

Crimes (Administration of Sentences) Amendment (Parole) Bill 2004

New South Wales

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes (Administration of Sentences) Act 1999* so as:

- (a) to reconstitute the Parole Board as the State Parole Authority (***the Parole Authority***), to vary its membership and to restate its functions, and
- (b) to restate the matters to which the Parole Authority should give consideration before it decides to release an offender on parole, and
- (c) to restate the procedures to be followed by the Parole Authority for the purpose of forming its initial intention as to whether or not an offender is to be released on parole, and
- (d) to restate the procedures to be followed after the Parole Authority forms its initial intention as to whether or not an offender should be released on parole, and
- (e) to restate the Parole Authority's obligations with respect to submissions received from the State with respect to an offender's parole, and to ensure that such submissions may be made in relation to all offenders, not just serious offenders, and
- (f) to require an offender's parole order to be made subject to conditions that give effect to a post-release plan that has been prepared for the offender, and
- (g) to extend the period that must elapse between the date on which the Parole Authority decides to release an offender on parole and the date on which the offender is released, and
- (h) to direct appeals from the Parole Authority's decisions to the Supreme Court rather than to the Court of Criminal Appeal, and
- (i) to empower a judicial member of the Parole Authority, in urgent circumstances, to suspend an offender's parole order pending an inquiry as to whether the order should be revoked, and
- (j) to increase the penalty that may be imposed in relation to misconduct before the Parole Authority, and
- (k) to restate the requirements for the Parole Authority to record the reasons for its decisions, and to supply those reasons to the Commissioner of Corrective Services (***the Commissioner***), and
- (l) to restate the entitlements of the Minister, and of any victims of offenders, to be given access to documents held by or on behalf of the Parole Authority, and
- (m) to allow the Parole Authority to make recommendations to the Commissioner concerning the preparation of offenders for release on parole, and
- (n) to restate the obligations of the Serious Offenders Review Council (***the Review Council***) with respect to the preparation of reports concerning the release on parole of serious offenders, and
- (o) to clarify the term for which a person may be appointed as acting Deputy Chairperson of the Parole Authority or the Review Council, and
- (p) to effect other minor, consequential and ancillary amendments.

The Bill also enacts savings and transitional provisions, and makes consequential amendments to a number of other Acts and instruments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (other than some

consequential amendments to be commenced later) on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to other Acts and instruments set out in Schedule 2.

Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999

Reconstitution of Parole Board as State Parole Authority

Schedule 1 [49] amends section 183 so as to provide for the constitution of a State Parole Authority in place of the current Parole Board. **Schedule 1 [1], [9], [17] and [41]** make consequential amendments to the rest of the Act, including amendments to uncommenced sections 106Q, 106T and 106Y and an uncommenced provision of section 135.

Schedule 1 [50] omits a provision of section 183 that requires the Parole Authority to include its Secretary as one of its members. **Schedule 1 [51]** further amends section 183 so as to require one of the Parole Authority's community members to be a person who has an appreciation or understanding of the interests of victims of crime. **Schedule 1 [48] and [52]** make consequential amendments to sections 180 and 184.

Schedule 1 [53] replaces section 185 with new sections 185 and 185A.

Proposed section 185 restates the functions of the Parole Authority, and requires the Parole Authority, when exercising its functions, to have regard to the fact that the Commissioner has the care, control and management of offenders and to consider any submissions made by the Commissioner.

Proposed section 185A allows the Parole Authority, in consultation with the Minister, to establish guidelines in relation to the exercise of its functions.

Schedule 1 [72] amends clause 19 of Schedule 1 so as to make the Secretary of the Parole Authority a non-judicial member for the purposes of any committee established to conduct routine business on behalf of the Parole Authority, and so eligible for membership of such a committee.

Matters to be considered in relation to the granting of parole

Schedule 1 [16] replaces section 135 with new sections 135 and 135A.

