

SENTENCING (AMENDMENT) ACT 1993 No. 90

NEW SOUTH WALES



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SENTENCING (AMENDMENT) ACT 1993 No. 90

NEW SOUTH WALES



Act No. 90, 1993

An Act to amend the Sentencing Act 1989 with respect to the functions of the Offenders Review Board; and for other purposes. [Assented to 29 November 1993]

Sentencing (Amendment) Act 1993 No. 90

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

1. This Act may be cited as the Sentencing (Amendment) Act 1993.

Commencement

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

Amendment of Sentencing Act 1989 No. 87

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

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

In section 4 (1), insert in alphabetical order:

“**existing licence**” means a licence to be at large:

- (a) granted under section 463 of the Crimes Act 1900 before 12 January 1990 (being the day on which that section was repealed); and
- (b) which was still in force immediately before the commencement of Schedule 1 (2) to the Prisons (Amendment) Act 1993;

“**licensee**” means a person holding an existing licence;

“**Review Council**” means the Serious Offenders Review Council constituted by section 60 of the Prisons Act 1952;

“**serious offender**” has the same meaning as in Part 10 of the Prisons Act 1952.

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

From section 13A (9) (b), omit “Serious Offenders Review Board”, insert instead “Review Council”.

SCHEDULE 1—AMENDMENTS—*continued*(3) Section 18 (**Consideration by the Board**):

At the end of section 18, insert:

(2) Despite subsection (1) (a), the Board may defer consideration of its decision to a day less than 60 days (but not less than 21 days) before the day on which the prisoner becomes eligible for release on parole if it is of the opinion that it is unable to make a decision because it has not been furnished with a report required to be made to it or there are other relevant matters requiring further consideration.

(4) Section 19 (**Decision of the Board about release on parole**):

From section 19, omit “after considering”, insert instead “following consideration of”.

(5) Section 19A:

After section 19, insert:

Reasons to be provided by Board for rejection of Review Council’s advice etc.

19A. (1) If the Board rejects the advice of the Review Council given under section 62 of the Prisons Act 1952 concerning the release on parole of a serious offender, the Board must state in writing its reasons for rejecting that advice.

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

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

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

(6) Section 36 (**Warrants**):

From section 36 (1), omit “Substitute”, insert instead “Alternate”.

(7) Section 50 (**Report to the Minister**):

After section 50 (1) (c), insert:

(c1) the number of existing licences amended, varied or revoked by the Board; and

SCHEDULE 1—AMENDMENTS—*continued*(8) Section 51 (**Information concerning prisoners and parolees**):

At the end of section 51 (1) (d), insert:

; or

- (e) who is a licensee or a person whose existing licence has been revoked,

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

- (a) Omit clause 11A, insert instead:

Representation of Review Council

11A. A non-judicial member of the Review Council, chosen by the Chairperson of the Review Council or by a judicial member of the Review Council nominated by the Chairperson, is entitled to attend and be heard (but not vote) at a meeting of the Board or a Division of the Board at which a matter relating to a serious offender is being considered.

- (b) In clause 13 (1), after “Chairperson”, insert “or a judicial member nominated by the Chairperson”.

- (c) After clause 15 (2), insert:

(3) In the case of a tied vote, the judicial member presiding at a meeting of the Board is to have the casting vote.

(10) Schedule 2 (**Savings and Transitional Provisions**):

- (a) Before clause 1, insert:

Part 1—Provisions consequent on the enactment of this Act

- (b) After clause 10, insert:

Part 2—Provisions relating to existing licences**Existing licences preserved**

11. An existing licence continues in force despite the repeal of Part 10 of the Prisons Act 1952 (“**the former Part**”) by the Prisons (Amendment) Act 1993, but subject to this Part.

Duration of existing licence

12. Unless revoked, an existing licence to which a person is subject expires when the sentence of imprisonment to which the licence relates expires.

