

1996—No. 88

SENTENCING ACT 1989—REGULATION

(Sentencing (General) Regulation 1996)

NEW SOUTH WALES



[Published in Gazette No. 33 of 15 March 1996]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Sentencing Act 1989, has been pleased to make the Regulation set forth hereunder.

R. J. Debus
Minister for Corrective Services.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Sentencing (General) Regulation 1996.

Commencement

2. This Regulation commences on 15 March 1996.

Definitions

3. (1) In this Regulation:

“**Board**” means the Offenders Review Board constituted under the Act;

“**governor**” of a prison means the superintendent, gaoler, governor or other officer for the time being in charge of the prison;

“**offender**” means a prisoner and, in relation to a parole order, includes the person in respect of whom the order is made;

“**probation and parole officer**” means a probation and parole officer employed in the Department of Corrective Services;

“**the Act**” means the Sentencing Act 1989.

(2) In this Regulation, a reference to a Form is a reference to a form set out in Schedule 1.

Application of Regulation

4. This Regulation applies to all matters arising under the Act other than those arising under the Act in its application to the making of control orders, or to detainees, under Part 4 of the Act.

PART 2—PAROLE

Consideration of reports concerning serious offenders: sec. 17

5. For the purposes of section 17 (1) (c) of the Act, the following reports are required to be furnished to the Board for consideration by it in deciding whether to make a parole order for a serious offender:

- (a) any report prepared for the purpose by or on behalf of
 - (i) a victim of an offence committed by the serious offender;
or
 - (ii) a family representative of such a victim (if the victim is dead or under any incapacity);
- (b) any report prepared for the purpose by or on behalf of the Crown.

Parole order made by a court: sec. 24

6. (1) A parole order under section 24 of the Act must be reduced to writing using Form 1 or, if the order contains terms and conditions relating to supervision, Form 2.

(2) The registrar or clerk of the court by which the order is made must send copies of the order to the following persons:

- (a) the governor of the prison in which the offender is to be kept;
- (b) the Commissioner of Corrective Services.

(3) Copies of the order sent to the governor of the prison are, if practicable, to be sent so as to arrive at the prison at or before the time the offender arrives at the prison.

(4) As soon as practicable after receiving copies of the order, the governor must ensure that a copy is given to the offender.

(5) On the day of release of the offender from prison under the order, the governor of the prison must ensure that:

- (a) the order is read to the offender; and
- (b) the effect of the order is explained to the offender; and

- (c) the offender indicates that the offender understands the terms and conditions on which the offender is to be released by signing a statement to that effect on a copy of the order; and
- (d) all copies of the order are endorsed with the offender's date of release; and
- (e) a copy of the order is given to the offender; and
- (f) the copy of the order containing the signed statement referred to in paragraph (c) is retained at the prison.

(6) If an offender is subject to more than one parole order, this clause does not require common provisions in the orders to be read to the offender more than once.

Parole order made by the Board: secs. 19, 22, 25

7. (1) A parole order under section 19, 22 or 25 of the Act must be reduced to writing using Form 3.

(2) The Board must send copies of the order to the following persons:

- (a) the governor of the prison in which the offender is kept;
- (b) the Commissioner of Corrective Services.

(3) As soon as practicable after receiving copies of the order, the governor must ensure that a copy is given to the offender.

(4) On the day of release of the offender from prison under the order, the governor of the prison must ensure that:

- (a) the order is read to the offender; and
- (b) the effect of the order is explained to the offender; and
- (c) the offender indicates that the offender understands the terms and conditions on which the offender is to be released by signing a statement to that effect on a copy of the order; and
- (d) all copies of the order are endorsed with the offender's date of release; and
- (e) a copy of the order is given to the offender; and
- (f) the copy of the order containing the signed statement referred to in paragraph (c) is retained at the prison.

Review by the Board of intention to refuse release on parole: sec. 19

8. (1) A notice under section 19 (b) of the Act must be sent to the governor of the prison in which the offender is kept.

(2) As soon as practicable after receiving the notice, the governor of the prison must ensure that:

- (a) the notice is read to the offender; and
- (b) the effect of the notice is explained to the offender; and
- (c) the notice is handed to the offender.

(3) Notice of an offender's intention to make representations to the Board concerning release on parole:

- (a) may be given using Form 4;
- (b) must be given to the governor of the prison in which the offender is kept; and
- (c) must be sent by the governor to the Secretary of the Board.

