

FIRST PRINT

SENTENCING LEGISLATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to make a number of amendments to the Sentencing Act 1989, the Prisons Act 1952 and the Crimes Act 1900.

The principal amendments are made for the purpose of revising the procedures relating to the consideration, grant, refusal and review of parole for prisoners who are serious offenders.

The Bill also contains amendments:

- (a) to require victim submissions and victim impact statements to be taken into account in certain circumstances concerning serious offenders; and
- (b) to require the Serious Offenders Review Council to consider the public interest when considering certain matters relating to serious offenders; and
- (c) to clarify the power to defer the consideration of parole for certain persons while they are at large; and
- (d) to change the name of the Offenders Review Board; and
- (e) by way of statute law revision, for savings and transitional purposes, and for consequential matters.

Many of the provisions of the Bill deal with serious offenders. The expression "serious offender" is presently defined in section 59 of the Prisons Act 1952, and includes life prisoners, prisoners who are serving a minimum term of 12 years or more, prisoners convicted of murder, and certain prisoners who are managed as serious offenders.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days proclaimed by the Governor-in-Council.

Clauses 3-6 are formal provisions giving effect to the Schedules of amendments.

Sentencing Legislation (Amendment) 1994

Change of name

The Bill changes the name of the Offenders Review Board to the "Parole Board". References in this Explanatory Note to the Parole Board should be read as extending to the Offenders Review Board pending the commencement of the provisions changing its name.

See Schedule 1 (1), (13), (14); Schedule 2 (1), (2) (a), (4); Schedule 4. Transitional provisions are included in clause 6 of Schedule 2A to the Sentencing Act 1989, as inserted by Schedule 1 (19).

Re-organisation of Sentencing Act 1989 regarding parole

Division 2 of Part 3 of the Sentencing Act 1989 deals with parole for prisoners with sentences of more than three years. The Bill divides the Division into a series of Subdivisions, so that prisoners who are not serious offenders will be dealt with by Subdivision 2, and serious offenders will be dealt with by Subdivision 3. Under the present arrangements, both classes of prisoners are dealt with under the one set of provisions; under the new arrangements, they will be dealt with under separate sets of provisions (although a number of the provisions in both Subdivisions are the same or similar). This involves a number of consequential amendments.

See Schedule 1 (3), (4), (6), (7), (8), (15).

Parole procedures concerning serious offenders

The Bill revises the procedures regarding the grant of parole to prisoners who are serious offenders. As mentioned above, parole for serious offenders will be dealt with by Subdivision 3 of Division 2 of Part 3. A significant alteration will be the opportunity for victims (as well as prisoners) to make submissions to the Parole Board at key times.

Under the Bill, the Parole Board will be required to give preliminary consideration as to whether a serious offender should be released on parole and to formulate its initial intention either to make or not to make a parole order (proposed section 22D). The Board will in due course decide whether to make a parole order, on the following principles:

- (a) the Board will confirm its initial intention to make a parole order if there are no victim submissions or it is not required to seek victim submissions;
- (b) the Board will reconsider its initial intention to make a parole order if there are victim submissions and will in that event take into account any prisoner submissions;
- (c) the Board will confirm its initial intention not to make a parole order if there are no prisoner submissions;
- (d) the Board will reconsider its initial intention not to make a parole order if there are prisoner submissions and will in that event take into account any victim submissions.

(Proposed sections 22E-22K.)

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LEGISLATIVE COUNCIL

Sentencing Legislation (Amendment) Bill 1994

First Print

Amendments to be moved in Committee

- No. 1 Page 7, Schedule 1, proposed section 22H, lines 26 and 27. Omit "receiving and".
- No. 2 Page 7, Schedule 1, proposed section 22H, lines 34-36. Omit "and to have a reasonable opportunity to make relevant submissions at the hearing".
- No. 3 Pages 7 and 8, Schedule 1, proposed section 22H, line 39 on page 7 to line 4 on page 8. Omit "and to have a reasonable opportunity to make any relevant submissions at the hearing".
- No. 4 Page 8, Schedule 1, proposed section 22H, lines 5-7. Omit all words on those lines, insert instead:
- (5) Submissions must be made in writing and in advance of the hearing. The victim and prisoner are entitled to reasonable access to the submissions in advance of the hearing.
- No. 5 Page 8, Schedule 1, proposed section 22I, line 22. Omit "receiving and".
- No. 6 Page 8, Schedule 1, proposed section 22I, lines 29-31. Omit "and to have a reasonable opportunity to make relevant submissions at the hearing".
- No. 7 Page 9, Schedule 1, proposed section 22I, lines 11 and 12. Omit "and to have a reasonable opportunity to make any relevant submissions at the hearing".
- No. 8 Page 9, Schedule 1, proposed section 22I, lines 13-15. Omit all words on those lines, insert instead:
- (7) Submissions must be made in writing and in advance of the hearing. The victim and prisoner are entitled to reasonable access to the submissions in advance of the hearing.
- No. 9 Page 9, Schedule 1, proposed section 22J. After line 37, insert:
- (3) That decision must be deferred if a hearing is

to be conducted in accordance with subsection (4).

(4) The Board must set a date on which the Board will hold a meeting if the Board is of the opinion that there is a dispute as to any matter of fact, as shown in the submissions considered at a meeting held under section 22H or 22I, that warrants the holding of a further meeting.

(5) On setting a date for a meeting under subsection (4), the Board is required to give notice, at least 14 days before the date of the meeting, to the victim and prisoner indicating that the victim and prisoner are required to be present at the meeting and may be required to give evidence as to the matter in dispute.

(6) A Public Defender (within the meaning of the Public Defenders Act 1969) may appear for a prisoner, to whom legal aid was granted for proceedings for the offence concerned, at a meeting under subsection (4) and may, when appearing for the person, be instructed by a solicitor who is an officer of the Legal Aid Commission or by another solicitor.

(7) The Board is to observe the rules of law governing the admission of evidence in the conduct of any such meeting.

(8) At such a meeting, the Board is to decide whether or not the prisoner should be released on parole.

No. 10 Page 19, Schedule 2, proposed section 62A. After line 32, insert:

(4) If a submission is lodged by the victim within that 14-day period, the Review Council must give notice of that fact to the offender and indicate in the notice that the offender may lodge submissions with the Review Council within a specified period of 14 days.

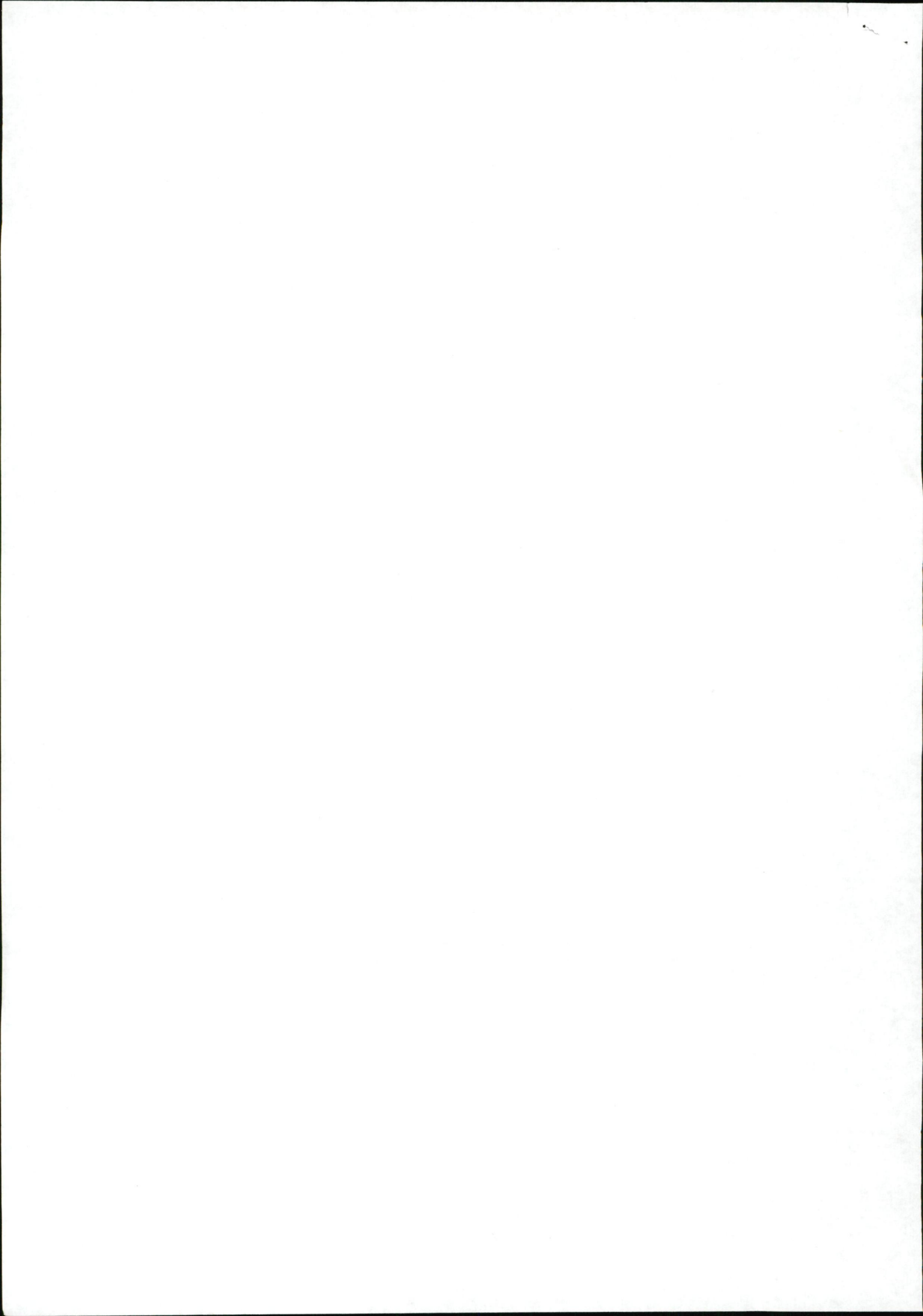
No. 11 Page 19, Schedule 2, proposed section 62A, line 35. Omit "that period", insert instead "the relevant 14-day period".

