



ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 82 of 1984

An Act to amend the Prisons Act, 1936.

[Assented to 15 November 1984]

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

Short title.

1. (1) This Act may be cited as the "Prisons Act Amendment Act, 1984".

(2) The Prisons Act, 1936, is in this Act referred to as "the principal Act".

Commencement.

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

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of
s. 6aa—
Transitional
provisions
relating to the
Prisons Act
Amendment Act
(No. 2), 1983.

3. Section 6aa of the principal Act is amended—

(a) by inserting in subsection (1) after the definition of "the amending Act" the following definition:

"the new parole board" means the parole board as constituted under this Act immediately after the commencement of the amending Act;

(b) by striking out the definition of "the parole board" in subsection (1) and substituting the following definition:

"the old parole board" means the parole board as constituted under this Act immediately prior to the commencement of the amending Act;

(c) by inserting in subsection (2) after the passage "An order of the" the word "old";

(d) by striking out subsection (3) and substituting the following subsection:

(3) An application for the release of a prisoner on parole that was before the old parole board immediately prior to the commencement of the Prisons Act Amendment Act (No. 2), 1983, but had not been finally disposed of at the commencement of the Prisons Act Amendment Act, 1984, shall be deemed to have been withdrawn.;

(e) by striking out from subsection (4) the passage "the parole board" first occurring and substituting the passage "the old parole board";

and

(f) by striking out from subsection (4) the passage "the parole board" second occurring and substituting the passage "the new parole board".

4. Section 7a of the principal Act is amended by striking out subsection (3).

Amendment of s. 7a—
Deputy Director and Assistant Directors.

5. The following section is inserted after section 7a of the principal Act:

Insertion of new s. 7b.

7b. (1) The Director may, with the approval of the Minister, delegate to any officer of the Department any of the powers, functions, duties or responsibilities vested in or imposed upon the Director under this Act.

Power of Director to delegate.

(2) A delegation under this section is revocable at will and shall not prevent the exercise or performance of any power, function, duty or responsibility by the Director.

6. The following sections are inserted after section 35 of the principal Act:

Insertion of new ss. 35a and 35b.

35a. (1) The Director may, by written order, grant to a prisoner leave to be absent from the place in which he is being detained—

Director may grant leave of absence from prison.

(a) for the medical or psychiatric examination, assessment or treatment of the prisoner;

(b) for the attendance of the prisoner at any educational or training course;

(c) for the purpose of participating in any form of recreation, entertainment or community service;

(d) for such purpose, on compassionate grounds, as the Director thinks fit;

(e) for any purpose related to criminal investigation;

or

(f) for such other purpose as the Director thinks fit.

(2) Leave of absence granted under this section may be subject to such conditions as the Director thinks fit, including, where the Director thinks it is appropriate, a condition that the prisoner will be in the custody of, and supervised by, one or more officers of the Department authorized by the Minister for the purpose.

(3) The Director may, by further written order, revoke any leave of absence granted under this section, or vary any of the conditions to which it is subject.

(4) Where a prisoner is still at large after the revocation or expiry of his leave of absence, he may be apprehended without warrant by any member of the police force or any officer of the Department authorized by the Minister for the purpose.

(5) A prisoner who is still at large after the expiry of his leave of absence shall be deemed to be unlawfully at large.

Prisoner shall comply with conditions to which temporary leave of absence is subject.

35b. (1) A prisoner who has been granted leave of absence pursuant to this Act and who contravenes or fails to comply with a condition to which the leave is subject shall be guilty of an offence and liable to imprisonment for a term not exceeding one year.

(2) A term of imprisonment to which a prisoner is sentenced for an offence against this section shall be cumulative on any other imprisonment that the prisoner is liable to serve.

Amendment of s. 42i—
Court shall fix or extend non-parole periods.