Decision on review of parole refusal: sec. 22

9. (1) A notice under section 22 (4) (b) of the Act must be sent to the governor of the prison in which the offender is kept.

(2) As soon as practicable after receiving the notice, the governor of the prison must ensure that:

- (a) the notice is read to the offender; and
- (b) the effect of the notice is explained to the offender; and
- (c) the offender's rights concerning the Board's decision are explained to the offender; and
- (d) the notice is handed to the offender.

(3) The governor of the prison must keep a copy of the notice.

(4) The Board must send a copy of the notice to the Commissioner of Corrective Services.

Terms and conditions: sec. 27

10. (1) A parole order is subject to the following terms and conditions:

- 1. The offender is to be of good behaviour and must not, during the term of the order, commit any offence.
- 2. The order may be revoked if the offender contravenes any of the terms and conditions of the order.
- 3. The order may be revoked if the court that made the order (however constituted) or the Board determines that it has sufficient reason to believe that the offender, having been released from custody, has not adapted to normal lawful community life.

(2) The terms and conditions of a parole order may require the offender to be subject to the supervision of a probation and parole officer for any period specified in the order, not being a period which extends for more than 3 years after the date on which the offender is released in accordance with the order.

(3) A parole order that contains such a requirement:

- (a) may state those terms and conditions in the form set out in Form 2 or 3 under the heading “Supervision conditions”; and
- (b) may, if the court or the Board thinks fit, contain one or more of the terms and conditions set out in Form 2 or 3 under the heading “Further supervision conditions”.

(4) Before a court or the Board makes a parole order containing terms or conditions relating to residence or treatment, the court or the Board:

- (a) must consider a report from a probation and parole officer as to the offender’s circumstances; and
- (b) must satisfy itself, having regard to the probation and parole officer’s report, that it is feasible to secure compliance with the terms or conditions.

(5) Before a court or the Board makes a parole order containing terms or conditions requiring the co-operation of a person other than the offender or a probation and parole officer, it must obtain the consent of the person to the specification of those terms and conditions in so far as they require the person’s co-operation.

Supervision: sec. 27

11. (1) For the purposes of section 27 (4) (a) of the Act, the prescribed supervision is supervision by a probation and parole officer assigned by the Commissioner of Corrective Services.

(2) The Commissioner of Corrective Services:

- (a) must assign a probation and parole officer to supervise an offender as soon as practicable after receiving a parole order that requires the offender to be supervised; and
- (b) may from time to time assign another probation and parole officer to supervise the offender in place of the officer previously assigned (and, in that event, must send notice to the offender accordingly).

Variation or termination of terms or conditions: sec. 27

12. (1) If the Board varies the terms and conditions of a parole order so as to make the offender subject to supervision under the order, or so as to affect the supervision of the offender, the Board must send notice of the variation to the Commissioner of Corrective Services.

(2) The Board must send written advice to the Commissioner of Corrective Services that a notice has been served under section 27 (5) of the Act on an offender.

Revocation of parole order before release: sec. 28

13. (1) For the purposes of section 28 of the Act, the following circumstances are prescribed as circumstances in which the Board may revoke a parole order:

Circumstances in which the Board, after the making of the order and before the release of the offender, decides that it has sufficient reason to believe that the offender, if released from custody, would not be able to adapt to normal lawful community life.

(2) The Board must send copies of an order under section 28 of the Act to the governor of the prison in which the offender is kept.

(3) As soon as practicable after receiving the order, the governor of the prison must ensure that:

- (a) the order is read to the offender; and
- (b) the effect of the order is explained to the offender; and
- (c) the offender's rights to a review of the revocation are explained to the offender; and
- (d) a copy of the order is handed to the offender.

(4) The Board must send notice of the revocation of a parole order under section 28 of the Act to the Commissioner of Corrective Services.

Inquiry into suspected breach of parole order: sec. 32

14. (1) A notice referred to in section 32 (1) (a) of the Act must be served on the offender in the manner required by the Act at least 7 days before the date set for the inquiry referred to in the notice.

(2) The Board must send a copy of each such notice to the Commissioner of Corrective Services.

Arrest warrants: sec. 36

15. A warrant for the arrest of a person under section 36 of the Act must conform to Form 5.

Revocation of parole order and review of revocation: sec. 38

16. (1) For the purposes of section 38 (2) (c) of the Act, the prescribed form for a notice of revocation of a parole order is Form 6.

