



New South Wales

# Crimes Legislation Amendment (Parole) Bill 2003

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to provide that if a court makes a parole order under the *Crimes (Sentencing Procedure) Act 1999* and it does not impose conditions requiring the offender to be subject to supervision, the parole order will be taken to include such conditions unless the court expressly states otherwise,
- (b) to provide that if the Parole Board makes a decision under the *Crimes (Administration of Sentences) Act 1999* to release an offender on parole, it will be required to record its reasons for its decision,
- (c) to provide that a warrant issued by the Parole Board under section 181 of that Act to commit an offender to a correctional centre must be signed by a judicial member of the Board only and not by the Secretary of the Board,

- (d) to allow for the membership of the Parole Board to be increased from the current maximum of 22 while ensuring that at least 4 are to be judicial members,
- (e) to make other amendments of a minor or consequential nature.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendment to the *Crimes (Sentencing Procedure) Regulation 2000* set out in Schedule 3.

## Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999

Under section 50 of the Act, when a court imposes a sentence of imprisonment for a term of 3 years or less and sets a non-parole period, the court must make an order directing the release of the offender on parole at the end of the non-parole period. Section 51 of the Act allows the court to impose conditions on any parole order that it makes (including conditions requiring that the offender be subject to supervision).

**Schedule 1 [1]** provides that if the court does not impose conditions in relation to the supervision of the offender when it makes a parole order, the parole order will be taken to include conditions that the offender be subject to supervision unless the court expressly states that the offender is not to be subject to supervision. **Schedule 1 [2] and [3]** are consequential amendments.

**Schedule 1 [4]** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act. **Schedule 1 [5]** provides that the amendment made by Schedule 1 [1] does not apply to any existing parole order.

## **Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999**

**Schedule 2 [1]** is consequential on the amendment made by Schedule 1 [1].

At present under Part 6 of the Act, the Parole Board is required to record its reasons for making a parole decision only when it decides that an offender should not be released on parole. **Schedule 2 [2]** provides that the Parole Board will also be required to record its reasons when it decides that an offender should be released on parole under that Part. **Schedule 2 [3]** is a consequential amendment. **Schedule 2 [4]** provides that the Parole Board will also be required to record its reasons for rescinding, under section 175 of the Act, the revocation of a periodic detention order, home detention order or parole order.

At present under section 183 of the Act, the Parole Board consists of at least 10, but not more than 22, members. **Schedule 2 [7]** removes the existing upper and lower limits as to the number of members so long as at least 4 of the members are judicial members, at least one is a police officer, at least one is an officer of the Probation and Parole Service and at least 10 are community members. **Schedule 2 [8]** provides for the appointment (from those persons who are appointed as judicial members of the Parole Board) of more than one Deputy Chairperson of the Board. **Schedule 2 [5] and [9]–[14]** are consequential amendments.

Section 181 of the Act provides that the Parole Board may issue a warrant committing an offender to a correctional centre in certain circumstances (eg if the Parole Board revokes a periodic detention order, home detention order or parole order in respect of the offender). Such a warrant is to be signed by a judicial member of the Parole Board or by the Secretary of the Board. **Schedule 2 [6]** removes the capacity for the warrant to be signed by the Secretary.

**Schedule 2 [15]** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act. **Schedule 2 [16]** makes it clear the changes relating to the membership of the Parole Board do not affect any existing appointments.

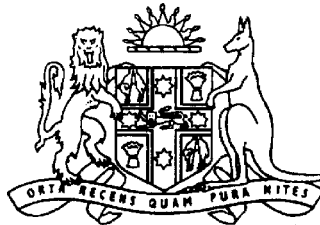
## **Schedule 3 Amendment of Crimes (Sentencing Procedure) Regulation 2000**

**Schedule 3** consequentially amends the form that is used when a court makes an order for unsupervised parole. As a result of the amendment made by Schedule 1 [1], the court is required to expressly state that an offender is not to be subject to supervision if the court intends to provide for unsupervised parole.

