

**2001**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**REHABILITATION OF OFFENDERS (INTERIM)  
BILL 2001**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
Michael Moore  
Minister for Health, Housing and Community Services**

## **EXPLANATORY MEMORANDUM**

### **Rehabilitation of Offenders (Interim) Bill (2001)**

#### **Outline**

This Bill provides for the operation of home detention, parole and a Sentence Administration Board. The title of the Bill reflects the Government's commitment to review all existing legislation relating to the administration of sentences in the ACT and incorporate it into one Act which will enable the operation of a fully integrated case-management system of offender rehabilitation. The development of a home detention scheme, along with the establishment of a Sentence Administration Board, are the first steps in this extensive review and development process.

The Bill will allow for the operation of two forms of home detention:

- In the first form, prisoners who have been sentenced to a term of imprisonment or juveniles who have been committed to an institution for a period of 18 months or less may, subject to conditions specified in the Bill, serve their sentence by way of home detention.
- The second form of home detention will apply to people who are remanded in custody, who, subject to conditions specified in the Bill, may be remanded in custody by way of home detention.

The Bill repeals the *Parole Act 1976*, and provides for a Sentence Administration Board (the Board) to replace the Parole Board, and to undertake sentence administration functions in relation to parole orders.

#### **Financial considerations**

The Government has committed \$349,000 in the 2001-2002 financial year to enable the operation of home detention. This will provide for approximately ten offenders to be managed on home detention at any given time. On this basis, the cost per offender on home detention is \$96 per day. This is significantly less than the cost of managing offenders in prison. In 1999-2000, the average cost for ACT sentenced prisoners was \$162 per day, and for remand prisoners, was \$336 per day. Given that the only people eligible for home detention will be those who have already been sentenced or remanded, there will be direct savings associated with the introduction of home detention.

Some initial infrastructure costs associated with the electronic monitoring devices used for offenders on home detention are fixed, so, should the demand for home detention increase, the cost of meeting this demand will not be linear.

There will be some indirect costs associated with the introduction of home detention in the ACT, and these are difficult to quantify. These costs are in relation to the court and legal representation time associated with the assessment of suitability for home detention. As this will only occur after sentencing to imprisonment or remand in custody, a further court hearing will be required. In addition, the role of the courts in monitoring compliance of people subject to home detention orders will have associated costs. Again, these are difficult to quantify, as they depend on a range of factors including compliance with orders by individual offenders.

Although the new Board's membership is larger than that of the Parole Board, due to the proposed meeting arrangements, it is not anticipated that the increased membership will, of itself, increase the cost for this Board.

## **Chapter 1 Preliminary**

### **1 Name of Act**

This clause gives the name of the Act as the *Rehabilitation of Offenders (Interim) Act 2001*. The government's intention in naming this an "interim" Act is to introduce the notion of a complete review of legislation governing the administration of sentences. This will lead to the introduction of a *Rehabilitation of Offenders Bill* aiming to facilitate a fully integrated case management and through-care system of offender rehabilitation.

### **2 Commencement**

This clause allows for the Act to commence on the day that it is notified in the ACT Government Gazette.

### **3 Dictionary**

This clause refers to the dictionary included at the end of the Bill. Terms used throughout the Act are defined in the dictionary and apply to the entire Bill, unless the definition or another provision of the Bill stipulates otherwise.

### **4 Notes**

Notes included in the Bill are not part of the Bill but provide an explanation for the sections in which they are included.

### **5 Meaning of subject to imprisonment etc**

This clause describes the meaning of "subject to" as used in this Bill.

## **Chapter 2 Home detention orders**

### **Part 2.1 Making home detention orders**

#### **6 Imprisonment by way of home detention**

This clause provides that sentenced offenders subject to a term of imprisonment of 18 months or less, or in the case of young people committed to an institution for a period of 18 months or less, may serve their custodial sentence by way of a home detention order.

In the case of a partially or completely suspended sentence, the period of the suspended sentence is to be disregarded when applied to a home detention order.