No. 12 Page 19, Schedule 2, proposed section 62A. After line 36, insert:

(6) A decision to make a recommendation must be deferred if a meeting is to be conducted in accordance with subsection (7).

(7) The Review Council must set a date on which the Review Council will hold a meeting if the Review Council is of the opinion that there is a dispute as to any matter of fact, as shown in the submissions considered under subsection (5), that warrants the holding of such a meeting.

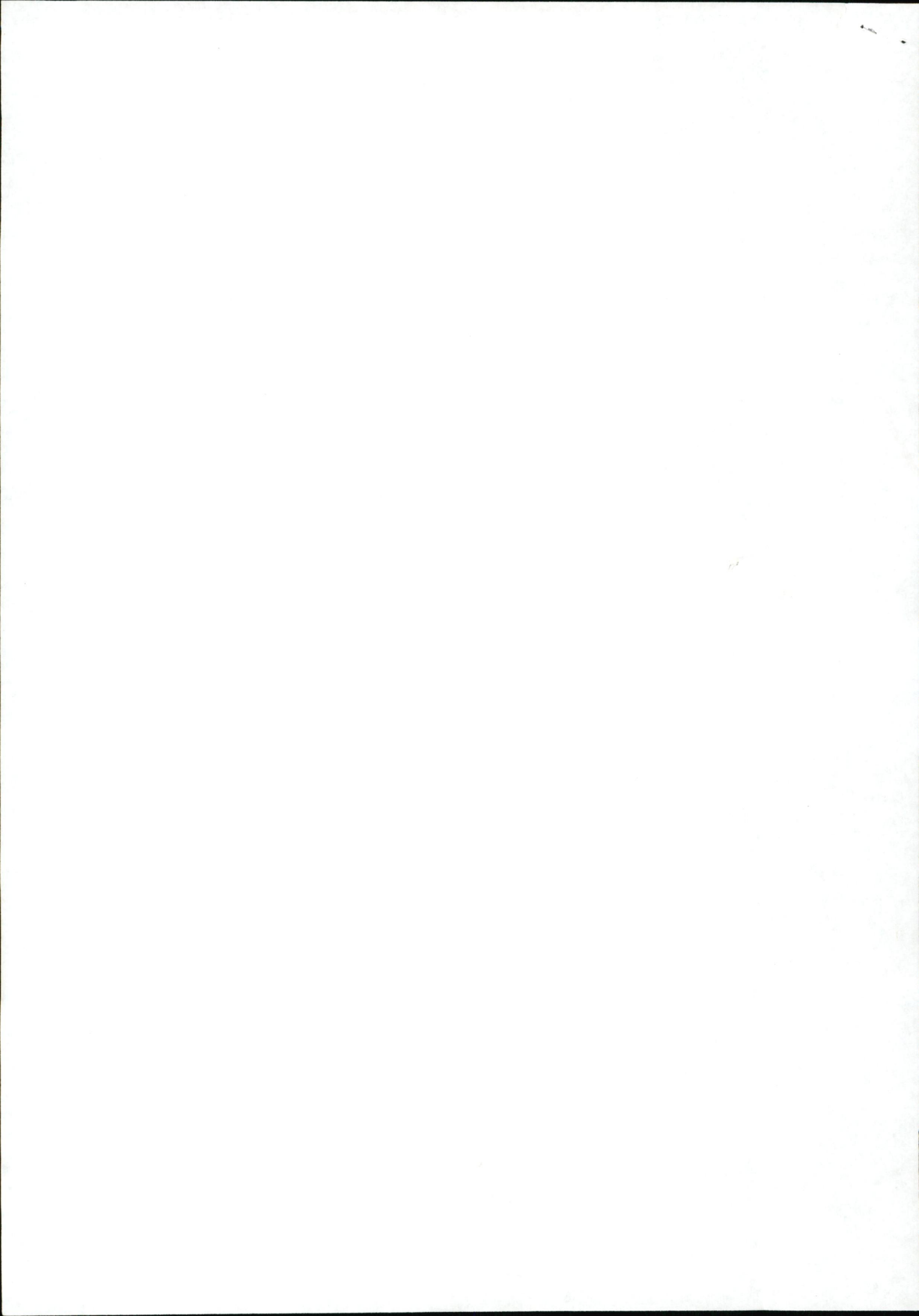
(8) On setting a date for a meeting under subsection (7), the Review Council is required to give notice, at least 14 days before the date of the meeting, to the victim and offender indicating that the victim and offender are required to be present



at the hearing and may be required to give evidence as to the matter in dispute.

(9) A Public Defender (within the meaning of the Public Defenders Act 1969) may appear for a prisoner, to whom legal aid was granted for the proceedings for the offence concerned, at a meeting under subsection (7) and may, when appearing for the person, be instructed by a solicitor who is an officer of the Legal Aid Commission or by another solicitor.

(10) The Review Council is to observe the rules of law governing the admission of evidence in the conduct of any such meeting.



Sentencing Legislation (Amendment) 1994

The functions of the Serious Offenders Review Council to provide reports and advice to the Parole Board concerning the release on parole of serious offenders will be re-enacted in Subdivision 3 (proposed section 22N).

See Schedule 1 (6).

Victim submissions to Parole Board

Victims who choose to make submissions to the Parole Board after the Board has formulated its initial intention to make a parole order for a serious offender will have to lodge a notice of intention to do so, after which a hearing of the Board will be set to receive submissions (proposed section 22H). Submissions can be made in writing or orally. Submissions are made by the victim, or by a family representative of the victim if the victim is dead or under any incapacity. Submissions can be made on behalf of a victim or family representative, but only with the written consent of the victim or family representative. Victims will not be entitled to call or examine witnesses, thereby ensuring that as far as possible the hearings will be conducted in a non-adversarial fashion (proposed clause 19 (2) of Schedule 1).

Similar arrangements are made for victims who choose to make submissions to the Parole Board after the Board has formulated its initial intention not to make a parole order for a serious offender and the serious offender indicates a desire to make submissions to the Board (proposed section 22I).

See Schedule 1 (6), (18).

Application by Crown to Court of Criminal Appeal

Following a decision by the Parole Board to make a parole order, the Crown will be authorised to apply to the Court of Criminal Appeal for a direction that the decision was made on information that was false, misleading or irrelevant (proposed section 23A). A parole order does not come into operation for eight days, to allow for such an application to be made. If such an application is made within seven days of the making of the parole order, the order is suspended until the application is dealt with or suspended (proposed section 22L (2), (3)).

See Schedule 1 (6), (9).

Victim submissions to Serious Offenders Review Council

A change is proposed by the Bill in the procedure to be adopted by the Serious Offenders Review Council when making a recommendation for a change in the security classification of a serious offender which would make the offender eligible for consideration for release on leave from prison. Under the Bill, the Review Council will not be able to make such a recommendation until an opportunity has been given for victims to make submissions to the Council about the serious offender and any submissions have been considered by the Council.

See Schedule 2 (3).

Sentencing Legislation (Amendment) 1994

Deferral of consideration of parole when prisoner is at large

The Bill will make it clear that the Parole Board can defer consideration of parole in relation to a person who is still at large after revocation of a parole order (proposed sections 18 (3) and 22C (3)).

See Schedule 1 (5), (6).

Power to decline to consider parole

The Bill will enable the Parole Board to decline to consider the grant of parole for a prisoner for up to three years at a time (proposed sections 18 (4) and 22C (4)).

See Schedule 1 (5), (6).

Request by Crown to revoke parole order

The Crown will be authorised to request the Parole Board to revoke a parole order granted to a serious offender (proposed section 34A). The request is made on the ground that the parole order was made on information that was false, misleading or irrelevant. If the Parole Board refuses to revoke the parole order, the Crown can apply to the Court of Criminal Appeal for a direction with respect to the information (proposed section 41A).

