

PROBATION AND PAROLE BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:—

- Child Welfare (Probation and Parole) Amendment Bill, 1983;
- Defamation (Probation and Parole) Amendment Bill, 1983;
- Periodic Detention of Prisoners (Probation and Parole) Amendment Bill, 1983;
- Prisoners (Interstate Transfer) (Probation and Parole) Amendment Bill, 1983;
- Prisons (Amendment) Bill, 1983;
- Crimes (Further Amendment) Bill, 1983.

The objects of this Bill are—

- (a) to require a court, when sentencing a person to a term of imprisonment of not more than 3 years—
 - (i) to specify a non-probation period for the person; and
 - (ii) to make a probation order authorising the person to be released from prison at the end of the non-probation period;
- (b) to re-enact, with modifications, the provisions of the Parole of Prisoners Act, 1966, relating to parole so that the specification of non-parole periods and release pursuant to parole orders made by the Parole Board ("the Board") shall, subject to those modifications, continue to apply to and in respect of persons sentenced to terms of imprisonment of more than 3 years;
- (c) to make other provisions relating to the release of prisoners on probation or parole, pursuant to orders made under the proposed Act, and the revocation of those orders in certain circumstances, including provisions requiring the review of certain decisions made by the Board; and
- (d) to repeal the Parole of Prisoners Act, 1966.

PART I.—PRELIMINARY.

Clause 1 specifies the short title by which the proposed Act may be cited.

Clause 2 provides that the proposed Act, with certain minor exceptions, is to commence on a day to be proclaimed by the Governor-in-Council.

Clause 3 sets out how the proposed Act is arranged in Parts, Divisions and Schedules.

Clause 4 contains various definitions used in the proposed Act. The definition of "term of imprisonment" prevents a person from being released on probation or parole, pursuant to orders made under the proposed Act, if the person is serving a sentence imposed under the Habitual Criminals Act, 1957, or serving a term of imprisonment by way of periodic detention under the Periodic Detention of Prisoners Act, 1981, or is subject to imprisonment for life or imprisoned or detained in custody under certain other Acts.

PART II.—PROBATION.

DIVISION 1.—*Non-probation Periods.*

Clause 5 requires a court, when sentencing a person to a single term of imprisonment of not less than 6 months nor more than 3 years, to specify a non-probation period for the person or to state its reasons for declining so to do.

Clause 6 requires a court, when sentencing a person to a further term of imprisonment which, together with each other such term which the person is already required to serve, totals not less than 6 months nor more than 3 years, to specify a non-probation period for the person or to state its reasons for declining so to do.

Clause 7 empowers a court to which an appeal has been made against a conviction or sentence—

- (a) to vary a non-probation period previously specified; or
- (b) if a non-probation period was not previously specified, to specify a non-probation period.

Clause 8 empowers a prescribed court, on an application made to it by a prisoner, to specify a non-probation period which might have been (but was not) specified by another court and to rectify patent errors which may have occurred in the specification of a non-probation period.

Clause 9 fixes the time for the commencement of a non-probation period for a prisoner as the day on which it is specified or any earlier day specified by the court when specifying the period, being an earlier day on which the prisoner was in custody. The clause also requires a court to specify a non-probation period which will have the effect of requiring the release of a prisoner under a probation order for a period of at least 6 months.

DIVISION 2.—*Probation.*

Clause 10 enables a non-probation period for a prisoner to be reduced by or in accordance with regulations to be made under the proposed Act ("the regulations").

Clause 11 requires a court, when it specifies a non-probation period for a prisoner, to make a probation order authorising the release of the prisoner at the expiration of the non-probation period.

Clause 12 provides that a probation order shall be in force, unless sooner rescinded or revoked, from the expiration of the non-probation period in respect of which it is made until the expiration of the term or terms of imprisonment in relation to which that non-probation period was specified.

Clause 13 declares that a probation order is subject to such terms and conditions, if any, as are prescribed and such terms and conditions as are specified in the order by the court when it makes the order. The clause also empowers a prescribed court to vary certain terms and conditions to which any such order is for the time being subject.

Clause 14 authorises the release of a prisoner from a prison in accordance with the terms and conditions of a probation order.

Clause 15 provides that a person to whom a probation order relates shall be deemed to have served the term or terms of imprisonment in respect of which the probation order was made if the order is not revoked during the period in respect of which it was made.

Clause 16 creates an offence if a person contravenes a term or condition of a probation order to which the person is subject. The penalty for any such offence is imprisonment for a term not exceeding the period extending from the time of the contravention up to the time the order was due to expire.

PART III.—PAROLE.

DIVISION 1.—*The Parole Board.*

Clause 17 provides that there shall be a Parole Board, the members of which are to be appointed by the Governor. The clause also gives effect to the provisions set forth in Schedule 1.

Clause 18 requires that a secretary to the Board shall be employed under the Public Service Act, 1979.

DIVISION 2.—*Non-parole Periods.*

Clause 19 requires a court, when sentencing a person to a single term of imprisonment of more than 3 years, to specify a non-parole period for the person.

Clause 20 requires a court, when sentencing a person to a further term of imprisonment which, together with each other such term to which the person is subject, totals more than 3 years, to specify a non-parole period for the person.

Clause 21 provides that a court may decline to specify a non-parole period otherwise required to be specified by clause 19 or 20 (1), but only where the court states its reasons for declining to specify the period.

Clause 22 empowers a court to which an appeal has been made against a conviction or sentence—

- (a) to vary a non-parole period previously specified; or
- (b) if a non-parole period was not previously specified, to specify a non-parole period.

Clause 23 empowers the Board, whether or not on an application made to it by a prisoner, to specify a non-parole period which might have been (but was not) specified by a court and to rectify patent errors which may have occurred in the specification of a non-parole period.

Clause 24 fixes the time for the commencement of a non-parole period for a prisoner as the day on which it is specified or any earlier day specified by the court or the Board when specifying the period, being an earlier day on which the prisoner was in custody. The clause also requires a court or the Board to specify a non-parole period that will not extend past the expiration of the term or terms of imprisonment in respect of which it is specified.

DIVISION 3.—*Parole.*

Clause 25 enables a non-parole period for a prisoner to be reduced by or in accordance with the regulations.

Clause 26 requires the Board to make any parole order it is empowered to make (which order will authorise the release of a prisoner on parole) unless it has sufficient reason to believe that the prisoner whose release will be authorised by the order would not be able to adapt to normal lawful community life, if released from custody.

Clause 27 obliges the Board to consider, before the expiration of a non-parole period for a prisoner, whether the prisoner should be released on parole at the end of that period. If the Board does not make a parole order authorising the release of the prisoner as a result of that consideration, it is required to serve notice on the prisoner fixing a time at which the prisoner's release on parole may be reconsidered.

Clause 28 permits a prisoner to make submissions to the Board with respect to its reconsideration of the prisoner's release on parole.

Clause 29 requires the Board to determine whether or not a prisoner should be released on parole after a reconsideration required by clause 28. The Board may defer making any such determination once only, but not for more than 2 months.

Clause 30 enables a prisoner who has been refused parole to apply to the Court of Criminal Appeal, subject to certain restrictions, for a direction that the determination made under clause 29 with respect to the prisoner was made upon information which was false, misleading or irrelevant.

Clause 31 provides that a parole order shall be in force, unless sooner rescinded, from the expiration of the non-parole period in respect of which it is made or, where the order is made after the expiration of that period, from the time specified in the order. A parole order continues in force, unless sooner revoked, until the expiration of the terms or terms of imprisonment in relation to which the non-parole period was specified or the expiration of 5 years, whichever first occurs. The period of 5 years may be extended in accordance with the regulations.

Clause 32 declares that a parole order is subject to such terms and conditions, if any, as are prescribed and such terms and conditions as are specified in the order by the Board when it makes the order. The clause also empowers the Board to vary certain terms and conditions to which the order is for the time being subject.

Clause 33 empowers the Board to rescind a parole order, in prescribed circumstances, before a prisoner is released pursuant to the order.

Clause 34 authorises the release of a prisoner from a prison in accordance with the terms and conditions of a parole order.

Clause 35 provides that a person to whom a parole order applies shall be deemed to have served the term or terms of imprisonment in respect of which the parole order was made if the order has not been rescinded before the release of the person from custody and is not revoked during the period in respect of which it was made.

Clause 36 validates parole orders made otherwise than in accordance with procedural requirements of the proposed Act.

Clause 37 enables an inquiry to be conducted (by the Board or a stipendiary magistrate) into a suspected contravention of a term or condition of a parole order without the revocation of the order.

Clause 38 specifies the circumstances in which a parole order may be revoked. Where the Board finds that a ground for revocation arose before the order revoking the parole order is made, the Board may revoke the parole order retrospectively.

Clause 39 authorises the issue of a warrant for the apprehension of a person who was the subject of a parole order which has been revoked or, in certain circumstances, is the subject of an inquiry to be conducted under clause 37.

Clause 40 requires a review of the revocation of a parole order to be conducted by the Board except where the order was revoked by a court and permits a prisoner to make submissions to the Board in relation to the revocation of a parole order made with respect to the prisoner.

Clause 41 provides that, where a person is returned to prison to serve part of a period of imprisonment as a consequence of the revocation of a parole order, the part required to be served shall be reduced by the interval between the release of the prisoner under the parole order and the revocation of the parole order.

PART IV.—MISCELLANEOUS.

Clause 42 states the effect where various combinations of non-probation periods or non-parole periods, or both, are specified for the same person.

Clause 43 requires non-parole periods of 12 months or less to be treated as non-probation periods.

Clause 44 restricts the disclosure of information relating to prisoners which has been furnished to the Board.

Clause 45 enables certain members of the Board to restrict the disclosure of information to prisoners.

