

**PROBATION AND PAROLE (SERIOUS OFFENCES)  
AMENDMENT BILL 1987**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The Crimes (Sentencing) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to amend the Probation and Parole Act 1983 so as—

- (a) to require a non-parole period fixed for a specified serious offence to be not less than three-quarters of the length of the sentence imposed; and
- (b) to remove the presumption in favour of release on parole for a prisoner given a non-parole period of at least 6 years for a specified serious offence and to set out criteria to be applied by the Parole Board before making a parole order for any such prisoner.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be fixed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments to the Principal Act.

Schedule 1 (1) inserts into section 4 (Interpretation) of the Principal Act a definition of "serious offence". The relevant offences are to be listed in a new Schedule to that Act.

Schedule 1 (2) inserts proposed sections 20A (Minimum non-parole periods for serious offences) and 20B (Commencement of certain non-parole periods) into the Principal Act.

A court or the Parole Board, when fixing a non-parole period that relates to one or more serious offences, will be required by proposed section 20A to specify a period at least as long as three-quarters of the period the prisoner would have to serve if not released before the sentence or sentences expire.

*Probation and Parole (Serious Offences) Amendment 1987*

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If a non-parole period so specified replaces another non-parole period, proposed section 20B provides for its commencement to be back-dated to the first day on which the prisoner was in custody serving a sentence to which the former period related, but a court or the Board, when fixing the later non-parole period, may require its commencement at a later time.

Schedule 1 (3) inserts proposed section 21 (3) and (4) into the Principal Act which permit a court or the Parole Board to decline to fix a non-parole period in accordance with proposed section 20A if it determines that the circumstances justify that course (reasons must be stated).

Schedule 1 (4) inserts section 26 (3) and (4) into the Principal Act. Section 26 (General duty of the Board) of that Act presently imposes a presumption in favour of parole, by requiring the Parole Board to make any parole order it is empowered to make unless it determines it has sufficient reason to believe that the prisoner would not be able to adapt to lawful community life (or exercises its limited power to defer making the order). Under the proposed amendment, that presumption is not to apply to a prisoner for whom a non-parole period of at least 6 years is specified in accordance with proposed section 20A (except in specified cases in which it is not clear whether the non-parole period was so specified only with regard to a serious offence or serious offences).

Schedule 1 (5) inserts proposed section 26A (Duty of Board where serious offences involved) into the Principal Act. In deciding whether to make a parole order (under which a prisoner will be released) for a prisoner to whom the presumption in favour of parole does not apply because of conviction for a serious offence, the Parole Board will be required by the proposed section to determine that release is appropriate, having regard to the principle that the public interest is of primary importance. The Board will also be required to take into account certain other specified matters and to determine that it has sufficient reason to believe that the prisoner would be able to adapt to normal lawful community life.

Schedule 1 (6) inserts proposed Schedule 5 (Serious offences) into the Principal Act. The proposed Schedule consists of a list of the offences which will be serious offences for the purposes of the amendments. Some of the offences included are murder, manslaughter, kidnapping, armed robbery, sexual assaults causing injury or involving young children and trafficking in marketable quantities of drugs.

