the sentence expiry date.

Section 55B: inserted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

### *Variation and discharge of conditions*

#### **56 Application for variation or discharge of conditions**

- (1) An offender who is subject to release conditions imposed by the Board may apply to the Board at any time for the variation or discharge of any of those conditions.
- (2) A probation officer may at any time apply to the Board for the variation or discharge of any release condition imposed by the Board that applies to an offender.
- (3) An application under this section must indicate whether or not the offender wishes to appear before the Board to state his or her case.
- (4) When a probation officer applies for the variation or discharge of a condition, the probation officer may suspend the condition until the application is determined.
- (5) Subsection (4) does not apply to an application for variation or discharge of standard release conditions imposed on an offender who is subject to an indeterminate sentence.

Compare: 1985 No 120 s 107G(1)–(3)

Section 56(1): amended, on 1 October 2007, by section 34(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 56(2): amended, on 1 October 2007, by section 34(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 56(5): inserted, on 22 January 2014, by section 53 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

**56A Application of section 56 during epidemic**

While an epidemic management notice is in force, a probation officer who has made an application to the Board under section 56(2) for the variation of a release condition imposed by the Board may himself or herself vary the condition; and the variation has effect until the application has been heard and disposed of.

Section 56A: inserted, on 19 December 2006, by section 8 of the Parole Amendment Act 2006 (2006 No 88).

Section 56A: amended, on 1 October 2007, by section 35 of the Parole Amendment Act 2007 (2007 No 28).

**57 Procedure for determining applications**

- (1) Before determining an application for variation or discharge, the Board may seek information from anyone it considers has, or may have, an interest in the application, such as (without limitation) the Police or any victim of the offender.
- (2) To avoid doubt, section 13 (which is about information to be given to, or withheld from, offenders) applies to hearings for the purpose of determining an application for variation or discharge.
- (3) An application for variation or discharge may be determined without the Board hearing from any person, unless—
  - (a) the offender has asked to appear before the Board to state his or her case; or
  - (b) the Board wishes to hear from any person orally.

Compare: 1985 No 120 s 107G(6), (7)

Section 57(2): amended, on 1 October 2007, by section 36 of the Parole Amendment Act 2007 (2007 No 28).

**58 Board determines application for variation or discharge**

- (1) On an application under section 56, the Board may direct the variation or discharge of any release condition imposed by the Board that applies to an offender.
- (2) The Board may not—
  - (a) extend the duration of any release condition to a date that is later than 6 months after the offender's statutory release date; or
  - (b) extend the duration of any special condition beyond the date on which the standard release conditions cease to apply.
- (3) The Board may not discharge the standard release conditions with effect from a date that is less than 6 months after the date on which the offender was released, unless the offender is released on compassionate release or was, at the time of his or her release, detained in a hospital or in a secure facility.
- (4) If the Board directs the variation or discharge of a condition,—

- (a) the variation or discharge takes effect on the date specified in the direction; and
- (b) every variation must be treated as part of the conditions that apply to the offender; and
- (c) notice of the direction must be given to the offender, the probation officer involved, the Police, and (if reasonably practicable) any victim to whom notice of the original condition was given.

Compare: 1985 No 120 s 107G(5), (9)

Section 58(1): amended, on 1 October 2007, by section 37(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 58(2)(b): amended, on 1 October 2007, by section 37(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 58(3): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

### *Recall*

#### **59 Definition of recall application**

A **recall application** is an application for an order that an offender be recalled to continue serving a sentence of imprisonment in a prison.

Section 59: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

#### **60 Making recall application**

- (1) The chief executive may make a recall application to the Board in respect of any offender who—
  - (a) is subject to an indeterminate sentence; and
  - (b) is on parole or on compassionate release.
- (2) A probation officer may make a recall application to the Board in respect of any offender who—
  - (a) is subject to a determinate sentence; and
  - (b) has not yet reached his or her statutory release date; and
  - (c) is on parole or compassionate release.
- (2A) The Commissioner of Police may make a recall application in respect of any offender described in subsection (1) or (2) on the ground stated in section 61(a).
- (3) A recall application must specify the ground or grounds in section 61 on which the applicant relies, and the basis on which the applicant is satisfied that the ground or grounds apply.
- (4) When a recall application is made, the sentence to which the recall application relates ceases to run as follows:

- (a) if a final recall order is made, for the period between the lodgement of the application and the making of the order during which the offender was at large:
  - (b) if an interim recall order is made but the Board does not make a final recall order, for the period between the making of the interim recall order and the date of the determination of the application during which the offender was at large.
- (5) When a recall application is made, the sentence to which the recall application relates continues to run as follows:
- (a) for the period (if any) between the lodgement of the application and the date of its determination during which the offender is under legal custody in accordance with the Corrections Act 2004:
  - (b) if an interim recall order is made but the Board does not make a final recall order, for the period between the lodgement of the application and the making of the interim recall order:
  - (c) if no interim or final recall order is made, for the period between the lodgement of the application and the date of its determination.

Compare: 1985 No 120 s 107I(1)–(3), (7)–(9)

Section 60(2)(c): amended, on 1 October 2007, by section 38(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 60(2A): inserted, on 1 October 2007, by section 38(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 60(4): replaced, on 22 January 2014, by section 54 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 60(5): inserted, on 22 January 2014, by section 54 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 60(5)(b): amended, on 2 September 2015, by section 24 of the Parole Amendment Act 2015 (2015 No 4).

## 61 Grounds for recall

The grounds for recall are that—

- (a) the offender poses an undue risk to the safety of the community or any person or class of persons; or
- (b) the offender has breached his or her release conditions; or
- (c) the offender has committed an offence punishable by imprisonment, whether or not this has resulted in a conviction; or
- (d) in the case of an offender who is subject to residential restrictions,—
  - (i) the offender is jeopardising the safety of any person at his or her residence; or
  - (ii) a suitable residence in an area in which a residential restriction scheme is operated by the chief executive is no longer available; or



- (iii) the offender no longer wishes to be subject to residential restrictions; or
- (e) in the case of an offender who is subject to a special condition that requires his or her attendance at a residential programme,—
  - (i) the offender is jeopardising the safety of any person at the residence, or the order or security of the residence; or
  - (ii) the offender has failed to remain at the residence for the duration of the programme; or
  - (iii) the programme has ceased to operate, or the offender's participation in it has been terminated for any reason.

Compare: 1985 No 120 s 107I(6)

Section 61(b): amended, on 1 October 2007, by section 39(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 61(c): amended, on 1 October 2007, by section 39(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 61(d): substituted, on 1 October 2007, by section 39(3) of the Parole Amendment Act 2007 (2007 No 28).

## **62 Making interim recall order**

- (1) On receiving a recall application, the chairperson or any panel convenor must make an interim recall order if he or she is satisfied on reasonable grounds that—
  - (a) the offender poses an undue risk to the safety of the community or to any person or class of persons; or
  - (b) the offender is likely to abscond before the determination of the application for recall; or
  - (c) in the case of an offender who is subject to residential restrictions,—
    - (i) a suitable residence in an area in which a residential restriction scheme is operated by the chief executive is no longer available; or
    - (ii) the offender no longer wishes to be subject to residential restrictions.
- (2) When deciding whether to make an interim recall order in respect of an offender who is currently detained, the chairperson or panel convenor (as the case may be) must make the decision as if the offender were not detained.

Compare: 1985 No 120 s 107J(1)–(2A)

Section 62(1)(c): substituted, on 1 October 2007, by section 40 of the Parole Amendment Act 2007 (2007 No 28).

## **63 What happens when interim recall order made**

- (1) When an interim recall order is made, the chairperson or a panel convenor (as the case may be) must issue a warrant in the prescribed form for the arrest of

the offender and for the offender to be detained in a prison pending the determination of the application for recall.

- (2) At any time after a warrant is issued under subsection (1), a constable may arrest the offender, whether or not the constable has possession of the warrant, for the purpose of returning the offender to a prison.
- (3) On, or as soon as practicable after, being taken into custody following the issue of a warrant under subsection (1), the offender must be given a copy of the recall application and a notice that—
  - (a) specifies the date on which the application is to be determined; and
  - (b) advises the offender of his or her right to appear before the Board and to state his or her case in person or through counsel; and
  - (c) requires the offender to notify the Board, not later than 7 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or to be represented by counsel.
- (4) While an offender is subject to an interim recall order, he or she must be detained in custody.

Compare: 1985 No 120 s 107J(3), (4)

Section 63(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 63(1): amended, on 7 July 2004, by section 24 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 63(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 63(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

#### **64 What happens if no interim recall order made**

If no interim recall order is made following a recall application, the Board must cause to be served on the offender—

- (a) a copy of the recall application; and
- (b) a notice of the kind described in section 63(3).

Compare: 1985 No 120 s 107K

#### **65 Procedure for determining recall applications**

- (1) If an interim recall order is made, the Board must determine the recall application on a date that is,—
  - (a) if the offender is in custody when the interim order is made, at least 14 days after, but not more than 1 month after, the date of the interim order; or
  - (b) if the offender is not in custody when the interim order is made, at least 14 days after, but not more than 1 month after, the date on which the offender is taken into custody.

- (2) If no interim recall order is made, the Board must determine the recall application on a date that is at least 14 days after, but not more than 2 months after, the date on which the copy of the recall application is served on the offender.
- (3) To avoid doubt, section 13 (which is about information to be given to, or withheld from, offenders) applies to hearings for the purpose of determining a recall application.
- (4) The Board may determine a recall application without the Board hearing from any person orally unless—
  - (a) the offender has indicated that he or she, in person or through counsel, wishes to appear to state his or her case; or
  - (b) the Board wishes to hear from any other person orally.
- (5) Despite subsections (1) and (2), the Board may from time to time adjourn the hearing of a recall application; but no adjournment may be for more than 8 days, unless the offender consents to a longer period.

Compare: 1985 No 120 s 107L(1), (6), (10)

Section 65(3): amended, on 1 October 2007, by section 41 of the Parole Amendment Act 2007 (2007 No 28).

#### **65A Application of section 65 during epidemic**

- (1) This subsection applies to a recall application if, but for this section, section 65(1) or (2) would have the effect of requiring the Board to determine it—
  - (a) while an epidemic management notice is in force; or
  - (b) after an epidemic management notice has expired, but while (in the Board’s opinion) there remains as an effect of the outbreak of the disease referred to in the notice a backlog of offenders in respect of whom a recall application should, by virtue of section 65(1) or (2), have been considered before it.
- (2) In relation to an application for a recall application to which subsection (1) applies, it is a sufficient compliance with section 65(1) or (2) (as the case requires) if the Board considers it as soon after it should have been considered as is reasonably practicable in the circumstances.
- (3) This subsection applies to the hearing of a recall application if the Board wishes to adjourn it, without the offender’s consent,—
  - (a) while an epidemic management notice is in force; or
  - (b) after an epidemic management notice has expired, but while (in the Board’s opinion) there remains as an effect of the outbreak of the disease referred to in the notice a backlog of matters pending before the Board.
- (4) The Board may, without the offender’s consent, adjourn the hearing of a recall application to which subsection (3) applies for any period (not exceeding 21 days) it thinks appropriate in the circumstances.
- (5) The circumstances referred to in subsections (2) and (4) include—

- (a) the number of appropriately qualified employees of the chief executive available to provide administrative support to the Board:
  - (b) the number of appropriately qualified employees of the chief executive available to produce reports for and participate in hearings of the Board:
  - (c) the number of Board members available to conduct hearings:
  - (d) the number and nature of the other matters pending before the Board.
- (6) The Board may decide the order in which it should consider recall applications that, by virtue of subsection (2), may be considered as soon after they should have been considered as is reasonably practicable in the circumstances in any order it thinks appropriate.
- (7) If the notice applies to only stated parts of New Zealand, subsections (1) to (6) apply within those parts only.

Section 65A: inserted, on 19 December 2006, by section 9 of the Parole Amendment Act 2006 (2006 No 88).

## **66 Board may make final recall order**

- (1) The Board may make a final recall order recalling an offender to continue serving his or her sentence in a prison if, following a hearing on a recall application, it is satisfied on reasonable grounds that 1 or more of the grounds for recall in section 61 have been established.
- (2) When deciding whether to make a final recall order in respect of an offender who is currently detained, the Board must make the decision as if the offender were not detained.
- (3) On making a recall order, the Board must issue a warrant in the prescribed form for the arrest of the offender and for the offender to resume serving his or her sentence in a prison.
- (3A) If a warrant is issued under subsection (3) in respect of an offender who is not currently detained, a constable may at any time arrest the offender, whether or not the constable has possession of the warrant, for the purpose of returning the offender to a prison to resume serving his or her sentence.
- (4) If the Board refuses a recall application,—
- (a) the Board must direct the offender's release from custody under any warrant issued under section 63(1) (if applicable); and
  - (b) any release conditions that were suspended resume (subject to paragraph (c)); and
  - (c) the Board may vary or discharge any conditions imposed by the Board that apply to the offender, without the need for an application under section 56.

Compare: 1985 No 120 s 107L(2)–(4), (7)–(9)

Section 66(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 66(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 66(3): amended, on 7 July 2004, by section 25(1) of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 66(3A): inserted, on 7 July 2004, by section 25(2) of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 66(3A): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 66(3A): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 66(4)(b): amended, on 1 October 2007, by section 42 of the Parole Amendment Act 2007 (2007 No 28).

### **66A Protection of constables**

Section 44 of the Policing Act 2008 applies to protect constables as if a warrant issued under section 63(1) or section 66(3) were a process issued out of a court.

Section 66A: inserted, on 7 July 2004, by section 26 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 66A heading: amended, on 1 October 2008, pursuant to section 116(a)(i) of the Policing Act 2008 (2008 No 72).

Section 66A: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 66A: amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

### *Reviews and appeals from decisions*

### **67 Review of decisions**

- (1) An offender who is the subject of any decision of the Board under this Act (other than a decision under any of the provisions referred to in subsection (2)) may, within 28 days of the decision, apply in writing to the Board for a review of that decision.
- (2) No review under this section may be sought of—
  - (a) a decision under section 13AB to make, or to refuse to make, a confidentiality order; or
  - (b) a decision under section 13AE to vary or rescind, or to refuse to vary or rescind, a confidentiality order; or
  - (c) a decision under section 21A(b) or 27(4) specifying relevant activities; or
  - (d) a review under section 107(6) of—
    - (i) an order made under that section; or
    - (ii) an order made under section 105 of the Criminal Justice Act 1985 (as provided for in section 97(8)).
- (3) The grounds for an application for review under this section are that the Board, in making the decision,—
  - (a) failed to comply with the procedures set out in this Act and any regulations made under it; or

- (b) made an error of law; or
  - (c) failed to comply with a policy of the Board developed under section 109(2)(a), which resulted in unfairness to the offender; or
  - (d) based its decision on erroneous or irrelevant information that was material to the decision reached; or
  - (e) acted without jurisdiction.
- (4) A review under this section must be undertaken, as soon as practicable, by the chairperson or by a panel convenor to whom the chairperson delegates the conduct of the review.
- (5) Following a review, the reviewer must—
- (a) confirm, quash, or amend the decision; or
  - (b) refer the matter back to the Board with a direction to reconsider and decide the matter.
- (6) For the purposes of an appeal under section 68,—
- (a) a decision to confirm, quash, or amend the decision is the final decision of the Board; and
  - (b) a decision of the Board taken following a reconsideration in accordance with a referral under subsection (5)(b) is the final decision of the Board.

Section 67(2): replaced, on 2 September 2015, by section 25 of the Parole Amendment Act 2015 (2015 No 4).

### **68 Appeal to High Court against postponement orders, section 107 orders, and final recall orders**

- (1) An offender who is subject to a postponement order, an order under section 107, or a final recall order may, within 28 days of the date of the decision on a review under section 67 (or whatever longer time the court permits), appeal to the High Court against the decision on the grounds that the order ought not to have been made.
- (2) No appeal may be made under this section until the decision to make the order has been reviewed under section 67.
- (3) If an offender lodges an appeal, he or she remains subject to the order while the appeal is determined.
- (4) In the case of an appeal against a final recall order, without limiting the matters that the court may consider in determining the appeal, the court must consider the need to protect the community, or any person or class of persons.

