

# SENTENCING (AMENDMENT) ACT 1992 No. 56

NEW SOUTH WALES

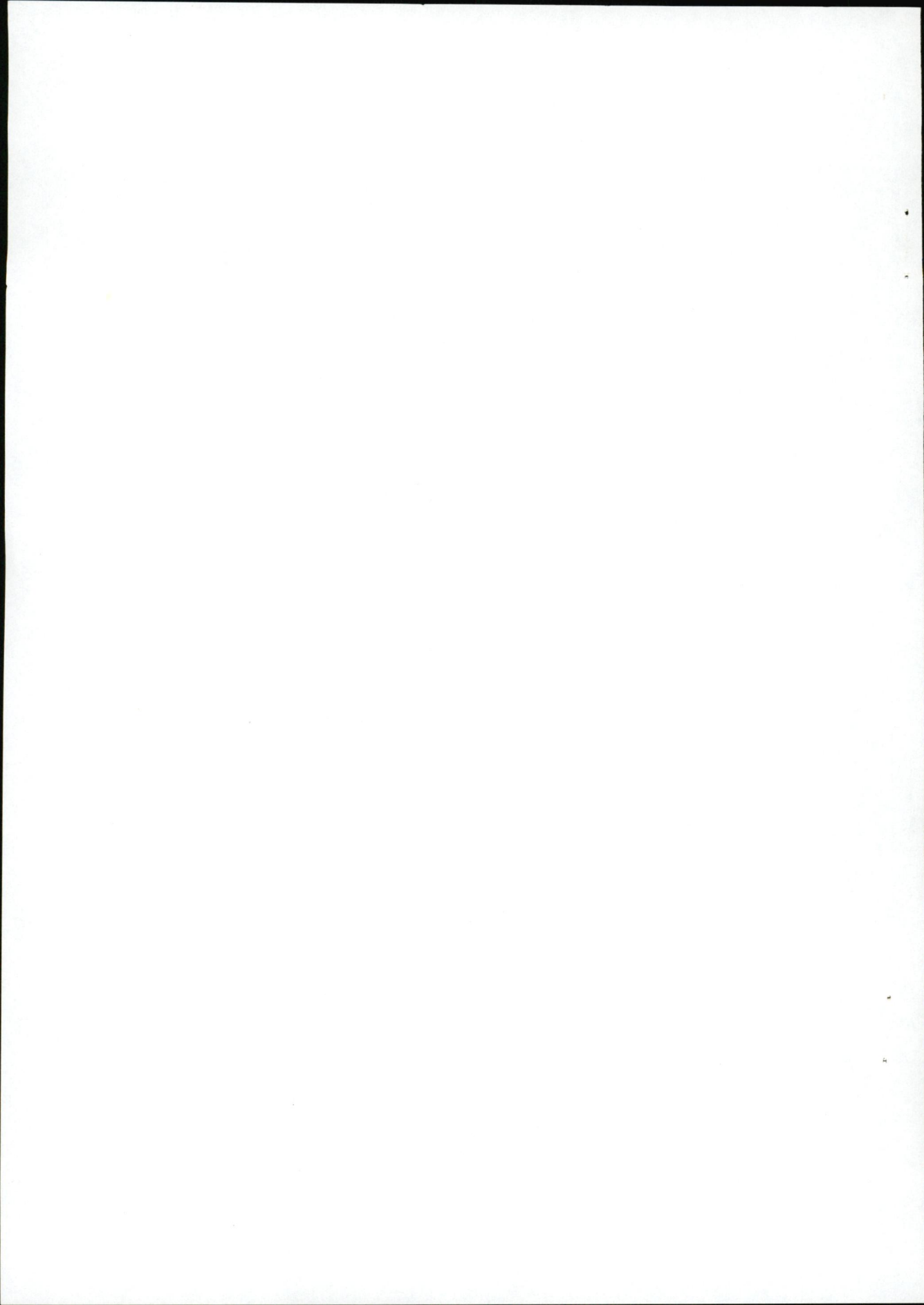


## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Sentencing Act 1989 No. 87
4. Savings and transitional provisions

SCHEDULE 1—AMENDMENTS

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**SENTENCING (AMENDMENT) ACT 1992 No. 56**

**NEW SOUTH WALES**



**Act No. 56, 1992**

**An Act to amend the Sentencing Act 1989 with respect to the detention in custody of persons suspected of a breach of parole and with respect to the composition of the Offenders Review Board; and for other purposes.  
[Assented to 8 October 1992]**

*Sentencing (Amendment) Act 1992 No. 56*

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

**Short title**

1. This Act may be cited as the Sentencing (Amendment) Act 1992.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Sentencing Act 1989 No. 87**

3. The Sentencing Act 1989 is amended as set out in Schedule 1.

**Savings and transitional provisions**

4. (1) Section 25 of the Sentencing Act 1989, as amended by this Act, applies in respect of sentences of imprisonment imposed before or after the commencement of Schedule 1 (1).

(2) The amendments made by this Act to section 36 of the Sentencing Act 1989 do not apply to a warrant issued before the commencement of Schedule 1 (2).

(3) Nothing in this Act affects the validity of the appointment, or continuity in office, of any member of the Offenders Review Board holding office immediately before the commencement of Schedule 1 (3).

(4) The persons who, immediately before the commencement of Schedule 1 (3), held office as the members of the Offenders Review Board referred to in section 45 (2) (b) and (c) of the Sentencing Act 1989 are taken to hold office under section 45 (1) (b) of that Act, as amended by this Act.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

- (1) Section 25 (**Making of parole orders by Board**):

From section 25 (1) (b), omit “and the remainder of the sentence exceeds 6 months”.

- (2) Section 36 (**Warrants**):

From section 36 (3), omit “the warrant was issued”, insert instead “the person was returned to prison or removed to a place of custody, or to court, pursuant to the warrant”.