Clause 46 requires the Board to provide reports to the Minister in specified circumstances.

Clause 47 enables the Board to obtain certain information relating to prisoners from the Corrective Services Commission of New South Wales, the Commissioner of Police, the Director (within the meaning of the Child Welfare Act, 1939) and the Secretary of the Department of Health.

Clause 48 declares that the proposed Act does not affect the Royal prerogative of mercy.

Clause 49 enables proceedings for an offence against the proposed Act to be brought in a court of petty sessions.

Clause 50 empowers the making of regulations.

Clause 51 effects repeals of the Acts and provisions of Acts listed in Schedule 2.

Clause 52 declares that the savings and transitional provisions contained in Schedule 3 have effect.

Clause 53 provides for the amendment of the proposed Act as a consequence of the enactment of certain provisions of the Community Welfare Act, 1982, which are to be commenced at a future date.

Schedule 1 makes provisions relating to the members of the Board, the constitution of Divisions of the Board and proceedings before the Board and Divisions of the Board.

Schedule 2 specifies the Acts and provisions repealed by clause 51.

Schedule 3 makes provisions of a saving and transitional nature.

Schedule 4 contains the amendments to the proposed Act intended to be effected under clause 53.

PROBATION AND PAROLE ACT, 1983, No. 194

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 194, 1983.

An Act with respect to the release of certain prisoners on probation or parole; to repeal the Parole of Prisoners Act, 1966; and for other purposes. [Assented to, 31st December, 1983.]

See also Child Welfare (Probation and Parole) Amendment Act, 1983; Defamation (Probation and Parole) Amendment Act, 1983; Periodic Detention of Prisoners (Probation and Parole) Amendment Act, 1983; Prisoners (Interstate Transfer) (Probation and Parole) Amendment Act, 1983; Prisons (Amendment) Act, 1983; Crimes (Further Amendment) Act, 1983.

Probation and Parole.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Probation and Parole Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—PROBATION—*ss.* 5–16.

DIVISION 1.—*Non-probation Periods*—*ss.* 5–9.

DIVISION 2.—*Probation*—*ss.* 10–16.

PART III.—PAROLE—*ss.* 17–41.

DIVISION 1.—*The Parole Board*—*ss.* 17, 18.

DIVISION 2.—*Non-parole Periods*—*ss.* 19–24.

DIVISION 3.—*Parole*—*ss.* 25–41.

Probation and Parole.

PART IV.—MISCELLANEOUS—ss. 42–53.

SCHEDULE 1.—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE.

SCHEDULE 2.—REPEALS.

SCHEDULE 3.—SAVINGS AND TRANSITIONAL PROVISIONS.

SCHEDULE 4.—AMENDMENTS RELATED TO THE COMMUNITY WELFARE ACT, 1982.

Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“appointed day” means the day appointed and notified under section 2 (2);

“Board” means the Parole Board constituted under this Act;

“Commission” means the Corrective Services Commission of New South Wales;

“court” includes a judge, stipendiary magistrate and justice;

“imprisonment” includes penal servitude;

“judicial member of the Board” means the Chairman or the Deputy Chairman of the Board;

“non-parole period” means a period specified under section 19, 20 (1), 22 (1) (b) or 23 (1);

“non-probation period” means a period specified under section 5, 6 (1), 7 (1) (b) or 8 (1);

“parole order” means an order made under section 27 (2) or 29 (3);

Probation and Parole.

“prison” has the meaning ascribed thereto in the Prisons Act, 1952;

“prisoner” has the meaning ascribed thereto in the Prisons Act, 1952;

“probation order” means an order made under section 11 (1);

“regulation” means a regulation made under this Act;

“term of imprisonment”, in relation to a person, means a term for which the person is sentenced to imprisonment by a court, inclusive of any period for which the person is or may be released under a probation order, a parole order or a license granted under section 463 of the Crimes Act, 1900, but does not include—

- (a) imprisonment pursuant to the Habitual Criminals Act, 1957;
- (b) subject to section 27 (b) of the Periodic Detention of Prisoners Act, 1981, imprisonment in respect of which an order made under section 5 (1) of that Act is in force;
- (c) imprisonment in default of payment of any fine or penalty;
- (d) imprisonment for life or imprisonment pursuant to a sentence of death;
- (e) keeping in strict custody pursuant to section 23 (3) of the Mental Health Act, 1958; or
- (f) imprisonment pursuant to Part XIV of the Child Welfare Act, 1939.

(2) In this Act, a reference to—

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Except in so far as the context or subject-matter otherwise indicates or requires, in this Act, Schedule 1 excepted, a reference to the Board includes a reference to a Division of the Board, within the meaning of that Schedule.

Probation and Parole.

PART II.

PROBATION.

DIVISION 1.—*Non-probation Periods.*

Initial non-probation period.

- 5.** Where a person—
- (a) was convicted before, or is convicted on or after, the appointed day;
 - (b) is sentenced on or after that day by a court to a term of imprisonment of not less than 6 months and not more than 3 years in respect of that conviction; and
 - (c) is, when so sentenced, not serving another term of imprisonment,
- the court shall, upon sentencing the person—
- (d) specify a period before the expiration of which the person shall not be released on probation pursuant to this Act, except as may be provided otherwise by this Act; or
 - (e) decline to specify any such period and state the reasons for that decision.

Further non-probation period.

- 6. (1)** Where a person—
- (a) was convicted before, or is convicted on or after, the appointed day;
 - (b) is sentenced on or after that day by a court to a term of imprisonment (in this section referred to as the “subsequent term”) of not more than 3 years in respect of that conviction; and
 - (c) is, when so sentenced, serving another term of imprisonment of not more than 3 years imposed within or outside New South Wales (in this section referred to as the “original term”) which is required to be served cumulatively upon, or partly cumulatively upon and partly concurrently with, the subsequent term,
- the court shall, if the term of imprisonment to which the person would have been sentenced, had the original term and subsequent term been imposed by a single sentence giving effect to the requirements relating to the order

Probation and Parole.

in which the original term and subsequent term are to be served), would not have been less than 6 months or more than 3 years, upon sentencing the person to the subsequent term—

- (d) specify a period before the expiration of which the person shall not be released on probation pursuant to this Act, except as may be provided otherwise by this Act; or
- (e) decline to specify any such period and state the reasons for that decision.

(2) Subsection (1) applies whether or not a non-probation period was specified in respect of the original term.

Appeals.

7. (1) Where an appeal is lodged against the conviction of, or a sentence imposed upon, a person by a court (in this section referred to as “the original court”), the court determining the appeal may—

- (a) if a non-probation period was specified in respect of any term of imprisonment imposed upon the conviction or by the sentence, by an order, vary or rescind the period so specified (whether or not the court varies the term of imprisonment); or
- (b) if a non-probation period was not so specified, specify a period which the original court was entitled to specify pursuant to section 5 or 6 (1), as the case may be.

(2) Where, pursuant to subsection (1) (a), a court varies a period specified pursuant to section 5 or 6 (1), the period so specified by the original court shall be deemed to be the period so varied.

(3) Where, pursuant to subsection (1) (a), a court rescinds a period specified pursuant to section 5 or 6 (1), the court shall state the reasons for that decision.

(4) Where a court declines to specify a period pursuant to subsection (1) (b) in any case in which—

- (a) the court is entitled to do so; and
- (b) the original court has failed to specify a non-probation period (without making a decision to decline to specify a non-probation period or without stating the reasons for any such decision),

the court shall state the reasons for that decision.

Probation and Parole.

Further power to specify non-probation period.

8. (1) Where a prescribed court, upon application made to the court by a prisoner—

(a) is satisfied—

- (i) that a court (in this subsection referred to as “the original court”) has, whether on or after the appointed day, imposed upon the prisoner a term of imprisonment in respect of which the original court was entitled to specify a period pursuant to section 5 or 6 (1); and
- (ii) that the original court has failed to specify a non-probation period in respect of that term (without making a decision to decline to specify any such period or without stating the reasons for that decision); or

(b) is satisfied that a court has made a patent error in specifying a non-probation period,

the prescribed court may specify a period which the original court or court referred to in paragraph (b) was entitled to specify pursuant to section 5 or 6 (1).

(2) In subsection (1) (b), “patent error” includes a mistake of fact and an error in a calculation.

(3) A prescribed court shall not specify a period pursuant to subsection (1) unless it is satisfied from information before the court that an appeal against a conviction of, or sentence imposed upon, the prisoner, or both, has not been commenced or, if commenced, has been determined.

(4) Where a prescribed court declines to specify a period pursuant to subsection (1) in a case in which the court is entitled to do so, the court shall state the reasons for its decision.

Probation and Parole.

Commencement and duration.

9. (1) A non-probation period specified pursuant to section 5 with respect to a sentence (or pursuant to section 7 (1) (b) or 8 (1) because a court was entitled so to specify a non-probation period) shall commence or be deemed to have commenced, as the case may require—

- (a) except where an earlier day is specified under paragraph (b)—
on the day on which the sentence is or was imposed; or
- (b) where the person in respect of whom the period is specified was, by reason of the offence to which the sentence relates, in custody before the day on which the sentence is or was imposed—on such earlier day, if any, as is specified by the court when specifying the period, being a day on which the person was so in custody.

(2) A non-probation period specified pursuant to section 6 (1) with respect to an original term and a subsequent term (or pursuant to section 7 (1) (b) or 8 (1) because a court was entitled so to specify a non-probation period)—

- (a) shall commence, or be deemed to have commenced, as the case may require—
 - (i) except where an earlier day is specified under subparagraph (ii)—on the day on which the original term was imposed;
or
 - (ii) where the person in respect of whom the period is specified was, by reason of the offence to which the original term or subsequent term relates, in custody before the day on which the original term was imposed—on such earlier day, if any, as is specified by the court when specifying the period, being a day on which the person was so in custody;
and
- (b) where the court so orders, shall be in substitution for any non-probation period specified in respect of the original term, being a non-probation period to which reference is made by the court.

