SENTENCING ACT 1989 No. 87

NEW SOUTH WALES

TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Objects of Act
4. Definitions

PART 2—SENTENCING

5. Minimum and additional terms
6. Fixed terms: alternative to minimum and additional terms
7. Fixed terms: sentences of 6 months or less
8. Information about minimum or fixed term
9. Cumulative sentences
10. Restriction on setting minimum and additional terms
11. Powers on appeal
12. Operation of this Part
13. Exclusions from this Part

PART 3—PAROLE

Division 1—Release on parole

14. Eligibility for release on parole
15. Parole order necessary for release

Division 2—Parole orders—sentences of more than 3 years

16. Application of this Division
17. General duty of the Board
18. Consideration by the Board
19. Decision of the Board about release on parole
20. Notice of refusal of parole
21. Review by the Board
22. Decision after review
23. Application to Court of Criminal Appeal

Division 3—Parole orders—sentences of 3 years or less

24. Making of parole orders by court
25. Making of parole orders by Board

Division 4—Parole orders—general provisions
26. Duration of parole order
27. Terms and conditions of parole order
28. Revocation of parole order before release
29. Release under parole order
30. Effect of parole order
31. Procedural requirements
32. Powers of Board if breach suspected
33. Inquiry into suspected breach
34. Revocation of parole order by Board
35. Revocation of parole order by court
36. Warrants
37. Judicial notice of warrants
38. Notice of revocation
39. Review of revocation
40. Decision after review
41. Application to Court of Criminal Appeal

PART 4—APPLICATION OF THIS ACT TO CHILDREN
42. Definitions
43. Application of this Act to children

PART 5—THE OFFENDERS REVIEW BOARD
44. Constitution of the Board
45. Composition of the Board
46. Provisions relating to members, Divisions and procedure of the Board
47. Secretary and other staff of the Board

PART 6—MISCELLANEOUS
48. Disclosure of information
49. Security of certain information
50. Report to the Minister
51. Information concerning prisoners and parolees
52. Evidence
53. Royal prerogative etc. preserved
54. Proceedings for offences
55. Regulations
56. Repeals
57. Savings and transitional provisions
58. Amendment of Acts

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE
SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS
SCHEDULE 3—AMENDMENT OF PRISONS ACT 1952
SCHEDULE 4—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 AND CHILDREN (DETENTION CENTRES) ACT 1987
SCHEDULE 5—AMENDMENT OF OTHER ACTS

SENTENCING ACT 1989 No. 87

NEW SOUTH WALES

Act No. 87, 1989

An Act to promote truth in sentencing; to provide for the procedure to be followed in sentencing prisoners to imprisonment and for the release of prisoners on parole; to repeal the Probation and Parole Act 1983 and amend certain other Acts; and for other purposes. [Assented to 2 June 1989]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Sentencing Act 1989.

Commencement

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

Objects of Act

3. The objects of this Act are—

(a) to promote truth in sentencing by requiring convicted offenders to serve in prison (without any reduction) the minimum or fixed term of imprisonment set by the court; and

(b) to provide that prisoners who have served their minimum terms of imprisonment may be considered for release on parole for the residue of their sentences.

Definitions

4. (1) In this Act—

"additional term" means an additional term set under Part 2;

"Board" means the Offenders Review Board constituted by this Act;

"court" includes a Judge, Magistrate and Justice;

"fixed term" means a fixed term set under Part 2;

"imprisonment" includes penal servitude;

"minimum term" means a minimum term set under Part 2;

"parole order" means an order made under this Act directing the release of a prisoner on parole;

"prison" and "prisoner" have the same meanings as in the Prisons Act 1952.

(2) In this Act, a reference to a sentence of imprisonment to which a person is subject includes a reference to a sentence which has been imposed but which has not yet commenced.

(3) In this Act, a reference to a minimum or additional term or a fixed term is, if the term has been varied under the Prisons Act 1952 or the Children (Detention Centres) Act 1987 for a breach of discipline, a reference to the term as so varied.

(4) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

PART 2—SENTENCING

Minimum and additional terms

5. (1) When sentencing a person to imprisonment for an offence, a court is required—

(a) firstly, to set a minimum term of imprisonment that the person must serve for the offence; and

(b) secondly, to set an additional term during which the person may be released on parole.

(2) The additional term must not exceed one-third of the minimum term, unless the court decides there are special circumstances.

(3) If a court sets an additional term that exceeds one-third of the minimum term, the court is required to state the reason for that decision.

(4) The minimum and additional terms set for an offence together comprise, for the purposes of any law, the term of the sentence of the court for the offence.

Fixed terms: alternative to minimum and additional terms

6. (1) When sentencing a person to imprisonment for an offence, a court may decline to set minimum and additional terms for the offence and may set instead a fixed term of imprisonment that the person must serve for the offence.

(2) A court may decline to set minimum and additional terms for a person if it appears to the court that it is appropriate to set a fixed term—

(a) because of the nature of the offence or the antecedent character of the person; or

(b) because of other sentences already imposed on the person; or

(c) for any other reason that the court considers sufficient.

(3) A court is required to state the reason for its decision to set a fixed term instead of minimum and additional terms.

Fixed terms: sentences of 6 months or less

7. (1) A court may not set minimum and additional terms for an offence if they would together not exceed 6 months.

(2) In that case, the court is required to set a fixed term of imprisonment not exceeding 6 months that the person must serve for the offence.

Information about minimum or fixed term

8. **(1)** When setting a minimum or fixed term, a court is required to specify the day on which the term commences or commenced and the day on which the prisoner will be eligible to be released from prison or on parole.

(2) If the prisoner is sentenced to more than one term of imprisonment or is already subject to a term of imprisonment, the court is required to specify the earliest day on which the prisoner would be eligible to be released from prison or on parole.

(3) In specifying a day under this section, the court may rely on the information then available to the court.

(4) The purpose of this section is to require the court to give information about the likely effect of a sentence.

Cumulative sentences

9. **(1)** If a court imposes a further sentence of imprisonment which is to be cumulative on a previous sentence imposed by the court or to which the person is subject (being a previous sentence which has a minimum term), the further sentence must commence at the end of the minimum term of the previous sentence.

(2) If there is more than one previous sentence which has a minimum term, the further sentence must commence at the end of the minimum term that last expires.