*Sentencing (Amendment) Act 1992 No. 56*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 45:

Omit the section, insert instead:

**Composition of the Board**

45. (1) The Board is to consist of:

- (a) 7 members appointed by the Governor; and
- (b) 2 ex-officio members, one being a police officer nominated by the Commissioner of Police and one being an officer of the Community Corrections Service of the Department of Courts Administration nominated by the Director-General of that Department.

(2) Of the appointed members:

- (a) 3 are each to be either a Judge of the District Court or a retired Judge of the Supreme Court or the District Court; and
- (b) 4 are to reflect as closely as possible the composition of the community at large.

(4) Schedule 1 (**Provisions Relating to the Members of the Board, Divisions of the Board and Procedure**):

- (a) From clause 3 (4), omit “non-judicial member” where firstly occurring, insert instead “non-judicial appointed member”.
- (b) From clause 3 (4), omit “non-judicial member” where secondly occurring, insert instead “member”.
- (c) After clause 3, insert:

**Deputies**

3A. (1) The Commissioner of Police or the Commander, State Intelligence Group may from time to time appoint a person to be the deputy of the ex-officio member nominated by that Commissioner, and each may revoke such an appointment at any time.

(2) The Director-General of the Department of Courts Administration may from time to time appoint a person to be the deputy of the ex-officio member nominated by that Director-General, and may revoke such an appointment at any time.

*Sentencing (Amendment) Act 1992 No. 56*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) In the absence of an ex-officio member, the member's deputy:

- (a) may, if available, act in the place of the member; and
- (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (d) From clauses 4 and 8, omit "a member" wherever occurring, insert instead "an appointed member".
- (e) From clause 5, omit "A member", insert instead "An appointed member".
- (f) From clause 6 (subclause (1) (i) excepted), omit "a member" wherever occurring, insert instead "an appointed member".
- (g) Omit clause 6 (1) (i) and (j).
- (h) After clause 6, insert:

**Withdrawal of nomination as ex-officio member**

6A. (1) The Commissioner of Police may at any time revoke the nomination of a police officer made for the purposes of section 45 (1) (b).

(2) The Director-General of the Department of Courts Administration may at any time revoke the nomination of an officer of the Community Corrections Service made for the purposes of section 45 (1) (b).

(3) On a revocation under this clause the office, as a Board member, of the person affected is taken to be vacant.

- (i) In clause 7, after "appointed", insert "or nominated".

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[Minister's second reading speech made in—  
*Legislative Assembly on 9 April 1992*  
*Legislative Council on 23 September 1992*]

SENTENCING (AMENDMENT) BILL 1992

SECOND READING SPEECH - LEGISLATIVE ASSEMBLY

MR SPEAKER,

I MOVE,

THAT THIS BILL BE NOW READ A SECOND TIME.

MR SPEAKER,

THE SENTENCING AMENDMENT BILL PROPOSES THREE AMENDMENTS TO THE SENTENCING ACT 1989. BEFORE DETAILING THE SPECIFIC FEATURES OF EACH AMENDMENT, IT IS APPROPRIATE TO NOTE THE CONTEXT IN WHICH THE AMENDMENTS HAVE BEEN MADE, TOGETHER WITH THE CIRCUMSTANCES LEADING TO THEIR DEVELOPMENT.

..2/.....MR SPEAKER,





MR SPEAKER,

THE SENTENCING ACT HAS NOW BEEN OPERATING FOR OVER TWO AND A HALF YEARS. IT PROVIDES THE FRAMEWORK FOR THE ESTABLISHMENT AND MAINTENANCE OF TRUTH IN SENTENCING WITHIN THE NEW SOUTH WALES CRIMINAL JUSTICE SYSTEM. AS HONOURABLE MEMBERS WOULD BE AWARE, THE ACT FUNDAMENTALLY SERVES TWO FUNCTIONS. THE FIRST IS TO PROVIDE AND DIRECT SENTENCING POLICY. THIS IS THE RESPONSIBILITY OF MY COLLEAGUE THE ATTORNEY-GENERAL. THE SECOND RELATES TO THE ADMINISTRATION OF THE NEW SOUTH WALES PAROLE SYSTEM, WHICH FALLS WITHIN MY MANDATE.

MR SPEAKER,

THE PROPOSALS BEFORE THE HOUSE HAVE BEEN DEVELOPED FROM MATTERS REFERRED TO ME BY THE CHAIRPERSON OF THE OFFENDERS REVIEW BOARD AND THE SENIOR CHILDREN'S MAGISTRATE. THE AMENDMENTS ARE DESIGNED TO ENHANCE THE EFFICIENCY OF THE NEW SOUTH WALES PAROLE SYSTEM.

