

PRISONS (AMENDMENT) ACT, 1983, No. 132

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 132, 1983.

An Act to amend the Prisons Act, 1952, so as to constitute a Release on Licence Board and to define its functions, and for other purposes.
[Assented to, 21st December, 1983.]

Prisons (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Prisons (Amendment) Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

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- (2) Except as provided by this section, this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

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- (3) For the purpose only of enabling the Release on Licence Board to be constituted in accordance with the Prisons Act, 1952, as amended by this Act, on or after (but not before) the day appointed and notified under subsection (2), appointments may be made under Part X of the Prisons Act, 1952, as amended by this Act, and any other act, matter or thing may be done, before that day as if the whole of this Act commenced on the date of assent to this Act.

Amendment of Act No. 9, 1952.

3. The Prisons Act, 1952, is amended in the manner set forth in Schedule 1.

Prisons (Amendment).

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE PRISONS ACT, 1952.

(1) Section 2—

After the matter relating to Part IX, insert:—

PART X.—RELEASE ON LICENCE BOARD.

(2) Section 4, definition of “Board”—

Before the definition of “Chairman”, insert:—

“Board” means the Release on Licence Board constituted under section 59;

(3) (a) Section 29 (1) (e)—

Omit “order, or”, insert instead “order; or”.

(b) Section 29 (1) (f)—

After section 29 (1) (e), insert:—

(f) being interviewed by any member of the police force in connection with the commission of any crime or offence, whether or not committed or suspected of having been committed by the prisoner,

(c) Section 29 (1)—

Before “for any other purpose”, insert “or”.

(4) Section 41 (5)–(7)—

Omit section 41 (5), insert instead:—

(5) A prisoner granted remission pursuant to the foregoing provisions may, before the date on which the prisoner’s release would otherwise be operative, be released from prison—

(a) upon the order of the Commission—for such period not exceeding 28 days as the Commission may determine; or

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRISONS ACT, 1952—*continued.*

(b) upon the order of the Minister—for such period as the Minister may determine,

or both.

(6) An order shall not be made for the purposes of subsection (5) (b), nor shall any period be determined for the purposes of that paragraph, except in accordance with a recommendation made to the Minister by the Commission, the Parole Board or the Release on Licence Board.

(7) The provisions of section 61 (2)–(4) apply to and in respect of a recommendation referred to in subsection (6) and made or to be made by the Commission or the Parole Board in the same way as they apply to and in respect of such a recommendation made or to be made by the Release on Licence Board, and so apply as if a reference in those provisions to the Release on Licence Board were a reference to the Commission or the Parole Board, as the case may be.

(5) Part X—

After Part IX, insert:—

PART X.**RELEASE ON LICENCE BOARD.****Constitution of Release on Licence Board.**

59. (1) There shall be constituted a Board, to be called the Release on Licence Board.

(2) The Board shall consist of 9 members, of whom—

(a) 6 shall be appointed members; and

(b) 3 shall be *ex officio* members.

Prisons (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRISONS ACT, 1952—*continued.*

(3) The appointed members of the Board shall be appointed by the Minister, and of them—

- (a) 1 shall be a Judge of the District Court of New South Wales;
- (b) 1 shall be a member of the police force nominated by the Commissioner of Police; and
- (c) 4 shall be persons (not being Departmental officers) appointed to represent the community or any significant portion of the community.

(4) The ex officio members of the Board shall be the persons holding office or duly acting as—

- (a) the Director of Classifications;
- (b) the Director of the Probation and Parole Service; and
- (c) the Chief Psychologist,

in the Department of Corrective Services.

(5) The Chairman of the Board shall be the person appointed under subsection (3) (a).

(6) An appointed member of the Board shall, subject to this Act, hold office for such period not exceeding 3 years as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(7) Schedule 5 has effect with respect to the Board.

(8) In this section and in Schedule 5, "Departmental officer" means a Commissioner or an officer of the Department of Corrective Services.

Prisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRISONS ACT, 1952—*continued.***Functions of the Board.**

60. (1) The functions of the Board are—
- (a) to make recommendations to the Minister relating to the grant of licences under section 463 (1) of the Crimes Act, 1900, including recommendations relating to the limits to be specified in and the conditions to be indorsed on any such licence under that subsection;
 - (b) to make, at the request of the Minister or the Commission, recommendations to the Minister relating to the grant of remissions under section 462 (1) of the Crimes Act, 1900, of the whole or portions of sentences;
 - (c) to make, at the request of the Minister or the Commission, recommendations to the Minister relating to the grant of remissions under section 41 (5) of this Act by the Minister; and
 - (d) to make recommendations to the Minister or the Commission relating to such other matters as are referred to the Board by the Minister or the Commission, respectively.

(2) The Board shall have such other functions as are conferred or imposed on it by or under any other Act or as are determined by the Minister or as may be prescribed.

(3) Recommendations may be made under subsection (1) (a), (b) or (c) in relation to any offenders, whether or not sentenced to indeterminate periods of imprisonment or penal servitude.

Special provisions relating to certain recommendations of the Board.

61. (1) Notwithstanding anything in this Act, the Board may not make a recommendation referred to in section 60 (1) (a), (b) or (c) unless the recommendation is made at a meeting attended by, and is supported by, the Chairman of the Board.

Prisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRISONS ACT, 1952—*continued.*

(2) In considering whether or not to make a recommendation referred to in section 60 (1) (a) that an offender be granted a licence under section 463 (1) of the Crimes Act, 1900, or a recommendation referred to in section 60 (1) (b) that an offender be granted a remission under section 462 (1) of that Act, or a recommendation referred to in section 60 (1) (c) that a prisoner be granted remission under section 41 (5) of this Act—

(a) the Board shall take into consideration the following principles:—

- (i) that licences and remissions are to be granted only in such limited and special circumstances as clearly warrant their being granted;
- (ii) that offenders who are not undergoing sentences of life imprisonment are not to be granted licences or remissions except in extenuating circumstances; and
- (iii) that the public interest is paramount; and

(b) the Board shall have regard to the following matters:—

- (i) the nature and length of the offender's sentence and the period already served;
- (ii) any relevant comments made by the Judge, Stipendiary Magistrate or Justice when imposing the sentence;
- (iii) whether the grant of the licence or remission will endanger the public or any section of the public or prejudice the public interest in any way; and
- (iv) the special circumstances of the case.

(3) If the Board makes a recommendation referred to in section 60 (1) (a) that an offender be granted a licence under section 463 (1) of the Crimes Act, 1900, or a recommendation referred to in section 60 (1) (b) that an offender be granted a remission under section 462 (1) of that Act, or a recommendation referred to in

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SCHEDULE 1—*continued.*
AMENDMENTS TO THE PRISONS ACT, 1952—*continued.*

section 60 (1) (c) that a prisoner be granted remission under section 41 (5) of this Act by the Minister, it shall include in its recommendation—

- (a) a statement as to how the principles referred to in subsection (2) (a) have application in relation to the recommendation;
- (b) a statement as to what matters referred to in subsection (2) (b) are relevant in relation to the recommendation; and
- (c) such information and comment respecting those principles and matters as assist in justifying the recommendation.

(4) In this section, a reference to imprisonment includes a reference to penal servitude, and a reference to life imprisonment includes a reference to penal servitude for life and also any other indeterminate sentence.

(6) Schedule 5—

After Schedule 4, insert:—

SCHEDULE 5.

(Sec. 59.)

PROVISIONS RELATING TO THE CONSTITUTION AND PROCEDURE OF THE BOARD.

Age of members.

1. A person of or above the age of 70 years is not eligible to be appointed as a member of the Board or to act in the office of an appointed member of the Board.

Acting appointed members.

