

# Crimes (Administration of Sentences) Amendment (Parole) Act 2004 No 94

[2004-94]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2006](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Crimes (Administration of Sentences) Amendment (Parole) Act 2004 No 94



New South Wales

## Contents

<b>Long title</b> .....	3
1 Name of Act .....	3
2 Commencement .....	3
3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93 .....	3
4 Amendment of other Acts and instruments .....	4
<b>Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999</b> .....	4
<b>Schedule 2 Amendment of other Acts and instruments</b> .....	27

# Crimes (Administration of Sentences) Amendment (Parole) Act 2004 No 94



New South Wales

An Act to amend the *Crimes (Administration of Sentences) Act 1999* with respect to parole; and for other purposes.

## 1 Name of Act

This Act is the *Crimes (Administration of Sentences) Amendment (Parole) Act 2004*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, subject to this section.
- (2) Schedule 1 [8] commences on the date of assent, or on the commencement of Schedule 3 [4] to the *Compulsory Drug Treatment Correctional Centre Act 2004*, whichever is the later.
- (3) Schedule 1 [9] commences on the commencement of Schedule 1 [49] to this Act, or on the commencement of Schedule 3 [4] to the *Compulsory Drug Treatment Correctional Centre Act 2004*, whichever is the later.
- (4) Schedule 1 [17] commences on the commencement of Schedule 1 [49] to this Act, or on the commencement of Schedule 3 [5] to the *Compulsory Drug Treatment Correctional Centre Act 2004*, whichever is the later.
- (5) Schedule 1 [18] commences on the commencement of Schedule 1 [16] to this Act, or on the commencement of Schedule 1 [6] to the *Compulsory Drug Treatment Correctional Centre Act 2004*, whichever is the later.
- (6) Schedule 2.3 commences on the commencement of Schedule 1 [49] to this Act, or on the commencement of Schedule 1 [6] to the *Compulsory Drug Treatment Correctional Centre Act 2004*, whichever is the later.

## 3 Amendment of *Crimes (Administration of Sentences) Act 1999 No 93*

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 1.

#### 4 Amendment of other Acts and instruments

Each Act and instrument referred to in Schedule 2 is amended as set out in that Schedule.

### Schedule 1 Amendment of **Crimes (Administration of Sentences) Act 1999**

(Section 3)

#### [1] The whole Act (except to the extent to which its provisions are otherwise amended or repealed by this Act and except Schedule 5)

Omit “Parole Board” and “Parole Board’s” wherever occurring.

Insert instead “Parole Authority” and “Parole Authority’s”, respectively.

#### [2] Section 3 Interpretation

Omit the definition of **Chief Executive Officer, Corrections Health Service** and the definitions of **Corrections Health Service**, **full-time detention**, **Parole Board** and **periodic detention** from section 3 (1).

Insert in alphabetical order:

**Chief Executive Officer, Justice Health** means the person for the time being holding office or acting as the chief executive officer of Justice Health under the [Health Services Act 1997](#).

**full-time detention** means detention in a correctional centre, but does not include periodic detention.

**Justice Health** means the statutory health corporation of that name specified in Schedule 2 to the [Health Services Act 1997](#).

**Parole Authority** means the State Parole Authority constituted by section 183.

**parole eligibility date**, in relation to an offender, means:

- (a) subject to paragraph (b), the date on which the offender first becomes eligible for release on parole, or
- (b) if the offender is returned to custody following revocation of parole, the date occurring 12 months after the date on which the offender is so returned.

**periodic detention**, in relation to an offender, means:

- (a) detention in a periodic detention centre, or
- (b) participation in an activity pursuant to an order referred to in section 84 (1) (a), or

(c) the carrying out of community service work pursuant to an order referred to in section 84 (1) (b),

for as many detention periods as there are weeks in the term of the offender's sentence.

**Probation and Parole Service** means the administrative unit of that name that exists within the Department.

**[3] Section 4 Application of Part**

Insert at the end of section 4 (1) (e):

, and

(f) any person in custody who is given into the keeping of a correctional officer under section 250.

**[4] Section 51 Definitions**

Insert "(whether or not it is also a criminal offence)" after "by an inmate" in the definition of **correctional centre offence**.

**[5] Section 51, definition of "criminal offence"**

Insert in alphabetical order:

**criminal offence** means an act or omission that constitutes an offence otherwise than as a consequence of its having been declared by the regulations to be a correctional centre offence for the purposes of this Division.

**[6] Section 58 Certain offences may be dealt with by Local Court**

Omit "an offence for which criminal proceedings can and should".

Insert instead "a criminal offence for which proceedings should".

**[7] Section 73 Compulsory medical treatment**

Omit "Corrections Health Service" wherever occurring.

Insert instead "Justice Health".

**[8] Sections 106F, 106G and 106U (as inserted by Schedule 3 [4] to the [Compulsory Drug Treatment Correctional Centre Act 2004](#))**

Omit "Corrections Health Service" wherever occurring.

