



Australian Capital Territory

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About this republication

The republished law

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Australian Capital Territory

PAROLE ACT 1976

Reprinted as at 31 May 1992

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Australian Capital Territory

PAROLE ACT 1976

An Act relating to the Release of Prisoners on Parole

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Parole Act 1976*.¹

Commencement

2. This Act shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice in the *Gazette*.¹

Repeal

3. The *Parole of Prisoners Ordinance 1971* is repealed.

Interpretation

5. (1) In this Act, unless the contrary intention appears—

“Board” means the Parole Board of the Australian Capital Territory;

“Chairperson” means—

- (a) the Chairperson of the Board; or
- (b) a person who is acting as the Chairperson in accordance with section 13A;

“member” means member of the Board;

“non-parole period” means—

- (a) a period fixed by a court in pursuance of section 7 of this Act as the period during which a person is not to be eligible to be released on parole;
- (b) the part of a term of imprisonment fixed under section 4 of the repealed Ordinance as the period during which the person sentenced to the term of imprisonment was not to be eligible to be released on parole; or
- (c) where a period referred to in paragraph (a) or (b) is subject to reduction or remission by virtue of section 5 of the *Removal of Prisoners (Australian Capital Territory) Act 1968*—the period equal to the first-mentioned period less the period of reduction or remission to which that first-mentioned period is subject;

“offence” means an offence against a law (other than an Act or regulations under an Act) in force in the Territory;

“parole order” means an order made under subsection 20 (1) and, if such an order has been varied, means the order as varied;

“parole period”, in relation to a person who has been released from prison on parole, means the period that—

- (a) commences on the day on which the person is released from prison; and
- (b) ends on the day on which the term of imprisonment to which that person was sentenced expires, or, if the parole order in relation to the person is revoked, on the date of the revocation;

“police officer” means a member of the Police Force of the Territory;

“prison” includes any place where a person who has been sentenced to a term of imprisonment may be detained to serve the sentence;

“repealed Ordinance” means the *Parole of Prisoners Ordinance 1971*;

“Secretary” means the Secretary to the Board appointed under section 16A;

“State” means the State of New South Wales.

(2) For the purposes of this Act, a person shall be deemed to have served a term of imprisonment—

- (a) when he is discharged from imprisonment; or
- (b) when he would, but for the fact that he is serving another term of imprisonment, have been discharged from imprisonment.

Application

6. This Act applies to, and in relation to, an order made under section 4 of the repealed Ordinance as if the order had been made in pursuance of section 7 of this Act.

PART II—FIXING OF NON-PAROLE PERIOD

Court to fix non-parole period

7. (1) Subject to subsection (2), where a court sentences a person to a term of imprisonment of not less than 12 months or to terms of imprisonment that, in the aggregate, are not less than 12 months, the court shall fix a period as the period during which the person is not to be eligible to be released on parole in pursuance of this Act.

(2) Subsection (1) does not apply—

- (a) in the case of a person sentenced to one term of imprisonment—if that sentence is suspended;
- (b) in the case of a person sentenced to 2 or more terms of imprisonment—if both or all of those sentences are suspended;
- (c) if the court, having regard to the nature of the offence or offences and the antecedents of the person convicted, considers that the fixing of a non-parole period would be inappropriate; or
- (d) if the person is sentenced to imprisonment for life.

(3) Subsection (1) applies whether the offence in respect of which a sentence is imposed was committed before or after the commencement of this Act and whether the person was convicted before or after that commencement.

(4) Where a court sentences a person to imprisonment but fails to fix, or fails properly to fix, a non-parole period, the Court may, upon application by the Attorney-General of the Commonwealth, the informant or the person sentenced, fix a non-parole period.

Fixing of non-parole period where person serving a previous sentence

8. (1) Where a person who is serving a sentence of imprisonment (in this section called “the previous sentence”) is sentenced to a further term of imprisonment (in this section called “the further sentence”), subsections 7 (1) and 7 (2) apply as if the court by which the further sentence is imposed had sentenced the person to imprisonment for a term equal to the aggregate of the terms of the previous sentence and the further sentence.

(2) Subsection (1) applies whether the previous sentence was imposed before or after the commencement of this Act.

(3) The imposition of the further sentence revokes any non-parole period fixed in respect of the previous sentence.

(4) A non-parole period fixed at the time of the imposition of the further sentence—

- (a)** shall be taken to have commenced on the date on which the previous sentence was imposed; and
- (b)** shall not be such as to render the person eligible to be released on parole earlier than would have been the case if the further sentence had not been imposed.