(3) If the further sentence is imposed during the additional term for the previous sentence or during the additional term that last expires, the further sentence must commence on the day it is imposed or on an earlier day specified by the court.

(4) If a court imposes a further sentence that does not comply with this section, the further sentence is to be taken to commence at the time required by this section.

(5) This section has effect despite section 444 of the Crimes Act 1900 or any other law.

(6) Otherwise, this section does not affect any law relating to the time when a sentence commences or commenced, or comes to an end, or any power of a court to direct that a sentence is to commence at the expiration of another sentence.

(7) A reference in this section to a further sentence includes a reference to a sentence excluded from this Part by section 13.

Restriction on setting minimum and additional terms

10. The minimum and additional terms set by a court for an offence—

(a) must together not exceed the maximum period of imprisonment that may be imposed for the offence; and

(b) must together not be less than any minimum period of imprisonment that must be imposed for the offence.

Powers on appeal

11. **(1)** If an appeal is made against a conviction or sentence, the court determining the appeal may—

(a) vary any minimum and additional terms; or

(b) rescind any minimum and additional terms and set a fixed term instead; or

(c) rescind any fixed term and set minimum and additional terms instead.

(2) Any term as varied or set under this section must comply with this Part.

(3) This section does not limit any other power of a court in determining an appeal.

Operation of this Part

12. **(1)** When sentencing a person to more than one term of imprisonment, a court must set minimum and additional terms, or a fixed term, for each sentence.

(2) A minimum or additional term, or fixed term, set for an offence is not revoked or varied by a later such term set for another offence.

Exclusions from this Part

13. This Part does not apply to the sentencing of a person—

(a) to imprisonment that will be required to be served by way of periodic detention under the Periodic Detention of Prisoners Act 1981; or

(b) to imprisonment in default of payment of any fine or penalty; or

(c) to imprisonment for life or for any other indeterminate period; or

(d) to detention in strict custody under section 428P (5) or 428ZB of the Crimes Act 1900; or

(e) to imprisonment under the Habitual Criminals Act 1957.

PART 3—PAROLE

Division 1—Release on parole

Eligibility for release on parole

14. **(1)** Prisoners may be released on parole in accordance with this Act.

(2) A prisoner is eligible for release on parole only if—

(a) the prisoner is subject to at least one sentence of imprisonment that has a minimum term; and

(b) the prisoner has served each such minimum term and is not subject to any other sentence of imprisonment that does not have a minimum term.

(3) Nothing in this Act authorises the release of a prisoner who is required to be kept in prison in relation to an offence against a law of the Commonwealth.

Parole order necessary for release

15. A prisoner eligible for release on parole is entitled to be released on parole only if a parole order directing the release of the prisoner has been made and takes effect.

Division 2—Parole orders—sentences of more than 3 years

Application of this Division

16. This Division applies to the making of a parole order in respect of a sentence of imprisonment of more than 3 years that has a minimum term.

General duty of the Board

17. **(1)** The Board may not make a parole order for a prisoner unless the Board has—

(a) determined that the release of the prisoner is appropriate, having regard to the principle that the public interest is of primary importance; and

(b) considered relevant comments (if any) made by the court when sentencing the prisoner; and

(c) considered any reports required by regulations made for the purposes of this section to be furnished to it; and

(d) taken into account the antecedents of the prisoner and any special circumstances of the case; and

(e) determined that it has sufficient reason to believe that the prisoner, if released from custody, would be able to adapt to normal lawful community life; and

(f) considered any other relevant matter.

(2) In making a decision under this section, the Board is not to take into account whether a prisoner, if released on parole, may become liable to be deported.

Consideration by the Board

18. The Board is required to consider 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.

Decision of the Board about release on parole

19. Immediately after considering whether a prisoner should be released on parole, the Board is required—

(a) to make an order directing the release of the prisoner on parole on the day on which the prisoner becomes eligible for release on parole or, if that day has passed, at a specified time occurring not later than 7 days after the order is made; or

(b) to cause the prisoner to be advised, by a written notice served on the prisoner, that the Board does not intend to make a parole order.

Notice of refusal of parole

20. A notice that the Board does not intend to make a parole order must—

(a) set a date (occurring as soon as practicable, but not earlier than 14 days, after the date on which the notice is served) on which the Board will meet for the purpose of reconsidering whether the prisoner should be released on parole; and

(b) require the prisoner to notify the Secretary of the Board, not later than 7 days before the date set, if the prisoner intends to make representations to the Board about being released on parole; and

(c) 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

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

Review by the Board

21. (1) If a notice is served on a prisoner under section 20 and the prisoner has duly notified the Secretary of the Board that the prisoner intends to make representations to the Board, the Chairperson of the Board shall convene a meeting of the Board, on the date set by the notice, for the purpose of reconsidering whether the prisoner should be released on parole.

(2) At a meeting of the Board convened under this section, or at a subsequent meeting (which shall, where practicable, be held before the prisoner is eligible for release on parole) the prisoner may make submissions to the Board with respect to being released on parole.

Decision after review

22. (1) At a meeting convened under section 21, the Board shall, after reviewing all the reports, documents and other information placed before it, 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) The making of a decision, deferred by the Board under this section—

(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 shall make an order directing the release of the prisoner on parole on the day on which the prisoner becomes eligible for release on parole or, if that day has passed, at a specified time occurring not later than 7 days after the order is made.

(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.

Application to Court of Criminal Appeal

23. (1) If—

(a) the Board has decided, under section 22, that a prisoner should not be released on parole; and

(b) the prisoner alleges that the decision of the Board was made on information which was false, misleading or irrelevant,

the prisoner 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) 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.

(3) At the 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.

(4) 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, but no appeal lies to that Court against the refusal of a Judge of that Court to grant leave to so appear.

Division 3—Parole orders—sentences of 3 years or less

Making of parole orders by court

24. (1) When a court imposes a sentence of imprisonment of 3 years or less that has a minimum term, the court is required to make an order directing the release of the prisoner on parole at the end of the minimum term.

(2) A parole order under this section is conditional on the prisoner being eligible for release in accordance with section 14 at the time the minimum term ends.

(3) If the prisoner is not eligible for release at that time, the prisoner is entitled to be released on parole as soon as the prisoner becomes so eligible.

