

**PROBATION AND PAROLE (AMENDMENT) BILL, 1984**

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**EXPLANATORY NOTE**

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

The objects of this Bill are to amend the Probation and Parole Act, 1983 ("the Act"), so as—

- (a) to provide that, where a prisoner who is serving a period of imprisonment for an offence is sentenced for a further offence as a consequence of which a non-probation or non-parole period is fixed, the non-probation or non-parole period shall commence or be deemed to have commenced when the prisoner is sentenced or was in custody for the further offence, rather than when the prisoner was sentenced or in custody for the previous offence (Schedule 1);
- (b) to enable a patent error made by a court in specifying a non-probation period for a prisoner to be rectified on the application of the Corrective Services Commission of New South Wales, where the prisoner remains in custody (Schedule 2); and
- (c) to make it clear—
  - (i) that, where a court or the Parole Board specifies a non-probation period or non-parole period under the Act for a person, the court or Parole Board shall give consideration to each term of imprisonment to which the person is subject, whether or not a probation order or parole order is in force in respect of any such term (Schedule 3 (1)); and
  - (ii) that an applicant to the Court of Criminal Appeal under the Act may appear in person only with the leave of that court and that a single Judge of that court may grant that leave (Schedule 3 (7) and (8)),and to make other provisions of a minor, consequential or ancillary nature.



**PROBATION AND PAROLE (AMENDMENT) BILL, 1984**

No.       , 1984.

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**A BILL FOR**

**An Act to amend the Probation and Parole Act, 1983, with respect to the commencement of certain non-probation or non-parole periods and the variation of certain non-probation periods and in certain other respects; and for other purposes.**

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*Probation and Parole (Amendment) 1984*

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**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:—

**5 Short title.**

1. This Act may be cited as the "Probation and Parole (Amendment) Act, 1984".

**Commencement.**

2. (1) Except as provided by subsection (2), this Act shall commence 10 on the date of assent to this Act.

(2) The several provisions of Schedules 1 and 2, and section 5 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**15 Principal Act.**

3. The Probation and Parole Act, 1983, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules:—

20 SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COMMENCEMENT OF CERTAIN NON-PROBATION OR NON-PAROLE PERIODS.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE RECTIFICATION OF CERTAIN NON-PROBATION PERIODS.

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SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 4.—SAVINGS.

**Amendment of Act No. 194, 1983.**

- 5   **5.** The Principal Act is amended in the manner set forth in Schedules 1–3.

**Savings.**

6. Schedule 4 has effect.

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SCHEDULE 1.

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(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
COMMENCEMENT OF CERTAIN NON-PROBATION OR  
NON-PAROLE PERIODS.

- (1) Sections 9 (2) (a) (i), 24 (2) (a) (i)—  
15       Omit “original term” wherever occurring, insert instead “subsequent term is or”.
- (2) Sections 9 (2) (a) (ii), 24 (2) (a) (ii)—  
      Omit “original term or” wherever occurring.
- (3) Sections 9 (2) (a) (ii), 24 (2) (a) (ii)—  
20       Omit “original term was” wherever occurring, insert instead “subsequent term is or was”.
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## SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
RECTIFICATION OF CERTAIN NON-PROBATION PERIODS.

5 (1) Section 4 (1), definition of "non-probation period"—

After "8 (1)", insert "or (1A)".

(2) (a) Section 8 (1A)—

After section 8 (1), insert:—

10 (1A) Where a prescribed court, upon application made to  
the court by the Commission, is satisfied that a court has, after  
the commencement of this subsection, made a patent error in  
specifying a non-probation period for a prisoner, the prescribed  
15 court may, if it is satisfied that the prisoner has not been  
released from lawful custody as a consequence of the specifica-  
tion of the non-probation period, specify a period which the  
court which made the error was entitled to specify pursuant to  
section 5 or 6 (1).

(b) Section 8 (2)—

Omit "subsection (1) (b)", insert instead "this section".

20 (c) Section 8 (3), (4)—

After "subsection (1)" wherever occurring, insert "or (1A)".

(3) Section 9 (1), (2)—

After "8 (1)" wherever occurring, insert "or (1A)".

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## SCHEDULE 3.

(Sec. 5.)

## MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

## (1) Section 4 (4)—

5 After section 4 (3), insert:—

(4) For the purposes of sections 5, 6 (1), 19 and 20 (1), where—

(a) a person is sentenced to a term of imprisonment; and

10 (b) a probation order or parole order relating to the person is in force when the person is so sentenced, being an order made in respect of another term of imprisonment to which the person was previously sentenced,

the person shall be deemed to be serving the other term of imprisonment.

## 15 (2) Section 5 (b)—

Omit “not less”, insert instead “more”.

## (3) (a) Sections 6 (1) (c), 20 (1) (c)—

Omit “which is required” wherever occurring, insert instead “in circumstances which require the subsequent term”.

## 20 (b) Sections 6 (1) (c), 20 (1) (c)—

Omit “with, the subsequent” wherever occurring, insert instead “with, the original”.

## (c) Section 6 (1)—

Omit “giving”, insert instead “(giving”.

## 25 (d) Section 6 (1)—

Omit “not have been less than 6 months or”, insert instead “have been more than 6 months and not”.

*Probation and Parole (Amendment) 1984*

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SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 22 (4)—

Omit “Where,” insert instead “Where”.

5 (5) Section 24 (1) (a) (ii), (2) (a) (ii)—

Omit “was by” wherever occurring, insert instead “was, by”.

(6) Section 27 (1) (b) (ii)—

After “on the prisoner”, insert “subsequently to the revocation of the parole order”.

10 (7) (a) Section 30 (1), (2)—

Omit “the court” wherever occurring, insert instead “that court”.

(b) Section 30 (3)—

Omit “court”, insert instead “Court of Criminal Appeal”.

(c) Section 30 (4)—

15 After section 30 (3), insert:—

(4) The power of the Court of Criminal Appeal to grant the applicant leave to appear in person at the hearing or determination of an application under this section may be exercised by any Judge of that court, but no appeal lies to that court against the refusal of a Judge of that court to grant leave to so appear.

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(8) Section 40 (7)—

Omit “(2) and (3)”, insert instead “(2)–(4)”.

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*Probation and Parole (Amendment) 1984*

## SCHEDULE 4.

(Sec. 6.)

## SAVINGS.

**Interpretation.**

- 5 1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2) for the commencement of Schedule 1.

**Non-probation periods.**

2. Where a non-probation period was, before the appointed day, specified—

(a) pursuant to section 6 (1) of the Principal Act; or

- 10 (b) pursuant to section 7 (1) (b) or 8 (1) of the Principal Act because a court was entitled so to specify a non-probation period,

section 9 (2) (a) of the Principal Act, as in force immediately before that day, applies to and in respect of that non-probation period as if Schedule 1 had not been enacted.