See Schedule 1 (10), (11).

Consideration of public interest by Serious Offenders Review Council

The Serious Offenders Review Council will be expressly required to take the public interest into consideration when providing advice and making recommendations about the security classification of serious offenders, the placement of serious offenders, and developmental programs provided for serious offenders. The Bill lists a number of matters to be taken into account when considering the public interest.

See Schedule 2 (2) (b).

Victim impact statements

Section 447C of the Crimes Act 1900 was inserted by the Crimes (Sentencing) Amendment Act 1987, but has not yet commenced.

The Bill will amend that section:

- (a) to require the Supreme Court to take into account victim impact statements when exercising its functions under section 13A of the Sentencing Act 1989 to substitute minimum and additional terms of imprisonment for existing life sentences (see Schedule 3 (a)—proposed section 447C (1A), (2); and a consequential amendment made by Schedule 1 (2)); and
- (b) to enable victim impact statements to be made by or on behalf of family representatives of victims against whom the offence was committed and who are dead or under some incapacity (or in circumstances prescribed by the regulations) (Schedule 3 (a)—proposed section 447C (2A)); and
- (c) to provide that the absence of a victim impact statement is not to give rise to an inference that an offence had little or no impact on a victim (Schedule 3 (b)).

Sentencing Legislation (Amendment) 1994

Statute law revision

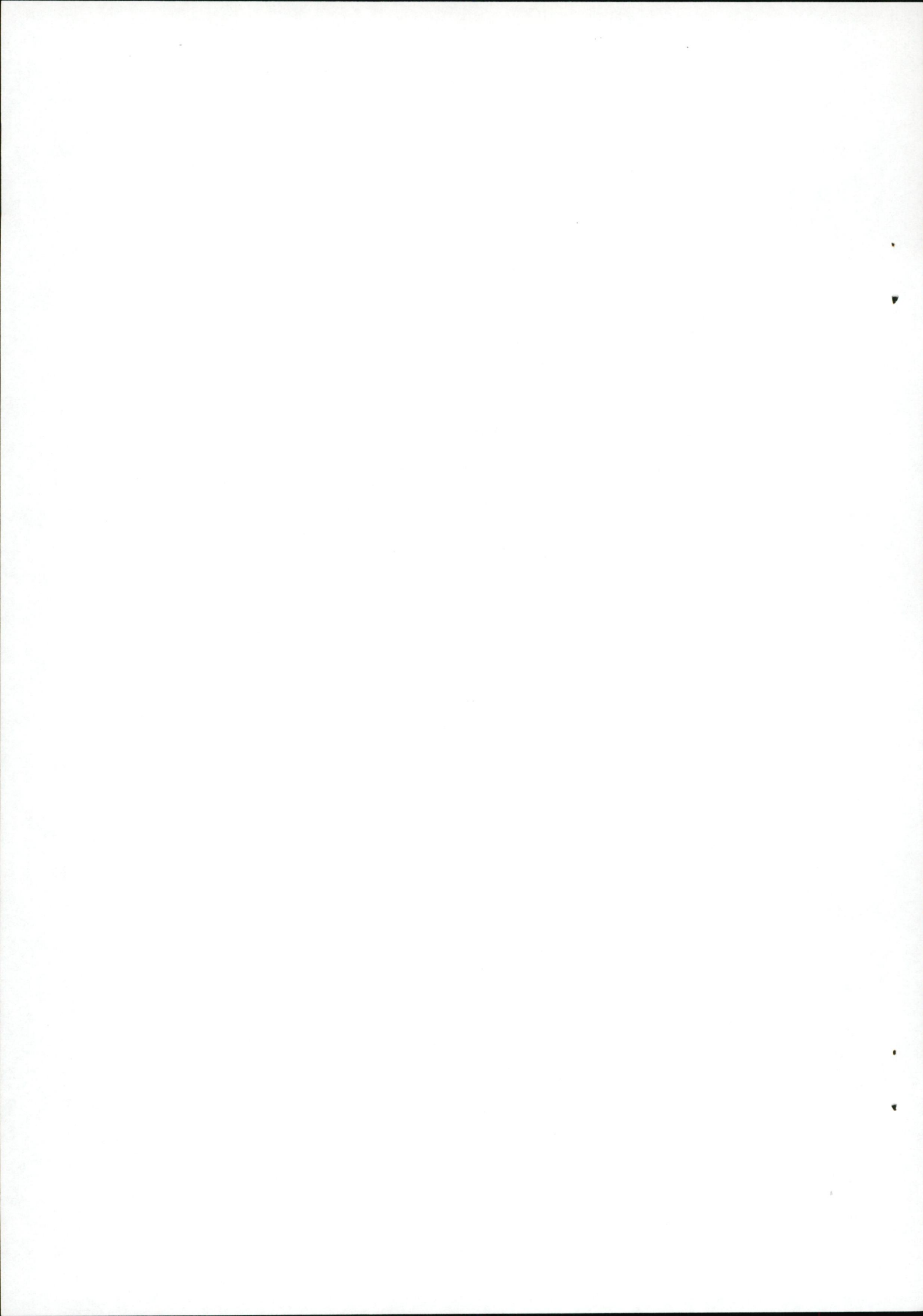
The Bill amends the Sentencing Act 1989 by way of statute law revision. The amendments are consequential on administrative changes.

See Schedule 1 (12), (16).

Savings and transitional provisions

The Bill inserts a Schedule of savings and transitional provisions into the Sentencing Act 1989. Parole orders already made are unaffected, but generally the amendments made by the Bill will extend to existing prisoners.

See Schedule 1 (17), (19).



FIRST PRINT

SENTENCING LEGISLATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Sentencing Act 1989 No. 87
4. Amendment of Prisons Act 1952 No. 9
5. Amendment of Crimes Act 1900 No. 40
6. Consequential amendment of other Acts

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952

SCHEDULE 3—AMENDMENT OF CRIMES ACT 1900

SCHEDULE 4—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

SENTENCING LEGISLATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Sentencing Act 1989 and the Prisons Act 1952 to revise the procedures relating to the parole for prisoners who are serious offenders; to require victim submissions and victim impact statements to be taken into consideration in certain circumstances; to amend the Crimes Act 1900 in relation to the making and use of victim impact statements; to change the name of the Offenders Review Board and for this purpose to make consequential amendments to other Acts; and for other purposes.

Sentencing Legislation (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Sentencing Legislation (Amendment) Act 1994.

5 **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.

10 **Amendment of Prisons Act 1952 No. 9**

4. The Prisons Act 1952 is amended as set out in Schedule 2.

Amendment of Crimes Act 1900 No. 40

5. The Crimes Act 1900 is amended as set out in Schedule 3.

Consequential amendment of other Acts

15 6. The Acts specified in Schedule 4 are amended as set out in that Schedule.

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989

(Sec. 3)

(1) Section 4 (**Definitions**):

20 Omit the definition of "Board" in section 4 (1), insert instead:

"Board" means the Parole Board constituted by this Act;

(2) Section 13A (**Existing life sentences**):

25 At the end of section 13A (9), insert "This subsection does not affect the duty of the Supreme Court under section 447C (1A) of the Crimes Act 1900 to have regard to any victim impact statement."

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

- (3) Part 3, Division 2, Subdivision 1:
After the heading to Division 2, insert:
- Subdivision 1—General** 5
- (4) Part 3, Division 2, Subdivision 2:
After section 17, insert:
- Subdivision 2—Prisoners other than serious offenders**
- Application of this Subdivision** 10
- 17A. This Subdivision applies only to prisoners who are not serious offenders.
- (5) Section 18 (**Consideration by the Board**):
After section 18 (2), insert:
- (3) Despite subsection (1) (c), the Board is not required to consider whether the person concerned should be released on parole until the person is returned to the prison system following revocation of the parole order. If the person is at large for the whole of one or more years following the revocation, the Board may decline to consider its decision at all in relation to that year or those years. 15
- (4) Despite the above provisions of this section, the Board may decline to consider the case of a prisoner for up to but not exceeding 3 years at a time after it last considered the grant of parole to the prisoner under this Division. 20
- (6) Part 3, Division 2, Subdivision 3:
After section 22, insert:
- Subdivision 3—Serious offenders** 25
- Application of this Subdivision** 30
- 22A. This Subdivision applies only to prisoners who are serious offenders.

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

Definitions

22B. In this Subdivision:

5 “**prisoner submissions**” means submissions under this Subdivision to the Board by a prisoner;

 “**submissions**” means victim submissions or prisoner submissions;

 “**victim**”, in relation to a prisoner, means:

10 (a) a victim of an offence committed by the prisoner; or

 (b) a family representative of such a victim (if the victim is dead or under any incapacity or in such circumstances as may be prescribed by the regulations);

 “**victim submissions**” means submissions under this Subdivision to the Board by a victim.

