



ANNO TRICESIMO QUINTO

**ELIZABETHAE II REGINAE**

**A.D. 1986**

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**No. 69 of 1986**

**An Act to amend the Correctional Services Act, 1982, the Criminal Law Consolidation Act, 1935, and the Justices Act, 1921.**

*[Assented to 20 November 1986]*

The Parliament of South Australia enacts as follows:

**PART I**

**PRELIMINARY**

**Short title.** 1. This Act may be cited as the "Statutes Amendment (Parole) Act, 1986".

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

**PART II**

**AMENDMENT OF CORRECTIONAL SERVICES ACT, 1982**

**Citation.** 3. The Correctional Services Act, 1982, is in this Part referred to as "the principal Act".

**Amendment of s. 4— Interpretation.** 4. Section 4 of the principal Act is amended by inserting after the definition of "the Department" the following definition:

"designated condition", in relation to release on parole, means a condition of the parole that is designated by the Board as a condition the breach of which will result in automatic cancellation of parole:.

**Amendment of s. 63— Powers of the Board.** 5. Section 63 of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) The Board may (and shall, if a prisoner so requests) interview a prisoner at any time and, if such an interview is to be conducted outside the prison, may request the manager of the prison to cause

the prisoner to be brought before the Board at a specified time and place.

(4) The Board is not obliged to interview a prisoner pursuant to the prisoner's request more than once in any year.

6. Section 64 of the principal Act is amended by striking out subsection (3a). Amendment of  
s. 64—  
Reports by Board.

7. Section 65 of the principal Act is amended—

(a) by striking out subsections (1), (2), (3) and (4) and substituting the following subsections: Amendment of  
s. 65—  
Court shall fix or  
extend non-parole  
periods.

(1) Subject to subsection (4), where a court sentences a person to imprisonment, the court shall—

(a) if the person is not subject to an existing non-parole period—fix a non-parole period;

or

(b) if the person is subject to an existing non-parole period—review the non-parole period and extend it by such period as the court thinks fit (but not so that the period of extension exceeds the period of imprisonment that the person becomes liable to serve by virtue of the sentence, or sentences, imposed by the court).

(2) Subject to subsection (4), the sentencing court may, on application by a prisoner who is serving a sentence of imprisonment but who is not subject to an existing non-parole period, fix a non-parole period.

(3) The fact that the prisoner has completed a non-parole period previously fixed in respect of the same sentence of imprisonment or that a court has previously declined to fix a non-parole period in respect of that sentence does not preclude an application under subsection (2).

(4) The above provisions are subject to the following qualifications:

(a) a non-parole period shall not be fixed in respect of a person who is liable to serve a total period of imprisonment of less than one year;

(b) where a person who is subject to a sentence of life imprisonment is further sentenced to imprisonment by a court of summary jurisdiction, the question of whether a non-parole period should be fixed or extended shall be referred to the court by which the sentence of life imprisonment was imposed;

(c) a court may, by order, decline to fix a non-parole period in respect of a person sentenced to

imprisonment if the court is of the opinion that it would be inappropriate to fix such a period by reason of—

- (i) the gravity of the offence or the circumstances surrounding the offence;
  - (ii) the criminal record of the person;
  - (iii) the behaviour of the person during any previous period of release on parole;
- or
- (iv) any other circumstance.;

(b) by inserting in subsection (6) before paragraph (a) the following paragraph:

(aa) may order the preparation of a report on the person by the Board.;

(c) by inserting after subparagraph (i) of paragraph (b) of subsection (6) the following subparagraph:

(ia) the necessity (if at all) to protect some other person or persons generally from the likely behaviour of the prisoner should the prisoner be released on parole;

and

(d) by striking out subsection (7).

**8. Section 66 of the principal Act is amended—**

(a) by inserting in subsection (2) after subparagraph (i) of paragraph (a) the following subparagraph:

(ia) that the prisoner shall not possess an offensive weapon unless the prisoner has first obtained the permission of the Board to do so and complies with the terms and conditions of that permission.;

and

(b) by inserting after subsection (4) the following subsection:

(4a) In fixing or recommending conditions to which the release on parole of a prisoner will be subject, the Board may designate any condition as a condition the breach of which will result in automatic cancellation of parole.

**9. Section 70 of the principal Act is amended by striking out from subsection (2) “section 75” and substituting “this Part”.**

Amendment of s. 66—  
Board shall order release on parole at end of non-parole period.

Amendment of s. 70—  
Duration of parole for life prisoners.

**10. Section 72 of the principal Act is amended by striking out from subsection (3) “section 75” and substituting “this Part”.**

Amendment of s. 72—  
Discharge from parole of prisoners other than life prisoners.

11. The following section is inserted after section 72 of the principal Act:

Insertion of new s. 73.

73. (1) Where the Board finds that a person who has been released on parole has, while on parole, breached a designated condition, the person is, subject to this Part, liable to serve in prison the balance of the sentence, or sentences, of imprisonment in respect of which the person was on parole, being the balance unexpired as at the day on which the breach was committed.

Automatic cancellation of parole for breach of designated conditions.

(2) Subsection (1) applies notwithstanding that, at the time of finding the breach proved, the parole has expired or been discharged.