PART III—RELEASE ON PAROLE***Division 1—Parole Board of the Australian Capital Territory*****Establishment and constitution of Parole Board**

9. (1) There shall be a Parole Board of the Australian Capital Territory, the members of which shall be appointed by the Minister.

(2) The Board shall consist of 5 members, namely—

- (a)** the Chairperson; and
- (b)** 4 other members.

(3) The members shall be appointed as part-time members.

(4) One member at least shall be a female and one member at least shall be a male.

(5) A person shall not be appointed as the Chairperson unless he or she—

- (a)** is, or has been—

- (i) a Judge of the Federal Court of Australia;
 - (ii) a Judge of the Supreme Court; or
 - (iii) a Judge of the Supreme Court of a State or the Northern Territory; or
- (b) has been enrolled as a legal practitioner (however described) of the High Court or of the Supreme Court of a State or Territory for not less than 5 years.

Tenure of office

9A. (1) Subject to this Division, a member holds office for such period, not exceeding 3 years, as is specified in the instrument of his appointment.

(3) A member is eligible for re-appointment.

Fees and allowances

10. (1) Subject to any determination in operation under the *Remuneration Tribunals Act 1973* of the Commonwealth, a member shall be paid such fees and allowances as are prescribed.

(2) This section does not apply to or in relation to the Chairperson if he is a Judge of a court referred to in subsection 9 (5).

Leave of absence

11. The Minister may grant leave of absence to a member upon such terms and conditions as the Minister determines.

Termination of appointment

12. (1) The Minister may terminate the appointment of a member other than the Chairperson by reason of misbehaviour or physical or mental incapacity.

(2) If a member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (b) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board;

the Minister shall terminate the appointment of the member.

Resignation

13. A member may resign his office by writing under his hand delivered to the Minister.

Acting Chairperson

13A. (1) The Minister may appoint a person who is eligible under subsection 9 (5) to be appointed as Chairperson to act as the Chairperson—

- (a) during a vacancy in the office of Chairperson; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty on leave of absence granted by the Minister under section 11 or is absent from Australia or is, for any reason, unable or unavailable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The appointment of a person under subsection (1) ceases to have effect if the person resigns his appointment by writing signed by him and delivered to the Minister.

(4) Where a person is acting as the Chairperson in accordance with paragraph (1) (b) and the office of the Chairperson becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) While a person is acting as the Chairperson in accordance with this section, he has, and may exercise, all the powers and shall perform all the functions of the Chairperson.

(6) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that his appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Acting appointments

14. (1) Where a member is, or is expected to be, unable (whether on account of illness or otherwise) to perform his functions as a member or a member has ceased to hold office before the expiration of his term of office, the Minister may appoint a person to act as a member during that inability or for the remainder of that term.

(2) This Act applies to, and in relation to, a person holding office by virtue of an appointment under subsection (1) as if he were a member.

(3) The validity of an act or decision of the Board shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

(4) In this section, “member” means a member other than the Chairperson.

Procedure at meetings of Board

15. (1) The Chairperson shall preside at a meeting of the Board.

(1A) At a meeting of the Board, the Chairperson and 2 other members constitute a quorum.

(2) A question arising at a meeting of the Board shall be determined by a majority of the votes of the members present and voting.

(2A) At a meeting, the Chairperson has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(3) A member shall not take part in any deliberation or decision of the Board relating to a person in whose case the member has an interest.

(4) Unless the Chairperson directs otherwise, a person, other than the person whose case is being considered by the Board or a person summoned to attend as a witness, is not entitled to be present at a meeting of the Board.

(5) A meeting of the Board may be adjourned from time to time.

Chairperson may summon witnesses

16. (1) For the purpose of the performance by the Board of its functions, the Chairperson has the same power to summon and examine witnesses as he or she would have if he or she were the Chairperson of a Board of Inquiry appointed under the *Inquiries Act 1991*.

(2) The *Inquiries Act 1991* applies to, and in relation to, a person summoned by the Chairperson to attend before the Board or to produce documents, books or writings as if the Chairperson were the Chairperson of a Board of Inquiry appointed under that Act.

Secretary to Board

16A. (1) There shall be a Secretary to the Board who shall be appointed by the Minister after consultation with the Chairperson.

(2) In addition to the duties required to be performed by the Secretary under section 17, the Secretary shall perform—

- (a) general secretarial duties for the Board; and
- (b) such other duties as the Chairperson from time to time directs.

Division 2—Release on Parole

Secretary to refer reports to Chairperson

17. (1) Where a non-parole period has been fixed in respect of a person, the Secretary shall, not later than 30 days before the expiration of that period—

- (a) notify the Chairperson of the date on which the non-parole period will expire; and
- (b) deliver to the Chairperson any reports relating to the person that have, during that part of the non-parole period that has expired, been submitted to the Secretary.