(3) Where, by reason of an order made under subsection (2) (b), a non-probation period is in substitution for another non-probation period, any probation order made as a consequence of the specification of the other non-probation period shall be deemed to be rescinded.

Probation and Parole.

(4) A non-probation period may not extend past the date occurring 6 months before the expiration of—

- (a) except as provided by paragraph (b), the term of imprisonment in respect of which the non-probation period is determined; or
- (b) where the non-probation period is determined in respect of more than one term of imprisonment, the term of imprisonment which last expires.

DIVISION 2.—*Probation.*

Interpretation.

10. In this Division and in any probation order, a reference to a non-probation period, in relation to a prisoner, is a reference to the non-probation period reduced by the period, if any, by which the non-probation period is required to be reduced in relation to the prisoner by or in accordance with the regulations.

Duty to make probation order.

11. (1) When a court specifies a non-probation period for a prisoner, the court shall also order that the prisoner be released from prison on probation at the expiration of the non-probation period for the prisoner.

(2) A document purporting to be a certificate made or issued by a prescribed officer recording the particulars of an order made under subsection (1) shall in all courts and before all persons and bodies authorised by law to receive evidence be prima facie evidence of the matters therein set out.

Probation and Parole.

Duration of probation order.

12. A probation order made by a court as a consequence of the specification of a non-probation period for a prisoner shall, unless it is sooner rescinded or revoked, be in force for the term of the order, being the interval of time commencing with the expiration of the non-probation period for the prisoner and concluding with—

- (a) except as provided by paragraph (b), the expiration of the term of imprisonment of which the non-probation period forms part; or
- (b) where the non-probation period was specified in respect of more than one term of imprisonment—the expiration of the term of imprisonment which last expires.

Terms and conditions of probation order.

13. (1) A probation order shall be subject to the terms and conditions, if any, which are prescribed in relation to the order and—

- (a) except as provided by paragraph (b), the terms and conditions which are specified by the court when the court makes the order; or
- (b) where the terms and conditions so specified have been varied under subsection (2), those terms and conditions as so varied for the time being.

(2) On application made as prescribed, a prescribed court may (whether before or after the release under the probation order of the person to whom the probation order relates) vary the terms and conditions, other than any prescribed terms and conditions, to which a probation order is for the time being subject.

(3) A term or condition referred to in subsection (1) (a) or (b) to which a probation order purports to be subject for the time being has no effect to the extent, if any, to which it is inconsistent with a term or condition prescribed in relation to the order.

Probation and Parole.

(4) The terms and conditions of a probation order may include terms and conditions requiring the person to whom the order relates to be subject to the supervision of a prescribed officer, or an officer of a prescribed class or description, during the period specified in the order.

(5) Notwithstanding the terms and conditions to which a probation order made with respect to a person is subject, a prescribed court may, on application made as prescribed, terminate any requirement made by the order or any such term or condition for or with respect to the person's being subject to supervision as referred to in subsection (4).

Release under probation order.

14. A probation order made with respect to a prisoner which has not been rescinded shall be sufficient warrant for the governor of the prison in which the prisoner is detained or any other person having lawful custody of the prisoner to release the prisoner in accordance with the tenor of the order.

Effect of probation order.

15. Where a probation order which has not been rescinded is not revoked during the period in respect of which it was made, the person to whom the order relates shall, upon the expiration of the period, be deemed to have served the term or, if more than one, the terms of imprisonment in respect of which the probation order was made.

Breach of probation order.

16. (1) A person who contravenes a term or condition of a probation order which relates to the person is guilty of an offence against this Act and liable to imprisonment for a term not exceeding the residue of the term of the order at the time at which the contravention occurred.

(2) Proceedings for an offence under subsection (1)—

(a) shall be taken only by a person acting with the authority of a prescribed court granted on application made as prescribed; and

Probation and Parole.

- (b) shall be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.
- (3) In proceedings before a court for an offence under subsection (1), the time at which a contravention of a term or condition of a probation order occurred shall be that time as determined by the court.
- (4) A court may not sentence a person to a term of imprisonment for an offence under subsection (1) so that—
- (a) the term would be required to be served cumulatively upon, or partly cumulatively upon and partly concurrently with, another term imposed upon the person by another sentence; and
 - (b) the total term of imprisonment to which the person would be sentenced, were both terms to be imposed by a single sentence (giving effect to the requirements relating to the order in which the terms are to be served), would be more than 3 years.
- (5) Where a person is sentenced to a term of imprisonment for an offence under subsection (1) by reason of the contravention of a term or condition of a probation order, the probation order shall be deemed to be revoked.
- (6) A court, in sentencing a person to whom a probation order relates to a term of imprisonment otherwise than for an offence under subsection (1), may revoke the probation order.
- (7) Where a probation order is revoked under subsection (5) or (6), the person to whom the probation order related shall be deemed to have served the term or, if more than one, the terms of imprisonment in respect of which the probation order was made.
-

Probation and Parole.

PART III.

PAROLE.

DIVISION 1.—*The Parole Board.*

Constitution and procedure of the Parole Board.

17. (1) There shall be a Parole Board which shall have and may exercise the functions conferred and imposed upon it by or under this or any other Act and the regulations.

(2) The members of the Board shall be appointed by the Governor.

(3) Schedule 1 has effect.

Secretary to the Board.

18. For the purposes of this Act, a secretary to the Board shall be employed under the Public Service Act, 1979.

DIVISION 2.—*Non-parole Periods.*

Initial non-parole period.

19. Where a person—

(a) was convicted before, or is convicted on or after, the appointed day;

(b) is sentenced on or after that day by a court to a term of imprisonment of more than 3 years in respect of that conviction;
and

(c) is, when so sentenced, not serving another term of imprisonment,

the court shall, upon sentencing the person, specify a period before the expiration of which the person shall not be released on parole pursuant to this Act, except as may be provided otherwise by this Act.

Probation and Parole.

Further non-parole period.**20. (1)** Where a person—

- (a) was convicted before, or is convicted on or after, the appointed day;
- (b) is sentenced on or after that day by a court to a term of imprisonment (in this section referred to as the “subsequent term”) in respect of that conviction; and
- (c) is, when so sentenced, serving another term of imprisonment imposed within or outside New South Wales (in this section referred to as the “original term”) which is required to be served cumulatively upon, or partly cumulatively upon and partly concurrently with, the subsequent term,

the court shall, if the term of imprisonment to which the person would have been sentenced, had the original term and subsequent term been imposed by a single sentence (giving effect to the requirements relating to the order in which the original term and subsequent term are to be served), would have been more than 3 years, upon sentencing the person to the subsequent term, specify a period before the expiration of which the person shall not be released on parole pursuant to this Act, except as may be provided otherwise by this Act.

(2) Subsection (1) applies whether or not a non-probation period or non-parole period was specified in respect of the original term.

Discretion of court.

21. (1) Notwithstanding sections 19 and 20 (1), if it appears to a court required by section 19 or 20 (1) to specify a non-parole period that—

- (a) by reason of the nature of the offence or the antecedent character of the person convicted; or
- (b) for any other reason which the court considers sufficient,

the specification of a non-parole period is undesirable, the court may decline to specify a non-parole period.

(2) Where a court, pursuant to subsection (1), declines to specify a non-parole period, the court shall state the reasons for that decision.

Probation and Parole.

Appeals.

22. (1) Where an appeal is lodged against the conviction of, or a sentence imposed upon, a person by a court (in this section referred to as "the original court"), the court determining the appeal may—

- (a) if a non-parole period was specified in respect of any term of imprisonment imposed upon the conviction or by the sentence, by an order, vary or rescind the period so specified (whether or not the court varies the term of imprisonment); or
- (b) if a non-parole period was not so specified, specify a period which the original court was entitled to specify pursuant to section 19 or 20 (1), as the case may be.

(2) Where, pursuant to subsection (1) (a), a court varies a period specified pursuant to section 19 or 20 (1), the period so specified by the original court shall be deemed to be the period so varied.

(3) Where, pursuant to subsection (1) (a), a court rescinds a period specified pursuant to section 19 or 20 (1), the court shall state the reasons for that decision.

(4) Where, a court declines to specify a period pursuant to subsection (1) (b) in any case in which—

- (a) the court is entitled to do so; and
- (b) the original court has failed to specify a non-parole period (without making a decision to decline to specify a non-parole period or without stating the reasons for any such decision),

the court shall state the reasons for that decision.

Board may specify non-parole period.

23. (1) Where the Board—

- (a) is satisfied—
 - (i) that a court has, whether before, on or after the appointed day, imposed upon a prisoner a term of imprisonment in respect of which the court was entitled to specify a period pursuant to section 4 or 4A of the Parole of Prisoners Act, 1966, or pursuant to section 19 or 20 (1); and

Probation and Parole.

(ii) that the court has failed to specify a non-parole period in respect of that term (without making a decision to decline to specify any such period or without stating the reasons for that decision); or

(b) is satisfied that a court has made a patent error in specifying a non-parole period for a prisoner,

the Board, whether or not on the application of the prisoner, may specify a period which the court was entitled to specify pursuant to section 19 or 20 (1).

(2) In subsection (1) (b), "patent error" includes a mistake of fact and an error in a calculation.

(3) The Board shall not specify a period pursuant to subsection (1) unless it is satisfied from information before the Board that an appeal against a conviction of, or sentence imposed upon, the prisoner, or both, has not been commenced or, if commenced, has been determined.

(4) Where the Board declines to specify a period pursuant to subsection (1) in a case in which the Board is entitled so to do by reason of the sentence imposed, the Board shall record its decision and the reasons therefor in its minutes, whether the sentence was imposed before, on or after the appointed day.