.../3.....MR SPEAKER



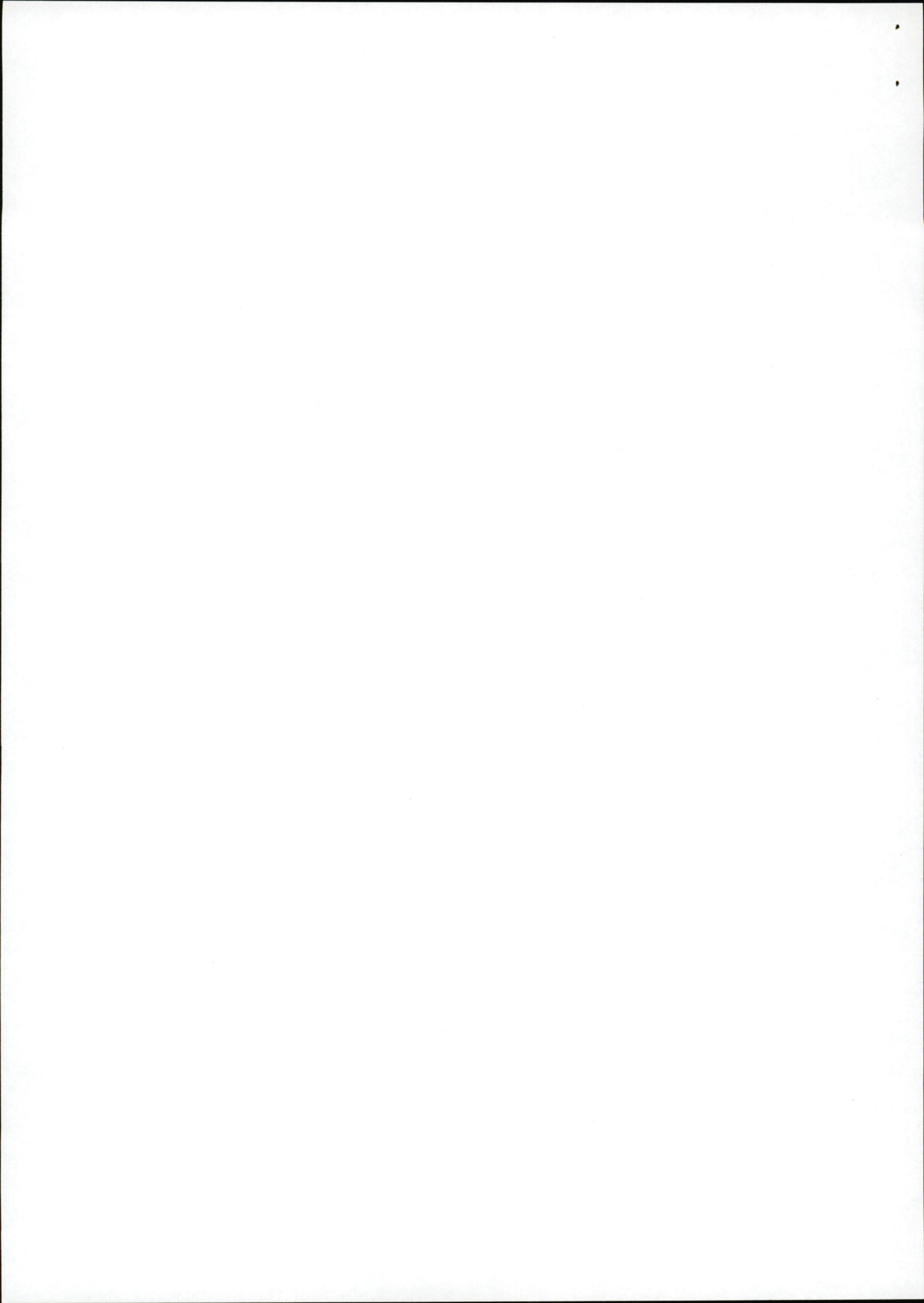
MR SPEAKER,

THE RESPONSIBILITY FOR THE CONDITIONAL RELEASE TO PAROLE OF ADULT INMATES, SUBJECT TO SENTENCES OF GREATER THAN THREE YEARS WHICH COMPRISE AN ADDITIONAL TERM, RESTS WITH THE OFFENDERS REVIEW BOARD.

PERHAPS A LESSER KNOWN FEATURE OF THE SENTENCING ACT IS THE CREATION OF A PARALLEL PAROLE JURISDICTION IN THE CHILDREN'S COURT. POWERS EQUIVALENT TO THE OFFENDERS REVIEW BOARD ARE EXERCISED BY THE SENIOR CHILDREN'S MAGISTRATE FOR JUVENILE DETAINEES.

I WILL NOW TURN TO THE SPECIFIC FEATURES OF THE AMENDMENTS.

../4.....MR SPEAKER,



MR SPEAKER,

THE FIRST AMENDMENT SEEKS TO REMOVE THE EXISTING STATUTORY LIMITATION ON THE RE-PAROLE JURISDICTION OF THE OFFENDERS REVIEW BOARD. AT PRESENT, SECTION 25(1)(B) OF THE ACT MAKES PROVISION FOR THE OFFENDERS REVIEW BOARD TO ORDER THE RELEASE OF INMATES UNDER CERTAIN CONDITIONS.

THOSE INMATES SUBJECT ORIGINALLY TO IMPRISONMENT FOR THREE YEARS OR LESS, WHERE A COURT-BASED PAROLE ORDER HAS BEEN REVOKED, MAY ONLY BE ELIGIBLE FOR RE-PAROLE IF THE BALANCE OF SENTENCE EXCEEDS SIX MONTHS.

THE CHAIRPERSON OF THE OFFENDERS REVIEW BOARD HAS RECOMMENDED THE REMOVAL OF THIS LIMITATION. IT HAS BEEN NOTED THAT, IN THE PAST TWO YEARS, OVER 80 CASES HAVE FALLEN OUTSIDE THE JURISDICTION OF THE BOARD DUE TO THE CONSTRAINTS OF STANDING OVER RE-PAROLE CONSIDERATION FOR NECESSARY CUSTODIAL AND PAROLE REPORTS.

../5.....ACCORDINGLY



ACCORDINGLY, IN MANY INSTANCES, SOME INMATES HAVE REMAINED IN CUSTODY TO SERVE THE UNEXPIRED BALANCE OF PAROLE DESPITE POSSIBLY BEING SUITABLE FOR RE-PAROLE.

