

Legislative Assembly for the Australian Capital Territory

Rehabilitation of Offenders (Interim) Amendment Bill 2002 (No 2)

EXPLANATORY STATEMENT

Presented by authority of
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Minister for Police, Emergency Services and Corrections

REHABILITATION OF OFFENDERS (INTERIM) AMENDMENT BILL 2002 (No 2)

Outline

This Bill amends the *Rehabilitation of Offenders (Interim) Act 2001* (the ROO Act), the *Remand Centres Act 1976* (the RCA) and the *Crimes Act 1900* (the Crimes Act).

The amendments to the ROO Act and the Crimes Act will enable the Sentence Administration Board (the Board) and the parole system to operate effectively and will lead to greater transparency in the sentencing process. The amendment to the RCA will ensure that people arrested under the ROO Act are taken to be before the Board for the purposes of the RCA.

Notes on Clauses

PART 1 PRELIMINARY

Clause 1 Name of Act

The Bill, once enacted, will be known as the *Rehabilitation of Offenders (Interim) Amendment Act 2002 (No 2)*.

Clause 2 Commencement

This clause provides that all sections except for section 22 will commence on the day after notification. Section 22 will commence three months after notification. This is to allow relevant agencies to make arrangements to facilitate the operation of the amended provision.

PART 2 REHABILITATION OF OFFENDERS (INTERIM) ACT 2001

Clause 3 Act amended – pt 2

This Bill amends the ROO Act. Additional amendments to other Acts are contained in Part 3 of the Bill.

Clause 4 Arrest with warrant of person subject to home detention order: section 22(1) and (2)

This clause replaces “apprehension” with “arrest” in section 22. This will bring the language of the section in line with other provisions of the ROO Act dealing with arrest. There is no reason to have references to both “apprehension” and “arrest” in the same Act given that both terms have the same practical effect.

Clause 5 Section 22(3)

As for clause 4.

Clause 6 Section 42

If the Board is aware that a victim has concerns about violence or harassment by an offender, section 42 of the ROO Act requires the Board to take all reasonable steps to notify the victim if it decides to make, or not to make, a parole order for the offender. This clause will also require the Board to take all reasonable steps to notify a victim who is on the victims register and a victim who has made a submission to the Board. It is appropriate that such victims be notified given that they have clearly expressed an interest in the outcome of the parole proceedings.

Clause 7 Board to seek views of victims: section 46(1)

Section 46 currently provides that before considering whether to release an offender on parole, the Board must contact each victim of the offender whose details are on the victims register. This clause provides that the Board must take all reasonable steps to notify such victims. Victims on the victims register are advised that it is their responsibility to ensure that their details are kept up to date. It is not appropriate to delay consideration of a person's parole indefinitely merely because a victim is unable to be contacted, despite the Board's best efforts.

Clause 8 Arrest of parolee with warrant: section 54(1)

As for clauses 4 and 5, this clause simply brings the wording of section 54 in line with other provisions in the Act dealing with arrest. There is no change to the effect of the provision.

Clause 9 Section 54(2)(d)

As for clause 8.

Clause 10 Section 54(3)

As for clause 8.

Clause 11 Section 56, new heading

This clause amends the heading of section 56 so that it describes the content of the section more accurately.

Clause 12 Revocation of parole orders: section 58 (4)

Section 58(3) provides that if the Board is satisfied that an offender has breached parole but has decided not to revoke the order, the Board may do one of several things, including imposing an additional condition on the parole order, or amending an existing condition. In such cases, this clause will allow the Board to remand the offender until a stated date or a stated event in order to give effect to the condition or amended condition. However, the Board will not be able to remand an offender for more than 30 days. This clause will allow, for example, the Board to remand an offender until a place becomes available at a rehabilitation centre or a refuge, as long as it is within the 30 day limit.

Clause 13 Sections 59 and 60

This clause replaces sections 59 and 60 of the ROO Act. Current section 59 provides that an order revoking parole takes effect on the date stated in the order, and allows that date to be backdated to the date, or the first date, that it appears the offender breached the parole order. The section was intended to allow backdating only where the parole order had already ended. Proposed new section 59 clarifies this intent. The clause also inserts a note referring to section 43(3), which sets out the consequences of revocation in such cases.

Section 60 is no longer needed as it is covered by proposed new section 62A.

Clause 14 Parole order revoked if parolee sentenced to imprisonment: section 61(a)

Current section 61 provides that a parole order is automatically revoked if the offender is convicted of an offence and sentenced to a term of imprisonment that is not completely suspended. The clause limits automatic revocation to where the relevant offence was committed during the parole period, which was the original intention. It is not appropriate to automatically revoke a parole order for an offence that was committed prior to the parole order, given that an offender who has his or her parole order revoked is liable to serve the entire parole period in custody.