7. Section 42i of the principal Act is amended—

(a) by striking out from subsection (1) the passage “exceeding one year” and substituting the passage “of one year or more”;

(b) by striking out from subsection (1) the passage “more than one year” and substituting the passage “one year or more”;

(c) by striking out paragraphs (b) and (c) from subsection (2) and substituting the following paragraph:

and

(b) the total period of imprisonment to which he is liable (in pursuance of his existing sentence and the further sentence referred to in paragraph (a)) is one year or more,;

(d) by striking out from subsection (2) the passage “and subject to subsection (4),”;

(e) by striking out paragraph (a) from subsection (2a);

(f) by striking out from paragraph (b) of subsection (2a) the passage “more than one year” and substituting the passage “one year or more”;

(g) by striking out paragraph (c) from subsection (3);

and

(h) by striking out subsections (4) and (4a) and substituting the following subsection:

(4) In determining an application under subsection (2a) made by a prisoner who was in prison immediately prior to the commencement of the Prisons Act Amendment Act (No. 2), 1983, the court shall, if the prisoner has already served a period of imprisonment that would be equal to, or exceed, a non-parole period determined in accordance with this section, as reduced by the total number of days of remission credited to the prisoner after that commencement, make an order fixing a non-parole period in respect of that prisoner

that expires thirty days after the day on which the order is made.

8. Section 42k of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

Amendment of s. 42k—
Board shall order release of a prisoner upon parole.

(1) The board shall order that a prisoner in respect of whom a non-parole period has been fixed be released from prison on parole on a day specified by the board, being a day not later than thirty days after the day when the period the prisoner has served in prison during the non-parole period and the total number of days of remission credited to him during that period (but after the commencement of the Prisons Act Amendment Act (No. 2), 1983) together equal the non-parole period.

9. Section 42na of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

Amendment of s. 42na—
Duration of parole in relation to life prisoners.

(1) A prisoner serving a sentence of life imprisonment who is released on parole shall, unless his release is cancelled or his sentence is extinguished, remain on parole—

(a) in the case of a prisoner released on parole prior to the commencement of the Prisons Act Amendment Act, 1981—for the remainder of the sentence;

and

(b) in any other case—for the period recommended by the board and approved by the Governor.

10. Section 42nb of the principal Act is repealed and the following section is substituted:

Repeal of s. 42nb and substitution of new section.

42nb. (1) Where a person has been released on parole from a sentence other than a sentence of life imprisonment, the board may, upon the application of that person or of its own motion, vary or revoke a condition to which the parole is subject.

Variation or revocation of parole conditions.

(2) Where a person has been released on parole from a sentence of life imprisonment, the board may, on the application of that person or of its own motion, recommend to the Governor that a condition to which the parole is subject be varied or revoked, and the Governor may, on receiving such a recommendation, order accordingly.

(3) The board shall not exercise its powers under this section of its own motion in relation to a person released on parole unless it has given reasonable notice of its intention to do so to that person and has considered any submissions made by him on the matter.

(4) The board shall not make an order or recommendation under this section in relation to a person who is under the supervision of a parole officer unless it has obtained and considered a report from that parole officer.

11. Section 42nf is amended by striking out from subsection (1) the passage "he is (except in the case of a person in respect of whom a non-parole period is fixed)" and substituting the passage "(not being a sentence in default of payment of a pecuniary sum) and that sentence is not suspended, he is, subject to any further non-parole period that may have been fixed,".

Amendment of s. 42nf—
Cancellation is automatic.

Amendment of
s. 42ra—
Remission for
certain life
prisoners and
prisoners serving
sentences
exceeding three
months.

12. Section 42ra of the principal Act is amended—

(a) by striking out from subsection (2) the passage “served in a prison by a prisoner to whom this section applies, consider the behaviour of the prisoner during that month” and substituting the passage “, consider the behaviour during that month of each prisoner to whom this section applies”;

and

(b) by striking out from subsection (5) the passage “served in a prison by a prisoner”.

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

D. B. DUNSTAN, Governor