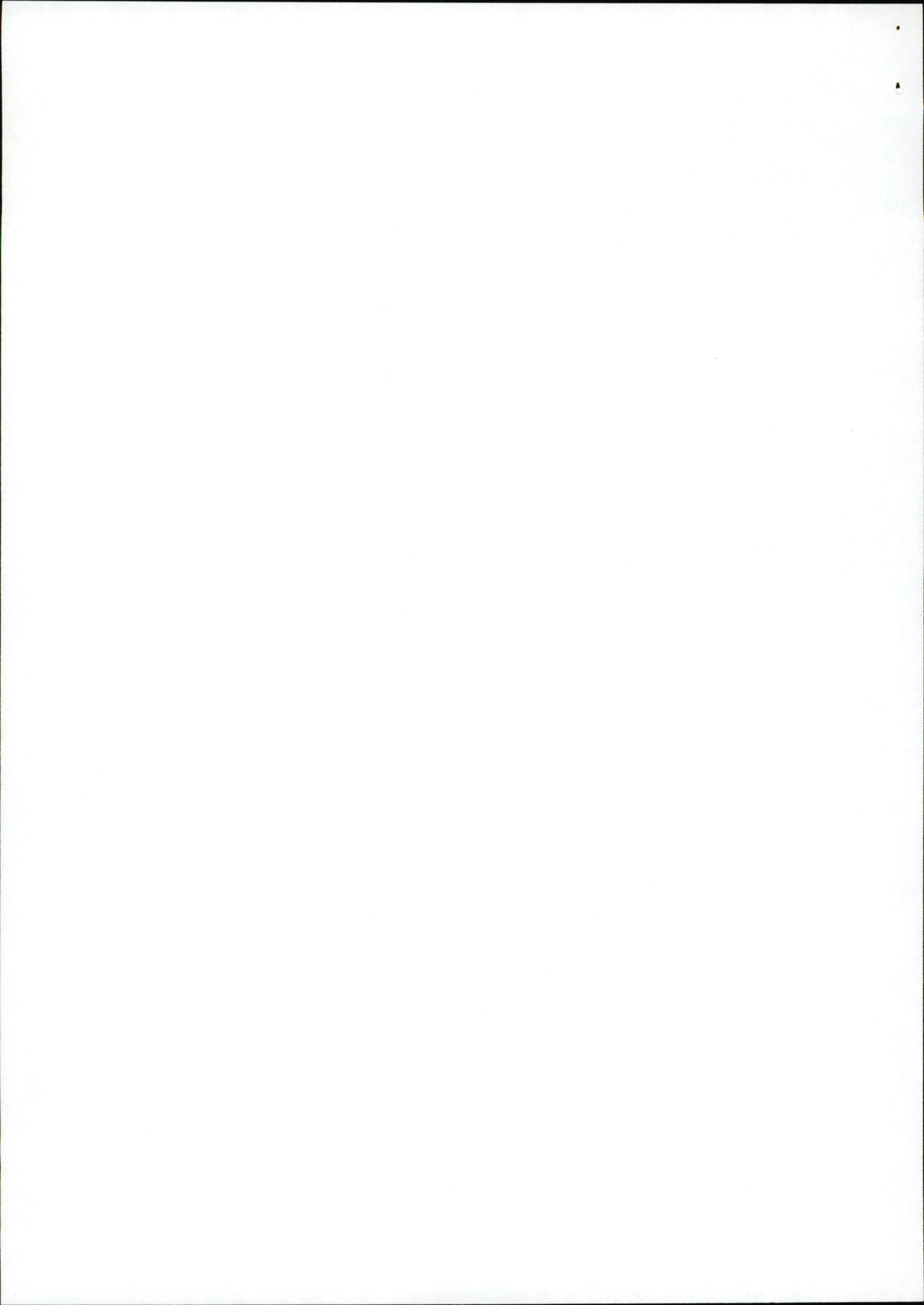
I BELIEVE RESPONSIBILITY FOR DETERMINING WHETHER AN INMATE IS SUITABLE FOR RE-PAROLE SHOULD BE GOVERNED BY THE DELIBERATIONS OF THE OFFENDERS REVIEW BOARD AND NOT BY AN ARBITRARY STATUTORY LIMITATION. THIS AMENDMENT IS FULLY SUPPORTED BY THE SENIOR CHILDREN'S MAGISTRATE.

MR SPEAKER,

THE SECOND AMENDMENT RELATES TO A MATTER RAISED BY THE SENIOR CHILDREN'S MAGISTRATE REGARDING THE ISSUE OF WARRANTS UNDER SECTION 36(3) OF THE ACT WHEN BREACH OF PAROLE IS SUSPECTED BY EITHER THE BOARD OR COURT.

PRESENT PROVISIONS ARE SUCH THAT PAROLEES, WHEN APPREHENDED BY POLICE, MAY BE DETAINED IN CUSTODY UNTIL REVOCATION OF THE WARRANT BY THE BOARD OR COURT, OR UNTIL THE EXPIRATION OF 7 DAYS, COMMENCING FROM THE DATE THE WARRANT WAS ISSUED.

