

**PRISONS (SERIOUS OFFENDERS REVIEW BOARD)
AMENDMENT ACT 1989 No. 219**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Prisons Act 1952 No. 9
4. Amendment of Defamation Act 1974 No. 18
5. Amendment of Crimes Act 1900 No. 40 (Repeal of provisions relating to release on licence)

SCHEDULE 1 - AMENDMENT OF PRISONS ACT 1952

SCHEDULE 2 - AMENDMENT OF DEFAMATION ACT 1974

**PRISONS (SERIOUS OFFENDERS REVIEW BOARD)
AMENDMENT ACT 1989 No. 219**

NEW SOUTH WALES



Act No. 219, 1989

An Act to amend the Prisons Act 1952 to constitute the Serious Offenders Review Board and to provide for its functions; to amend the Defamation Act 1974 and the Crimes Act 1900; and for other purposes. [Assented to 21 December 1989]

Prisons (Serious Offenders Review Board) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Prisons (Serious Offenders Review Board) Amendment Act 1989.

Commencement

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

Amendment of Prisons Act 1952 No. 9

3. The Prisons Act 1952 is amended as set out in Schedule 1.

Amendment of Defamation Act 1974 No. 18

4. The Defamation Act 1974 is amended as set out in Schedule 2.

Amendment of Crimes Act 1900 No. 40 (Repeal of provisions relating to release on licence)

5. Section 463 of, and the Eighth Schedule to, the Crimes Act 1900 are repealed.

SCHEDULE 1 - AMENDMENT OF PRISONS ACT 1952

(Sec. 3)

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

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

"**Board**" means the Serious Offenders Review Board constituted by section 59;

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

(2) Part 10:

Omit the Part, insert instead:

PART 10 - SERIOUS OFFENDERS REVIEW BOARD

Division 1 - Constitution and functions of Board

Constitution of the Board

59. There is constituted by this Act a Serious Offenders Review Board.

Composition of the Board

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

- (a) 7 members appointed by the Governor; and
- (b) 3 ex-officio members, being officers of the Department of Corrective Services nominated for the time being by the Director-General.

(2) Of the members appointed by the Governor:

- (a) 2 are each to be either a Judge of the District Court or a retired Judge of the Supreme Court or the District Court; and
- (b) 1 is to be a member of the Police Force nominated by the Commissioner of Police; and
- (c) 4 are to be persons (not being officers of the Department of Corrective Services) appointed to represent the community or any significant portion of the community.

Functions of the Board

61. The functions of the Board are:

- (a) to revoke or vary licences that were granted under section 463 of the Crimes Act 1900 before its repeal; and
- (b) to prepare reports for the Supreme Court in respect of applications for determinations of minimum terms and additional terms for existing life sentences under section 13A of the Sentencing Act 1989; and

Prisons (Serious Offenders Review Board) Amendment 1989

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

- (c) to prepare reports to the Offenders Review Board in respect of the release on parole of prisoners who are subject to such existing life sentences and such other classes of serious offenders as may be prescribed by the regulations; and
- (d) to perform such functions as may be prescribed by the regulations in relation to the management of prisoners who have been sentenced to penal servitude for life or other serious offenders.

Provisions relating to members and procedure of the Board

62. Schedule 5 has effect with respect to the members and procedure of the Board.

Division 2 - Decisions of Board concerning licences granted before the repeal of section 463 of the Crimes Act 1900

Existing licences preserved

63. (1) The repeal of section 463 of the Crimes Act 1900 does not affect any licence to be at large granted to a person under that section.

(2) This Division applies to any such licence.

Revocation or variation of licence

64. (1) A licence may at any time be revoked or varied by the Board.

(2) If a licence is revoked, the person released on licence is to be returned to gaol and detained for the remainder of his or her sentence.

(3) If the Chairperson or Deputy Chairperson of the Board is of the opinion that:

- (a) the matter of whether a licence is to be revoked is being considered by the Board or will shortly be considered by the Board; and
- (b) circumstances exist that justify the immediate apprehension of the licensee,

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

the Chairperson or Deputy Chairperson may issue a warrant to a member of the Police Force directing that the licensee be apprehended and returned to gaol.

(4) A direction in a warrant under subsection (3) for the apprehension by a member of the Police Force of a licensee and the return of the licensee to gaol is sufficient authority for that apprehension and for the detention of the licensee in gaol pending a decision as to whether or not the licence will be revoked.

Chairperson or Deputy Chairperson required to support decision to revoke or vary licence

65. (1) The Board may not decide to revoke or vary a licence unless the decision is made at a meeting attended by, and is supported by, the Chairperson or Deputy Chairperson of the Board.

(2) This section applies despite any other provision of this Act.