The total period of the prison sentence or committal period may not exceed 18 months (where there are concurrent or consecutive sentences) in order for an offender to be eligible for home detention.

This clause provides that where a young offender is committed to a State institution or other institution, this Act applies as if the committal were a sentence of imprisonment.

#### **7 Remand by way of home detention**

Where a Court has remanded a person into custody, (or detained a person in the case of a young offender) a Court may make a home detention order, for the person to serve their remand by way of home detention.

This clause provides that where a young person is remanded in custody to a shelter, the remand applies as if were a reference to ordering of the detention of the young offender under the *Children and Young People Act 1999*.

Any period served by way of a home detention order is to be considered as if it were time detained in a shelter.

This section is subject to Part 2.2 (Procedures for making home detention orders).

### **Part 2.2 Procedures for making home detention orders**

#### **Division 2.2.1 General**

#### **8 Application of pt 2.2**

This clause ensures that eligibility for assessment and the assessment procedure take place whenever a home detention order is made, or is being considered.

#### **Division 2.2.2 Restrictions on making home detention orders**

#### **9 Home detention not available for offenders for certain offences**

This clause specifies a number of offences that, if committed by offenders who have received a sentence of imprisonment or been remanded in custody after conviction but before sentence, makes them ineligible to be considered for a home detention order.

The listed offences are those considered most relevant to protecting the community in the use of home detention as a means of custody. They include serious offences

against others, serious drug offences and offences that involve a disregard for rules and conditions pertaining to conventional institutions.

A specific condition is included regarding the exclusion of domestic violence offenders, where an offence is committed against an individual with whom it is likely the perpetrator would live, if released to home detention.

#### **10 Home detention not available for sentenced offenders or remandees with certain history**

This clause excludes sentenced offenders or remandees with specific offending history from being assessed for suitability for home detention.

Sentenced offenders and remandees who have been respondents to a domestic violence order within the last ten years involving someone who would be living with the person subject to a home detention order are not eligible for home detention.

#### **11 Suitability of sentenced offenders and remandees for home detention**

This clause specifies the considerations that must be taken into account before a court may make a home detention order. These include written consent from people with whom a person subject to home detention would live, and the applicant's consent to comply with the conditions of an order.

Tenants and boarders are excluded from the category of people included in the concept of "household". This is to permit the possibility that a person who resides at a hostel or half way house may be considered suitable for home detention. To include tenants and boarders as people who must give consent under this clause may, in some cases, require the consent of dozens or more co-residents (co-tenants or co-boarders). Such a situation is not intended, and is prevented by the wording of this clause. However, each situation will require careful consideration by the assessing officer, and it may be that some residential situations may be such that consent of tenants, boarders and landlords are considered appropriate.

A court can only make a home detention order if an assessment report recommends suitability. Home detention cannot be ordered by a court if there is a likelihood or risk of a person committing a sexual offence or an offence involving violence.

This clause allows for consent to be given on behalf of children, young people and people with a mental disability with whom a person on a home detention order may reside. The clause provides that the regulations may make provision for how this will be achieved.

### **Division 2.2.3 Assessment reports**

#### **12 Referral of sentenced offender or remandee for assessment**

Where a court sentences a person to a term of imprisonment or remands a person in custody the court may ask the chief executive for an assessment report about the person. Such a request does not stay the execution of the sentence of imprisonment, nor affect the order for remand.

### **13 Assessment of suitability for home detention**

This clause specifies what must be included in an investigation of suitability for a home detention order. An assessment report can include recommended conditions that a court could consider, in the event that it makes a home detention order.

The clause provides that the regulations may make provision in relation to the making of assessments and preparation of reports.

### **14 Obtaining information etc for assessment report**

This clause requires administrative units, Territory authorities statutory office holders or any other entities to provide information to assist with the preparation of reports assessing a person's suitability to be placed on a home detention order. Consistent with existing ACT legislation relating to the provision of this type of information, protection is provided for those supplying information pursuant to this clause.