../6.....MR SPEAKER,



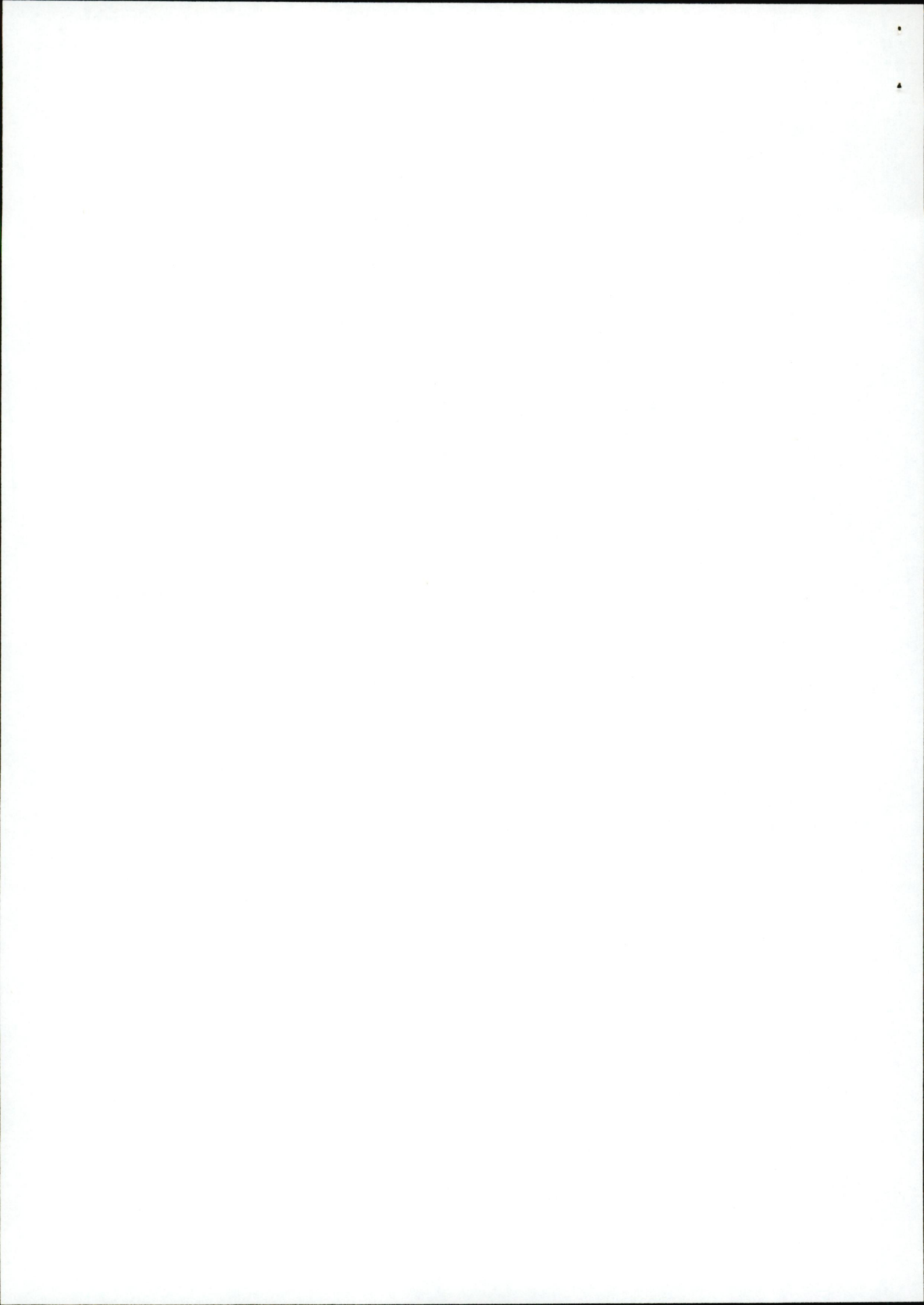


MR SPEAKER,

THE ISSUE OF A WARRANT IS THE ACT OF THE BOARD OR COURT IN PREPARING, SIGNING OR CIRCULATING THE DOCUMENT. IN THE MAJORITY OF CASES WHERE PERSONS SUSPECTED OF BREACH OF PAROLE HAVE FAILED TO APPEAR BEFORE THE BOARD, A TIME PERIOD OF MUCH GREATER THAN 7 DAYS IS REQUIRED TO LOCATE AND SUBSEQUENTLY APPREHEND THE PAROLEE.

ACCORDINGLY, IT IS PROPOSED THAT THE LEGISLATION WILL REQUIRE EXECUTION OF THE WARRANT, WHICH IS THE ACT OF THE OFFICER AUTHORISED TO CARRY OUT THE TERMS OF THE WARRANT IN APPREHENDING AND PLACING THE PERSON IN CUSTODY, TO APPLY BEFORE THE 7 DAY LIMITATION WILL COMMENCE.