Principles etc. applying to decision to revoke or vary licence

66. (1) In considering whether to revoke or vary a licence, the Board may have regard to:

- (a) the licensee's conduct, and any breach of the conditions of the licence, while at large; and
- (b) the matters which were considered when the recommendation was made to grant the licence; and
- (c) any other matter that the Board considers relevant.

(2) The matters mentioned in subsection (1) may include:

- (a) the nature and length of the licensee's prison sentence and the period served; and
- (b) any relevant comments made by the court when imposing sentence; and
- (c) the interests of the public or any section of the public; and

Prisons (Serious Offenders Review Board) Amendment 1989

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

- (d) any psychological, medical and psychiatric reports on the licensee since sentencing; and
- (e) other reports (including reports on the licensee's prison history) which the Board considers relevant; and
- (f) any special circumstances of the case.

Notification to licensee of consideration by the Board

67. (1) Before deciding whether to revoke or vary a licence, the Board is to serve on the licensee a notice in writing that it intends to consider making such a decision.

(2) The notice must:

- (a) state the decision that the Board is to consider making; and
- (b) specify the reason why the Board has decided to consider making the decision; and
- (c) specify the time within which, and the manner in which, the licensee may make written submissions to the Board concerning the proposed decision.

(3) A notice is not required under this section if a decision is being considered at the request of the licensee.

Reconsideration of decision to revoke or vary licence at hearing before Board

68. (1) If the Board decides:

- (a) to revoke a licence; or
- (b) to vary a licence so as to impose additional obligations or restrictions on the licensee,

the Board is to serve on the licensee a notice in writing that it has made such a decision.

(2) The notice to the licensee must:

- (a) state the decision that the Board has made; and
- (b) request the licensee to notify the Board (in the manner and within the time specified in the notice) if the licensee wishes the Board to reconsider the

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

decision and to make representations at a hearing conducted by the Board for that purpose; and

- (c) except as provided by subsection (3), be accompanied by copies of the reports and other documents used by the Board in making the decision.

(3) A copy of the whole or any part of a report or other document is not required to be provided to a licensee under this section if, in the opinion of the Chairperson or Deputy Chairperson of the Board:

- (a) the security, discipline or good order of a prison may be adversely affected; or
(b) the licensee or any other person may be endangered.

(4) A licensee who has duly notified the Board of his or her intention to make representations may do so at a meeting of the Board notified to the licensee.

(5) At that meeting (or an adjourned meeting) the Board may confirm or rescind, or alter, its decision.

Decision by the Board to revoke or vary licence in certain cases without notice etc.

69. The Board may, in any case in which it considers there is reasonable cause to do so, decide to revoke or vary a licence even though the licensee has not been given notice of the matter or any opportunity to make written submissions or representations to the Board.

Service of notice to licensee

70. The Board may serve a notice on a licensee under this Division:

- (a) personally; or
(b) by post addressed to the last address of the licensee known to the Board.

Prisons (Serious Offenders Review Board) Amendment 1989

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

Review by Court of Criminal Appeal of certain decisions

71. (1) If

- (a) the Board has made a decision to revoke or vary a licence; and
- (b) the licensee alleges that the decision was based on the taking into consideration of information which was false, misleading or irrelevant,

the licensee 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.

(2) The Court of Criminal Appeal may give such direction with respect to the information as it thinks fit.

(3) An application under this section is not to be considered by the Court of Criminal Appeal unless it is satisfied that the application is not an abuse of process and that there appears to be sufficient evidence to support the application.

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

(5) The power of the Court of Criminal Appeal to grant the applicant 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.

(6) No appeal lies to the Court of Criminal Appeal against the refusal of a Judge of that Court to grant leave to appear.

Application for determination under section 13A of the Sentencing Act 1989

72. A person who is returned to gaol following a decision of the Board to revoke his or her licence is not eligible for a further licence but may apply for the determination of a minimum term and an additional term for the life sentence by the Supreme Court under section 13A of the Sentencing Act 1989.

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

(3) Schedule 5:

Omit the Schedule, insert instead:

**SCHEDULE 5 - PROVISIONS RELATING
TO THE MEMBERS AND PROCEDURE
OF THE BOARD**

(Sec. 62)

Definitions

1. In this Schedule:

"**Chairperson**" means the Chairperson of the Board;

"**Deputy Chairperson**" means the Deputy Chairperson of the Board;

"**Judge**" means a Judge of the District Court;

"**judicial member**" means the Chairperson or Deputy Chairperson of the Board;

"**member**" means a member of the Board;

"**non-judicial member**" means a member other than the Chairperson or Deputy Chairperson;

"**retired Judge**" means a person who has retired from the office of Judge of the Supreme Court or District Court.