Crimes Legislation Amendment (Parole) Bill 2003

Explanatory note

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New South Wales

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New South Wales

## Crimes Legislation Amendment (Parole) Bill 2003

No. , 2003

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### A Bill for

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* to make further provision for the inclusion of parole supervision conditions in parole orders made by the courts; to amend the *Crimes (Administration of Sentences) Act 1999* to provide that the Parole Board is required to record its reasons for releasing offenders on parole and to make further provision with respect to the constitution of the Parole Board; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes Legislation Amendment (Parole) Act 2003</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92</b>	7
The <i>Crimes (Sentencing Procedure) Act 1999</i> is amended as set out in Schedule 1.	8 9
<b>4 Amendment of Crimes (Administration of Sentences) Act 1999 No 93</b>	10
The <i>Crimes (Administration of Sentences) Act 1999</i> is amended as set out in Schedule 2.	11 12
<b>5 Amendment of Crimes (Sentencing Procedure) Regulation 2000</b>	13
The <i>Crimes (Sentencing Procedure) Regulation 2000</i> is amended as set out in Schedule 3.	14 15



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**Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999**

(Section 3)

**[1] Section 51 Conditions on parole orders**

Insert after section 51 (1A):

(1AA) If, in making a parole order, the court does not impose any such conditions in relation to the supervision of the offender, the parole order is, unless the court expressly states that the offender is not to be subject to supervision, taken to include conditions requiring that the offender be subject to supervision prescribed by the regulations under the *Crimes (Administration of Sentences) Act 1999* while released on parole.

**[2] Section 51 (1B)**

Omit “subsection (1A)”. Insert instead “subsections (1A) and (1AA)”.

**[3] Section 51 (1B) (a)**

Omit “may not”. Insert instead “are not to”.

**[4] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Crimes Legislation Amendment (Parole) Act 2003*, to the extent that it amends this Act

**[5] Schedule 2, Part 10**

Insert after Part 9:

**Part 10 Provisions consequent on enactment of Crimes Legislation Amendment (Parole) Act 2003**

**50 Application of section 51 (1AA)**

Section 51 (1AA), as inserted by the *Crimes Legislation Amendment (Parole) Act 2003*, does not apply to any parole order made by a court under section 50 before the commencement of that subsection.

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<b>Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999</b>	1
	2
(Section 4)	3
<b>[1] Section 128 Conditions governing parole</b>	4
Insert “(including any conditions that are, under section 51 (1AA) of the <i>Crimes (Sentencing Procedure) Act 1999</i> , taken to be included in the order)” after “court” in section 128 (1) (b).	5 6 7
<b>[2] Section 131A</b>	8
Insert after section 131:	9
<b>131A Reasons for parole decisions</b>	10
(1) If the Parole Board makes a decision under this Part:	11
(a) that an offender should be released on parole, or	12
(b) that an offender should not be released on parole,	13
the Parole Board must cause the reasons for its decision to be recorded in its minutes.	14 15
(2) In giving those reasons, the Parole Board must, in the case of a decision made under Division 2, have regard to the following:	16 17 18
(a) the principle and matters referred to in section 135 and, if the decision relates to a serious offender to whom section 154 applies, the matters referred to in that section,	19 20 21 22
(b) such other matters that the Parole Board is, under this Act or the regulations, required to take into account in making the decision.	23 24 25
<b>[3] Sections 141 (4) (a), 149 (4) (a) and 150 (4) (a)</b>	26
Omit the paragraphs.	27
<b>[4] Section 175 Decision after review</b>	28
Insert after section 175 (4):	29
(5) If the Parole Board rescinds the revocation of the periodic detention order, home detention order or parole order concerned, the Parole Board must cause the reasons for its decision to be recorded in its minutes.	30 31 32 33