(2) Where—

- (a) a non-parole period has been fixed in respect of a person; and
- (b) the Secretary receives from an authority of the State a recommendation that the person be considered for release on parole before the expiration of the non-parole period,

the Secretary shall forthwith deliver to the Chairperson the recommendation and any reports relating to the person that have, during that part of the non-parole period that has expired, been submitted to the Secretary.

(3) Where the Secretary receives from an authority of the State an application by a person for release on parole, the Secretary shall forthwith

deliver to the Chairperson the application and any reports relating to the person that have been submitted to the Secretary, other than reports already delivered to the Chairperson in accordance with subsection (1) or (2).

(4) Where—

- (a) the Secretary has given a notification or delivered a recommendation or application to the Chairperson under this section; and
- (b) before a meeting of the Board is held to consider the release on parole of the person to whom the notification or recommendation relates or by whom the application was made, a report relating to the person is received by the Secretary,

the Secretary shall forthwith deliver that report to the Chairperson.

(5) In this section, a reference to reports submitted to the Secretary shall be read as including a reference to reports that were, before the date of commencement of the *Parole (Amendment) Act 1982*, submitted to the authorized officer but were not, before that date, delivered to the Chairperson.

(6) In this section, “authorized officer” means—

- (a) in relation to a person sentenced by the Supreme Court—the Sheriff; and
- (b) in relation to a person sentenced by the Magistrates Court—the Registrar of the Magistrates Court.

Chairperson to convene meeting of Board

18. (1) The Chairperson may convene a meeting of the Board to consider the release of a person on parole.

(2) Subject to subsection (3), where the Chairperson receives a notification, recommendation or application in pursuance of section 17, he shall convene a meeting of the Board to consider the release on parole of the person to whom the notification or recommendation relates or by whom the application was made, as the case may be.

(3) Where the Chairperson receives an application in pursuance of subsection 17 (3), he may, instead of convening a meeting of the Board to consider the release on parole of the person by whom the application was made, cause the application to be considered by the Board at its next meeting.

Certain prisoners not to be refused parole without the opportunity of a hearing

19. (1) Where—

- (a) the non-parole period in respect of a person has expired; and
- (b) the Board is of the opinion that the information before the Board does not justify the release of the person on parole,

the Board—

- (c) shall cause a statement in writing of the reasons for its opinion to be given to the person; and
- (d) shall direct that, if the person so requests, he be brought before the Board.

(2) A request by a person for the purpose of paragraph (1) (d) is not effective for the purpose of this section unless it is made in writing before the expiration of a period of 7 days after the day on which the statement referred to in paragraph (1) (c) is given to the person.

(3) Subject to subsection (4), a person brought before the Board in accordance with a direction under subsection (1)—

- (a) may be asked by a member such questions as the member thinks fit; and
- (b) is not bound to answer a question put to him if the answer to the question would incriminate, or would tend to incriminate, the person or his spouse or would tend to expose the person or his spouse to proceedings for an offence against a law of the Commonwealth or of a State or a Territory.

(4) The Chairperson may disallow a question put to a person in pursuance of subsection (3) if, in the opinion of the Chairperson, the question is unfair or unduly prejudicial to the person.

(5) Where a statement has been given to a person in accordance with subsection (1), the Board shall not decline to make a parole order in respect of that person unless—

- (a) the person has failed to make a request in accordance with subsection (2); or
- (b) the person has been brought before the Board and, having taken into account the matters (if any) put by him to the Board, the Board is of the opinion that he should not be released on parole.

Release on parole

20. (1) Where—

- (a) a person is serving a sentence of imprisonment; and
- (b) a non-parole period has been fixed in respect of that person,

the Board may, by order, direct that the person be released from prison on parole at a time specified in the order.

(2) Subject to subsection (3), the time to be specified in an order for the purpose of subsection (1) is such time as the Board thinks proper, being a time not earlier than the expiration of the non-parole period.

(3) The Board may, in a parole order, specify a time earlier than the expiration of the non-parole period if the Board is satisfied—

- (a) that the person to be released has exhibited such excellence in his general behaviour, and has made such endeavours in relation to his rehabilitation, that it is desirable that he be released on parole before the expiration of the non-parole period; or
- (b) that there are special circumstances that justify the release of the person on parole before the expiration of the non-parole period.

(4) The Board shall not, in pursuance of subsection (3), specify in a parole order a time that is earlier than the expiration of the non-parole period by a number of days that exceeds the number calculated at the rate of 4 days for every month, or part of a month, of imprisonment actually served.