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# PROBATION AND PAROLE (SERIOUS OFFENCES) AMENDMENT BILL 1987

NEW SOUTH WALES

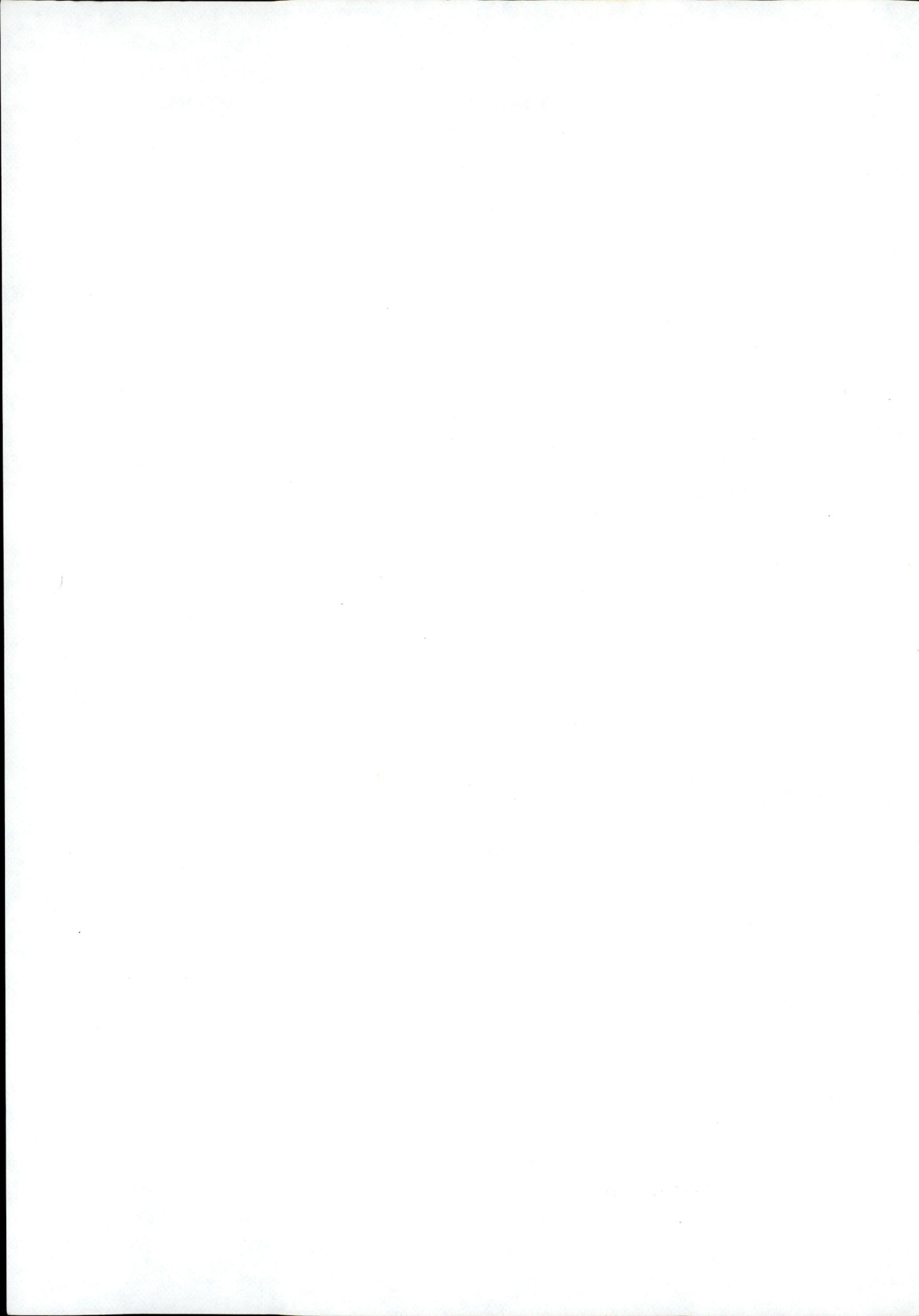


## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 194, 1983

SCHEDULE 1—AMENDMENTS

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**PROBATION AND PAROLE (SERIOUS OFFENCES)  
AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

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**A BILL FOR**

An Act to amend the Probation and Parole Act 1983 to provide for the imposition of minimum non-parole periods for certain serious offences; and for other purposes.

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See also Crimes (Sentencing) Amendment Bill 1987.

*Probation and Parole (Serious Offences) Amendment 1987*

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Probation and Parole (Serious Offences) Amendment Act 1987.

**5 Commencement**

2. This Act shall commence on a day to be appointed by proclamation.

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

3. The Probation and Parole Act 1983 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 4 (**Interpretation**)—

Section 4 (1)—

After the definition of “regulation”, insert:

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“serious offence” means an offence referred to in Schedule 5;

(2) Sections 20A, 20B—

After section 20, insert:

**Minimum non-parole periods for serious offences**

20A. (1) If—

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(a) a non-parole period is to be specified with respect to one or more offences (including, where relevant, an offence for which a term of imprisonment is already being served); and

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(b) the offence or at least one of the offences is a serious offence,

this section applies to the non-parole period.

