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**PAROLE AMENDMENT ACT 1994**

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**No. 97 of 1994**

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**AN ACT to amend the *Parole Act 1975*****[Royal Assent 16 December 1994]**

**B**E 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:—

**Short title**

**1**—This Act may be cited as the *Parole Amendment Act 1994*.

**Commencement**

**2**—This Act commences on the day on which the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994* commences.

## Principal Act

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

### Section 3 amended (Interpretation)

4—Section 3 of the Principal Act is amended as follows:—

- (a) by omitting the definition of “dangerous criminal”;
- (b) by inserting the following definition after the definition of “Director”:—

“**general meeting**” means a meeting of the Board that is not a special meeting;

- (c) by omitting the definition of “non-parole period” and substituting the following definition:—

“**non-parole period**”, in relation to a sentence of imprisonment, means—

- (a) in a case to which section 12B (1) (d) or 12BA (1) (a) applies—the whole period of the sentence; or
  - (b) in a case to which section 12B (1) (e) or 12BA (1) (b) applies—the non-parole period specified in the order made under that section; or
  - (c) in any other case—the non-parole period specified in section 12A (1);
- (d) by omitting the definition of “parole order” and substituting the following definition:—

“**parole order**” means a parole order under section 19;
  - (e) by omitting “and a dangerous criminal” from the definition of “prisoner”;
  - (f) by omitting “section 11 (1).” from the definition of “secretary” and substituting “section 11 (1);”;

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\* Act No. 73 of 1975. Subsequently amended by No. 83 of 1981, No. 29 of 1984, No. 5 of 1985, No. 7 of 1987, No. 49 of 1989, No. 5 of 1990, Nos. 43 and 46 of 1991, No. 77 of 1993 and No. 68 of 1994.

(g) by inserting the following definitions after the definition of “secretary”:-

“**sentence**” includes a sentence imposed by way of resentencing under section 9 (1) of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*;

“**special meeting**” means a meeting of the Board at which it exercises a power or performs a function in relation to a person convicted of murder or treason.

### Section 5 amended (Establishment of Parole Board)

5—Section 5 of the Principal Act is amended as follows:—

(a) by omitting from subsection (2) “The Board shall consist” and substituting “Subject to subsection (2A), the Board consists”;

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

(2A) The Board, when holding a special meeting, consists of 5 persons, being—

(a) the persons appointed as members under subsection (2); and

(b) 2 other persons appointed by the Governor.

(2B) The members appointed under subsection (2A) (b) are to be persons who the Governor is satisfied have knowledge or experience that would render them eligible for appointment under subsection (2) (b).

(c) by inserting in subsection (3) “appointed under subsection (2)” after “members of the Board”.

**Section 6 amended (Term of office and removal of members of the Board)**

6—Section 6 (3) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraphs:—

- (c) has, in the case of a member appointed under section 5 (2), been absent from 3 or more consecutive meetings of the Board without the leave of the Board;
- (ca) has, in the case of a member appointed under section 5 (2A) (b), been absent from 3 or more consecutive special meetings without the leave of the Board.

**Section 7 amended (Proceedings of the Board)**

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

- (a) by inserting in subsection (3B) “appointed under section 5 (2),” after “Board”;
- (b) by inserting the following subsection after subsection (3B):—

(3BA) A person who is a deputy appointed under subsection (3B) may be appointed as a member of the Board under section 5 (2A) (b) and that person may hold the office of member in conjunction with the office of deputy.

- (c) by omitting from subsection (3C) “The following” and substituting “Subject to subsections (3D) and (3E), the following”;
- (d) by omitting from subsection (3C) (c) “shall be deemed” and substituting “is taken”;
- (e) by inserting the following subsections after subsection (3C):—

(3D) When a person who is a deputy appointed under subsection (3B) and who also holds an appointment under section 5 (2A) (b) as a member of the Board attends a special meeting, he or she does so in the capacity of a member and not in the capacity of a deputy.

(3E) Where one of the persons who is a deputy appointed under subsection (3B) also holds an appointment under section 5 (2A) (b) as a member of the Board, the person who is the other deputy appointed under subsection (3B) is entitled to attend a special meeting if the member of whom he or she is the principal deputy is absent from that special meeting.

(3F) The Minister may appoint 2 persons to be deputies of the members of the Board appointed under section 5 (2A) (b) and a deputy so appointed holds office during the pleasure of the Minister.

(3G) The following provisions apply to a deputy appointed under subsection (3F):—

- (a) the deputy is to be designated by the Minister as principal deputy to one of the members of the Board appointed under section 5 (2A) (b);
- (b) the deputy is entitled to attend a special meeting of the Board if—
  - (i) the member of whom he or she is the principal deputy is absent from that special meeting; or
  - (ii) the other member of the Board appointed under section 5 (2A) (b) and that member's deputy are both absent from that special meeting;
- (c) when so attending a special meeting, the deputy is taken to be a member of the Board.
- (f) by omitting subsection (5) and substituting the following subsections:—
  - (5) Three members of the Board constitute a quorum at a general meeting.
  - (5A) Five members of the Board constitute a quorum at a special meeting.