Preliminary consideration by Board

20 22C. (1) The Board is required to give preliminary consideration as to whether a prisoner should be released on parole:

 (a) at least 60 days before the day on which the prisoner becomes eligible for release on parole; and

25 (b) if the prisoner has not been released on parole on or after that day—within each successive year following that day if the prisoner is then eligible for release on parole; and

 (c) if the prisoner has been released on parole on or after that day but the parole order has been revoked and a further parole order has not been made for the prisoner after that revocation—within each successive year following that revocation if the prisoner is then eligible for release on parole.

30 (2) Despite subsection (1) (a), the Board may defer giving preliminary consideration to a day less than 60 days (but not less than 21 days) before the day on which the prisoner becomes eligible for release on parole if it is of

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Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

the opinion that it is unable to complete its preliminary consideration because it has not been furnished with a report required to be made to it or there are other relevant matters requiring further consideration. 5

(3) Despite subsection (1) (c), the Board is not required to give preliminary consideration until the person concerned is returned to the prison system following revocation of the parole order. If the person is at large for the whole of one or more years following the revocation, the Board may decline to consider its decision at all in relation to that year or those years. 10

(4) Despite the above provisions of this section, the Board may decline to consider the case of a prisoner for up to but not exceeding 3 years at a time after it last considered the grant of parole to the prisoner under this Division. 15

Formulation of Board's initial intention

22D. On or immediately after giving its preliminary consideration as to whether a prisoner should be released on parole, the Board is required to formulate and record its initial intention either: 20

- (a) to make a parole order in relation to the prisoner; or 25
- (b) not to make such a parole order.

General procedure following formulation of Board's initial intention

22E. (1) The Board is to decide, in accordance with this Subdivision, to make or not to make a parole order, on the following principles: 30

- (a) the Board will confirm its initial intention to make a parole order if there are no victim submissions or if it is not required to seek victim submissions;
- (b) the Board will reconsider its initial intention to make a parole order if there are victim submissions and will in that event take into account any prisoner submissions; 35

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

5 (c) the Board will confirm its initial intention not to make a parole order if there are no prisoner submissions;

(d) the Board will reconsider its initial intention not to make a parole order if there are prisoner submissions and will in that event take into account any victim submissions.

10 (2) Submissions are to be disregarded unless they are made in accordance with this Subdivision.

(3) The Board is required to consider all submissions made in accordance with this Subdivision.

Preliminary notice to victims

15 22F. (1) As soon as practicable after formulating its initial intention to make a parole order, the Board is (subject to and in accordance with the regulations) required to give a preliminary notice of its intention to victims of the prisoner.

20 (2) The preliminary notice must:

(a) give an indication of the Board's initial intention; and

25 (b) state that there will be an opportunity for submissions to be made by victims of the prisoner about the making of a parole order in relation to the prisoner; and

30 (c) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged by a victim with the Secretary of the Board; and

(d) be in a form approved by the Board.

35 (3) In circumstances where a preliminary notice need not be given to victims of its initial intention to make a parole order, the Board may, subject to section 22N, proceed immediately to confirming its initial intention.

Preliminary notice to prisoner

40 22G. (1) As soon as practicable after formulating its initial intention not to make a parole order, the Board is required to give a preliminary notice of its intention to the prisoner.

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

- (2) The preliminary notice must:
- (a) give an indication of the Board's initial intention; and 5
 - (b) state that there will be an opportunity for submissions to be made by the prisoner about the making of a parole order in relation to the prisoner; and
 - (c) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged by the prisoner with the Secretary of the Board; and 10
 - (d) except as provided by section 49, be accompanied by copies of the reports and other documents intended to be used by the Board in deciding whether the prisoner should be released on parole; and 15
 - (e) be in a form approved by the Board. 20

Procedure following preliminary notice to victims 20

22H. (1) If a notice of intention to make submissions is lodged with the Secretary of the Board by a victim within the period specified in the notice under section 22F, the Board must set a date (occurring as soon as practicable, but not earlier than the end of that period) on which the Board will conduct a hearing for the purpose of receiving and considering submissions by victims. 25

(2) Subject to section 22J (2), the Board may postpone or adjourn any such hearing for any reason that seems appropriate to it. 30

(3) A victim who lodges such a notice of intention within that period is entitled to receive reasonable notice of the hearing and any postponed or adjourned hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make relevant submissions at the hearing. 35

(4) The prisoner concerned is entitled to receive reasonable notice of any such hearing, and is entitled to be present at any such hearing and to have a reasonable

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

opportunity to make any relevant submissions at the hearing.

5 (5) Submissions can be made in writing or orally, or both. If they are in writing, they may be presented to the Board in advance of the hearing or at the hearing.

(6) With the written consent of a victim or the prisoner, a person may do any or all of the following:

10 (a) lodge a notice of intention to make submissions on behalf of the victim or the prisoner; or

(b) make submissions on behalf of the victim or the prisoner; or

15 (c) be present at any such hearing with the approval of the Board.

Procedure following preliminary notice to prisoner

20 22I. (1) If a notice of intention to make submissions is lodged with the Secretary of the Board by the prisoner within the period specified in a notice under section 22G, the Board must set a date (occurring as soon as practicable) on which the Board will conduct a hearing for the purposes of receiving and considering submissions by the prisoner.

25 (2) Subject to section 22J (2), the Board may postpone or adjourn any such hearing for any reason that seems appropriate to it.

30 (3) The prisoner is entitled to receive reasonable notice of the hearing and any postponed or adjourned hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make relevant submissions at the hearing.

35 (4) On setting a date for a hearing under subsection (1), the Board is (subject to and in accordance with the regulations) required to give notice that it proposes to give an opportunity for submissions to be made by victims of the prisoner about the making of a parole order in relation to the prisoner.

(5) The notice must:

40 (a) give an indication of the Board's initial intention not to make a parole order, but must indicate that this intention could be reversed; and

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

- (b) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged with the Secretary of the Board; and 5
- (c) be in a form approved by the Board.
- (6) A victim who lodges such a notice of intention within that period is entitled to receive reasonable notice of any such hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make any relevant submissions at the hearing. 10
- (7) Submissions can be made in writing or orally, or both. If they are in writing, they may be presented to the Board in advance of the hearing or at the hearing. 15
- (8) With the written consent of the prisoner or a victim, a person may do any or all of the following:
- (a) lodge a notice of intention to make submissions on behalf of the prisoner or the victim; or
- (b) make submissions on behalf of the prisoner or the victim; or 20
- (c) be present at any such hearing with the approval of the Board.
- (9) Any meeting of the Board convened under this section is, where practicable, required to be held before the prisoner is eligible for release on parole. 25
- Decision following review**
- 22J. (1) At a meeting held under section 22H or 22I, the Board is required, after reviewing all the reports, documents, submissions and other information placed before it, to decide 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 decision should be deferred. 30
- (2) That decision: 35
- (a) may be deferred once only; and
- (b) may not be deferred for more than 2 months.
- (3) If, under this section, the Board decides that a prisoner should be released on parole, the Board may make an order under section 22L. 40

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

5 (4) If, under this section, the Board decides that a prisoner should not be released on parole or defers making a decision, the Board is required:

(a) to cause the reason for the decision or deferral to be recorded in the minutes of the Board; and

10 (b) to cause the prisoner to be advised, by notice in writing served on the prisoner, of the decision or deferral and the reason for the decision or deferral.

Decision where no review

15 22K. (1) The Board is required to confirm its initial intention to make a parole order if there are no victim submissions or if it is not required to seek victim submissions.

(2) The Board is required to confirm its initial intention not to make a parole order if there are no prisoner submissions.

20 (3) If, under this section, the Board confirms its initial intention to make a parole order, the Board is required to make an order under section 22L.

(4) If, under this section, the Board confirms its initial intention not to make a parole order, the Board is required:

25 (a) to cause the reason for its refusal to make a parole order to be recorded in the minutes of the Board; and

(b) to cause the prisoner to be advised, by notice served on the prisoner, of the refusal and the reason for the refusal.

30 **Parole order**

22L. (1) If the Board decides in accordance with this Subdivision that a prisoner should be released on parole, the Board is required to make an order directing the release of the prisoner at a specified time on:

35 (a) if the day on which the prisoner becomes eligible for release on parole occurs after the period of 8 days after the order is made—that day; or

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

- (b) if the day on which the prisoner becomes eligible for parole occurs during the period of 8 days after the order is made—a day during the period of 7 days commencing at the end of that period; or 5
- (c) if the day on which the prisoner becomes eligible for release on parole has passed—a day during the period of 7 days commencing at the end of the period of 8 days after the order is made. 10

(2) If an application is made to the Court of Criminal Appeal under section 23A within the period of 7 days after a parole order is made, the order is suspended until the application is dealt with by the Court or the application is withdrawn. 15

(3) However, if the direction of the Court of Criminal Appeal includes a requirement that the Board reconsider its decision in the light of the direction, the suspension of the order continues until the Board revokes the order under section 28 or confirms it with or without modifications. If the Board does neither during the period of 28 days after the date of the Court's order, the suspension automatically lapses at the end of that period. 20

Regulations regarding victims

22M. The regulations may: 25

- (a) prescribe the manner in which a notice to victims may or must be given under this Subdivision; and
- (b) establish a scheme for identifying (in advance or as occasion requires) persons who are eligible to be given such a notice; and 30
- (c) without limiting paragraph (b), require persons to provide evidence of their identity and of the circumstances by which they claim to be victims; and
- (d) determine the circumstances in which such a notice need not be given. 35

*Sentencing Legislation (Amendment) 1994*SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
*continued***Reasons to be provided for rejection of Review Council's advice**

5 22N. (1) If the Board rejects the advice of the Review Council given under section 62 of the Prisons Act 1952 concerning the release on parole of a prisoner, the Board must state in writing its reasons for rejecting that advice.