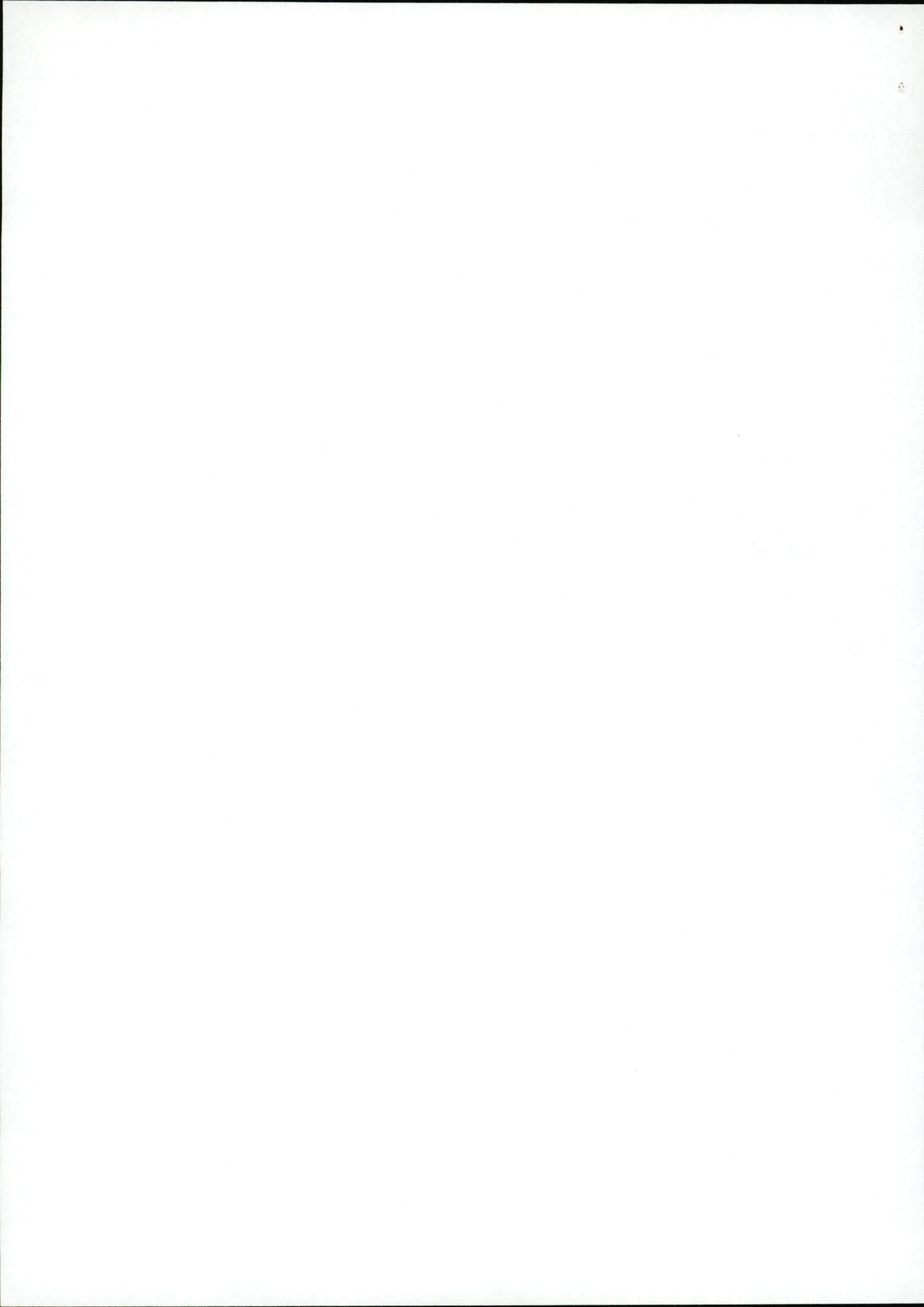
..7/.....MR SPEAKER,



MR SPEAKER,

THE FINAL AMENDMENT ADDRESSES THE STATUS OF THE TWO DEPARTMENTAL REPRESENTATIVES ON THE OFFENDERS REVIEW BOARD. AT PRESENT, ALL MEMBERS OF THE BOARD ARE APPOINTED BY THE GOVERNOR. IN ACCORDANCE WITH THE PROVISIONS OF THE ACT, WHENEVER THE DEPARTMENTAL POLICE OR COMMUNITY CORRECTIONS MEMBER PROPOSE TO BE ABSENT FROM THE BOARD, AN EXECUTIVE COUNCIL MINUTE, NOMINATING AN ACTING MEMBER, MUST BE PREPARED AND SUBMITTED FOR THE GOVERNOR'S APPROVAL. THIS PROCESS HAS PROVEN TO BE ADMINISTRATIVELY CUMBERSOME AND INAPPROPRIATE TO THE NEEDS OF THE OFFENDERS REVIEW BOARD, PARTICULARLY IN RELATION TO THE POLICE MEMBER ON THE BOARD.

..8.....MR SPEAKER,



MR SPEAKER,

ADVICE FROM THE OFFENDERS REVIEW BOARD INDICATES IT IS POSSIBLE THAT THE POLICE COMMISSIONER'S NOMINEE TO THE BOARD MAY BE UNABLE TO ATTEND MEETINGS FOR APPROXIMATELY TEN WEEKS EACH YEAR DUE TO LEAVE AND OTHER WORK COMMITMENTS. ABSENCES HAVE OFTEN BEEN NECESSARY AT EXTREMELY SHORT NOTICE. ALTHOUGH THE COMMISSIONER HAS NOMINATED A DEPUTY FOR SUCH OCCASIONS, THE PROCESS OF OBTAINING THE APPROVAL OF THE GOVERNOR IN COUNCIL OFTEN RESULTS IN LACK OF FULL REPRESENTATION ON THE BOARD.

TO OVERCOME THESE PROBLEMS, DEPARTMENTAL MEMBERS WILL BE GRANTED EX OFFICIO MEMBERSHIP STATUS ON THE BOARD. IN THE CASE OF THE POLICE NOMINEE, THE APPOINTMENT OF A DEPUTY WILL BE SUBJECT TO EITHER THE POLICE COMMISSIONER OR, IF UNAVAILABLE, THE COMMANDER OF THE STATE INTELLIGENCE GROUP. THE COMMUNITY CORRECTIONS MEMBER WILL BE SUBJECT TO APPOINTMENT BY THE DIRECTOR GENERAL OF THE DEPARTMENT OF COURTS ADMINISTRATION.

..8.....MR SPEAKER,



MR SPEAKER,

THE AFOREMENTIONED AMENDMENTS TO THE ACT ARE RESPONSIVE TO THE CONCERNS OF THE OFFENDERS REVIEW BOARD AND SENIOR CHILDREN'S MAGISTRATE AND ARE DESIGNED TO AMELIORATE UNNECESSARY ADMINISTRATIVE BURDENS OF THE ACT.

I TAKE THIS OPPORTUNITY TO PLACE ON RECORD MY REGARD FOR THE OUTSTANDING ACHIEVEMENTS OF BOTH THE BOARD, HEADED BY HIS HONOUR JUDGE ALEC MUIR, AND IN THE JUVENILE JURISDICTION, THE SENIOR CHILDREN'S MAGISTRATE, MR. ROD BLACKMORE, FOR MAINTAINING A VIABLE AND CREDIBLE PAROLE SYSTEM IN WHICH THE COMMUNITY OF NEW SOUTH WALES CAN HAVE FAITH.