**15 Non-parole periods.**

3. Where a non-parole period was, before the appointed day, specified—

(a) pursuant to section 20 (1) of the Principal Act; or

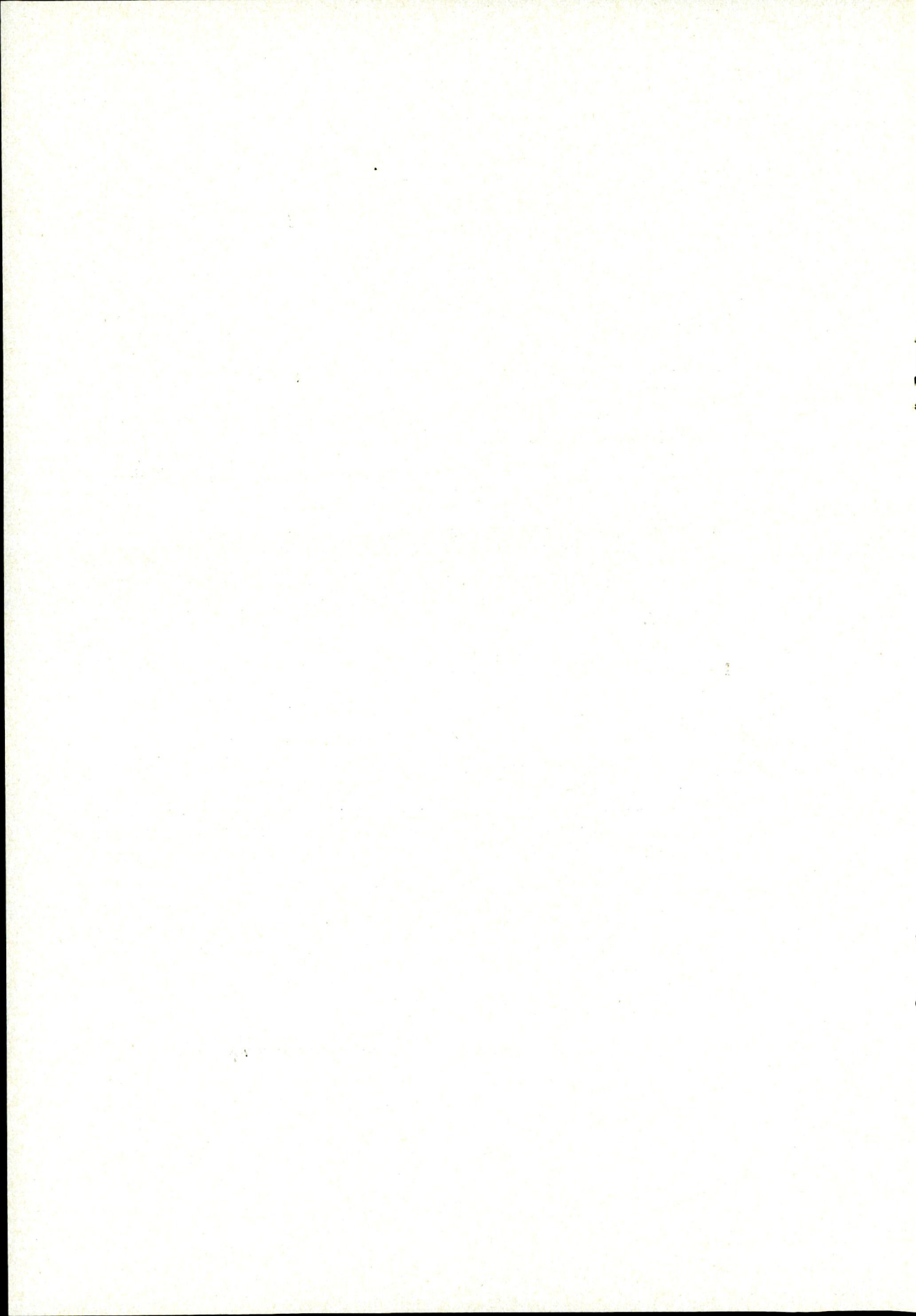
(b) pursuant to section 22 (1) (b) or 23 (1) of the Principal Act because a court was entitled so to specify a non-parole period,

- 20 section 24 (2) (a) of the Principal Act, as in force immediately before that day, applies to and in respect of that non-parole period as if Schedule 1 had not been enacted.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984







**PROBATION AND PAROLE (AMENDMENT) ACT, 1984, No. 124**

**New South Wales**



ANNO TRICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. 124, 1984.**

An Act to amend the Probation and Parole Act, 1983, with respect to the commencement of certain non-probation or non-parole periods and the variation of certain non-probation periods and in certain other respects; and for other purposes. [Assented to, 26th November, 1984.]

*Probation and Parole (Amendment) 1984*

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**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:—

**Short title.**

1. This Act may be cited as the "Probation and Parole (Amendment) Act, 1984".

**Commencement.**

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedules 1 and 2, and section 5 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal Act.**

3. The Probation and Parole Act, 1983, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COMMENCEMENT OF CERTAIN NON-PROBATION OR NON-PAROLE PERIODS.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE RECTIFICATION OF CERTAIN NON-PROBATION PERIODS.

*Probation and Parole (Amendment) 1984*

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SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 4.—SAVINGS.

**Amendment of Act No. 194, 1983.**

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

**Savings.**

6. Schedule 4 has effect.

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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
COMMENCEMENT OF CERTAIN NON-PROBATION OR  
NON-PAROLE PERIODS.

(1) Sections 9 (2) (a) (i), 24 (2) (a) (i)—

Omit "original term" wherever occurring, insert instead "subsequent term is or".

(2) Sections 9 (2) (a) (ii), 24 (2) (a) (ii)—

Omit "original term or" wherever occurring.