Compare: 1985 No 120 s 107M(1), (3)

### **69 Procedure on appeal against postponement orders, section 107 orders, and final recall orders**

- (1) An appellant must forward a copy of his or her appeal to the Board.

- (2) On receiving a copy of an appeal, the Board must forward to the Registrar of the High Court all information in its possession regarding the decision appealed against.
- (3) The Registrar of the High Court must, on receipt of the information from the Board, set down the appeal for hearing on the first practicable sitting day in the most convenient place where sittings of the High Court are held, and must notify the appellant and the Board accordingly.
- (4) Subject to this section, sections 323, 325, 326, 328, 334, 335, 337 to 342, 351, 379, and 382 of the Criminal Procedure Act 2011 apply to an appeal under section 68 with the necessary modifications as if the order appealed against were an order made by a District Court Judge.
- (4A) Any Judge of the High Court may, on the application of the appellant or intending appellant,—
  - (a) review a decision of the District Court to refuse to extend the time allowed for lodging an appeal under section 68, and confirm the decision or reverse it and allow any extension of time that he or she thinks fit;
  - (b) in any other case, extend any time allowed for lodging an appeal under section 68.
- (5) On an appeal under section 68, the court may receive in evidence anything that the Board could have received at first instance.
- (6) The court is not bound to allow the appeal on the ground merely of the improper admission or rejection of evidence unless, in the opinion of the court, a substantive wrong or miscarriage of justice occurred because of it.

Compare: 1985 No 120 s 107M(2), (5), (6)

Section 69(4): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 69(4A): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 69(4A)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **70 Powers of court on appeal**

- (1) On an appeal against a postponement order or an order under section 107 the court may—
  - (a) confirm, quash, or amend the order; or
  - (b) refer the matter back to the Board with a direction to reconsider and decide the matter, in which case it must—
    - (i) advise the Board of its reasons for doing so; and
    - (ii) give the Board any directions that it thinks just concerning any aspect of the reconsideration.
- (2) On an appeal against a final recall order, the court may—

- (a) confirm the order; or
- (b) quash the order and, unless the offender is liable to be detained under this or any other enactment,—
  - (i) direct the release of the offender from custody; or
  - (ii) direct the release of the offender on standard release conditions (in which case the conditions are deemed to have been imposed by the Board), and refer the offender to the Board for consideration of whether to impose any special conditions; or
- (c) refer the matter back to the Board with a direction to reconsider and decide the matter, in which case it must—
  - (i) advise the Board of its reasons for doing so; and
  - (ii) give the Board any directions that it thinks just concerning any aspect of the reconsideration.

Compare: 1985 No 120 s 107M(4), (8)

Section 70(2)(b)(ii): amended, on 1 October 2007, by section 44 of the Parole Amendment Act 2007 (2007 No 28).

### *Offences*

#### **71 Offence to breach conditions**

- (1) Every offender commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000, who breaches, without reasonable excuse, any standard release conditions or any special conditions imposed by the Board.
- (2) The conviction and sentencing of an offender under this section does not limit the power to recall the offender from parole or compassionate release.

Compare: 1985 No 120 s 107H(1), (3)

Section 71(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 71(1): amended, on 1 October 2007, by section 45(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 71(2): amended, on 1 October 2007, by section 45(2) of the Parole Amendment Act 2007 (2007 No 28).

#### **71A Offences related to drug or alcohol conditions**

- (1) An offender on parole, or released under section 17 at the release date of a long-term sentence, with a drug or alcohol condition commits an offence if the offender—
  - (a) refuses or fails, without reasonable excuse,—
    - (i) to undergo a testing procedure when required to do so under sections 16B(2)(a) and 16D; or



- (ii) to submit to continuous monitoring when required to do so under section 16B(2)(b); or
  - (iii) to comply with instructions specified in a notice given under section 16B(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
  - (iv) to accompany an authorised person, when required to do so under section 16D(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
  - (v) to contact a specified automated system when required to do so under section 16B(2)(c); or
  - (vi) to report, at any time or times when required to do so under section 16D(5), to a specified testing facility to undergo testing; or
  - (vii) to undergo a testing procedure when required to do so under sections 16B(2)(c) and 16D; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under section 16B(2)(a) or (c) for the purposes of a prescribed testing procedure; or
  - (c) tampers with a drug or alcohol monitoring device required under section 16B(2)(b) or does anything with the intention of interfering with the functioning of that device.
- (2) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000.

Section 71A: inserted, on 15 May 2017, by section 8 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

## **72 Offence to refuse entry to residence specified under residential restrictions**

- (1) This section applies to a residence (the **residence**) in which an offender is required to reside under residential restrictions.
- (2) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000, who refuses or fails, without reasonable excuse, to allow a probation officer who has identified himself or herself to enter into the residence if the offender is required to be in the residence at the time that the probation officer seeks entry.
- (3) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000, who refuses or fails, without reasonable excuse, to allow an authorised person to enter into the residence for the purpose of servicing or inspecting any equipment used in the electronic monitoring of the offender's compliance with the residential restrictions (whether or not the offender is required to be in the residence at that time).

- (4) For the purposes of subsection (3), an **authorised person** is a person who—
- (a) is a probation officer and has identified himself or herself; or
  - (b) accompanies a person described in paragraph (a); or
  - (c) is authorised in writing by a probation officer and has produced that written authority to an occupant of the residence.

Section 72: substituted, on 1 October 2007, by section 46 of the Parole Amendment Act 2007 (2007 No 28).

Section 72(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 72(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **72A Offence to refuse authorised person entry for certain purposes related to continuous monitoring**

- (1) This section applies to an offender who is—
- (a) on parole, or released under section 17 at the release date of a long-term sentence, or subject to an extended supervision order, with a drug or alcohol condition; and
  - (b) required, under section 16B(2)(b), to submit to continuous monitoring of the offender's compliance with the condition.
- (2) The offender commits an offence if the offender refuses or fails, without reasonable excuse, to allow an authorised person to enter the offender's residential address for all or any of the following purposes:
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
  - (b) servicing or inspecting the device;
  - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In subsection (2), **authorised person** means any of the following:
- (a) an authorised person (as defined in section 16B(7)) who has produced evidence of that person's identity to the offender;
  - (b) a person accompanying a person described in paragraph (a);
  - (c) a person who—
    - (i) has produced evidence of that person's identity to the offender;and

- (ii) is authorised in writing by an authorised person (as defined in section 16B(7)) to enter the offender's residential address for all or any of the following purposes:
  - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the offender:
  - (B) servicing or inspecting the device:
  - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
- (iii) has produced that written authority to the offender.

Section 72A: inserted, on 15 May 2017, by section 9 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

### *Arrest of offenders*

#### **73 Arrest without warrant**

- (1) Any constable may arrest, without a warrant, an offender whom the constable has reasonable grounds to believe is unlawfully at large.
- (2) Any constable or any probation officer may arrest, without a warrant, an offender whom the constable or officer has reasonable grounds to believe has breached any of his or her release condition or conditions of an extended supervision order or interim supervision order.

Compare: 1985 No 120 s 107H(2)

Section 73(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 73(2): amended, on 8 September 2018, by section 69 of the Statutes Amendment Act 2018 (2018 No 27).

Section 73(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 73(2): amended, on 1 October 2007, by section 47 of the Parole Amendment Act 2007 (2007 No 28).

Section 73(2): amended, on 7 July 2004, by section 9 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

#### **73A Power to enter premises to arrest**

- (1) A constable may, at any time, for the purpose of arresting an offender named in a warrant issued under section 63(1) or section 66(3), enter any premises, by force if necessary, if he or she has reasonable cause to believe that the offender is in or on the premises.
- (2) If the constable who is executing the warrant is not in uniform, and the person in actual occupation of the premises asks the constable to produce evidence of his or her authority, the constable must produce the warrant or a badge or other evidence that he or she is a constable.

Compare: 1957 No 87 s 22

Section 73A: inserted, on 7 July 2004, by section 27 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 73A(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 73A(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### *Regulations*

#### **74 Regulations**

- (1) The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing forms for the purpose of this Part and Part 1A:
  - (b) prescribing the manner in which the key dates and non-parole periods of sentences of imprisonment are to be determined:
  - (c) providing that specified information must be provided to offenders, and prescribing the manner and form in which that information is to be provided:
  - (d) regulating the operation of the Board:
  - (e) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this section and the amounts of the fines that may be imposed in respect of those offences, which fines must not exceed \$500:
  - (f) generally providing for any other matters that are contemplated by, or necessary for giving full effect to, this Part and Part 1A, and their due administration.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

---

#### **Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

---

Section 74(1)(a): amended, on 7 July 2004, by section 10(a) of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 74(1)(f): amended, on 7 July 2004, by section 10(b) of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 74(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### *Rules*

Heading: inserted, on 15 May 2017, by section 10 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

#### **74A Rules about drug and alcohol testing and monitoring**

- (1) The chief executive may make rules for all or any of the following purposes:
  - (a) prescribing, for the purposes of section 16B(2)(a) and (c), 1 or more types of testing procedure that an offender to whom section 16B applies may be required to undergo:
  - (b) specifying how often each of the prescribed testing procedures may be carried out:
  - (c) prohibiting authorised persons from requiring an offender to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:
  - (d) prescribing, for the purposes of section 16B(2)(b), 1 or more types of drug or alcohol monitoring device that may be connected to an offender to whom section 16B applies:
  - (e) specifying restrictions as to how often, and for how long,—
    - (i) continuous monitoring may be carried out:
    - (ii) an offender may be required to contact an automated system:
  - (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from an offender in order for the sample to be used as evidence that the offender has breached a drug or alcohol condition:
    - (i) controlled drugs:
    - (ii) psychoactive substances:
    - (iii) alcohol.
- (2) Rules under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	The maker must: <ul style="list-style-type: none"> <li>• publish it in the <i>Gazette</i></li> <li>• make it available on an Internet site that is maintained by or on behalf of the Department of Corrections and that is, so far as practicable, publicly available free of charge</li> <li>• make it available for public inspection free of charge</li> <li>• make it available for purchase at a reasonable price</li> </ul>	LA19 ss 73, 74(1)(a), Sch 1 cl 14
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 74A: inserted, on 15 May 2017, by section 10 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

Section 74A(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 74A(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## **74B Further provisions concerning rules about drug and alcohol testing and monitoring**

- (1) Rules made under section 74A(a) may, without limitation, prescribe testing procedures that do all or any of the following:
  - (a) include, as part of the procedure, either or both of the following:
    - (i) breath screening:
    - (ii) the collection and analysis of breath, blood, hair, urine, or any other bodily sample:
  - (b) require an offender to be supervised by a person of the same sex as the offender during the collection of a bodily sample required for testing:
  - (c) provide for an offender to elect, if the offender meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The chief executive may make rules under section 74A only if satisfied that the rules—
  - (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
  - (b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
  - (c) ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) Subsection (1)(b) overrides subsection (2)(c).

Section 74B: inserted, on 15 May 2017, by section 10 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

**74C Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012**

*[Repealed]*

Section 74C: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

**Subpart 3—Sentence calculation**

*Cumulative sentences*

**75 Cumulative sentences form notional single sentence**

- (1) If, after the commencement date, an offender is sentenced to a sentence of imprisonment (a **later sentence**) that is directed to be served cumulatively on another sentence (an **earlier sentence**), the later sentence and the earlier sentence form a notional single sentence for the purpose of determining—
  - (a) whether the offender is subject to a long-term sentence or a short-term sentence; and
  - (b) the non-parole period to apply when determining the offender’s parole eligibility date; and
  - (c) the release date to apply when determining the offender’s statutory release date.
- (2) If the earlier sentence is part of a series of cumulative sentences, then all the sentences (including any pre-cd sentences) in that series, along with the later sentence, form a notional single sentence for the purpose described in subsection (1).
- (3) Every sentence (including any pre-cd sentences) in a series of cumulative sentences links to the next one in the series at its sentence expiry date.
- (4) Every notional single sentence is deemed to be a sentence that is imposed on or after the commencement date, even if it contains a pre-cd sentence.

*Start date of sentence of imprisonment*

**76 General rules about start date of sentence of imprisonment**

- (1) The start date of a sentence of imprisonment imposed after the commencement date is the date on which the sentence is imposed, except as otherwise provided in sections 77 to 81.
- (2) The start date of a pre-cd sentence is the date, determined under Part 4 of the Criminal Justice Act 1985, on which the sentence commences.

Compare: 1985 No 120 s 78(1)

**77 Start date of notional single sentence**

The start date of a notional single sentence is the start date of the first sentence in the series of sentences that forms the notional single sentence.

**78 Deferred start date**

If a court defers a start date under section 100 of the Sentencing Act 2002, the start date of the sentence of imprisonment is the date on which the offender is taken into custody after the expiry of the period specified by the court.

Compare: 1985 No 120 s 78(3)

**79 Start date if later sentence replaces original sentence**

- (1) The start date of a sentence that is substituted for a sentence that was quashed or otherwise set aside on appeal (the **original sentence**) is the start date of the original sentence.
- (2) If a sentence (the **original sentence**) ceases to apply because the conviction to which it relates is quashed and a retrial ordered, and if a sentence of imprisonment is imposed following the retrial, the start date of the later sentence is the start date of the original sentence.
- (3) In either situation referred to in subsection (1) or subsection (2), if the original sentence was directed to be served cumulatively on another sentence but the later sentence is not directed to be served cumulatively, then the start date of the later sentence is the start date that the original sentence would have had if it had not been directed to be served cumulatively.

Section 79: substituted, on 7 July 2004, by section 28 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

**80 Start date after temporary surrender to New Zealand**

- (1) This section applies if an offender is temporarily surrendered to New Zealand under the Extradition Act 1999 and—
  - (a) is convicted and sentenced to a sentence of imprisonment; and
  - (b) is required to be returned in accordance with section 66(2) of the Extradition Act 1999 to the country from which the offender was surrendered on completion of the proceedings to which the extradition related.
- (2) Unless the court otherwise directs, the start date of the sentence imposed is the date on which the person, having been returned to New Zealand, is taken into custody.
- (3) This section applies despite any other provision in this Act.

Compare: 1985 No 120 s 78A

**81 Start date of sentence of imprisonment when term imposed**

If a person on whom a term of imprisonment is imposed for non-payment of a sum of money, disobedience of a court order, or contempt of court is not



already detained under a sentence of imprisonment, then the start date of the sentence of imprisonment is the day on which the person is taken into custody to serve the term imposed.

Compare: 1985 No 120 s 78(7)

### *Sentence expiry dates*

#### **82 Sentence expiry date**

- (1) The sentence expiry date of a determinate sentence is the date that is reached when the offender who is subject to the sentence has served the full term of the sentence.
- (2) The sentence expiry date of a notional single sentence is the sentence expiry date of the last sentence in the series of sentences that forms the notional single sentence.
- (3) An indeterminate sentence has no sentence expiry date.

#### **83 Sentence expiry date of pre-cd sentence**

The sentence expiry date of a pre-cd sentence is the date, determined under Parts 4 and 6 of the Criminal Justice Act 1985, on which the sentence expires.

### *Non-parole periods*

#### **84 Non-parole periods**

- (1) The non-parole period of a long-term determinate sentence is one-third of the length of the sentence, unless the sentence is one to which subsection (2) or subsection (4) applies.
- (2) The non-parole period of a sentence in respect of which the court has imposed a minimum term of imprisonment (whether under section 86, section 86D(4), section 86E(4), section 89, or section 103 of the Sentencing Act 2002) is the minimum term imposed.
- (3) The non-parole period of a sentence of imprisonment for life is 10 years, unless the court—
  - (a) has imposed a minimum term of imprisonment in respect of that sentence; or
  - (b) has made an order under section 86E(2) or 103(2A) of the Sentencing Act 2002 in respect of that sentence.
- (3A) An offender who is subject to an order under section 86E(2) or 103(2A) of the Sentencing Act 2002 is not eligible for parole in respect of the sentence to which the order relates, nor in respect of any other sentence to which he or she is subject when the order is imposed, nor in respect of any sentence subsequently imposed.