(4) This section does not authorise the release on parole of a prisoner who is also serving a sentence of imprisonment of more than 3 years that has a minimum term unless the prisoner is entitled to be released under Division 2.

(5) A parole order may be made under this section even though at the time it is made it appears that the prisoner might not be eligible for release at the end of the minimum term because of another sentence to which the prisoner is subject.

Making of parole orders by Board

25. (1) An order may be made by the Board directing the release of a prisoner on parole if the prisoner is subject to a sentence of imprisonment of 3 years or less that has a minimum term and—

(a) a court fails to make a parole order as required by section 24; or

(b) a parole order made by a court under that section has been revoked and the remainder of the sentence exceeds 6 months.

(2) Division 2 applies to the making of a parole order under this section.

Division 4—Parole orders—general provisions

Duration of parole order

26. Unless revoked, a parole order to which a person is subject expires when the sentence of imprisonment to which the order relates has expired.

Terms and conditions of parole order

27. **(1)** A parole order is subject to—

(a) such terms and conditions (if any) as are prescribed by the regulations; and

(b) any terms and conditions that are specified in the order when the order is made (but subject to any variation of those terms and conditions under this section).

(2) The Board may, by order in writing served personally or by post (whether before or after the release of the person under the parole order) on the person to whom a parole order relates, vary the terms and conditions, other than any prescribed terms and conditions, to which the parole order is subject for the time being.

(3) A term or condition of a parole order imposed by a court or the Board has no effect to the extent (if any) to which it is inconsistent with an applicable prescribed term or condition.

(4) The terms and conditions of a parole order may include terms and conditions—

(a) requiring that the person to whom the order relates be subject to supervision prescribed by the regulations, during the period specified by or under the order or the regulations; and

(b) providing for the revocation of the order on a contravention by the person of a term or condition of the order, or otherwise.

(5) Despite the terms and conditions to which a parole order is subject, the Board may, by notice in writing served personally or by post on the person to whom the order relates, terminate any requirement made by any such term or condition requiring or relating to the person's being subject to supervision.

(6) Without limiting the power of the Board under this section, a court may at any time vary any term or condition of a parole order imposed by the court.

Revocation of parole order before release

28. The Board may, by order in writing and in such circumstances as may be prescribed by the regulations, revoke a parole order before the person to whom the order relates has been released under the order.

Release under parole order

29. A parole order made for a prisoner which has taken effect and has not been revoked is sufficient warrant for any person having lawful custody of the prisoner to release the prisoner as directed by the order.

Effect of parole order

30. A person who, after serving a minimum term that forms part of a sentence, is lawfully released on parole as directed by a parole order is to be taken to be serving the sentence of imprisonment from the time of release—

(a) until the sentence expires; or

(b) if the parole order is revoked or taken to have been revoked on a day that occurs before the sentence expires—until that day.

Procedural requirements

31. A parole order is not invalid merely because of a failure by the Board or a court to comply with any procedural requirement imposed by or under this Act.

Powers of Board if breach suspected

32. **(1)** If the Board has reasonable cause to believe that a person has contravened a term or condition of a parole order for the contravention of which the order may be revoked, the Board may, whether or not the order has expired—

(a) by written notice served personally or by post on the person, require the person to appear before the Board at a specified time and place for the purpose of an inquiry into whether the order should be revoked; or

(b) where, in the opinion of the Board, the circumstances of the particular case so require, without revoking the order, decide that a warrant should be issued under section 36.

(2) If a person fails to comply with the requirements of a notice served on the person under this section, the Board may—

(a) without revoking the parole order, decide that a warrant should be issued under section 36; or

(b) by an order made under section 34, revoke the parole order.

(3) The Board is not required to inquire into a possible contravention of a parole order made by a court unless the person to whom the order relates is required by the terms and conditions of the order to be supervised.

Inquiry into suspected breach

33. **(1)** If a person to whom a parole order relates attends before the Board pursuant to—

(a) the requirements of a notice served under section 32; or

(b) a warrant issued under section 36,

the Board must immediately inquire into whether any of the terms and conditions of the order have been contravened.

(2) The person to whom the parole order relates may make submissions to the Board against the revocation of the order.

Revocation of parole order by Board

34. **(1)** The Board may, by order in writing, revoke a parole order or direct that it is to be taken to have been revoked—

(a) if the terms and conditions of the parole order provide that the order may be revoked because of a contravention of any of those terms and conditions by the person to whom the order relates and the person has contravened any such term or condition; or

(b) if the terms and conditions of the parole order provide that the order may be revoked otherwise than because of a contravention of any of those terms and conditions and the order is revoked in accordance with any such provision; or

(c) if the Board is satisfied that the person to whom the parole order relates has been sentenced by a court to imprisonment for an offence committed while the order was in force; or

(d) if the Board is authorised by section 32 to revoke the parole order.

(2) The Board may revoke a parole order or direct that it is to be taken to have been revoked whether or not—

(a) a notice has been served under section 32; or

(b) an inquiry has been held under section 33.

(3) Where the Board makes an order under this section, the Board must, in the order, state the reason for the revocation.

(4) The Board may, in an order made under this section, direct that a parole order is to be taken to have been revoked—

(a) where the parole order is revoked because of a contravention of a term or condition of the order, on such day occurring not earlier than the day on which the contravention occurred; or

(b) where the parole order is revoked because of the imposition of a sentence of imprisonment, on such day occurring not earlier than the day on which the offence to which the sentence relates was committed,

as the Board specifies in the order made under this section.

(5) A direction under this section has effect even if the parole order concerned has expired and even if the person concerned is consequently required to serve a period of a sentence of imprisonment which would otherwise have expired.

(6) For the purposes of this section, the day on which a contravention of a term or condition of a parole order occurred shall be such day as is determined by the Board.

Revocation of parole order by court

35. (1) In sentencing a person to whom a parole order relates to imprisonment for another offence, a court may—

(a) revoke the parole order; or

(b) direct that the parole order is to be taken to have been revoked on such day, occurring while the parole order was in force but not earlier than the day on which the offence to which the sentence relates was committed, as is specified by the court in the direction.

(2) A direction under this section has effect even if the parole order concerned has expired and even if the person concerned is consequently required to serve a period of a sentence of imprisonment which would otherwise have expired.

(3) Without limiting the power of the Board under section 34, the court which made a parole order may exercise the powers of the Board under that section to revoke the order.