Insert instead "Justice Health".

**[9] Sections 106Q, 106T and 106Y (as inserted by Schedule 3 [4] to the [Compulsory Drug Treatment Correctional Centre Act 2004](#))**

Omit "Parole Board" wherever occurring. Insert instead "Parole Authority".

**[10] Section 128 Conditions governing parole**

Insert after section 128 (2):

(2A) The conditions of a parole order must include conditions giving effect to a post-release plan, prepared by the Probation and Parole Service and adopted by the Parole Authority, in relation to the offender.

**[11] Section 128 (3)**

Omit "The conditions".

Insert instead "Without limiting subsection (2A), the conditions".

**[12] Section 129 Obligations of offender**

Omit "subject, and" from section 129 (b). Insert instead "subject.".

**[13] Section 129 (c)**

Omit the paragraph.

**[14] Section 130 Revocation of parole order before release**

Insert at the end of the section:

(2) Division 4 of Part 7 applies to the revocation of a parole order under this section in the same way as it applies to the revocation of a parole order under Division 3 of that Part.

**[15] Section 131A Reasons for parole decisions**

Omit the section.

**[16] Sections 135 and 135A**

Omit section 135. Insert instead:

**135 General duty of Parole Authority**

(1) The Parole Authority must not make a parole order for an offender unless it is satisfied, on the balance of probabilities, that the release of the offender is appropriate in the public interest.

- (2) In deciding whether or not the release of an offender is appropriate in the public interest, the Parole Authority must have regard to the following matters:
- (a) the need to protect the safety of the community,
  - (b) the need to maintain public confidence in the administration of justice,
  - (c) the nature and circumstances of the offence to which the offender's sentence relates,
  - (d) any relevant comments made by the sentencing court,
  - (e) the offender's criminal history,
  - (f) the likelihood of the offender being able to adapt to normal lawful community life,
  - (g) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole,
  - (h) any report in relation to the granting of parole to the offender that has been prepared by or on behalf of the Probation and Parole Service, as referred to in section 135A,
  - (i) any other report in relation to the granting of parole to the offender that has been prepared by or on behalf of the Review Council, the Commissioner or any other authority of the State,
  - (j) such guidelines as are in force under section 185A,
  - (k) such other matters as the Parole Authority considers relevant.
- (3) Except in exceptional circumstances, the Parole Authority must not make a parole order for a serious offender unless the Review Council advises that it is appropriate for the offender to be considered for release on parole.

### **135A Preparation of reports by Probation and Parole Service**

A report prepared by or on behalf of the Probation and Parole Service for the purposes of section 135 must address the following matters:

- (a) the likelihood of the offender being able to adapt to normal lawful community life,
- (b) the risk of the offender re-offending while on release on parole, and the measures to be taken to reduce that risk,
- (c) the measures to be taken to assist the offender while on release on parole, as set out in a post-release plan prepared by the Probation and Parole Service in

relation to the offender,

- (d) the offender's attitude to the offence to which his or her sentence relates,
- (e) the offender's willingness to participate in rehabilitation programs, and the success or otherwise of his or her participation in such programs,
- (f) the offender's attitude to any victim of the offence to which his or her sentence relates, and to the family of any such victim,
- (g) any offences committed by the offender while in custody, including in particular any correctional centre offences and any offence involving an escape or attempted escape,
- (h) the likelihood of the offender complying with any conditions to which his or her parole may be made subject.

**[17] Section 135 (as substituted by item [16])**

Omit "Parole Board" from section 135 (2) (ia) (as inserted by Schedule 3 [5] to the [Compulsory Drug Treatment Correctional Centre Act 2004](#)).

Insert instead "Parole Authority".

**[18] Section 135A (as inserted by item [16])**

Insert after section 135A (h):

- (i) in the case of an offender in respect of whom the Drug Court has declined to make a compulsory drug treatment order on the ground referred to in section 18D (1) (b) (vi) of the [Drug Court Act 1998](#), the contents of any notice under section 18D (2) (b) of that Act.

**[19] Sections 137-137C**

Omit section 137. Insert instead:

**137 Consideration of parole when offender first eligible for parole**

- (1) The Parole Authority must consider whether or not an offender should be released on parole at least 60 days before the offender's parole eligibility date.
- (2) Despite subsection (1), the Parole Authority may defer consideration of an offender's case until not less than 21 days before the offender's parole eligibility date if it is of the opinion:
  - (a) that it is unable to complete its consideration because it has not been furnished with a report required to be made to it, or



(b) that there are other relevant matters requiring further consideration.

