



New South Wales

# Sentencing Amendment (Parole) Act 1996 No 144

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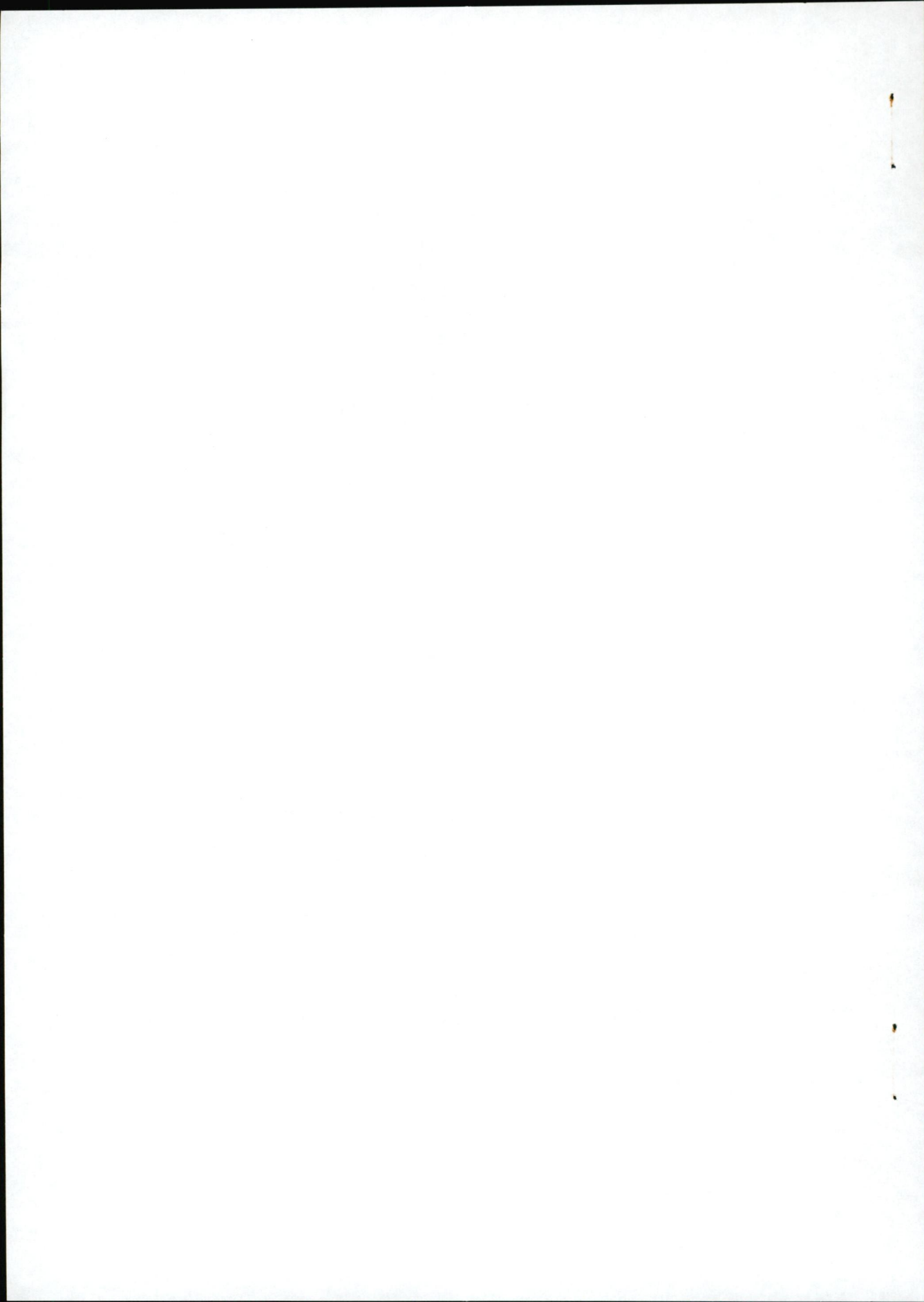
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New South Wales

## **Sentencing Amendment (Parole) Act 1996 No 144**

Act No 144, 1996

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An Act to amend the *Sentencing Act 1989*, the *Prisons Act 1952* and certain other Acts to revise the procedures relating to the parole of prisoners who are serious offenders, to require victim submissions to be taken into consideration in certain circumstances, to change the name of the Offenders Review Board, and for other purposes. [Assented to 16 December 1996]

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

**1 Name of Act**

This Act is the *Sentencing Amendment (Parole) Act 1996*.