10 (2) The Board must forward a copy of those reasons to the Review Council.

(3) The Review Council may make submissions to the Board concerning the rejection of its advice within 21 days of that rejection.

15 (4) The Board is not to make a final decision concerning the release of the prisoner during the period referred to in subsection (3).

(7) Part 3, Division 2, Subdivision 4:

Before section 23, insert:

20 **Subdivision 4—Applications to Court of Criminal Appeal**

(8) Section 23 (**Application to Court of Criminal Appeal by prisoner**):

In section 23 (1) (a), after "22", insert ", 22J or 22K".

(9) Section 23A:

25 After section 23, insert:

Application to Court of Criminal Appeal by Crown

23A. (1) If:

30 (a) the Board has decided, under section 22J or 22K, that a prisoner who is a serious offender should be released on parole; and

(b) the Attorney General or the Director of Public Prosecutions alleges that the decision of the Board was made on information that was false, misleading or irrelevant,

35 the Attorney General or the Director of Public Prosecutions may, in accordance with rules of court, apply to the Court of Criminal Appeal for a direction to be given

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

to the Board as to whether the information was false, misleading or irrelevant and the Court of Criminal Appeal may give such directions with respect to the information as it thinks fit. 5

(2) At the hearing or determination of an application under this section, the prisoner is not entitled to appear in person, except by leave of the Court of Criminal Appeal.

(3) The power of the Court of Criminal Appeal to grant the prisoner 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. 10
15

(10) Section 34A:

After section 34, insert:

Request by Crown to revoke parole order

34A. The Attorney General or the Director of Public Prosecutions may request the Board to exercise its powers under section 34 to revoke a parole order made in relation to a prisoner who is a serious offender, on the ground that the order was made on information that was false, misleading or irrelevant. 20

(11) Section 41A:

After section 41, insert:

Application to Court of Criminal Appeal by Crown

41A. (1) If:

(a) the Board refuses within 28 days after a request by the Attorney General or the Director of Public Prosecutions under section 34A to revoke a parole order in relation to a prisoner who is a serious offender; and 30

(b) the Attorney General or the Director of Public Prosecutions alleges that the order was made on information that was false, misleading or irrelevant, 35

the Attorney General or the Director of Public Prosecutions may, in accordance with rules of court, apply

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

5 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 it thinks fit.

10 (2) Subsections (2) and (3) of section 23A apply to an application under this section in the same way as they apply to an application under section 23A (1).

(12) Section 43 (**Application of this Act to children**):

Omit section 43 (2) (h), insert instead:

15 (h) a reference to the Commissioner of Corrective Services were a reference to the Director-General of the Department of Juvenile Justice.

(13) Part 5, heading:

Omit "OFFENDERS REVIEW BOARD", insert instead "PAROLE BOARD".

20 (14) Section 44 (**Constitution of the Board**):

Omit section 44 (1), insert instead:

(1) There is constituted by this Act a Parole Board.

(15) Section 49 (**Security of certain information**):

After "20", insert ", 22G".

25 (16) Section 51 (**Information concerning prisoners and prisons**):

(a) From section 51 (1), omit "Director-General of Corrective Services", insert instead "Commissioner of Corrective Services".

30 (b) From section 51 (2), omit "Director-General of Corrective Services", insert instead "Director of the New South Wales Probation Service in the Department of Courts Administration, the Commissioner of Corrective Services".

(c) From section 51 (3), omit "Director-General of the Department of Family and Community Services", insert

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

instead “Director-General of the Department of Community Services (in respect of a prisoner or person referred to in paragraph (a)) or the Director-General of the Department of Juvenile Justice (in respect of a prisoner or person referred to in paragraph (b))”. 5

(d) From section 51 (4), omit “Secretary of the Department of Health”, insert instead “Director-General of the Department of Health”. 10

(17) Section 57 (**Savings and transitional provisions**):

Omit “Schedule 2 has”, insert instead “Schedules 2 and 2A have”.

(18) Schedule 1 (**Provisions relating to the members of the Board, Divisions of the Board and procedure**): 15

At the end of clause 19 (**Representation etc.**), insert:

(2) However, victims or their representatives are not entitled to call or examine witnesses at a hearing under Subdivision 3 of Division 2 of Part 3.

(19) Schedule 2A: 20

After Schedule 2, insert:

SCHEDULE 2A—SAVINGS AND TRANSITIONAL PROVISIONS RELATING TO AMENDING ACTS
(Sec. 57)

Part 1—General 25

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

Sentencing Legislation (Amendment) Act 1994. 30

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

Sentencing Legislation (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

5 (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:

- 10 (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; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

15 **Part 2—Provisions consequent on Sentencing Legislation (Amendment) Act 1994**

Definition

2. In this Part:

20 “amending Act” means the Sentencing Legislation (Amendment) Act 1994.

General application of amendments to existing prisoners and parole orders

25 3. (1) An amendment made to this Act or the Prisons Act 1952 by the amending Act that applies in relation to prisoners, parole orders or any other acts, matters or things extends to:

- (a) persons who were prisoners immediately before the commencement of the amendment; and
- (b) parole orders made before that commencement; and
- 30 (c) acts, matters or things done or omitted to be done before that commencement or existing at or before that commencement,

as appropriate according to the relevant provisions.

35 (2) Anything done or omitted under sections 18–22 of this Act before the commencement of Subdivision 3 of Division 2 of Part 3 of this Act in relation to serious offenders is taken to have been done or omitted under the relevant provision of that Subdivision.

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

(3) However, if any steps have been commenced under sections 18–22 of this Act before the commencement of Subdivision 3 of Division 2 of Part 3 of this Act in relation to a serious offender and the procedures under that Part in relation to those steps have not been completed at that commencement, those procedures are to be completed as if that Part had not been amended by the amending Act. This subclause has effect subject to any directions of the Board. 5
10

Consideration by Board

4. Without affecting the generality of clause 3, sections 18 (3) and 22 (3) of this Act as amended by the amending Act extend to persons who are at large at the commencement of those provisions. 15

Parole orders already made

5. Without affecting the generality of clause 3, a parole order in force at the commencement of Subdivision 3 of Division 2 of Part 3 of this Act in relation to a serious offender is taken to have been granted under that Subdivision. 20

Offenders Review Board

6. (1) On and from the commencement of the amendment of section 44 by the amending Act:

- (a) the body constituted with the name of Offenders Review Board continues in existence under the name of Parole Board, so that its identity is not affected; and 25
- (b) a reference in any other Act, in any instrument under an Act, or in any other document of any kind, to that body under its former name is to be read as or as including a reference to that body under its new name. 30

(2) The amendment does not affect the tenure of office of any member of that body. 35

(3) This clause overrides clause 9 of Schedule 2.

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952

(Sec. 4)

(1) Section 59 (**Definitions**):

- 5 (a) Omit the definition of “Offenders Review Board”, insert instead:

“**Parole Board**” means the Parole Board constituted by the Sentencing Act 1989;

- 10 (b) From paragraph (e) of the definition of “serious offender”, omit “Offenders Review Board”, insert instead “Parole Board”.

(2) Section 62 (**Functions of the Review Council**):

- (a) From section 62 (b), omit “Offenders Review Board”, insert instead “Parole Board”.

- 15 (b) At the end of section 62, insert:

(2) When exercising its functions under subsection (1) (a) in relation to a serious offender, the Review Council is to consider the public interest and any other relevant matters.