Chairperson etc. of the Board

2. (1) The members referred to in section 60 (2) (a) are to be respectively appointed, in and by the instruments by which the members are appointed (or in and by other instruments executed by the Governor), as:

(a) Chairperson of the Board; and

(b) Deputy Chairperson of the Board.

(2) The appointment of a person who is a Judge as the Chairperson or Deputy Chairperson does not, nor does the person's service as the Chairperson or Deputy Chairperson, affect the person's tenure of the office of a Judge or the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office.

Prisons (Serious Offenders Review Board) Amendment 1989

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

(3) A person who is a Judge may, even though the person is the Chairperson or Deputy Chairperson, exercise the powers of a Judge.

(4) The service, as the Chairperson or Deputy Chairperson, of a Judge is to be taken, for all purposes, to be service as a Judge.

Acting appointed members

3. (1) The Deputy Chairperson, during the illness or absence of the Chairperson, is to act in the office of the Chairperson and, while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.

(2) The Governor may, from time to time, appoint a person, being a Judge or retired Judge, to act in the office of the Deputy Chairperson during the illness or absence of the Deputy Chairperson, and the person, while so acting, has all the functions of the Deputy Chairperson and is to be taken to be the Deputy Chairperson.

(3) If a non-judicial appointed member has been granted leave of absence by the Minister for a period, the Governor may appoint a person to act in the office of the non-judicial member during that period, and the person, while so acting, has all the functions of the member and is to be taken to be a member.

(4) The Governor may, at any time, remove a person from an office to which the person was appointed under subclause (2) or (3).

(5) For the purposes of this clause:

(a) a vacancy in the office of Chairperson or Deputy Chairperson is to be taken to be an absence from office of the Chairperson or Deputy Chairperson; and

(b) the Deputy Chairperson is to be taken to be absent from the office of Deputy Chairperson while acting as Chairperson.

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

Deputies of ex-officio members

4. (1) An ex-officio member may, from time to time, appoint a person to be his or her deputy, and the member or the Minister may revoke any such appointment.

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

- (a) may, if available, act in the place of the member; and
- (b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) A person may not be appointed as a deputy unless the person is an officer of the Department of Corrective Services.

Terms of office of appointed members

5. Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of appointed members

6. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of appointed member

7. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by notice in writing addressed to the Minister; or
- (d) is removed from office by the Governor; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent

Prisons (Serious Offenders Review Board) Amendment 1989

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or
- (h) being a judicial member, ceases to be a Judge (except because of retirement); or
- (i) being the member referred to in section 60 (2) (b), ceases to be a member of the Police Force.

(2) The Governor may remove an appointed member from office at any time.

Filling of vacancy in office of appointed member

8. If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member.

(2) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

Committees of Board

10. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

(2) The members of a committee must be members of the Board.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

General procedure

11. (1) Except as otherwise provided by this Act or the regulations:

- (a) meetings of the Board are to be held at such times and places as are fixed by the Chairperson; and
- (b) the procedure for the convening of meetings of the Board and for the conduct of business at those meetings is to be as determined by the Chairperson.

(2) The Board may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

(3) The Board is not bound by the rules or practice as to evidence and may inform itself on any matter as it thinks fit.

(4) Proceedings before the Board:

- (a) are to be open to the public unless the Board determines in any particular case that the proceedings are to be conducted wholly or partly in the absence of the public; and
- (b) are not to be conducted in an adversary manner; and
- (c) are to be conducted with as little formality and technicality, and with as much expedition, as fairness to any affected person and the requirements of this Act permit.

(5) A decision of the Board is not vitiated merely because of any informality or want of form.

Prisons (Serious Offenders Review Board) Amendment 1989

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

Quorum

12. The quorum for a meeting of the Board is 5 members consisting of at least 1 judicial member and at least 4 non-judicial members.

Presiding member

13. The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Board.

Voting at meetings of the Board

14. If the Chairperson and the Deputy Chairperson are both present at a meeting of the Board, only the Chairperson is entitled to vote with respect to any decision.

Decisions

15. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present, including the vote cast by a judicial member entitled to vote at the meeting, is the decision of the Board.

Authentication of documents

16. Each document requiring authentication by the Board may be sufficiently authenticated if signed by a person purporting to be the member who presided at the meeting of the Board when the proceedings with respect to which the document was prepared took place.

Proof of certain matters not required

17. In any legal proceedings, proof is not required, until evidence is given to the contrary, of:

- (a) the constitution of the Board; or
- (b) any determination, recommendation or decision of the Board; or
- (c) the appointment of, or holding of office by, any member; or
- (d) the presence or nature of a quorum at any meeting of the Board.