Warrants

36. (1) If—

(a) a parole order made for a person has been revoked; or

(b) the Board has made a decision under section 32 that a warrant should be issued for the arrest of the person for whom a parole order was made,

the Board may, by warrant signed by the Chairperson, Substitute Chairperson or Deputy Chairperson of the Board, authorise any member of the Police Force to arrest the person to whom the parole order related or relates.

(2) If a warrant is issued under this section because of the revocation of a parole order made for a person, the warrant also authorises any member of the Police Force to return the person to a prison for the purpose of serving the person's sentence of imprisonment.

(3) If a warrant is issued under this section because of a decision made under section 32, the warrant also authorises any member of the Police Force—

(a) to return the person to a prison; or

(b) if the terms of the warrant so require, to remove the person to a place of custody or to a court, or both, as specified in the warrant,

there to remain until the revocation of the warrant by the Board or the court or until the expiration of the period of 7 days commencing with the day on which the warrant was issued, whichever first occurs, for the purpose of conducting an inquiry under section 33 to determine whether the terms and conditions of the parole order have been contravened.

(4) A warrant issued under this section is sufficient authority for the arrest of the person to whom it relates by a member of the Police Force and the removal to and detention in prison or at another place, as the warrant may require, of the person.

Judicial notice of warrants

37. All courts and persons acting judicially shall take judicial notice of an instrument that purports to be a warrant signed in accordance with section 36 until it is proved that the instrument is not such a warrant.

Notice of revocation

38. **(1)** As soon as practicable after the Board revokes a parole order, the Board shall cause a notice under this section to be served on the prisoner to whom the order related.

(2) The notice must—

(a) set a date, occurring not earlier than 14, nor later than 28, days after the date on which it is served, on which the Board is to meet for the purpose of—

(i) reconsidering the revocation of the parole order; and

(ii) if the parole order is taken to have been revoked on an earlier day than the day on which the Board decided to revoke the parole order—determining whether the specification of the earlier day should be revoked or varied; and

(b) require the prisoner to notify the Secretary of the Board, not later than 7 days before the date so set, if the prisoner intends to make representations to the Board in relation to the revocation of the order or the specification of the earlier day, or both; and

(c) be in the form prescribed by the regulations; and

(d) except as provided by section 49, be accompanied by—

(i) a copy of the order which revoked the parole order; and

(ii) copies of the reports and other documents used by the Board in making the decision to revoke the parole order and, if appropriate, to specify the earlier day.

Review of revocation

39. **(1)** Where a notice has been served on a prisoner under section 38 and the prisoner has duly notified the Secretary of the Board that the prisoner intends to make representations to the Board, the Chairperson of the Board shall convene a meeting of the Board, on the date set by the notice, for the purpose of—

(a) reconsidering the revocation of the parole order; or

(b) determining whether the specification of the earlier day should be revoked or varied,

or both, as the case may require.

(2) At the meeting of the Board convened pursuant to the notice, or at a subsequent meeting to which that meeting is adjourned or postponed, the prisoner may make submissions to the Board with respect to the revocation of the parole order and, if appropriate, the specification of the earlier day.

Decision after review

40. (1) The Board shall, after reviewing all the reports, documents and other information placed before it, decide whether or not it should—

(a) rescind the revocation of the parole order concerned; or

(b) revoke or vary the specification of the earlier day.

(2) A decision under this section has effect according to its tenor even if the parole order concerned has expired.

Application to Court of Criminal Appeal

41. (1) Where—

(a) the Board has revoked a parole order; and

(b) the person to whom the parole order related alleges that the parole order was revoked as a consequence of a decision made on information that was false, misleading or irrelevant,

the person 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)–(4) of section 23 apply to an application under this section in the same way as they apply to an application under section 23.

PART 4—APPLICATION OF THIS ACT TO CHILDREN

Definitions

42. (1) In this Part—

"detainee" means a person subject to a detention order within the meaning of the Children (Detention Centres) Act 1987;

"detention centre" means a detention centre within the meaning of the Children (Detention Centres) Act 1987.

(2) A reference in this Part to the making of a control order is a reference to the making of an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987, by which a person is committed to the control of the Minister administering the Children (Detention Centres) Act 1987.

(3) A reference in this Part to this Act does not include a reference to Schedules 3–5 to this Act.

Application of this Act to children

43. (1) This Act applies to the making of control orders and to detainees in the same way as it applies to the sentencing of persons to imprisonment and to prisoners.

(2) This Act so applies as if—

(a) a reference to the sentencing of a person to imprisonment were a reference to the making of a control order; and

(b) a reference to a prisoner were a reference to a detainee; and

(c) a reference to a prison were a reference to a detention centre; and

(d) a reference to a conviction were a reference to a finding of guilt; and

(e) a reference to the Board or a member of the Board in Part 3 and sections 48, 49 and 51 were a reference to the Children's Court or a Children's Magistrate, respectively; and

(f) a reference to the Secretary of the Board were a reference to a Registrar of the Children's Court; and

(g) a reference to a prisoner being endangered in section 49 included a reference to a detainee being psychologically harmed; and

(h) a reference to the Director-General of Corrective Services were a reference to the Director-General of the Department of Family and Community Services.

PART 5—THE OFFENDERS REVIEW BOARD

Constitution of the Board

44. (1) There is constituted by this Act an Offenders Review Board.

(2) The Board has the functions conferred or imposed on it by or under this or any other Act.

Composition of the Board

45. (1) The Board is to consist of 9 members appointed by the Governor.

(2) Of the members—

(a) 3 shall each be either a Judge of the District Court or a retired Judge of the Supreme Court or District Court; and

(b) 1 shall be a member of the Police Force nominated by the Commissioner of Police; and

(c) 1 shall be an officer of the Probation and Parole Service in the Department of Corrective Services; and

(d) 4 shall reflect as closely as possible the composition of the community at large.

Provisions relating to members, Divisions and procedure of the Board

46. Schedule 1 has effect with respect to the Board.

Secretary and other staff of the Board

47. A Secretary of the Board and such other staff as are necessary to enable the Board to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

PART 6—MISCELLANEOUS

Disclosure of information

48. **(1)** A person shall not—

(a) disclose any information to another person; or

(b) supply to another person any report or other document,

relating to a prisoner and furnished to the Board, unless the disclosure or supply is—

(c) made in connection with the administration of this Act or the regulations; or

(d) made with the prior permission of the Board; or

(e) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing or determination by that court, body or person of any matter or thing; or

(f) made in accordance with the regulations.