(3) Sections 9 (2) (a) (ii), 24 (2) (a) (ii)—

Omit "original term was" wherever occurring, insert instead "subsequent term is or was".

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## SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
RECTIFICATION OF CERTAIN NON-PROBATION PERIODS.

(1) Section 4 (1), definition of "non-probation period"—

After "8 (1)", insert "or (1A)".

(2) (a) Section 8 (1A)—

After section 8 (1), insert:—

(1A) Where a prescribed court, upon application made to the court by the Commission, is satisfied that a court has, after the commencement of this subsection, made a patent error in specifying a non-probation period for a prisoner, the prescribed court may, if it is satisfied that the prisoner has not been released from lawful custody as a consequence of the specification of the non-probation period, specify a period which the court which made the error was entitled to specify pursuant to section 5 or 6 (1).

(b) Section 8 (2)—

Omit "subsection (1) (b)", insert instead "this section".

(c) Section 8 (3), (4)—

After "subsection (1)" wherever occurring, insert "or (1A)".

(3) Section 9 (1), (2)—

After "8 (1)" wherever occurring, insert "or (1A)".



## SCHEDULE 3.

(Sec. 5.)

## MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

## (1) Section 4 (4)—

After section 4 (3), insert:—

(4) For the purposes of sections 5, 6 (1), 19 and 20 (1), where—

- (a) a person is sentenced to a term of imprisonment; and
- (b) a probation order or parole order relating to the person is in force when the person is so sentenced, being an order made in respect of another term of imprisonment to which the person was previously sentenced,

the person shall be deemed to be serving the other term of imprisonment.

## (2) Section 5 (b)—

Omit “not less”, insert instead “more”.

## (3) (a) Sections 6 (1) (c), 20 (1) (c)—

Omit “which is required” wherever occurring, insert instead “in circumstances which require the subsequent term”.

## (b) Sections 6 (1) (c), 20 (1) (c)—

Omit “with, the subsequent” wherever occurring, insert instead “with, the original”.

## (c) Section 6 (1)—

Omit “giving”, insert instead “(giving”.

## (d) Section 6 (1)—

Omit “not have been less than 6 months or”, insert instead “have been more than 6 months and not”.

*Probation and Parole (Amendment) 1984*

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SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 22 (4)—

Omit “Where,” insert instead “Where”.

(5) Section 24 (1) (a) (ii), (2) (a) (ii)—

Omit “was by” wherever occurring, insert instead “was, by”.

(6) Section 27 (1) (b) (ii)—

After “on the prisoner”, insert “subsequently to the revocation of the parole order”.

(7) (a) Section 30 (1), (2)—

Omit “the court” wherever occurring, insert instead “that court”.

(b) Section 30 (3)—

Omit “court”, insert instead “Court of Criminal Appeal”.

(c) Section 30 (4)—

After section 30 (3), insert:—

(4) The power of the Court of Criminal Appeal to grant the applicant leave to appear in person at the hearing or determination of an application under this section may be exercised by any Judge of that court, but no appeal lies to that court against the refusal of a Judge of that court to grant leave to so appear.

(8) Section 40 (7)—

Omit “(2) and (3)”, insert instead “(2)–(4)”.

---

*Probation and Parole (Amendment) 1984*

## SCHEDULE 4.

(Sec. 6.)

## SAVINGS.

**Interpretation.**

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2) for the commencement of Schedule 1.

**Non-probation periods.**

2. Where a non-probation period was, before the appointed day, specified—

(a) pursuant to section 6 (1) of the Principal Act; or

(b) pursuant to section 7 (1) (b) or 8 (1) of the Principal Act because a court was entitled so to specify a non-probation period,

section 9 (2) (a) of the Principal Act, as in force immediately before that day, applies to and in respect of that non-probation period as if Schedule 1 had not been enacted.

**Non-parole periods.**

3. Where a non-parole period was, before the appointed day, specified—

(a) pursuant to section 20 (1) of the Principal Act; or

(b) pursuant to section 22 (1) (b) or 23 (1) of the Principal Act because a court was entitled so to specify a non-parole period,

section 24 (2) (a) of the Principal Act, as in force immediately before that day, applies to and in respect of that non-parole period as if Schedule 1 had not been enacted.

*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, 26th November, 1984.*

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