(3) Where a person referred to in subsection (1) is, at the time of finding the breach proved, still on parole, the parole is, by virtue of this section, cancelled.

12. Section 74 of the principal Act is amended—

Amendment of s. 74—  
Cancellation of parole by Board for breach of conditions other than designated conditions.

(a) by striking out subsection (1) and substituting the following subsection:

(1) Where the Board is satisfied that a person who has been released on parole has, while on parole, breached a condition of parole (not being a designated condition), the Board may, by order, direct that the person serve in prison the sentence or sentences, of imprisonment in respect of which the person was on parole for such further period, not exceeding 6 months, as the Board thinks appropriate.;

(b) by inserting after subsection (1) the following subsections:

(1a) Subsection (1) applies notwithstanding that, at the time of finding the breach proved, the parole has expired or been discharged.

(1b) Where the Board makes an order under subsection (1) in respect of a person who is still on parole, the Board shall order that the person's release on parole be cancelled.;

and

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

(4) Subject to subsections (4a) and (4b), a person who is returned to prison for breach of a parole condition (not being a designated condition) after the commencement of the Prisons Act Amendment Act (No. 2), 1983, shall, unless the person has, by instrument in writing, elected to remain in prison to serve the balance of sentence then remaining, be released from prison on parole when the period for which the person was returned has been served.

(4a) If a person who has been returned to prison pursuant to this section commits an offence while in prison and a sentence of imprisonment is imposed for the offence, the person is liable to serve in prison the balance of the sentence,

or sentences, unexpired as at the date on which the offence was committed.

(4b) The release of a person under subsection (4) shall not be release on parole if the period of parole has expired.

Amendment of  
s. 75—  
Automatic  
cancellation of  
parole upon  
further sentence  
of imprisonment.

13. Section 75 of the principal Act is amended by striking out subsection (3).

Amendment of  
s. 79—  
Remission for  
certain life  
prisoners and  
prisoners serving  
sentences  
exceeding 3  
months.

14. Section 79 of the principal Act is amended—

(a) by striking out from subsection (1) “to a prisoner who has been found or declared to be insane, an habitual criminal or incapable of exercising proper control over his sexual instincts pursuant to the Criminal Law Consolidation Act, 1935, nor to a person returned to prison after the commencement of the Prisons Act Amendment Act (No. 2), 1983, upon cancellation of parole for breach of parole conditions” and substituting the following paragraphs:

(c) to a prisoner who is serving, or is liable to serve, a sentence of indeterminate duration;

or

(d) to a prisoner who is serving a further period of imprisonment pursuant to an order of the Board made under section 74.;

(b) by striking out from subsection (2) “Subject to subsection (3), the” and substituting “The”;

and

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

(3) The fact that a prisoner has been, or is liable to be, punished under this Act or any other Act or law for behaviour while in prison does not preclude the Permanent Head from taking that behaviour into account for the purposes of subsection (2).

Amendment of  
s. 80—  
Release of  
prisoners on  
remission.

15. Section 80 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) Notwithstanding any other provision of this Act, a person returned to prison upon cancellation of parole shall, unless released earlier under any other provision of this Act or any other Act or law, be released from prison when the total number of days of remission credited to the person after cancellation and the period the person has served in prison after cancellation together equal the period of imprisonment that the person was, upon that cancellation, liable to serve.

## PART III

## AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT, 1935

16. The Criminal Law Consolidation Act, 1935, is in this Part referred to as "the principal Act". Citation.

17. Section 5 of the principal Act is amended by inserting after the definition of "common prostitute" the following definition: Amendment of s. 5—  
Interpretation.

"court" means, except where a contrary intention is indicated or appears from the context, the Supreme Court, a District Criminal Court or a court of summary jurisdiction:.

18. The principal Act is amended by inserting after section 301 the following section: Insertion of new s. 302.

302. A court, in fixing the term of a sentence of imprisonment or in fixing or extending a non-parole period in respect of a sentence, or sentences, of imprisonment, shall have regard to the fact (where applicable) that the prisoner may be credited, pursuant to Part VII of the Correctional Services Act, 1982, with a maximum of 15 days of remission for each month served in prison. Court to have regard to remission in fixing sentence or non-parole period.

19. Section 310 of the principal Act is amended—

(a) by striking out from subsection (1) "The court" and substituting "Subject to subsection (3), the court";

and

(b) by inserting after subsection (2) the following subsection:

(3) Where a sentence of imprisonment is imposed for an offence committed by the convicted person during a period of release on parole, the court shall (except where one of the sentences to which the convicted person is subject is life imprisonment) direct that the sentence is to be cumulative upon the sentence, or sentences, in respect of which the convicted person was on parole.

Amendment of s. 310—  
Sentences of imprisonment may be made cumulative.

## PART IV

## AMENDMENT OF THE JUSTICES ACT, 1921

20. The Justices Act, 1921, is in this Part referred to as "the principal Act". Citation.

21. Section 93 of the principal Act is amended by striking out "and the justice issuing the same may, if he thinks fit, order that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant has been previously adjudged or sentenced". Amendment of s. 93—  
Warrant of commitment for subsequent offence must be delivered to prison forthwith.

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

D. B. DUNSTAN, Governor