Maximum penalty: 5 penalty units.

(2) The Board may grant permission as referred to in subsection (1) (d) only if it is satisfied that to do so would be in the public interest or in the interest of the prisoner concerned.

Security of certain information

49. Nothing in section 20 or 38 requires a prisoner to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the prisoner may, in the opinion of a judicial member of the Board—

(a) adversely affect the security, discipline or good order of a prison; or

(b) endanger the prisoner or any other person.

Report to the Minister

50. **(1)** The Board shall, as soon as practicable after 31 December in each year, supply to the Minister for presentation to Parliament a report giving information as to the Board's activities during that year and setting out statistical information as to—

(a) the number of cases considered by the Board; and

(b) the number of persons released on parole pursuant to this Act; and

(c) the number of parole orders amended, varied or revoked by the Board; and

(d) such other matters as to the Board seem appropriate.

(2) The Board—

(a) shall report to the Minister on the release of any prisoner, if the question of whether the prisoner should be released has been referred by the Minister to the Board; and

(b) may report to the Minister on whether the detention in strict custody in a prison of a person under section 428P (5) or 428ZB of the Crimes Act 1900 should be continued or not.

Information concerning prisoners and parolees

51. **(1)** The Director-General of Corrective Services, and all persons employed in a prison, shall grant to the members of the Board or to any person authorised in writing by the Board in that behalf access at all reasonable times to any prisoner confined in the prison—

(a) whose release on parole is being considered by the Board; or

(b) whose case has been referred to the Board by the Minister as referred to in section 50; or

(c) in respect of whom a minimum term is applicable; or

(d) who is being detained in strict custody in a prison under section 428P (5) or 428ZB of the Crimes Act 1900,

and shall provide for those members or persons, as the case may be, facilities for communicating with or observing the prisoner.

(2) The Director-General of Corrective Services or the Commissioner of Police shall, if so requested by the Board, supply or cause to be supplied to the Board reports on the conduct and character of—

(a) any prisoner referred to in subsection (1); and

(b) any person who is for the time being subject to a parole order.

(3) Where any prisoner or person referred to in subsection (2) was formerly—

(a) an inmate of an institution, within the meaning of the Child Welfare Act 1939; or

(b) a person detained in a detention centre, within the meaning of the Children (Detention Centres) Act 1987,

the Director-General of the Department of Family and Community Services, shall, if requested by the Board, supply or cause to be supplied to the Board a report on the conduct and character of the prisoner or person while an inmate of an institution or while a person detained in a detention centre.

(4) The Secretary of the Department of Health shall, if requested by the Board—

(a) arrange for psychological, medical or psychiatric examinations to be carried out on any prisoner or person referred to in subsection (2); and

(b) supply, or cause to be supplied, to the Board all reports on the result of any such examination.

(5) There shall be included in any report on a prisoner or person supplied to the Board under this section any information available to the person supplying the report or causing it to be supplied which may be of assistance to the Board in considering the case of the prisoner or person to whom the report relates.

Evidence

52. A document purporting to be a certificate made or issued by a prescribed officer recording the particulars of a parole order made by a court is, in all courts and before all persons and bodies authorised by law to receive evidence, prima facie evidence of the matters set out in the certificate.

Royal prerogative etc. preserved

53. Nothing in this Act limits or affects in any manner the Royal prerogative of mercy or any entitlement of a prisoner to be discharged or released from prison under the Crimes Act 1900 or any other Act.

Proceedings for offences

54. Proceedings for an offence against this Act or the regulations shall be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

55. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

(a) terms and conditions of parole orders; and

(b) applications under, and forms to be used for the purposes of, this Act and the regulations; and

(c) the service of notices and other instruments under this Act or the regulations; and

(d) information to be provided to prisoners and other persons for the purposes of this Act; and

(e) the procedure to be followed at meetings of the Board.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeals

56. (1) The Probation and Parole Act 1983 is repealed.

(2) The Probation and Parole Regulation 1984 is repealed.

Savings and transitional provisions

57. Schedule 2 has effect.

Amendment of Acts

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

(2) The Children (Criminal Proceedings) Act 1987 and the Children (Detention Centres) Act 1987 are amended as set out in Schedule 4.

(3) The Acts specified in Schedule 5 are amended as set out in that Schedule.

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE

(Sec. 46)

Definitions

1. In this Schedule—

"Chairperson" means the Chairperson of the Board;

"committee" means a committee appointed under clause 22;

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

"Division" means a Division of the Board constituted under clause 9;

"Judge" means a Judge of the District Court;

"judicial member" means the Chairperson, Substitute Chairperson or Deputy Chairperson;

"member" means a member of the Board;

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

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE—*continued*

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

"Substitute Chairperson" means the Substitute Chairperson of the Board.

Chairperson etc. of the Board

2. (1) The members referred to in section 45 (2) (a) shall respectively be 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) Substitute Chairperson of the Board; and

(c) Deputy Chairperson of the Board.

(2) The appointment of a person who is a Judge as the Chairperson, Substitute Chairperson or Deputy Chairperson does not, nor does the person's service as the Chairperson, Substitute 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.

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

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

Acting members

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

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

(3) 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 shall be taken to be the Deputy Chairperson.

(4) If a non-judicial 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 that person, while so acting, has all the functions of the member and shall be taken to be a member.

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

(6) For the purposes of this clause—

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

(b) the Substitute Chairperson or Deputy Chairperson shall be taken to be absent from the office of Substitute Chairperson or Deputy Chairperson during any period of acting in another office pursuant to subclause (1) or (2).

Terms of office

4. Subject to this Schedule, a 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

5. A 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 member

6. (1) The office of a member becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not re-appointed;

(c) resigns the office by writing under his or her hand addressed to the Minister;

(d) is removed from office by the Governor;

(e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(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;

(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;

(h) being a judicial member, ceases to be a Judge (except because of retirement); or

(i) being the member referred to in section 45 (2) (b), ceases to be a member of the Police Force; or

(j) being the member referred to in section 45 (2) (c), ceases to be an officer of the Probation and Parole Service in the Department of Corrective Services.