Proposed section 135 provides that the Parole Authority is not to grant parole unless it is satisfied that the release of the offender is appropriate in the public interest and, except in exceptional circumstances, unless the Review Council has advised that it is appropriate for the offender to be considered for release. The proposed section also restates the matters that the Parole Authority must take into consideration in deciding whether the offender's release is appropriate in the public interest, which matters include consideration of reports prepared by the Review Council, the Commissioner, the Probation and Parole Service and other State authorities.

Proposed section 135A sets out the matters to be addressed by a report prepared by the Probation and Parole Service for the purposes of proposed section 135.

Parole Authority procedures as to forming of initial intention

Schedule 1 [19] replaces existing section 137, dealing with the procedure to be followed by the Parole Authority when considering an offender (other than a serious offender) for release on parole, with new sections 137, 137A, 137B and 137C.

Proposed section 137 continues an existing obligation for the Parole Authority to consider all offenders for parole within 60 days preceding the date on which they first become eligible for release on parole.

Proposed section 137A provides that the Parole Authority will be required to consider an offender for parole in subsequent years only if the offender applies for parole.

Proposed section 137B allows the Parole Authority to consider an offender for

parole at any time, and without the need for an application, if satisfied that to do so is necessary to avoid manifest injustice.

Proposed section 137C makes it clear that the Parole Authority may (but need not) interview an offender for the purpose of considering the offender's case.

Schedule 1 [26] replaces existing section 143, dealing with the procedure to be followed by the Parole Authority when considering a serious offender for release on parole, with new sections 143, 143A, 143B and 143C. The proposed sections parallel proposed sections 137, 137A, 137B and 137C.

Parole Authority procedures after initial intention formed

Schedule 1 [22] replaces existing sections 139 and 140, dealing with the procedures to be followed after the Parole Authority's initial consideration of an offender (other than a serious offender) for parole, with new sections 139 and 140.

Proposed section 139 provides that where the Parole Authority proposes to refuse parole it must notify the offender of that fact and give the offender an opportunity to apply for the Parole Authority to reconsider the matter and, if the offender so desires and the circumstances so warrant, to conduct a hearing at which the offender can address the Parole Authority before it makes its final decision.

Proposed section 140 deals with the postponement and adjournment of hearings and with the manner in which submissions are to be made at a hearing. **Schedule 1 [23]** makes a consequential amendment to section 141.

Schedule 1 [27] replaces existing sections 145, 146 and 147, dealing with the procedures to be followed after the Parole Authority's initial consideration of a serious offender for parole, with new sections 145, 146 and 147.

Proposed section 145 provides that where the Parole Authority proposes to grant parole it must notify victims of the offender of that fact and give the victim an opportunity to apply for the Parole Authority to reconsider the matter and, if the victim so desires, to conduct a hearing at which the victim can address the Parole Authority before it makes its final decision. If any victim seeks a hearing, the Parole Authority must then notify the offender that there will be a hearing and that the offender will be entitled to appear at the hearing.

Proposed section 146 provides that where the Parole Authority proposes to refuse parole it must notify the offender of that fact and give the offender an opportunity to apply for the Parole Authority to reconsider the matter and, if the offender so desires and the circumstances so warrant, to conduct a hearing at which the offender can address the Parole Authority before it makes its final decision. If the offender seeks a hearing, the Parole Authority must then notify all victims and the offender that there will be a hearing and that any such victim will be entitled to appear at the hearing.

Proposed section 147 deals with the postponement and adjournment of hearings and with the manner in which submissions are to be made at a hearing.

Schedule 1 [28]–[33] make consequential amendments to sections 148, 149 and 150.

State submissions

Schedule 1 [37] substitutes section 153. The proposed section 153 makes it clear that a State submission as to a serious offender's release on parole that is made before the date on which the Parole Authority makes its final decision as to parole must be taken into consideration in relation to that decision, and that a State submission made after that date but before the offender is released must be taken into consideration with a view to the Parole Authority revoking the parole order under section 130. The proposed section also makes it clear that State submissions may be made by the Commissioner.