**137A Consideration of parole in subsequent years**

- (1) At any time within 90 days before the anniversary of an offender's parole eligibility date, the offender, if still eligible for release on parole, may apply to be released on parole.
- (2) After receiving such an application, but not more than 60 days before the anniversary of the offender's parole eligibility date, the Parole Authority must consider whether or not the offender should be released on parole.
- (3) Despite subsection (2):
  - (a) if the offender is unlawfully at large following revocation of parole, the Parole Authority is not required to consider the offender's case until the offender is returned to custody, and
  - (b) if the offender is unlawfully at large for the whole of one or more years following the revocation, the Parole Authority may decline to consider the offender's case at all in relation to that year or those years, and
  - (c) in any case, the Parole Authority may decline to consider an offender's case for up to 3 years at a time after it last considered the grant of parole to the offender.

**137B Consideration of parole so as to avoid manifest injustice**

The Parole Authority may consider an offender's case at any time after the offender's parole eligibility date, and without the need for an application, in such circumstances as may be prescribed by the regulations as constituting manifest injustice.

**137C Parole Authority may examine offender**

- (1) For the purpose of its consideration of an offender's case, the Parole Authority may (but need not) examine the offender.
- (2) An offender is not entitled to make submissions to the Parole Authority at any meeting held by it for the purposes of this section, and consequently section 190 (1) does not apply to any such meeting.

**[20] Section 138 Release of offender on parole**

Omit section 138 (1). Insert instead:

- (1) As soon as practicable after deciding to release an offender on parole, the Parole Authority must make an order directing that the offender be released on parole on

or before a day occurring during a period specified in accordance with subsection (1AA).

(1AA) The period to be specified in a parole order under this section is to be:

- (a) if the order is made earlier than the offender's parole eligibility date, a period beginning no earlier than the offender's parole eligibility date and ending no later than 35 days after that date, and
- (b) in any other case, a period beginning no earlier than the date on which the order is made and ending no later than 35 days after that date.

**[21] Section 138 (1A)**

Omit "subsection (1) (a)". Insert instead "subsection (1)".

**[22] Sections 139 and 140**

Omit the sections. Insert instead:

**139 Notice to offender of intention to refuse parole**

- (1) As soon as practicable after forming an initial intention not to make a parole order for an offender, the Parole Authority:
  - (a) must give notice of its intention to the offender, and
  - (b) must determine whether, in relation to any reconsideration of the matter:
    - (i) there will be a hearing, whether or not the offender requests a hearing, or
    - (ii) there will be a hearing only if the offender requests a hearing and the Parole Authority is satisfied that a hearing is warranted.
- (2) The notice must inform the offender of the following matters:
  - (a) that the Parole Authority's initial intention is not to make a parole order in relation to the offender,
  - (b) that the offender may apply to the Parole Authority for the matter to be reconsidered,
  - (c) that, if the offender makes such an application:
    - (i) there will be a hearing, whether or not the offender requests a hearing, or
    - (ii) there will be a hearing only if the offender requests a hearing and the Parole Authority is satisfied that a hearing is warranted,
  - (d) that the Parole Authority will take into account any submissions by the

offender when making its final decision on the matter.

- (3) The notice:
  - (a) must indicate the address to which such an application should be sent, and the date by which such an application must be made, and
  - (b) subject to section 194, must be accompanied by copies of the reports and other documents intended to be used by the Parole Authority in making its final decision.
- (4) An application by an offender under this section:
  - (a) may be accompanied by written submissions in support of the application, and
  - (b) if the notice to the offender states that there will be a hearing only if the application requests a hearing, may request a hearing.
- (5) If there is to be a hearing, the Parole Authority:
  - (a) must set a date (occurring as soon as practicable) on which the hearing will be conducted, and
  - (b) must give notice to the offender of the date, time and place for the hearing.

#### **140 Conduct of hearing**

- (1) At any hearing conducted by the Parole Authority pursuant to an application under section 139, the offender may make submissions to the Parole Authority as to whether or not the offender should be released on parole.
- (2) Submissions may be made orally or in writing and, if in writing, may be given to the Parole Authority either in advance of or at the hearing.
- (3) The Parole Authority may postpone or adjourn a hearing for any reason that seems appropriate to it.

#### **[23] Section 141 Decision following review**

Insert “, submissions” after “documents” in section 141 (1).

#### **[24] Section 141 (3)**

Omit “7” wherever occurring. Insert instead “35”.

#### **[25] Section 141A**

Insert after section 141:

### **141A Submissions by Commissioner**

- (1) The Commissioner may at any time make submissions to the Parole Authority concerning the release on parole of an offender.
- (2) If the Commissioner makes any such submission before the Parole Authority makes a final decision concerning the release of the offender, the Parole Authority must not make such a decision without taking the submission into account.
- (3) If the Commissioner makes any such submission after the Parole Authority makes a final decision concerning the release of the offender, but before the offender is released, the Parole Authority must consider whether or not it should exercise its power under section 130 to revoke the relevant parole order.