SCHEDULE 1—AMENDMENTS—*continued***Conditions of existing licence**

13. (1) An existing licence is subject to:

- (a) any conditions that were indorsed on the licence when the licence was granted (including the limits specified in the licence within which the licensee may be at large); and
- (b) any variation of those conditions made under the former Part, this clause or any other Act; and
- (c) any conditions prescribed by the regulations.

(2) The Board may, by order in writing served personally or by post on the licensee, vary the conditions, other than any prescribed conditions, to which the existing licence is subject.

(3) A condition of an existing licence imposed by the Board has no effect to the extent (if any) to which it is inconsistent with an applicable prescribed condition.

(4) A variation of the conditions of an existing licence may include conditions that:

- (a) require that the licensee be subject to supervision prescribed by the regulations, during the period specified by or under the licence or the regulations; and
- (b) provide for the revocation of the licence on a contravention by the person of a condition of the licence, or otherwise.

(5) Despite the conditions to which an existing licence is subject, the Board may, by notice in writing served personally or by post on the licensee, terminate any requirement made by any such condition requiring or relating to the person's being subject to supervision.

Effect of existing licence

14. A licensee who was lawfully released on an existing licence is taken to have been or to be serving the sentence of imprisonment to which the licence relates from the time of release until the sentence expires. However, if an existing licence is revoked, the person is (subject to clause 26) to be returned to prison and detained for the remainder of his or her sentence.

SCHEDULE 1—AMENDMENTS—*continued***Powers of Board if breach suspected**

15. (1) If the Board has reasonable cause to believe that a licensee has contravened a condition of an existing licence for the contravention of which the licence may be revoked, the Board may, whether or not the licence has expired:

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

(b) where, in the opinion of the Board, the circumstances of the particular case so require, without revoking the licence, decide that a warrant should be issued under clause 19.

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

(a) without revoking the existing licence, decide that a warrant should be issued under clause 19; or

(b) by an order made under clause 17, revoke the existing licence.

Inquiry into suspected breach

16. (1) If a licensee attends before the Board pursuant to:

(a) the requirements of a notice served under clause 15; or

(b) a warrant issued under clause 19,

the Board must immediately inquire into whether any of the conditions of the licence have been contravened.

(2) The licensee may make submissions to the Board against the revocation of the licence.

Revocation of existing licence by Board

17. (1) The Board may, by order in writing, revoke at any time an existing licence or direct that it be taken to have been revoked.

(2) The circumstances in which the Board may revoke an existing licence or direct that it be taken to have been revoked include any of the following:

SCHEDULE 1—AMENDMENTS— *continued*

- (a) if the conditions of the existing licence provide that the licence may be revoked because of a contravention of any of those conditions by the licensee and that person has contravened any such term or condition;
 - (b) if the conditions of the existing licence provide that the licence may be revoked otherwise than because of a contravention of any of those conditions and the licence is revoked in accordance with any such provision;
 - (c) if the Board is satisfied that the licensee has been sentenced by a court to imprisonment for an offence committed while the licence was in force;
 - (d) if the Board is authorised by clause 15 to revoke the existing licence.
- (3) The Board may revoke an existing licence or direct that it is to be taken to have been revoked whether or not:
- (a) a notice has been served under clause 15; or
 - (b) an inquiry has been held under clause 16.
- (4) Where the Board makes an order under this clause, the Board must, in the order, state the reason for the revocation.
- (5) The Board may, in an order made under this clause, direct that an existing licence be taken to have been revoked:
- (a) where the existing licence is revoked because of a contravention of a condition of the licence, on such day occurring not earlier than the day on which the contravention occurred; or
 - (b) where the existing licence 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 clause.
- (6) A direction under this clause has effect even if the existing licence 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.

SCHEDULE 1—AMENDMENTS—*continued*

(7) For the purposes of this clause, the day on which a contravention of a condition of an existing licence occurred is to be such day as is determined by the Board.