- (4) The non-parole period of a long-term notional single sentence is the total obtained by adding together all the non-parole periods of every sentence that makes up the notional single sentence.
- (5) For the purpose only of calculating the non-parole period of a long-term notional single sentence,—
- (a) every short-term sentence (being a sentence imposed after the commencement date) within the notional single sentence must be treated as if it had a non-parole period of one-third of its length; and
  - (ab) every sentence in respect of which an order under section 86C(4) or 86D(3) of the Sentencing Act 2002 has been made must be treated as if the full term of the sentence were the non-parole period of the sentence; and
  - (b) every long-term pre-cd sentence under which the offender is eligible for parole must be treated as if it had a non-parole period of the period represented by the time between the commencement of the sentence and the close of the date on which the offender is eligible to be released on parole from that sentence under section 89 of the Criminal Justice Act 1985; and
  - (c) every pre-cd sentence under which the offender is not eligible for parole (including every short-term pre-cd sentence) must be treated as if it had a non-parole period of the period represented by the time between the commencement date of the sentence and the close of the date on which the offender must be released from that sentence (the sentence's final release date) under section 90 of the Criminal Justice Act 1985.

Section 84(2): amended, on 1 June 2010, by section 16(1) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 84(3): substituted, on 1 June 2010, by section 16(2) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 84(3A): inserted, on 1 June 2010, by section 16(2) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 84(5)(ab): inserted, on 1 June 2010, by section 16(3) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

## **85 Pre-cd sentences do not have non-parole periods**

Pre-cd sentences do not have non-parole periods under this Act and, except for the purpose described in section 84(5), the requirement in section 88(1) for the chief executive to determine the non-parole period of sentences does not apply to pre-cd sentences.

### *Release dates*

#### **86 Release date of sentence**

- (1) The release date of a short-term sentence (including a short-term notional single sentence) is the date on which the offender who is subject to the sentence has served half of it.
- (1A) Subsection (1) does not apply to a short-term sentence in respect of which an order has been made under section 86C(4)(b) of the Sentencing Act 2002, and the release date of such a sentence is its sentence expiry date.
- (2) The release date of a long-term determinate sentence (including a long-term notional single sentence) is its sentence expiry date.
- (3) An indeterminate sentence has no release date.

Section 86(1A): inserted, on 1 June 2010, by section 17(1) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

#### **87 Release date of pre-cd sentence**

- (1) The release date of a short-term pre-cd sentence is the final release date of the sentence, as determined under section 91 of the Criminal Justice Act 1985.
- (2) The release date of a long-term determinate pre-cd sentence is the date that is 3 months before its sentence expiry date.
- (3) Despite subsection (2), the release date of a long-term determinate pre-cd sentence that was imposed before the commencement of the Criminal Justice Amendment Act 1993 (which was 1 September 1993) is the final release date of the sentence, as determined under section 91 of the Criminal Justice Act 1985.
- (4) An indeterminate pre-cd sentence has no release date.

### *Determining key dates*

#### **88 Chief executive must determine key dates, etc**

- (1) The chief executive must ensure that the key dates and non-parole period of every sentence to which an offender is subject, and the offender's parole eligibility date and statutory release date (if any), are determined in accordance with this Part and any regulations made under this Act, or with Parts 4 and 6 of the Criminal Justice Act 1985 and the Criminal Justice Regulations 1985, as the case requires.
- (2) Despite subsection (1), the non-parole period and release date of every sentence imposed on an offender need not be determined if the offender's parole eligibility date and statutory release date (if any) may be correctly calculated without determining all the non-parole periods and release dates.
- (3) A determination under this section may be revised at any time.

Compare: 1985 No 120 s 91

*Determining how much time has been served***89 Determining time served**

- (1) When determining how much of a sentence imposed on or after the commencement date an offender has served, the provisions of this subpart apply.
- (2) When determining how much of a pre-cd sentence an offender has served, Parts 4 and 6 of the Criminal Justice Act 1985 continue to apply.

**90 Period spent in pre-sentence detention deemed to be time served**

- (1) For the purpose of calculating the key dates and non-parole period of a sentence of imprisonment (including a notional single sentence) and an offender's statutory release date and parole eligibility date, an offender is deemed to have been serving the sentence during any period that the offender has spent in pre-sentence detention.
- (2) When an offender is subject to 2 or more concurrent sentences,—
  - (a) the amount of pre-sentence detention applicable to each sentence must be determined; and
  - (b) the amount of pre-sentence detention that is deducted from each sentence must be the amount determined in relation to that sentence.
- (3) When an offender is subject to 2 or more cumulative sentences that make a notional single sentence, any pre-sentence detention that relates to the cumulative sentences may be deducted only once from the single notional sentence.

Compare: 1985 No 120 ss 81(7), (9), 81A(5), 81B(5)

**91 Meaning of pre-sentence detention**

- (1) **Pre-sentence detention** is detention of a type described in subsection (2) that occurs at any stage during the proceedings leading to the conviction or pending sentence of the person, whether that period (or any part of it) relates to—
  - (a) any charge on which the person was eventually convicted; or
  - (b) any other charge on which the person was originally arrested; or
  - (c) any charge that the person faced at any time between his or her arrest and before conviction.
- (2) The types of detention that are pre-sentence detention are detention under an order made under section 24(2) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 and detention on remand pursuant to a court order—
  - (a) in a prison (or in a Police station in accordance with section 35 of the Corrections Act 2004);
  - (b) in a residence established under section 364 of the Oranga Tamariki Act 1989, or detention in Police custody under section 238(1)(e) of that Act;
  - (c) in a hospital or secure facility under any of sections 23, 35, 38(2), and 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003:

- (d) in a hospital or secure facility pursuant to an order under—
    - (i) section 171(2) or 184T(3) or (4) of the Summary Proceedings Act 1957; or
    - (ii) section 169 of the Criminal Procedure Act 2011:
  - (e) in a hospital following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992:
  - (ea) in a secure facility following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
  - (f) in a hospital under section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (3) In the case of an extradition offender (as defined in section 93), **pre-sentence detention** includes detention in custody overseas in relation to a request for extradition, as recorded on a certificate obtained under section 62 of the Extradition Act 1999 (including any substitute certificate obtained under that section).
- (4) In the case of an ICC offender (as defined in section 93), **pre-sentence detention** includes detention in custody overseas, as recorded on a certificate obtained under section 99 of the International Crimes and International Criminal Court Act 2000 (including any substitute certificate obtained under that section).
- (4A) In the case of a MACM offender (as defined in section 93), **pre-sentence detention** includes detention in custody overseas, as recorded on a certificate obtained under section 41B of the Mutual Assistance in Criminal Matters Act 1992 (including any substitute certificate obtained under that section).
- (5) Detention that would, under subsection (2) or subsection (3), be pre-sentence detention, is not pre-sentence detention for the purposes of subsection (1) if the offender was, during that detention,—
- (a) under legal custody in accordance with the Corrections Act 2004 and serving a sentence of imprisonment; or
  - (b) in the case of an extradition offender, detained in custody under a sentence for an offence imposed under the law of the country from where the offender was extradited under the request for extradition.
- (6) In subsection (5)(a), **servicing a sentence of imprisonment** includes time spent in a prison following an application for a recall order, but only if—
- (a) a final recall order is made following that application; and
  - (b) the offender was not, immediately before the application for the recall order was made, subject to conditions related to the offender's home detention under a direction of the Board given before the commence-

ment of section 72 of the Parole Amendment Act 2007 or in accordance with that section, whether those conditions were suspended or not.

Compare: 1985 No 120 ss 81(1), (8), 81A, 81B

Section 91(2): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 91(2)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 91(2)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 91(2)(c): substituted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 91(2)(d): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 91(2)(ea): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 91(4A): inserted, on 30 June 2002, by section 18(1) of the Mutual Assistance in Criminal Matters Amendment Act 2002 (2002 No 23).

Section 91(5)(a): substituted, on 1 October 2007, by section 50(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 91(6): substituted, on 1 October 2007, by section 50(2) of the Parole Amendment Act 2007 (2007 No 28).

## 92 Procedure for recording length of pre-sentence detention

- (1) The person who is in charge of a prison, social welfare residence, hospital, or secure facility referred to in section 91(2) (in this section referred to as a **detention place**) must keep a record of—
  - (a) the date on which a person is admitted to the detention place on detention as referred to in section 91(2); and
  - (b) the total period during which the person is subsequently detained before sentence in that detention place, whether on the original charge or any other charge.
- (2) After sentencing, the person in charge of the detention place (other than a Police jail) must supply the offender with a copy of the record kept under subsection (1) and, if the offender disputes the accuracy of the record, he or she may apply to the person who made it to review it.
- (3) A person in charge of a detention place (other than a Police jail) who receives an application under subsection (2) must immediately review the record and, having reviewed it, must notify the offender in writing of—
  - (a) whether the record is confirmed; or
  - (b) the manner in which the record is amended.
- (4) If the offender is dissatisfied with the outcome of the review, he or she may appeal the review to the court that imposed the sentence, in which case subpart 4 of Part 6 of the Criminal Procedure Act 2011 applies so far as it is applicable and with any necessary modifications, to the appeal.

- (5) An extradition offender or an ICC offender or a MACM offender (as defined in section 93) may exercise the rights in this section to review and appeal a record of pre-sentence detention (as recorded on their relevant certificates) in the same way as any other offender may seek a review and appeal against a determination of the record of pre-sentence detention.

Compare: 1985 No 120 s 81(1), (4)–(6), 81A(3), (4), (9), (10), 81B(3), (4), (8)–(10)

Section 92(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 92(1): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 92(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 92(5): amended, on 30 June 2002, by section 18(2) of the Mutual Assistance in Criminal Matters Amendment Act 2002 (2002 No 23).

### 93 Definition of extradition offender and ICC offender and MACM offender

- (1) An offender is an **extradition offender** for the purpose of sections 91 and 92 if—
- (a) the offender was convicted following his or her extradition to New Zealand of the offence to which the extradition related, or of any other offence for which he or she could be tried in New Zealand in accordance with section 64 of the Extradition Act 1999 as a result of that extradition; and
  - (b) the offender was detained in custody in the country from where the offender was extradited in relation to the request for extradition; and
  - (c) a certificate under section 62 of the Extradition Act 1999 was obtained showing the total period during which the offender was held in custody in relation to the request for extradition.
- (2) An offender is an **ICC offender** if—
- (a) section 98(1) of the International Crimes and International Criminal Court Act 2000 applies to the offender; and
  - (b) a certificate was obtained under section 99 of the International Crimes and International Criminal Court Act 2000 showing the total period during which the offender was held in custody overseas in relation to a request by the ICC before the imposition of sentence in New Zealand.
- (3) An offender is a **MACM offender** if—
- (a) section 41A of the Mutual Assistance in Criminal Matters Act 1992 applies to the offender; and
  - (b) a certificate was obtained under section 41B of the Mutual Assistance in Criminal Matters Act 1992 showing the total period during which the offender was held in custody overseas in relation to a request by a foreign country before the imposition of sentence in New Zealand.

Compare: 1985 No 120 ss 81A(1), 81B(1)

Section 93 heading: amended, on 30 June 2002, by section 18(3) of the Mutual Assistance in Criminal Matters Amendment Act 2002 (2002 No 23).

Section 93(3): added, on 30 June 2002, by section 18(4) of the Mutual Assistance in Criminal Matters Amendment Act 2002 (2002 No 23).

#### **94 Time ceases to run in certain circumstances**

For the purpose of calculating how much time an offender who is subject to a sentence of imprisonment has served, time ceases to run,—

- (a) for an offender detained in a prison, during any period when the offender is unlawfully at large from detention; and
- (b) for an offender on parole or compassionate release, as provided in section 60(4).
- (c) *[Repealed]*

Compare: 1985 No 120 ss 94(7), 107I(8), (9)

Section 94(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 94(b): replaced, on 22 January 2014, by section 55 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 94(c): repealed, on 1 October 2007, by section 51(3) of the Parole Amendment Act 2007 (2007 No 28).

#### **95 Time on bail pending appeal does not count as time served**

- (1) Any time during which an offender is released from detention on bail pending an appeal does not count as time served under any sentence.
- (2) To avoid doubt, time spent released from detention on bail is not pre-sentence detention (as defined in section 91).

#### **96 Period between quashed sentence and new sentence does not count as time served**

- (1) Subsection (2) applies if—
  - (a) a sentence of imprisonment is passed on the conviction of an offender; and
  - (b) that conviction is subsequently quashed and a new hearing or a new trial is ordered; and
  - (c) following a new hearing or a new trial, the offender is again convicted and a new sentence of imprisonment is imposed on the offender.
- (2) In the situation described in subsection (1), the period commencing on the quashing of the first sentence and the imposition of the new sentence does not count as time served under the new sentence.
- (3) However, this section is subject to section 90 (which means that if the offender is remanded in custody during the period described in subsection (2), that



period of pre-sentence detention counts as time served under the subsequent sentence).

Compare: 1985 No 120 s 78(6)

#### Subpart 4—Transitional arrangements for offenders subject to pre-cd sentences

##### *General rules*

#### **97 Application of this Part to offenders subject to pre-cd sentences**

- (1) Every offender who was released under Part 6 of the Criminal Justice Act 1985 before the commencement date is deemed to have been released under subpart 2 of this Part and, in particular,—
  - (a) an offender who was released on parole or at his or her final release date is deemed to be on parole under section 28, and any conditions to which the offender is subject are deemed to be release conditions imposed by the Board; and
  - (b) an offender who was released to home detention is deemed to be on home detention under section 35 (as in force before the commencement of section 72 of the Parole Amendment Act 2007), and any conditions to which the offender is subject are deemed to be detention conditions imposed by the Board; and
  - (c) an offender who was released under a direction by the Minister of Corrections under section 94 of the Criminal Justice Act 1985 is deemed to have been released on compassionate release under section 41, and any conditions to which the offender is subject are deemed to be release conditions imposed by the Board; and
  - (d) an offender who was directed to be released under the Criminal Justice Act 1985 before the commencement date, but who (although the direction had not been revoked) had not in fact been released by that date, must be released under the Criminal Justice Act 1985 in accordance with the direction but, once the offender is released, paragraphs (a), (b), and (c) apply as if the offender had been released before the commencement date.
- (2) If, before the commencement date, an offender is referred under section 97(5) or (6) of the Criminal Justice Act 1985 to the Board for consideration but the Board has not made a decision then, after the commencement date, the offender must be brought to the attention of the chairperson for consideration for referral to the Board under section 25 of this Act.
- (3) If, before the commencement date, an offender is being considered by the Minister of Corrections for early release under section 94 of the Criminal Justice Act 1985 but the Minister has not made a decision, then, after the commence-

ment date, the offender must be brought to the attention of the chairperson for consideration for referral to the Board under section 41 of this Act.

- (4) If an offender referred to in subsection (3) was being considered by the Minister of Corrections on the ground referred to in section 94(1)(c) of the Criminal Justice Act 1985, the chairperson may refer the offender, and the Board may release him or her under section 41 of this Act, as if he or she were eligible to be considered under that section.
- (5) A properly made application for a recall order that is made under the Criminal Justice Act 1985 before the commencement date must, after the commencement date, be treated as if it were a properly made recall application under section 60 of this Act, and sections 65 and 66 apply accordingly.
- (6) A properly made interim recall order that is made under the Criminal Justice Act 1985 before the commencement date must, after the commencement date, be treated as if it were a properly made interim recall order made under section 62 of this Act, and sections 63 to 66 apply accordingly.
- (7) An application for an order under section 105 of the Criminal Justice Act 1985 must, after the commencement date, be dealt with as if it were an application under section 107 of this Act.
- (8) Every order made under section 105 of the Criminal Justice Act 1985 must be reviewed by the Board under section 107(6) of this Act as if the order had been made under that section.
- (9) Despite subsection (1), every appeal against a decision made under Part 4 or Part 6 of the Criminal Justice Act 1985 must, whether the appeal is lodged before or after the commencement date, be lodged and dealt with as if Part 6 of that Act had not been repealed.

Section 97(1)(b): amended, on 1 October 2007, by section 52 of the Parole Amendment Act 2007 (2007 No 28).