(5) Where the Board—

(a) specifies a period pursuant to subsection (1); or

(b) declines so to specify a period,

the Board shall forthwith cause the prisoner concerned to be advised accordingly by notice in writing served on the prisoner.

Probation and Parole.

Commencement and duration.

24. (1) A non-parole period specified pursuant to section 19 with respect to a sentence (or pursuant to section 22 (1) (b) or 23 (1) because a court was entitled so to specify a non-parole period)—

(a) shall commence or be deemed to have commenced, as the case may require—

(i) except where an earlier day is specified under subparagraph (ii)—on the day on which the sentence is or was imposed;
or

(ii) where the person in respect of whom the period is specified was by reason of the offence to which the sentence relates, in custody before the day on which the sentence is or was imposed—on such earlier day, if any, as is specified by the court or the Board, as the case may be, when specifying the period, being a day on which the person was so in custody; and

(b) shall not be of less than 6 months' duration.

(2) A non-parole period specified pursuant to section 20 (1) with respect to an original term and a subsequent term (or pursuant to section 22 (1) (b) or 23 (1) because a court was entitled so to specify a non-parole period)—

(a) shall commence, or be deemed to have commenced, as the case may require—

(i) except where an earlier day is specified under subparagraph (ii)—on the day on which the original term was imposed; or

(ii) where the person in respect of whom the period is specified was by reason of the offence to which the original term or subsequent term relates, in custody before the day on which the original term was imposed—on such earlier day, if any, as is specified by the court or the Board, as the case may be, when specifying the period, being a day on which the person was so in custody; and

Probation and Parole.

- (b) where the court or the Board so orders, shall be in substitution for any non-probation period or non-parole period specified in respect of the original term, being a non-probation period or non-parole period to which reference is made by the court or the Board, as the case may be.

(3) Where, by reason of an order made under subsection (2) (b), a non-parole period is in substitution for a non-probation period or any other non-parole period—

- (a) any probation order made as a consequence of the specification of the non-probation period; and
- (b) any parole order made as a consequence of the specification of the other non-parole period,

shall be deemed to be rescinded.

(4) A non-parole period may not extend past the date of the expiration of—

- (a) except as provided by paragraph (b), the term of imprisonment in respect of which the non-parole period is determined; or
- (b) where the non-parole period is determined in respect of more than one term of imprisonment, the term of imprisonment which last expires.

DIVISION 3.—*Parole.*

Interpretation.

25. In this Division and in any parole order, a reference to a non-parole period, in relation to a prisoner, is a reference to the non-parole period reduced by the period, if any, by which the non-parole period is required to be reduced in relation to the prisoner by or in accordance with the regulations.

Probation and Parole.

General duty of the Board.

26. (1) Where the Board is empowered to make a parole order with respect to a prisoner, the Board shall make the order unless—

- (a) the Board determines that it has sufficient reason to believe that the prisoner, if released from custody, would not be able to adapt to normal lawful community life; or
- (b) under section 29 (1), the Board defers the making of a determination whether or not the prisoner should be released on parole.

(2) Subsection (1) (a) does not authorise the Board to determine that a prisoner should be refused release on parole by reason only that, in the opinion of the Board, the prisoner may become liable to be deported.

Consideration by the Board.

27. (1) The Board shall—

- (a) not less than 60 days before the expiration of the non-parole period for a prisoner; and
- (b) where, after the expiration of a non-parole period specified for the prisoner (being a non-parole period which has not been rescinded), a prisoner is serving a sentence or sentences in respect of which the non-parole period was specified—
 - (i) within the initial and each successive period of 12 months occurring after a notice has been served pursuant to subsection (2) (c) on the prisoner, but only if the prisoner has not been released under a parole order subsequently to the service of the notice; and
 - (ii) within the initial and each successive period of 12 months occurring after the revocation (otherwise than pursuant to section 38 (8)) of a parole order which was made as a consequence of the specification of the non-parole period, but only if a notice has not been served pursuant

Probation and Parole.

to subsection (2) (c) on the prisoner and the prisoner has not been released under a further parole order subsequently to the revocation of the parole order,

consider whether the prisoner should be released on parole.

(2) Forthwith after consideration of the case of a prisoner pursuant to subsection (1), the Board shall do one of the following, namely:

- (a) where consideration of the case was required by subsection (1) (a), authorise and direct, by order in writing, that the prisoner be released from lawful custody on parole at the time specified in the order, being—
 - (i) except as provided by subparagraph (ii), the time at which the non-parole period for the prisoner expires; or
 - (ii) if the prisoner has, in the opinion of the Board, exhibited excellence in conduct, training, industry, education or some other aspect of penal rehabilitation during the expired part of the non-parole period, a time occurring not more than 21 days before the expiration of the non-parole period for the prisoner;
- (b) where consideration of the case was required by subsection (1) (b), authorise and direct, by order in writing, that the prisoner be released from lawful custody on parole at the time specified in the order, being a time occurring not later than 7 days after the day on which the order is made; or
- (c) in any case, cause the prisoner to be advised by notice in writing served on the prisoner that the Board does not intend to make an order under this subsection with respect to the prisoner.

(3) A notice served on a prisoner pursuant to subsection (2) (c) shall—

- (a) specify a date, occurring as soon as practicable but not earlier than 14 days after the date on which it is served, on which the Board shall meet for the purpose of reconsidering whether the prisoner should be released on parole;

Probation and Parole.

- (b) require the prisoner to notify the secretary to the Board, not later than 7 days before the date so specified, if the prisoner intends to make representations to the Board in relation to being released on parole;
- (c) be in the prescribed form; and
- (d) except as provided by section 45, be accompanied by copies of the reports and other documents intended to be used by the Board in determining whether the prisoner should be released on parole.

Review by the Board.

28. (1) Where a notice has been served on a prisoner pursuant to section 27 (2) (c), the Chairman of the Board shall convene a meeting of the Board, on the date specified under section 27 (3) (a) in the notice, for the purpose of reconsidering whether the prisoner should be released on parole.

(2) At the meeting of the Board convened pursuant to subsection (1), or at a subsequent meeting to which that meeting is adjourned or postponed (which shall, where the firstmentioned meeting was held before the expiration of the non-parole period for the prisoner, also be held before the expiration of that period), the prisoner may make submissions to the Board with respect to being released under a parole order, if the prisoner has notified the secretary to the Board in accordance with section 27 (3) (b).

Determination after review.

29. (1) At a meeting referred to in section 28, the Board shall, after reviewing all the reports, documents and other information placed before it, determine whether or not the prisoner should be released on parole or whether, for reasons specified by the Board in its minutes, the making of that determination should be deferred.

(2) The making of a determination, deferred by the Board under subsection (1) at a meeting held during the non-parole period for the prisoner—

- (a) may be deferred once only; and
- (b) shall not be deferred for more than 2 months.

Probation and Parole.

(3) Where, pursuant to this section, the Board determines that a prisoner should be released on parole, the Board shall authorise and direct, by order in writing, that the prisoner be released from lawful custody on parole at the time specified in the order, being—

- (a) except as provided by paragraph (b), the time at which the non-parole period for the prisoner expires; or
- (b) where the determination is made after the expiration of the non-parole period for the prisoner, the time (occurring not later than 7 days after the day on which the order is made) specified in the order.

(4) Where, pursuant to this section, the Board determines that a prisoner should not be released on parole or defers making a determination, the Board shall—

- (a) cause the reason for the determination or deferral, as the case may be, to be recorded in the minutes of the Board; and
- (b) cause the prisoner to be advised by notice in writing served on the prisoner of the determination or deferral and the reasons for the determination or deferral.

Application to Court of Criminal Appeal.

30. (1) Where—

- (a) the Board has determined, pursuant to section 29, that a prisoner should not be released on parole; and
- (b) the prisoner alleges that the determination of the Board was made upon information which was false, misleading or irrelevant,

the prisoner may, in accordance with rules of court, apply to the Court of Criminal Appeal for a direction to be given to the Board as to whether the information was false, misleading or irrelevant and the Court of Criminal Appeal may give such direction with respect to the information as the court thinks fit.

Probation and Parole.

(2) An application under this section shall not be considered by the Court of Criminal Appeal unless the court is satisfied that the application is not an abuse of process and there is prima facie ground for the application.

(3) At the hearing or determination of an application under this section, the applicant is not entitled to appear in person, except by leave of the court.

Duration of parole order.

31. (1) A parole order made by the Board as a consequence of the specification of a non-parole period shall, unless it is sooner rescinded or revoked, be in force for the term of the order, being the interval of time commencing at the time specified under section 27 (2) (a) or (b) or 29 (3) (a) or (b), as the case may be, in the order and concluding with—

- (a) except as provided by paragraph (b)—the expiration of the term of imprisonment of which the non-parole period forms part; or
- (b) where the non-parole period was specified in respect of more than one term of imprisonment—the expiration of the term of imprisonment which last expires.

(2) Notwithstanding subsection (1), a parole order which would otherwise continue to have effect shall cease to have effect on the expiration of the period of 5 years after the time when it was first in force, unless the Board—

- (a) before the expiration of that period, reviews the order in accordance with the regulations; and
- (b) continues the term of the order in force, in accordance with the regulations, by reason of the prisoner to whom the order relates having breached a term or condition of the order during that period.

(3) Nothing in subsection (2) permits the term of a parole order to be continued in force so that the order has effect after the expiration of the term or, if more than one, the terms of imprisonment in respect of which the order was made.

Probation and Parole.

Terms and conditions of parole order.

32. (1) A parole order shall be subject to the terms and conditions, if any, which are prescribed in relation to the order and—

(a) except as provided by paragraph (b), the terms and conditions which are specified in the order when the Board makes the order;
or

(b) where the terms and conditions so specified have been varied under subsection (2), those terms and conditions as so varied for the time being.