(2) The notice must be sent to the governor of the prison in which the offender is kept.

(3) As soon as practicable after receiving the notice, the governor of the prison must ensure that:

- (a) the notice is read to the offender; and
- (b) the effect of the notice is explained to the offender; and
- (c) the notice is handed to the offender.

(4) Notice of an offender's intention to make representations to the Board concerning the revocation of a parole order:

- (a) may be given using Form 4; and
- (b) must be given by the offender to the governor of the prison in which the offender is kept; and
- (c) must be sent by the governor to the Secretary of the Board.

Decision on review of revocation: sec 39

17. (1) The Board must send written notice of its decision following a review under section 39 of the Act to the following persons:

- (a) the governor of the prison at which the offender is kept; and
- (b) the Commissioner of Corrective Services.

(2) As soon as practicable after receiving the notice, the governor of the prison must ensure that:

- (a) the notice is read to the offender; and
- (b) the effect of the notice is explained to the offender; and
- (c) the offender's rights concerning the decision are explained to the offender.

Notice of revocation of parole order: sec. 35

18. (1) If a court revokes a parole order under section 35 (1) of the Act, the registrar or clerk of the court must send written notice of that fact to the following persons:

- (a) the Commissioner of Corrective Services;
- (b) the Board, in the case of an order made by the Board.

(2) The notice must conform to Form 7 and must specify any direction of the court as to the day on which the order is to be treated as having been revoked.

PART 3—GENERAL**Instrument requiring attendance: Sch. 1, cl. 16**

19. For the purposes of clause 16 (1) of Schedule 1 to the Act, an instrument in writing referred to in that subclause must conform to Form 8.

Records of proceedings: Sch. 1, cl. 21

20. (1) The Board must keep a record (in writing or otherwise) of the proceedings of the Board, including a record of:

- (a) the persons appearing or represented before the Board; and
- (b) the submissions (if any) made by any such person; and
- (c) the reasons (if any) stated in support of those submissions.

(2) For the purposes of clause 21 (2) of Schedule 1 to the Act, the prescribed period after the expiration of which any record may be destroyed is the period of 5 years commencing with the day on which the record is made.

Information to be given to offenders

21. (1) When an offender is received into prison under sentence, the governor of the prison must give to the offender information in writing concerning the nature and effect of the sentence.

(2) The information must, in every case, include:

- (a) the information contained in Form 9, in the case of an offender to whom the provisions of Division 2 of Part 3 of the Act apply; or
- (b) the information contained in Form 18, in the case of an offender to whom the provisions of Division 3 of Part 3 of the Act apply.

Delegation of functions

22. (1) A function conferred or imposed by this Regulation on the Commissioner of Corrective Services or the governor of a prison may be delegated to any officer within the Department of Corrective Services.

(2) The functions of the Board under this Regulation may be exercised by the Secretary to the Board.

Repeal

23. (1) The Sentencing Regulation 1989 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Sentencing Regulation 1989, had effect under that Regulation continues to have effect under this Regulation.

SCHEDULE 1—FORMS**Form 1**

(Cl. 6 (1))

PARTICULARS OF PAROLE ORDER MADE BY COURT

(NO SUPERVISION ORDERED)

Sentencing Act 1989

1 Sentencing details

Case No:

Conviction Date:

*Local/*District Court at:.....

Offender:

Date of Birth:

Offence:

Particulars of imprisonment imposed by Court

Minimum term of

to commence on:

AND

**Additional term of:

to commence at the expiration
of minimum term and to expire
on:

Earliest day eligible for release
is:.....

*The above term of
imprisonment is to be served
cumulatively on

*Fixed/*Minimum terms of:

that commenced on:

2 Release Details

Pursuant to the provisions of the Sentencing Act 1989, the Court directed that the offender be released on parole at the expiration of the minimum term of imprisonment. The order is to be in force for the period commencing on the date of release and terminating on unless it is revoked.

3 Prescribed term and conditions

This order is subject to the following prescribed terms and conditions:

- (a) the offender is to be of good behaviour and must not, during the term of the order, commit any offence; and
- (b) the order may be revoked if the offender contravenes any of the terms and conditions of the order; and
- (c) the order may be revoked if the Court that made the order (however constituted) or the Board determines that it has sufficient reason to believe that the offender, having been released from custody, has not adapted to normal lawful community life.

4 Other conditions

The order is also subject to the following terms and conditions:

I certify that the above are particulars of a parole order made

by:

on:

Dated:

Registrar/Justice of the Peace

Iacknowledge that I understand the terms and conditions on which I am released from parole.