## **Division 2.4 Explanation of home detention orders**

### **15 Explanation of home detention orders to be given**

This clause stipulates that a court must explain to a person receiving a home detention order the obligations of the order, and consequences of failing to comply with it. A home detention order is not invalid if a court does not comply with this clause.

## **Part 2.3 Operation of home detention orders**

### **16 Effect of home detention order for sentenced offender**

This clause stipulates that the time spent on a home detention order counts as time served under imprisonment, unless the home detention order is revoked. If revoked, any time after revocation is taken to be time not served.

### **17 Effect of home detention order for remandee**

This clause stipulates that, in relation to section 451 of the Crimes Act, time spent on remand by way of home detention counts as time in custody on remand in relation to proceedings for the offence. If the home detention order is revoked, any time after the revocation takes effect is to be disregarded.

### **18 Conditions of home detention orders**

This clause provides for conditions for people subject to a home detention order. This includes those conditions prescribed by the regulations, and those imposed by the relevant court.

Where a court wishes to impose a fine or compensation order on an offender, this must be done separately from any home detention order.

This clause prevents a court from revoking or amending any standard conditions prescribed under the regulations, or to impose or amend any additional conditions that that are inconsistent with the standard conditions prescribed by the regulations.

### **19 Obligations under home detention orders**

This clause sets out the obligations of a person serving a home detention order. As such, it provides the basis on which an order may be said to have been breached.

## **20 Duration of home detention order**

This clause specifies that a home detention order ends when the term of sentence or remand is completed, or if the person is released on parole, or if the home detention order is revoked.

Where a home detainee is released on parole, all home detention orders to which the person may be subject end.

## **Part 2.4 Revocation of home detention orders**

### **21 Arrest without warrant of person subject to home detention order**

This clause allows for police officers to arrest a person without a warrant if the police officer believes on reasonable grounds that a person subject to a home detention order has breached, or will breach their obligations under the order.

Where a police officer makes such an arrest, the person must be brought before the relevant court as soon as practicable.

### **22 Arrest with warrant of person subject to home detention order**

Where a judicial officer is satisfied that a person subject to a home detention order has breached or will breach their obligations under the order, the officer may issue a warrant for the apprehension of a person to be brought before the relevant court. This clause also prescribes what information must be included on the warrant.

### **23 Duty of corrections officers relating to breaches of home detention orders**

Where a corrections officer believes on reasonable grounds that a person subject to a home detention order has breached obligations of the order, the officer must inform the court about the breach.

### **24 Revocation of home detention order**

A court may make an order to revoke a home detention order if the court is satisfied that the person on the home detention order has breached the obligations of the order; the persons circumstances have changed so that it is no longer appropriate that home detention be served; a person with whom the person subject to an order is living withdraws their consent; or the person applies to the court for the order to be revoked.

**25 Date of effect of revocation of home detention orders**

Where a home detention order is to be revoked the court must specify when the revocation takes effect from. The date must be either the date the court makes the order, the date the court believes the breach took place, or where more than one breach occurred, the date where it appears that the person first breached their obligations. The prescription of this process is to accommodate the notion that time served on home detention as a remand option may count toward time served in custody on a sentence of imprisonment. See also clause 16 & 17.

**26 Consequential revocation of other home detention orders**

This clause requires that where a sentenced offender's home detention order is revoked, any other home detention order the offender is subject to are also automatically revoked.

**Part 2.5 Other provisions about home detention orders**

**27 Regulations about home detention**

This clause provides for the use of regulations in relation to conditions that people subject to a home detention order may be obliged to comply with. These regulations include testing procedures for detecting alcohol or drug use, employment conditions, community service work and direction from a corrections officer to participate in and counselling and treatment programs.

**28 Exercise of functions by court after home detention order has ended**

This clause stipulates that the court may exercise a function in relation to a home detention order after the order has ended.



## **Chapter 3 Nonparole periods and parole**

### **Part 3.1 Preliminary**

#### **29 Definitions for ch 3**

This clause provides definitions of terms to be used in chapter 3.

