

PAROLE AMENDMENT ACT 1987

No. 7 of 1987

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PAROLE AMENDMENT ACT 1987

No. 7 of 1987

AN ACT to amend the Parole Act 1975 and to consequentially amend the Prisoners (Interstate Transfer) Act 1982.

[Royal Assent 15 April 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Parole Amendment Act 1987*. Short title.

2—This Act shall commence on the day on which it receives Commence- the Royal assent. ment.

Principal Act. **3**—In this Act, the *Parole Act 1975** is referred to as the Principal Act.

Amendment of section 3 of Principal Act (Interpretation). **4**—Section 3 of the Principal Act is amended by inserting after the definition of “life prisoner” the following definition:—

“non-parole period”, in relation to a sentence of imprisonment, means the period that is the non-parole period in respect of that sentence in pursuance of section 12A or 12B (1) (e), as the case requires;

Insertion in Principal Act of new Part IIIA. **5**—After Part III of the Principal Act, the following Part is inserted:—

PART IIIA

ELIGIBILITY FOR PAROLE

Statutory non-parole period.

12A—(1) Subject to subsection (2) and to section 12B, the non-parole period in respect of a sentence of imprisonment is—

- (a) a period of 6 months; or
- (b) a period equal to one-half of the period of the sentence,

whichever is the greater.

(2) Subsection (1) does not apply in relation to—

- (a) a sentence of imprisonment for the term of the natural life of the prisoner; or
- (b) a sentence of imprisonment imposed by order under section 392 (2) of the *Criminal Code*.

Power of courts to make orders limiting eligibility for parole.

12B—(1) Where a court imposes a sentence of imprisonment on a person (not being a sentence imposed by order under section 392 (2) of the *Criminal Code*), either upon the conviction of the person for an offence or upon the determination of an appeal, or, on appeal, confirms the imposition of such a sentence, the court may, having regard to—

- (a) the nature and circumstances of the offence;
- (b) the antecedents or character of the person; or

* Act No. 73 of 1975. Subsequently amended by No. 83 of 1981, No. 29 of 1984, and No. 5 of 1985.

(c) any other matter that it considers relevant,
order—

(d) that the person be not eligible for parole in respect of that sentence; or

(e) subject to subsection (2), that the person be not eligible for parole in respect of that sentence before the expiration of such non-parole period as is specified in the order.

(2) The non-parole period specified in an order under subsection (1) (e) in respect of a sentence of imprisonment to which section 12A (1) applies shall be not less than the non-parole period that, but for the making of the order, would be applicable, under that section, in respect of that sentence.

(3) An order made under subsection (1) shall be taken, for all purposes, to form part of the sentence to which it relates.

12c—(1) Subject to section 12D, a prisoner shall not be released on parole before the completion of the non-parole period (if any) applicable to his sentence unless, in the opinion of the approving authority, there are exceptional circumstances warranting his earlier release on parole.

Prisoner not eligible for parole before completion of non-parole period except in special circumstances.

(2) For the purposes of subsection (1), the approving authority is—

(a) in the case of release under section 14—the Governor acting with the advice of at least one Minister; and

(b) in the case of release under section 19—the Board.

12D—(1) In this section—

“ designated sentence ” means—

(a) a sentence of imprisonment to which a non-parole period is applicable;

(b) a sentence of imprisonment to which an order under section 12B (1) (d) is applicable; or

(c) a sentence of imprisonment imposed by order under section 392 (2) of the *Criminal Code*;

Prisoner subject to more than one non-parole period or other minimum term.

“ minimum term ”, in relation to a designated sentence, means—

- (a) in the case of a sentence to which a non-parole period is applicable—that non-parole period; or
- (b) in any other case—the sentence itself.

(2) Where, at any time, a person is subject to 2 or more designated sentences—

- (a) the minimum terms relating to those designated sentences shall, subject to subsections (3) and (4), be cumulative upon, or concurrent with, each other in like manner as the sentences to which they relate; and
- (b) the completion by a person of the non-parole period applicable to a sentence to which he is subject shall not be taken into account for the purposes of section 12c (1) if, at the time of completion of that non-parole period, he has not completed the minimum term relating to any other designated sentence to which he is subject.

