



ANNO DECIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1969

No. 105 of 1969

An Act to amend the Prisons Act, 1936-1968.

[Assented to 18th December, 1969.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short titles.

1. (1) This Act may be cited as the "Prisons Act Amendment Act (No. 2), 1969".

(2) The Prisons Act, 1936-1968, as amended by this Act, may be cited as the "Prisons Act, 1936-1969".

(3) The Prisons Act, 1936-1968, is hereinafter referred to as "the principal Act".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of principal Act, s. 3—Arrangement.

3. Section 3 of the principal Act is amended by inserting after the passage "PART IV—Control of Prisoners" the passage "PART IVA—Sentences and Parole".

Amendment of principal Act, s. 4—Interpretation.

4. Section 5 of the principal Act is amended by striking out from the definition of "prisoner" the passage "Mental Health Act, 1935-1963" and inserting in lieu thereof the passage "Mental Health Act, 1935-1969, and any person under sentence of imprisonment but released on parole under this Act".

5. Sections 42 and 42a of the principal Act are repealed and the following new Part, headings and sections are enacted and inserted in their place:—

Repeal of
ss. 42 and
42a of
principal Act
and enactment
of Part IVA
in lieu
thereof—

PART IVA.

SENTENCES AND PAROLE.

The Parole Board.

42. In this Part, unless the contrary intention appears— Interpretation.

“non-parole period” means a period fixed by a court under section 42i of this Act :

“parole officer” means a person appointed, and holding the office of, a parole officer pursuant to section 42h of this Act :

“probationary release” means release upon parole :

“the board” means the Parole Board of South Australia constituted under this Act :

“the Chief Justice” means the Chief Justice of the Supreme Court :

“the Supreme Court” means the Supreme Court of South Australia.

42a. (1) There shall be a board entitled the “Parole Board of South Australia”. The parole board.

(2) The board shall consist of five members appointed by the Governor of whom—

(a) one, who shall be the chairman of the board shall be a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of criminology, penology, or any other related science ;

(b) one shall be a legally qualified medical practitioner who has, in the opinion of the Governor, extensive knowledge of, and experience in, the practice of psychology or psychiatry ;

(c) one shall be a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of sociology or any other related science ;

(d) one shall be a person selected by the Governor from a panel of two persons (one of whom shall be a man and one a woman) nominated by the South Australian Chamber of Manufactures, Incorporated ;

and

(e) one shall be a person selected by the Governor from a panel of two persons (one of whom shall be a man and one a woman) nominated by the United Trades and Labor Council of South Australia.

(3) At least one of the members of the board must be a woman.

**Terms of
appointment.**

42b. (1) The chairman of the board shall be appointed for a term of five years and upon the expiration of his term of appointment, shall, if he is not then of or above the age of seventy years, be eligible for re-appointment.

(2) Any other member of the board shall be appointed for such term, not exceeding three years, as is specified in the instrument of his appointment, and upon the expiration of his term of appointment, shall be eligible for re-appointment.

(3) The Governor may, by notice in writing served upon a member of the board, remove him from office if the Governor is satisfied that the member has committed an offence, or is guilty of dishonest or dishonourable conduct, or is suffering from a mental or physical illness, that justifies his removal from office.

(4) The office of a member of the board shall become vacant if—

(a) he dies ;

(b) his term of office expires ;

(c) he resigns by written notice addressed to the Minister ;

(d) he is removed from office by the Governor pursuant to subsection (3) of this section ;

or

(e) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or compounds with his creditors for less than one hundred cents in the dollar.

(5) Upon the occurrence of a vacancy in the office of a member of the board, a person eligible under this Act for appointment as a member, shall, in accordance with this Act, be appointed to fill the vacancy.

42c. (1) The chairman of the board shall preside at every meeting of the board at which he is present. Proceedings of board.

(2) If the chairman is absent from any meeting of the board the members present shall elect one of their number to act as chairman for that meeting, and a person so elected shall be deemed to be, and shall have and may exercise all the powers, authorities, duties and obligations of, the chairman at that meeting.

(3) Where any member of the board is unable, or fails, for any reason, to act in his capacity as a member of the board, the Governor may appoint a suitable person to be a deputy of that member for any period, and a person so appointed shall, while so acting, be deemed to be a member of the board.

(4) Three members shall constitute a quorum at a meeting of the board and no business shall be transacted at a meeting unless a quorum is present.