#### **30 Application of ch 3 to victim who is a child**

Where the victim of a sentenced offender is a child under the age of 15 the provisions of this Act which relate to the victim will be administered by the person who has parental responsibility for the child rather than with the child.

The person nominated as having parental responsibility is a person qualifying in this position as provided for in the *Children and Young People Act 1999*, section 17.

### **Part 3.2 Nonparole periods**

#### **31 Court to set nonparole period**

This clause requires the court to set a non parole period when a person is sentenced to a term of imprisonment of 12 months or longer. The term of imprisonment may include an aggregate of sentences imposed at the particular proceedings. This links to clause 32 (1) which provides that this requirement also applies where there is an existing sentence of imprisonment.

Where a person is subject to an existing sentence of imprisonment and is on parole, a new sentence of imprisonment will automatically revoke the parole order, as provided for in clause 61, and the person is liable to serve the entire parole period in custody in addition to the new sentence of imprisonment. The parole period is the period commencing on, and including, the parole date through until, but excluding, the expiry date on the parole order. (The automatic revocation of the parole order also applies when a parole order expires if the offence for which the person is sentenced occurred within the parole period as provided for in clause 61).

The liability to serve the entire parole period in prison does not preclude the person from being further released to parole.

The court is required to specify the commencement date and the expiry date for the nonparole period. The commencement date may be backdated in relation to section 451 of the *Crimes Act 1900* to take into account time spent in custody on remand. This includes time on remand served by way of a home detention order under the provisions of clause 17.

The court has discretion in the requirement to set a non parole period where it considers the fixing of a nonparole period would be inappropriate.

A sentence to life imprisonment does not attract a nonparole period.

A sentence of imprisonment which is completely suspended, and any part of a sentence of imprisonment which is suspended, are not subject to the fixing of a non-

parole period and are not included in the aggregation of sentence length to determine the requirement for the fixing of a non-parole period.

Provision is made for continuity and application of the section where offences to be aggregated or to be subject to the setting of a nonparole period may occur prior to and after the commencement of this Act.

Provision is made for the Attorney-General, the Director of Public Prosecutions, the Secretary of the Sentence Administration Board or the person sentenced, to apply to the court to set a non-parole period if the court has not done so, or has not done so properly according to the requirements of this part.

### **32 Setting of nonparole period for person serving 1 or more previous sentences**

This clause provides for the fixing of a nonparole period when a person sentenced to a term of imprisonment (a new sentence) is already serving one or more sentences of imprisonment (existing sentences).

A person serving an existing sentence may be serving a sentence in prison which does not have a non parole period fixed (because it is a term less than twelve months); or may be in prison serving the nonparole period of a term of imprisonment; or may be in the community on parole.

When a sentence of imprisonment is imposed on a person subject to an existing sentence of imprisonment the court must consider the aggregate of the terms of the existing and the new sentence. If the aggregate of the terms is twelve months or longer, the court is required to fix a non parole period according to the provisions of section 31.

Where a nonparole period had been fixed for an existing sentence, the imposition of a new sentence of imprisonment revokes the existing nonparole period and the court must set a new nonparole period. This applies whether the person is currently imprisoned or is on parole.

The new nonparole period must not make the person eligible for release on parole earlier than they would have been eligible for release under an existing sentence.

In relation to the automatic revocation of a parole order, the policy of 'no clean street time' applies as provided for at clause 43. A term of imprisonment in relation to a parole order is not discharged unless the period of parole is completed without revocation. In the case where parole is revoked by the imposition of a new sentence of imprisonment, the person is liable to serve the entire parole period in custody in addition to the new term of imprisonment imposed.

Provision is made for the aggregation of terms of imprisonment and setting of the nonparole period for sentences of imprisonment imposed before or after the commencement of this Act.

**33 Secretary to be told about fixing of nonparole period etc**

This clause requires the court to inform and provide details to the Sentence Administration Board Secretariat when a person is sentenced to imprisonment with a nonparole period. It is essential for this information to be forwarded to allow the secretary to perform necessary administrative functions.