### **[26] Sections 143-143C**

Omit section 143. Insert instead:

### **143 Consideration of parole when serious offender first eligible for parole**

- (1) The Parole Authority must consider whether or not a serious offender should be released on parole at least 60 days before the offender's parole eligibility date.
- (2) Despite subsection (1), the Parole Authority may defer consideration of an offender's case until not less than 21 days before the offender's parole eligibility date if it is of the opinion:
  - (a) that it is unable to complete its consideration because it has not been furnished with a report required to be made to it, or
  - (b) that there are other relevant matters requiring further consideration.

### **143A Consideration of parole in subsequent years**

- (1) At any time within 90 days before the anniversary of a serious offender's parole eligibility date, the offender, if still eligible for release on parole, may apply to be released on parole.
- (2) After receiving such an application, but not more than 60 days before the anniversary of the offender's parole eligibility date, the Parole Authority must consider whether or not the offender should be released on parole.
- (3) Despite subsection (2):
  - (a) if the offender is unlawfully at large following revocation of parole, the Parole Authority is not required to consider the offender's case until the offender is returned to custody, and

- (b) if the offender is unlawfully at large for the whole of one or more years following the revocation, the Parole Authority may decline to consider the offender's case at all in relation to that year or those years, and
- (c) in any case, the Parole Authority may decline to consider an offender's case for up to 3 years at a time after it last considered the grant of parole to the offender.

**143B Consideration of parole so as to avoid manifest injustice**

The Parole Authority may consider a serious offender's case at any time after the offender's parole eligibility date, and without the need for an application, in such circumstances as may be prescribed by the regulations as constituting manifest injustice.

**143C Parole Authority may examine serious offender**

- (1) For the purpose of its consideration of a serious offender's case, the Parole Authority may (but need not) examine the offender.
- (2) A serious offender is not entitled to make submissions to the Parole Authority at any meeting held by it for the purposes of this section, and consequently section 190 (1) does not apply to any such meeting.

**[27] Sections 145-147**

Omit the sections. Insert instead:

**145 Notice to victims of intention to grant parole**

- (1) As soon as practicable after forming an initial intention to make a parole order for a serious offender, but subject to and in accordance with the regulations, the Parole Authority must give notice of its intention to those victims of the offender (if any) whose names are recorded in the Victims Register.
- (2) The notice must inform each victim concerned of the following matters:
  - (a) that the Parole Authority's initial intention is to make a parole order in relation to the offender,
  - (b) that the victim may apply to the Parole Authority for the matter to be reconsidered,
  - (c) that, if the victim makes such an application, there will be a hearing only if the application requests a hearing,
  - (d) that the Parole Authority will take into account any submissions by the victim when making its final decision on the matter.

- (3) The notice must indicate the address to which such an application should be sent and the date by which such an application must be made.
- (4) An application by a victim under this section:
  - (a) may be accompanied by written submissions in support of the application, and
  - (b) may request a hearing.
- (5) If the application requests a hearing, the Parole Authority:
  - (a) must set a date (occurring as soon as practicable) on which the hearing will be conducted, and
  - (b) must give notice to the Commissioner, the offender and the victim of the date, time and place for the hearing.
- (6) The notice to the offender under subsection (5) (b) must include the following information:
  - (a) that the Parole Authority's initial intention is to make a parole order,
  - (b) that there will be a hearing conducted for the purpose of reconsidering the matter,
  - (c) that, following the hearing, the Parole Authority could change its intention,
  - (d) that the offender will be entitled to make submissions at the hearing as to whether or not the offender should be released on parole,
  - (e) that other submissions may be made at the hearing by the State and by victims of the offender.
- (7) In circumstances where, under subsection (1), notice need not be given of its initial intention, the Parole Authority may, subject to section 152, proceed immediately to confirm its intention.

#### **146 Notice to serious offender of intention to refuse parole**

- (1) As soon as practicable after forming an initial intention not to make a parole order for a serious offender, the Parole Authority:
  - (a) must give notice of its intention to the offender, and
  - (b) must determine whether, in relation to any reconsideration of the matter:
    - (i) there will be a hearing, whether or not the offender requests a hearing, or
    - (ii) there will be a hearing only if the offender requests a hearing and the

Parole Authority is satisfied that a hearing is warranted.