Schedule 1 [25] inserts a new section 141A, with respect to offenders other than serious offenders. The proposed section 141A makes it clear that a submission by the Commissioner as to an offender's release on parole that is made before the date on which the Parole Authority makes its final decision as to parole must be taken into consideration in relation to that decision, and that a submission made by the

Commissioner after that date but before the offender is released must be taken into consideration with a view to the Parole Authority revoking the parole order under section 130.

Parole order to give effect to post-release plan

Schedule 1 [10] amends section 128 so as to require the conditions of an offender's parole order to give effect to a post-release plan prepared for the offender by the Probation and Parole Service. **Schedule 1 [11]** makes a consequential amendment to section 128 (3).

Extension of period between decision to grant parole and release on parole

Schedule 1 [24], [34] and [35] amend sections 141 and 151 so as to allow the Parole Authority to delay releasing an offender for up to 35 days after its decision to grant parole (enabling it to ensure that the offender can be released into an appropriate post-release program) and so as to require the Parole Authority to delay releasing a serious offender for at least 14 days (allowing time for an application to be made under section 156 for a review of its decision to grant parole). **Schedule 1 [20]** amends section 138 so as to set similar timeframes. **Schedule 1 [21]** makes a consequential amendment to section 138 (1A).

Review of Parole Authority decisions

Schedule 1 [36] amends sections 151, 155, 156, 157, 176, 177 and 178 so as to provide that decisions of the Parole Authority are to be reviewable by the Supreme Court rather than by the Court of Criminal Appeal. **Schedule 1 [39] and [46]** make consequential amendments to certain headings. A consequential amendment to section 48 of the *Supreme Court Act 1970* (**Schedule 2.7**) will result in such a review being heard in the Common Law Division of the Supreme Court.

Suspension of parole orders

Schedule 1 [44] inserts a new section 172A into the Act. The proposed section enables the Commissioner to apply to a judicial member of the Parole Authority for an order suspending an offender's parole order and, if necessary, a warrant for the offender's arrest. Such an order will only be made if the judicial member is satisfied that the Commissioner has reasonable grounds for believing that the offender is in breach of the parole order or that there is a serious risk that the offender will leave the State, harm another person or commit an indictable offence, and that there is insufficient time to call a meeting of the Parole Authority to deal with the matter. A suspension order will remain in force for up to 28 days after the offender is returned to custody, so as to allow time for an inquiry to be conducted into those allegations.

Penalty for misconduct before Parole Authority

Schedule 1 [54] amends section 189 so as to provide that the maximum penalty for misconduct before the Parole Authority is to be 20 penalty units or imprisonment for 28 days. Currently the maximum penalty is 10 penalty units.

Access to documents held by Parole Authority

Schedule 1 [56] inserts a new section 193A into the Act. The proposed section entitles the Minister to be given access to all documents held by or on behalf of the Parole Authority, and entitles the victims of a serious offender to be given access to all such documents other than those whose release is prohibited by section 194.

Schedule 1 [57] amends section 194 so as to provide that a judicial member of the Parole Authority may prohibit disclosure of a document on the ground that the document might adversely affect the supervision of offenders who have been released on parole or that the document might disclose the contents of an offender's medical, psychiatric or psychological report. **Schedule 1 [58]** makes a consequential amendment to section 194 (2).

Recommendations by Parole Authority to Commissioner of Corrective Services

Schedule 1 [56] inserts a new section 193B into the Act. The proposed section

authorises the Parole Authority to make recommendations to the Commissioner as to the preparation of offenders for release on parole, and requires the Commissioner to have regard to (but not be bound by) any such recommendation.

Parole Authority to record reasons for its decisions

Schedule 1 [56] inserts a new section 193C into the Act. The proposed section requires the Parole Authority to keep records of the reasons for its decisions, and to supply copies of those reasons to the Minister, Commissioner or Probation and Parole Service on request. The proposed section also provides that the Parole Authority's decisions under Part 6 or 7 of the Act are final. **Schedule 1 [15]** consequentially repeals section 131A.