## **98 Transitional provisions for hearings within 3 months after commencement date**

- (1) During the transition period (defined in subsection (3)), every hearing by the Board of a type referred to in section 42 (which relates to hearings to decide release conditions at statutory release, parole hearings, and home detention hearings) must be an attended hearing as described in section 49, despite anything in sections 45 to 48.
- (2) To avoid doubt, during the transition period the Board may exercise any and all of its powers under sections 42 to 50 with respect to hearings due to be held after the end of the transition period.
- (3) In this section and section 99, **transition period** means the period starting on the commencement date and ending on the date that is 3 months after the commencement date.

**99 Chief executive may exercise certain powers before commencement date**

- (1) Before the commencement date, the chief executive may, with respect to any hearing by the Board that is due to be held during the transition period (defined in section 98(3)), take any administrative steps that are necessary or desirable to ensure that, after the commencement date, the Board will be able to conduct the hearings as required by this Act, including—
  - (a) arranging for reports to be provided to the Board as required by section 43(1); and
  - (b) giving notice as required by section 43(2) and (3); and
  - (c) providing victims who request information (as permitted under section 44) with that information; and
  - (d) fixing times for attended hearings and giving notice as required by section 45(7)(b) and (c).
- (2) After the commencement date, any power exercised by the chief executive under subsection (1) is deemed to have been exercised by the Board.

**100 Offenders subject to non-association orders**

- (1) This section applies to an offender who is subject to a pre-sentence order made under section 77B of the Criminal Justice Act 1985 that the offender must not associate with any specified person or with persons of any specified class (a **non-association order**).
- (2) When an offender to whom this section applies is released under this Part, he or she is subject to the non-association order imposed by the court in addition to the conditions imposed by the Board as if, for all purposes, the order were a release condition imposed by the Board.
- (3) The offender or a probation officer may apply to the Board for the variation or discharge of a non-association order as if the order were a special condition imposed under this Part.

**101 Corrective training deemed to be short-term sentence**

For the purposes of this Part, a sentence of corrective training imposed under the Criminal Justice Act 1985 is deemed to be a short-term sentence of imprisonment.

**102 Suspended sentences**

- (1) This section applies if,—
  - (a) before the commencement date, an order was made under section 21A(1) of the Criminal Justice Act 1985 suspending a sentence of imprisonment; and
  - (b) after the commencement date, an order is made under section 21A(4) of that Act (as continued for this purpose by section 155 of the Sentencing Act 2002) bringing the suspended sentence into effect.

- (2) For the purposes of sentence calculation, the start date of the suspended sentence is the date on which the order under section 21A(4) of the Criminal Justice Act 1985 is made, and the sentence is deemed to be a short-term sentence imposed after the commencement date.

*Release at final release date*

**103 Purpose and effect of section 104**

- (1) The purpose of section 104 is to provide a special form of release for offenders who are subject to long-term pre-cd sentences and whose release would otherwise be delayed as a result of the operation of subparts 2 and 3.
- (2) By way of explanation, the effect of section 104 is that, if it applies to an offender, the Board is obliged to release the offender on parole at his or her final release date, but the offender is subject to release conditions, and is liable to recall until his or her statutory release date.

**104 Release at final release date**

- (1) An offender who is detained under a long-term pre-cd sentence must be released from detention on his or her final release date, subject to the provisions of this section.
- (2) If the offender's final release date is also his or her statutory release date, the offender must be released under subpart 2, and not under this section.
- (3) An offender must not be released under this section if, on his or her final release date,—
  - (a) the offender is also subject to a sentence of imprisonment imposed after the commencement date that has a release date that is later than the offender's statutory release date as it was at the commencement date; or
  - (b) the offender is subject to an order under section 107, or an application for such an order, or an application under section 105 of the Criminal Justice Act 1985.
- (4) If subsection (3) ceases to apply to an offender, the offender must be released under this section on his or her final release date or, if that date has passed, on a date set by the Board that is as soon as practicable after it and that is not a non-release day.
- (5) The following sections apply to an offender who is released under this section:
  - (a) sections 7 to 16:
  - (b) section 17, as if the offender were being released at his or her statutory release date:
  - (c) sections 29 to 32, as if the offender were being released on parole:
  - (d) sections 42 to 50, as if the offender were being considered for release on parole:

- (e) sections 51 to 54, as if the offender were being released at his or her statutory release date:
  - (f) sections 56 to 73, as if the offender had been released on parole.
- (6) A reference in this Act or any other enactment to an offender released on parole includes a reference to an offender released under this section.

### 105 Calculation of final release dates

- (1) The final release date of an offender who is subject to a pre-cd sentence must be determined under section 91 of the Criminal Justice Act 1985, but any date so determined may be varied in accordance with section 106.
- (2) If, after a final release date has been varied in accordance with section 106, it appears that the original date determined under the Criminal Justice Act 1985 should be amended (for instance, because a sentence is quashed, or an error in the determination is discovered), then the original determination may be amended and, if necessary, section 106 applies to the amended determination.

Section 105(1): amended, on 7 July 2004, by section 30 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### 106 Variation and cancellation of final release dates

- (1) If, after the commencement date, an offender who is subject to a long-term pre-cd sentence is sentenced to a new concurrent sentence whose release date falls between the offender's final release date and his or her **original statutory release date** (being the offender's statutory release date as it was at the commencement date), the offender's final release date becomes the release date of the new sentence; and if the offender becomes subject to more than 1 such new sentence, the final release date becomes the release date of the new sentence that has the latest release date.
- (2) If, after the commencement date, an offender who is subject to 1 or more long-term pre-cd sentences is sentenced to a sentence that is directed to be served cumulatively on one of the pre-cd sentences, the offender's final release date—
  - (a) is cancelled if the resulting notional single sentence is a short-term sentence; or
  - (b) if the resulting notional single sentence is a long-term sentence, becomes the date that is calculated by—
    - (i) taking the period between the final release date of the earlier sentence and the expiry date of that sentence; and
    - (ii) deducting that period from the sentence expiry date of the notional single sentence.
- (3) When subsection (2)(b) applies, if the notional single sentence is subsequently revised (by extending or reducing the notional single sentence), the offender's final release date—

- (a) is cancelled if the revised notional single sentence is a short-term sentence; or
  - (b) must be calculated by deducting the period referred to in subsection (2)(b)(i) from the expiry date of the revised notional single sentence.
- (4) Subsection (1) may not be applied if the result would be to extend the offender's final release date to a date that is later than his or her original statutory release date.
- (5) None of subsection (1), subsection (2), or subsection (3) may be applied if the result would be to make the offender's final release date earlier than it was before the subsection was applied to it.
- (6) The final release date of an offender who is subject to a long-term pre-cd sentence is cancelled, and section 104(1) therefore ceases to apply, if the offender is recalled under a final recall order from parole, home detention (directed by the Board before the commencement of section 72 of the Parole Amendment Act 2007 or in accordance with that section), or compassionate release.

Section 106(6): added, on 7 July 2004, by section 31 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 106(6): amended, on 1 October 2007, by section 53 of the Parole Amendment Act 2007 (2007 No 28).

## **107 Order that offender not be released**

- (1) This section applies to an offender who is subject to a determinate pre-cd sentence for a specified offence (as defined in subsection (9)).
- (2) The chief executive may apply to the Board at any time before the offender's final release date for an order that the offender not be released before the applicable release date (as defined in subsection (9)).
- (3) The Board must make the order if it is satisfied that the offender would, if released before the applicable release date, be likely to commit a specified offence between the date of release and the applicable release date.
- (4) A copy of the application under subsection (2), and a copy of any report submitted to the Board, must be given to the offender at least 14 days before the application is to be considered, and the offender must be given an opportunity to appear before the Board and state his or her case in person or by counsel.
- (5) If the Board makes an order, it must state its reasons in writing and give a copy of the order and the reasons to the offender or to his or her counsel.
- (6) An order made under this section must be reviewed by the Board at least once in every 6 months following the making of the order, and subsection (4) applies to every review, with all necessary modifications.
- (7) On a review, the Board must revoke the order if it is no longer satisfied that the test in subsection (3) is met; and if it revokes the order, the Board must determine the release conditions that will apply to the offender on release.

- (8) An order made under this section expires on the applicable release date, unless revoked earlier under subsection (7).
- (9) In this section,—
- applicable release date** means,—
- (a) in the case of an offender subject to a pre-cd sentence imposed for a specified offence, the date that is 3 months before the sentence expiry date;
  - (b) in the case of an offender who is subject to more than 1 pre-cd sentence imposed for a specified offence, the date that is 3 months before the sentence expiry date of the sentence with the latest sentence expiry date

**specified offence** means—

- (a) murder; or
- (b) a sexual crime under Part 7 of the Crimes Act 1961 punishable by 7 or more years' imprisonment; and includes a crime under section 144A or section 144C of that Act; or
- (c) an offence against any of sections 171, 173 to 176, 188, 189(1), 191, 198 to 199, 208 to 210, 234, 235, or 236 of the Crimes Act 1961.

Section 107(9) **specified offence** paragraph (c): amended, on 7 July 2004, by section 32 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

## Part 1A

### Extended supervision orders

Part 1A: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

#### *Preliminary*

Heading: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### 107A Overview of Part

This Part—

- (a) provides that offenders who have been convicted of certain offences may, after assessment by a health assessor, be made subject to an extended supervision order by a court; and
- (b) provides that an extended supervision order may last for not more than 10 years at a time; and
- (c) provides that the conditions of an extended supervision order are the standard extended supervision conditions and any special conditions imposed by the Board; and
- (d) provides rights of appeal and review relating to extended supervision orders.

Section 107A: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107A(a): amended, on 12 December 2014, by section 6(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107A(b): amended, on 12 December 2014, by section 6(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107A(c): amended, on 1 October 2007, by section 54 of the Parole Amendment Act 2007 (2007 No 28).

### **107B Meaning of relevant offence, relevant sexual offence, and relevant violent offence**

- (1) In this Part, **relevant offence** means any of the following:
- (a) an offence specified in subsection (2), (2A), or (3):
  - (b) an attempt to commit any offence specified in subsection (2) or (2A) (but only if the offence is not itself specified as an attempt and the provision does not itself provide that the offence may be completed on an attempt):
  - (c) a conspiracy to commit any offence specified in subsection (2) or (2A):
  - (d) an offence committed overseas that would come within the description of any offence described in subsection (2) or (2A), or paragraph (b) or (c) of this subsection, if it had been committed in New Zealand:
  - (e) an offence that is equivalent to an offence specified in subsection (2) or (2A) but that was committed against a provision of the Crimes Act 1961 that has been repealed.
- (2) In this Part, an offence against any of the following sections of the Crimes Act 1961 is a **relevant sexual offence**:
- (a) section 128B(1) (sexual violation):
  - (b) section 129(1) (attempted sexual violation):
  - (c) section 129(2) (assault with intent to commit sexual violation):
  - (d) section 129A(1) (sexual connection with consent induced by certain threats):
  - (e) section 129A(2) (indecent act with consent induced by certain threats), but only if the victim of the offence was under the age of 16 at the time of the offence:
  - (f) section 130(2) (incest):
  - (g) section 131(1) and (2) (sexual connection with dependent family member):
  - (h) section 131(3) (indecent act on dependent family member), but only if the victim of the offence was under the age of 16 at the time of the offence:
  - (i) section 131B (meeting young person following sexual grooming):



- (j) section 132(1), (2), and (3) (sexual conduct with child under 12):
  - (k) section 134(1), (2), and (3) (sexual conduct with young person under 16):
  - (l) section 135 (indecent assault):
  - (m) section 138(1), (2), and (4) (sexual exploitation of person with significant impairment):
  - (n) section 142A (compelling another person to do indecent act with animal):
  - (o) section 143 (bestiality):
  - (p) section 144A(1) (sexual conduct with children and young people outside New Zealand):
  - (q) section 144C(1) (organising or promoting child sex tours):
  - (r) section 208 (abduction for purposes of marriage or sexual connection).
- (2A) In this Part, an offence against any of the following sections of the Crimes Act 1961 is a **relevant violent offence**:
- (a) section 172(1) (murder):
  - (b) section 173(attempt to murder):
  - (c) section 174 (counselling or attempting to procure murder):
  - (d) section 176 (accessory after the fact to murder):
  - (e) section 177 (manslaughter):
  - (f) section 188(1) and (2) (wounding with intent):
  - (g) section 189(1) (injuring with intent to cause grievous bodily harm):
  - (h) section 191(1) and (2) (aggravated wounding or injury):
  - (i) section 198(1) and (2) (discharging firearm or doing dangerous act with intent):
  - (j) section 198A(1) and (2) (using firearm against law enforcement officer, etc):
  - (k) section 198B (commission of crime with firearm):
  - (l) section 199 (acid throwing):
  - (m) section 209 (kidnapping):
  - (n) section 234(2) (robbery):
  - (o) section 235 (aggravated robbery):
  - (p) section 236(1) and (2) (assault with intent to rob).
- (2B) For the purposes of subsection (1)(e),—
- (a) an offence against the former section 133 of the Crimes Act 1961 (indecenty with girl under 12) is equivalent to an offence against section 132(3) of that Act (indecent act on child under 12):

- (b) an offence against the former section 139 of the Crimes Act 1961 (indecent act between woman and girl) is equivalent to an offence against section 134(3) of that Act (indecent act on young person under 16):
  - (c) an offence against the former section 140 of the Crimes Act 1961 (indecentcy with boy under 12) is equivalent to an offence against section 132(3) of that Act (indecent act on child under 12):
  - (d) an offence against the former section 140A of the Crimes Act 1961 (indecentcy with boy between 12 and 16) is equivalent to an offence against section 134(3) of that Act (indecent act on young person under 16):
  - (e) an offence against the former section 142 of the Crimes Act 1961 (anal intercourse)—
    - (i) if the person upon whom the act of anal intercourse was committed was under the age of 12 years when the act was committed, is equivalent to an offence against section 132(1) of that Act (sexual connection with child under 12); and
    - (ii) if the person upon whom the act of anal intercourse was committed was of or over the age of 12 years when the act was committed, is equivalent to an offence against section 134(1) of that Act (sexual connection with young person under 16).
- (3) An offence under the Films, Videos, and Publications Classification Act 1993 is also a relevant offence if the offence is punishable by imprisonment and any publication that is the subject of the offence is objectionable because it does any or all of the following:
- (a) promotes or supports, or tends to promote or support, the exploitation of children, or young persons, or both, for sexual purposes:
  - (b) describes, depicts, or otherwise deals with sexual conduct with or by children, or young persons, or both:
  - (c) exploits the nudity of children, or young persons, or both.

Section 107B: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107B heading: amended, on 12 December 2014, by section 7(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107B(1): replaced, on 12 December 2014, by section 7(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107B(2): replaced, on 12 December 2014, by section 7(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107B(2A): replaced, on 12 December 2014, by section 7(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107B(2B): inserted, on 20 May 2005, by section 10 of the Crimes Amendment Act 2005 (2005 No 41).

Section 107B(2B): amended, on 12 December 2014, by section 7(3) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### 107C Meaning of eligible offender

- (1) In this Part, **eligible offender** means an offender who—
- (a) is not subject to an indeterminate sentence but is a person who has been sentenced to imprisonment for a relevant offence (and that sentence has not been quashed or otherwise set aside) and has not ceased, since his or her latest conviction for a relevant offence (that has not been quashed or otherwise set aside), to be subject to any or all of the following:
    - (i) a sentence of imprisonment (whether for a relevant offence or otherwise);
    - (ii) release conditions (whether suspended or not);
    - (iii) an extended supervision order; or
  - (b) is a person who—
    - (i) has arrived in New Zealand within 6 months of ceasing to be subject to any sentence, supervision conditions, or order imposed on the person for a relevant offence by an overseas court; and
    - (ii) has, since that arrival, been in New Zealand for less than 6 months; and
    - (iii) resides or intends to reside in New Zealand; or
  - (c) has been convicted of a relevant offence and in respect of that offence has been determined to be a returning prisoner under the Returning Offenders (Management and Information) Act 2015; or
  - (d) is a person to whom subpart 3 of Part 2 of the Returning Offenders (Management and Information) Act 2015 applies.
- (2) To avoid doubt, and to confirm the retrospective application of this provision, despite any enactment or rule of law, an offender may be an eligible offender even if he or she committed a relevant offence, was most recently convicted, or became subject to release conditions or an extended supervision order before this Part and any amendments to it came into force.