- 20 (3) Without limiting the generality of the meaning of public interest in subsection (2), the Review Council is to take into account the following matters when considering the public interest:

- 25 (a) the protection of the public, which is to be paramount;
- (b) the nature and circumstances of the crime;
- (c) the reasons and recommendations of the sentencing court;
- (d) the criminal history and family background of the offender;
- 30 (e) the time served in custody and the time to be served;
- (f) the conduct of the offender while in custody, including conduct during previous imprisonment, if applicable;
- 35 (g) the attitude of the offender;

Sentencing Legislation (Amendment) 1994

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952—
continued

- (h) the position of and consequences to the victim, including the victim's family;
- (i) the need to maintain public confidence in the administration of criminal justice; 5
- (j) the need to reassure the community that serious offenders are in secure custody as long as it is appropriate;
- (k) the rehabilitation of the offender and the re-entry of the person into the community as a law-abiding citizen; 10
- (l) the availability of family, departmental and other support;
- (m) such other factors as are prescribed by the regulations. 15
- (3) Section 62A:
- After section 62, insert:
- Victim submissions involving serious offenders**
- 62A. (1) This section applies to a recommendation of the Review Council to the Commissioner for a change in the security classification of a serious offender, where the change, if approved by the Commissioner, would make the offender eligible for consideration for leave of absence from prison under section 29. 20
- (2) The Review Council cannot make such a recommendation unless it has given notice, in accordance with the regulations, that it proposes to give an opportunity for submissions to be made by victims about the offender. 25
- (3) The notice must specify a period of at least 14 days during which submissions by a victim may be lodged with the Review Council. 30
- (4) Submissions can be in writing only.
- (5) The Review Council is required to consider all relevant submissions lodged within that period before deciding whether to make such a recommendation. 35

Sentencing Legislation (Amendment) 1994

SCHEDULE 3—AMENDMENT OF CRIMES ACT 1900—*continued*

(b) After section 447C (4), insert:

(4A) The absence of a victim impact statement is not to give rise to an inference that an offence had little or no impact on a victim.

5

**SCHEDULE 4—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS**

(Sec. 6)

Defamation Act 1974 No. 18

Section 17CA (Matters arising out of proceedings of Parole Board, Serious Offenders Review Council and Serious Offenders Management Committee):

10

From section 17CA (b), omit "Offenders Review Board", insert instead "Parole Board".

Parole Orders (Transfer) Act 1983 No. 190

15

Section 8 (Registration):

From section 8 (2) (a), omit "Offenders Review Board", insert instead "Parole Board".

SECOND PRINT

SENTENCING LEGISLATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Sentencing Act 1989 No. 87
4. Amendment of Prisons Act 1952 No. 9
5. Amendment of Crimes Act 1900 No. 40
6. Consequential amendment of other Acts

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952

SCHEDULE 3—AMENDMENT OF CRIMES ACT 1900

SCHEDULE 4—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments

NEW SOUTH WALES



Act No. , 1994

An Act to amend the Sentencing Act 1989 and the Prisons Act 1952 to revise the procedures relating to the parole for prisoners who are serious offenders; to require victim submissions and victim impact statements to be taken into consideration in certain circumstances; to amend the Crimes Act 1900 in relation to the making and use of victim impact statements; to change the name of the Offenders Review Board and for this purpose to make consequential amendments to other Acts; and for other purposes.

Sentencing Legislation (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Sentencing Legislation (Amendment) Act 1994.

5 **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.

10 **Amendment of Prisons Act 1952 No. 9**

4. The Prisons Act 1952 is amended as set out in Schedule 2.

Amendment of Crimes Act 1900 No. 40

5. The Crimes Act 1900 is amended as set out in Schedule 3.

Consequential amendment of other Acts

15 6. The Acts specified in Schedule 4 are amended as set out in that Schedule.

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989

(Sec. 3)

(1) Section 4 (**Definitions**):

20 Omit the definition of "Board" in section 4 (1), insert instead:

"Board" means the Parole Board constituted by this Act;

(2) Section 13A (**Existing life sentences**):

25 At the end of section 13A (9), insert "This subsection does not affect the duty of the Supreme Court under section 447C (1A) of the Crimes Act 1900 to have regard to any victim impact statement."

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

- (3) Part 3, Division 2, Subdivision 1:
After the heading to Division 2, insert:
- Subdivision 1—General** 5
- (4) Part 3, Division 2, Subdivision 2:
After section 17, insert:
- Subdivision 2—Prisoners other than serious offenders**
- Application of this Subdivision** 10
- 17A. This Subdivision applies only to prisoners who are not serious offenders.
- (5) Section 18 (**Consideration by the Board**):
After section 18 (2), insert:
- (3) Despite subsection (1) (c), the Board is not required to consider whether the person concerned should be released on parole until the person is returned to the prison system following revocation of the parole order. If the person is at large for the whole of one or more years following the revocation, the Board may decline to consider its decision at all in relation to that year or those years. 15
- (4) Despite the above provisions of this section, the Board may decline to consider the case of a prisoner for up to but not exceeding 3 years at a time after it last considered the grant of parole to the prisoner under this Division. 20
- (4) Despite the above provisions of this section, the Board may decline to consider the case of a prisoner for up to but not exceeding 3 years at a time after it last considered the grant of parole to the prisoner under this Division. 25
- (6) Part 3, Division 2, Subdivision 3:
After section 22, insert:
- Subdivision 3—Serious offenders** 30
- Application of this Subdivision**
- 22A. This Subdivision applies only to prisoners who are serious offenders.

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

Definitions

22B. In this Subdivision:

5 “**prisoner submissions**” means submissions under this Subdivision to the Board by a prisoner;

 “**submissions**” means victim submissions or prisoner submissions;

 “**victim**”, in relation to a prisoner, means:

10 (a) a victim of an offence committed by the prisoner; or

 (b) a family representative of such a victim (if the victim is dead or under any incapacity or in such circumstances as may be prescribed by the regulations);

 “**victim submissions**” means submissions under this Subdivision to the Board by a victim.

Preliminary consideration by Board

20 22C. (1) The Board is required to give preliminary consideration as to whether a prisoner should be released on parole:

 (a) at least 60 days before the day on which the prisoner becomes eligible for release on parole; and

25 (b) if the prisoner has not been released on parole on or after that day—within each successive year following that day if the prisoner is then eligible for release on parole; and

 (c) if the prisoner has been released on parole on or after that day but the parole order has been revoked and a further parole order has not been made for the prisoner after that revocation—within each successive year following that revocation if the prisoner is then eligible for release on parole.

30 (2) Despite subsection (1) (a), the Board may defer giving preliminary consideration to a day less than 60 days (but not less than 21 days) before the day on which the prisoner becomes eligible for release on parole if it is of

35

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

the opinion that it is unable to complete its preliminary consideration because it has not been furnished with a report required to be made to it or there are other relevant matters requiring further consideration. 5

(3) Despite subsection (1) (c), the Board is not required to give preliminary consideration until the person concerned is returned to the prison system following revocation of the parole order. If the person is at large for the whole of one or more years following the revocation, the Board may decline to consider its decision at all in relation to that year or those years. 10

(4) Despite the above provisions of this section, the Board may decline to consider the case of a prisoner for up to but not exceeding 3 years at a time after it last considered the grant of parole to the prisoner under this Division. 15

Formulation of Board's initial intention

22D. On or immediately after giving its preliminary consideration as to whether a prisoner should be released on parole, the Board is required to formulate and record its initial intention either: 20

- (a) to make a parole order in relation to the prisoner; or 25
- (b) not to make such a parole order.

General procedure following formulation of Board's initial intention

22E. (1) The Board is to decide, in accordance with this Subdivision, to make or not to make a parole order, on the following principles: 30

- (a) the Board will confirm its initial intention to make a parole order if there are no victim submissions or if it is not required to seek victim submissions;
- (b) the Board will reconsider its initial intention to make a parole order if there are victim submissions and will in that event take into account any prisoner submissions; 35

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

5 (c) the Board will confirm its initial intention not to make a parole order if there are no prisoner submissions;

(d) the Board will reconsider its initial intention not to make a parole order if there are prisoner submissions and will in that event take into account any victim submissions.

10 (2) Submissions are to be disregarded unless they are made in accordance with this Subdivision.

(3) The Board is required to consider all submissions made in accordance with this Subdivision.

Preliminary notice to victims

15 22F. (1) As soon as practicable after formulating its initial intention to make a parole order, the Board is (subject to and in accordance with the regulations) required to give a preliminary notice of its intention to victims of the prisoner.

20 (2) The preliminary notice must:

(a) give an indication of the Board's initial intention; and

25 (b) state that there will be an opportunity for submissions to be made by victims of the prisoner about the making of a parole order in relation to the prisoner; and

30 (c) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged by a victim with the Secretary of the Board; and

(d) be in a form approved by the Board.

35 (3) In circumstances where a preliminary notice need not be given to victims of its initial intention to make a parole order, the Board may, subject to section 22N, proceed immediately to confirming its initial intention.

Preliminary notice to prisoner

40 22G. (1) As soon as practicable after formulating its initial intention not to make a parole order, the Board is required to give a preliminary notice of its intention to the prisoner.

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

- (2) The preliminary notice must:
- (a) give an indication of the Board's initial intention; and 5
 - (b) state that there will be an opportunity for submissions to be made by the prisoner about the making of a parole order in relation to the prisoner; and
 - (c) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged by the prisoner with the Secretary of the Board; and 10
 - (d) except as provided by section 49, be accompanied by copies of the reports and other documents intended to be used by the Board in deciding whether the prisoner should be released on parole; and 15
 - (e) be in a form approved by the Board.

