

[Act 1996 No 144]



Sentencing Amendment (Parole) Bill 1996 (No 2)

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Sentencing Act 1989* and the *Prisons Act 1952*:

- (a) to revise the procedures relating to the consideration, grant, refusal and review of parole for prisoners who are serious offenders, and
 - (b) to require victim submissions to be taken into account in connection with the granting of parole to serious offenders, and
 - (c) to require submissions made on behalf of the State also to be taken into account in those circumstances, and
 - (d) to require the Serious Offenders Review Council to consider the public interest when considering certain matters relating to serious offenders, and
 - (e) to clarify the power to defer the consideration of parole for certain persons while they are at large, and
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- (f) to change the name of the Offenders Review Board, and
- (g) for other purposes.

Many of the provisions of the Bill deal with serious offenders. The expression *serious offender* is presently defined in section 59 of the *Prisons Act 1952*, and includes life prisoners, prisoners who are serving a minimum term of 12 years or more, prisoners convicted of murder, and certain prisoners who are managed as serious offenders.

Outline of provisions

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days proclaimed by the Governor-in-Council.

Clauses 3–5 are formal provisions giving effect to the Schedules of amendments.

Change of name—Parole Board

The Bill changes the name of the Offenders Review Board to the Parole Board. References in this Explanatory Note to the Parole Board should be read as extending to the Offenders Review Board pending the commencement of the provisions changing its name.

See Schedule 1 [1], [16], [17]; Schedule 2 [1], [2], [5], [8]; Schedule 3. Transitional provisions are included in clause 6 of Schedule 2A to the *Sentencing Act 1989*, as inserted by Schedule 1 [37].

Re-organisation of Sentencing Act 1989 regarding parole

Division 2 of Part 3 of the *Sentencing Act 1989* deals with parole for prisoners with sentences of more than three years. The Bill divides the Division into a series of Subdivisions, so that prisoners who are not serious offenders will be dealt with by Subdivision 2, and serious offenders will be dealt with by Subdivision 3. Under the present arrangements, both classes of prisoners are dealt with under the one set of provisions; under the new arrangements, they will be dealt with under separate sets of provisions (although a number of the provisions in both Subdivisions are the same or similar). This involves a number of consequential amendments.

See Schedule 1 [2], [3], [5], [9], [10], [11], [23].

Parole procedures concerning serious offenders

The Bill revises the procedures regarding the grant of parole to prisoners who are serious offenders. As mentioned above, parole for serious offenders will be dealt with by Subdivision 3 of Division 2 of Part 3. A significant alteration will be the opportunity for victims and the State (as well as prisoners) to make submissions to the Parole Board at key times.

Under the Bill, the Parole Board will be required to give preliminary consideration as to whether a serious offender should be released on parole and to formulate its initial intention either to make or not to make a parole order (proposed section 22D). The Board will in due course decide whether to make a parole order, on the following principles:

- (a) the Board will confirm its initial intention to make a parole order if there are no victim submissions or it is not required to seek such submissions,
- (b) the Board will reconsider its initial intention to make a parole order if there are victim submissions and will in that event take into account any prisoner submissions,
- (c) the Board will confirm its initial intention not to make a parole order if there are no prisoner submissions,
- (d) the Board will reconsider its initial intention not to make a parole order if there are prisoner submissions and will in that event take into account any victim submissions (proposed sections 22E–22K).

The functions of the Serious Offenders Review Council to provide reports and advice to the Parole Board concerning the release on parole of serious offenders will be re-enacted in Subdivision 3 (proposed section 22N).

See Schedule 1 [9].

Victim submissions to Parole Board

The Bill provides for a Victims Register of the names of victims of prisoners who have requested that they be given notice by the Parole Board of the possible parole of the prisoner concerned (proposed section 22M). Victims who choose to make submissions to the Parole Board after the Board has formulated its initial intention to make a parole order for a serious offender will have to lodge a notice of intention to do so, after which a hearing of the Board will be set to receive submissions (proposed section 22H). Submissions can be made in writing or, with the approval of the Board, orally. Submissions are made by the victim, or by a family representative of

the victim if the victim is dead or under any incapacity. Under clause 19 of Schedule 1 to the principal Act, victims are entitled to be represented at hearings held to hear their submissions. Victims will not be entitled to call or examine witnesses, thereby ensuring that as far as possible the hearings will be conducted in a non-adversarial fashion (proposed clause 19 (2) of Schedule 1).