Where the victims consent, the court is required to provide details of the victims (as defined in this Act) to the Secretary to enable the victims to be contacted regarding their rights under this Act and their registration on a victims register as described in clause 34. This clause allows the Board to take into account any concerns of which it aware have been made by the victims.

**34 Secretary to keep victims register etc**

This clause, in conjunction with clause 33, provides for victims to be made aware of their rights under this Act. The secretary will keep a victims register with contact details of victims to facilitate appropriate contact.

**Part 3.3 Parole**

**Division 3.3.1 General**

**35 Application of part 3.3**

This part applies to persons serving home detention after sentencing ie as a 'sentenced offender'. Parolees are sentenced offenders.

**Division 3.3.2 Release on parole**

**36 Eligibility for release on parole**

A nonparole set at time of sentence applies where a person serves the sentence of imprisonment in prison or by way of home detention. Where a nonparole period has been set the person is eligible for release on parole when the nonparole period has been served.

Release to parole is not permitted where the person is required to be kept in custody beyond the nonparole period because of offences against a State or the Commonwealth.

**37 Parole order necessary for release**

Release to parole is not automatic, a sentenced offender may only be released on parole under the authority of a parole order.

**38 Conditions of parole**

A parole order is subject to standard conditions listed in the regulations including supervision. The board may impose additional conditions but may not change or reduce the standard conditions or impose conditions which are inconsistent with the standard conditions.

The board has the power to make and revoke a parole order.

**39 Obligations under parole order**

This clause establishes the offender's obligation to comply with this Act and any order made under this Act.

**40 Recission of parole order before release**

Where the Board has made a parole order specifying a date for a person's release on parole, it may rescind the order before the person's release. This would be necessary if events or information came to the attention of the Board during the interim period, which were such that the Board no longer considered the person suitable for release on parole.

**41 Release under parole order**

This section gives authority for a person to be released on a parole order on the date stated in the order (the parole date) and gives authority for the prison to hold the person until the time of release. It allows the person to be released at a reasonable time, on the parole date (In previous times, a prisoner was unable to remain at a prison on the date of release and was ejected immediately after midnight). The offender may also request to be released on the next working day if the date for release falls on a weekend or public holiday.

**42 Victim to be told of decisions to make parole order etc**

This clause applies where a victim of an offender has expressed to the Board concerns about safety and the need for protection in relation to the offender's release on parole. The Board must, after considering the offender's release on parole, inform the victim, or the victim's representative, whether the person will be released to parole and if so the date of the release, and the offender's obligations under the order.

#### **43 Sentence not discharged until parole period completed**

This clause establishes that a person released on parole has not discharged the period of imprisonment to which the parole order relates, unless the parole has been completed without revocation. The person is not credited with time already served during parole when a revocation occurs. This policy is commonly referred to as 'no clean street time'. It contrasts with the policy of 'clean street time' where the offender is taken to discharge the period of imprisonment as it is served on parole until the parole is completed or until it is revoked. The difference is apparent when a parole order is revoked. Under the 'clean street time' policy, if a person's parole order is revoked, the person is liable to serve only the remainder of the parole period in prison. Under the 'no clean street time policy', if a person's parole order is revoked, the person is liable to serve the entire period of the parole in prison.

Where a parolee is sentenced to a further period of imprisonment while on parole (provided for in clause 26), the entire parole period is incorporated in to any new sentence of imprisonment.

The liability to serve the entire parole period in prison does not preclude the person from being further released to parole.

Where a matter relating to breach of parole has occurred during the parole period but the board is unable to consider the matter during the parole period, the board may conduct its proceedings to consider the matter after the expiry of the parole period and retrospectively revoke parole. An example where this situation may occur is when a warrant has been issued to bring the person before the board with regard to a breach allegation but the person is not arrested on the warrant until after the expiry of the parole period.

#### **44 Parole order not invalidated by failure to comply with procedural requirements**

A parole order is not made invalid only if the Board has failed to comply with any procedural requirement.