Procedure following preliminary notice to victims 20

22H. (1) If a notice of intention to make submissions is lodged with the Secretary of the Board by a victim within the period specified in the notice under section 22F, the Board must set a date (occurring as soon as practicable, but not earlier than the end of that period) on which the Board will conduct a hearing for the purpose of receiving and considering submissions by victims. 25

(2) Subject to section 22J (2), the Board may postpone or adjourn any such hearing for any reason that seems appropriate to it. 30

(3) A victim who lodges such a notice of intention within that period is entitled to receive reasonable notice of the hearing and any postponed or adjourned hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make relevant submissions at the hearing. 35

(4) The prisoner concerned is entitled to receive reasonable notice of any such hearing, and is entitled to be present at any such hearing and to have a reasonable

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

opportunity to make any relevant submissions at the hearing.

5 (5) Submissions can be made in writing or orally, or both. If they are in writing, they may be presented to the Board in advance of the hearing or at the hearing.

(6) With the written consent of a victim or the prisoner, a person may do any or all of the following:

10 (a) lodge a notice of intention to make submissions on behalf of the victim or the prisoner; or

(b) make submissions on behalf of the victim or the prisoner; or

15 (c) be present at any such hearing with the approval of the Board.

Procedure following preliminary notice to prisoner

20 22I. (1) If a notice of intention to make submissions is lodged with the Secretary of the Board by the prisoner within the period specified in a notice under section 22G, the Board must set a date (occurring as soon as practicable) on which the Board will conduct a hearing for the purposes of receiving and considering submissions by the prisoner.

25 (2) Subject to section 22J (2), the Board may postpone or adjourn any such hearing for any reason that seems appropriate to it.

30 (3) The prisoner is entitled to receive reasonable notice of the hearing and any postponed or adjourned hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make relevant submissions at the hearing.

35 (4) On setting a date for a hearing under subsection (1), the Board is (subject to and in accordance with the regulations) required to give notice that it proposes to give an opportunity for submissions to be made by victims of the prisoner about the making of a parole order in relation to the prisoner.

(5) The notice must:

40 (a) give an indication of the Board's initial intention not to make a parole order, but must indicate that this intention could be reversed; and

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

- (b) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged with the Secretary of the Board; and 5
- (c) be in a form approved by the Board.
- (6) A victim who lodges such a notice of intention within that period is entitled to receive reasonable notice of any such hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make any relevant submissions at the hearing. 10
- (7) Submissions can be made in writing or orally, or both. If they are in writing, they may be presented to the Board in advance of the hearing or at the hearing. 15
- (8) With the written consent of the prisoner or a victim, a person may do any or all of the following:
- (a) lodge a notice of intention to make submissions on behalf of the prisoner or the victim; or
- (b) make submissions on behalf of the prisoner or the victim; or 20
- (c) be present at any such hearing with the approval of the Board.
- (9) Any meeting of the Board convened under this section is, where practicable, required to be held before the prisoner is eligible for release on parole. 25
- Decision following review**
- 22J. (1) At a meeting held under section 22H or 22I, the Board is required, after reviewing all the reports, documents, submissions and other information placed before it, to decide 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 decision should be deferred. 30
- (2) That decision: 35
- (a) may be deferred once only; and
- (b) may not be deferred for more than 2 months.
- (3) If, under this section, the Board decides that a prisoner should be released on parole, the Board may make an order under section 22L. 40

Sentencing Legislation (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

5 (4) If, under this section, the Board decides that a prisoner should not be released on parole or defers making a decision, the Board is required:

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

Decision where no review

15 22K. (1) The Board is required to confirm its initial intention to make a parole order if there are no victim submissions or if it is not required to seek victim submissions.

(2) The Board is required to confirm its initial intention not to make a parole order if there are no prisoner submissions.

20 (3) If, under this section, the Board confirms its initial intention to make a parole order, the Board is required to make an order under section 22L.

(4) If, under this section, the Board confirms its initial intention not to make a parole order, the Board is required:

- 25 (a) to cause the reason for its refusal to make a parole order to be recorded in the minutes of the Board; and
- (b) to cause the prisoner to be advised, by notice served on the prisoner, of the refusal and the reason for the refusal.

Parole order

30 22L. (1) If the Board decides in accordance with this Subdivision that a prisoner should be released on parole, the Board is required to make an order directing the release of the prisoner at a specified time on:

- 35 (a) if the day on which the prisoner becomes eligible for release on parole occurs after the period of 8 days after the order is made—that day; or

Sentencing Legislation (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

- (b) if the day on which the prisoner becomes eligible for parole occurs during the period of 8 days after the order is made—a day during the period of 7 days commencing at the end of that period; or 5
- (c) if the day on which the prisoner becomes eligible for release on parole has passed—a day during the period of 7 days commencing at the end of the period of 8 days after the order is made. 10

(2) If an application is made to the Court of Criminal Appeal under section 23A within the period of 7 days after a parole order is made, the order is suspended until the application is dealt with by the Court or the application is withdrawn. 15

(3) However, if the direction of the Court of Criminal Appeal includes a requirement that the Board reconsider its decision in the light of the direction, the suspension of the order continues until the Board revokes the order under section 28 or confirms it with or without modifications. If the Board does neither during the period of 28 days after the date of the Court's order, the suspension automatically lapses at the end of that period. 20

Regulations regarding victims

22M. The regulations may: 25

- (a) prescribe the manner in which a notice to victims may or must be given under this Subdivision; and
- (b) establish a scheme for identifying (in advance or as occasion requires) persons who are eligible to be given such a notice; and 30
- (c) without limiting paragraph (b), require persons to provide evidence of their identity and of the circumstances by which they claim to be victims; and
- (d) determine the circumstances in which such a notice need not be given. 35

Sentencing Legislation (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued
Reasons to be provided for rejection of Review Council's advice

5 22N. (1) If the Board rejects the advice of the Review Council given under section 62 of the Prisons Act 1952 concerning the release on parole of a prisoner, the Board must state in writing its reasons for rejecting that advice.

10 (2) The Board must forward a copy of those reasons to the Review Council.

 (3) The Review Council may make submissions to the Board concerning the rejection of its advice within 21 days of that rejection.

15 (4) The Board is not to make a final decision concerning the release of the prisoner during the period referred to in subsection (3).

(7) Part 3, Division 2, Subdivision 4:

 Before section 23, insert:

20 **Subdivision 4—Applications to Court of Criminal Appeal**

(8) Section 23 (**Application to Court of Criminal Appeal by prisoner**):

 In section 23 (1) (a), after “22”, insert “, 22J or 22K”.

(9) Section 23A:

25 After section 23, insert:

Application to Court of Criminal Appeal by Crown

 23A. (1) If:

30 (a) the Board has decided, under section 22J or 22K, that a prisoner who is a serious offender should be released on parole; and

 (b) the Attorney General or the Director of Public Prosecutions alleges that the decision of the Board was made on information that was false, misleading or irrelevant,

35 the Attorney General or the Director of Public Prosecutions may, in accordance with rules of court, apply to the Court of Criminal Appeal for a direction to be given

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

to the Board as to whether the information was false, misleading or irrelevant and the Court of Criminal Appeal may give such directions with respect to the information as it thinks fit. 5

(2) At the hearing or determination of an application under this section, the prisoner is not entitled to appear in person, except by leave of the Court of Criminal Appeal.

(3) The power of the Court of Criminal Appeal to grant the prisoner 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. 15

(10) Section 34A:

After section 34, insert:

Request by Crown to revoke parole order

34A. The Attorney General or the Director of Public Prosecutions may request the Board to exercise its powers under section 34 to revoke a parole order made in relation to a prisoner who is a serious offender, on the ground that the order was made on information that was false, misleading or irrelevant. 20

(11) Section 41A: 25

After section 41, insert:

Application to Court of Criminal Appeal by Crown

41A. (1) If:

(a) the Board refuses within 28 days after a request by the Attorney General or the Director of Public Prosecutions under section 34A to revoke a parole order in relation to a prisoner who is a serious offender; and 30

(b) the Attorney General or the Director of Public Prosecutions alleges that the order was made on information that was false, misleading or irrelevant, 35

the Attorney General or the Director of Public Prosecutions may, in accordance with rules of court, apply

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

5 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 it thinks fit.

10 (2) Subsections (2) and (3) of section 23A apply to an application under this section in the same way as they apply to an application under section 23A (1).

(12) Section 43 (**Application of this Act to children**):

Omit section 43 (2) (h), insert instead:

15 (h) a reference to the Commissioner of Corrective Services were a reference to the Director-General of the Department of Juvenile Justice.

(13) Part 5, heading:

Omit "OFFENDERS REVIEW BOARD", insert instead "PAROLE BOARD".

20 (14) Section 44 (**Constitution of the Board**):

Omit section 44 (1), insert instead:

(1) There is constituted by this Act a Parole Board.