Section 107C: replaced, on 12 December 2014, by section 8 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107C(1)(b)(iii): amended, on 18 November 2015, by section 35(2) of the Returning Offenders (Management and Information) Act 2015 (2015 No 112).

Section 107C(1)(c): inserted, on 18 November 2015, by section 35(3) of the Returning Offenders (Management and Information) Act 2015 (2015 No 112).

Section 107C(1)(d): inserted, on 18 November 2015, by section 35(3) of the Returning Offenders (Management and Information) Act 2015 (2015 No 112).

### 107D Meaning of sentencing court

In this Part, **sentencing court**, in relation to an offender, means the High Court, unless every relevant offence for which the offender was most recently subject to a sentence of imprisonment was imposed by the District Court, or any court

on appeal from the District Court, in which case the sentencing court is the District Court presided over by a trial Judge.

Section 107D: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107D: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 107D: amended, on 12 December 2014, by section 9 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107E Obligation to assess eligible offenders**

*[Repealed]*

Section 107E: repealed, on 12 December 2014, by section 10 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

#### *Application for, and making of extended supervision orders*

Heading: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### **107F Chief executive may apply for extended supervision order**

- (1) The chief executive may apply to the sentencing court for an extended supervision order in respect of an eligible offender,—
  - (a) where the offender is subject to a sentence of imprisonment, at any time before the later of—
    - (i) the sentence expiry date of the sentence to which the offender is subject that has the latest sentence expiry date, regardless of whether that sentence is for a relevant offence; and
    - (ii) the date on which the offender ceases to be subject to any release conditions; or
  - (b) where the offender is subject to an extended supervision order, at any time before the expiry of the order; or
  - (c) where the offender is a person described in section 107C(1)(b), at any time within 6 months of the person's arrival in New Zealand; or
  - (d) where the offender is a person described in section 107C(1)(c) or (d), at any time before the end of the period for which the offender is subject to release conditions under the Returning Offenders (Management and Information) Act 2015.
- (2) An application under this section must be accompanied by a report by a health assessor (as defined in section 4 of the Sentencing Act 2002).
- (2A) Every health assessor's report must address one or both of the following questions:
  - (a) whether—

- (i) the offender displays each of the traits and behavioural characteristics specified in section 107IAA(1); and
  - (ii) there is a high risk that the offender will in future commit a relevant sexual offence:
- (b) whether—
  - (i) the offender displays each of the behavioural characteristics specified in section 107IAA(2); and
  - (ii) there is a very high risk that the offender will in future commit a relevant violent offence.
- (3) To avoid doubt, in addressing any matter to be referred to in the health assessor's report, the health assessor may take into account any statement of the offender or any other person concerning any conduct of the offender, whether or not that conduct constitutes an offence and whether or not the offender has been charged with, or convicted of, an offence in respect of that conduct.

Section 107F: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107F(1): replaced, on 12 December 2014, by section 11(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107F(1)(c): amended, on 18 November 2015, by section 35(4) of the Returning Offenders (Management and Information) Act 2015 (2015 No 112).

Section 107F(1)(d): inserted, on 18 November 2015, by section 35(5) of the Returning Offenders (Management and Information) Act 2015 (2015 No 112).

Section 107F(2): replaced, on 12 December 2014, by section 11(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107F(2A): inserted, on 12 December 2014, by section 11(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107F(3): added, on 1 October 2007, by section 57 of the Parole Amendment Act 2007 (2007 No 28).

Section 107F(3): amended, on 12 December 2014, by section 11(3) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107FA Sentencing court may make interim supervision order**

- (1) This section applies if, before an application for an extended supervision order is finally determined, 1 or more of the following events occur:
  - (a) the offender who is the subject of the application is released from detention:
  - (b) the offender who is the subject of the application ceases to be subject to an extended supervision order:
  - (c) the offender who is the subject of the application fails to appear at the hearing of the application and is brought before the court under a warrant issued under section 107G(3):
  - (d) an offender who is a person described in section 107C(1)(b) arrives in New Zealand.

- (2) The sentencing court may, on application by the chief executive, order that, until the application for an extended supervision order is finally determined, the offender is subject to the supervision conditions specified in the order.
- (3) When the court makes an interim supervision order, it may impose any of the standard conditions that are (under section 107JA), or special conditions that may be (under section 107K), imposed under an extended supervision order.
- (4) If, under an interim supervision order, the court imposes an intensive monitoring condition or residential restrictions, the period for which the interim supervision order is in force is not to be taken into account for the purpose of the limits specified in section 107K(3)(b) and (ba).
- (5) The court may suspend an interim supervision order subject to any conditions that the court thinks fit.
- (6) An interim supervision order ceases to have effect when the application for an extended supervision order is finally determined or discontinued.

Section 107FA: inserted, on 12 December 2014, by section 12 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107FA(3): amended, on 8 September 2018, by section 70 of the Statutes Amendment Act 2018 (2018 No 27).

### **107G Procedure following application for extended supervision order**

- (1) As soon as practicable after an application for an extended supervision order is made, the chief executive must ensure that the offender who is the subject of the application is served, by personal service, with—
  - (a) a copy of the application; and
  - (b) a copy of the health assessor's report; and
  - (c) copies of any affidavits accompanying the application; and
  - (d) a notice setting out the offender's rights and the procedures relating to the application.
- (2) A Judge of a sentencing court, or a Registrar, Justice, or Community Magistrate, may issue a summons to an offender in respect of whom an application under section 107F is made; and, in that case, rules in relation to service made under the Criminal Procedure Act 2011 apply with all necessary modifications.
- (3) A Judge of a sentencing court may issue a warrant for the arrest of the offender if the Judge is of the opinion that a warrant is necessary to compel the attendance of the offender; and, in that case, sections 162 and 163 of the Criminal Procedure Act 2011 and section 316 of the Crimes Act 1961 apply with all necessary modifications.
- (4) An offender who is the subject of an application for an extended supervision order must be present at the hearing of the application and may be represented by counsel.
- (5) During the hearing, the sentencing court may adjourn the hearing and,—

- (a) if the offender was brought to court under section 65(3) of the Corrections Act 2004, section 65 of that Act applies; or
  - (b) if the offender was brought to court following arrest under a warrant issued under subsection (3), the offender may be granted bail in accordance with subsection (6); but, if bail is not granted, the court must remand the offender in custody, in which case the period of the adjournment may not exceed 8 days unless the parties otherwise consent; or
  - (c) in any other case (subject to subsection (9)),—
    - (i) the court may allow the offender to go at large during the period of the adjournment; or
    - (ii) the offender may be granted bail in accordance with subsection (6).
- (6) If an offender who is the subject of an application for an extended supervision order may be granted bail, the Bail Act 2000 applies, with all necessary modifications, as if the offender were charged with an offence and was not bailable as of right.
- (7) The following provisions of the Criminal Procedure Act 2011 apply, with all necessary modifications, to proceedings for an extended supervision order:
- (a) section 184 (criminal records);
  - (b) *[Repealed]*
  - (c) section 379 (proceedings not to be questioned for want of form).
- (8) Any summons, warrant, or other form for which the content is prescribed under section 386 of the Criminal Procedure Act 2011 may, if modified appropriately, be used for the purposes of this section.
- (9) Before the Corrections Act 2004 comes into force, section 26(2) of the Penal Institutions Act 1954 applies as if paragraph (a) of that subsection applies to an offender who is subject to an application for an extended supervision order.
- (10) Subpart 3 of Part 5 of the Criminal Procedure Act 2011 (which relates generally to name suppression) applies, with all necessary modifications, to the hearing of an application for an extended supervision order as if the hearing were a proceeding in respect of an offence under any of sections 128 to 142A of the Crimes Act 1961.
- (11) The Costs in Criminal Cases Act 1967 applies, with all necessary modifications, to proceedings under this Part.

Section 107G: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107G(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 107G(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 107G(5)(b): amended, on 1 October 2007, by section 58 of the Parole Amendment Act 2007 (2007 No 28).

Section 107G(6): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 107G(7): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 107G(7)(b): repealed, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

Section 107G(8): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 107G(10): amended, on 5 March 2012 (applying in relation to a proceeding for an offence that was commenced before that date), by section 393 of the Criminal Procedure Act 2011 (2011 No 81).

### **107GAA Procedure where hearing contingent on outcome of PPO application**

- (1) This section applies to an application for an extended supervision order made in respect of an eligible offender who is also the subject of a PPO application that has not been determined or withdrawn.
- (2) For an application to which this section applies,—
  - (a) the sentencing court is (despite anything in section 107D) the High Court; and
  - (b) the sentencing court must not hear the application until—
    - (i) the proceeding on the PPO application has been completed and the court has declined to make a public protection order against the offender; or
    - (ii) the PPO application has been withdrawn; or
    - (iii) the public protection order made against the offender has been cancelled as a result of a successful appeal against the order; and
  - (c) the notice given under section 107G(1)(d) must inform the offender of the effect of this provision.
- (3) The application is taken to be withdrawn if the court has made a public protection order against the offender and all avenues for appeal are exhausted or the period in which an appeal may be filed expires.
- (4) Where the court has declined to make a public protection order and the court proceeds to hear the application for an extended supervision order, that application must, if practicable, be heard by the same Judge that heard the PPO application.
- (5) In this section, **PPO application** means an application for a public protection order under section 8 of the Public Safety (Public Protection Orders) Act 2014.  
Section 107GAA: inserted, on 12 December 2014, by section 13 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).



### **107GA Application of section 107G during epidemic**

- (1) This subsection applies to the hearing of an application for an extended supervision order relating to an offender who has been remanded in custody following arrest under a warrant issued under section 107G(3) if the court wishes to adjourn it—
  - (a) while an epidemic management notice is in force; or
  - (b) after an epidemic management notice has expired, but while (in the court’s opinion) there remains as an effect of the outbreak of the disease referred to in the notice a backlog of matters pending before the court.
- (2) The court may, without the offender’s consent, adjourn the hearing of an application for an extended supervision order to which subsection (1) applies for any period (not exceeding 21 days) it thinks appropriate in the circumstances.

Section 107GA: inserted, on 19 December 2006, by section 10 of the Parole Amendment Act 2006 (2006 No 88).

### **107H Hearings relating to extended supervision orders**

- (1) In this section, **hearing** means any hearing before a sentencing court or the Court of Appeal that relates to any of the following:
  - (a) an application for an extended supervision order;
  - (b) an application for cancellation of an extended supervision order;
  - (c) *[Repealed]*
  - (d) an appeal under section 107R.
- (2) At any hearing, the court may receive and take into account any evidence or information that it thinks fit for the purpose of determining the application or appeal, whether or not it would be admissible in a court of law.
- (3) At any hearing, the court is entitled to take into account the fact that an offender refused to co-operate with the preparation of the health assessor’s report required under section 107F(2), but it must also take into account any reasons the offender gives for refusal to co-operate with the preparation of the health assessor’s report.
- (4) When any hearing is to be held, the chief executive must notify every victim of the offender concerned about the hearing.
- (5) A victim may make written submissions to the court and, with the leave of the court, may appear and make oral submissions at the hearing.
- (6) The court must provide a copy of every order made at or following any hearing, along with the reasons for the order, to the offender concerned, the chief executive, and the Police.
- (6A) For the purposes of this section, a court may direct that the offender concerned be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

- (7) The chief executive must notify every victim of the offender concerned of the outcome of every hearing.

Section 107H: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107H(1)(c): repealed, on 12 December 2014, by section 14 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107H(6A): inserted, on 1 October 2007, by section 59 of the Parole Amendment Act 2007 (2007 No 28).

### **107I Sentencing court may make extended supervision order**

- (1) The purpose of an extended supervision order is to protect members of the community from those who, following receipt of a determinate sentence, pose a real and ongoing risk of committing serious sexual or violent offences.
- (2) A sentencing court may make an extended supervision order if, following the hearing of an application made under section 107F, the court is satisfied, having considered the matters addressed in the health assessor's report as set out in section 107F(2A), that—
- (a) the offender has, or has had, a pervasive pattern of serious sexual or violent offending; and
  - (b) either or both of the following apply:
    - (i) there is a high risk that the offender will in future commit a relevant sexual offence:
    - (ii) there is a very high risk that the offender will in future commit a relevant violent offence.
- (3) To avoid doubt, a sentencing court may make an extended supervision order in relation to an offender who was, at the time the application for the order was made, an eligible offender, even if, by the time the order is made, the offender has ceased to be an eligible offender.
- (4) Every extended supervision order must state the term of the order, which may not exceed 10 years.
- (5) The term of the order must be the minimum period required for the purposes of the safety of the community in light of—
- (a) the level of risk posed by the offender; and
  - (b) the seriousness of the harm that might be caused to victims; and
  - (c) the likely duration of the risk.
- (6) *[Repealed]*

Section 107I: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107I(1): amended, on 12 December 2014, by section 15(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107I(2): replaced, on 12 December 2014, by section 15(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107I(6): repealed, on 12 December 2014, by section 15(3) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

**107IAA Matters court must be satisfied of when assessing risk**

- (1) A court may determine that there is a high risk that an eligible offender will commit a relevant sexual offence only if it is satisfied that the offender—
  - (a) displays an intense drive, desire, or urge to commit a relevant sexual offence; and
  - (b) has a predilection or proclivity for serious sexual offending; and
  - (c) has limited self-regulatory capacity; and
  - (d) displays either or both of the following:
    - (i) a lack of acceptance of responsibility or remorse for past offending;
    - (ii) an absence of understanding for or concern about the impact of his or her sexual offending on actual or potential victims.
- (2) A court may determine that there is a very high risk that an eligible offender will commit a relevant violent offence only if it is satisfied that the offender—
  - (a) has a severe disturbance in behavioural functioning established by evidence of each of the following characteristics:
    - (i) intense drive, desires, or urges to commit acts of violence; and
    - (ii) extreme aggressive volatility; and
    - (iii) persistent harbouring of vengeful intentions towards 1 or more other persons; and
  - (b) either—
    - (i) displays behavioural evidence of clear and long-term planning of serious violent offences to meet a premeditated goal; or
    - (ii) has limited self-regulatory capacity; and
  - (c) displays an absence of understanding for or concern about the impact of his or her violence on actual or potential victims.

Section 107IAA: inserted, on 12 December 2014, by section 16 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

**107IAB Chief executive may apply for imposition of intensive monitoring condition**

- (1) When the chief executive makes an application under section 107F for an extended supervision order, he or she may at the same time apply to the sentencing court for an order requiring the Board to impose an intensive monitoring condition on the offender under section 107IAC.
- (2) If the chief executive makes an application under this section, the sentencing court is, for the purpose of that application and the corresponding application

under section 107F, and despite anything in section 107D, taken to be the High Court.

Section 107IAB: inserted, on 12 December 2014, by section 16 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107IAC Court may order imposition of intensive monitoring condition**

- (1) When a sentencing court makes an extended supervision order in respect of an offender, the court may at the same time, on application by the chief executive made under section 107IAB(1), make an order requiring the Board to impose an intensive monitoring condition on the offender.
- (2) An intensive monitoring condition is a condition requiring an offender to submit to being accompanied and monitored, for up to 24 hours a day, by an individual who has been approved, by a person authorised by the chief executive, to undertake person-to-person monitoring.
- (3) The order must specify the maximum duration of the intensive monitoring condition, which must be no longer than 12 months.
- (4) If the court makes an order under this section, the Board must impose an intensive monitoring condition on the offender as a special condition.
- (5) The court may not make an order under this section in respect of an offender more than once, even if the offender is subject to repeated extended supervision orders.
- (6) However, the court may make an order under this section in respect of an offender who was subject to an extended supervision order before the commencement of this section even if, under that order, the offender was at any time subject to a condition imposed by the Board under section 107K(2).

