

# Parole Board of South Australia

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## Annual Report for the year ended 30 June 2020

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To: The Honourable Vincent Tarzia, MP

Minister for Police, Emergency Services and Correctional Services

This report of the 51<sup>st</sup> year of operation of the Parole Board of South Australia for the twelve months from 1 July 2019 to 30 June 2020 is presented pursuant to the provisions of Section 64 of the *Correctional Services Act, 1982*.

Presiding Member's Report

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# Preface

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I am pleased to provide you with the Annual Report of the Parole Board of South Australia for the year 2019-2020.

The past year at the Parole Board, and by extension the Secretariat, has been extraordinary given the circumstances presented. The end of 2019 coincided with the departure of long serving Deputy Presiding Member, Tim Bourne and early into the new year Deputy Presiding Member, Stephen Ey, chose to end his tenure prematurely. The lack of Deputy Presiding Members over this period impacted heavily on the capacity of the Board to run meetings, given the legislative requirements.

The Board welcomed two new Deputy Presiding Members, Nicholas Floreani, in February 2020, and William Boucaut, QC, in April 2020, who have fitted in seamlessly and hit the ground running.

The impact of COVID-19, from March 2020, has resulted in several process changes, has curtailed the number of meetings conducted, and impacted on the number of interviews able to be conducted on each meeting. This has resulted in significant delays from the time of application for parole, to the time of consideration and interview.

The previous legislative changes, specifically the Criminal Law (High Risk Offenders) Act 2015 (SA), relating to Extended Supervision Orders, continue to have an impact on the workload of the Parole Board and this is illustrated in the main body of the Report.

Resourcing of the Parole Board Secretariat to accommodate the increase in workload as a result of Extended Supervision Orders, and in order to address delays caused by COVID-19, remains under discussion with the Department for Correctional Services, but the Secretariat will need to be adequately resourced to provide administrative capacity for the current high workload, in addition to expected future increases, with respect to offenders subject to Extended Supervision Orders, and the need to increase the number of scheduled meetings in order to recover from the impact of COVID-19.



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**E F Nelson QC**  
**Presiding Member, Parole Board of South Australia**

# Establishment and Functions of the Parole Board

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The Parole Board of South Australia is a statutory authority established by State Parliament in 1969 and appointed to:

- consider applications for release on parole from:
  - prisoners serving a sentence of five years or more
  - prisoners convicted for sexual offences; offences involving violence; offences involving firearms, arson and offenders or who have been returned to prison for cancellation of parole
  - prisoners sentenced to a term life imprisonment
- set the terms and conditions of release of all prisoners who become eligible for and are granted release on parole.
- review the progress and performance of prisoners whilst released on parole.
- consider reports provided by Community Corrections Officers and other professional organisations in relation to matters under Parole Board consideration.
- consider submissions from Victims of Crime and Police.
- review and amend the terms and conditions of parole where appropriate.
- determine appropriate penalties when breaches of parole have occurred.
- annually review the circumstances and progress of prisoners sentenced to a term of life imprisonment.
- annually review those persons declared incapable of controlling or unwilling to control their sexual instincts pursuant to Section 57 of the *Sentencing Act, 2017*.
- assume responsibility for the supervision and monitoring of those persons found not guilty of offences by reason of mental impairment, pursuant to the provisions of Section 269 of the *Criminal Law Consolidation Act, 1935*, and who are released into the community on licence conditions set by the Courts.
- supervise Interim Supervision Orders and Extended Supervision Orders, pursuant to the *Criminal Law (High Risk Offenders) Act, 2015*.

## Legislative Changes

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No legislative changes were noted relative to the Parole Board in the year 2019-20

# Parole Board Secretariat

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The Parole Board Secretariat provides administrative support to the Board. The Secretariat functions as an administrative unit of the Department for Correctional Services (DCS or the Department) and comprises the Secretary/Executive Officer and fifteen administrative staff. The Secretary/Executive Officer of the Board answers directly to the Presiding Member of the Parole Board in relation to all Board matters and to the Executive Director, Community Corrections and Specialist Prisons, DCS, in relation to matters of administration.