### **Section 12B amended (Power of courts to make orders limiting eligibility for parole)**

8—Section 12B (1) of the Principal Act is amended by inserting “imprisonment for the term of the person's natural life or” after “not being”.

**Section 12BA inserted**

**9**—After section 12B of the Principal Act, the following section is inserted:—

**Eligibility of life prisoners for parole**

12BA—(1) A court that sentences a person to imprisonment for the term of his or her natural life, either upon the conviction of the person for an offence or upon the determination of an appeal, must—

- (a) order that the person is not eligible for parole in respect of that sentence; or
- (b) order that the person is not eligible for parole in respect of that sentence before the expiration of such non-parole period as is specified in the order.

(2) An order made under subsection (1) forms, for all purposes, part of the sentence to which it relates.

(3) In determining which of the alternative orders under subsection (1) it should make, a court may have regard to such matters as it considers necessary or appropriate and, without limiting the generality of this, may have particular regard to all or any of the following:—

- (a) the nature and circumstances of the person's offence;
- (b) the person's antecedents or character;
- (c) any other sentence the court has imposed on the person.

(4) A life prisoner in respect of whom an order has been made under subsection (1) (a) is not eligible to be released on parole in respect of his or her sentence.

**Section 12C amended (When prisoner eligible for parole)**

**10**—Section 12C of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “approving authority” and substituting “Board”;
- (b) by omitting subsection (2).



**Part IV: Division I repealed**

11—Division I of Part IV of the Principal Act is repealed.

**Part IV, Division II: Heading repealed**

12—The heading to Division II of Part IV of the Principal Act is repealed.

**Section 15 repealed**

13—Section 15 of the Principal Act is repealed.

**Section 22 amended (Application of Division)**

14—Section 22 of the Principal Act is amended by omitting “, whether the parole order is made under section 14 or section 19”.

**Section 23 amended (Effect of parole orders)**

15—Section 23 of the Principal Act is amended as follows:—

- (a) by omitting subsection (2A);
- (b) by omitting subsection (3) and substituting the following subsections:—

(3) Notwithstanding subsection (2), the Board may—

- (a) in circumstances that it considers to be exceptional—direct that a prisoner who is released under a parole order is not required to be under the supervision of a parole officer; or
- (b) if it considers that it is unreasonable or unnecessary for a prisoner released under a parole order to be under the supervision of a parole officer for the whole of the period the prisoner is on parole—direct that the prisoner so released is required to be under the supervision of a parole officer only for such part of that period as the Board specifies in its direction.

(4) The Board must not issue a direction under subsection (3) (a) in respect of a life prisoner if that prisoner is released on parole pursuant to section 28.

**Section 24 amended (Prisoner on parole taken to be still under sentence)**

16—Section 24 (3) of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:—

(a) a life prisoner; or

**Section 25 amended (Power of Board to revoke parole orders, &c.)**

17—Section 25 of the Principal Act is amended as follows:—

(a) by omitting subsection (2);

(b) by omitting from paragraph (a) of subsection (5) “or dangerous criminal”;

(c) by omitting from paragraph (a) of subsection (5) “served;” and substituting “served; and”;

(d) by omitting from paragraph (b) of subsection (5) “life; and” and substituting “life.”;

(e) by omitting paragraph (c) from subsection (5).

**Section 28 amended (Power of Board to release prisoner on parole after previous revocation)**

18—Section 28 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsection:—

(1) The Board may release a prisoner on parole notwithstanding that on any previous occasion the prisoner’s release on parole has been revoked.

(b) by omitting subsection (2);

(c) by omitting subsection (3).

**Savings and transitional provisions in respect of life prisoners**

19—(1) In this section—

“commencement day” means the day on which the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994* commences;

“existing life prisoner” means a person who—

- (a) is under a sentence of imprisonment for the term of the person’s natural life; and
- (b) was sentenced to that term of imprisonment before the commencement day; and
- (c) has not been resentenced under section 9 (1) of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*.

(2) The eligibility of an existing life prisoner to be—

- (a) considered for release on parole; or
- (b) released on parole—

is to be determined in accordance with the Principal Act as in force immediately before the commencement day.

(3) If an existing life prisoner—

- (a) is on release on parole immediately before the commencement day; or
- (b) is released on parole on or after the commencement day—

section 25 (2) of the Principal Act as in force immediately before that day applies to the revocation, variation, amendment or suspension of the parole order by which the prisoner was so released.

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[Second reading presentation speech made in:—  
House of Assembly on 19 October 1994  
Legislative Council on 30 November 1994]

## NOTES