THE WORKLOAD OF THE OFFENDERS REVIEW BOARD IS SUBSTANTIAL. IN THE LAST CALENDAR YEAR OVER 5000 MATTERS WERE REFERRED TO THE BOARD FOR CONSIDERATION. OF THESE, 830 CASES INVOLVED FINAL DETERMINATIONS REGARDING RELEASE TO PAROLE. IN 78% OF THOSE CASES, RELEASE TO PAROLE WAS CONSIDERED APPROPRIATE.

..9/.....ANY AMENDMENTS





ANY AMENDMENTS WHICH ENABLE THE INCORPORATION OF MORE EFFICIENT AND STREAMLINED PROCEDURES INTO THE NEW SOUTH WALES PAROLE SYSTEM WILL BE WELCOMED BY ALL WHO WORK WITHIN THE ADMINISTRATION OF JUSTICE.

I COMMEND THE BILL TO THE HOUSE.



FIRST PRINT

## SENTENCING (AMENDMENT) BILL 1992

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to make several miscellaneous amendments to the Sentencing Act 1989. The amendments relate to:

- (a) the release on parole of prisoners whose parole has previously been revoked; and
- (b) the custody of persons arrested in relation to suspected breaches of parole; and
- (c) the composition of the Offenders Review Board.

The amendments are explained more fully below.

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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 proclaimed day or days.

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

Clause 4 preserves the holding of office by the existing members of the Offenders Review Board and makes other appropriate savings and transitional provisions.

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### SCHEDULE 1—AMENDMENTS

#### Release of prisoners on parole

Section 25 empowers the Offenders Review Board to order the release on parole of a prisoner in certain circumstances even if a previous parole order in respect of that prisoner has been revoked, provided that the remainder of the prisoner's sentence exceeds 6 months.

Schedule 1 (1) amends the section so as to allow the Board to order the release of such a prisoner even if the remainder of the prisoner's sentence is less than 6 months.

*Sentencing (Amendment) 1992*

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**Period of custody of person arrested in respect of parole**

Under section 36 as currently in force, a person arrested pursuant to a warrant issued in relation to a suspected contravention of a term or condition of the person's parole can be returned to prison, or removed to a place of custody or to court, and detained pending an inquiry to determine whether or not the parole was breached. The section authorises the person's detention until the warrant is revoked by the court or the Board or until the expiration of a period of 7 days after the warrant was issued—whichever detention is the shorter.

Schedule 1 (2) amends section 36 so as to allow the person to be detained, in a case where the warrant is not sooner revoked, for a maximum of 7 days after the person was returned to prison or removed into custody or to court pursuant to the warrant.

**Composition of Offenders Review Board**

All 9 members of the Board are currently appointed by the Governor.

Schedule 1 (3) repeals and replaces section 45 to provide that 2 of the members (the one from the Police Service and the one from the Community Corrections Service, as the Probation and Parole Service is now known) are not to be appointed by the Governor but are, instead, to be nominated by senior officers of their respective organisations.

Schedule 1 (4) makes a series of consequential or complementary amendments to Schedule 1 (which contains provisions relating to the members of the Offenders Review Board).

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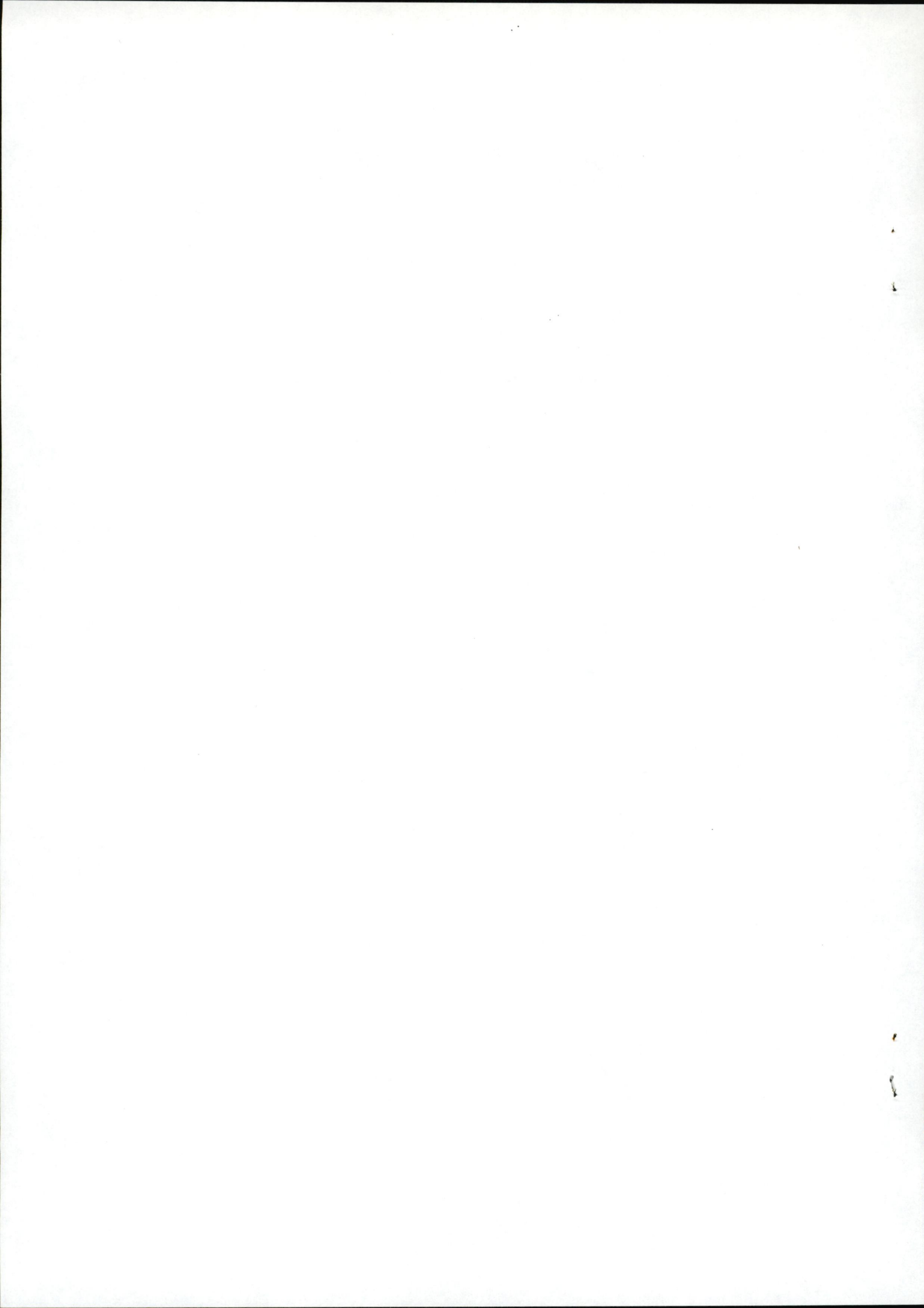
**SENTENCING (AMENDMENT) BILL 1992**