(5) A parole order is a sufficient authority for the release from prison of the person named in the order.

Parole order subject to conditions

21. A parole order is subject to such conditions as the Board thinks fit to specify in the order.

Parole order revoked where person sentenced to imprisonment

22. (1) In this section, “parole order” has the same meaning as in section 25.

(2) Where the person to whom a parole order relates is sentenced to a term of imprisonment in respect of an offence (including an offence against a law of the Commonwealth or of a State or another Territory) committed during the parole period, the parole order shall be deemed to have been revoked and, if the

parole period has already expired, to have been revoked immediately before the expiration of the parole period.

Release on parole after previous parole order revoked

23. (1) In this section, “parole order” has the same meaning as in section 25.

(2) A parole order may be made in relation to a person notwithstanding that a previous parole order in relation to the person has been revoked or is to be deemed to have been revoked.

Effect of parole order on sentence

24. (1) In this section, “parole order” has the same meaning as in section 25.

(2) Where a person has been released from prison on parole, whether under this Act or under the repealed Ordinance—

- (a)** he shall be deemed to be still under sentence of imprisonment, and not to have served any period of imprisonment that remained to be served at the commencement of the parole period, until the parole period expires without the parole order being revoked or until he is otherwise discharged from that imprisonment; and
- (b)** if the parole period expires, without the parole order being revoked, he shall be deemed to have served the period of imprisonment that remained to be served at the commencement of the parole period and to have been discharged from that imprisonment.

(3) Where a parole order is, by virtue of section 22, to be deemed to have been revoked immediately before the expiration of the parole period, subsection (2) has effect as if the parole period had not expired without the parole order being revoked.

Division 3—Revocation of Parole Order

Apprehension of person on parole

25. (1) In this section, “parole order” means—

- (a)** an order made under subsection 20 (1) of this Act; or
- (b)** an order made under subsection 5 (2) of the repealed Ordinance.

(2) Where a Judge of the Supreme Court is satisfied by information on oath that a person has failed to comply with a condition of a parole order, the Judge

may issue a warrant for the apprehension of the person and for the bringing of the person before the Board.

(3) Where a Judge of the Supreme Court is satisfied by information on oath that there are reasonable grounds for believing that a person will not comply with a condition of a parole order, the Judge may issue a warrant for the apprehension of the person and for the bringing of the person before the Board.

(4) A warrant under subsection (2) or (3) shall—

- (a) be in writing signed by the Judge by whom it is issued;
- (b) be directed to all police officers or to a named police officer;
- (c) state shortly the matter of the information on which it is founded; and
- (d) order the apprehension of the person to whom the warrant relates and the bringing of that person before the Board.

(5) A warrant under subsection (2) or (3) may be issued on Sunday as on any other day.

(6) A person who has been apprehended under a warrant issued under this section shall be brought before the Board as soon as practicable after he is taken into custody.

(7) Where a person who has been apprehended under a warrant issued under this section is brought before the Board, the Board may—

- (a) revoke the parole order in relation to that person;
- (b) vary the parole order in relation to that person; or
- (c) direct that the person be released from custody.

(8) Where a parole order is revoked, the person to whom the order related shall, unless he is again released on parole, be liable to be detained in prison for a period equal to the period for which he was liable, on the date on which he was released on parole under the revoked order, to be detained in prison.

PART IV—MISCELLANEOUS

Chief Minister may make arrangements with the State

26. The Chief Minister may make arrangements with the Governor of the State—

- (a) for the performance by officers of the State, in relation to persons sentenced in the Territory to imprisonment and serving their sentences in the State, of the same functions as are performed by those officers in relation to other persons serving sentences of imprisonment in the State; and
- (b) for reports prepared by those officers in respect of persons sentenced in the Territory to be furnished to authorities of the Territory.

Exercise of prerogative of mercy and operation of other laws not affected

27. Nothing in this Act affects—

- (a) the exercise of the Royal prerogative of mercy;
- (b) the operation of section 17 or section 19A of the *Crimes Act 1914-1973* of the Commonwealth as applied by section 7 of the *Interpretation Ordinance 1937-1967*; or
- (c) the operation of any Act, or of any other law in force in the Territory, relating to the release of offenders.

Annual reports

27A. (1) The Board shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister for presentation to the Legislative Assembly, a report of the operations of the Board during the year ended on that date.

(2) The Minister shall cause a report furnished to him under subsection (1) to be laid before the Legislative Assembly within 15 sitting days of the Assembly after the report is received by him.