The wider role of the Secretariat is to provide the interface between the Parole Board and DCS; other Government agencies; Victims of Crime; the Judiciary; legal practitioners and the community in general. In addition to the essential flow of information between the Board and the Department, the Secretariat provides parole details to the Courts and the Director of Public Prosecutions to assist in the sentencing process.

## Parole Board Membership

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Parole Board members are appointed by the Governor in Executive Council for a term of up to three years and may be eligible for reappointment. The Board comprises nine members and two deputy members. All members of the Board are appointed in a part-time capacity.

Certain positions on the Board are defined by statute:

- The Presiding Member (Chairperson) is required to be either, a judge of the Supreme Court or District Court or a person who has extensive knowledge of, and experience in, the science of criminology, penology or any related science.
- Two members are appointed as Deputy Presiding Members.
- One member must be a qualified medical practitioner who has extensive knowledge of, and experience in, psychiatry.
- One member must be a qualified social worker or sociologist.
- One member must have extensive knowledge of, and experience in, matters related to the impact of crime on victims and the needs of victims of crime.
- One member must be a person of Aboriginal descent.
- One member must be a former police officer.
- There are two additional deputy (occasional) members appointed to replace members who are unable to attend a Board meeting.

The Parole Board has a permanent meeting room in Flinders Street, Adelaide. This facility has adjacent holding cells to accommodate prisoners awaiting a hearing before the Board. The office of the Parole Board Secretariat is located in the same building.

## Members of the Parole Board in 2019-20

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Ms Frances Nelson QC	Presiding Member	Barrister
Mr William Boucaut QC	Dep. Presiding Member	Barrister
Mr Nicholas Floreani	Dep. Presiding member	Barrister
Mr Denis Edmonds	Member	Retired Police Officer
Dr Maria Naso	Member	Psychiatrist
Ms Katherine McLachlan	Member	Victim Representative
Mr Garth Dodd	Member	Aboriginal Member
Ms Sue Macdonald	Member	Social Worker
Ms Anne Bloor	Member	Social Worker
Mr Kevin Hill	Deputy Member	Retired Board Secretary
Mr Andrew Kyprianou	Deputy Member	Retired Social Worker

## Parole Board Meetings

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Parole Board meetings are held twice weekly, usually on a Tuesday and/or Thursday, sitting either as a Full Board (minimum of four members), or as a Division of the Board comprising three members including the Presiding Member or Deputy Presiding Member as Chairperson. The Board conducts most of its business at the Flinders Street meeting room in Adelaide.

Interviews with prisoners and parolees are held either in person or by video conference to country locations. Parole Board hearings are not open to the general public. However, prisoners and parolees are entitled to legal representation and/or other professional support should they so request.

- During financial year 2019-20 the Parole Board met formally in person, or virtually, on 105 occasions.
- A total of 939 prisoners/offenders were interviewed by the Board in the 2019-20 year.
  - 387 for Application
  - 269 on Warrant
  - 105 on ISO/ESO
  - 156 on Summons
  - 22 for Life Sentence Annual Review.
- Parole Board members also visit Prisons and Community Corrections Centres across the State and conduct interviews with prisoners and parolees at those locations.

## Victims of Crime

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Any person who registers as a Victim of Crime with DCS is entitled under the provisions of the *Victims of Crime Act, 2001* to make a submission to the Parole Board in respect of a parole applicant who was the perpetrator of the offence committed against them.

Registered victims and those victims who contact the Parole Board independently are invited to make written submissions to the Board prior to any determination of the prisoner's release. Victims may also make submissions to the Board in person by prior arrangement.

These submissions are considered when the Parole Board is making a determination in relation to an application for parole or when setting conditions for the release of a prisoner. Where there is a known victim of an offence, the Board will set a condition of parole prohibiting the offender from contacting or attempting to contact the victim of his/her crime. Victims may also request that the Board set particular conditions in relation to where an offender resides, or places the offender should not attend, such as towns, shopping centres, educational facilities.

The Commissioner for Victim's Rights endeavours to contact the families of all murder victims and provides the Parole Board with advice in relation to any concerns or requests expressed by those families/victims.