NEW SOUTH WALES



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  4. Savings and transitional provisions
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**SENTENCING (AMENDMENT) BILL 1992**

NEW SOUTH WALES



No. , 1992

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**A BILL FOR**

An Act to amend the Sentencing Act 1989 with respect to the detention in custody of persons suspected of a breach of parole and with respect to the composition of the Offenders Review Board; and for other purposes.

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*Sentencing (Amendment) 1992*

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

**Short title**

1. This Act may be cited as the Sentencing (Amendment) Act 1992.

**Commencement**

- 5 2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Sentencing Act 1989 No. 87**

3. The Sentencing Act 1989 is amended as set out in Schedule 1.

**Savings and transitional provisions**

- 10 4. (1) Section 25 of the Sentencing Act 1989, as amended by this Act, applies in respect of sentences of imprisonment imposed before or after the commencement of Schedule 1 (1).

- 15 (2) The amendments made by this Act to section 36 of the Sentencing Act 1989 do not apply to a warrant issued before the commencement of Schedule 1 (2).

- (3) Nothing in this Act affects the validity of the appointment, or continuity in office, of any member of the Offenders Review Board holding office immediately before the commencement of Schedule 1 (3).

- 20 (4) The persons who, immediately before the commencement of Schedule 1 (3), held office as the members of the Offenders Review Board referred to in section 45 (2) (b) and (c) of the Sentencing Act 1989 are taken to hold office under section 45 (1) (b) of that Act, as amended by this Act.

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**SCHEDULE 1—AMENDMENTS**

25

(Sec. 3)

- (1) Section 25 (**Making of parole orders by Board**):

From section 25 (1) (b), omit "and the remainder of the sentence exceeds 6 months".

- (2) Section 36 (**Warrants**):

30

From section 36 (3), omit "the warrant was issued", insert instead "the person was returned to prison or removed to a place of custody, or to court, pursuant to the warrant".



*Sentencing (Amendment) 1992*SCHEDULE 1—AMENDMENTS—*continued*

- (3) Section 45:  
Omit the section, insert instead:  
**Composition of the Board**
45. (1) The Board is to consist of: 5
- (a) 7 members appointed by the Governor; and
- (b) 2 ex-officio members, one being a police officer nominated by the Commissioner of Police and one being an officer of the Community Corrections Service of the Department of Courts Administration nominated by the Director-General of that Department. 10
- (2) Of the appointed members:
- (a) 3 are each to be either a Judge of the District Court or a retired Judge of the Supreme Court or the District Court; and 15
- (b) 4 are to reflect as closely as possible the composition of the community at large.
- (4) Schedule 1 (**Provisions Relating to the Members of the Board, Divisions of the Board and Procedure**):
- (a) From clause 3 (4), omit “non-judicial member” where firstly occurring, insert instead “non-judicial appointed member”. 20
- (b) From clause 3 (4), omit “non-judicial member” where secondly occurring, insert instead “member”.
- (c) After clause 3, insert:
- Deputies** 25
- 3A. (1) The Commissioner of Police or the Commander, State Intelligence Group may from time to time appoint a person to be the deputy of the ex-officio member nominated by that Commissioner, and each may revoke such an appointment at any time. 30
- (2) The Director-General of the Department of Courts Administration may from time to time appoint a person to be the deputy of the ex-officio member nominated by that Director-General, and may revoke such an appointment at any time. 35

*Sentencing (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) In the absence of an ex-officio member, the member's deputy:

- 5 (a) may, if available, act in the place of the member; and  
(b) while so acting, has all the functions of the member and is to be taken to be a member.
- (d) From clauses 4 and 8, omit "a member" wherever occurring, insert instead "an appointed member".
- 10 (e) From clause 5, omit "A member", insert instead "An appointed member".
- (f) From clause 6 (subclause (1) (i) excepted), omit "a member" wherever occurring, insert instead "an appointed member".
- (g) Omit clause 6 (1) (i) and (j).
- (h) After clause 6, insert:
- 15 **Withdrawal of nomination as ex-officio member**
- 6A. (1) The Commissioner of Police may at any time revoke the nomination of a police officer made for the purposes of section 45 (1) (b).
- 20 (2) The Director-General of the Department of Courts Administration may at any time revoke the nomination of an officer of the Community Corrections Service made for the purposes of section 45 (1) (b).
- (3) On a revocation under this clause the office, as a Board member, of the person affected is taken to be vacant.
- 25 (i) In clause 7, after "appointed", insert "or nominated".
-