- (2) The notice must inform the offender of the following matters:
  - (a) that the Parole Authority's initial intention is not to make a parole order in relation to the offender,
  - (b) that the offender may apply to the Parole Authority for the matter to be reconsidered,
  - (c) that, if the offender makes such an application:
    - (i) there will be a hearing, whether or not the offender requests a hearing, or
    - (ii) there will be a hearing only if the offender requests a hearing and the Parole Authority is satisfied that a hearing is warranted,
  - (d) that the Parole Authority will take into account any submissions by the offender when making its final decision on the matter.
- (3) The notice:
  - (a) must indicate the address to which such an application should be sent, and the date by which such an application must be made, and
  - (b) subject to section 194, must be accompanied by copies of the reports and other documents intended to be used by the Parole Authority in making its final decision.
- (4) An application by an offender under this section:
  - (a) may be accompanied by written submissions in support of the application, and
  - (b) if the notice to the offender states that there will be a hearing only if the application requests a hearing, may request a hearing.
- (5) If there is to be a hearing, the Parole Authority:
  - (a) must set a date (occurring as soon as practicable) on which the hearing will be conducted, and
  - (b) must give notice to the Commissioner, the offender and, subject to and in accordance with the regulations, to those victims of the offender (if any) whose names are recorded in the Victims Register, of the date, time and place for the hearing.
- (6) The notice to a victim under subsection (5) (b) must include the following information:

- (a) that the Parole Authority's initial intention is not to make a parole order,
- (b) that there will be a hearing for the purpose of reconsidering the matter,
- (c) that, following the hearing, the Parole Authority could change its intention,
- (d) that the victim will be entitled to make submissions at the hearing as to whether or not the offender should be released on parole,
- (e) that other submissions may be made at the hearing by the State and by the offender.

#### **147 Conduct of hearing**

- (1) At any hearing conducted by the Parole Authority pursuant to an application under section 145 or 146, both the offender and any victim of the offender may make submissions to the Parole Authority as to whether or not the offender should be released on parole.
- (2) Submissions may be made orally or in writing and, if in writing, may be given to the Parole Authority either in advance of or at the hearing.
- (3) The Parole Authority may postpone or adjourn a hearing for any reason that seems appropriate to it.

#### **[28] Section 148 Principles on which Parole Authority's final decision to be made**

Omit "victim submissions" wherever occurring in section 148 (1) (a) and (b) (except where secondly occurring in section 148 (1) (a)).

Insert instead "submissions to the contrary".

#### **[29] Section 148 (1) (d)**

Omit "victim". Insert instead "other".

#### **[30] Section 148 (2)**

Insert ", subject to section 185 (2)," after "and".

#### **[31] Section 149 Decision following review**

Insert "occurring during a period" after "on a day" in section 149 (3).

#### **[32] Section 150 Decision where no review**

Insert "or other submissions to the contrary" after "no victim submissions" in section 150 (1).



**[33] Section 150 (3)**

Insert “occurring during a period” after “on a day”.

**[34] Section 151 Release of serious offender on parole**

Omit section 151 (1). Insert instead:

- (1) The period to be specified in a parole order under section 149 or 150 is to be:
  - (a) if the order is made earlier than 14 days before the offender’s parole eligibility date, a period beginning no earlier than the offender’s parole eligibility date and ending no later than 21 days after that date, and
  - (b) in any other case, a period beginning no earlier than 14 days after the date on which the order is made and ending no later than 35 days after that date.

**[35] Section 151 (2)**

Omit “7”. Insert instead “14”.

**[36] Sections 151, 155, 156, 157, 176, 177 and 178**

Omit “Court of Criminal Appeal” wherever occurring.

Insert instead “Supreme Court”.

**[37] Section 153**

Omit the section. Insert instead:

**153 Submissions by State**

- (1) The State may at any time make submissions to the Parole Authority concerning the release on parole of a serious offender.
- (2) If the State makes any such submission before the Parole Authority makes a final decision concerning the release of the offender, the Parole Authority must not make such a decision without taking the submission into account.
- (3) If the State makes any such submission after the Parole Authority makes a final decision concerning the release of the offender, but before the offender is released, the Parole Authority must consider whether or not it should exercise its power under section 130 to revoke the relevant parole order.
- (4) The regulations may make provision for or with respect to submissions by the State under this section, including provisions relating to the application of this Subdivision in connection with any such submission.

(5) The powers of the State under this section may be exercised by the Commissioner and by any other authority of the State.

**[38] Section 154A Serious offenders the subject of non-release recommendations**

Omit “Chief Executive Officer of the Corrections Health Service” from section 154A (3) (a).

Insert instead “Chief Executive Officer, Justice Health”.

**[39] Part 6, Division 2, Subdivision 4, heading**

Omit “**Court of Criminal Appeal**”. Insert instead “**Supreme Court**”.

**[40] Section 163 Revocation of periodic detention order**

Omit “revoked.” from section 163 (1) (c). Insert instead:

revoked,

and may do so either on its own initiative or on the recommendation of the Commissioner.

**[41] Sections 165AA, 179A and 181**

Omit “the Board’s” and “the Board” wherever occurring.

Insert instead “the Parole Authority’s” and “the Parole Authority”, respectively.

**[42] Section 167 Revocation of home detention order**

Omit “order.” from section 167 (1) (d). Insert instead:

order,

and may do so either on its own initiative or on the recommendation of the Commissioner or a probation and parole officer.

**[43] Section 170 Revocation of parole order**

Omit “revoked.” from section 170 (1) (c). Insert instead:

revoked,

and may do so either on its own initiative or on the recommendation of the Commissioner or a probation and parole officer.