(5) On any matter arising before a meeting of the board—

(a) the decision carried by a majority of the votes cast by the members present at the meeting shall be the decision of the board ;

and

(b) in addition to a deliberative vote the chairman shall have, in the event of an equality of votes, a second or casting vote.

(6) An act or proceeding of the board shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

(7) No liability shall attach to any member of the board for any act or omission by him or by the board in good faith and in the exercise or purported exercise of his or its powers or functions or in the discharge or purported discharge of his or its duties under this Act.

(8) Subject to this Act, the business of the board shall be conducted in such manner as the board may determine.

Remuneration,
etc.

42d. The members of the board shall be entitled to receive such remuneration, allowances and expenses as may be determined by the Governor.

Judicial
notice.

42e. (1) Where any document purports to bear the signature of a member of the board, a court, or a person acting judicially, shall presume, in the absence of evidence to the contrary, that the signature of that member of the board has been duly affixed to that document.

(2) An apparently genuine document purporting to record a determination or decision of the board and purporting to be signed by the secretary to the board shall, in the absence of evidence to the contrary, be taken as proof that such a determination or decision has been duly made by the board.

Powers of
board.

42f. (1) For the purposes of this Part the board may—

- (a) by summons under the hand of the chairman or a member require any person to attend before the board ;
- (b) require any person to give oral or written answers to any questions relating to any matters before the board ;
- (c) by summons under the hand of the chairman or a member require any person to produce any documents in his possession or power relating to any matter before the board ;
- (d) examine witnesses upon oath or affirmation which may be administered by the chairman or a member ;

and

(e) require any information given to the board to be verified by statutory declaration.

(2) If a person—

(a) who has been duly served with a summons to attend before the board, neglects or fails to attend in obedience to the summons ;

(b) wilfully insults the board or any member thereof ;

(c) misbehaves himself before the board ;

(d) interrupts the proceedings of the board ;

or

(e) being called or examined as a witness before the board, refuses to be sworn or to affirm, or refuses to answer any question that he would be compellable to answer in a court of law, or refuses to produce documents specified in a summons served upon him, or any of them,

he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for three months.

42g. (1) The board shall, at such time in each year as may be prescribed, make a written report to the Minister of— Report.

(a) the number of prisoners released upon parole during the last preceding period of twelve months, and the number returned to prison upon cancellation of probationary release ;

and

(b) the general activity of the board under this Part and any matters affecting the operation of this Part that the board thinks fit to include in the report.

(2) The board shall, whenever so required by the Minister and, in any case, at least once in every year, furnish the Minister with a written report on every prisoner serving a sentence of life imprisonment or of indeterminate duration.

(3) The board shall, whenever so required by the Minister, furnish the Minister with a report on any matter in connection with the administration of this Part upon which the Minister may require a report.

42h. (1) The Governor may, subject to the Public Service Act, 1967-1969, appoint a secretary to the board, and such parole officers and other officers and servants as he thinks necessary for the purposes of this Part.

Officers and
servants.

(2) A person so appointed shall be subject to the provisions of the Public Service Act, 1967-1969.

Sentences and Imprisonment.

Non-parole
period.

42i. Where a person is convicted of an offence and sentenced to be imprisoned, the court may, if it thinks it desirable to do so, fix a period during which the prisoner shall not be released upon parole.

Subsequent
sentence after
non-parole
period fixed.

42j. Where a prisoner has been sentenced to a term of imprisonment in respect of which a non-parole period has been fixed, and is subsequently sentenced to a further term of imprisonment—

(a) the court in imposing the subsequent sentence may (whether the imprisonment is to be cumulative upon or concurrent with that previously imposed) extend the non-parole period by a period not exceeding the term of the subsequent sentence ;

or

(b) if the court fixes a separate non-parole period in respect of the subsequent sentence, that non-parole period shall be cumulative upon, or concurrent with, that fixed in respect of the previous sentences according to whether the term of imprisonment is cumulative upon, or concurrent with, that previously imposed.

Release on Parole.

Probationary
release.

42k. (1) If the board, having regard to the interests of the public and the interests of a prisoner, is satisfied that it is proper to do so, it may order that the prisoner shall be released at a time specified in the order and he shall be released accordingly.

(2) An order may be made under subsection (1) of this section upon such terms and conditions as the board thinks fit and specifies in the order.

(3) The board may at any time before the probationary release of a prisoner pursuant to an order under subsection (1) of this section, revoke, amend or vary the order.