## Parole Release

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A prisoner is eligible for parole consideration upon the expiry of the non-parole period that has been fixed by the sentencing court. An application for parole may be submitted to the Parole Board up to six months prior to the expiry of the non-parole period. **During 2019-20, a total of 777 new parole orders were registered compared to 842 in 2018-19.**

These parole releases include:

### Automatic Release (Section 66(1) of the Correctional Services Act, 1982)

**In 2019-20 there were 448 automatic releases on conditions set by the Parole Board (Section 66(1) Correctional Services Act, 1982) compared to 448 in 2018-19.** Under this legislation, prisoners who are serving a total sentence of 12 months or more but less than 5 years, other than those prisoners convicted for sexual offence or offences involving violence, are paroled automatically after they have served their non-parole (minimum) period providing that they agree to comply with parole conditions set by the Parole Board.

All other eligible prisoners must apply to the Parole Board for release on parole.

As a result of COVID -19 restrictions and an accompanying desire to reduce the numbers of people attending at the Parole Board meeting room, the Presiding Member determined to have Automatic Release meetings moved online. This has reduced the amount of time for members to be required onsite, and decreased traffic through the Secretariat.

There has had no impact on decision making or setting of conditions with respect to automatic releases and has become an efficient way to conduct meetings.

### Discretionary Release (Section 66(2) & 67 of the Correctional Services Act, 1982)

**In 2019-20 there were 560 discretionary releases by prisoner application (Section 67 Correctional Services Act, 1982) compared to 650 in 2018-19.** All prisoners eligible for parole consideration, regardless of the length of sentence who are serving a sentence of imprisonment for a sexual offence; an offence involving violence, (as defined by the *Correctional Services Act, 1982*) or offences involving firearms or arson, must apply to the Parole Board for release on parole. Additionally, where parole was previously cancelled by reason of further offending or for a breach of parole conditions, the prisoner must apply to the Parole Board for parole.

All prisoners serving a total sentence or sentences of five years or more, including prisoners sentenced to life imprisonment, are also required to apply to the Parole Board for release. An application for parole may be submitted no earlier than six months prior to the expiry of the non-parole period.

The Parole Board interviews the majority of prisoners who apply for parole before making a determination in respect of release on parole. Release is rarely refused without the prisoner first being given an opportunity of a hearing before the Board. The Board must provide written reasons for refusing the release of a prisoner within 30 days of the decision being made. Interviews are conducted either in person, or by video conference link with the country institutions. All interviews and hearings conducted by the Parole Board are electronically recorded and full transcripts are produced. When release on parole is granted or recommended, the Parole Board must fix the conditions to which the prisoner will be subject upon release.

Where the Parole Board refuses an application for parole, the reasons for that decision must be provided to the prisoner within 30 days.

With respect to consideration and interview of prisoners for potential parole release, there have been several factors impacting on timeframes for review and subsequently impacted on reducing discretionary release figures. Initially, the absence of two Deputy Presiding Members, determined that the Presiding Member alone was the sole person permitted, as required by legislation, to chair meetings. This resulted in a large number of meetings being cancelled earlier in the year. From March 2020, in the early stages of the COVID pandemic, the capacity to interview was further curtailed, initially by a further reduction in scheduled meetings, and then by the reduction of the number of prisoners able to be interviewed via audio visual link (AVL). DCS institutions have strict timings for prisoner lockdown, and this effectively shortened meeting times.

The Presiding Member declined to interview certain categories of offender via AVL, particularly life sentenced prisoners, high risk child sex offenders, and high-risk violent offenders, deferring interviews until DCS advised that in-person interviews could recommence for these cohorts.

## Life Imprisonment

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### Annual Reviews

The Parole Board is required, by statute, to annually review the progress and circumstances of each prisoner serving a sentence of life imprisonment or any sentence of indeterminate duration. The prisoner may elect to appear before the Board and be interviewed for the purpose of the annual review.

On 30 June 2020 there were 200 prisoners in custody serving a term of life imprisonment. A further 18 prisoners were serving an indeterminate term of imprisonment, either because the court had not set a non-parole period or they had been found incapable of controlling, or unwilling to control, their sexual instincts pursuant to Section 57 of the *Sentencing Act 2017*.

As noted above, life sentenced prisoners applying for parole, were not interviewed by the Board from the onset of the pandemic, and were deferred, pending recommencement of prisoner movement and DCS approval for transportation to Parole Board for interview.