Signed:
(Offender)

Witness:

Name:

Address:

The offender was released from custody
on (date)

Signed:
(Governor)

Date:

* delete if not applicable

** delete if fixed term of imprisonment imposed

Form 2

(Cll. 6 (1), 10 (3))

PARTICULARS OF PAROLE ORDER MADE BY COURT

(SUPERVISION ORDERED)

Sentencing Act 1989

1 Sentencing details

Case No:

Conviction Date:

*Local/*District Court at:.....

Offender:

Date of Birth:

Offence:

Particulars of imprisonment imposed by Court

Minimum term of:

to commence on:

AND

**Additional term of:

to commence at the expiration
of minimum term and to expire
on:Earliest day eligible for release
is:*The above term of
imprisonment is to be served
cumulatively on

*Fixed/*Minimum term of:

that commenced on:

2 Release details

Pursuant to the provisions of the Sentencing Act 1989, the Court directed that the offender be released on parole at the expiration of the minimum term of imprisonment. The order is to be in force for the period commencing on the date of release and terminating on unless it is revoked.

3 Prescribed terms and conditions

This order is subject to the following prescribed terms and conditions:

- (a) the offender is to be of good behaviour and must not, during the term of the order, commit any offence; and
- (b) the order may be revoked if the offender contravenes any of the terms and conditions of the order; and
- (c) the order may be revoked if the Court that made the order (however constituted) or the Board determines that it has sufficient reason to believe that the offender, having been released from custody, has not adapted to normal lawful community life.

4 Supervision conditions

The offender must:

- until the order ceases to have effect or for a period of 3 years from the date of release (whichever is the lesser); or
- until supervision ceases in accordance with condition 5 (e),

submit to the supervision and guidance of the probation and parole officer assigned for the supervision of the offender for the time being and obey all reasonable directions of that officer and, in particular, the offender:

- (a) is to report to the probation and parole officer or another person nominated by that officer in the manner and at the times directed and be available for interview at such times and places as that officer or nominee may from time to time direct; and
- (b) is to reside at an address agreed on by the probation and parole officer and receive visits at that address by the probation and parole officer on such occasions as the probation and parole officer considers necessary; and
- (c) is not to travel outside the boundaries of the State without the express approval of the District Manager of the district office of the New South Wales Probation and Parole Service in the Department of Corrective Services to which the probation and parole officer is attached; and
- (d) is not to leave Australia without the permission of the Offenders Review Board.

5 Further supervision conditions

The offender, being subject to supervision, is also subject to the following conditions:

- (a) the offender is to enter into employment arranged or agreed on by the probation and parole officer or make himself or herself available for employment as instructed by that officer; and
- (b) the offender is to notify the probation and parole officer of any intention to change his or her employment:
 - (i) if practicable, before the change occurs; or
 - (ii) otherwise, at his or her next interview with the probation and parole officer; and
- (c) the offender is not to associate with any person or persons specified by the probation and parole officer;
- (d) the offender is not to frequent or visit any place or district designated by the probation and parole officer;
- (e) the terms and conditions of the order relating to supervision by the probation and parole officer cease to have effect if the probation and parole officer has notified the person in writing, with the concurrence of the District Manager of the district office of the New South Wales Probation and Parole Service in the Department of Corrective Services to which the probation and parole officer is attached, that the offender is not required to be subject to supervision.

6 Other conditions

The order is also subject to the following terms and conditions:

1996—No. 88

I certify that the above are particulars of a parole order made

by:

on:

Dated:

Registrar/Justice of the Peace

I acknowledge that I understand the terms and conditions on which I am released on parole.

Signed:
(Offender)

Witness:

Name:

Address:

The offender was released from custody on (date)

Signed:
(Governor)

Date:

* delete if not applicable

Form 3

(CII. 7 (1), 10 (3))

PARTICULARS OF PAROLE ORDER MADE BY THE BOARD

Sentencing Act 1989

1 Sentence details

Case No:

Conviction Date:

*Local/*District Court at:

Offender:

Date of Birth:

Offence:

Particulars of imprisonment imposed by Court

Minimum term of

to commence on:

AND

**Additional term of

to commence at the expiration
of minimum term and to expire
on:

Earliest day eligible for release
is:

*The above term of
imprisonment is to be served
cumulatively on

*Fixed/*Minimum term of

that commenced on:

2 Release details

Pursuant to the provisions of the Sentencing Act 1989, the Offenders Review Board directs that the offender be released on parole at the expiration of the minimum term of imprisonment. The order is to be in force for the period commencing on the date of release and terminating on unless it is revoked.