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

Filling of vacancy in office of member

7. In the event of the office of any member becoming vacant a person shall, subject to this Schedule, be appointed to fill the vacancy.

Effect of certain other Acts

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

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE—*continued*

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

Divisions of the Board

9. (1) The Chairperson may constitute Divisions of the Board by nominating the members of each Division.

(2) The Chairperson may, at any time, dissolve a Division.

(3) A Division consists of—

(a) the Chairperson and 3 non-judicial members; or

(b) the Substitute Chairperson, or Deputy Chairperson, and 3 non-judicial members.

(4) The Divisions may meet at different places at the same time.

(5) In this Act (except this Schedule), a reference to the Board includes a reference to a Division of the Board.

Delegation to Divisions

10. (1) The Chairperson may delegate to a Division any function of the Board under this or any other Act.

(2) A Division shall, for the purpose of the exercise of any function delegated to the Division by the Chairperson, be taken to be the Board.

General procedure

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

(a) meetings of the Board or of a Division shall 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 or of a Division and for the conduct of business at those meetings shall be as determined by the Chairperson.

(2) The Board or a Division 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 or a Division 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 or a Division—

(a) shall be open to the public unless the Board or Division determines in any particular case that the proceedings shall be conducted wholly or partly in the absence of the public; and

(b) shall not be conducted in an adversary manner.

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

Quorum

12. The quorum for a meeting of the Board or of a Division is 3 members consisting of at least 1 judicial member and at least 2 non-judicial members.

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE—*continued*

Presiding members

13. (1) The Chairperson shall preside at a meeting of the Board.

(2) At a meeting of a Division, the judicial member of the Division shall preside.

Voting at meetings of the Board

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

Decisions

15. (1) 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.

(2) A decision supported by the votes cast by the judicial member and at least one non-judicial member of a Division at a meeting of the Division at which a quorum is present is the decision of the Division.

Powers of judicial members

16. (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 or a Division for the purpose of giving evidence; or

(b) to produce to the Board or a Division 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 any proceedings of the Board or of a Division,

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

(2) The judicial member presiding at a meeting of the Board or of a Division may require a person who appears before the Board or Division 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 or a Division pursuant to a requirement made under subclause (1), the Board or Division may take possession of the document for such period as it considers necessary for the purpose of the proceedings before it.

(4) Subclause (1) does not have the effect of requiring a person to produce to the Board or a Division any document the production of which the Minister certifies in writing may—

(a) endanger a prisoner or any other person; or

(b) be otherwise contrary to the public interest.

Examination by a presiding member

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

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE—*continued*

(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 but, where the person claims, before answering the question, that the answer might tend to incriminate him or her, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings for an offence under clause 18 (c) or in relation to a charge of perjury in respect of the answer.

Offences

18. A person shall not—

(a) refuse, fail or neglect to comply with a requirement made of the person under clause 16 (1) or (2) or 17 (1) by a judicial member except to the extent to which the person is lawfully excused from complying with the requirement; or

(b) in purported compliance with a requirement made of the person under clause 16 (1) by a judicial member, 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 or a Division.

Maximum penalty: 5 penalty units.

Representation etc.

19. At any meeting of the Board or of a Division at which a person is, under this Act, entitled to make submissions to the Board or Division, the person may—

(a) be represented by a barrister or solicitor or, with the consent of the Board or Division, by any other person; and

(b) call and examine any witness who attends, including any witness called by the Board or Division; and

(c) give evidence on oath; and

(d) produce documents and exhibits to the Board or Division; and

(e) otherwise adduce, orally and in writing, to the Board or Division such matters, and address the Board or Division on such matters, as are relevant to the proceedings before the Board or Division.

Witnesses' expenses

20. A person who is required to appear or to give evidence before the Board or a Division (other than a prisoner in respect of whom the proceedings are being held) is entitled to be paid such allowances and expenses, if any, as the Minister may determine in respect of the person.

Record of proceedings

21. (1) The member presiding at a meeting of the Board or of a Division shall cause a record of the proceedings at the meeting to be made.

(2) Records made for the purposes of subclause (1) may be destroyed after the expiration of the period prescribed by the regulations.

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD, DIVISIONS OF THE BOARD AND PROCEDURE—*continued*

Committees

22. The Chairperson may appoint one or more non-judicial members as a committee for the purpose of—

(a) inquiring into and reporting to the Board on any prisoner to whom a parole order relates and whose case is to come before the Board for consideration; and

(b) disposing of routine business of the Board, other than making determinations or decisions or submitting reports under Part 6.

Authentication of documents etc.

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

Certificate of secretary

24. A document purporting to be a certificate made or issued by the Secretary of the Board recording any determination or decision of the Board shall in all courts and before all persons and bodies authorised by law to receive evidence be prima facie evidence of the matters set out in the certificate.

Proof of certain matters not required

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

(a) the constitution of the Board or of a Division; or

(b) any determination, decision or recommendation 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 or of a Division.

Liability of members etc.

26. No matter or thing done by the Board, a Division or a committee, and no matter or thing done by any member or by any person acting under the direction of the Board or of a Division shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 57)

Definitions

1. (1) In this Schedule—

"former Act" means the Probation and Parole Act 1983.

(2) In this Schedule, a reference—

(a) to the former Act includes a reference to that Act as applied by section 33B of the Children (Criminal Proceedings) Act 1987; or

(b) to a sentence of detention is a reference to the period of detention under a control order as referred to in Part 4.

Savings and transitional regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

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

(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.

Preservation of existing remission reducing "head sentence"

3. This Act does not affect the reduction of any sentence of imprisonment or detention by any remission to which a person was entitled, immediately before the repeal of the former Act, under—

(a) Part 11 of the Prisons Act 1952; or

(b) section 29 of the Children (Detention Centres) Act 1987; or

(c) section 19 of the Periodic Detention of Prisoners Act 1981; or

(d) section 28 (6) (b) of the Prisoners (Interstate Transfer) Act 1982; or

(e) the Royal prerogative of mercy.

Redetermination of non-parole or non-probation periods

4. (1) On the repeal of the former Act, a non-parole period or non-probation period (within the meaning of the former Act) applying to a prisoner immediately before that repeal shall be redetermined in accordance with this clause.