(2) The non-parole period shall be at least three-quarters of—

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(a) the length of the sentence for the only serious offence involved; or

(b) the total length of the sentences for all the serious offences involved (any two or more such sentences that are wholly or partly concurrent being treated as one sentence to the extent of their concurrence).

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(3) This section has effect with respect to non-parole periods specified pursuant to section 19, 20, 22 or 23.

*Probation and Parole (Serious Offences) Amendment 1987*

SCHEDULE 1—AMENDMENTS—*continued*

(4) A reference in this section to a serious offence does not include a reference to an offence committed before the commencement of this section.

**Commencement of certain non-parole periods**

5 20B. (1) If section 20A applies to a non-parole period and the non-parole period is specified with respect to—

(a) an original term (for which a non-parole period was previously specified); and

(b) a subsequent term,

10 the later non-parole period shall commence, or be deemed to have commenced, on the first day on which the prisoner was in custody serving the original term or on such later day as the court or the Board may specify when fixing the later non-parole period.

15 (2) If a court or the Board specifies such a later day, it shall state the reasons for doing so.

(3) This section has effect despite anything in section 24.

(4) In this section, “original term” and “subsequent term” have the same meanings as in section 20.

20 (3) Section 21 (**Discretion of court**)—

Section 21 (3), (4)—

After section 21 (2), insert:

25 (3) Notwithstanding section 20A, a court or the Board, when specifying a non-parole period with respect to a serious offence, may specify a shorter period than that required by section 20A, but only if it determines that the circumstances justify that course.

(4) If a court or the Board specifies such a shorter non-parole period, it shall state the reasons for doing so.

(4) Section 26 (**General duty of the Board**)—

Section 26 (3), (4)—

30 After section 26 (2), insert:

(3) Subsection (1) does not apply to a prisoner who is subject to a non-parole period of 6 years or more specified in accordance with section 20A, unless—

35 (a) the length of the sentence for the only serious offence involved; or

(b) the total length of the sentences for all the serious offences involved (any two or more such sentences that are wholly or partly concurrent being treated as one sentence to the extent of their concurrence),

*Probation and Parole (Serious Offences) Amendment 1987***SCHEDULE 1—AMENDMENTS—continued**

is less than 6 years (if no other offence is involved) or 8 years (if any other offence is involved).

(4) A reference in subsection (3) to an “other” offence is a reference to an offence that is not a serious offence.

## 5 (5) Section 26A—

After section 26, insert:

**Duty of Board where serious offences involved**

10 26A. The Board shall not make a parole order with respect to a prisoner to whom section 26 (1) does not apply, unless the Board has—

- (a) determined that release of the prisoner is appropriate, having regard to the principle that the public interest is of primary importance;
- 15 (b) considered relevant comments (if any) made by the court when sentencing the prisoner for the serious offence or serious offences involved;
- (c) considered any reports required by regulations made for the purposes of this section to be furnished to it with respect to the prisoner;
- 20 (d) taken into account the antecedents of the prisoner and any special circumstances of the case; and
- (e) determined that it has sufficient reason (other than that the prisoner may become liable to be deported) to believe that the prisoner, if released from custody, would be able to
- 25 adapt to normal lawful community life.

## (6) Schedule 5—

At the end of the Act, insert:

**SCHEDULE 5—SERIOUS OFFENCES**

(Sec. 4 (1))

30 **Homicide, grievous bodily harm etc.**

1. Any of the following offences:

- (a) murder or manslaughter;
- (b) an offence under sections 27–30 of the Crimes Act 1900 (attempts to murder);
- 35 (c) an offence under section 33 of the Crimes Act 1900 (wounding etc. with intent to do grievous bodily harm or resist arrest);
- (d) an offence under section 196 or 197 of the Crimes Act 1900 (setting fire to dwelling etc. with person therein).

**Abduction and kidnapping**

40 2. An offence under sections 86–91 of the Crimes Act 1900.