**[44] Section 172A**

Insert after section 172:

### **172A Interim suspension of parole order**

- (1) On the application of the Commissioner, a judicial member of the Parole Authority:
  - (a) may make an order suspending an offender's parole order, and
  - (b) if the offender is not then in custody, may issue a warrant for the offender's arrest.
- (2) An application under subsection (1) may be made in person or by telephone, electronic mail or facsimile transmission.
- (3) Action under subsection (1) may only be taken in relation to an offender's parole order if the judicial member is satisfied:
  - (a) that the Commissioner has reasonable grounds for believing:
    - (i) that the offender has failed to comply with the offender's obligations under the parole order, or
    - (ii) that there is a serious and immediate risk that the offender will leave New South Wales in contravention of the conditions of the parole order, or
    - (iii) that there is a serious and immediate risk that the offender will harm another person, or
    - (iv) that there is a serious and immediate risk that the offender will commit an offence, and
  - (b) that, because of the urgency of the circumstances, there is insufficient time for a meeting of the Parole Authority to be convened to deal with the matter.
- (4) If an application under this section is made otherwise than in person, the judicial member may furnish the applicant with a suspension order or arrest warrant:
  - (a) by sending a copy of the order or warrant to the applicant by electronic mail or facsimile transmission, or
  - (b) by dictating the terms of the order or warrant to the applicant by telephone.
- (5) A document:
  - (a) that contains:
    - (i) a copy of a suspension order or arrest warrant that the judicial member has sent by electronic mail or facsimile transmission, or

- (ii) the terms of a suspension order or arrest warrant that the judicial member has dictated by telephone, and
  - (b) that bears a notation:
    - (i) as to the identity of the judicial member, and
    - (ii) as to the time at which the copy was sent or the terms dictated,
- has the same effect as the original suspension order or arrest warrant.
- (6) A suspension order may be revoked by any judicial member of the Parole Authority or by the Commissioner.
  - (7) Unless sooner revoked, a suspension order ceases to have effect at the end of 28 days after it is made or, if the offender is not in custody when it is made, at the end of 28 days after the offender is taken into custody.
  - (8) While a suspension order is in force, the parole order to which it relates does not have effect.
  - (9) An arrest warrant is sufficient authority for a police officer to arrest the offender named in the warrant, to convey the offender to the correctional centre specified in the warrant and to deliver the offender into the custody of the governor of that correctional centre.
  - (10) In this section:
    - arrest warrant*** means a warrant referred to in subsection (1) (b).
    - suspension order*** means an order referred to in subsection (1) (a).

**[45] Section 173 Notice of revocation**

Insert “and, in any case, within 21 days after the offender is returned to custody” after “executed” in section 173 (1A) (b).

**[46] Part 7, Division 5, heading**

Omit “**Court of Criminal Appeal**”. Insert instead “**Supreme Court**”.

**[47] Section 179 Consequential revocation of other orders**

Omit “Divisions 1, 2 and 3” from section 179 (2).

Insert instead “Divisions 1-4”.

**[48] Section 180 Offenders to attend Parole Authority when called on**

Omit “or the Secretary of the Parole Board” from section 180 (2) (a).

**[49] Section 183 Constitution of Parole Authority**

Omit section 183 (1). Insert instead:

(1) There is constituted by this Act a State Parole Authority.

**[50] Section 183 (2) (d)**

Omit the paragraph.

**[51] Section 183 (2A)**

Insert after section 183 (2):

(2A) Of the members referred to in subsection (2) (e), at least one must be a person who, in the opinion of the Minister, has an appreciation or understanding of the interests of victims of crime.

**[52] Section 184 Divisions of Parole Authority**

Omit section 184 (2) (c). Insert instead:

(c) one or more official members.

**[53] Sections 185 and 185A**

Omit section 185. Insert instead:

**185 Functions of Parole Authority**

(1) The Parole Authority has the following functions:

- (a) to determine matters with respect to the granting of parole and the conditions on which parole is granted,
- (b) to determine matters with respect to the revocation of periodic detention orders, home detention orders and parole orders,
- (c) such other functions as are conferred or imposed on it by or under this or any other Act or law.

(2) In exercising its functions, the Parole Authority:

- (a) must have regard to the fact that the Commissioner has the care, control and management of all offenders who are held in custody in accordance with Part 2, 3 or 4, and

(b) must consider any submissions made to it by the Commissioner or by any other person or body entitled to make such submissions.

(3) In particular, in exercising any function in respect of which the Review Council has furnished advice, the Parole Authority must have regard not only to that advice but also to any submissions made by the Commissioner with respect to that advice.

### **185A Establishment of guidelines**

In consultation with the Minister, the Parole Authority may from time to time establish guidelines (not inconsistent with this Act or the regulations) in relation to the exercise of its functions.