Regulations

28. The Executive may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

NOTE

1. The *Parole Act 1976* as shown in this reprint comprises Act No. 29, 1976 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

| Ordinance | Number and year | Date of notification in <i>Gazette</i> | Date of commencement | Application, saving or transitional provisions |
|--|-----------------|--|---|--|
| <i>Parole Ordinance 1976</i> | 29, 1976 | 29 June 1976 | 22 Nov 1976 (see <i>Gazette</i> 1976, No. S210) | |
| <i>Ordinances Revision Ordinance 1978</i> | 46, 1978 | 28 Dec 1978 | 28 Dec 1978 | — |
| <i>Parole (Amendment) Ordinance 1982</i> | 1, 1982 | 19 Feb 1982 | 19 Oct 1982 | S. 15 |
| | as amended by | | | |
| | 91, 1982 | 23 Nov 1982 | 19 Oct 1982 | — |
| <i>Parole (Amendment) Ordinance (No. 2) 1982</i> | 83, 1982 | 20 Oct 1982 | 20 Oct 1982 | — |
| <i>Magistrates Court Ordinance 1985</i> | 67, 1985 | 19 Dec 1985 | 1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265) | — |
| <i>Parole (Amendment) Ordinance 1986</i> | 73, 1986 | 6 Nov 1986 | 6 Nov 1986 | S. 6 |
| <i>Parole (Amendment) Ordinance 1988</i> | 3, 1988 | 4 Mar 1988 | 4 Mar 1988 | — |
| <i>Administrative Arrangements (Consequential Amendments) Ordinance 1988</i> | 17, 1988 | 22 Apr 1988 | 22 Apr 1988 | S. 4 |
| <i>Parole (Amendment) Ordinance (No. 2) 1988</i> | 39, 1988 | 13 July 1988 | 13 July 1988 | — |
| <i>Self-Government (Consequential Amendments) Ordinance 1989</i> | 38, 1989 | 10 May 1989 | Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164) | — |

Self-Government day 11 May 1989

NOTE—continued

Table 2

Table of Acts

| Act | Number and year | Date of notification in <i>Gazette</i> | Date of commencement | Application, saving or transitional provisions |
|--|-----------------|--|--|--|
| <i>Royal Commissions and Inquiries (Consequential Provisions) Act 1991</i> | 3, 1991 | 1 Mar 1991 | Ss. 1 and 2: 1 Mar 1991 Remainder: 1 May 1991 (see s. 2 (2)) | — |
| <i>Magistrates and Coroner's Courts (Registrar) Act 1991</i> | 44, 1991 | 20 Sept 1991 | Ss. 1 and 2: 20 Sept 1991 Remainder: 25 Sept 1991 (see <i>Gazette</i> 1991, No. S103, p. 2) | — |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision | How affected |
|--------------|---|
| S. 4 | rep. No. 46, 1978 |
| S. 5 | am. Nos. 1 and 83, 1982; Nos. 3 and 39, 1988; No. 38, 1989 |
| S. 7 | am. No. 38, 1989 |
| S. 9 | am. Nos. 1 and 83, 1982; No. 73, 1986; Nos. 17 and 39, 1988; No. 38, 1989 |
| S. 9A | ad. No. 1, 1982 am. No. 73, 1986; No. 38, 1989 |
| S. 10 | rs. No. 1, 1982 am. No. 39, 1988 |
| S. 11 | am. No. 83, 1982; No. 17, 1988 |
| S. 12 | am. No. 1, 1982; No. 73, 1986; Nos. 17 and 39, 1988; No. 38, 1989 |
| S. 13 | am. No. 17, 1988 |
| S. 13A | ad. No. 83, 1982 am. Nos. 17 and 39, 1988 |
| S. 14 | am. Nos. 1 and 83, 1982; Nos. 17 and 39, 1988 |
| S. 15 | am. No. 1, 1982; No. 39, 1988 |
| S. 16 | am. No. 39, 1988; Act No. 3, 1991 |
| S. 16A | ad. No. 1, 1982 am. Nos. 17 and 39, 1988 |
| S. 17 | rs. No. 1, 1982 am. No. 67, 1985; No. 39, 1988; Act No. 44, 1991 |
| S. 18 | am. No. 1, 1982; No. 39, 1988 |

NOTE—continued**Table of Amendments**—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision | How affected |
|--------------|--------------------------------|
| S. 19 | am. No. 39, 1988 |
| S. 26 | am. No. 38, 1989 |
| S. 27A | ad. No. 1, 1982 |
| | am. No. 17, 1988; No. 38, 1989 |
| S. 28 | am. No. 17, 1988; No. 38, 1989 |

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