(2) The Board may, by order in writing served personally or by post (whether before or after the release of the person under the parole order) on the person to whom a parole order relates, vary the terms and conditions, other than any prescribed terms and conditions, to which the parole order is for the time being subject.

(3) A term or condition referred to in subsection (1) (a) or (b) to which a parole order purports to be subject for the time being has no effect to the extent, if any, to which it is inconsistent with a term or condition prescribed in relation to the order.

(4) The terms and conditions of a parole order may include terms and conditions—

(a) requiring the person to whom the order relates to be subject to the supervision of a prescribed officer, or an officer of a prescribed class or description, during the period specified by or under the order or the regulations, as the case may be; and

(b) providing for the revocation of the order upon a contravention by the person of a term or condition of the order, or otherwise.

(5) Notwithstanding the terms and conditions to which a parole order is subject, the Board may, by notice in writing served personally or by post on the person to whom the order relates, terminate any requirement made by the order or any such term or condition for or with respect to the person's being subject to supervision as referred to in subsection (4) (a).

Probation and Parole.

Rescission of parole order.

33. The Board, by order in writing, may, in such circumstances as may be prescribed, rescind a parole order before the person to whom the order applies has been released under the order.

Release under parole order.

34. A parole order made with respect to a prisoner which has not been rescinded shall be sufficient warrant for the governor of the prison in which the prisoner is detained or any other person having lawful custody of the prisoner to release the prisoner in accordance with the tenor of the order.

Effect of parole order.

35. Where a parole order which has not been rescinded is not revoked during the period in respect of which it was made, the person to whom the order relates shall—

- (a) except as provided by paragraph (b), upon the expiration of that period; or
- (b) where the parole order ceases to have effect under section 31 (2) —when the parole order so ceases to have effect,

be deemed to have served the term or, if more than one, the terms of imprisonment in respect of which the parole order was made.

Procedural requirements.

36. A parole order is not invalid by reason only of a failure by the Board to comply with any procedural requirement imposed upon the Board by or under this Act.

Probation and Parole.

Inquiry into suspected breach of order.

37. (1) Where the Board has reasonable cause to believe that a person to whom a parole order relates has contravened a term or condition of the order for the contravention of which the order may be revoked, the Board may—

- (a) by notice in writing served personally or by post on the person, require the person to appear before the Board or a court of petty sessions constituted by a stipendiary magistrate at a time and place specified in the notice for the purpose of an inquiry into whether the order should be revoked; or
- (b) where, in the opinion of the Board, the circumstances of the particular case so require, without revoking the order, determine that a warrant should be issued under section 39.

(2) If a person to whom a parole order relates fails to comply with the requirements of a notice served on the person under subsection (1) (a), the Board may—

- (a) without revoking the order, determine that a warrant should be issued under section 39; or
- (b) by an order made under section 38 (1), revoke the order.

(3) Where a person to whom a parole order relates attends before the Board or a court of petty sessions pursuant to—

- (a) the requirements of a notice served under subsection (1) (a); or
- (b) a warrant issued under section 39,

the Board or court, as the case may be, shall forthwith inquire into whether any of the terms and conditions of the order has been contravened.

(4) The person to whom the parole order relates may make submissions to the Board or court, as the case may be, against the revocation of the order.

(5) If an inquiry is conducted under this section by a court of petty sessions, the stipendiary magistrate constituting the court shall—

- (a) in the exercise of the court's functions under this section, have all the functions of a court of summary jurisdiction sitting in open court; and

Probation and Parole.

- (b) forthwith after the conclusion of the inquiry, report to the Board—
 - (i) any determinations made by the court as a consequence of the inquiry; and
 - (ii) any submissions made to the court against revocation of the parole order concerned.

Revocation of parole order.

38. (1) The Board may, by order in writing, revoke a parole order—

- (a) if the terms and conditions of the parole order provide that the order may be revoked by reason of a contravention of any of those terms and conditions by the person to whom the order relates and the person has contravened any such term or condition;
- (b) if the parole order provides that the order may be revoked otherwise than by reason of a contravention of any of those terms and conditions and the order is revoked in accordance with any such provision;
- (c) if the Board is authorised by section 37 (2) to revoke the parole order; or
- (d) in any case, if the Board is satisfied that the person to whom the parole order relates has been sentenced by a court to a term of imprisonment in respect of an offence committed during the period for which the order was in force.

(2) The Board may, under subsection (1), revoke a parole order whether or not—

- (a) a notice has been served under section 37 (1) (a); or
- (b) an inquiry has been held under section 37,

with respect to revocation of the order.

(3) Where, under subsection (1), the Board revokes a parole order, the Board shall, in the order made under that subsection, state the ground for the revocation.

Probation and Parole.

(4) The Board may, in an order made under subsection (1) with respect to a parole order, direct that the parole order shall be treated as having been revoked—

- (a) where the parole order is revoked by reason of a contravention of a term or condition of the order, on such day occurring not earlier than the day on which the contravention occurred; or
- (b) where the parole order is revoked by reason of the imposition of a sentence referred to in subsection (1) (d), on such day occurring not earlier than the day on which the offence to which the sentence relates was committed,

as the Board specifies in the order made under subsection (1).

(5) A direction given under subsection (4) by the Board shall have effect according to its tenor.

(6) Where, in an order made under subsection (1) with respect to a parole order, the Board does not give a direction under subsection (4), the parole order is revoked on the day on which the order is made under subsection (1).

(7) For the purposes of subsection (4) (a), the day on which a contravention of a term or condition of a parole order occurred shall be such day as is determined by the Board.

(8) A court, in sentencing a person to whom a parole order relates to a term of imprisonment, may—

- (a) revoke the parole order; and
- (b) direct that the order shall be treated as having been revoked on such day, occurring not earlier than the day on which the offence to which the sentence relates was committed, as is specified by the court.

(9) A direction given under subsection (8) (b) by a court shall have effect according to its tenor.

Probation and Parole.

Warrants.**39. (1) Where—**

- (a) a parole order has been revoked after the release of a prisoner from prison or otherwise from lawful custody; or
- (b) the Board has made a determination under section 37 (1) (b) or (2) (a) with respect to a person to whom a parole order relates,

the Board may, by warrant signed by a judicial member of the Board, authorise any member of the police force to apprehend the person to whom the parole order related or relates.

(2) Where a warrant is issued under this section by reason of the revocation of a parole order, the warrant also authorises any member of the police force to return the person to a prison for the purpose of serving a period of imprisonment consisting of so much of the term or, if more than one, of each of the terms of imprisonment to which the person is subject as has not been served by the person and, where the person is subject to more than one term of imprisonment, for the purpose of serving those terms in accordance with the requirements relating to the order in which the terms are to be served.

(3) Where a warrant is issued under this section by reason of a determination made under section 37 (1) (b) or (2) (a), the warrant also authorises any member of the police force—

- (a) to return the person to a prison; or
- (b) if the terms of the warrant so require, to remove the person to a place of custody or court of petty sessions, or both, as specified in the warrant,

there to remain until the revocation of the warrant by the Board or the court of petty sessions or until the expiration of the period of 7 days commencing with the day on which the warrant was issued, whichever first occurs, for the purpose of conducting an inquiry under section 37 to determine whether the terms and conditions of the parole order have been contravened.

(4) A warrant issued under this section shall be sufficient authority for the apprehension of the person to whom it relates by a member of the police force and the removal to and detention in a prison or at another place, as the warrant may require, of the person.

Probation and Parole.

(5) All courts and persons acting judicially shall take judicial notice of an instrument that purports to be a warrant signed in accordance with subsection (1) until it is proved that the instrument is not such a warrant.

Review of revocation.

40. (1) As soon as practicable after a parole order has been revoked otherwise than pursuant to section 38 (8), the Board shall cause a notice to be served on the prisoner to whom the order related which notice shall—

- (a) specify a date, occurring not earlier than 14, nor later than 28, days after the date on which it is served, on which the Board shall meet for the purpose of—
 - (i) reconsidering the revocation of the parole order; and
 - (ii) where, under section 38, the parole order is required to be treated as having been revoked on an earlier day than the day on which an order was made under section 38 (1) with respect to the parole order—determining whether the specification of the earlier day should be revoked or varied;
- (b) require the prisoner to notify the secretary to the Board, not later than 7 days before the date so specified, if the prisoner intends to make representations to the Board in relation to the revocation of the order or the specification of the earlier day, or both;
- (c) be in the prescribed form; and
- (d) except as provided by section 45, be accompanied by—
 - (i) a copy of the order made under section 38 (1) with respect to the parole order; and
 - (ii) copies of the reports and other documents used by the Board in determining to revoke the parole order and, if appropriate, to specify the earlier day.

(2) Where a notice has been served on a prisoner pursuant to subsection (1), the Chairman of the Board shall convene a meeting of the Board, on the date specified under subsection (1) (a) in the notice, for the purpose of—

- (a) reconsidering the revocation of the parole order; or

Probation and Parole.

- (b) determining whether the specification of the earlier day should be revoked or varied,

or both, as the case may require.

(3) At the meeting of the Board convened pursuant to subsection (2), or at a subsequent meeting to which that meeting is adjourned or postponed, the prisoner may make submissions to the Board with respect to the revocation of the parole order and, if appropriate, the specification of the earlier day, if the prisoner has notified the secretary to the Board in accordance with subsection (1) (b).

(4) The Board shall, after reviewing all the reports, documents and other information placed before it, determine whether or not it should—

- (a) rescind the revocation of the parole order concerned; or
(b) revoke or vary the specification of the earlier day, if any.

(5) A determination of the Board pursuant to subsection (4) shall have effect according to its tenor.