#### **[54] Section 189 Misconduct before Parole Authority**

Omit the penalty provision at the end of section 189 (1). Insert instead:

Maximum penalty: 20 penalty units or imprisonment for 28 days.

#### **[55] Section 192 Report to Minister**

Omit section 192 (2). Insert instead:

(2) The Parole Authority must also report to the Minister from time to time on any aspect of its activities concerning which the Minister requests a report.

#### **[56] Sections 193A-193C**

Insert after section 193:

### **193A Access to documents held by Parole Authority**

- (1) The Minister is entitled to be given access to all documents held by or on behalf of the Parole Authority.
- (2) Subject to section 194, a victim of a serious offender is entitled to be given access to all documents held by or on behalf of the Parole Authority in relation to the offender.

### **193B Recommendations to Commissioner**

- (1) The Parole Authority may at any time make recommendations to the Commissioner concerning the preparation of offenders for release on parole, either generally or in relation to any particular offender or class of offenders.
- (2) In exercising his or her functions, the Commissioner must have regard to, but is

not bound by, any such recommendation.

### **193C Parole Authority decisions**

- (1) The Parole Authority must cause a record of its reasons for the following decisions under Parts 6 and 7 to be kept in the minutes of its meetings:
  - (a) all decisions that result in the granting or refusing of parole,
  - (b) all decisions that result in the revocation of a periodic detention order, home detention order or parole order,
  - (c) all decisions that result in the refusal to revoke a periodic detention order or home detention order following a recommendation referred to in section 163 (1) or 167 (1),
  - (d) all decisions that result in the refusal to revoke a parole order:
    - (i) following a submission made under section 141A (3) or 153 (3), or
    - (ii) following a recommendation referred to in section 170 (1).
- (2) In recording its reasons for a decision under Division 2 of Part 6 that an offender should or should not be released on parole, the Parole Authority must address:
  - (a) the matters referred to in section 135, and
  - (b) if the decision relates to a serious offender to whom section 154 applies, the matters referred to in that section, and
  - (c) such other matters as the Parole Authority is, under this Act or the regulations, required to take into account in making the decision.
- (3) Copies of any records made under this section are to be supplied to the Minister, the Commissioner and the Probation and Parole Service, as they may request.
- (4) Subject to this Act, a decision by the Parole Authority under Part 6 or 7 is final.

### **[57] Section 194 Security of certain information**

Insert at the end of section 194 (d):

, or

- (e) adversely affect the supervision of any offender who has been released on parole,  
or
- (f) disclose the contents of any offender's medical, psychiatric or psychological report.

**[58] Section 194 (2)**

Insert at the end of section 194:

- (2) Subsection (1) does not permit the Minister to be denied access to any document held by the Parole Authority.

**[59] Section 198 Matters to be considered in relation to certain advisory functions**

Insert after section 198 (2):

- (2A) When exercising its functions under section 197 (2) (b) in relation to a serious offender, the Review Council must consider the following matters:
  - (a) the public interest,
  - (b) the offender's classification history,
  - (c) the offender's conduct while in custody, both in relation to sentences currently being served and in relation to earlier sentences,
  - (d) the offender's willingness to participate in rehabilitation programs, and the success or otherwise of his or her participation in such programs,
  - (e) any relevant reports (including any medical, psychiatric or psychological reports) that are available to the Review Council in relation to the offender,
  - (f) any other matter that the Review Council considers to be relevant.

**[60] Section 198 (3)**

Omit "subsection (1)". Insert instead "subsections (1) and (2A)".

**[61] Section 232 Commissioner**

Insert after section 232 (1) (a):

- (a1) has the care, control and management of all offenders who are held in custody in accordance with Part 2, 3 or 4, and

**[62] Section 232 (2)**

Insert ", (a1)" after "(a)".

**[63] Section 236A Functions of Justice Health**

Omit "The Corrections Health Service". Insert instead "Justice Health".



**[64] Section 236B CEO, Justice Health, to have access to correctional centres, offenders and medical records**

Omit “the Corrections Health Service”. Insert instead “Justice Health”.

**[65] Sections 236B, 236C and 236D**

Omit “Chief Executive Officer, Corrections Health Service” wherever occurring.

Insert instead “Chief Executive Officer, Justice Health”.

**[66] Section 236E Definitions**

Omit the definition of **authorised person**. Insert instead:

**authorised person** means a person appointed in accordance with the regulations to be an authorised person for the purposes of this Division.

**[67] Section 236H Protection from liability**

Omit “authorised officer” from section 236H (1) (b).

Insert instead “authorised person”.

**[68] Section 236I Regulations**

Omit section 236I (a). Insert instead:

(a) the appointment of authorised persons for the purposes of this Division,

**[69] Section 244 CEO, Justice Health, to have access to correctional centres, offenders and medical records**

Omit “Corrections Health Service” wherever occurring.