Section 107IAC: inserted, on 12 December 2014, by section 16 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107IA Court may impose special conditions on interim basis**

- (1) When a sentencing court makes an extended supervision order in respect of an offender, the court may, on the application of the chief executive, make an order imposing on the offender any special conditions that the Board may impose under section 107K.
- (2) The court may make an order under subsection (1) only if satisfied that there may not be sufficient time, before the extended supervision order comes into force, for the Board to determine which (if any) special conditions should be imposed on the offender.
- (3) An order under subsection (1) may do either or both of the following:
  - (a) suspend any or all of the standard extended supervision conditions that would otherwise apply to the offender:
  - (b) cancel or vary any special conditions that currently apply to the offender.
- (4) An order under subsection (1)—

- (a) takes effect when the extended supervision order to which it relates comes into force; and
  - (b) expires when the special conditions imposed by the order end as provided by section 107L(2A).
- (5) The court may, on the application of the chief executive, or on the application of the offender, cancel or vary a subsisting order under subsection (1) if satisfied that the cancellation or variation needs to be made before the Board determines which (if any) special conditions should be imposed on the offender.
- (6) Any variation under subsection (5) has effect as an order under subsection (1).
- (7) Section 107K applies with all necessary modifications to an order under subsection (1).

Section 107IA: inserted, on 1 October 2007, by section 60 of the Parole Amendment Act 2007 (2007 No 28).

#### *Nature of extended supervision order*

Heading: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### **107J Conditions of extended supervision order**

- (1) The conditions of an extended supervision order are—
- (a) the standard extended supervision conditions set out in section 107JA; and
  - (b) any special conditions imposed by the Board under section 107K, which apply for the period determined by the Board.
- (2) The standard extended supervision conditions—
- (a) apply throughout the term of the order (except as provided in section 107K(3) and section 107O); and
  - (b) must be treated for the purpose of sections 56 to 58 as having been imposed by the Board.

Section 107J: substituted, on 1 October 2007, by section 61 of the Parole Amendment Act 2007 (2007 No 28).

### **107JA Standard extended supervision conditions**

- (1) The standard extended supervision conditions are—
- (a) the offender must report in person to a probation officer in the probation area in which the offender resides as soon as practicable, and not later than 72 hours, after commencement of the extended supervision order;
  - (b) the offender must report to a probation officer as and when required to do so by a probation officer, and must notify the probation officer of his or her residential address and the nature and place of his or her employment when asked to do so;

- (c) the offender must obtain the prior written consent of a probation officer before moving to a new residential address:
  - (d) if consent is given under paragraph (c) and the offender is moving to a new probation area, the offender must report in person to a probation officer in the new probation area in which the offender is to reside as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area:
  - (e) the offender must not reside at any address at which a probation officer has directed the offender not to reside:
  - (ea) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:
  - (eb) the offender must, if a probation officer directs, allow the collection of biometric information:
  - (f) the offender must obtain the prior written consent of a probation officer before changing his or her employment:
  - (g) the offender must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the offender not to engage or continue to engage:
  - (h) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer:
  - (i) the offender must not associate with, or contact, a person under the age of 16 years, except—
    - (i) with the prior written approval of a probation officer; and
    - (ii) in the presence and under the supervision of an adult who—
      - (A) has been informed about the relevant offending; and
      - (B) has been approved in writing by a probation officer as suitable to undertake the role of supervision:
  - (j) the offender must not associate with, or contact, a victim of the offender without the prior written approval of a probation officer:
  - (k) the offender must not associate with, or contact, any person or class of person specified in a written direction given to the offender for the purposes of this paragraph.
- (2) In this section, **contact** includes communicating, or attempting to communicate, with a person by any means, such as by telephone or via the Internet.
- (3) The condition in subsection (1)(i) applies to extended supervision orders made before and after the commencement of section 17 of the Parole (Extended Supervision Orders) Amendment Act 2014.

Section 107JA: inserted, on 1 October 2007, by section 61 of the Parole Amendment Act 2007 (2007 No 28).

Section 107JA(1)(ea): inserted, on 22 August 2017, by section 53 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 107JA(1)(eb): inserted, on 22 August 2017, by section 53 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 107JA(1)(i): replaced, on 12 December 2014, by section 17(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107JA(3): inserted, on 12 December 2014, by section 17(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107JB Purpose of collecting biometric information under section 107JA(1)(eb)**

Biometric information collected under section 107JA(1)(eb) may only be used for the purpose of helping—

- (a) to manage offenders to ensure public safety; and
- (b) to identify offenders before they leave New Zealand; and
- (c) to enforce the condition specified in section 107JA(1)(ea).

Section 107JB: inserted, on 22 August 2017, by section 54 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

### **107K Board may impose special conditions**

- (1) At any time before an extended supervision order expires or is cancelled, and whether or not it has come into force, the Board may, on an application by the chief executive or a probation officer, impose on the offender any special condition that the Board is entitled to impose under section 15.
- (1A) Despite section 35(c), the Board may impose residential restrictions without being satisfied that the offender agrees to comply with them.
- (2) *[Repealed]*
- (3) When the Board imposes special conditions under this section,—
  - (a) the Board must specify the duration of those conditions which may (subject to paragraphs (b) and (ba)) be for the full term of the order, or any lesser period; and
  - (b) any residential restrictions that include the requirement in section 33(2)(c)(ii) may apply only within the first 12 months of the term of the order; and
  - (ba) any intensive monitoring condition may apply only within the first 12 months of the term of the order; and
  - (bb) any condition requiring the offender to participate in a programme (as referred to in section 15(3)(b)) must not—
    - (i) require that the offender be, or result in the offender being, supervised, monitored, or subject to other restrictions, for longer each day than is necessary to ensure the offender's attendance at classes

- or participation in other activities associated with the programme;  
or
- (ii) require the offender to reside with, or result in the offender residing with, any person, persons, or agency in whose care the offender is placed; and
  - (c) if the Board considers that any special conditions imposed on the offender are incompatible with all or any of the standard extended supervision conditions, the Board may (despite section 107J(1)(a)) suspend those incompatible standard extended supervision conditions during the period in which those special conditions are in force, and time runs on the suspended conditions during that period.
- (3A) Subsection (3B) applies if the Board has imposed or imposes on an offender any of the following special conditions:
- (a) a condition requiring the offender to submit to being accompanied and monitored for up to 24 hours a day under section 33(2)(c) and subsection (2) (imposed before the commencement of the Parole (Extended Supervision Orders) Amendment Act 2014);
  - (b) a condition of long-term full-time placement in the care of an appropriate agency, person, or persons for the purposes of a programme under sections 15(3)(b) and 16(c) and subsection (1) (imposed before the commencement of the Parole (Extended Supervision Orders) Amendment Act 2014);
  - (c) an intensive monitoring condition imposed under subsection (1) in accordance with an order made by the court under section 107IAC(1).
- (3B) When this subsection applies, the standard condition in section 107JA(1)(i)—
- (a) is suspended during the period in which the special condition is in force; and
  - (b) is for that period replaced by the condition specified in subsection (3C).
- (3C) For the purposes of subsection (3B)(b), the condition is that the offender must not associate with, or contact, a person under the age of 16 years, except—
- (a) with the prior written approval of an employee of the chief executive authorised by the chief executive to grant such approval; and
  - (b) in the presence and under the supervision of an adult who—
    - (i) has been informed about the relevant offending; and
    - (ii) has been approved in writing by a probation officer as suitable to undertake the role of supervision.
- (4) Subsections (2) and (4) of section 15 apply in respect of special conditions imposed under this section.
- (5) If an offender is subject to a special condition under this section that requires the offender to take prescription medication, the offender does not breach his or



her conditions, for the purposes of section 107T, if he or she withdraws consent to taking prescription medication.

- (6) The Board must notify the offender concerned, and every victim of the offender, if it is considering imposing special conditions under this section.
- (7) The offender and any victim of the offender may make written submissions to the Board and, with the leave of the Board, may appear and make oral submissions on whether special conditions should be imposed, what the conditions should be, and their duration.
- (8) Notice of any special conditions attached to an extended supervision order must be provided, in writing, to the following:
  - (a) the offender:
  - (b) the chief executive:
  - (c) the Police:
  - (d) every victim of the offender; but the Board may withhold notice of a particular condition if disclosure of the condition would unduly interfere with the privacy of any other person (other than the offender).

Section 107K: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107K(1): substituted, on 1 October 2007, by section 62 of the Parole Amendment Act 2007 (2007 No 28).

Section 107K(1A): inserted, on 4 April 2009, by section 4(1) of the Parole (Extended Supervision Orders) Amendment Act 2009 (2009 No 6).

Section 107K(2): repealed, on 12 December 2014, by section 18(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107K(3): substituted, on 1 October 2007, by section 62 of the Parole Amendment Act 2007 (2007 No 28).

Section 107K(3)(a): amended, on 12 December 2014, by section 18(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107K(3)(b): amended, on 4 April 2009, by section 4(3) of the Parole (Extended Supervision Orders) Amendment Act 2009 (2009 No 6).

Section 107K(3)(ba): inserted, on 12 December 2014, by section 18(3) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107K(3)(bb): inserted, on 12 December 2014, by section 18(3) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107K(3A): inserted, on 12 December 2014, by section 18(4) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107K(3B): inserted, on 12 December 2014, by section 18(4) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107K(3C): inserted, on 12 December 2014, by section 18(4) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107L Commencement and expiry of extended supervision order**

- (1) An extended supervision order comes into force,—

- (a) if the order is made while the offender is detained under a sentence of imprisonment or liable to be recalled, on the offender's statutory release date; or
  - (b) if the order is in respect of an offender who is already subject to an extended supervision order, on the expiry of that order, unless an earlier date is specified in the new order; or
  - (c) in any other case,—
    - (i) on the date that the order is made; or
    - (ii) if a different date is specified in the order, on the specified date.
- (1A) If an offender is released early under section 52 and the offender is subject to an extended supervision order made in the circumstances described in subsection (1)(a), then—
- (a) the extended supervision conditions and any special conditions (including any special conditions imposed under section 107IA) come into force on the offender's actual release date; but
  - (b) time does not begin to run on the order until the offender's statutory release date.
- (2) Any standard release conditions to which the offender is subject when the extended supervision order comes into force are discharged.
- (2A) Any special conditions (including any special conditions imposed under section 107IA) to which the offender is subject when an extended supervision order comes into force continue in force—
- (a) until the date that is 3 months after the date on which the extended supervision order comes into force; or
  - (b) if an application is made to the Board seeking the imposition of special conditions under section 107K within that 3-month period, until the Board—
    - (i) imposes 1 or more of those conditions; or
    - (ii) imposes any other special condition that the Board is entitled to impose under section 15; or
    - (iii) declines to impose any special conditions.
- (3) An extended supervision order expires on the earliest of the following:
- (a) the date on which the order is cancelled;
  - (b) the date on which the term of the order expires;
  - (c) if the offender becomes subject to a new extended supervision order before the expiry of an earlier extended supervision order, the commencement of the new extended supervision order.

Section 107L: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107L(1)(a): amended, on 1 October 2007, by section 63(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 107L(1)(b): replaced, on 12 December 2014, by section 19(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107L(1)(c): inserted, on 12 December 2014, by section 19(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107L(1A): inserted, on 22 January 2014, by section 56 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 107L(2): substituted, on 1 October 2007, by section 63(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 107L(2A): inserted, on 1 October 2007, by section 63(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 107L(3): replaced, on 12 December 2014, by section 19(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### *Cancellation, variation, and suspension*

Heading: replaced, on 12 December 2014, by section 20 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

## **107M Sentencing court may cancel extended supervision order**

- (1) At any time after an extended supervision order has come into force, the offender who is subject to the order, or the chief executive, may apply to the sentencing court to cancel the order on the grounds that the offender poses neither a high risk of committing a relevant sexual offence, nor a very high risk of committing a relevant violent offence, within the remaining term of the order.
- (2) On receipt of an application for cancellation, the Registrar of the sentencing court must set the matter down for hearing.
- (3) The applicant for cancellation must, as soon as practicable, serve on the other party—
  - (a) a copy of the application:
  - (b) notice of the date of the hearing.
- (4) The sentencing court may order the cancellation of an extended supervision order only if the applicant satisfies the court, on the basis of the matters set out in section 107IAA, that the offender poses neither a high risk of committing a relevant sexual offence, nor a very high risk of committing a relevant violent offence, within the remaining term of the order.
- (5) Section 107G(7) and (8) applies to proceedings under this section.
- (6) If the sentencing court declines to order the cancellation of an order, the court may at the same time, and on its own initiative or on application by the chief executive, order that the offender not be permitted to apply under this section for a specified period of not more than 2 years.

Section 107M: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107M(1): amended, on 12 December 2014, by section 21(1) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107M(4): replaced, on 12 December 2014, by section 21(2) of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107N Extension of short extended supervision order**

*[Repealed]*

Section 107N: repealed, on 12 December 2014, by section 22 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107O Board may vary conditions of extended supervision order**

- (1) At any time, whether before or after an extended supervision order has come into force, the offender who is subject to the order, or a probation officer, may apply to the Board for the variation or discharge of any condition of the order.
- (1A) However, the Board may not vary any condition of an extended supervision order in a way that would be contrary to any order made under section 107IAC requiring the imposition of an intensive monitoring condition.
- (2) Sections 56, 57, and 58(1) and (4) apply as if the conditions of the extended supervision order were release conditions, and as if the offender were already subject to the conditions.
- (3) If the conditions of an extended supervision order are varied or discharged, notice of the conditions as so varied or discharged must be provided to the following:
  - (a) the offender:
  - (b) the probation officer involved:
  - (c) the Police:
  - (d) every victim of the offender; but the Board may withhold notice of a particular condition if disclosure of the condition would unduly interfere with the privacy of any other person (other than the offender).

Section 107O: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107O(1A): inserted, on 12 December 2014, by section 23 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107P Suspension of conditions of extended supervision order**

- (1) The conditions of an offender's extended supervision order are suspended, and time ceases to run on the order during—
  - (a) any period that the offender is under legal custody in accordance with the Corrections Act 2004; and
  - (b) any subsequent period following the offender's release (if applicable) until the offender's statutory release date.

- (2) If the conditions of an extended supervision order are suspended under subsection (1), they are reactivated,—
- (a) in the case of an offender who is detained under a sentence of imprisonment, on the offender's statutory release date and in place of any other release conditions that would otherwise apply; and
  - (b) in the case of an offender who is detained under a court order, on the date the offender is released.
- (2A) If an offender is released early under section 52 and the offender is subject to an extended supervision order that is reactivated in the circumstances described in subsection (2)(a), then—
- (a) the extended supervision conditions and any special conditions (including any special conditions imposed under section 107IA) are reactivated on the offender's actual release date; but
  - (b) time does not begin to run on the order until the offender's statutory release date.
- (3) If an offender who is subject to an extended supervision order is detained in a hospital or secure facility under a compulsory care order or under a compulsory treatment order, then—
- (a) the conditions of the extended supervision order are suspended while the offender is detained, but a probation officer may reactivate any condition that is required to ensure that the offender does not pose an undue risk to the community or any person or class of persons; and
  - (b) time on the order continues to run during the period of detention; and
  - (c) the conditions that have not been reactivated earlier are reactivated when the offender is released.

Section 107P: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107P(1): substituted, on 1 October 2007, by section 64(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 107P(2)(a): amended, on 1 October 2007, by section 64(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 107P(2A): inserted, on 22 January 2014, by section 57 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 107P(3): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

### **107Q Effect of new sentence on offender subject to extended supervision order**

- (1) If an offender who is subject to an extended supervision order that is in force is sentenced to a community-based sentence or a sentence of home detention, the extended supervision order continues in force while the offender serves the sentence.

- (2) If an offender who is subject to an extended supervision order is sentenced to a determinate sentence, time ceases to run on the order, and the conditions of the order are suspended and then reactivated, in accordance with section 107P.
- (3) If an offender who is subject to an extended supervision order is sentenced to an indeterminate sentence, the order is cancelled; but if the sentence is subsequently quashed or otherwise set aside, the extended supervision order is to be treated as if it had not been cancelled.