(2) The non-parole period or non-probation period, as last fixed for the prisoner by a court or the Parole Board, shall be redetermined by reducing the period by the total of—

(a) any existing remission to which the prisoner is entitled as referred to in clause 3; and

(b) all future remission that the prisoner might have become entitled to (as estimated in accordance with this clause) had the provisions in force immediately before that repeal relating to the grant of remission continued in force.

(3) A redetermination under this clause shall be made by the Board.

(4) The Board is to make a redetermination under this clause on the basis that the prisoner would have received the maximum remission possible—

(a) under section 64 (1) (a) and (b) of the Prisons Act 1952 (calculated as if the prisoner had served the remainder of any sentence in an open institution); or

(b) under clause 34 (1) (a) and (b) of the Children (Detention Centres) Regulation 1988 (calculated as if the prisoner had served the remainder of any detention as a Class B detainee),

but not under any other provision.

(5) A redetermination by the Board under this clause is final and is not liable to be challenged, appealed against, quashed or called into question by any court.

(6) This clause applies even though the prisoner is on probation or on parole under the former Act on its repeal.

(7) A reference in this clause to the Board is, in relation to a detainee within the meaning of Part 4, a reference to the Director-General of the Department of Family and Community Services.

Translation of existing sentences

5. (1) Each sentence of imprisonment or detention to which a person was subject immediately before the repeal of the former Act and in respect of which a non-parole or non-probation period then applied shall be taken to be a sentence consisting of—

(a) a minimum term determined under this clause; and

(b) an additional term determined under this clause.

(2) The minimum term of any such sentence is the period from the commencement of the sentence to the end of the non-parole or non-probation period as redetermined under clause 4.

(3) The additional term of any such sentence is the period from the end of the minimum term so determined to the end of the sentence, as reduced by any existing remission as referred to in clause 3.

(4) This clause applies even though the person concerned is on probation or parole under the former Act on its repeal.

(5) Each sentence of imprisonment or detention to which a person was subject immediately before the repeal of the former Act (being a sentence to which Part 2 applies) and in respect of which a non-parole or non-probation period did not then apply, is to be taken to be a fixed term.

(6) Minimum and additional terms, or fixed terms, determined under this clause are to be taken to have been set under Part 2.

Saving of parole orders and probation orders

6. (1) A parole order or probation order made or deemed to have been made under the former Act is to be taken to be a parole order made under this Act.

(2) Terms and conditions of any such parole order or probation order that were prescribed by the regulations under the former Act are to be taken to be terms and conditions prescribed by the regulations under this Act.

(3) Anything done under a provision of the former Act in relation to such a parole order or probation order (including the issue of a warrant) is to be taken to have been done under the corresponding provision of this Act.

Saving of presumption in favour of parole for certain continuing prisoners

7. (1) This clause applies to a prisoner—

(a) for whom a minimum term has not been set after the repeal of the former Act; and

(b) to whom section 26 (1) of the former Act would have applied if that Act had not been repealed.

(2) Despite section 17 (1), the Board, when deciding whether to make a parole order for a prisoner to whom this clause applies, shall make the order unless the Board determines that it has sufficient reason to believe that the prisoner, if released from custody, would not be able to adapt to normal lawful community life.

Application of Part 2 (Sentencing)

8. (1) Part 2 applies to a sentence of imprisonment or detention imposed on a person after the commencement of that Part even if the person was found guilty or convicted of the offence concerned before that commencement.

(2) Part 2 does not apply to a sentence of imprisonment or detention imposed on a person after the commencement of that Part if the sentence is imposed in proceedings to correct a sentence imposed before that commencement.

Parole Board

9. (1) The members of the Parole Board constituted under the former Act who held office immediately before the repeal of the former Act cease to hold office on that repeal, but are eligible to be appointed to the Offenders Review Board constituted under this Act.

(2) Anything done by or in relation to the Parole Board constituted under the former Act is to be taken to have been done by or in relation to the Offenders Review Board constituted under this Act.

(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 Parole Board or a member of the Parole Board shall be read as a reference to the Offenders Review Board or a member of the Offenders Review Board.

Pending appeals against decisions of Visiting Justices preserved

10. Schedule 3 (4) does not affect any appeal against the decision of a Visiting Justice, being an appeal pending at the commencement of Schedule 3 (4).

SCHEDULE 3—AMENDMENT OF PRISONS ACT 1952

(Sec. 58 (1))

(1) Section 25 (**Governor of prison may impose penalties for certain prison offences**)—

(a) From section 25 (2) (d), omit "prisoners;", insert instead "prisoners.".

(b) Omit section 25 (2) (e).

(c) Omit section 25 (6).

(2) Section 26B (**Imposition of penalty by Visiting Justice**)—

(a) Omit section 26B (1) (e), insert instead:

(e) the extension, by a period that does not exceed 28 days, of each minimum or fixed term (within the meaning of the Sentencing Act 1989) to which the prisoner is subject (other than a term which is cumulative on a minimum term).

(b) Omit section 26B (4), insert instead:

(4) A penalty under subsection (1) (e) which extends a prisoner's minimum term reduces by a corresponding period the prisoner's additional term, but if the additional term is thereby extinguished, the prisoner's extended minimum term becomes a fixed term within the meaning of the Sentencing Act 1989.

(5) A penalty under subsection (1) (e) may extend a prisoner's sentence of imprisonment beyond the end of the sentence imposed by the court or the maximum sentence which could lawfully be imposed by the court for the offence concerned.

(3) Section 26E (**Cumulative punishments**)—

Omit "forfeiture", insert instead "extension".

(4) Section 26G (**Appeals against decisions of Visiting Justices**)—

(a) Section 26G (1)—

After "penalty", insert "under section 26B (1) (e)".

(b) Section 26G (4), (5)—

Omit the subsections, insert instead:

(4) Except as otherwise provided by this section, a decision of a Visiting Justice to impose a penalty on a prisoner in proceedings under this Part is final and is not liable to be challenged, appealed against, quashed or called into question by any court.

(5) Section 41—

Omit the section, insert instead:

Expiration of sentence

41. The discharge of a prisoner from prison may, with the prisoner's consent, be delayed during the period of 24 hours after the prisoner is due to be discharged or during any Saturday, Sunday or public holiday.

