

SENTENCING BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill 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 term of imprisonment and who are of good behaviour may be released on parole for the residue of their sentences.

The Bill makes other changes, including changes to the provisions of the Prisons Act 1952 relating to prison discipline.

The Bill establishes the following new procedures relating to sentencing and parole:

- The court is required firstly to fix a minimum term of imprisonment that the prisoner must serve in prison (without any reduction for remission or otherwise).
- The court is then required to fix an additional term during which the prisoner may be released on parole.
- Unless the court decides there are special circumstances, the additional term must not exceed one-third of the minimum term (that is, the minimum term must be at least 75 per cent of the total sentence of imprisonment).
- The court may decline to set a minimum term and additional term and may set instead a fixed term of imprisonment that the prisoner must serve in prison (without any reduction for remission or otherwise). All sentences of 6 months or less will be fixed sentences.
- The court is required to specify the date on which a minimum term or fixed term of imprisonment is to commence and the day on which the prisoner will be eligible for release or parole.
- Remissions will be abolished. Accordingly the total sentence (or "head sentence") and minimum term (or "non-parole period") will not in future be reduced after they are set by the court.

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- The above procedures are not to apply to sentences of periodic detention, sentences for life and certain other sentences to which parole is not presently applicable.
- In the case of future sentences of more than 3 years, there will be no presumption that the prisoner should be released on parole as soon as the prisoner becomes eligible for parole.
- In the case of sentences of 3 years or less, prisoners will continue to be released on parole as soon as they become eligible for parole.
- The new procedures are to apply (with appropriate modifications) to children sentenced to detention in a detention centre.
- The new procedures are to apply to existing prisoners. However, existing non-parole or non-probation periods and sentences applying to prisoners will be recalculated so as not to affect the reasonable expectations of those prisoners (and the sentencing court) as to the date on which they would be eligible to be released from prison or on parole.
- In proceedings for a breach of discipline, the prisoner's minimum or fixed term of imprisonment may be increased by a Visiting Justice by a period not exceeding 28 days.
- The right to appeal to the District Court or any other court against any punishment imposed by a Visiting Justice for a breach of discipline is to be removed in all cases except a punishment which increases the prisoner's minimum or fixed term.

The Bill repeals the Probation and Parole Act 1983 and amends certain other Acts.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines expressions used in the proposed Act. The expression "Board" refers to the Offenders Review Board (formerly the Parole Board).

PART 2—SENTENCING

Clause 5 requires a court sentencing a person to imprisonment to set a minimum term and an additional term that is not to exceed one-third of the minimum term except in special circumstances.

Clause 6 allows a sentencing court to decline to set minimum and additional terms if there is sufficient reason to do so and to set a fixed term instead.

Clause 7 provides that sentences of 6 months or less must be for a fixed term.

Clause 8 requires the sentencing court to specify when the term of imprisonment (minimum or fixed) commences and when the prisoner is to be eligible for release from prison or on parole.

Clause 9 provides that cumulative sentences must commence from the end of the minimum term of the previous sentence.

Clause 10 restricts the power to set minimum and additional terms so that together they must not exceed the maximum allowable sentence for the offence or be less than any compulsory minimum sentence for the offence.

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Clause 11 sets out the power to vary minimum, additional or fixed terms on an appeal against a conviction or sentence.

Clause 12 requires a court to set minimum and additional terms, or a fixed term, for each separate sentence imposed by the court.

Clause 13 provides that the proposed Part does not apply to certain sentences of imprisonment (including periodic detention, imprisonment for life and fine default imprisonment).

PART 3—PAROLE**Division 1—Release on parole**

Clause 14 provides that a prisoner serving a sentence with a minimum term is not eligible for parole until the prisoner has served each minimum term and each other sentence without a minimum term.

Clause 15 provides that a prisoner eligible for parole is entitled to be released on parole only if a parole order is made.

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

Clause 16 applies the proposed Division to sentences of more than 3 years that consist of minimum and additional terms.

Clause 17 specifies the matters that the Board must take into account in deciding whether a prisoner should be released on parole. There is no longer to be any presumption in favour of parole.

Clause 18 requires the Board to consider a prisoner for parole at least 60 days before the prisoner becomes eligible for parole and (if the prisoner is not then released on parole) within each successive year after the prisoner becomes eligible for parole.

Clause 19 requires the Board to make the decision on whether a prisoner is to be released on parole immediately after considering the matter.

Clause 20 requires the Board to inform a prisoner of certain matters when it decides not to release the prisoner on parole.

Clause 21 requires the Board (if requested to do so) to review a decision not to release a prisoner on parole and allows the prisoner to make submissions to the Board on the review.

Clause 22 deals with a review by the Board of a decision not to release a prisoner on parole.

Clause 23 allows a prisoner to apply to the Court of Criminal Appeal for a direction that information used by the Board to make its decision was false, misleading or irrelevant.

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

Clause 24 requires the sentencing court to order the release on parole of a prisoner if the prisoner's sentence is for 3 years or less. In order to be released, the prisoner must not, at the time fixed for release on parole, be serving any other sentence.

Clause 25 enables the Board, in certain circumstances, to order the release on parole of prisoners to whom the Division applies.

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Division 4—Parole orders—general provisions

Clause 26 provides that a parole order expires, unless it is revoked, when the sentence concerned has expired.

Clause 27 provides for the terms and conditions of a parole order and allows the terms and conditions to be varied by the sentencing court or the Board.

Clause 28 allows the Board to revoke a parole order before the prisoner is released on parole.