### Parole for Prisoners Sentenced to Life Imprisonment

Amendments to the *Correctional Services Act, 1982* in 2016 changed the procedures relating to parole for prisoners sentenced to life imprisonment.



A life sentenced prisoner is eligible to submit an application to the Parole Board up to six months prior to the expiry of his/her non-parole period. If the Board approves release on parole, the reasons for that decision are prepared and forwarded to the State Attorney-General, the Commissioner of Police and the Commissioner for Victim's Rights.

Any objections to a Parole Board decision to release a prisoner sentenced to life imprisonment must be forwarded for review by the Parole Administrative Review Commissioner (PARC) within 60 days of receiving the reasons for release on parole.

The PARC, having examined the evidence and material relating to the matter, may make any order the Commissioner considers appropriate. A decision of the Parole Administrative Review Commissioner is final.

## Criteria for Release on Parole

The paramount consideration of the Parole Board when determining an application from a prisoner for release on parole is the safety of the community.

The Parole Board must also take the following matters in consideration when determining an application for the release of a prisoner:

- any relevant remarks made by the court in passing sentence;
- the likelihood of the prisoner complying with the conditions of parole;
- where the prisoner was imprisoned for an offence or offences involving violence, the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment (but the Board must not substitute its view of these matters for the view expressed by the court in passing sentence);
- if, in relation to an offence for which the prisoner was imprisoned, there is a registered victim – the impact that the release of the prisoner on parole is likely to have on the registered victim and the registered victim's family;
- the behaviour of the prisoner whilst in prison or on home detention;
- the behaviour of the prisoner during any previous release on parole;
- any reports tendered to the Board:
  - (i) on the social background, or the medical, psychiatric or psychological condition of the prisoner;
  - (ii) from Community Corrections Officers or other officers or employees of the Department;
- the probable circumstances of the prisoner after release from prison or home detention; and
- any other matters that the Board assesses to be relevant.

## Parole Conditions

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Parole is a privilege which enables a prisoner to be released from prison after the minimum period fixed by a Court (non-parole period) has expired, but prior to the end of the full prison sentence. If parole is granted, the prisoner must agree to obey the conditions of parole set by the Parole Board. Parole conditions will include a requirement that the parolee report to a Community

Corrections Officer on a regular basis (usually weekly reporting as a minimum requirement). Parole conditions are designed to:

- provide a level of protection for the community from further offending;
- monitor the activities and progress of the parolee when released; and
- provide professional support to assist the reintegration of the parolee into the community and reduce the risk of re-offending.

Section 68 of the *Correctional Services Act, 1982* provides statutory conditions for the release of prisoners sentenced to life imprisonment. Additionally, the Parole Board must consider imposing a condition requiring a life sentenced parolee to be subject to electronic monitoring and/or to reside at a specified premises or parole hostel for a period of up to 12 months. The Adelaide Pre-Release Centre is declared as a parole hostel for this purpose.

## Parole Orders

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At any one time in 2019-20, there was approximately 1070 offenders serving their sentence on parole in South Australia, this compares to an average of 1064 in 2018-19. This number fluctuates on a daily basis depending on the number of prisoners released on parole and the number of parolees who complete parole or have their parole cancelled.

## Parole Breaches

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If an offender fails to comply with the conditions of the parole order, including conviction and sentence for further offences while on parole, that offender is in breach of parole and the Parole Board may take the following action.

Where a member of the Parole Board suspects on reasonable grounds that a parolee may have breached a condition of parole, the Presiding Member or Deputy Presiding Member may:

- (a) summons the parolee to appear before the Parole Board; or
- (b) issue a warrant for the apprehension of the parolee, for the purpose of bringing the parolee before the Parole Board.

When a parolee is interviewed by way of summons for a less serious breach of parole, the Board may, if the breach is proved, admonish and warn the parolee of the serious consequences should a further breach be committed and/or order that the parolee serve up to 200 hours of Community Service Work as a penalty.

If a parolee is returned to custody for a serious breach of parole, the parolee is detained in custody awaiting a hearing before the Parole Board. At the hearing the Board will interview the parolee and make a determination as to whether or not a breach has occurred.