(6) Section 60 (**Functions of the Release on Licence Board**)—

(a) After "1900;" in section 60 (1) (a1), insert "and".

(b) Omit section 60 (1) (c).

(c) Omit from section 60 (3) ", (a1) or (c)", insert instead "or (a1)".

(7) Section 61 (**Special provisions relating to certain recommendations of the Release on Licence Board**)—

(a) Omit from section 61 (1) ", (a1) or (c)", insert instead "or (a1)".

(b) Omit from section 61 (2) "or a recommendation referred to in section 60 (1) (c) that a prisoner be granted remission under section 41 (5) of this Act".

(c) Omit from section 61 (2) (a) (i) "and remissions".

(d) Omit from section 61 (2) (a) (ii) "or remissions".

(e) Omit from section 61 (2) (b) (iii) "or remission".

(f) Omit from section 61 (3) "or a recommendation referred to in section 60 (1) (c) that a prisoner be granted remission under section 41 (5) of this Act by the Minister".

(8) Part 11 (**Remission**)—

Omit the Part.

(9) Schedule 8 (**Savings and Transitional Provisions**), Part 2—

Omit clauses 3–5.

SCHEDULE 4—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 AND CHILDREN (DETENTION CENTRES) ACT 1987

(Sec. 58 (2))

Children (Criminal Proceedings) Act 1987 No. 55—

(1) Section 33 (**Penalties**)—

Omit from section 33 (1) (g) "the Probation and Parole Act 1983", insert instead "the Sentencing Act 1989".

(2) Section 33B (**Application of Part 2 of the Probation and Parole Act 1983**)—

Omit the section.

(3) Schedule 1 (**Modifications of the Probation and Parole Act 1983**)—

Omit the Schedule.

SCHEDULE 4—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 AND CHILDREN (DETENTION CENTRES) ACT 1987—*continued*

Children (Detention Centres) Act 1987 No. 57—

(1) Section 9 (**Persons on remand and persons subject to control to be detained in detention centres**)—

Omit from section 9 (5) "and section 33B of the Children (Criminal Proceedings) Act 1987", insert instead "and the Sentencing Act 1989".

(2) Section 21 (**Punishments for misbehaviour**)—

(a) Omit section 21 (1) (e), insert instead:

(e) in the case of misbehaviour declared by the regulations to be serious misbehaviour—extension, by a period that does not exceed 7 days, of each minimum or fixed term (within the meaning of the Sentencing Act 1989) to which the detainee is subject (other than a term which is cumulative on a minimum term).

(b) After section 21 (3), insert:

(4) A punishment under subsection (1) (e) may only be imposed, in accordance with this Act and the regulations, by a Children's Magistrate.

(5) A penalty under subsection (1) (e) which extends a detainee's minimum term reduces by a corresponding period the detainee's additional term, but if the additional term is thereby extinguished, the detainee's extended minimum term becomes a fixed term within the meaning of the Sentencing Act 1989.

(6) A punishment under subsection (1) (e) may extend a detainee's period of detention beyond the end of the period of detention imposed by the court or the maximum period of detention which could lawfully be imposed by the court for the offence concerned.

(3) Section 24 (**Persons subject to control may be granted leave, discharged etc.**)—

Omit section 24 (1) (c), insert instead:

(c) discharge a person subject to control from detention if the Director-General has made arrangements for the person to serve the period of detention by way of periodic detention or made suitable arrangements for the supervision of the person during the period of detention.

SCHEDULE 4—AMENDMENT OF CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 AND CHILDREN (DETENTION CENTRES) ACT 1987—*continued*

(4) Section 26 (**Release on licence under the Prisons Act 1952**)—

Omit the section.

(5) Section 29 (**Remission**)—

Omit the section.

(6) Section 30 (**Discharge generally**)—

Omit from section 30 (3) "the Probation and Parole Act 1983", insert instead "the Sentencing Act 1989".

(7) Section 32 (**Termination of detention orders**)—

Omit from section 32 (b) (ii) "taking into account any reduction or extension of that period under section 29 or 33".

SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 58 (3))

Children (Interstate Transfer of Offenders) Act 1988 No. 85—

Section 8 (**Provisions to be contained in each arrangement**)—

(1) Section 8 (2) (c)—

Omit "made; and", insert instead "made.".

(2) Section 8 (2) (d)—

Omit the paragraph.

Crimes Act 1900 No. 40—

Section 560A (**Probation officers, regulations etc.**)—

Omit the section.

Periodic Detention of Prisoners Act 1981 No. 18—

(1) Section 19 (**Remission of sentence**)—

Omit the section.

(2) Section 21 (**Extension of detention for time spent on leave of absence**)—

(a) Omit section 21 (1), insert instead:

(1) Whenever a periodic detainee takes leave of absence under section 20 in respect of the whole or part of a detention period, the periodic detention which the periodic detainee is required by this Act to serve is, by this subsection, extended by 1 week.

(b) From section 21 (2), omit "any remission of sentence to which the periodic detainee may otherwise be entitled under section 19 is, by this subsection, reduced by 1 week or, where the periodic detainee is not entitled to any remission of sentence under section 19,".

(3) Section 27 (**Certain effects of cancellation of order for periodic detention**)—

(a) Section 27 (b)—

Omit "Probation and Parole Act 1983", insert instead "Sentencing Act 1989".

(b) Section 27 (c)—

Omit "imprisonment; and", insert instead "imprisonment.".

(c) Section 27 (d)—

Omit the paragraph.

(4) Section 33 (**Offences**)—

Omit section 33 (6).

(5) Schedule 2 (**Savings and transitional provisions**)—

Omit clause 3.

Prisoners (Interstate Transfer) Act 1982 No. 104—

(1) Section 5 (**Definitions**)—

Omit the definition of "remission regulations".

(2) Section 26 (**Information to be sent to participating State**)—

Section 26 (1) (c)—

Omit "entitlements to remissions and release on probation or parole", insert instead "entitlements to release on parole".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

(3) Section 28 (**Provisions relating to translated sentences**)—

Section 28 (6) (b)—

Omit "under the remission regulations" where firstly occurring, and "and any further remission of sentence under the remission regulations shall be calculated from the time of the arrival of the person in New South Wales".

[*Minister's second reading speech made in—*
Legislative Assembly on 10 May 1989
Legislative Council on 23 May 1989]