3 Prescribed terms and conditions

This order is subject to the following prescribed terms and conditions:

- (a) the offender is to be of good behaviour and must not, during the term of the order, commit any offence; and
- (b) the order may be revoked if the offender contravenes any of the terms and conditions of the order; and
- (c) the order may be revoked if the Board determines that it has sufficient reason to believe that the offender, having been released from custody, has not adapted to normal lawful community life.

4 Supervision conditions

The offender must:

- until the order ceases to have effect or for a period of 3 years from the date of release (whichever is the lesser), or
- until supervision ceases in accordance with condition 5 (e),

submit to the supervision and guidance of the probation and parole officer assigned for the supervision of the offender for the time being and obey all reasonable directions of that officer and, in particular, the offender:

- (a) is to report to the probation and parole officer or another person nominated by that officer in the manner and at the times directed and be available for interview at such times and places as that officer or nominee may from time to time direct; and
- (b) is to reside at an address agreed on by the probation and parole officer and receive visits at that address by the probation and parole officer on such occasions as the probation and parole officer considers necessary; and
- (c) is not to travel outside the boundaries of the State without the express approval of the District Manager of the district office of the New South Wales Probation and Parole Service in the Department of Corrective Services to which the probation and parole officer is attached; and
- (d) is not to leave Australia without the permission of the Offenders Review Board.

5 Further supervision conditions

The offender, being subject to supervision, is also subject to the following conditions:

- (a) the offender is to enter into employment arranged or agreed on by the probation and parole officer or make himself or herself available for employment as instructed by that officer; and
- (b) the offender is to notify the probation and parole officer of any intention to change his or her employment:
 - (i) if practicable, before the change occurs; or
 - (ii) otherwise, at his or her next interview with the probation and parole officer; and
- (c) the offender is not to associate with any person or persons specified by the probation and parole officer; and
- (d) the offender is not to frequent or visit any place or district designated by the probation and parole officer; and
- (e) the terms and conditions of the order relating to supervision by the probation and parole officer cease to have effect if the probation and parole officer has notified the person in writing, with the concurrence of the District Manager of the district office of the New South Wales Probation and Parole Service in the Department of Corrective Services to which the probation and parole officer is attached, that the offender is not required to be subject to supervision.

1996—No. 88**6 Other conditions**

The order is also subject to the following terms and conditions:

Order dated the day of 19

Signed

(Judicial member of the Offenders Review Board)

Date

I acknowledge that I understand the terms and conditions on which I am released on parole.

Signed:

(Offender)

Witness:

Name:

Address:

The offender was released from custody on (date)

Signed:

(Governor)

Date:

* delete if not applicable

Form 4

(Cl. 8 (3), 16 (4))

NOTICE RELATING TO RECONSIDERATION BY THE BOARD UNDER S. 20

(b) OR 39

Sentencing Act 1989

To the Offenders Review Board

from

(Name of offender)

1996—No. 88

I notify the Secretary of the Offenders Review Board that I *do not intend/intend to make representations to the Board at the meeting to be held on to reconsider:

* whether I should be released OR parole

OR

* whether my parole order should be revoked

At that time, I *do not wish/wish to appear before the Board.

I *do not intend/intend to be legally represented.

*I wish to be represented at this meeting

by.. ..

of

and seek the consent of the Board for this person to attend for this purpose. My reasons for requesting representation by the named person are:

.....

Signed:

Date:

To: The Secretary of the Offenders Review Board.

*Delete if inapplicable

Note: Legal aid is available from a duty solicitor to assist an offender in preparing representations to the Board. If aid is required, contact without delay:

Prisoner's Legal Service,
 Legal Aid Commission.

Form 5

(Cl. 15)

WARRANT FOR APPREHENSION AND DETENTION

Sentencing Act 1989

To the Commissioner of Police for the State of New South Wales. to all members of the Police Force and to all keepers of prisons in that State.

WHEREAS was sentenced to by
 (Court) at on for
 the offence(s) of

1996—No. 88

AND by order of the Offenders Review Board dated was released from prison on parole on in accordance with the terms of the parole order, which order has been revoked, NOW the Offenders Review Board issues this warrant authorising any member of the Police Force to apprehend

- * and return him/her to a prison..... * to serve the portion of his/her term of imprisonment unexpired on
- * and to remove him/her to * for the purpose of conducting, within 7 days, an inquiry as to whether the order should be revoked.