Where the Parole Board finds that a parolee has breached a parole condition, the Board may either release the parolee from custody (having already served time in custody) or cancel parole pursuant to the provisions of Section 74 of the *Correctional Services Act, 1982*. In 2019-20 parole was cancelled in 150 cases for breaches of parole conditions under this section of the Act.

- During 2019-20 the Parole Board issued 638 warrants for the arrest of parolees suspected of breaching their parole conditions. This compares to 734 warrants issued in 2018-19.

- A total of 707 arrest warrants were executed, 11 warrants were withdrawn and 13 warrants remained active but not executed as at 30 June 2020.
- By comparison and with regard to the year 2018-19, a total of 713 arrest warrants were executed, 9 warrants were withdrawn and 12 warrants remained active but not executed as at 30 June 2020.

## Breach by Further Offending

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Where a parolee commits an offence whilst on parole and receives a sentence of imprisonment for that offence, parole is automatically cancelled pursuant to Section 75 of the *Correctional Services Act, 1982*. The court must order that the new sentence be served cumulatively upon the unexpired balance of parole that remained at the time of the offence.

- During 2019-20 parole was automatically cancelled with respect to 36 parolees as a consequence of receiving a sentence of imprisonment for further offences committed whilst on parole. This compares to automatic cancellation of parole for 44 parolees in 2018-19.

## Parole Orders Successfully Completed

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A parole order is completed upon the expiry of the sentence of imprisonment imposed by the Court. A parolee is deemed to have successfully completed a parole term, notwithstanding some minor breaches during parole, if he/she is on parole when the sentence expires.

- During 2019-20 a total of 586 parolees successfully completed their parole orders representing a 72.8% successful completion rate. However, the constant flow of offenders into and out of the parole system is not taken into account in this estimate.

## Section 57 and 59 of the *Sentencing Act, 2017* – Causing Serious Harm

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Offenders who are convicted for serious sexual offences may, under Section 57 of the *Sentencing Act*, also be declared by the Supreme Court to be incapable of controlling, or unwilling to control, their sexual instincts. These offenders are detained in custody until further order of the Supreme Court.

The Parole Board is required by statute to review the progress and circumstances of these offenders every 12 months. The offender may elect to appear before the Board and be interviewed for the purpose of the review.

The Court may subsequently order, under Section 59 of the Act, the release of the offender on licence. The Parole Board is required to set the conditions for release and has responsibility for the supervision and monitoring of the licensee once released. The Board is empowered to return a licensee to custody and to cancel release where the Board is satisfied that the licensee has contravened, or is likely to contravene, a condition of licence.

# Section 269 of the *Criminal Law Consolidation Act, 1935* - Mental Impairment

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Persons who commit an offence but are found by the Court to be not guilty by reason of mental impairment, may be committed to detention for a period determined by the Court or may subsequently be released into the community on licence. The conditions of licence are set by the Court. Supervisory responsibility for those released on licence is divided between the Parole Board and the Minister for Health.

The Parole Board has responsibility for exercising supervision in all respects other than those conditions that relate to treatment or monitoring the mental condition of the licensee. The Parole Board has no power to return a licensee supervised under this *Act* to custody when a condition is contravened. The Court may order the revocation of the licence or variation of the supervision order on the application of the Director of Public Prosecutions.

## Interim/Extended Supervision Orders

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The Attorney General can apply to the Supreme Court for an Extended Supervision Order to a person who is a high risk offender as defined by the Criminal Law (High Risk Offenders) Act 2015 (SA). The application has to be made within 12 months of the end of the person's sentence (including on release or parole or home detention) or extended supervision order or after the sentence is wholly satisfied (for life imprisonment)

The Supreme Court has to consider at least one report from a medical practitioner including assessment on the person's likelihood of re-offending with similar offences. The Supreme Court's main determination must be based on the safety of the community.

Extended Supervision Orders can last for 5 years and further orders can be made following this time.

Extended Supervision Orders include conditions that the person not commit further offences, not possess any firearms or ammunition, or offensive weapons. Other conditions can be imposed by the Court and these conditions can also be varied by the Court.

