

Act No. 182

**PROBATION AND PAROLE (SERIOUS OFFENCES)
AMENDMENT BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Crimes (Sentencing) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to amend the Probation and Parole Act 1983 so as—

- (a) to require a non-parole period fixed for a specified serious offence to be not less than three-quarters of the length of the sentence imposed; and
- (b) to remove the presumption in favour of release on parole for a prisoner given a non-parole period of at least 6 years for a specified serious offence and to set out criteria to be applied by the Parole Board before making a parole order for any such prisoner.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be fixed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments to the Principal Act.

Schedule 1 (1) inserts into section 4 (Interpretation) of the Principal Act a definition of “serious offence”. The relevant offences are to be listed in a new Schedule to that Act.

Schedule 1 (2) inserts proposed sections 20A (Minimum non-parole periods for serious offences) and 20B (Commencement of certain non-parole periods) into the Principal Act.

A court or the Parole Board, when fixing a non-parole period that relates to one or more serious offences, will be required by proposed section 20A to specify a period at least as long as three-quarters of the period the prisoner would have to serve if not released before the sentence or sentences expire.

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If a non-parole period so specified replaces another non-parole period, proposed section 20B provides for its commencement to be back-dated to the first day on which the prisoner was in custody serving a sentence to which the former period related, but a court or the Board, when fixing the later non-parole period, may require its commencement at a later time.

Schedule 1 (3) inserts proposed section 21 (3) and (4) into the Principal Act which permit a court or the Parole Board to decline to fix a non-parole period in accordance with proposed section 20A if it determines that the circumstances justify that course (reasons must be stated).

Schedule 1 (4) inserts section 26 (3) and (4) into the Principal Act. Section 26 (General duty of the Board) of that Act presently imposes a presumption in favour of parole, by requiring the Parole Board to make any parole order it is empowered to make unless it determines it has sufficient reason to believe that the prisoner would not be able to adapt to lawful community life (or exercises its limited power to defer making the order). Under the proposed amendment, that presumption is not to apply to a prisoner for whom a non-parole period of at least 6 years is specified in accordance with proposed section 20A (except in specified cases in which it is not clear whether the non-parole period was so specified only with regard to a serious offence or serious offences).

Schedule 1 (5) inserts proposed section 26A (Duty of Board where serious offences involved) into the Principal Act. In deciding whether to make a parole order (under which a prisoner will be released) for a prisoner to whom the presumption in favour of parole does not apply because of conviction for a serious offence, the Parole Board will be required by the proposed section to determine that release is appropriate, having regard to the principle that the public interest is of primary importance. The Board will also be required to take into account certain other specified matters and to determine that it has sufficient reason to believe that the prisoner would be able to adapt to normal lawful community life.

Schedule 1 (6) inserts proposed Schedule 5 (Serious offences) into the Principal Act. The proposed Schedule consists of a list of the offences which will be serious offences for the purposes of the amendments. Some of the offences included are murder, manslaughter, kidnapping, armed robbery, sexual assaults causing injury or involving young children and trafficking in marketable quantities of drugs.