Similar arrangements are made for victims who choose to make submissions to the Parole Board after the Board has formulated its initial intention not to make a parole order for a serious offender and the serious offender indicates a desire to make submissions to the Board (proposed section 221).

See Schedule 1 [9], [36].

State Submissions to Parole Board

The Bill provides that the State may also make submissions to the Parole Board about the release on parole of serious offenders. The right of the State to make submissions is at present contained in the regulations (proposed section 220).

See Schedule 1 [9].

Application by State to Court of Criminal Appeal

Following a decision by the Parole Board to make a parole order, the Attorney General or the Director of Public Prosecutions will be authorised to apply to the Court of Criminal Appeal for a direction that the decision was made on information that was false, misleading or irrelevant (proposed section 23A). A parole order does not come into operation for eight days, to allow for such an application to be made. If such an application is made within seven days of the making of the parole order, the order is suspended until the application is dealt with or suspended (proposed section 22L, (2), (3)).

See Schedule 1 [9], [12].

Victim submissions and State submissions to Serious offenders Review Council about security classification

A change is proposed by the Bill in the procedure to be adopted by the Serious Offenders Review Council when making a recommendation for a change in the security classification of a serious offender which would make

the offender eligible for consideration for release on leave from prison. Under the Bill, the Review Council will not be able to make such a recommendation until an opportunity has been given for victims to make written submissions to the Council about the serious offender and any submissions have been considered by the Council.

The State is also given a right to make submissions.

See Schedule 2 [7], [[12].

Deferral of consideration of parole when prisoner is at large

The Bill will make it clear that the Parole Board can defer consideration of parole in relation to a person who is still at large after revocation of a parole order (proposed sections 18 (3) and 22C (3)).

See Schedule 1 [4], [9].

Power to decline to consider parole

The Bill will enable the Parole Board to decline to consider the grant of parole for a prisoner for up to three years at a time (proposed sections 18 (4) and 22C (4)).

See Schedule 1 [4], [9].

Request by State to revoke parole order

The Attorney General and the Director of Public Prosecutions will be authorised to request the Parole Board to revoke a parole order granted to a serious offender (proposed section 34A). The request is made on the ground that the parole order was made on information that was false, misleading or irrelevant. If the Parole Board refuses to revoke the parole order, the Attorney General and the Director of Public Prosecutions can apply to the Court of Criminal Appeal for a direction with respect to the information (proposed section 41A).

See Schedule 1 [[13], [14].

Community members of the Parole Board

At present there are 4 community members of the Parole Board. Because of the frequent meetings of the Board, the Bill enables the appointment of 16 community members. However, only 4 of those members may attend a particular meeting for the purposes of constituting the Board.

See Schedule 1 [18], [21], [22].

Judicial members of the Parole Board and Serious Offenders Review Council

At present the judicial members of the Parole Board and the Serious Offenders Review Council are required to be Judges of the District Court or retired Judges of the Supreme Court or District Court. The Bill extends the persons eligible to be appointed as judicial members to Judges or retired Judges of the Federal Court or any New South Wales Court, Magistrates or retired Magistrates and any person qualified to be appointed as a Judge of a New South Wales Court. See Schedules 1 [20], [22], [29], [30], [33] and Schedule 2 [3], [4], [9]–[11].

Misconduct during hearings of the Parole Board

The Parole Board is required to hold hearings for the purpose of granting parole at which prisoners and victims making submissions may attend. The Bill makes it an offence if persons attending the hearing misconduct themselves or if they fail to leave the hearing after being directed to do so by the judicial member presiding.

See Schedule 1 [35].

Consideration of public interest by Serious Offenders Review Council

The Serious Offenders Review Council will be expressly required to take the public interest into consideration when providing advice and making recommendations about the security classification of serious offenders, the placement of serious offenders, and developmental programs provided for serious offenders. The Bill lists a number of matters to be taken into account when considering the public interest.

See Schedule 2 [6].

Statute law revision

The Bill amends the *Sentencing Act 1989* by way of statute law revision. The amendments are consequential on administrative changes or on other changes made by the Bill.

See Schedule 1 [6]–[8], [15], [24]–[27].

Savings and transitional provisions

The Bill inserts a Schedule of savings and transitional provisions into the *Sentencing Act 1989*. Parole orders already made are unaffected, but generally the amendments made by the Bill will extend to existing prisoners.

See Schedule 1 [28], [37].