SCHEDULE 1—AMENDMENTS—*continued***Robbery**

3. An offence under sections 94–98 of the Crimes Act 1900, except the offence of stealing any chattel, money or valuable security from the person of another, as referred to in section 476 (6) (a) (ii) of that Act.

**Sexual assault**

4. An offence under or punishable under any of the following provisions of the Crimes Act 1900:

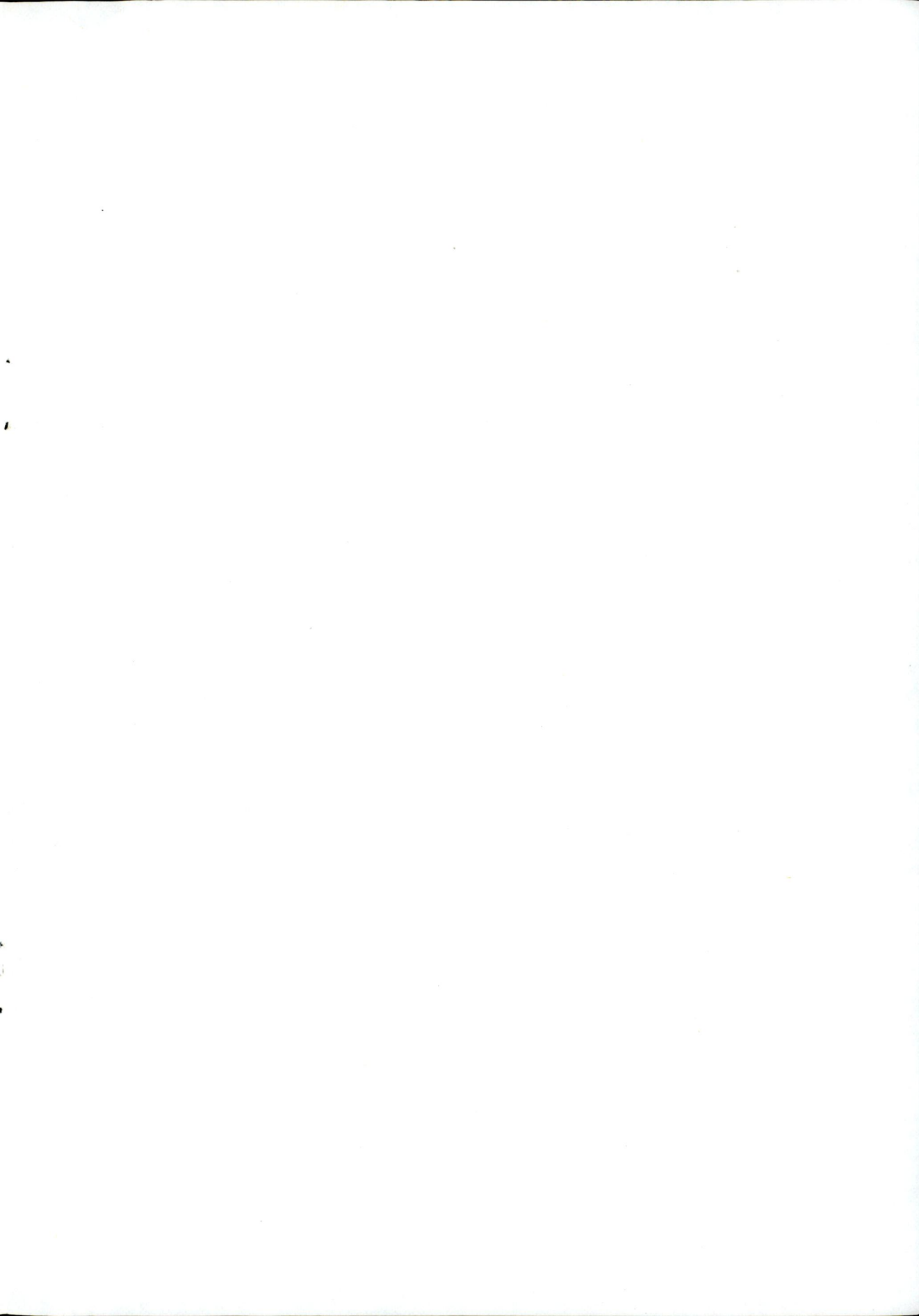
- (a) section 61B (sexual assault category 1—inflicting grievous bodily harm with intent to have sexual intercourse);
- (b) section 61C (sexual assault category 2—inflicting actual bodily harm etc. with intent to have sexual intercourse);
- (c) section 61D (sexual assault category 3—sexual intercourse without consent), but only where the offence is committed against a person under the age of 10 years;
- (d) section 66A (sexual intercourse—child under 10);
- (e) section 66B (attempting, or assaulting with intent, to have sexual intercourse with child under 10);
- (f) section 78H (homosexual intercourse with male under 10);
- (g) section 78I (attempt, or assault with intent, to have homosexual intercourse with male under 10).