**2 Commencement**

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

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

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

**4 Amendment of Prisons Act 1952 No 9**

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

**5 Consequential amendment of other Acts**

The Acts specified in Schedule 3 are amended as set out in that Schedule.

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## **Schedule 1 Amendment of Sentencing Act 1989**

(Section 3)

### **[1] Section 4 Definitions**

Omit the definition of *Board* in section 4 (1). Insert instead:

*Board* means the Parole Board constituted by this Act.

### **[2] Part 3, Division 2, Subdivision 1, heading**

Insert after the heading to Division 2 "**Subdivision 1 General**".

### **[3] Part 3, Division 2, Subdivision 2**

Insert after section 17:

#### **Subdivision 2 Prisoners other than serious offenders**

##### **17A Application of this Subdivision**

This Subdivision applies only to prisoners who are not serious offenders.

### **[4] Section 18 Consideration by the Board**

Insert after section 18 (2):

- (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.
- (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.

**[5] Section 19A Reasons to be provided by Board for rejection of Review Council's advice etc**

Omit the section.

**[6] Section 21 Review by the Board**

Insert "to conduct a hearing" before "for the purpose of reconsidering" in section 21 (1).

**[7] Section 21 (2)**

Omit "At a meeting of the Board convened under this section, or at a subsequent meeting".

Insert instead "At that hearing, or at a hearing conducted at a subsequent meeting".

**[8] Section 22 Decision after review**

Omit "At a meeting convened" from section 22 (1).

Insert instead "At a hearing conducted".

**[9] Part 3, Division 2, Subdivision 3**

Insert after section 22:

**Subdivision 3 Serious offenders**

**22A Application of this Subdivision**

This Subdivision applies only to prisoners who are serious offenders.

**22B Definitions**

(1) In this Subdivision:

*prisoner submissions* means submissions under this Subdivision to the Board by a prisoner.

*submissions* means victim submissions or prisoner submissions.

*victim* of a prisoner means:

- (a) a victim of the offence for which the prisoner has been sentenced (or of any offence taken into account under section 21 of the *Criminal Procedure Act 1986* when that sentence was passed), 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.

*Victims Register* means the register kept under section 22M of the names of victims of prisoners who have requested that they be given notice under this Subdivision of the possible parole of the prisoner concerned.

- (2) A victim of an offence for the purposes of the definition of *victim* in subsection (1) includes a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence. A person suffers *harm* if, as a result of such an act:
  - (a) the person suffers actual physical bodily harm, mental illness or nervous shock, or
  - (b) the person's property is deliberately taken, destroyed or damaged.

## **22C Preliminary consideration by Board**

- (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
  - (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.
- (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 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.
- (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.
- (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.

## **22D Formulation of Board's initial intention**

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:

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



**22E General procedure following formulation of Board's initial intention**

- (1) The Board is to decide, in accordance with this Subdivision, to make or not 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 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,
  - (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.
- (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.

**22F Preliminary notice to victims of initial intention to make parole order**

- (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 whose names are recorded in the Victims Register.
- (2) The preliminary notice must:
  - (a) give an indication of the Board's initial intention, and

- (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
  - (c) 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 by a victim, and
  - (d) be in a form approved by the Board.
- (3) In circumstances where preliminary notice need not be given of its initial intention to make a parole order, the Board may, subject to section 22N, proceed immediately to confirm its initial intention.

**22G Preliminary notice to prisoner of initial intention not to make a parole order**

- (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.
- (2) The preliminary notice must:
  - (a) give an indication of the Board's initial intention, and
  - (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 with the Secretary of the Board by the prisoner, and
  - (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
  - (e) be in a form approved by the Board.

**22H Procedure following preliminary notice to victims of initial intention to make parole order**

- (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 at a meeting for the purpose of receiving and considering those submissions.
- (2) Subject to section 22J (2), the Board may postpone or adjourn any such hearing for any reason that seems appropriate to it.
- (3) A person who lodges such a notice of intention within that period:
  - (a) is entitled to receive reasonable notice of the hearing and any postponed or adjourned hearing, and
  - (b) is entitled to be present at any such hearing and to have a reasonable opportunity to make relevant submissions at the hearing.
- (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 opportunity to make any relevant submissions at the hearing.
- (5) Submissions can be made in either or both of the following ways:
  - (a) Submissions can be made in writing and can be presented to the Board in advance of the hearing or at the hearing.
  - (b) Submissions can be made orally, but in the case of victim submissions only with the approval of the Board.