(6) Where—

- (a) the Board has revoked a parole order; and
(b) the person to whom the parole order related alleges that the parole order was revoked as a consequence of a determination made upon information which was false, misleading or irrelevant,

the person may, in accordance with rules of court, apply to the Court of Criminal Appeal for a direction to be given to the Board as to whether the information was false, misleading or irrelevant and the Court of Criminal Appeal may give such direction with respect to the information as the court thinks fit.

(7) Subsections (2) and (3) of section 30 apply to and in respect of an application under subsection (6) in the same way as those subsections apply to and in respect of an application under that section and they so apply as if the references in those subsections to an application under that section were references to an application under subsection (6).

Probation and Parole.

Effect of revocation of parole order.

41. Notwithstanding section 39 (2) and (4), where a prisoner—
- (a) after having been released under a parole order, is returned to a prison;
 - (b) is serving a period of imprisonment consisting of so much of the term or, if more than one, of the terms of imprisonment in respect of which the parole order was made as was not served by the prisoner before being released pursuant to the order; and
 - (c) is not serving that period by reason of any other sentence imposed on the prisoner,

that period shall be reduced by the interval of time commencing with the day on which the prisoner was released pursuant to the order and concluding with—

- (d) except as provided by paragraph (e), the day on which the order was revoked; or
- (e) where, under section 38 or a determination made under section 40, the order is required to be treated as having been revoked on an earlier day, that earlier day.

PART IV.**MISCELLANEOUS.****Effect of certain non-probation and non-parole periods.**

42. (1) Where a person is, at the same time, subject to—
- (a) one or more than one non-probation period and one or more than one non-parole period;

Probation and Parole.

- (b) more than one non-probation period; or
- (c) more than one non-parole period,

the person shall, for the purposes of this Act and the regulations, be treated as being at that time subject to the non-probation period or non-parole period, as the case may be, which last expires and not subject to any other non-probation period or non-parole period to which the person would be subject if this subsection had not been enacted.

(2) Where, by reason of the operation of subsection (1), a person is not subject to a non-probation period or a non-parole period to which the person would be subject if that subsection had not been enacted—

- (a) any probation order made as a consequence of the specification of the non-probation period; and
- (b) any parole order made as a consequence of the specification of the non-parole period,

shall be deemed to be rescinded.

(3) Subsection (1) shall not have the effect, where a non-probation period or non-parole period is not specified in respect of any term of imprisonment to which a person is sentenced, of rendering the person subject to the term eligible to be released under a probation order or a parole order pursuant to this Act earlier than the day on which the person would have become eligible to be released by reason of the imposition of the sentence and any such probation order or parole order shall be deemed to be rescinded.

(4) If a non-probation period or non-parole period for a prisoner expires after the time at which the prisoner becomes entitled to be discharged or released from prison under the Prisons Act, 1952, or the Crimes Act, 1900, or by reason of the exercise of the Royal prerogative of mercy—

- (a) nothing in this Act prevents the discharge or release of the prisoner at that time; and
- (b) any probation order or parole order made as a consequence of the specification of the non-probation period or non-parole period, as the case may be, shall be deemed to be rescinded.

Probation and Parole.

Certain non-parole periods to be treated as non-probation periods.

43. (1) Except as provided by section 42, where a non-parole period of not more than 12 months is specified by a court or the Board pursuant to section 19 or 20 (1) (or pursuant to section 22 (1) (b) or 23 (1) because a court was entitled so to specify a non-parole period) in respect of a prisoner, the non-parole period shall, for the purposes of this Act, be deemed to be a non-probation period specified by the court (or, where the period was specified by the Board, by a court of petty sessions) under section 5 or 6 (1), as the case may require, and the provisions of this Act relating to non-parole periods shall not apply to or in respect of the period.

(2) Where a court makes a probation order which takes effect on the expiration of a non-parole period referred to in subsection (1), the terms and conditions of the order shall not require the person to whom the order relates to submit to supervision for a period of more than 3 years.

(3) A probation order referred to in subsection (2) which, in the absence of this subsection, would be in force pursuant to section 12 for a period of more than 5 years shall—

- (a) cease to be in force after it has been in force for 5 years; and
- (b) for the purposes of sections 15 and 16 (1), be deemed to have been made in respect of a period of 5 years.

Disclosure of information.

44. (1) A person shall not—

- (a) disclose any information to another person; or
- (b) supply to another person any report or other document, relating to a prisoner and furnished to the Board, unless the disclosure or supply is—
 - (c) made in connection with the administration of this Act or the regulations;

Probation and Parole.

- (d) made with the prior permission of the Board;
- (e) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing or determination by that court, body or person of any matter or thing; or
- (f) made in accordance with the regulations.

Penalty: \$500.

(2) The Board may grant permission as referred to in subsection (1) (d) only if it is satisfied that to do so would be in the public interest or in the interest of the prisoner concerned.

Security of certain information.

45. Nothing in section 27 (3) or 40 (1) requires a prisoner to be provided with a copy of a report or other document or any part thereof, the provision of which to the prisoner may, in the opinion of a judicial member of the Board—

- (a) adversely affect the security, discipline or good order of a prison;
or
- (b) endanger the prisoner or any other person.

Reports to the Minister.

46. (1) The Board shall, as soon as practicable after 31st December in each year, furnish to the Minister for presentation to Parliament a report giving information as to the Board's activities during that year and setting out statistical information as to the number of cases considered by it, the number of persons released on parole pursuant to this Act, the number of parole orders amended, varied, rescinded or revoked by the Board, and such other matters as to the Board seem appropriate.

Probation and Parole.

(2) The Board—

- (a) shall report to the Minister upon the release of any prisoner, where the question of whether the prisoner should be released has been referred by the Minister to the Board; and
- (b) may report to the Minister upon whether the keeping in strict custody in a prison of a person under section 23 (3) of the Mental Health Act, 1958, should be continued or not.

Information concerning prisoners and parolees.

47. (1) The Commission, and all persons employed in a prison, shall grant to the members of the Board or to any person authorised in writing by the Board in that behalf access at all reasonable times to any prisoner confined in the prison—

- (a) whose release on parole is being considered by the Board;
- (b) whose case has been referred to the Board by the Minister as referred to in section 46 (2);
- (c) in respect of whom a non-parole period is applicable; or
- (d) who is being kept in strict custody in the prison under section 23 (3) of the Mental Health Act, 1958,

and shall provide for those members or persons, as the case may be, facilities for communicating with or observing the prisoner.

(2) The Commission or the Commissioner of Police shall, if so requested by the Board, furnish or cause to be furnished to the Board reports on the conduct and character of—

- (a) any prisoner referred to in subsection (1); and
- (b) any person who is for the time being subject to a parole order.

(3) Where any prisoner or person referred to in subsection (2) (a) or (b) was formerly an inmate of an institution, within the meaning of the Child Welfare Act, 1939, the Director, as defined in section 4 (1) of that Act, shall, if so requested by the Board, furnish or cause to be furnished to the Board a report on the conduct and character of the prisoner or person while an inmate of an institution.

Probation and Parole.

(4) The Secretary of the Department of Health shall, if so requested by the Board—

- (a) arrange for psychological, medical or psychiatric examinations to be carried out on any prisoner or person referred to in subsection (2) (a) or (b); and
- (b) furnish, or cause to be furnished, to the Board all reports upon the result of any such examinations.

(5) There shall be included in any report upon a prisoner or person furnished, or caused to be furnished, to the Board under this section any information available to the person furnishing the report or causing it to be furnished which may be of assistance to the Board in considering the case of the prisoner or person to whom the report relates.

Royal prerogative preserved.

48. Nothing in this Act shall be so construed as to limit or affect in any manner the Royal prerogative of mercy.

Proceedings for offences.

49. Proceedings for an offence against this Act shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Regulations.

50. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) terms and conditions of probation orders and parole orders;
- (b) applications under, and forms to be used for the purposes of, this Act and the regulations;

Probation and Parole.

- (c) the service of notices and other instruments under this Act or the regulations;
- (d) information to be provided to prisoners and other persons for the purposes of this Act; and
- (e) the procedure to be followed at meetings of the Board.

(2) A regulation which prescribes a court for the purposes of this Act may prescribe a judge, stipendiary magistrate or justice by reference to a class of judges, stipendiary magistrates or justices, whether sitting in chambers or not.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

Repeals.

51. Each Act specified in Column 1 of Schedule 2 is, to the extent specified opposite that Act in Column 2 of that Schedule, repealed.

Savings and transitional provisions.

52. Schedule 3 has effect.

Amendments related to the Community Welfare Act, 1982.

53. This Act is amended in the manner set forth in Schedule 4 on such day as may be appointed by the Governor for the commencement of that Schedule and as may be notified by proclamation published in the Gazette, being not earlier than the appointed day.

Probation and Parole.

SCHEDULE 1.

(Sec. 17 (3).)

PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND
PROCEDURE.**Interpretation.**

1. In this Schedule—

“Chairman” means the Chairman of the Board;

“committee” means a committee appointed under clause 22;

“Deputy Chairman” means the Deputy Chairman of the Board;

“Division” means a Division of the Board constituted under clause 9 (1);

“Judge” means a Judge of the District Court of New South Wales;

“judicial member” means the Chairman or the Deputy Chairman;

“member” means a member of the Board;

“non-judicial member” means a member other than the Chairman or the Deputy
Chairman.**Composition of the Board.**

2. (1) The Board shall consist of 7 members.

(2) Of the members—

(a) 2 shall be Judges, of whom—

(i) one shall, in and by the instrument by which the member is appointed or by a subsequent instrument executed by the Governor, be appointed as Chairman of the Board; and

(ii) the other shall, in and by the instrument by which the member is appointed, be appointed as Deputy Chairman of the Board;

(b) 1 shall be a member of the police force nominated by the Commissioner of Police; and

(c) 4 shall reflect as closely as possible the composition of the community at large.