**Drug trafficking etc.**

5. An offence under the Drug Misuse and Trafficking Act 1985, being—

- (a) an offence section 23 (2) of that Act (cultivation etc. of prohibited plants);
- (b) an offence under section 24 (2) of that Act (manufacture or production of prohibited drugs);
- (c) an offence under section 25 (2) of that Act (supply of prohibited drugs);
- (d) an offence under section 26 of that Act of conspiring to commit an offence referred to in paragraph (a), (b) or (c);
- (e) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); or
- (f) an offence under section 28 of that Act of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales which corresponds to section 23 (2), 24 (2) or 25 (2) of that Act.







**PROBATION AND PAROLE (SERIOUS OFFENCES)  
AMENDMENT ACT 1987 No. 182**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 194, 1983

SCHEDULE 1—AMENDMENTS

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**PROBATION AND PAROLE (SERIOUS OFFENCES) AMENDMENT  
ACT 1987 No. 182**

NEW SOUTH WALES



**Act No. 182, 1987**

An Act to amend the Probation and Parole Act 1983 to provide for the imposition of minimum non-parole periods for certain serious offences; and for other purposes. [Assented to 4 December 1987]

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See also Crimes (Sentencing) Amendment Act 1987.

*Probation and Parole (Serious Offences) Amendment 1987*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Probation and Parole (Serious Offences) Amendment Act 1987.

**Commencement**

2. This Act shall commence on a day to be appointed by proclamation.

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

3. The Probation and Parole Act 1983 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 4 (**Interpretation**)—

Section 4 (1)—

After the definition of “regulation”, insert:

“serious offence” means an offence referred to in Schedule 5;

(2) Sections 20A, 20B—

After section 20, insert:

**Minimum non-parole periods for serious offences**

20A. (1) If—

- (a) a non-parole period is to be specified with respect to one or more offences (including, where relevant, an offence for which a term of imprisonment is already being served); and
- (b) the offence or at least one of the offences is a serious offence,

this section applies to the non-parole period.

(2) The non-parole period shall be at least three-quarters of—

- (a) the length of the sentence for the only serious offence involved; or
- (b) the total length of the sentences for all the serious offences involved (any two or more such sentences that are wholly or partly concurrent being treated as one sentence to the extent of their concurrence).

(3) This section has effect with respect to non-parole periods specified pursuant to section 19, 20, 22 or 23.



SCHEDULE 1—AMENDMENTS—*continued*

(4) A reference in this section to a serious offence does not include a reference to an offence committed before the commencement of this section.

**Commencement of certain non-parole periods**

20B. (1) If section 20A applies to a non-parole period and the non-parole period is specified with respect to—

- (a) an original term (for which a non-parole period was previously specified); and
- (b) a subsequent term,

the later non-parole period shall commence, or be deemed to have commenced, on the first day on which the prisoner was in custody serving the original term or on such later day as the court or the Board may specify when fixing the later non-parole period.

(2) If a court or the Board specifies such a later day, it shall state the reasons for doing so.

(3) This section has effect despite anything in section 24.

(4) In this section, “original term” and “subsequent term” have the same meanings as in section 20.

**(3) Section 21 (Discretion of court)—**

Section 21 (3), (4)—

After section 21 (2), insert:

(3) Notwithstanding section 20A, a court or the Board, when specifying a non-parole period with respect to a serious offence, may specify a shorter period than that required by section 20A, but only if it determines that the circumstances justify that course.

