



The law

- For offenders serving sentences under Commonwealth law, the State Parole Authority has no jurisdiction.
- Grants of parole and revocation of parole are determined by the Attorney General's Department in Canberra. There is no equivalent tribunal to the SPA for Commonwealth parole.
- Where a federal offender's parole is revoked, they are brought before a Local Court Magistrate for a new non-parole period to be set. This is the process even where the original offence was dealt with in the District or Supreme Court.
- A Magistrate has no power to reverse the revocation of parole. This remains a matter for the Attorney General under s19AU.
- If the Magistrate sets a new non-parole period under s19AW, the Attorney General retains power under s19AL to grant or refuse release on parole at the end of that period.

Filing District Court appeals

The revocation process for Commonwealth parole orders is set out in ss 19AQ-19AZB of the Crimes Act 1914 (Cth).

After the arrest of a person whose parole order has been revoked, (s19AV warrant), the person must be brought before a prescribed authority, being a Magistrate in the Local Court of NSW, as soon as practicable (s 19AV(3)). Even if the parole order relates to a sentence originally imposed in a higher Court, the person must be brought before a Magistrate and not the original sentencing Court.

Where person notified of revocation

Where the person whose parole has been revoked has already been notified by the Attorney-General of the revocation, the Magistrate must issue a warrant directing that the person be detained in prison for the unserved part of the sentence or sentences (s19AW(1)).

The Magistrate must then fix a non-parole period (s 19AW(1)(f)), unless the Magistrate considers it inappropriate to do so because of the nature of the breach of the parole conditions that led to the revocation; or the unserved part of the sentence or sentences is 3 months or less (s 19AW(3)).

Where person not notified of revocation

Where the person whose parole has been revoked has not been notified by the Attorney-General of the revocation, the Magistrate must, pursuant to s 19AX(1), immediately notify the Attorney-General that the person has been brought before the Magistrate and order that the person be detained in custody until the Attorney-General orders that the revocation order be rescinded or until the completion of proceedings under s 19AW(1).

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Commonwealth Revocation of Parole

Once notified that the person has been brought before the particular Magistrate, the Attorney-General must, as soon as practicable, give written notice to the person as to the parole conditions alleged to have been breached and request that the person provide, within 14 days, a written submission stating why the parole order should not have been revoked (s 19AX(2)).

If the person fails to make written submissions to the Attorney-General within 14 days of notification, the Attorney-General will notify the Magistrate in writing of the decision not to rescind the revocation order (s 19AX(3)). The Magistrate will then proceed on the basis that the person has been notified by the Attorney-General of the revocation and deal with the matters under s 19AW, i.e. issue a warrant to detain the person and fix a non-parole period, subject to s 19AW(3).

If the person makes written submissions to the Attorney-General within 14 days of notification, the Attorney-General must decide as soon as practicable after receiving that submission, whether or not to rescind the revocation order, and must advise the Magistrate accordingly (s 19AX(4)).

The Magistrate must immediately order the release of the person if notified of the Attorney-General's decision to rescind (s 19AX(5)).

If the Magistrate is notified of the Attorney-General's decision not to rescind, the Magistrate will then proceed on the basis that the person has been notified by the Attorney-General of the revocation and deal with the matters under s 19AW, i.e. issue a warrant to detain the person and fix a non-parole period, subject to s 19AW(3).

Automatic revocation of parole under s 19AQ

Where an offence is committed on parole and a sentence of 3 months or more imprisonment is imposed for the new offence, parole is automatically revoked.

Ideas for submissions regarding the setting of a new non-parole period under s 19AW

Legal Aid is available for parole revocation hearings in the Local Court. Solicitors will assist with making submissions under s 19AX(2) if necessary, and provide representation at the revocation hearing.

It is the experience of CCU staff that in general Magistrates will set a fairly short further non-parole period to reflect the severity of the breach of parole. The view of the CDPP should be ascertained beforehand. In many instances they take a pragmatic approach, particularly given the Attorney General will have responsibility for deciding whether the offender is released on parole a second time.

It may be appropriate to submit on the following areas:

- Nature of the parole breaches and any mitigating factors.
- Any successful period of current parole and achievements during this time, including compliance with supervision, treatment in the community, employment, family reconciliation etc.
- Any health needs or other personal circumstances.
- Mitigating features for the original offence or any helpful observations of the sentencing court regarding objective seriousness and prospects of rehabilitation.
- It may be useful to obtain supporting material from family or community organisations.

There is a right of appeal to the Supreme Court under s19AY against the issuing of the s19AW warrant, the calculation of the unserved part of the outstanding sentence or the fixing or refusal to fix a non-parole period.

COMMONWEALTH OFFENCES GUIDE TO REVOCATION OF PAROLE