**22I Procedure following preliminary notice to prisoner of initial intention not to make a parole order**

- (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 at a meeting for the purposes of receiving and considering submissions by the prisoner.
- (2) Subject to section 22J (2), the Board may postpone or adjourn any such hearing for any reason that seems appropriate to it.
- (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.
- (4) On or before setting a date for a hearing under subsection (1), the Board is (subject to and in accordance with the regulations) required to give notice to victims of the prisoner whose names are recorded in the Victims Register that it proposes to give them an opportunity to make submissions about the making of a parole order in relation to the prisoner.
- (5) The notice under subsection (4) must:
  - (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
  - (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
  - (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.

- (7) Submissions can be made in either or both of the following ways:
  - (a) Submissions can be made in writing and can be presented to the Board in advance of the hearing or at the hearing.
  - (b) Submissions can be made orally, but in the case of victim submissions only with the approval of the Board.

#### **22J Decision following review**

- (1) At a meeting held for the purposes of a hearing 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.
- (2) That decision:
  - (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.
- (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
  - (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.

#### **22K Decision where no review**

- (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.
- (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:
  - (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.

#### **22L Parole order**

- (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:
  - (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
  - (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
  - (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.
- (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.

- (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.

#### **22M Victims Register and notice to victims and others**

- (1) There is to be a Victims Register.
- (2) There is to be recorded in the Victims Register the names of victims of prisoners who have requested that they be given notice under this Subdivision of the possible parole of the prisoner concerned.
- (3) The Victims Register is, subject to the regulations, to be kept by such government agency as the Minister directs.
- (4) The regulations may make provision for or with respect to:
  - (a) the keeping of the Victims Register, and
  - (b) the manner in which a notice to victims may or must be given under this Subdivision and the circumstances (if any) in which such a notice need not be given, and
  - (c) the identification of persons who are victims for the purposes of this Subdivision, including the determination of the persons who are family representatives of victims and the provision by persons claiming to be victims of evidence of their identity and of the circumstances by which they claim to be victims.

#### **22N Reasons to be provided for rejection of Review Council's advice**

- (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.

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

**220 Submissions by the State**

- (1) The State may also make submissions to the Parole Board concerning the release on parole of a prisoner.
- (2) If the State does so, the Parole Board is not to make a final decision concerning the release of the prisoner until it has taken any such submission into account.
- (3) The regulations may make provision with respect to submissions by the State under this section, including provisions relating to the application of this Subdivision in connection with any such submission.
- (4) The powers of the State under this section may be exercised, subject to those regulations, by any agent of the State.

**[10] Part 3, Division 2, Subdivision 4, heading**

Insert before section 23 "Subdivision 4 Applications to Court of Criminal Appeal".

**[11] Section 23 Application to Court of Criminal Appeal by prisoner**

Insert ", 22J or 22K" after "22" in section 23 (1) (a).

**[12] Section 23A**

Insert after section 23:

**23A Application to Court of Criminal Appeal by Crown**

- (1) If:
  - (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,

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 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.

- (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.

**[13] Section 34A**

Insert after section 34:

**34A Request by State to revoke parole order**

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.

**[14] Section 41A**

Insert after section 41:

**41A Application to Court of Criminal Appeal by State**

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

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 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.

- (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).

**[15] Section 43 Application of this Act to children**

Omit section 43 (2) (h). Insert instead:

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

**[16] Part 5, heading**

Omit "Offenders Review Board".  
Insert instead "Parole Board".

**[17] Section 44 Constitution of the Board**

Omit section 44 (1). Insert instead:

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

**[18] Section 45 Composition of the Board**

Omit "7 members" from section 45 (1) (a).  
Insert instead "at least 7, but not more than 19, members".

**[19] Section 45 (1) (b)**

Omit "an officer of the Community Corrections Service of the Department of Courts Administration nominated by the Director-General of that Department".