* The Offenders Review Board ordered the revocation of the parole order for breach of the following terms and conditions of the order, namely:

.....

This warrant is sufficient authority for the apprehension of

..... and *his/her return to and retention in a prison.

.....

(Judicial Member of the Offenders Review Board)

*Delete if inapplicable

Form 6

(Cl. 16)

NOTICE TO PRISONER OF REVIEW BY THE BOARD

Sentencing Act 1989

TO (Name of offender)

TAKE NOTICE that the Offenders Review Board at its meeting on made an order for revocation of your parole to date from The Board will reconvene on at (time) in order to reconsider the revocation of your parole.

* A copy of the order made which revoked your parole order is attached.

* Copies are attached of reports and other documents intended to be used by the Board in reaching its decision.

* You may make submissions to the Board with respect to *the revocation of your parole order/*the date of revocation of your parole order. If you wish to do so, you are required to notify the Secretary of the Board not later than

.....

Secretary of the Offenders Review Board

*Delete if inapplicable

Form 4

(Cl. 18 (2))

NOTICE OF REVOCATION OF PAROLE ORDER

sentencing Act 1989

TAKE NOTICE that on (date) the (Court)
at revoked the parole order made
by
on (date) in respect of (offender).

*The court directed that the parole order is to be taken to have been revoked
on

*Registrar/*Clerk of the Court

TO:

The Commissioner
Department of Corrective Services
The Offenders Review Board

*Delete if inapplicable.

Form 8

(Cl. 19)

INSTRUMENT REQUIRING ATTENDANCE OR PRODUCTION OF
DOCUMENTS

Sentencing Act 1989

IN THE MATTER of a hearing before the Offenders Review Board in respect of (name
of offender)

YOU ARE REQUIRED to appear before the Board on
(date)

21
1996—No. 88

at a.m./p.m. at
(time) (place)

*for the purpose of giving evidence

*to produce the documents specified below:

.....
.....

.....
(Judicial Member of the Offenders Review
Board)

*Delete if inapplicable.

Form 9

(Cl. 21 (2))

INFORMATION RELATING TO PAROLE

Sentencing Act 1989

(Information to be given to prisoners having a sentence exceeding 3 years)

1. You have been given a sentence exceeding 3 years made up of a minimum term of imprisonment which must be served in custody followed by an additional term which may be served in the community on parole following consideration by the Offenders Review Board (or the court has decided not to sentence you in this way and has given reasons).

2. If you appeal against your sentence, the court hearing the appeal may, among other things:

- (a) vary or cancel the minimum term of imprisonment; or
- (b) set a minimum term of imprisonment if one has not already been set; or
- (c) decline to set a minimum term of imprisonment, giving reasons for doing so.

3. If you think a mistake has been made in the setting of or failure to set a minimum term of imprisonment, you may apply to the court that originally sentenced you and, if there has been a mistake, the court may correct it. To make the application, you should fill out an application form and hand it to the prison authorities. The court may correct the mistake without your application.

4. If :

- (a) you have been given a number of minimum terms of imprisonment expiring at different times; or
- (b) you are serving a number of fixed terms of imprisonment expiring at different times,

the minimum period of imprisonment you must serve will depend on whichever term expires last.

5. If a minimum term of imprisonment is the last to expire of the terms of imprisonment to which you are subject, the Board will consider your case and decide if a parole order should be made. To do this, the Board has to determine (among other things) that it has sufficient reason to believe that you would be able to adapt to normal lawful community life if released.

6. A report will be prepared for the Board by a probation and parole officer who will have interviewed you on a number of occasions and made inquiries about you before preparing the report. Reports may also be made by prison officials and by any other person possessing relevant information required by the Board.

7. If the Board intends to refuse you parole, you will be notified by the Board of the date on which the Board will review its decision. You will be given the opportunity to make submissions to the Board about its decision, and you may:

- (a) attend the Board meeting to do this; and
- (b) be legally represented at the Board meeting (or, with the consent of the Board, be represented by someone other than a legal practitioner),

or you may decline to make any submission to the Board.

You will be asked to let the Board know what you intend to do. If practicable, you will be provided with my available reports or documents about you which the Board will use to make its decision.