Clause 29 makes a parole order sufficient authority for the release of a prisoner.

Clause 30 deems a person who is released on parole to be serving the sentence until the sentence expires or the order is revoked.

Clause 31 protects a parole order from invalidity merely because of any procedural defect.

Clause 32 empowers the Board, when it suspects a breach of a parole order, to require the parolee to appear before the Board or to issue a warrant for the arrest of the parolee. The parole order may be revoked if the parolee fails to appear.

Clause 33 provides for an inquiry into whether a parolee has contravened the terms and conditions of parole.

Clause 34 provides for the revocation of a parole order if the terms and conditions of the parole have been contravened or the parolee is sentenced to a further term of imprisonment. The revocation may be retrospective to the date on which the order was contravened or the further offence was committed (whether or not it has expired).

Clause 35 allows a court sentencing a person to imprisonment for a further offence to revoke a parole order applicable to the person. The revocation may be retrospective to the date on which the further offence was committed (whether or not it has expired).

Clause 36 empowers the Board to issue a warrant for the arrest of a parolee if the parole order is revoked or if the Board has required the appearance of the parolee at an inquiry into a possible breach of parole.

Clause 37 requires judicial notice to be taken of such a warrant.

Clause 38 provides for notice to be given to a parolee when a parole order is revoked.

Clause 39 requires the Board to review the revocation of a parole order if requested to do so.

Clause 40 requires the Board to review the available information and make a decision on such a review.

Clause 41 allows a parolee to apply to the Court of Criminal Appeal for a direction that information used by the Board on such a review was false, misleading or irrelevant.

PART 4—APPLICATION OF THIS ACT TO CHILDREN

Clause 42 defines expressions used in the Part.

Clause 43 applies the proposed Act (with appropriate modifications) to the detention of children or other young persons.

PART 5—THE OFFENDERS REVIEW BOARD

Clause 44 constitutes the Offenders Review Board (formerly the Parole Board).

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Clause 45 provides that the Board shall consist of 9 members and specifies the necessary qualifications for a member. The membership remains the same except for the addition of a person experienced in the supervision of parolees.

Clause 46 gives effect to proposed Schedule 1, which relates to the members, Divisions and procedure of the Board.

Clause 47 provides for a secretary and other staff of the Board.

PART 6—MISCELLANEOUS

Clause 48 restricts the disclosure of information furnished to the Board.

Clause 49 restricts a prisoner's access to certain reports and documents if access would adversely affect prison discipline or any person's safety.

Clause 50 requires the Board to furnish a report every year for presentation to Parliament giving information and statistics on the Board's activities.

Clause 51 gives the Board full access to prisoners for certain purposes and empowers the Board to call for reports on and examinations of prisoners.

Clause 52 is an evidentiary provision.

Clause 53 makes it clear that the proposed Act does not affect the Royal prerogative of mercy.

Clause 54 requires proceedings for an offence under the proposed Act to be dealt with summarily before a Local Court.

Clause 55 empowers the Governor to make regulations under the proposed Act for certain purposes.

Clause 56 repeals the Probation and Parole Act 1983 and the regulations under that Act.

Clause 57 gives effect to the Schedule of savings and transitional provisions (Schedule 2).

Clause 58 gives effect to amendments to the Prisons Act 1952 and certain other Acts (Schedules 3–5).

Schedule 1 contains provisions relating to the members of the Board, the Divisions of the Board and the procedure of the Board or any such Division. The provisions are generally the same as the existing provisions applying to the Parole Board.

Schedule 2 enacts savings and transitional provisions, including the following:

- The preservation of any existing remissions to which prisoners have become entitled.
- The redetermination of existing non-parole or non-probation periods (or sentences without any such period) by the Board based on those existing remissions and all future remissions to which prisoners might (but for the proposed Act) have become entitled.
- The conversion of existing non-parole or non-probation periods (as so redetermined) as minimum terms of imprisonment and the residue of the sentences as additional terms.

The saving of the presumption in favour of parole for certain continuing prisoners.

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Schedule 3 contains the following amendments to the Prisons Act 1952:

- abolition of remission (Schedule 1 (8) and (9)).
- in the case of breaches of prison discipline, conferring on a Visiting Justice (but not the governor of a prison) power to extend the minimum or fixed term of imprisonment of the prisoner concerned by a period not exceeding 28 days (in place of the power to forfeit remissions) (Schedule 1 (1), (2), (3)).
- the removal of the right to appeal to the District Court or other court against any punishment imposed by a Visiting Justice for a breach of discipline (except the extension of a minimum or fixed term) (Schedule 1 (4)).
- the removal of the power of the Minister or Director-General to release prisoners before the expiration of their sentences (including the power to release a prisoner prior to a weekend or public holiday) (Schedule 1 (5)–(7)).

Schedule 4 contains the following amendments to the Children (Criminal Proceedings) Act 1987 and the Children (Detention Centres) Act 1987:

- repeal of provisions applying the existing Probation and Parole Act 1983 to the fixing of non-probation periods for children detained in a detention centre; the proposed Act is to apply to detention centres.
- the abolition of remissions for children detained in a detention centre.
- in the case of serious misbehaviour, conferring on a Visiting Children's Magistrate power to extend the minimum or fixed term of detention of a detainee by a period not exceeding 7 days (in place of the power to forfeit remissions).
- the modification of the existing wide powers of the Director-General to release a child from a detention centre at any time.
- other consequential amendments.

Schedule 5 contains consequential amendments to a number of other Acts.