(3) A person of or above the age of 70 years shall not be appointed as a non-judicial member.

(4) The appointment of a person who is a Judge as the Chairman or Deputy Chairman shall not, nor shall the person's service as the Chairman or Deputy Chairman, affect the person's tenure of the office of a Judge or the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office.

(5) A person who is a Judge may, notwithstanding that the person is the Chairman or Deputy Chairman, exercise the powers of a Judge.

(6) The service, as the Chairman or Deputy Chairman, of a Judge shall, for all purposes, be taken to be service as a Judge.

Probation and Parole.

SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE
BOARD AND PROCEDURE—*continued.***Acting members, Chairman and Deputy Chairman.**

3. (1) The Deputy Chairman shall, during the illness or absence of the Chairman, act in the office of the Chairman and shall have and may exercise all the functions of the Chairman.

(2) The Governor may, from time to time, appoint a person, being a Judge, to act in the office of the Deputy Chairman during the illness or absence of the Deputy Chairman, and the person, while so acting, shall have and may exercise all the functions of the Deputy Chairman.

(3) Where a non-judicial member has been granted leave of absence by the Minister for a period, the Governor may appoint a person to act in the office of the non-judicial member during that period, and that person, while so acting, shall have and may exercise all the functions of the member.

(4) The Governor may remove any person from the office to which the person was appointed under subclause (2) or (3).

(5) For the purposes of this clause—

- (a) a vacancy in the office of the Chairman or Deputy Chairman shall be deemed to be an absence from office of the Chairman or Deputy Chairman; and
- (b) the Deputy Chairman shall be deemed to be absent from office as Deputy Chairman during any period that the Deputy Chairman acts in the office of Chairman pursuant to subclause (1).

Terms of office.

4. Subject to this Schedule, a member shall hold office for such term, not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration.

5. A member is entitled to be paid such fees and travelling and subsistence allowances, if any, as the Minister may from time to time determine in respect of the member.

Probation and Parole.

SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE
BOARD AND PROCEDURE—*continued.***Filling of vacancy in office of member.**

6. In the event of the office of any member becoming vacant a person shall, subject to this Schedule, be appointed to fill the vacancy.

Casual vacancies.

7. (1) A member shall be deemed to have vacated office if the member—
- (a) dies;
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
 - (d) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
 - (e) resigns the office by writing under his or her hand addressed to the Governor;
 - (f) being a judicial member, ceases to be a Judge;
 - (g) being a non-judicial member, attains the age of 70 years;
 - (h) being the member referred to in clause 2 (2) (b), ceases to be a member of the police force; or
 - (i) is removed from office by the Governor under subclause (2).
- (2) The Governor may remove any member from office.

Effect of certain other Acts.

8. (1) The Public Service Act, 1979, does not apply to or in respect of the appointment of a member, and a member is not, in the person's capacity as a member, subject to that Act while the person holds office as a member.

(2) The office of a member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Probation and Parole.

SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE—*continued.***Divisions of the Board.**

9. (1) The Chairman may constitute Divisions of the Board by nominating the members of each Division.

(2) The Chairman may, at any time, dissolve a Division.

(3) A Division shall consist of—

(a) the Chairman and 3 non-judicial members; or

(b) the Deputy Chairman and 2 non-judicial members.

(4) The Divisions may meet at different places at the same time.

Delegation to Divisions.

10. (1) The Chairman may delegate to a Division any function of the Board under this or any other Act.

(2) A Division shall, for the purpose of the exercise or performance of any function delegated to the Division by the Chairman, be deemed to be the Board.

General procedure.

11. (1) Except as may be otherwise provided by this Act or the regulations—

(a) meetings of the Board or of a Division shall be held at such times and places as are fixed by the Chairman; and

(b) the procedure for the convening of meetings of the Board or of a Division and for the conduct of business at those meetings shall be as determined by the Chairman.

(2) The Board or a Division may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

(3) The Board or a Division is not bound by the rules or practice as to evidence and may inform itself on any matter as it thinks fit.

Probation and Parole.

SCHEDULE 1—*continued.*

PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE
BOARD AND PROCEDURE—*continued.*

(4) Proceedings before the Board or a Division—

- (a) shall be open to the public unless the Board or Division, as the case may be, determines in any particular case that the proceedings shall be conducted wholly or partly in the absence of the public; and
- (b) shall not be conducted in an adversary manner.

(5) No decision of the Board shall be vitiated by reason only of any informality or want of form.

Quorum.

12. (1) Three members of the Board or of a Division, consisting of a judicial member and 2 non-judicial members, shall form a quorum at a meeting of the Board or of the Division.

(2) Any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board and shall have and may exercise all the functions of the Board.

(3) Any duly convened meeting of a Division at which a quorum is present shall be competent to transact any business of the Division and shall have and may exercise all the functions of the Board delegated to the Division.

Presiding members.

13. (1) The Chairman or, in the absence of the Chairman, the Deputy Chairman shall preside at a meeting of the Board.

(2) At a meeting of a Division—

- (a) where the Chairman is a member of the Division—the Chairman; or
 - (b) where the Chairman is not a member of the Division—the Deputy Chairman,
- shall preside.

Probation and Parole.

SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE—*continued.***Voting at meetings of the Board.**

14. Where the Chairman and the Deputy Chairman are both present at a meeting of the Board, only the Chairman is entitled to vote with respect to any decision.

Decisions.

15. (1) A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present, including the vote cast by the judicial member entitled to vote at the meeting, shall be the decision of the Board.

(2) A decision supported by the votes cast by the judicial member and at least one non-judicial member of a Division at a meeting of the Division at which a quorum is present shall be the decision of the Division.

Powers of judicial members.

16. (1) A judicial member may, by instrument in writing, require any person on whom the instrument is served personally or by post—

- (a) to appear before the Board or a Division for the purpose of giving evidence; or
- (b) to produce to the Board or a Division any document (including a document in the custody or under the control of the person and in the possession of or the property of the Crown) that is relevant to any proceedings of the Board or of a Division,

at a time, date and place specified in the instrument.

(2) The judicial member presiding at a meeting of the Board or of a Division may require a person who appears before the Board or Division to be sworn for the purpose of giving evidence on oath and may administer an oath accordingly.

(3) Where a document is produced to the Board or a Division pursuant to a requirement made under subclause (1), the Board or Division may take possession of the document for such period as it considers necessary for the purpose of the proceedings before it.

(4) Subclause (1) does not have the effect of requiring a person to produce to the Board or a Division of the Board any document the production of which the Minister certifies in writing—

- (a) endanger a prisoner or any other person; or
- (b) be otherwise contrary to the public interest.

Probation and Parole.

SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE
BOARD AND PROCEDURE—*continued.***Questions of a presiding member.**

17. (1) The judicial member presiding at a meeting of the Board or of a Division may require a person (including an officer or employee of the Crown) who appears before the Board or Division to answer a question that is reasonably related to the proceedings before the Board or Division.

(2) A person is not excused from answering a question put to the person by a judicial member on the ground that the answer might tend to incriminate the person but, where the person claims, before answering the question, that the answer might tend to incriminate him or her, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings for an offence under clause 18 (1) (c) or in relation to a charge of perjury in respect of the answer.

Offences.

18. (1) A person shall not—

- (a) refuse, fail or neglect to comply with a requirement made of the person under clause 16 (1) or (2) or 17 (1) by a judicial member except to the extent to which the person is lawfully excused from complying with the requirement;
- (b) in purported compliance with a requirement made of the person under clause 16 (1) (paragraph (a) excepted) by a judicial member, produce any document knowing it to be false or misleading in a material particular; or
- (c) not having been sworn, make a statement that is false or misleading in a material particular when the person is appearing before the Board or a Division.

(2) A person who contravenes subclause (1) is guilty of an offence against this Act and is liable to a penalty not exceeding \$500.

Representation, etc.

19. At any meeting of the Board or a Division at which a person is, under section 28 (2), 37 (4) or 40 (3), entitled to make submissions to the Board or Division, the person may—

- (a) be represented by a barrister or solicitor or, with the consent of the Board or Division, by any other person;

Probation and Parole.

SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE
BOARD AND PROCEDURE—*continued.*

- (b) call and examine any witness who attends, including any witness called by the Board or Division;
- (c) give evidence on oath;
- (d) produce documents and exhibits to the Board or Division; and
- (e) otherwise adduce, orally and in writing, to the Board or Division such matters, and address the Board or Division on such matters, as are relevant to the proceedings before the Board or Division.

Witnesses' expenses.

20. (1) A person who is required to appear or to give evidence before the Board or a Division is entitled to be paid such allowances and expenses, if any, as the Minister may determine in respect of the person.

(2) Subclause (1) does not apply in respect of a person who is entitled to make submissions under section 28 (2), 37 (4) or 40 (3).

Record of proceedings.

21. (1) The member presiding at a meeting of the Board or a Division shall cause a record of the proceedings at the meeting to be made in the prescribed manner.

(2) Records made for the purposes of subclause (1) may be destroyed after the expiration of the prescribed period.

Committees.

22. The Chairman may appoint one or more non-judicial members as a committee for the purpose of—

- (a) inquiring into and reporting to the Board on any prisoner to whom a parole order relates and whose case is to come before the Board for consideration; and
- (b) disposing of routine business of the Board, other than making determinations or decisions or submitting reports and recommendations under Part III.

Probation and Parole.

SCHEDULE 1—*continued.*

PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE
BOARD AND PROCEDURE—*continued.*

Authentication of documents, etc.

23. Every document requiring authentication by the Board or a Division may be sufficiently authenticated if signed by a person purporting to be the member who presided at the meeting of the Board or Division when the proceedings with respect to which the document was prepared took place.

