

No. 29 of 1976

PAROLE ORDINANCE 1976

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No. 29 of 1976

AN ORDINANCE

Relating to the Release of Prisoners on Parole.

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1973*.

Dated this twenty-third day of June, 1976.

JOHN R. KERR
Governor-General.

By His Excellency's Command,

R. ELLICOTT
Attorney-General.

PAROLE ORDINANCE 1976

PART I—PRELIMINARY

1. This Ordinance may be cited as the *Parole Ordinance 1976*.* Short title.
2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice in the *Gazette*. Commencement.
3. The *Parole of Prisoners Ordinance 1971* is repealed. Repeal.
4. This Ordinance shall be administered by the Attorney-General. Administration.
5. (1) In this Ordinance, unless the contrary intention appears— Interpretation.
 - “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 Court of Petty Sessions—the Clerk of the Court of Petty Sessions;
 - “Board” means the Parole Board of the Australian Capital Territory;
 - “Chairman” means—
 - (a) the Chairman of the Board; or
 - (b) the person for the time being appointed to act in place of the member referred to in paragraph 9 (2)(a);

* Notified in the *Australian Government Gazette* on 29 June 1976.

“Legislative Assembly” means the Australian Capital Territory Legislative Assembly;

“member” means member of the Board;

“non-parole period” means—

- (a) a period fixed by a court in pursuance of section 7 of this Ordinance as the period during which a person is not to be eligible to be released on parole; or
- (b) the part of a term of imprisonment fixed under section 4 of the repealed Ordinance as the period during which the person sentenced to the term of imprisonment was not to be eligible to be released on parole;

“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 sub-section 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*;

“State” means the State of New South Wales.

(2) For the purposes of this Ordinance, 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 Ordinance 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 Ordinance.

PART II—FIXING OF NON-PAROLE PERIOD

Court to fix non-parole period.

7. (1) Subject to sub-section (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 Ordinance.

(2) Sub-section (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) Sub-section (1) applies whether the offence in respect of which a sentence is imposed was committed before or after the commencement of this Ordinance 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, the informant or the person sentenced, fix a non-parole period.

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"), sub-sections 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.

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

(2) Sub-section (1) applies whether the previous sentence was imposed before or after the commencement of this Ordinance.

(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

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

Establishment and constitution of Parole Board.

(2) The Board shall consist of—

- (a) a Judge of the Supreme Court;
- (b) one part-time member nominated by the Legislative Assembly; and
- (c) one other part-time member.

(3) A member holds office for the period of 3 years commencing on the date of his appointment.

(4) The member referred to in paragraph (2)(a) shall be the Chairman of the Board.

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

Fees and allowances.

10. A member other than the Chairman shall be paid such fees and allowances as are prescribed.

Leave of absence.

11. The Attorney-General may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Attorney-General determines.

Termination of appointment.

12. (1) The Governor-General may terminate the appointment of a member other than the Chairman by reason of misbehaviour or physical or mental incapacity.

(2) If a member 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, the Governor-General shall terminate his appointment.

Resignation.

13. A member may resign his office by writing under his hand delivered to the Governor-General.

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 Governor-General may appoint a person to act as a member during that inability or for the remainder of that term.

(2) This Ordinance applies to, and in relation to, a person holding office by virtue of an appointment under sub-section (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) A person shall not be appointed under this section to act in place of the member referred to in paragraph 9 (2)(a) unless he is a Judge of the Supreme Court.

(5) A person appointed to act in place of the member referred to in paragraph 9 (2)(a) shall, while the appointment continues, perform the functions, and have the powers, of the Chairman.

- 15.** (1) The Chairman shall preside at a meeting of the Board. Procedure at meetings of Board.
- (2) Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members.
- (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 Chairman 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.

- 16.** (1) For the purpose of the performance by the Board of its functions, the Chairman has the same power to summon and examine witnesses as he would have if he were the Chairman of a Board of Enquiry appointed under the *Enquiry Ordinance 1938-1970*. Chairman may summon witnesses.
- (2) The *Enquiry Ordinance 1938-1970* applies to, and in relation to, a person summoned by the Chairman to attend before the Board or to produce documents, books or writings as if the Chairman were the Chairman of a Board of Enquiry appointed under that Ordinance.

Division 2—Release on Parole

- 17.** (1) Subject to sub-section (2), where a non-parole period has been fixed in respect of a person, the authorized officer shall, not later than 30 days before the expiration of that period— Authorized officer to refer reports to Chairman.
- (a) notify the Chairman of the date on which the non-parole period will expire; and
- (b) deliver to the Chairman any reports that have been submitted to him during that period in relation to the person.
- (2) Where the non-parole period fixed in respect of a person expires earlier than 30 days after the commencement of this Ordinance, the authorized officer shall, forthwith after the commencement of this Ordinance—
- (a) notify the Chairman of the date on which the non-parole period will expire; and
- (b) deliver to the Chairman any reports that have been submitted to the authorized officer in relation to that person.
- (3) Where the authorized officer receives from an authority of the State a recommendation that a person be considered for release on parole before the expiration of the non-parole period, the authorized officer shall forthwith notify the Chairman of the recommendation and deliver to the Chairman any reports that have been submitted to him during the non-parole period in relation to the person.
- (4) Where the authorized officer receives from an authority of the State an application by a person for release on parole, the authorized officer shall forthwith deliver to the Chairman the application and any reports that have been submitted to him in relation to the person, other than reports already delivered to the Chairman in accordance with sub-section (1), (2) or (3).

Chairman
to convene
meeting of
Board.

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

(2) Subject to sub-section (3), where the Chairman receives a notification or application for the purpose of section 17, he shall convene a meeting of the Board to consider the release on parole of the person to whom the notification relates or by whom the application was made, as the case may be.

(3) Where the Chairman receives an application for the purpose of sub-section 17 (4), 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 sub-section (4), a person brought before the Board in accordance with a direction under sub-section (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 Chairman may disallow a question put to a person in pursuance of sub-section (3) if, in the opinion of the Chairman, the question is unfair or unduly prejudicial to the person.

(5) Where a statement has been given to a person in accordance with sub-section (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 sub-section (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.

20. (1) Where—

Release on parole.

- (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 sub-section (3), the time to be specified in an order for the purpose of sub-section (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 sub-section (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.

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

Parole order subject to conditions.

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

Parole order revoked where person sentenced to imprisonment.

(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.

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

Release on parole after previous parole order revoked.

(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 Ordinance 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, sub-section (2) has effect as if the parole period had not expired without the parole order being revoked.

Division 3—Revocation of Parole Order

Apprehen-
sion of
person on
parole.

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

- (a) an order made under sub-section 20 (1) of this Ordinance; or
- (b) an order made under sub-section 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 sub-section (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 sub-section (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

26. The Governor-General may make arrangements with the Governor of the State—

Governor-General may make arrangements with 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.

27. Nothing in this Ordinance 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 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.

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

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

Regulations.