Insert instead "an officer of the Probation and Parole Service nominated by the Commissioner of Corrective Services".

**[20] Section 45 (2) (a)**

Omit the paragraph. Insert instead:

(a) 3 are to be judicially qualified persons, and

**[21] Section 45 (2) (b)**

Omit "4". Insert instead "the remainder".

**[22] Section 45 (3) and (4)**

Insert at the end of section 45:

(3) For the purposes of subsection (2) (a), *judicially qualified persons* are:

- (a) Judges or retired Judges of a New South Wales Court or the Federal Court, or
  - (b) Magistrates or retired Magistrates, or
  - (c) persons qualified to be appointed as a Judge of a New South Wales Court.
- (4) For the purposes of any meeting of the Board, not more than 4 members referred to in subsection (2) (b) may attend for the purposes of constituting the Board. If there are more than 4 of those members at any particular time, the members who may so attend a particular meeting are to be determined in accordance with arrangements approved by the Chairperson of the Board.

**[23] Section 49 Security of certain information**

Insert “, 22G” after “20”.

**[24] Section 51 Information concerning prisoners and prisons**

Omit “Director-General of Corrective Services” from section 51 (1).  
Insert instead “Commissioner of Corrective Services”.

**[25] Section 51 (2)**

Omit “Director-General of Corrective Services”.  
Insert instead “Commissioner of Corrective Services”.

**[26] Section 51 (3)**

Omit “Director-General of the Department of Family and Community Services”.  
Insert 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))”.

**[27] Section 51 (4)**

Omit "Secretary of the Department of Health".

Insert instead "Director-General of the Department of Health".

**[28] Section 57 Savings and transitional provisions**

Omit "Schedule 2 has". Insert instead "Schedules 2 and 2A have".

**[29] Schedule 1 Provisions relating to the members of the Board, Divisions of the Board and Procedure**

Omit the definitions of *Judge* and *retired Judge* from clause 1.

Insert instead:

*Judge* includes Magistrate.

**[30] Schedule 1, clause 3 (3)**

Omit "Judge or retired Judge".

Insert instead "a judicially qualified person (as referred to in section 45)".

**[31] Schedule 1, clause 3A (2) and 6A (2)**

Omit "The Director-General of the Department of Courts Administration" wherever occurring.

Insert instead "The Commissioner of Corrective Services".

**[32] Schedule 1, clause 3A (2)**

Omit "that Director-General".

Insert instead "that Commissioner".

**[33] Schedule 1, clause 6 (1) (h)**

Omit "Judge (except because of retirement)".

Insert instead "judicially qualified person (as referred to in section 45)".

**[34] Schedule 1, clause 6A (2)**

Omit "an officer of the Community Corrections Service".  
Insert instead "an officer of the Probation and Parole Service".

**[35] Schedule 1, clause 18A**

Insert after clause 18:

**18A Misconduct in proceedings before the Board or Division**

- (1) A person must not, during a hearing at a meeting of the Board or a Division:
  - (a) wilfully insult the members of the Board or Division, or
  - (b) wilfully misbehave during the hearing, or
  - (c) wilfully and without lawful excuse interrupt the hearing, or
  - (d) without lawful excuse disobey a direction of the judicial member presiding during the hearing.

Maximum penalty: 10 penalty units.

- (2) The judicial member presiding during the hearing may direct a person who does any thing referred to in subclause (1) to leave the place where the hearing is being conducted.
- (3) A person must not fail to comply with a direction under this clause.

Maximum penalty: 10 penalty units.

**[36] Schedule 1, clause 19 (2)**

Insert at the end of clause 19:

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

- (b) without the approval of the Board or Division, to give evidence on oath, address the Board or Division or otherwise orally adduce any matter to the Board or Division.

**[37] Schedule 2A**

Insert after Schedule 2:

**Schedule 2A Savings and transitional provisions relating to amending Acts**

(Section 57)

**Part 1 General**

**1 Savings and transitional regulations**

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

*Sentencing Amendment (Parole) Act 1996.*

- (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.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, 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.

## **Part 2 Provisions consequent on Sentencing Amendment (Parole) Act 1996**

### **2 Definition**

In this Part:

*amending Act* means the *Sentencing Amendment (Parole) Act 1996*.