(4) The Comptroller of Prisons, and any person having the custody or control of the prisoner, are hereby authorized and required to take such action as may be necessary to comply with an order under this section.

(5) A person so released shall, until the expiration of his term of imprisonment, or the cancellation of his probationary release, be under the supervision of a parole officer, and shall comply with such terms and conditions as may be specified in the order of the board, and with such requirements as may be made of him by the parole officer in accordance with the regulations.

(6) A prisoner released upon probation or licence pursuant to this Act, as in force before the commencement of the Prisons Act Amendment Act, 1969, shall be deemed to be a prisoner released upon parole under this Act, and the terms and conditions upon which he was so released shall be deemed to be terms and conditions upon which the board ordered his release upon parole.

(7) The board shall not order that a prisoner be released on parole under this section before the expiration of a non-parole period fixed in relation to the prisoner unless the Governor, on the recommendation of the board, has approved the probationary release of the prisoner.

42l. A prisoner released upon parole shall remain upon parole for the remainder of the term of his sentence, and if the probationary release of the prisoner is not cancelled, the sentence of the court shall, upon the expiration of that period, be deemed to have been wholly satisfied.

Prisoner to remain on parole for remainder of sentence.

42m. (1) The board may, at any time, for any reason that it considers sufficient, cancel the probationary release of a prisoner.

Cancellation of probationary release.

(2) Where a person is sentenced to imprisonment for any offence committed during the period of his probationary release, his probationary release shall, by virtue of this subsection, be cancelled whether or not at the time of his conviction for that offence, the period of his probationary release had elapsed.

(3) If the probationary release of a prisoner is cancelled, the prisoner shall be liable to serve the remainder of his sentence, and the period of his probationary release shall not be taken into account in determining how much of the term of imprisonment remains to be served.

(4) If the probationary release of a prisoner has been cancelled, or if the board has reasonable cause to suspect any act or omission on the part of a prisoner that may justify the cancellation of his probationary release, it may, by warrant signed by any two members of the board, authorize any member of the police force to apprehend the prisoner, and return him to prison or detain him for examination by the board, as the case may require, and that warrant shall be sufficient authority for that purpose.

**Probationary
release after
previous
cancellation.**

42n. Subject to this Act, the board may release a prisoner upon parole notwithstanding that on any previous occasion or occasions his probationary release has been cancelled.

**Habitual
criminals.**

42o. (1) Where the board is satisfied that it is proper that a person declared to be an habitual criminal pursuant to the Criminal Law Consolidation Act, 1935-1969, should be released, it may make a recommendation to the Governor under section 323 of that Act that that person be released on licence pursuant to that section.

(2) The board may recommend to the Governor conditions upon which, in the opinion of the board, any such person should be so released.

42p. (1) The board shall, as often as it thinks necessary, and, in any case, at least once in every year, consider the progress or condition of every person detained pursuant to section 77a of the Criminal Law Consolidation Act, 1935-1969, in an institution within the meaning of that section.

**Persons
detained under
s. 77a of the
Criminal Law
Consolidation
Act.**

(2) The board shall, if it is satisfied upon the report of two legally qualified medical practitioners that a person detained pursuant to section 77a of the Criminal Law Consolidation Act, 1935-1969, is fit to be at liberty, recommend to the Governor, for the purposes of that section, that he be released.

Regulations.

42q. The Governor may make such regulations as he deems necessary or expedient for the purposes of this

Part and, without limiting the generality of the foregoing, those regulations may—

- (a) prescribe the manner and form in which a prisoner may make application for probationary release, and prescribe the frequency with which such applications may be made ;
 - (b) provide for the board to consider and determine whether prisoners should be released upon parole whether they have made application for probationary release or not ;
 - (c) prescribe the times and places at which the board shall meet for the transaction of business, and prescribe any rule of procedure to be observed by the board ;
 - (d) provide for the reduction of a non-parole period as an incentive to, or reward for, the good conduct or industry of a prisoner ;
- and
- (e) prescribe the manner in which a prisoner released upon parole is to be supervised and prescribe the requirements that may be made of him by a parole officer in the course of that supervision.

42r. This Act shall not be construed as limiting or affecting in any way the exercise in relation to a prisoner of the prerogative of mercy, or any other prerogative exercisable by the Governor.

Royal
prerogatives
unaffected.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. W. HARRISON, Governor.