(3) For the purposes of subsection (2), where, at any time, a person is subject to 2 or more sentences that are ordered to be served concurrently, being sentences to each of which, but for this subsection, a non-parole period would be applicable under section 12A, those sentences shall be taken to be collectively subject to a single non-parole period ascertained, in accordance with that section, as if those sentences comprised a single sentence of imprisonment for a period equal to the total period of imprisonment to which the person is sentenced as a result of those sentences being ordered to be served concurrently.

(4) Where, under subsection (2), the minimum term in relation to a designated sentence is cumulative upon the minimum term in relation to another such sentence, the later minimum term shall be taken to commence upon the expiration of the earlier minimum term, notwithstanding that the earlier sentence has not been completed.

12E—(1) Subject to sections 12c and 12D, a prisoner may, not earlier than 3 months before the expiration of the non-parole period (if any) in respect of his sentence, apply to the Board to be released on parole. Applications for parole.

(2) Subject to section 12D, if a prisoner is not released on parole at the expiration of the non-parole period in respect of his sentence, he may, not earlier than 3 months after—

(a) the expiration of that period; or

(b) the making by him of an application under this subsection in respect of that sentence,

apply to the Board to be released on parole, and the Board shall consider whether he should be so released.

(3) Notwithstanding the foregoing provisions of this section, the Board may, in its discretion, permit a prisoner to make an application to the Board at a time earlier than a time at which, but for this subsection, the prisoner would be eligible to make the application.

(4) An application by a prisoner under this section shall be made in the prescribed manner.

(5) The Board may consider a prisoner's release on parole notwithstanding that he has not made an application under this section.

6—Sections 16 and 17 of the Principal Act are repealed.

Repeal of sections 16 and 17 of Principal Act.

7—Section 19 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “section 17,” and substituting “section 12E,”;

(b) by omitting from subsection (1) “section 16,” and substituting “section 12C,”.

Amendment of section 19 of Principal Act (Release on parole).

8—Sections 32, 33, and 34 of, and the Schedule to, the Principal Act are repealed.

Repeal of sections 32 to 34 of, and Schedule to, Principal Act.

9—Section 26 of the *Prisoners (Interstate Transfer) Act 1982* is amended by omitting subsection (1) and substituting the following subsections:—

Amendment of section 26 of *Prisoners Interstate Transfer) Act 1982* (Provisions relating to transferred sentences).

(1) Where under a law of a participating State there has been fixed by or under a law in respect of a translated sentence a minimum term of imprisonment (being a shorter term than the translated sentence), during which minimum term the person subject to the sentence is not eligible to be released on parole, that minimum term shall, subject to subsection (1A) have effect for the purposes of the law of Tasmania.

(1A) Where a minimum term referred to in subsection (1) is of lesser duration than the non-parole period (if any) that would be applicable, under section 12A of the *Parole Act 1975*, to the sentence to which it relates if that sentence had been imposed by a court in Tasmania, subsection (1) has effect as if that minimum term were of the same duration as that non-parole period.

(1B) Where a person referred to in subsection (1) is subsequently transferred to a participating State, the minimum term referred to in that subsection shall, unless it has been quashed on a review by, or on appeal to, a court of the participating State where the minimum term was fixed, have effect, notwithstanding subsection (1A), for the purposes of the application of the interstate law of that State and may be treated as if it had been a minimum term fixed by a court of Tasmania.

Transitional
and saving.

10—(1) For the purposes of the Principal Act as amended by this Act, the non-parole period in respect of a sentence of imprisonment imposed at any time in respect of a conviction recorded before the commencement of this Act (not being a sentence of imprisonment for the natural life of the prisoner or a sentence of imprisonment imposed by order under section 392 (2) of the *Criminal Code*) is the period specified in section 16 of the Principal Act.

(2) The power of a court under section 12B of the Principal Act as amended by this Act to order that a person be not eligible for parole or to specify a non-parole period is not exercisable in respect of a sentence of imprisonment imposed in respect of a conviction recorded before the commencement of this Act.

(3) The repeal by section 8 of sections 32 and 33 of the Principal Act does not affect anything done in pursuance of those sections.

(4) The repeal by section 8 of section 34 of, and the Schedule to, the Principal Act does not affect the operation of the amendments of the *Criminal Code* set out in that Schedule, and the *Criminal Code* shall, subject to any subsequent enactment amending or modifying it, continue to be construed as if that repeal had not occurred.