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<b>[5] Section 180 Offenders to attend Parole Board when called on</b>	1
Omit “the Chairperson, Alternate Chairperson, Deputy Chairperson or” from section 180 (2) (a).	2 3
Insert instead “a judicial member of the Parole Board (as referred to in section 183 (2) (a)) or the”.	4 5
<b>[6] Section 181 Warrants committing offenders to correctional centres</b>	6 7
Omit section 181 (2). Insert instead:	8
(2) A warrant under this section is to be signed by a judicial member of the Parole Board as referred to in section 183 (2) (a).	9 10 11
<b>[7] Section 183 Constitution of Parole Board</b>	12
Omit section 183 (2). Insert instead:	13
(2) The Parole Board is to consist of the following members:	14
(a) at least 4 (referred to as <i>judicial members</i> ) are to be judicially qualified persons appointed by the Governor,	15 16
(b) at least one is to be a police officer appointed by the Commissioner of Police,	17 18
(c) at least one is to be an officer of the Probation and Parole Service appointed by the Commissioner of Corrective Services,	19 20 21
(d) one is to be the Secretary of the Parole Board,	22
(e) at least 10 (referred to as <i>community members</i> ) are to be persons, appointed by the Governor, who reflect as closely as possible the composition of the community at large.	23 24 25 26
<b>[8] Schedule 1 Parole Board</b>	27
Omit clause 1 (1). Insert instead:	28
(1) A person who is appointed as a judicial member of the Parole Board is, in and by the instrument by which the person is so appointed (or such other instrument as may be executed by the Governor), to be appointed as:	29 30 31 32
(a) the Chairperson of the Parole Board, or	33

- (b) the Alternate Chairperson of the Parole Board, or 1
- (c) a Deputy Chairperson of the Parole Board. 2
- [9] Schedule 1, clause 2 (2)** 3
- Omit “the Deputy Chairperson”. 4
- Insert instead “a Deputy Chairperson designated by the Chairperson”. 5
- [10] Schedule 1, clause 2 (3)** 6
- Omit “the Deputy Chairperson” wherever occurring. 7
- Insert instead “a Deputy Chairperson”. 8
- [11] Schedule 1, clause 2 (6) (a)** 9
- Omit “the Chairperson, Alternate Chairperson or Deputy Chairperson”. 10
- Insert instead “the judicial member concerned”. 11
- [12] Schedule 1, clause 2 (6) (b)** 12
- Insert “a” before “Deputy Chairperson” where firstly occurring. 13
- [13] Schedule 1, clause 14A** 14
- Insert after clause 14: 15
- 14A Attendance of official members** 16
- (1) For the purposes of any meeting of the Parole Board: 17
- (a) not more than one police officer, and 18
- (b) not more than one officer of the Probation and Parole 19
- Service, 20
- may attend for the purposes of constituting the Parole Board. 21
- (2) Despite subclause (1), the Chairperson may convene up to 6 22
- meetings a year of the Parole Board at which all official 23
- members may attend. 24
- [14] Schedule 1, clause 16** 25
- Omit “or Deputy Chairperson” wherever occurring. 26
- Insert instead “or a Deputy Chairperson”. 27

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<b>[15] Schedule 5 Savings, transitional and other provisions</b>	1
Insert at the end of clause 1 (1):	2
<i>Crimes Legislation Amendment (Parole) Act 2003</i> , to the	3
extent that it amends this Act	4
<b>[16] Schedule 5</b>	5
Insert in appropriate order with appropriate Part and clause numbers:	6
<b>Part</b>	7
<b>Provisions consequent on enactment of</b>	8
<b>Crimes Legislation Amendment (Parole)</b>	9
<b>Act 2003</b>	9
<b>Constitution of Parole Board</b>	10
The substitution of section 183 (2) of this Act by the <i>Crimes</i>	11
<i>Legislation Amendment (Parole) Act 2003</i> does not affect the	12
appointment of a person as a member of the Parole Board if	13
the appointment was in force immediately before the	14
substitution of that subsection.	15
<b>Judicial members of Parole Board</b>	16
The substitution of clause 1 (1) of Schedule 1 to this Act by	17
the <i>Crimes Legislation Amendment (Parole) Act 2003</i> does	18
not affect a judicial member's appointment as Chairperson,	19
Alternate Chairperson or Deputy Chairperson, respectively,	20
of the Parole Board if the appointment was in force	21
immediately before the substitution of that subclause.	22

**Schedule 3 Amendment of Crimes (Sentencing Procedure) Regulation 2000**

(Section 5)

**Schedule 1 Forms**

Insert before item 1 in Form 2:

**In making this parole order, the Court has expressly stated that this offender is not to be subject to supervision while released on parole**

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