The Parole Board can also impose conditions on people under extended supervision orders including in relation to requiring electronic monitoring, requiring the person to live at a certain address, undertake programs or activities, preventing communication with certain people, and various other conditions.

During 2019-20 a total of 40 new ISO/ESO orders were registered compared to 38 in 2018-19, 25 in 2017-18, and 16 in total for the 2 x financial years of 2015-16 and 2016-17.

During 2019-20 the Parole Board issued and executed 148 warrants for the arrest of offenders suspected of breaching their ISO/ESO conditions, compared to 89 in 2018-19. This is a significant increase of 66% on the 2018-19 figure. (\*Please note the figure of issued and executed warrants with respect to 2018-19 was noted in the Parole Board Annual Report 2018-19 as 51. This was incorrect. The correct figure was 89)

As at 30 June 2020 there were a total of 79 ISO/ESO offenders being supervised by Community Corrections and the Parole Board, compared with 41 as at 30 June 2019, and 15 as at 30 June 2018. This is a significant increase of 92% on the 2018-19 figure.

Clearly the impact of the Criminal Law (High Risk Offenders) Act 2015 (SA), has had a significant impact on the capacity of the Board relative to both the numbers of prisoners supervised in Interim/ Extended Supervision Orders, and the requirement to issue warrants and then interview these offenders.

As noted in the preface, continued growth at the present rate of this cohort will require further resourcing of both the Board and Secretariat in the near future.

## Court Reports

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The Parole Board is frequently asked by Judges of the Supreme Court of South Australia, District Court of South Australia and Magistrates Courts to provide Parole Board Reports in relation to people before the courts awaiting sentence.

In addition, the Board regularly provides reports to those courts in relation to persons found not guilty due to mental impairment where the court is considering a matter of release on licence.

The Parole Board Secretariat provides general and invaluable assistance on a daily basis to Sentencing Courts, the Office of the Director of Public Prosecutions and Legal Practitioners in terms of advising the expiration terms of parole periods and the calculation of balances of parole to be served.

For the year 2019-20, there were 21 reports completed by the Presiding Member, 10 by Deputy Presiding Members, and 45 by the Secretariat.

The Parole Board is also required to supply reports to the Supreme Court under Section 57 of the Sentencing Act 2017, with regard to offenders incapable of controlling, or unwilling to control, sexual instincts, as required by legislation. In 2019-20, 18 of these reports were completed by the Presiding Member and provided to the Minister for Correctional Services and the Attorney General.

## ESO/ISO Reports to Attorney General's Department

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The Presiding Member has provided 124 reports with respect to ESO/ISO offenders in the 2019-20 period, at the request of the Crown Solicitor's Office.

## Reasons for Refusal/Release

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The Presiding Member has provided 13 Reasons for Release, with respect to life sentenced prisoners, to the Commissioner for Victim's rights, the Attorney General and the Commissioner of police.

In addition, it is required by the Board to provide Reasons for Refusal of parole to prisoners at institutions within 30 days of the decision to refuse parole. The Presiding Member has provided Reasons for Refusal on 42 occasions in the year 2019-20.

# Acknowledgments

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The Parole Board wishes to acknowledge the co-operation and assistance received from the Chief Executive, Executive Directors, Officers and staff of Department for Correctional Services; the Commissioner and Officers of South Australia Police; the Clinical Director of Forensic Mental Health Services, psychiatrists and staff of the South Australian Forensic Mental Health Service; the Crown Solicitor and Officers of the Crown Law Office; Officers of the Courts Administration Authority; the Officers of the Department of Immigration and Citizenship.

The Board also wishes to record its appreciation for the services provided by the Secretary and Staff of the Parole Board Secretariat who have continued to provide excellent support in the face of a greatly increased workload and staffing difficulties.

The Parole Board relies on, and acknowledges, the provision of reports and assessments on prisoners and parolees by Departmental Psychologists, Community Corrections Officers and prison Social Workers. The Board also acknowledges those who provide programs and counselling to prisoners and parolees. These activities provide invaluable assistance and support to the Board in its primary objective of protecting the community and reducing the level of offending in South Australia.

The Board would also like to acknowledge the efforts of the departing Deputy Presiding Members, Stephen Ey and, in particular, Tim Bourne, who provided great service to the Board over 15 years.