### **3 General application of amendments to existing prisoners and parole orders**

- (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 (including prisoners released on parole at that commencement), and
  - (b) parole orders made before that commencement, and
  - (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.
- (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.
- (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.



#### **4 Consideration by Board**

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

#### **5 Parole orders already made**

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.

#### **6 Offenders Review Board**

- (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
  - (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.
- (2) The amendment does not affect the tenure of office of any member of that body.
- (3) This clause overrides clause 9 of Schedule 2.

## Schedule 2 Amendment of Prisons Act 1952

(Section 4)

### [1] Section 59 Definitions

Omit the definition of *Offenders Review Board*. Insert instead:

*Parole Board* means the Parole Board constituted by the *Sentencing Act 1989*.

### [2] Section 59, definition of "serious offender"

Omit "Offenders Review Board" from paragraph (e) of the definition.

Insert instead "Parole Board".

### [3] Section 61 Membership of the Review Council

Omit section 61 (2) (a). Insert instead:

(a) 2 are to be judicially qualified persons, and

### [4] Section 61 (3)

Insert after section 61 (2):

(3) For the purposes of subsection (2) (a), *judicially qualified persons* are:

- (a) Judges or retired Judges of a New South Wales Court or the Federal Court, or
- (b) Magistrates or retired Magistrates, or
- (c) persons qualified to be appointed as a Judge of a New South Wales Court.

### [5] Section 62 Functions of the Review Council

Omit "Offenders Review Board" from section 62 (b).

Insert instead "Parole Board".

**[6] Section 62 (2) and (3)**

Insert at the end of section 62:

- (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.
- (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:
  - (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,
  - (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,
  - (g) the attitude of the offender,
  - (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,
  - (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,
  - (l) the availability of family, departmental and other support,
  - (m) such other factors as are prescribed by the regulations.

**[7] Section 62A**

Insert after section 62:

**62A Victim submissions and State submissions involving serious offenders**

- (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 unescorted leave of absence under section 29.
- (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 about the offender to be made by victims.
- (3) The notice must specify a period of at least 14 days during which any such submissions may be lodged with the Review Council.
- (4) If such a submission is lodged 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.
- (5) Submissions made by victims can be in writing only.
- (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) The State may also make submissions to the Review Council concerning a recommendation to which this section applies and, if it does so, the Review Council is not to make a final decision concerning the matter until it has taken any such submission into account. The powers of the State under this subsection may be exercised, subject to the regulations, by any agent of the State.

(8) In this section:

*victim* of a serious offender, means a person whose name is recorded in the Victims Register under section 22M of the *Sentencing Act 1989* as a victim of that offender.

**[8] Section 63 Establishment of a Serious Offenders Management Committee**

Omit "Offenders Review Board" from section 63 (8) (b).  
Insert instead "Parole Board".

**[9] Schedule 5 Provisions relating to the members and procedure of the Review Council**

Omit the definitions of *Judge* and *retired Judge* from clause 1.  
Insert instead:

*Judge* includes Magistrate.

**[10] Schedule 5, clause 3 (2)**

Omit "Judge or retired Judge".  
Insert instead "a judicially qualified person (as referred to in section 61)".

**[11] Schedule 5, clause 7 (1) (h)**

Omit the paragraph. Insert instead:

(h) being a judicial member, ceases to be a judicially qualified person (as referred to in section 61).

**[12] Schedule 5, clause 22 (2)**

Insert at the end of clause 22:

(2) However, victims of serious offenders or their representatives are not entitled:

- (a) to call or examine witnesses at a meeting for the purposes of section 62A, or
- (b) to give evidence on oath, address the Review Council or otherwise orally adduce any matter to the Review Council.

## **Schedule 3 Consequential amendment of other Acts**

(Section 5)

### **3.1 Defamation Act 1974 No 18**

#### **Section 17CA Matters arising out of proceedings of Parole Board, Serious Offenders Review Council and Serious Offenders Management Committee**

Omit "Offenders Review Board" from section 17CA (b).  
Insert instead "Parole Board".

### **3.2 Parole Orders (Transfer) Act 1983 No 190**

#### **Section 8 Registration**

Omit "Offenders Review Board" from section 8 (2) (a).  
Insert instead "Parole Board".

[Minister's second reading speech made in—  
Legislative Assembly on 30 October 1996  
Legislative Council on 5 December 1996]

BY AUTHORITY