Certificate of secretary.

24. A document purporting to be a certificate made or issued by the secretary to the Board recording any determination or decision of the Board shall in all courts and before all persons and bodies authorised by law to receive evidence be prima facie evidence of the matters therein set out.

Proof of certain matters not required.

25. In any legal proceedings, no proof shall be required, until evidence is given to the contrary, of—

- (a) the constitution of the Board or of a Division;
- (b) any determination, decision or recommendation of the Board;
- (c) the appointment of, or holding of office by, any member; or
- (d) the presence or nature of a quorum at any meeting of the Board or of a Division.

Liability of members, etc.

26. No matter or thing done by the Board, a Division or a committee, and no matter or thing done by any member or by any person acting under the direction of the Board or a Division shall, if the matter or thing was done bona fide for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

Probation and Parole.

SCHEDULE 2.

(Sec. 51.)

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1966, No. 41 ..	Parole of Prisoners Act, 1966	The whole Act.
1969, No. 27 ..	Child Welfare (Amendment) Act, 1969 ..	Section 7.
1970, No. 6 ..	Prisons (Amendment) Act, 1970 ..	Section 3 (2).
1970, No. 33 ..	Parole of Prisoners (Amendment) Act, 1970.	The whole Act.
1978, No. 155 ..	Prisons (Amendment) Act, 1978 ..	So much of the Table in Schedule 4 as amends Act No. 41, 1966.
1981, No. 20 ..	Parole of Prisoners (Amendment) Act, 1981.	The whole Act.
1982, No. 89 ..	Parole of Prisoners (Community Welfare) Amendment Act, 1982.	The whole Act.
1983, No. 3 ..	Miscellaneous Acts (Community Welfare) Amendment Act, 1983.	So much of Schedule 1 as amends Act No. 89, 1982.

SCHEDULE 3.

(Sec. 52.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule—

“former Board” means the Parole Board constituted under section 3 of the repealed Act;

“repealed Act” means the Parole of Prisoners Act, 1966.

Savings.

2. (1) A non-parole period to which a prisoner was subject immediately before the appointed day, being a period which was—

(a) specified before the appointed day—

(i) under section 4 or 4A of the repealed Act;

(ii) under section 4B (b) of that Act, in relation to the specifying of which a court was subject to the obligations, restrictions and limitations imposed by section 4 or 4A of that Act; or

Probation and Parole.

SCHEDULE 3—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(iii) under section 4C (1) of the repealed Act by reason of a court's being entitled to specify a period pursuant to section 4 or 4A of that Act,

shall be deemed to be a non-parole period specified under section 19 or 20 (1), as the case may require; or

(b) varied under section 4B (a) of the repealed Act, shall be deemed to be varied under section 22 (1) (a),

whether or not the period could have been specified under section 19 or 20 (1) or varied under section 22 (1) (a), as the case may be, had this Act been in force when the period was specified or varied under the repealed Act.

(2) A parole order made pursuant to section 6 (2) or (3) of the repealed Act and in force immediately before the appointed day shall, on that day, be deemed to be a parole order made under the corresponding provision of this Act.

(3) Subclause (2) applies to a parole order made under the repealed Act, whether or not the order was made in respect of—

(a) a sentence imposing a term of imprisonment of 3 years or less; or

(b) sentences imposing terms of imprisonment which, had the terms been imposed by a single sentence (giving effect to the requirements relating to the order in which the terms are to be served) would be a single sentence imposing a term of imprisonment of 3 years or less.

(4) A warrant signed under section 6 (3) of the repealed Act which had not been executed before the appointed day shall be deemed to be a warrant signed under section 39 (1) and issued under section 39 by reason of the revocation of the parole order to which the warrant relates.

(5) A request made by the former Board under section 8 (2) (a) or (b) of the repealed Act and which had not been complied with before the appointed day shall be deemed to be a request made by the Board under section 47 (2) or (3).

(6) A determination or decision of the former Board made pursuant to a provision of the repealed Act shall be deemed to be a determination or decision of the Board made pursuant to the corresponding provision of this Act.

(7) Any other act, matter or thing done by the former Board pursuant to a provision of the repealed Act, being an act, matter or thing that could have been done under a corresponding provision of this Act had this Act been in force when the act, matter or thing was done, shall be deemed to have been done by the Board under the corresponding provision.

(8) Nothing in this clause requires the Board to cause a prisoner to be supplied with any notice, report or other document by reason only of a determination made by the former Board.

Probation and Parole.

SCHEDULE 3—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Former parole orders not revived.**

3. Nothing in this Act revives any parole order rescinded or revoked under the repealed Act.

Certain periods deemed to be non-parole periods.

4. Where—

- (a) a prisoner is, on the appointed day, serving a term of imprisonment imposed by a court before 31st January, 1967; and
- (b) the court which imposed the sentence made a recommendation that the prisoner be considered for release after a specified period,

the specified period shall be deemed to be a non-parole period specified under section 19 or 20 (1), whether or not the period could have been specified under section 19 or 20 (1) had this Act been in force when the recommendation was made.

Parole of certain prisoners.

5. (1) Where, by reason of the operation of clause 2 (1) or 4, a non-parole period specified or varied under the repealed Act in respect of a prisoner is deemed to be a non-parole period specified under section 19 or 20 (1) or varied under section 22 (1) (a), as the case may be, in respect of the prisoner, the Board shall—

- (a) except as provided by paragraph (b), not less than 60 days before the day prescribed in relation to the non-parole period for the purposes of this clause, being a day occurring before the expiration of the non-parole period; or
- (b) where the day so prescribed is, or occurs less than 60 days after, the appointed day, as soon as practicable after the appointed day,

consider whether or not the non-parole period should be reduced.

(2) If the Board, pursuant to subclause (1), considers that a non-parole period should be reduced, the Board shall, by its order—

- (a) determine the period by which the non-parole period shall be reduced; and
- (b) specify the terms and conditions, if any, subject to which that determination may be rescinded by the Board before the expiration of the non-parole period, as so reduced.

(3) A determination may not be made by the Board under subclause (2) (a) so as to have the effect that a non-parole period for a prisoner, when reduced in accordance with the determination, shall expire before the day prescribed in relation to the non-parole period for the purposes of this clause.

Probation and Parole.

SCHEDULE 3—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(4) Where, by reason of a determination made under subclause (2) (a) which has not been rescinded, a non-parole period for a prisoner is required to be reduced by a period, a reference to the non-parole period in Division 3 of Part III and in any parole order made by the Board as a consequence of the specification of the non-parole period is a reference to the non-parole period as so reduced.

(5) Nothing in this clause affects the operation of section 42 with respect to a non-parole period referred to in subclause (1).

Limitation of powers of Board in certain circumstances.

6. (1) Where a person is transferred to an institution pursuant to an order made under section 94 (1) of the Child Welfare Act, 1939, the functions conferred or imposed upon the Board by this Act shall not be exercised or performed in relation to the person during the period of the person's detention pursuant to that order.

(2) Subject to this clause, an order of discharge under section 54 (4) of the Child Welfare Act, 1939, shall be deemed to be a parole order duly made by the Board under section 27 (2) (a).

(3) Where a parole order referred to in subclause (2) relates to a person who, at the time of discharge from an institution had not attained the age of 18 years, the functions that, but for this subclause, would be conferred or imposed by this Act upon the Board in relation to the parole order shall, subject to this clause, be exercised and performed by the Minister for Youth and Community Services to the exclusion of the Board, until that person attains the age of 18 years or the parole period earlier expires.

(4) Subject to this Act, a parole order referred to in subclause (2) shall—

(a) remain in force for the period; and

(b) be subject to the terms and conditions,

specified in the discharge order deemed, by that subclause, to be the parole order.

(5) For the purposes of this Act, discharge from an institution under section 54 (4) of the Child Welfare Act, 1939, shall be deemed to be release, on parole, from a prison.

(6) The power to issue a warrant conferred by section 39 shall not be exercised in respect of a parole order referred to in subclause (2) before the person to whom the parole order relates attains the age of 18 years.

(7) Nothing in this clause shall prejudice or affect any function conferred or imposed by or under the Child Welfare Act, 1939, upon the Minister for Youth and Community Services or upon any other person.

Probation and Parole.

SCHEDULE 3—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Construction of certain references.**

7. (1) Where the repealed Act, an instrument made under that Act or any provision thereof is referred to in any other Act or instrument, the reference extends to this Act, to any corresponding instrument made under this Act or to any corresponding provision of this Act or of an instrument made under this Act.

(2) A reference to the former Board occurring in any instrument made under the repealed Act before the appointed day shall be read and construed as a reference to the Board.

Probation under recognizance.

8. Nothing in this Act affects the terms or conditions relating to probation of any recognizance entered into before, on or after the appointed day.

Regulations.

9. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any provision of this Schedule other than this clause.

Probation and Parole.

SCHEDULE 4.

(Sec. 53.)

AMENDMENTS RELATED TO THE COMMUNITY WELFARE ACT, 1982.

- (1) Section 4 (1), definition of "term of imprisonment"—
- (a) From paragraph (d), omit "death;"; insert instead "death; or".
 - (b) From paragraph (e), omit "1958; or", insert instead "1958."
 - (c) Omit paragraph (f).
- (2) (a) Section 47 (3)—
- Omit "the Director, as defined in section 4 (1) of that Act", insert instead "or was formerly a person subject to control, within the meaning of the Community Welfare Act, 1982, the Director, as defined in section 4 (1) of the Community Welfare Act, 1982".
- (b) Section 47 (3)—
- After "institution" where lastly occurring, insert "or while a person subject to control, as the case may be".
- (3) Schedule 3, clause 6—
- Omit the clause.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
*By Deputation from
His Excellency the Governor.*

*Government House,
Sydney, 31st December, 1983.*