Revocation of existing licence by court

18. (1) In sentencing a licensee to imprisonment for another offence, a court may:

- (a) revoke the existing licence; or
- (b) direct that the existing licence be taken to have been revoked on such day, occurring while the existing licence 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 clause has effect even if the existing licence 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.

Warrants

19. (1) If:

- (a) an existing licence that was granted to a person is revoked; or
- (b) the Board makes a decision under clause 15 that a warrant should be issued for the arrest of the person to whom an existing licence was granted,

the Board may, by warrant signed by the Chairperson, Alternate Chairperson or Deputy Chairperson of the Board, authorise any police officer to arrest the person to whom the existing licence related or relates.

(2) If a warrant is issued under this clause because of the revocation of an existing licence granted to a person, the warrant also authorises any police officer 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 clause because of a decision made under clause 15, the warrant also authorises any police officer:

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

SCHEDULE 1—AMENDMENTS—*continued*

- (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 person was returned to prison or removed to a place of custody, or to court, pursuant to the warrant, whichever first occurs, for the purpose of conducting an inquiry under clause 16 to determine whether the conditions of the existing licence have been contravened.

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

Judicial notice of warrants

20. All courts and persons acting judicially are to take judicial notice of an instrument that purports to be a warrant signed in accordance with clause 19 until it is proved that the instrument is not such a warrant.

Notice of revocation

21. (1) As soon as practicable after the Board revokes an existing licence, the Board must cause a notice under this clause to be served on the prisoner to whom the licence 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 existing licence; and
 - (ii) if the existing licence is taken to have been revoked on an earlier day than the day on which the Board decided to revoke the existing licence—determining whether the specification of the earlier day should be revoked or varied; and

SCHEDULE 1—AMENDMENTS—*continued*

- (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 licence 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 clause 25, be accompanied by:
 - (i) a copy of the order which revoked the existing licence; and
 - (ii) copies of the reports and other documents used by the Board in making the decision to revoke the existing licence and, if appropriate, to specify the earlier day.

Review of revocation

22. (1) Where a notice has been served on a prisoner under clause 21 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 is to convene a meeting of the Board, on the date set by the notice, for the purpose of

- (a) reconsidering the revocation of the existing licence; or
- (b) determining whether the specification of the earlier day should be revoked or varied,

or both, as the case requires.

(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 existing licence and, if appropriate, the specification of the earlier day.

Decision after review

23. (1) The Board is, after reviewing all the reports, documents and other information placed before it, to decide whether or not it should:

- (a) rescind the revocation of the existing licence concerned; or
- (b) revoke or vary the specification of the earlier day.

SCHEDULE 1—AMENDMENTS—*continued*

(2) A decision under this clause has effect according to its tenor even if the existing licence concerned has expired.

Application to Court of Criminal Appeal

24. (1) Where:

- (a) the Board has revoked an existing licence; and
- (b) the person to whom the existing licence related alleges that the existing licence 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) An application under this clause 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 clause, 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 clause 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.

Security of certain information

25. Section 49 applies to clause 21 in the same way as it applies to sections 20 and 38.

Application for determination under section 13A

26. A person who is returned to prison following the revocation of his or her licence may, if subject to an existing life sentence, apply to the Supreme Court under section 13A for the determination of a minimum term and an additional term for the life sentence.

SCHEDULE 1—AMENDMENTS—*continued*

Licences granted etc. before repeal of section 463 of Crimes Act 1900—validation

27. Any act, matter or thing done or purporting to be done by the Governor in relation to the granting or variation of an existing licence or the revocation of a former licence that:

- (a) was done solely on the advice of a Minister before the repeal of section 463 of the Crimes Act 1900; and
- (b) would have been done validly if done on the advice of the Executive Council,

is validated.

Regulations

28. The regulations may prescribe conditions for existing licences.

*[Minister's second reading speech made in—
Legislative Council on 28 October 1993
Legislative Assembly on 11 November 1993 a.m.]*