Reports by Serious Offenders Review Council

Schedule 1 [59] amends section 198 so as to prescribe the matters to be taken into consideration by the Review Council when it prepares a report with respect to the release on parole of a serious offender. **Schedule 1 [60]** makes a consequential amendment to section 198 (3).

Term of appointment of acting Deputy Chairpersons

Schedule 1 [71] amends clause 2 of Schedule 1 so as to allow a judicially qualified person to be appointed as acting Deputy Chairperson of the Parole Authority for any period up to 3 years.

Schedule 1 [73] amends clause 2 of Schedule 2 so as to allow a judicially qualified person to be appointed as acting Deputy Chairperson of the Review Council for any period up to 3 years.

Minor amendments

Schedule 1 [2], [7], [8], [38], [63], [64], [65] and [69] amend sections 3, 73, 154A, 236A, 236B, 236C, 236D and 244, and uncommenced sections 106F, 106G and 106U, as a consequence of the Corrections Health Service having been renamed (under the *Health Services Act 1997*) as "Justice Health".

Schedule 1 [3] amends section 4 so as to make it clear that Part 2 applies to persons given into the keeping of a correctional officer under section 250.

Schedule 1 [5] inserts a definition of *criminal offence* into section 51. **Schedule 1 [4], [6] and [70]** make consequential amendments to sections 51, 58 and 256.

Schedule 1 [13] amends section 129 so that an offender who is on release on parole will no longer be required to report changes of address. **Schedule 1 [12]** makes a consequential amendment to section 129.

Schedule 1 [40], [42] and [43] amend sections 163, 167 and 170 so as to enable the Parole Authority to revoke a periodic detention order, home detention order or parole order on its own motion or on the recommendation of the Commissioner or (in the case of a home detention order or parole order) a probation and parole officer.

Schedule 1 [45] amends section 173 so as to ensure that a notice of revocation of parole is served on an offender no later than 21 days after the offender is returned to custody.

Schedule 1 [47] amends section 179 so as to provide that the rights of appeal that apply to the revocation of periodic detention orders, home detention orders and parole orders do not apply in relation to an order that is revoked as a consequence of the revocation of some other such order. **Schedule 1 [14]** amends section 130 to make it clear that those rights exist not only in relation to parole orders that are revoked under Part 7 but also in relation to parole orders that are revoked under section 130.

Schedule 1 [55] amends section 192 so as to enable the Minister to require the Parole Authority to furnish a report to the Minister as to why a particular offender has been released. The Minister is already able to require the Parole Authority to furnish a report as to whether a particular offender should be released.

Schedule 1 [61] amends section 232 (1) so as to make it clear that the care, control and management of offenders who are held in custody is the responsibility of the

Commissioner. **Schedule 1 [62]** makes a consequential amendment to section 232 (2).

Schedule 1 [66], [67] and [68] amend sections 236E, 236H and 236I to deal with inappropriate references to authorised officers.

Schedule 1 [2] substitutes a number of definitions with new definitions to clarify the meaning of certain words and expressions.

Savings and transitional provisions

Schedule 1 [74] amends clause 1 of Schedule 5 so as to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [75] inserts a new Part at the end of Schedule 5 so as to make specific provision with respect to certain matters arising as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of other Acts and instruments

Schedule 2.1–2.6 amend a number of Acts and instruments as a consequence of the renaming of the Parole Board as the State Parole Authority.

Schedule 2.7 amends the *Supreme Court Act 1970* so as to exclude the Parole Authority from the definition of ***specified tribunal*** in section 48 (1) of that Act. Consequently, proceedings to review decisions of the Parole Authority (which, pursuant to the amendments to be made by **Schedule 1 [36]**, will in future be dealt with by the Supreme Court rather than the Court of Criminal Appeal) will not be assigned to the Court of Appeal, but will instead be assigned to the Common Law Division of the Supreme Court.