8. After the review meeting the Board will let you know its decision. If you have been refused parole, you may apply to the Court of Criminal Appeal for a direction that the Board's determination was made on false, misleading or irrelevant information.

9. If you are released on parole the parole order will be subject to certain terms and conditions, which will be set out in the parole order. One condition is that you will be of good behaviour and not commit any offence. You may be placed under the supervision of a probation and parole officer, and what this means will be set out in the order. Other conditions may also be added (for example, relating to medical treatment).

10. The terms and conditions of a parole order may be varied by the Board.

11. A parole order remains in force, unless sooner revoked, until the expiry of the sentence of imprisonment (that is, until expiry of the additional term).

12. A breach of parole will occur if

- (a) you are convicted of a further offence; or
- (b) you fail to observe any of the terms or conditions of the parole order.

13. The Board may revoke your parole order if it is satisfied that a breach of the terms and conditions of parole has occurred and may issue a warrant for your arrest.

14. However, the Board may conduct an inquiry into a suspected breach and may:

- (a) send you a notice asking you to attend; or
- (b) issue a warrant for your arrest to secure your attendance (as an alternative to revoking the order).

If you do not attend in response to a notice, a warrant for your arrest may be issued.

1996—No. 88

15. If the Board revokes your parole order, you will be notified by the Board of the date on which the Board will review:

- (a) its decision to revoke; and
- (b) the date of revocation, if revocation has been backdated.

The same procedures as are described in paragraphs 7 and 8 apply to this review.

16. If your parole order is revoked, you will be returned to prison to serve the rest of the sentence remaining at the time of the revocation (which may be backdated if the Board decides that the breach occurred earlier). This means that “street-time” counts as time served in prison.

17. If you are on parole and are sentenced to imprisonment for another offence, the court may revoke your parole order and then sentence you for the other offence, taking into account the outstanding balance of the sentence for the first offence.

18. An information notice detailing various prison discipline guidelines and rules will be provided to you following your reception in prison. Any breach of discipline which is dealt with by a Visiting Justice may result in an increase in your minimum or fixed term of imprisonment of up to 28 days per offence and, for certain breaches of discipline, the Superintendent may impose some other form of punishment (such as loss of privileges). You will be given the right of appeal against a penalty imposed only if the penalty has the effect of increasing your time in custody.

Form 10

(Cl. 21 (2))

INFORMATION RELATING TO PAROLE**Sentencing Act 1989**

(Information to be given to prisoners having a sentence exceeding 6 months but not exceeding 3 years)

1. You have been given a sentence of not more than 3 years made up of a minimum term of imprisonment which must be served in custody followed by an additional term which may be served in the community on parole (or the court has decided not to sentence you in this way and has given reasons).

2. If you appeal against your sentence, the court hearing the appeal may, among other things:

- (a) vary or cancel your minimum term of imprisonment; or
- (b) set a minimum term of imprisonment if one has not already been set; or
- (c) decline to set a minimum term of imprisonment, giving reasons for doing so.

3. If you think a mistake has been made in the setting of or failure to set a minimum term of imprisonment, you may apply to the court that originally sentenced you and, if there has been a mistake, the court may correct it. To make the application, you should fill out an application form and hand it to the prison authorities. The court may correct the mistake without your application.

4. If:

- (a) you have been given a number of minimum terms of imprisonment expiring at different times; or
- (b) you are serving a number of fixed terms of imprisonment expiring at different times,

the minimum period of imprisonment you must serve will depend on whichever term expires last.

5. If a minimum term of imprisonment is the last to expire of the terms of imprisonment to which you are subject, you will be released automatically to parole, unless you are subject to those provisions of the Sentencing Act 1989 that relate to release at the discretion of the Offenders Review Board. Prior to this you will (if you are to be under supervision during parole) have been interviewed, perhaps several times, by a probation and parole officer, who will have discussed your release with you. The prison authorities will, on releasing you from prison, serve the parole order on you and explain its meaning.

6. Your parole order will be subject to certain terms and conditions, which will be set out in the parole order. One condition is that you will be of good behaviour and not commit any offence. You may be placed under the supervision of a probation and parole officer, and what this means will be set out in the order. Other conditions may also be added (for example, relating to medical treatment).

7. The terms and conditions of a parole order made by a court may be varied by the court (if you are not subject to New South Wales Probation and Parole Service supervision) on your application or by the Offenders Review Board (if you are being supervised) on application by yourself or your probation and parole officer.