(15) Section 49 (**Security of certain information**):

After "20", insert ", 22G".

25 (16) Section 51 (**Information concerning prisoners and prisons**):

(a) From section 51 (1), omit "Director-General of Corrective Services", insert instead "Commissioner of Corrective Services".

30 (b) From section 51 (2), omit "Director-General of Corrective Services", insert instead "Director of the New South Wales Probation Service in the Department of Courts Administration, the Commissioner of Corrective Services".

(c) From section 51 (3), omit "Director-General of the Department of Family and Community Services", insert

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

instead “Director-General of the Department of
Community Services (in respect of a prisoner or person
referred to in paragraph (a)) or the Director-General of the
Department of Juvenile Justice (in respect of a prisoner or
person referred to in paragraph (b))”. 5

(d) From section 51 (4), omit “Secretary of the Department of
Health”, insert instead “Director-General of the
Department of Health”. 10

(17) Section 57 (**Savings and transitional provisions**):

Omit “Schedule 2 has”, insert instead “Schedules 2 and
2A have”.

(18) Schedule 1 (**Provisions relating to the members of the Board,
Divisions of the Board and procedure**): 15

At the end of clause 19 (**Representation etc.**), insert:

(2) However, victims or their representatives are not
entitled to call or examine witnesses at a hearing under
Subdivision 3 of Division 2 of Part 3.

(19) Schedule 2A: 20

After Schedule 2, insert:

**SCHEDULE 2A—SAVINGS AND TRANSITIONAL
PROVISIONS RELATING TO AMENDING ACTS**

(Sec. 57)

Part 1—General 25

Savings and transitional regulations

1. (1) The regulations may contain provisions of a
savings or transitional nature consequent on the enactment
of any of the following Acts:

Sentencing Legislation (Amendment) Act 1994. 30

(2) A provision referred to in subclause (1) may, if the
regulations so provide, take effect from the date of assent
to the Act concerned or a later date.

Sentencing Legislation (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

5 (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:

10 (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; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

15 **Part 2—Provisions consequent on Sentencing Legislation (Amendment) Act 1994**

Definition

2. In this Part:

20 “**amending Act**” means the Sentencing Legislation (Amendment) Act 1994.

General application of amendments to existing prisoners and parole orders

25 3. (1) An amendment made to this Act or the Prisons Act 1952 by the amending Act that applies in relation to prisoners, parole orders or any other acts, matters or things extends to:

(a) persons who were prisoners immediately before the commencement of the amendment; and

(b) parole orders made before that commencement; and

30 (c) acts, matters or things done or omitted to be done before that commencement or existing at or before that commencement,

as appropriate according to the relevant provisions.

35 (2) Anything done or omitted under sections 18–22 of this Act before the commencement of Subdivision 3 of Division 2 of Part 3 of this Act in relation to serious offenders is taken to have been done or omitted under the relevant provision of that Subdivision.

Sentencing Legislation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF SENTENCING ACT 1989—
continued

(3) However, if any steps have been commenced under sections 18–22 of this Act before the commencement of Subdivision 3 of Division 2 of Part 3 of this Act in relation to a serious offender and the procedures under that Part in relation to those steps have not been completed at that commencement, those procedures are to be completed as if that Part had not been amended by the amending Act. This subclause has effect subject to any directions of the Board. 5
10

Consideration by Board

4. Without affecting the generality of clause 3, sections 18 (3) and 22 (3) of this Act as amended by the amending Act extend to persons who are at large at the commencement of those provisions. 15

Parole orders already made

5. Without affecting the generality of clause 3, a parole order in force at the commencement of Subdivision 3 of Division 2 of Part 3 of this Act in relation to a serious offender is taken to have been granted under that Subdivision. 20

Offenders Review Board

6. (1) On and from the commencement of the amendment of section 44 by the amending Act: 25
- (a) the body constituted with the name of Offenders Review Board continues in existence under the name of Parole Board, so that its identity is not affected; and
 - (b) a reference in any other Act, in any instrument under an Act, or in any other document of any kind, to that body under its former name is to be read as or as including a reference to that body under its new name. 30
- (2) The amendment does not affect the tenure of office of any member of that body. 35
- (3) This clause overrides clause 9 of Schedule 2.

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952

(Sec. 4)

(1) Section 59 (**Definitions**):

- 5 (a) Omit the definition of "Offenders Review Board", insert instead:

"Parole Board" means the Parole Board constituted by the Sentencing Act 1989;

- 10 (b) From paragraph (e) of the definition of "serious offender", omit "Offenders Review Board", insert instead "Parole Board".

(2) Section 62 (**Functions of the Review Council**):

- (a) From section 62 (b), omit "Offenders Review Board", insert instead "Parole Board".

- 15 (b) At the end of section 62, insert:

(2) When exercising its functions under subsection (1) (a) in relation to a serious offender, the Review Council is to consider the public interest and any other relevant matters.

20 (3) Without limiting the generality of the meaning of public interest in subsection (2), the Review Council is to take into account the following matters when considering the public interest:

- 25 (a) the protection of the public, which is to be paramount;
- (b) the nature and circumstances of the crime;
- (c) the reasons and recommendations of the sentencing court;
- (d) the criminal history and family background of the offender;
- 30 (e) the time served in custody and the time to be served;
- (f) the conduct of the offender while in custody, including conduct during previous imprisonment, if applicable;
- 35 (g) the attitude of the offender;

Sentencing Legislation (Amendment) 1994

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952—
continued

- (h) the position of and consequences to the victim, including the victim's family;
- (i) the need to maintain public confidence in the administration of criminal justice; 5
- (j) the need to reassure the community that serious offenders are in secure custody as long as it is appropriate;
- (k) the rehabilitation of the offender and the re-entry of the person into the community as a law-abiding citizen; 10
- (l) the availability of family, departmental and other support;
- (m) such other factors as are prescribed by the regulations. 15
- (3) Section 62A:
- After section 62, insert:
- Victim submissions involving serious offenders**
- 62A. (1) This section applies to a recommendation of the Review Council to the Commissioner for a change in the security classification of a serious offender, where the change, if approved by the Commissioner, would make the offender eligible for consideration for leave of absence from prison under section 29. 20 25
- (2) The Review Council cannot make such a recommendation unless it has given notice, in accordance with the regulations, that it proposes to give an opportunity for submissions to be made by victims about the offender.
- (3) The notice must specify a period of at least 14 days during which submissions by a victim may be lodged with the Review Council. 30
- (4) If a submission is lodged by the victim within that 14-day period, the Review Council must give notice of that fact to the offender and indicate in the notice that the offender may lodge submissions with the Review Council within a specified period of 14 days. 35
- (5) Submissions can be in writing only.

Sentencing Legislation (Amendment) 1994

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952—
continued

5 (6) The Review Council is required to consider all relevant submissions lodged within the relevant 14-day period before deciding whether to make such a recommendation.

(7) In this section:

“**victim**”, in relation to the serious offender, means:

10 (a) a victim of an offence committed by the serious offender; or

(b) a family representative of such a victim (if the victim is dead or under any incapacity or in such circumstances as may be prescribed by the regulations).

15 (4) Section 63 (**Establishment of a Serious Offenders Management Committee**):

From section 63 (8) (b), omit “Offenders Review Board”, insert instead “Parole Board”.

SCHEDULE 3—AMENDMENT OF CRIMES ACT 1900

(Sec. 5)

Section 447C (**Victim impact statements**):

(a) Omit subsection 447C (2), insert instead:

25 (1A) This subsection applies to an application made to the Supreme Court under section 13A of the Sentencing Act 1989 for the determination of a minimum term and an additional term for an existing life sentence referred to in that section. In exercising its functions under that section in relation to the application, the Supreme Court is (subject to subsections (3) and (4)) to receive and consider any victim impact statement tendered to it and prepared after a court imposed the life sentence.

35 (2) A victim impact statement referred to in subsection (1) or (1A) is a statement containing particulars of any injury suffered by any victim as a result of the offence concerned.

*Sentencing Legislation (Amendment) 1994***SCHEDULE 3—AMENDMENT OF CRIMES ACT 1900—*continued***

(2A) In the case of a victim against whom the offence concerned was committed, a victim impact statement may (subject to subsection (3)) be given by or on behalf of a family representative of the victim, if the victim is dead or under any incapacity or in such circumstances as may be prescribed by the regulations. 5

(b) After section 447C (4), insert:

(4A) The absence of a victim impact statement is not to give rise to an inference that an offence had little or no impact on a victim. 10

SCHEDULE 4—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 6)

Defamation Act 1974 No. 18 15

Section 17CA (Matters arising out of proceedings of Parole Board, Serious Offenders Review Council and Serious Offenders Management Committee):

From section 17CA (b), omit "Offenders Review Board", insert instead "Parole Board". 20

Parole Orders (Transfer) Act 1983 No. 190

Section 8 (Registration):

From section 8 (2) (a), omit "Offenders Review Board", insert instead "Parole Board".