Insert instead “Justice Health”.

**[70] Section 256 Victims Register**

Omit “a criminal offence” from the definition of **victim** in section 256 (5).

Insert instead “an offence”.

**[71] Schedule 1 Parole Authority**

Insert after clause 2 (3):

(3A) The term for which a person is appointed to act in the office of a Deputy Chairperson is to be such period (not exceeding 3 years) as is specified in the

relevant instrument of appointment.

**[72] Schedule 1, clause 19 (2)**

Insert at the end of clause 19:

- (2) The Secretary of the Parole Authority is taken to be a non-judicial member for the purposes of a committee appointed for the purpose referred to in subclause (1) (b), and may consequently be appointed as a member of such a committee.

**[73] Schedule 2 Serious Offenders Review Council**

Insert after clause 2 (3):

- (3A) The term for which a person is appointed to act in the office of the Deputy Chairperson is to be such period (not exceeding 3 years) as is specified in the relevant instrument of appointment.

**[74] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Crimes (Administration of Sentences) Amendment (Parole) Act 2004*

**[75] Schedule 5**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of [Crimes \(Administration of Sentences\) Amendment \(Parole\) Act 2004](#)**

**Definition**

In this Part, **the 2004 amending Act** means the *Crimes (Administration of Sentences) Amendment (Parole) Act 2004*.

**Parole Authority a continuation of former Parole Board**

- (1) The Parole Authority is a continuation of, and the same legal entity as, the former Parole Board.
- (2) Each person who was a member of the Parole Board immediately before the commencement of this clause continues to hold office as a member of the Parole Authority for the residue of the term for which he or she was appointed as a

member of the Parole Board.

- (3) A reference to the Parole Board in any other Act or instrument extends to the Parole Authority.

### **Matters pending before former Parole Board**

- (1) Any matter that was pending before the former Parole Board before the commencement of Schedule 1 [19] to the 2004 amending Act, including any matter that the former Parole Board had commenced to consider under section 137, is to be continued and completed, until a final decision on the matter has been reached, as if that Act had not been enacted.
- (2) Any matter that was pending before the former Parole Board before the commencement of Schedule 1 [26] to the 2004 amending Act, including any matter that the former Parole Board had commenced to consider under section 143, is to be continued and completed, until a final decision on the matter has been reached, as if that Act had not been enacted.

### **Proceedings pending before the Court of Criminal Appeal**

Any proceedings that were pending before the Court of Criminal Appeal immediately before the commencement of Schedule 1 [36] to the 2004 amending Act are to be continued and completed as if that Act had not been enacted.

### **Unexecuted arrest warrants**

The amendment to section 180 made by Schedule 1 [48] to the 2004 amending Act does not affect the validity of any warrant signed by the Secretary of the former Parole Board before the commencement of that amendment.

### **Authorised persons under section 236E**

Any person who was an authorised person under section 236E immediately before the amendment to that section by Schedule 1 [66] to the 2004 amending Act is taken, on the commencement of that amendment, to be an authorised person under that section, as so amended.

## **Schedule 2 Amendment of other Acts and instruments**

(Section 4)

### **2.1 Children (Detention Centres) Act 1987 No 57**

#### **Section 29 Application of Crimes (Administration of Sentences) Act 1999 to detainees**

Omit "Parole Board" wherever occurring. Insert instead "Parole Authority".

## 2.2 Defamation Act 1974 No 18

### [1] Section 17CA Matters arising out of proceedings of State Parole Authority, Serious Offenders Review Council and Serious Offenders Management Committee

Omit “Parole Board” wherever occurring.

Insert instead “State Parole Authority”.

### [2] Section 17CA (b)

Omit “that Board”. Insert instead “that Authority”.

## 2.3 Drug Court Act 1998 No 150

### Section 18D Restriction on power of Drug Court to make compulsory drug treatment orders (as inserted by Schedule 1 [6] to the [Compulsory Drug Treatment Correctional Centre Act 2004](#))

Omit “Parole Board” from section 18D (2) (b).

Insert instead “State Parole Authority”.

## 2.4 Fines Act 1996 No 99

### Section 89 Periodic detention

Omit “Parole Board” from section 89 (10).

Insert instead “State Parole Authority”.

## 2.5 Freedom of Information Regulation 2000

### Schedule 3 Public authorities

Omit the matter relating to the Parole Board from Part 3.

Insert in Part 3 in alphabetical order of public authorities:

State Parole Authority

Department of Corrective Services

## 2.6 Parole Orders (Transfer) Act 1983 No 190

### Section 8 Registration

Omit “Parole Board” from section 8 (2) (a).

Insert instead “State Parole Authority”.

## **2.7 Supreme Court Act 1970 No 52**

### **Section 48 Assignment to the Court of Appeal**

Insert “but not including the State Parole Authority,” after “designated person,” in section 48 (1) (a) (vii).