Section 107Q: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107Q(1): amended, on 1 October 2007, by section 65 of the Parole Amendment Act 2007 (2007 No 28).

### *Appeals and reviews*

Heading: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

#### **107R Appeals against decisions of sentencing court**

- (1) An appeal against a decision or order made by the sentencing court under section 107I, 107IAC, 107M, or 107RA may be made by the offender to whom the decision or order relates or by the chief executive.
- (2) Every appeal must be to the Court of Appeal, and Part 6 of the Criminal Procedure Act 2011 applies as far as applicable with the necessary modifications, and subject to section 107H of this Act, as if the appeal were an appeal against sentence.
- (3) The lodging of an appeal against a decision or order does not prevent that decision or order taking effect according to its terms.

Section 107R: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107R(1): amended, on 12 December 2014, by section 24 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107R(2): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **107RA Review by court**

- (1) A sentencing court must, on or before the review date specified in subsection (2), commence a review of an extended supervision order in order to ascertain whether there is—
  - (a) a high risk that the offender will commit a relevant sexual offence within the remaining term of the order; or
  - (b) a very high risk that the offender will commit a relevant violent offence within the remaining term of the order.
- (2) The review date of an extended supervision order is,—

- (a) if an offender has not ceased to be subject to an extended supervision order since first becoming subject to an extended supervision order, the date that is 15 years after the date on which the first extended supervision order commenced; and
  - (b) thereafter, 5 years after the imposition of any and each new extended supervision order.
- (3) A review under this section must be commenced by way of an application by the chief executive, which may be made at any time within 4 months before the review date.
- (4) For the purpose of a review under this section, sections 107F (except subsection (1)), 107G, 107GA, and 107H apply (with any necessary modification) as if the review were an application for an extended supervision order.
- (5) Following the review, the court must either confirm the order or cancel it.
- (6) The court may only confirm the order if, on the basis of the matters set out in section 107IAA, it is satisfied that there is—
  - (a) a high risk that the offender will commit a relevant sexual offence within the remaining term of the order; or
  - (b) a very high risk that the offender will commit a relevant violent offence within the remaining term of the order.
- (7) For any period during which time has ceased to run on an extended supervision order under section 107P, time also ceases to run on the period specified in subsection (2) for the purpose of calculating the review date of an extended supervision order.

Section 107RA: inserted, on 12 December 2014, by section 25 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107RB Biennial review of high-impact conditions**

- (1) In this section, a **high-impact condition**, in relation to an extended supervision order imposed on an offender, means either of the following:
  - (a) a residential condition that requires the offender to stay at a specified residence for more than a total of 70 hours during any week;
  - (b) a condition requiring the offender to submit to a form of electronic monitoring that enables the offender's whereabouts to be monitored when the offender is not at his or her residence.
- (2) The Board must review every high-impact condition of an offender's extended supervision order every 2 years after the later of the following:
  - (a) the date on which the high-impact condition was imposed;
  - (b) the date on which the high-impact condition was confirmed or varied, whether under section 107O or this section.
- (3) Before a review under this section,—

- (a) the chief executive must make a recommendation to the Board on whether the condition is still appropriate and, if not, whether the condition should be discharged or varied and, if it should be varied, how; and
  - (b) the Board must advise the offender that a review is to take place and that he or she may make a written submission to the Board; and
  - (c) the Board may seek information from any other person it considers has, or may have, an interest in the application.
- (4) The review may be determined without the Board hearing from any person, unless—
- (a) the Board wishes to hear from any person orally; or
  - (b) the Board is contemplating making a high-impact condition more onerous, in which case it must give the offender an opportunity to appear before the Board.
- (5) Following the review, the Board may confirm, discharge, or vary the condition.
- (6) Section 58(4) applies if the Board directs the variation or discharge of a high-impact condition section.
- (7) For any period during which time has ceased to run on an extended supervision order under section 107P, time also ceases to run on the period of 2 years specified in subsection (2) for the purpose of calculating the date or dates by which the Board must conduct a review under this section.

Section 107RB: inserted, on 12 December 2014, by section 25 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107S Review of Board decisions**

Section 67 (which provides for reviews of decisions by the Board) applies to decisions by the Board under section 107K or section 107O.

Section 107S: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### *Miscellaneous provisions*

Heading: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### **107T Offence to breach extended supervision order or interim supervision order**

An offender who is subject to an extended supervision order or interim supervision order and who breaches, without reasonable excuse, any conditions attaching to that order commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years.

Section 107T: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107T heading: amended, on 8 September 2018, by section 71(1) of the Statutes Amendment Act 2018 (2018 No 27).



Section 107T: amended, on 8 September 2018, by section 71(2) of the Statutes Amendment Act 2018 (2018 No 27).

Section 107T: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **107TA Offences related to drug or alcohol conditions**

- (1) An offender who is subject to an extended supervision order with a drug or alcohol condition commits an offence if the offender—
  - (a) refuses or fails, without reasonable excuse,—
    - (i) to undergo a testing procedure when required to do so under sections 16B(2)(a) and 16D; or
    - (ii) to submit to continuous monitoring when required to do so under section 16B(2)(b); or
    - (iii) to comply with instructions specified in a notice given under section 16B(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
    - (iv) to accompany an authorised person, when required to do so under section 16D(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
    - (v) to contact a specified automated system when required to do so under section 16B(2)(c); or
    - (vi) to report, at any time or times when required to do so under section 16D(5), to a specified testing facility to undergo testing; or
    - (vii) to undergo a testing procedure when required to do so under sections 16B(2)(c) and 16D; or
  - (b) does anything with the intention of diluting or contaminating a bodily sample required under section 16B(2)(a) or (c) for the purposes of a prescribed testing procedure; or
  - (c) tampers with a drug or alcohol monitoring device required under section 16B(2)(b) or does anything with the intention of interfering with the functioning of that device.
- (2) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years.

Section 107TA: inserted, on 15 May 2017, by section 11 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

### **107U Rules about court practice and procedure**

- (1) The Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of courts in proceedings under section 107I, 107M, or 107RA.

- (2) *See* section 148 of the Senior Courts Act 2016 and section 228 of the District Court Act 2016, which provide that court rules are secondary legislation.

Compare: 1991 No 120 s 90

Section 107U: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107U(1): amended, on 12 December 2014, by section 26 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

Section 107U(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### **107V Additional victim notification**

The chief executive must notify every victim of an offender who is subject to an extended supervision order or interim supervision order if any of the following occurs:

- (a) the offender is convicted of an offence against section 107T:
- (b) the offender's extended supervision order expires:
- (c) the offender dies.

Section 107V: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 107V: amended, on 8 September 2018, by section 72 of the Statutes Amendment Act 2018 (2018 No 27).

### **107W Information about victims not to be disclosed**

In any proceedings under this Part, no person may, directly or indirectly, disclose to the offender any information that discloses the current address or contact details of any victim of the offender (as defined in section 4 of the Victims' Rights Act 2002).

Section 107W: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### **107X Application of Legal Services Act 2000**

For the purposes of section 6(a) of the Legal Services Act 2000 (which identifies proceedings for which legal aid may be granted), proceedings under this Part before any court are criminal proceedings.

Section 107X: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### *Transitional measures*

Heading: inserted, on 7 July 2004, by section 11 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### **107ZA Extension of certain orders that are in force before this section comes into force**

- (1) This section applies where—
  - (a) an offender is subject to an extended supervision order that—

- (i) was imposed before this section comes into force; and
  - (ii) has an expiry date that is on or before the date that is 6 months after this section comes into force; and
- (b) an application is made for a new extended supervision order in respect of the offender before the expiry date of the extended supervision order.
- (2) When this section applies, the expiry date of the offender's existing extended supervision order is deemed to be the earliest of the following:
  - (a) the date (if any) on which the application for a new extended supervision order is declined;
  - (b) the date on which any new extended supervision order comes into force;
  - (c) the date that is 6 months after this section comes into force.
- (3) To avoid doubt, an offender referred to in subsection (1) remains subject to his or her extended supervision order until the applicable expiry date referred to in subsection (2).

Section 107ZA: inserted, on 12 December 2014, by section 28 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

**107ZB Modification of conditions on extended supervision orders in force before this section comes into force**

- (1) This section applies to an offender who is subject to an extended supervision order—
  - (a) that was imposed before this section comes into force; and
  - (b) that includes a condition, imposed under section 15(3)(b), requiring the offender to participate in a programme; and
  - (c) where the terms of that condition—
    - (i) require that the offender be, or result in the offender being, supervised, monitored, or subject to other restrictions, for longer each day than is necessary to ensure the offender's attendance at classes or participation in other activities associated with the programme; or
    - (ii) require the offender to reside with, or result in the offender residing with, any person, persons, or agency in whose care the offender is placed.
- (2) Where this section applies, the Board must, within 2 years after the date on which this section comes into force, review the condition imposed under section 15(3)(b) on the offender and either cancel the condition, or adjust it so that it complies with section 107K(3)(bb).
- (3) If the Board has not conducted and completed the review required under this section by the close of the day that is 2 years after the date on which this section comes into force, the condition requiring the offender to participate in a programme is cancelled.

Section 107ZB: inserted, on 12 December 2014, by section 28 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107Y Definitions**

*[Repealed]*

Section 107Y: repealed, on 12 December 2014, by section 27 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

### **107Z Applications in respect of transitional eligible offenders to be made within first 6 months after commencement**

*[Repealed]*

Section 107Z: repealed, on 12 December 2014, by section 27 of the Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69).

## **Part 2**

### **New Zealand Parole Board and amendments to other enactments relating to parole and release generally**

#### *Establishment of Board*

#### **108 New Zealand Parole Board established**

- (1) The New Zealand Parole Board is established as an independent statutory body.
- (2) The Department of Corrections provides administrative and training support to the Board.
- (3) The Board is subject to the Official Information Act 1982 and to the Privacy Act 2020.

Section 108(3): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

#### **109 Functions of Board**

- (1) The functions of the Board are—
  - (a) to consider offenders for parole and, if appropriate, to direct offenders to be released on parole (under sections 20 to 32):
  - (b) *[Repealed]*
  - (c) to consider offenders for release on compassionate release and, if appropriate, to give a direction for their release on compassionate grounds under section 41:
  - (d) to set the conditions for—
    - (i) offenders released at their statutory release date (under section 18); and
    - (ii) offenders released on parole or compassionate release; and
    - (iii) *[Repealed]*

- (iv) offenders released at their final release date under section 104:
  - (da) to monitor the compliance by offenders with their release conditions in accordance with section 29B:
  - (e) to consider and determine applications for—
    - (i) the variation and discharge of release conditions under section 58; and
    - (ia) the variation and discharge of conditions of extended supervision orders as provided for in section 107O; and
    - (ii) interim and final recall from parole or compassionate release:
  - (f) to make postponement orders under section 27 in relation to offenders:
  - (g) to make and review orders under section 107:
  - (ga) to impose special conditions on offenders in respect of whom extended supervision orders have been made:
  - (h) to review decisions in accordance with section 67:
  - (i) to do anything else it is required to do under this Act or any other enactment.
- (2) The Board also has the following functions:
- (a) to develop policies on how to discharge its functions under this section, and to amend and revise those policies as it sees fit:
  - (b) to maintain a register of Board decisions:
  - (c) to keep statistical and other records relating to its work:
  - (d) to provide information that is readily accessible to offenders, victims (as defined in section 4 of the Victims' Rights Act 2002), and the general public about matters relating to release from detention and the policies and operation of the Board generally.

Section 109(1)(b): repealed, on 1 October 2007, by section 66(1) of the Parole Amendment Act 2007 (2007 No 28).

Section 109(1)(d)(iii): repealed, on 1 October 2007, by section 66(2) of the Parole Amendment Act 2007 (2007 No 28).

Section 109(1)(da): inserted, on 1 October 2007, by section 66(5) of the Parole Amendment Act 2007 (2007 No 28).

Section 109(1)(e)(i): amended, on 1 October 2007, by section 66(3) of the Parole Amendment Act 2007 (2007 No 28).

Section 109(1)(e)(ia): inserted, on 7 July 2004, by section 12(1) of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 109(1)(e)(ii): amended, on 1 October 2007, by section 66(4) of the Parole Amendment Act 2007 (2007 No 28).

Section 109(1)(ga): inserted, on 7 July 2004, by section 12(2) of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

Section 109(2)(d): amended, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

**110 Department of Corrections to provide administrative and training support to Board**

- (1) The chief executive must ensure that the Board and the chairperson are provided with the administrative and training support necessary to enable them to perform their functions efficiently and effectively.
- (2) The support must, without limitation, include the following:
  - (a) support on a regional basis for parole panels operating in each region:
  - (b) co-ordination of the timetable for, and membership of, parole panels:
  - (c) support for the Board in performing its functions under section 109(2):
  - (d) support for the chairperson in performing his or her functions under section 112:
  - (e) support for panel convenors in performing their functions under section 114(3):
  - (f) making available appropriate induction and training for Board members.

*Membership of Board***111 Membership of Board**

- (1) The Board consists of members who are appointed by the Governor-General on the recommendation of the Attorney-General.
- (2) The Board must include—
  - (a) 1 member who is appointed as chairperson; and
  - (b) at least 9 members who are appointed as panel convenors; and
  - (c) sufficient other members to enable the Board to carry out its functions efficiently and effectively.
- (3) Before recommending a person as a member, the Attorney-General must be satisfied that the person has—
  - (a) knowledge or understanding of the criminal justice system; and
  - (b) the ability to make a balanced and reasonable assessment of the risk an offender may present to the community when released from detention; and
  - (c) the ability to operate effectively with people from a range of cultures; and
  - (d) sensitivity to, and understanding of, the impact of crime on victims (as defined in section 4 of the Victims' Rights Act 2002).

Section 111(3)(d): amended, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

### **112 Chairperson of Board**

- (1) The member appointed as chairperson must be a Judge of the High Court or a former Judge of the High Court, or a District Court Judge or a former District Court Judge.
- (2) The primary function of the chairperson is to ensure that the Board carries out its functions in accordance with this Act in an efficient and effective manner.
- (3) Without limiting the function described in subsection (2), it is also the function of the chairperson to—
  - (a) make referrals to the Board for early release under section 25; and
  - (b) make referrals to the Board for compassionate release under section 41; and
  - (c) make interim recall orders under section 62; and
  - (d) allocate panel convenors to undertake reviews of decisions under section 67; and
  - (e) do anything else that the chairperson is required to do under this Act or any other enactment.
- (4) The chairperson may sit as a member (including as a panel convenor) at any panel hearing.

### **113 Delegation of chairperson's functions, powers, and duties**

- (1) The chairperson may delegate any of his or her functions or powers to any 1 or more panel convenors.
- (2) Every delegation must be in writing and may be revoked at will, either in writing or orally.
- (3) A delegation under this section may not be further delegated.
- (4) For the purpose of ensuring that the functions and powers of the chairperson are performed or exercised during any period when the chairperson is absent or incapacitated, the chairperson must ensure that at all times he or she has nominated 1 panel convenor to serve as acting chairperson if the need arises.
- (5) The fact that a person purports to exercise, or to have exercised, any function or power of the chairperson under a delegation or nomination is, in the absence of proof to the contrary, sufficient evidence of the person's authority to do so.

### **114 Panel convenors**

- (1) Every member who is appointed as a panel convenor must be a District Court Judge, a former District Court Judge, or a barrister or solicitor who has held a practising certificate for at least 7 years.
- (2) Despite subsection (1), at any time there may be appointed as a panel convenor 1 person who is a Judge of the High Court or a former Judge of the High Court.
- (3) The functions of a panel convenor are—

- (a) *[Repealed]*
  - (b) at a hearing,—
    - (i) to preside at the hearing; and
    - (ii) to determine any matters of procedure that may arise during or in relation to the hearing; and
    - (iii) to sign the decision of the panel at that hearing; and
  - (c) to make interim recall orders under section 62; and
  - (d) to undertake reviews under sections 46(2) and 67; and
  - (e) to do anything else that a panel convenor is required to do under this Act or any other enactment; and
  - (f) under the direction of the chairperson, to undertake or assist in the exercise of any of his or her functions.
- (4) The chairperson may appoint any member (whether or not qualified to be a panel convenor) as an acting panel convenor in respect of a particular hearing or number of hearings if, for any reason, a panel convenor is not available for that hearing or those hearings.
- (5) If the chairperson sits on a parole panel, he or she may act as a panel convenor for the purposes of that sitting; and for that purpose the chairperson has all the functions and powers of a panel convenor.