(4) If a court or the Board specifies such a shorter non-parole period, it shall state the reasons for doing so.

**(4) Section 26 (General duty of the Board)—**

Section 26 (3), (4)—

After section 26 (2), insert:

(3) Subsection (1) does not apply to a prisoner who is subject to a non-parole period of 6 years or more specified in accordance with section 20A, unless—

- (a) the length of the sentence for the only serious offence involved; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) the total length of the sentences for all the serious offences involved (any two or more such sentences that are wholly or partly concurrent being treated as one sentence to the extent of their concurrence),

is less than 6 years (if no other offence is involved) or 8 years (if any other offence is involved).

(4) A reference in subsection (3) to an “other” offence is a reference to an offence that is not a serious offence.

(5) Section 26A—

After section 26, insert:

**Duty of Board where serious offences involved**

26A. The Board shall not make a parole order with respect to a prisoner to whom section 26 (1) does not apply, unless the Board has—

- (a) determined that release of the prisoner is appropriate, having regard to the principle that the public interest is of primary importance;
- (b) considered relevant comments (if any) made by the court when sentencing the prisoner for the serious offence or serious offences involved;
- (c) considered any reports required by regulations made for the purposes of this section to be furnished to it with respect to the prisoner;
- (d) taken into account the antecedents of the prisoner and any special circumstances of the case; and
- (e) determined that it has sufficient reason (other than that the prisoner may become liable to be deported) to believe that the prisoner, if released from custody, would be able to adapt to normal lawful community life.

(6) Schedule 5—

At the end of the Act, insert:

**SCHEDULE 5—SERIOUS OFFENCES**

(Sec. 4 (1))

**Homicide, grievous bodily harm etc.**

1. Any of the following offences:

- (a) murder or manslaughter;
- (b) an offence under sections 27–30 of the Crimes Act 1900 (attempts to murder);

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) an offence under section 33 of the Crimes Act 1900 (wounding etc. with intent to do grievous bodily harm or resist arrest);
- (d) an offence under section 196 or 197 of the Crimes Act 1900 (setting fire to dwelling etc. with person therein).

**Abduction and kidnapping**

- 2. An offence under sections 86–91 of the Crimes Act 1900.

**Robbery**

- 3. An offence under sections 94–98 of the Crimes Act 1900, except the offence of stealing any chattel, money or valuable security from the person of another, as referred to in section 476 (6) (a) (ii) of that Act.

**Sexual assault**

- 4. An offence under or punishable under any of the following provisions of the Crimes Act 1900:
  - (a) section 61B (sexual assault category 1—inflicting grievous bodily harm with intent to have sexual intercourse);
  - (b) section 61C (sexual assault category 2—inflicting actual bodily harm etc. with intent to have sexual intercourse);
  - (c) section 61D (sexual assault category 3—sexual intercourse without consent), but only where the offence is committed against a person under the age of 10 years;
  - (d) section 66A (sexual intercourse—child under 10);
  - (e) section 66B (attempting, or assaulting with intent, to have sexual intercourse with child under 10);
  - (f) section 78H (homosexual intercourse with male under 10);
  - (g) section 78I (attempt, or assault with intent, to have homosexual intercourse with male under 10).

**Drug trafficking etc.**

- 5. An offence under the Drug Misuse and Trafficking Act 1985, being—
  - (a) an offence under section 23 (2) of that Act (cultivation etc. of prohibited plants);
  - (b) an offence under section 24 (2) of that Act (manufacture or production of prohibited drugs);
  - (c) an offence under section 25 (2) of that Act (supply of prohibited drugs);
  - (d) an offence under section 26 of that Act of conspiring to commit an offence referred to in paragraph (a), (b) or (c);
  - (e) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a), (b) or (c); or

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SCHEDULE 1—AMENDMENTS—*continued*

- (f) an offence under section 28 of that Act of conspiring to commit, or of aiding, abetting, counselling or procuring the commission of, an offence under the provisions of a law in force outside New South Wales which corresponds to section 23 (2), 24 (2) or 25 (2) of that Act.