Clause 15 New section 62A, part 3.4

Current section 60 provides that if the Board revokes a parole order, it must issue a warrant committing the offender to prison for the relevant period of imprisonment (a commitment warrant). However, there is no provision in the ROO Act for the Board to issue commitment warrants upon automatic revocation of parole under sections 61 or 62 of the Act. The issue of warrants is necessary to ensure that the offenders can continue to be held validly by NSW prison authorities. This clause provides for these warrants to be issued.

Clause 16 New section 72A, part 4.1

The ROO Act does not currently allow the Chairperson of the Board to delegate his or her functions under the Act. In order to ensure that the Board can continue to operate efficiently if the Chairperson is ill, on leave, or otherwise unable to perform his or her functions, this clause allows the Chairperson to delegate functions to a Deputy Chairperson.

Clause 17 Sentenced offenders to appear before Board: section 84(4)(c)

As for clauses 4, 5 and 8 –10, this clause simply brings the wording of section 84 in line with other provisions in the Act dealing with arrest. There is no change to the effect of the provision.

Clause 18 Section 84(5)

As for clause 17.

Clause 19 New sections 93A and 93B, part 4.4

This clause provides limited civil immunity for Board members. The immunity covers acts done in good faith in the performance of the member's functions under the ROO Act. This immunity is clearly necessary given the Board's role and is consistent with the immunity given to members of other statutory boards, such as the Health Professions Board.

The clause also provides civil immunity for witnesses and legal practitioners who appear before the Board. The immunity is the same as that given to witnesses and barristers appearing before the Supreme Court. Again, this is consistent with the immunity given to witnesses and legal practitioners who appear before other statutory boards, such as the Agents Board and Boards of Inquiry. There are strong public policy reasons for giving this immunity, for example, it will help to encourage the provision of frank and fearless advice to the Board. The immunity does not preclude prosecutions for perjury if the circumstances warrant such prosecution.

Clause 20 Security of information: section 96

Section 96 allows the Board to withhold a report or document from a person if giving the document may, in the opinion of a judicial member, do one of several things set out in subsections (a) to (d), including endangering a person or prejudicing the public interest.

It is not appropriate to allow the Board to withhold documents on the mere possibility that adverse consequences may follow. Accordingly, this clause raises the threshold so that a document may be withheld only if there is a substantial risk that a person would be endangered etc. The clause also replaces the reference to 'public interest' with 'public safety'. 'Public interest' is arguably too broad a term for this context. It is desirable to restrict the Board's discretion to withhold documents to cases where there is a more tangible risk, hence the change to 'public safety'. In the interests of a victim's privacy and safety, the clause also provides that the Board must not disclose a victim's contact details to an offender.

It should be noted that the provisions of the *Freedom of Information Act 1989* (the FOI Act) may also apply in relation to documents received by the Board. Section 38 of the FOI Act operates to provide that documents coming under section 96 of the ROO Act are exempt documents under the FOI Act. Section 24 of the FOI Act operates to provide that if a document is an exempt document under section 37(1) of that Act, the Board is not obliged to give information as to the existence or non-existence of a document. This includes documents that would, or could reasonably be expected to, endanger the safety of any person if they were disclosed.

PART 3 ADDITIONAL AMENDMENTS

Division 3.1 Crimes Act 1900

Clause 21 When sentence takes effect: section 352, new note

Section 352 of the Crimes Act provides that a sentence of imprisonment takes effect on the day that the sentence is passed unless the court orders otherwise. A new note makes it clear that the section should be read in conjunction with section 360 of the Crimes Act.

Clause 22 Time held in custody to count: section 360(1)

Section 360 currently provides that if an offender is sentenced to a term of imprisonment for an offence, any time served in custody in relation to that offence must be reckoned as a period of imprisonment already served under the sentence. It is currently unclear how this reckoning is to occur, or who is responsible for doing the reckoning. This clause provides that the court that sentences the person to a term of imprisonment must state in the sentence the period that the offender has already served in relation to the offence, and must take that period into account when passing sentence. This will enhance the transparency and certainty of the sentencing process. Corrective Services will provide the court with details of time served via the prosecutor.

Division 3.2 Remand Centres Act 1976

Clause 23 Persons who may be detained: new section 15 (1)(q)(ii)

Section 15 of the RCA lists people who may be detained in a remand centre and provides that a person not included in the list must not be detained at a remand centre. The list currently includes a person who is before the Board pending a parole decision or hearing. It is appropriate to also include any person who has been arrested and is waiting to be brought before the Board in relation to his or her parole. The amendments to section 15(1)(q)(ii) of the RCA will achieve this.