Section 114(3)(a): repealed, on 2 September 2015, by section 26 of the Parole Amendment Act 2015 (2015 No 4).

Section 114(3)(d): amended, on 1 October 2007, by section 68(2) of the Parole Amendment Act 2007 (2007 No 28).

### *How Board performs its functions*

#### **115 Parole panels**

- (1) The Board must operate in panels of at least 3 members, one of whom must be a panel convenor or the chairperson.
- (2) The decision of the majority of members on a panel is the decision of the panel.
- (3) Subsection (1) is subject to any other provision of this Act that requires or permits the Board to perform its functions other than by way of panel hearings.
- (4) Despite subsection (1), if a member leaves a hearing for any reason, the remaining 2 members may continue the hearing and, provided the absent member participates in the final decision-making process, the validity of any resulting decision is not affected.

#### **116 Decisions of Board**

- (1) A decision by a panel acting within its jurisdiction is a decision of the Board.
- (2) A decision by the chairperson or a panel convenor, acting within their respective jurisdictions, is a decision of the Board.



- (3) A decision of the Board on the detention or release of an offender, or on his or her release conditions, must be in writing and include reasons for the decision.
- (4) A copy of every decision of the Board that relates to an offender must be given to—
  - (a) the offender to whom it relates; and
  - (b) the Department of Corrections.

Section 116(3): amended, on 1 October 2007, by section 69 of the Parole Amendment Act 2007 (2007 No 28).

### **117 Information before Board**

- (1) In any hearing before the Board, the Board may receive and take into consideration whatever information it thinks fit, whether or not the information would be admissible as evidence in a court of law.
- (2) Information received by the Board may be in a form other than writing, but only if the Board is satisfied that—
  - (a) the information adds significantly to the written information available to it; and
  - (b) it will be possible, in relation to that information, to comply with the rule in section 13(1) about making information available to offenders.
- (3) This section is subject to sections 13AA to 13AE.

Compare: 1985 No 120 ss 106, 107L(5)

Section 117(3): added, on 1 October 2007, by section 70 of the Parole Amendment Act 2007 (2007 No 28).

### **117A Board may regulate own procedure**

The Board may regulate its own procedure as it thinks fit, subject to this Act and any regulations made under it.

Section 117A: inserted, on 7 July 2004, by section 33 of the Parole (Extended Supervision) Amendment Act 2004 (2004 No 67).

### **118 Avoiding actual or perceived bias**

- (1) The chairperson must ensure that no person involved in a parole panel hearing reviews a decision of that panel.
- (2) The chairperson must, if he or she becomes aware that a member has, or may be perceived as having, bias for or against an offender, require the member to excuse himself or herself from—
  - (a) participating in a panel that considers an application by or relating to the offender; and
  - (b) making, or participating in making, any other decision under this Act that relates to the offender.

*Summoning witnesses*

Heading: inserted, on 1 October 2007, by section 71 of the Parole Amendment Act 2007 (2007 No 28).

**118A Power to summon witnesses**

- (1) The chairperson or a panel convenor may, for the purposes of any matter before the Board, issue a summons requiring any person to—
  - (a) attend and give evidence; and
  - (b) produce any books, papers, documents, records, or things in the person's possession or control that are relevant to the subject of the matter before the Board.
- (2) The chairperson or panel convenor may not exercise the power conferred by subsection (1) on the basis of an application or request, but may do so only on his or her own initiative.
- (3) A witness is not required to attend and give evidence or produce any things in accordance with a summons issued under subsection (1) unless, at the time of the service of the summons or at some other reasonable time before the day on which the attendance of the witness would, apart from this subsection, be required, there is tendered or paid to the witness a sum in respect of the witness's allowances and travelling expenses in accordance with the scale prescribed for the time being by regulations made under the Criminal Procedure Act 2011.
- (4) The summons must be in writing and state the place and time at which the witness is required to attend.

Compare: 1908 No 25 s 4D

Section 118A: inserted, on 1 October 2007, by section 71 of the Parole Amendment Act 2007 (2007 No 28).

Section 118A(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**118B Service of summons**

- (1) A summons to a witness may be served by—
  - (a) delivering it to the witness; or
  - (b) leaving it at the witness's usual place of residence; or
  - (c) posting it by registered post addressed to the witness at the witness's usual place of residence.
- (2) The summons must be served at least 10 days before the day on which the witness is required to attend.
- (3) A summons served under subsection (1)(c) must be treated as having been served at the time when the letter would be delivered in the ordinary course of post.

Compare: 1908 No 25 s 5

Section 118B: inserted, on 1 October 2007, by section 71 of the Parole Amendment Act 2007 (2007 No 28).

### **118C Protection of witnesses**

Every witness giving evidence before the Board has the same privileges and immunities as a witness in a court of law.

Compare: 1908 No 25 s 6

Section 118C: inserted, on 1 October 2007, by section 71 of the Parole Amendment Act 2007 (2007 No 28).

### **118D Offences**

- (1) Every person commits an offence who, after being summoned to attend to give evidence before the Board or to produce to it any books, papers, documents, records, or things, without sufficient cause,—
  - (a) fails to attend in accordance with the summons; or
  - (b) refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by any member of the Board to answer concerning the subject of the matter before the Board; or
  - (c) fails to produce any such book, paper, document, record, or thing.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

Compare: 1908 No 25 s 9

Section 118D: inserted, on 1 October 2007, by section 71 of the Parole Amendment Act 2007 (2007 No 28).

Section 118D(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Attendance at hearings*

Heading: inserted, on 2 September 2015, by section 27 of the Parole Amendment Act 2015 (2015 No 4).

### **118E Attendance at hearings**

- (1) For the purpose of any hearing of the Board, a person (including a member of the Board, the offender, and counsel representing the offender) attends the hearing if he or she is present at the hearing, whether in person or by way of remote access, such as by telephone, video, or Internet link.
- (2) A person may only attend a hearing by remote access if the Board agrees.

Section 118E: inserted, on 2 September 2015, by section 27 of the Parole Amendment Act 2015 (2015 No 4).

*General provisions about Board and members*

**119 Annual report**

- (1) The Board must, within 2 months of the end of each financial year, give the Attorney-General an annual report on the operation of the Board, and the performance of its functions, during the financial year.
- (2) The Board's annual report must include—
  - (a) information about every referral made by the chairperson to the Board for early consideration for parole and for compassionate release; and
  - (b) information about every class designated by the Minister of Justice under section 25(3) for early consideration by the Board for parole.

**120 Term of appointment, and reappointment**

- (1) Every member, including the chairperson, must be appointed for a term of 3 years or less.
- (2) A member continues in office despite the expiry of his or her term of office until—
  - (a) the member is reappointed; or
  - (b) the member's successor is appointed; or
  - (c) the Attorney-General informs the member in writing that the member is not to be reappointed and that no successor is to be appointed at that time.
- (3) A member who is involved in a hearing that is not complete on the date that he or she ceases to be in office may complete the hearing after that date and is, for that purpose, deemed to be in office until the hearing is complete.
- (4) Any member may be reappointed any number of times.

**121 Members ceasing to hold office**

- (1) A member may at any time resign from office by written notice to the Governor-General.
- (2) The Governor-General may at any time, on the recommendation of the Attorney-General, remove a member from office for just cause; and the member is not entitled to compensation for removal.

**122 Remuneration and expenses of members**

- (1) The remuneration of any member who is a District Court Judge or a Judge of the High Court must, so far as it relates to the Judge's membership of the Board, be determined by the Higher Salaries Commission.
- (2) Every other member must be paid fees and expenses in accordance with the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies.

- (3) A person is not employed in the service of the Crown, for the purposes of the Public Service Act 2020 or the Government Superannuation Fund Act 1956, merely as a result of being a member of the Board.

Section 122(3): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

### **123 Immunity of members**

No member is personally liable for any act or omission done in pursuance, or intended pursuance, of the Board's functions, unless the act or omission was done in bad faith.

### **124 Abolition of Parole Board and District Prisons Boards**

- (1) At the close of the day before the commencement date, the Parole Board established under section 130 of the Criminal Justice Act 1985, and every District Prisons Board established under section 132 of that Act, are abolished.
- (2) The term of every member of the Parole Board, and of every member of a District Prisons Board, expires with the close of the day before the commencement date.
- (3) No member of the Parole Board or a District Prisons Board is entitled to compensation as a result of the expiry under this section of his or her term of office.
- (4) On and from the commencement date, every reference in an enactment (other than this Act), or in any instrument or register, to the Parole Board or to a District Prisons Board or District Prisons Boards must, if the context requires, be construed as a reference to the Board.

#### *Acts amended*

### **125 Acts amended**

The Acts set out in Schedule 2 are amended in the manner set out in that schedule.

## Schedule 1

### Transitional, savings, and related provisions

s 4A

Schedule 1: inserted, on 15 May 2017, by section 12 of the Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84).

### Part 1

#### Provisions relating to Parole (Drug and Alcohol Testing) Amendment Act 2016

#### 1 Interpretation

In this schedule,—

**commencement date** means the date on which the Parole (Drug and Alcohol Testing) Amendment Act 2016 comes into force

**pre-commencement drug or alcohol condition** means a condition—

- (a) that is imposed before the commencement date under section 15, 18(2)(b), or 107K(1); and
- (b) that prohibits an offender from doing 1 or more of the following:
  - (i) using (as defined in section 4(1)) a controlled drug;
  - (ii) using a psychoactive substance;
  - (iii) consuming alcohol.

#### 2 Testing and monitoring of offender on parole, or released under section 17, with pre-commencement drug or alcohol condition

- (1) This clause applies if an offender—
  - (a) is on parole with a pre-commencement drug or alcohol condition; or
  - (b) has been released under section 17, at the release date of a long-term sentence, with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 16B to 16E, 71A, 72A, 74A, and 74B, and any rules made under section 74A, apply in respect of the offender—
  - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by the Board on or after the commencement date; and
  - (b) as if the Board had complied with section 16A(3) in respect of the condition.

**3 Testing and monitoring of offender subject to extended supervision order with pre-commencement drug or alcohol condition**

- (1) This clause applies if an offender is subject to an extended supervision order with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 16B to 16E, 72A, 74A, 74B, and 107TA, and any rules made under section 74A, apply in respect of the offender—
  - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by the Board on or after the commencement date; and
  - (b) as if the Board had complied with section 16A(3) in respect of the condition.

## Schedule 2

### Amendments to other enactments

s 125

**Armed Forces Discipline Act 1971 (1971 No 53)***Amendment(s) incorporated in the Act(s).***Bail Act 2000 (2000 No 38)***Amendment(s) incorporated in the Act(s).***Extradition Act 1999 (1999 No 55)***Amendment(s) incorporated in the Act(s).***Immigration Act 1987 (1987 No 74)***Amendment(s) incorporated in the Act(s).***International Crimes and International Criminal Court Act 2000 (2000 No 26)***Amendment(s) incorporated in the Act(s).***International War Crimes Tribunals Act 1995 (1995 No 27)***Amendment(s) incorporated in the Act(s).***Legal Services Act 2000 (2000 No 42)***Amendment(s) incorporated in the Act(s).***Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)***Amendment(s) incorporated in the Act(s).***Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)***Amendment(s) incorporated in the Act(s).***Official Information Act 1982 (1982 No 156)***Amendment(s) incorporated in the Act(s).***Penal Institutions Act 1954 (1954 No 51)***Amendment(s) incorporated in the Act(s).***Social Security Act 1964 (1964 No 136)***Amendment(s) incorporated in the Act(s).*



## Parole Amendment Act 2007

Public Act	2007 No 28
Date of assent	31 July 2007
Commencement	see section 2

### 1 Title

This Act is the Parole Amendment Act 2007.

### 2 Commencement

This Act comes into force on a day to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.

Section 2: this Act (except sections 4(1), (3), (7), 16, 48, 49, and 67) brought into force, on 1 October 2007, by clause 2 of the Parole Amendment Act 2007 Commencement Order 2007 (SR 2007/256).

### 72 Transitional provisions relating to home detention

(1) In this section,—

**home detention** has the same meaning as it had in section 4 of the principal Act before the commencement of this section

**specified application** means any application for home detention that the Board receives—

- (a) before the commencement of this section and that has not been determined as at that commencement; or
- (b) on or after that commencement from an offender who has leave to apply under section 97 of the Sentencing Act 2002

**specified offender** means an offender who is serving his or her sentence on home detention—

- (a) on or after the commencement of this section, under a direction of the Board given before that commencement; or
- (b) after that commencement, under a direction of the Board that is authorised by subsection (2).

(2) The principal Act, as in force immediately before the commencement of this section, applies to any specified application and accordingly governs—

- (a) the consideration of the application; and
- (b) the exercise of any powers in respect of the application and the offender to whom it relates.

(3) The principal Act, as in force immediately before the commencement of this section, applies to the home detention of a specified offender and accordingly governs—

- 
- (a) the offender's rights, liabilities (including, without limitation, the offender's liability to recall), and obligations in respect of that home detention; and
  - (b) the exercise of any powers in respect of that home detention (including, without limitation, powers to impose, vary, or discharge conditions, and to release the offender on parole).
- (4) To avoid doubt, nothing in this section prevents the application, in respect of a specified application or a specified offender, of sections 7(2)(b), 13(5A), 13AA to 13AE, 60(2A), 61(c), 67(2), 117(3), and 118A to 118D of the principal Act as amended or inserted by this Act.

### **73 Transitional provisions relating to hearings**

Sections 44, 47, and 49 of the principal Act, as in force immediately before the commencement of this section, continue to apply to any matter that relates to a hearing in respect of which the Board has, before that commencement, given 1 or more notices under section 43(2) of the principal Act.

### **74 Transitional provision relating to extended supervision order**

- (1) The standard extended supervision conditions set out in section 107JA do not apply to a person who is subject to an extended supervision order made before the commencement of this section.
- (2) In relation to an extended supervision order made before the commencement of this section and to the person in respect of whom it is made, each reference to standard extended supervision conditions in sections 107J and 107K must be read as a reference to standard release conditions.

## Notes

### **1** *General*

This is a consolidation of the Parole Act 2002 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Privacy Act 2020 (2020 No 31): section 217

Contempt of Court Act 2019 (2019 No 44): section 29

Social Security Act 2018 (2018 No 32): section 459

Statutes Amendment Act 2018 (2018 No 27): Part 22

Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42): sections 50–54

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Parole (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 84)

District Court Act 2016 (2016 No 49): section 261

Parole (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 46)

Returning Offenders (Management and Information) Act 2015 (2015 No 112): section 35

Parole Amendment Act 2015 (2015 No 4)

Parole (Extended Supervision Orders) Amendment Act 2014 (2014 No 69)

Parole Amendment Act 2014 (2014 No 37)

Administration of Community Sentences and Orders Act 2013 (2013 No 88): Part 4

Criminal Procedure Act 2011 (2011 No 81): sections 393, 413

Sentencing and Parole Reform Act 2010 (2010 No 33) sections 15–17(1)

Immigration Act 2009 (2009 No 51): section 406(1)

---

Parole (Extended Supervision Orders) Amendment Act 2009 (2009 No 6)  
Corrections Amendment Act 2009 (2009 No 3): sections 36, 37  
Policing Act 2008 (2008 No 72): sections 116(a)(i), (ii), 130(1)  
Parole Amendment Act 2007 (2007 No 28)  
Parole Amendment Act 2006 (2006 No 88)  
Crimes Amendment Act 2005 (2005 No 41): section 10  
Parole (Extended Supervision) Amendment Act 2004 (2004 No 67)  
Corrections Act 2004 (2004 No 50): section 206  
Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 51  
Victims' Rights Act 2002 (2002 No 39): section 53  
Mutual Assistance in Criminal Matters Amendment Act 2002 (2002 No 23): section 18  
Parole Act Commencement Order 2002 (SR 2002/177)