8. The parole order remains in force, unless sooner revoked, until the expiry of the sentence of imprisonment (that is, until expiry of the additional term).

9. A breach of parole will occur if:

- (a) you are convicted of a further offence; or
- (b) you fail to observe any of the terms or conditions of the parole order.

10. The Board may revoke your parole order if it is satisfied that a breach of the terms and conditions of parole has occurred and may issue a warrant for your arrest.

11. However, the Board may conduct an inquiry into a suspected breach and may:

- (a) send you a notice asking you to attend; or
- (b) issue a warrant for your arrest to secure your attendance (as an alternative to revoking the order).

If you do not attend in response to a notice, a warrant for your arrest may be issued.

12. If the Board revokes your parole order, you will be notified by the Board of the date on which the Board will review:

- (a) its decision to revoke; and
- (b) the date of revocation, if revocation has been backdated.

You will be given the opportunity to make submissions to the Board about its decisions and will have the right to appear before the Board and be legally represented.

13. If your parole order is revoked, you will be returned to prison to serve the rest of the sentence remaining at the time of the revocation (which may be backdated, if the board decides that the breach occurred earlier). This means that “street-time” counts as time served in prison.

14. If you are on parole and are sentenced to imprisonment for another offence, the court may revoke your parole order and then sentence you for the other offence, taking into account the outstanding balance of the sentence for the first offence.

15. An information notice detailing various prison discipline guidelines and rules will be provided to you following your reception in prison. Any breach of discipline which is dealt with by a Visiting Justice may result in an increase in your minimum or fixed term of imprisonment of up to 28 days per offence and, for certain breaches of discipline, the Superintendent may impose some other form of punishment (such as loss of privileges). You will be given the right of appeal against a penalty imposed only if the penalty has the effect of increasing your time in custody.

NOTES

TABLE OF PROVISIONS

PART 1—PRELIMINARY

- 1. Citation
- 2. Commencement
- 3. Definitions
- 4. Application of Regulation

PART 2—PAROLE

- 5. Consideration of reports concerning serious offenders: sec. 17
- 6. Parole order made by a court: sec. 24
- 7. Parole order made by the Board: secs. 19, 22, 25
- 8. Review by the Board of intention to refuse release on parole: sec. 19
- 9. Decision on review of parole refusal: sec. 22
- 10. Terms and conditions: sec. 27
- 11. Supervision: sec. 27
- 12. Variation or termination of terms or conditions: sec. 27
- 13. Revocation of parole order before release: sec. 28
- 14. Inquiry into suspected breach of parole order: sec. 32
- 15. Arrest warrants: sec. 36

- 16. Revocation of parole order and review of revocation: sec. 38
- 17. Decision on review of revocation: sec. 39
- 18. Notice of revocation of parole order: sec. 35

PART 3—GENERAL

- 19. Instrument requiring attendance: Sch. 1, cl. 16
- 20. Records of proceedings: Sch. 1, cl. 21
- 21. Information to be given to offenders
- 22. Delegation of functions
- 23. Repeal

SCHEDULE 1—FORMS

EXPLANATORY NOTE

The object of this Regulation is to repeal and replace the Sentencing Regulation 1989 with no change in matters of substance. The Regulation deals with the following matters:

- (a) the reports to be furnished to the Offenders Review Board for consideration in relation to the making of a parole order for a serious offender (clause 5);
- (b) the forms for parole orders and the procedures to be followed after the making of a parole order (clauses 6 and 7);
- (c) the procedures to be followed in relation to the review by the Board of intention to refuse release on parole (clauses 8 and 9);
- (d) the terms and conditions of parole orders and the variation of such terms and conditions (clauses 10 and 12);
- (e) the supervision of offenders on parole (clause 11);
- (f) the procedures to be followed in relation to the revocation and the review of revocation of a parole order (clauses 13, 16, 17 and 18);
- (g) the giving of notice of an inquiry into a suspected breach of a parole order (clause 14);
- (h) certain forms to be used for the purposes the Sentencing Act 1989 (clauses 15 and 19);
- (i) the keeping of records of proceedings of the Board (clause 20);
- (j) the information to be given to an offender by the governor of a prison (clause 21);
- (k) the delegation of functions under the Regulation (clause 22);
- (l) formal matters (clauses 1, 2, 3, 4 and 23).

Regulation is made under the Sentencing Act 1989, including section 55 (the regulation making power) and various other sections referred to in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.