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

Power to summon witnesses and take evidence

18. (1) A judicial member may, by instrument in writing, require any person on whom the instrument is served personally or by post:

- (a) to appear before the Board for the purpose of giving evidence at a meeting of the Board; or
- (b) to produce to the Board any document (including a document in the custody or under the control of the person and in the possession of or the property of the Crown) that is relevant to the meeting,

at a time, date and place specified in the instrument.

(2) A judicial member may require a person who appears before the Board at a meeting to be sworn for the purpose of giving evidence on oath and may administer an oath accordingly.

(3) If a document is produced to the Board at a meeting, the Board may take possession of the document for such period as it considers necessary for the purposes of the meeting.

(4) This clause does not require a person to produce to the Board at a meeting any document the production of which the Minister certifies in writing may:

- (a) endanger any person; or
- (b) be otherwise contrary to the public interest.

Examination by judicial member

19. (1) A judicial member may require a person (including an officer or employee of the Crown) who appears before the Board at a meeting to answer a question that is reasonably related to the proceedings.

(2) A person is not excused from answering a question put to the person by a judicial member on the ground that the answer might tend to incriminate the person.

(3) If a person claims, before answering such a question, that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings (other

Prisons (Serious Offenders Review Board) Amendment 1989

SCHEDULE 1 - AMENDMENT OF PRISONS

ACT 1952 - *continued*

than proceedings for an offence under clause 20 (c) or in relation to a charge of perjury in respect of the answer).

Offences

20. A person must not:

- (a) refuse, fail or neglect to comply with a requirement under clause 18 or 19 except to the extent to which the person is lawfully excused from complying with the requirement; or
- (b) in purported compliance with a requirement under clause 18, produce any document knowing it to be false or misleading in a material particular; or
- (c) not having been sworn, make a statement knowing it to be false or misleading in a material particular when appearing before the Board at a meeting.

Maximum penalty: 5 penalty units.

Representation etc.

21. At a meeting of the Board at which a person is entitled or allowed to make submissions to the Board under Part 10, the person may:

- (a) be represented by a barrister or solicitor or, with the consent of the Board, by any other person; and
- (b) call and examine any witness who attends the meeting, including any witness called by the Board; and
- (c) give evidence on oath; and
- (d) produce documents and exhibits to the Board; and
- (e) otherwise adduce, orally and in writing, to the Board such matters, and address the Board on such matters, as are relevant to the proceedings.

Witnesses' expenses

22. A person who is required to appear or to give evidence before the Board at a meeting (other than the licensee in respect of whom the meeting is held) is entitled to be paid such allowances and expenses (if any) as the Minister may determine in respect of the person.

SCHEDULE 1 - AMENDMENT OF PRISONS
ACT 1952 - *continued*

Record of proceedings

23. (1) The person presiding at a meeting of the Board is to cause a record of the proceedings to be made.

(2) Any such records may be destroyed after the expiration of the period of 5 years after they were made.

(4) Schedule 8 (**Savings and transitional provisions**):

(a) At the end of clause 1 (1), insert:

Prisons (Serious Offenders Review Board) Amendment Act 1989.

(b) After Part 3, insert:

**PART 4 - PROVISIONS CONSEQUENTIAL ON
ENACTMENT OF PRISONS (SERIOUS OFFENDERS
REVIEW BOARD) AMENDMENT ACT 1989**

Release on Licence Board

17. (1) The members of the Release on Licence Board who held office immediately before the commencement of this clause cease to hold office on that commencement, but are eligible to be appointed to the Serious Offenders Review Board.

(2) Anything done by or in relation to the Release on Licence Board is to be taken to have been done by or in relation to the Serious Offenders Review Board.

(3) A reference in any other Act, or in any instrument made under any Act or in any other document of any kind, to the Release on Licence Board or a member of the Release on Licence Board is to be read as a reference to the Serious Offenders Review Board or a member of the Serious Offenders Review Board.

Prisons (Serious Offenders Review Board) Amendment 1989

SCHEDULE 2 - AMENDMENT OF DEFAMATION ACT 1974

(Sec. 4)

Section 17CA:

Omit section 17CA, insert instead:

Matters arising out of proceedings of the Offenders Review Board or Serious Offenders Review Board

17CA. There is a defence of absolute privilege:

- (a) for a publication of a report or other document under Part 3 of the Sentencing Act 1989 or Part 10 of the Prisons Act 1952; and
- (b) for a publication in the course of any proceedings of:
 - (i) the Offenders Review Board (or a Division or committee of that Board); or
 - (ii) the Serious Offenders Review Board (or a committee of that Board); and
- (c) for a publication by a body referred to in paragraph (b) of a report of any proceedings referred to in that paragraph.

[*Minister's second reading speech made in -
Legislative Assembly on 30 November 1989
Legislative Council on 7 December 1989*]