2. (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member of the Board during the illness or absence of the member, and the person, while so acting, shall have and may exercise and perform all the powers, authorities, duties and functions of the member.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRISONS ACT, 1952—*continued.*

(2) Without limiting subclause (1), the Minister may, from time to time, appoint a person to act in the office of Chairman of the Board during the illness or absence of the Chairman, and the person, while so acting, shall have and may exercise and perform all the powers, authorities, duties and functions of the Chairman.

(3) A person may not be appointed to act in the office of a member or the Chairman of the Board unless the person is eligible to be appointed to that office.

Acting ex officio members.

3. (1) Each ex officio member of the Board may, from time to time, appoint a person to act in the office of the member during the illness or absence of the member, and the person, while so acting, shall have and may exercise and perform all the powers, authorities, duties and functions of the member.

(2) The Minister may, from time to time, appoint a person to act in the office of an ex officio member of the Board during the illness or absence of the member and while there is no person appointed under subclause (1) acting in the office, and the person, while so acting, shall have and may exercise and perform all the powers, authorities, duties and functions of the member.

(3) A person may not be appointed to act in the office of an ex officio member of the Board unless the person is a Departmental officer.

(4) An ex officio member of the Board may remove any person from any office to which the person was appointed by the member under subclause (1).

Provisions applicable to acting members.

4. (1) The Minister may remove any person from any office to which the person was appointed under clause 2 or 3.

(2) A person while acting in the office of a member or the Chairman of the Board shall be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Prisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRISONS ACT, 1952—*continued.*

(3) For the purposes of clauses 2 and 3, a vacancy in the office of a member or the Chairman of the Board shall be deemed to be an absence from office of the member or Chairman, as the case may be.

(4) In section 61 and clauses 6 and 7—

- (a) a reference to a member (including the Chairman) of the Board includes a reference to a person acting in the office of the member of the Board; and
- (b) a reference to the Chairman of the Board includes a reference to a person acting in the office of the Chairman of the Board.

Meetings of the Board.

5. Meetings of the Board shall be held at least once every calendar month.

Chairman of the Board.

6. (1) The Chairman of the Board shall preside at all meetings of the Board at which the Chairman is present.

(2) If the Chairman of the Board is absent from any meeting, the members of the Board present shall appoint one of their number to preside at that meeting.

(3) This clause has effect subject to section 61.

Quorum and voting.

7. (1) Five members constitute a quorum at a meeting of the Board and any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board and shall and may exercise or perform all the powers, authorities, duties and functions of the Board.

(2) A decision supported by a majority of the votes at a meeting of the Board at which a quorum is present shall be the decision of the Board.

(3) This clause has effect subject to section 61.

Prisons (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRISONS ACT, 1952—*continued.***Vacation of office.**

8. (1) An appointed member of the Board shall be deemed to have vacated office if the member—

- (a) dies;
- (b) resigns the office by instrument in writing addressed to the Minister;
- (c) is removed from the office by the Minister under subclause (2);
- (d) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, unless on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (e) attains the age of 70 years; or
- (f) being—
 - (i) the member referred to in section 59 (3) (a)—ceases to be a Judge of the District Court of New South Wales;
 - (ii) the member referred to in section 59 (3) (b)—ceases to be a member of the police force; or
 - (iii) a member referred to in section 59 (3) (c)—becomes a Departmental officer.

(2) The Minister may remove any appointed member of the Board from office—

- (a) if the member discloses any information obtained in connection with the exercise or performance of his or her powers, authorities, duties or functions as such a member unless that disclosure is made—
 - (i) in connection with the exercise or performance of his or her powers, authorities, duties or functions as such a member;
 - (ii) for the purpose of any legal proceedings arising out of this Act or section 462 or 463 of the Crimes Act, 1900, or of any report of any such proceedings; or
 - (iii) with other lawful excuse; or
- (b) for any other cause of any kind whatsoever that to the Minister seems sufficient.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRISONS ACT, 1952—*continued.***Remuneration.**

9. Each member of the Board shall receive such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

General procedure.

10. The procedure for the calling of, and for the conduct of business at, meetings of the Board shall, subject to any procedure that is prescribed, be as determined by the Board.
