



Director's Instruction No. 15

The Appearance of the ACT DPP in Sentence Administration Board Proceedings

Overview

1. Each year the ACT Sentence Administration Board ("SAB") deals with thousands of applications in relation to parole and intensive corrections orders. In the 2017-2018 financial year it dealt with 1407 matters¹.
2. The purpose of this Instruction is to give prosecutors guidance on when it will be appropriate for the DPP to appear before the SAB.

Background

3. The SAB is created in Chapter 8 of the *Crimes (Sentence Administration) Act 2005*.
4. The SAB's main functions include dealing with applications for parole and inquiring into alleged breaches of parole and intensive corrections orders.² It is the SAB's function to determine whether such orders have been breached, and if so, what the consequence should be.

Functions of the ACT DPP in the SAB

5. The SAB is required to give the DPP notice when it convenes an inquiry into an application for parole,³ release on licence,⁴ an alleged breach of parole⁵ or an alleged breach of an intensive corrections order.⁶
6. Under section 204(3) of the *Crimes (Sentence Administration) Act 2005*, the DPP has a statutory right to appear and be heard in the SAB.⁷ This is reinforced by section 6(m) of the *Director of Public Prosecutions Act 1990*.

¹ See ACT Justice and Community Safety Annual Report for 2017-2018, page 400.

² *Crimes (Sentence Administration) Act 2005* s 172.

³ *C(SA)A* ss 125 and 127.

⁴ *C(SA)A* s 291.

⁵ *C(SA)A* s 147

⁶ *C(SA)A* s 63

⁷ See also s 204(1)(c).

7. Hearings before the SAB are administrative proceedings which are more inquisitorial than adversarial in nature. The SAB is not bound by the rules of evidence and may have regard to anything it considers appropriate.⁸ Proceedings must be conducted with as little formality and technicality as possible. However, the rules of natural justice do apply.⁹
8. The DPP is able to adduce and present evidence during SAB proceedings and make submissions with respect to findings of fact and the proper application of the law.
9. As delegates of the Director, all prosecutors are able to appear on behalf of the Director in the SAB.

Considerations informing when the DPP will appear in the SAB

10. Given the sheer volume of matters heard before the SAB each year, it is impracticable for this Office to appear in all matters. Moreover, the majority of matters will either be trivial or straightforward, meaning the SAB will not be meaningfully assisted by the DPP's appearance.
11. Conversely, there will be some matters where an offender who is applying for parole, or who is alleged to have breached an intensive corrections order, will present with a high likelihood of committing further offences¹⁰ and/or the proceeding before the SAB may involve complex factual or legal issues. In such instances there may be a compelling public interest in the DPP submitting on the appropriateness of making a parole order and/or assisting the SAB to decide complicated factual and legal questions.¹¹
12. It should be noted that when the DPP does not appear, there is no contradictor in the proceedings.
13. Prosecutors may find that police officers, Corrective Services officers, victims of crime, members of the public or the SAB itself approach them and request that the DPP appear in the SAB in relation to a particular matter.
14. The ability of the DPP to appear in the SAB at any given time must be considered in light of all other competing operational and resourcing demands on the Office.
15. **A prosecutor should not appear before the SAB unless that appearance is authorised by the Director, Deputy Director or Assistant Director.**
16. Any prosecutor may bring a proceeding in the SAB to the attention of the Director, Deputy Director, or Assistant Director, and make a recommendation as to whether or not the DPP should appear.

⁸ C(SA)A s 196(1).

⁹ C(SA)A s 196(1)-(2).

¹⁰ Other criteria for making parole orders are set out in the C(SA)A s 120(2).

¹¹ See C(SA)A s 120(1): The board may make a parole order for an offender only if it considers that parole is appropriate for the offender, having regard to the principle that the public interest is of primary importance.

17. The DPP will not oppose an offender's release on parole simply to add to the punitive effect of their sentence. The non-parole period is the minimum period which justice requires the offender to serve: *Henry v The Queen* [2019] ACTCA 5 at [33]. It would be inappropriate for the DPP to oppose parole simply because a view is taken that the overall sentence, or the non-parole period, was inadequate.
18. Notwithstanding the seriousness of the offence for which an offender has been sentenced, where an offender has served their non-parole period without incident and followed the directions of Corrective Services staff whilst detained (including with respect to their attendance and participation in courses and programmes directed towards their rehabilitation), the offender will generally have a reasonable expectation of being paroled at the expiration of their non-parole period. The DPP will generally not oppose release on parole in those circumstances.
19. As a general rule, the DPP will only appear in the SAB in relation to proceedings involving an application for parole, or an application to revoke parole, for an offender who presents a high likelihood of committing serious offences if paroled.
20. A 'serious offence', for the purpose of this direction, includes:
 - a. an offence involving significant violence;
 - b. an offence involving acts which expose a member of the community to a high risk of serious bodily injury or death;
 - c. a sexual offence;
 - d. drug trafficking at a mid to high level of objective seriousness where the offender, or associates of the offender, expect to receive a significant commercial gain from the trafficking.
21. In considering whether an offender presents a high likelihood of committing a serious offence, regard should be had to the offender's:
 - a. antecedent history;
 - b. behaviour whilst subject to conditional liberty, including their ability to follow the directions of Corrective Services or police;
 - c. behaviour whilst in custody, including any disciplinary breaches; and
 - d. commitment to their own rehabilitation.
22. The DPP may also appear in the SAB in relation to matters where there is legal uncertainty with respect to the applicable law, or there is an issue of particular interest in a matter and the SAB would benefit from the DPPs submissions on the proper application of the law, or guidance on the particular issue.

Information Sharing

23. Section 136 of the *Crimes (Sentencing) Act 2005* provides that:

136 Information exchanges between criminal justice entities

- (1) This section applies to any information in relation to an offence (including an alleged offence) in a record of a criminal justice entity, including information about—
 - (a) a person charged with the offence; and
 - (b) a victim of the offence; and
 - (c) a person convicted or found guilty of the offence.
- (2) The criminal justice entity may give the information to another criminal justice entity for the purposes of the other entity.
- (3) This section is additional to any other Act that provides for information to be given by, or to, a criminal justice entity.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (4) In this section:

criminal justice entity means any of the following:

- (a) the Supreme Court;
- (b) the Magistrates Court;
- (c) the director-general responsible for this Act;
- (d) the CYP director-general;
- (e) the sentence administration board;
- (f) the director of public prosecutions;
- (g) the chief police officer;
- (h) the victims of crime commissioner;
- (i) any other entity prescribed by regulation.

victim, of an offence—see section 47.

24. Accordingly, prosecutors appearing in the SAB are able to request and exchange information relating to the offender with the police and ACT Corrective Services.