### **Division 3.3.3 Making decisions about release on parole**

#### **45 Consideration of release on parole**

The Board must consider whether or not a person should be released on parole before the eligibility date. Where practicable, consideration should be made in sufficient time to allow identified problems associated with release to parole to be resolved.

If the eligibility date has passed because the board has declined to make a parole order for the person, or because the parole period has been revoked, the Board must consider the person's release to parole within each successive year unless the offender is no longer eligible for release on parole. An example of ineligibility is where the offender is made subject to a new fixed term of imprisonment.

The Board may not decline consideration for a period greater than three years since it was last considered.

#### **46 Board to seek views of victims**

The clause relates to the board's consideration of releasing an offender on parole when the board is aware of any victim (as defined in this Act) of the offender.

This clause provides for the victim to make a written submission or statement about any concerns relating to the release of the offender on parole including the likely effect on the victim, or the victim's family. In addition they may include any concerns the victim or the victim's family may have about the need for protection from violence or harassment from the offender. The Board must consider the contents of the submission or statement in its deliberations about whether the offender should be released on parole and in deciding any conditions imposed on a parole order. The Board may make conditions directly relating to the victim where appropriate.

The victim will be allowed a time not less than seven days to provide a written submission or statement to the Board.

#### **47 Initial decision of board about parole**

This clause provides for the board to consider whether or not a person should be released on parole. This applies when a person is serving a nonparole period or when a person has been refused parole previously and is reviewed by the board.

If the board decides that a person should be released on parole it must make a parole order specifying the parole date. This may be later than the eligibility date.

If the board is of the opinion, based on the information before it, that it cannot make a decision about the release of the person on parole it must issue a notice of its intention to refuse parole.

Further steps in the process of making a decision about parole where the decision cannot initially be formed, are provided for at clauses 48, 49 and 50.

Note that clause 33 allows the board to revoke a parole order before the person has been released to parole.

#### **48 Notice of intention to refuse parole**

This clause sets out the procedures regarding a notice of intention to refuse parole.

The notice of intention to refuse parole must be issued in writing and must include a meeting date for the board to consider its decision. The meeting should be held as soon as practicable but must allow at least 14 days after the notification has been given to the offender. The notification should be accompanied by any reports and documents used by the board in making its initial decision to refuse. However, certain documents which the board may have considered are protected from release to the person under clause 95.

If the person having received a notice of intention to refuse parole, wishes to make a submission to the Board, the person must advise the Secretary no later than seven days before the meeting date in order for the Secretary to facilitate the meeting.

**49 Further consideration by board of intention to refuse parole**

This clause provides that a person who has received a notice of intention to refuse parole may make a submission to the Board about being released on parole. The Secretary must facilitate the meeting of the Board, on the date stated in the notice, to decide whether or not the person should be released on parole.

A submission may be made verbally or in writing and may be made on behalf of the person by a lawyer or where the Board consents, by another representative. If a further meeting is held by the Board in relation to the decision about release to parole, the offender is entitled to make a further submission.

Where a person is serving a nonparole period, the Board must, if practicable, make a decision regarding release on parole before the eligibility date.

The rights of a person entitled under this Act to make a submission are provided for in clause 94. Meetings conducted for the purpose of reviewing a notice of refusal are subject to the provisions for inquiries in clauses 89 to 95.

**50 Decision of board about parole after further consideration**

This clause requires the Board, after considering the information initially before it and submissions made, to either defer its decision or to decide whether or not to release the person on parole. If the Board decides not to release the person on parole it must make a record of its reasons and provide a copy of these to the person when it informs them of its decision.

**51 General duty of board in making parole decisions**

This clause provides for matters to which the Board must have regard in its decision about whether to make a parole order for a person. The Board is required to consider public interest as a primary factor when making a decision.

Further matters to be taken into account may be specified under the regulations.

**Division 3.3.4 Parole orders in exceptional circumstances**

**52 Making of parole orders in exceptional circumstances**

This clause provides for the Board to release a person to parole before the end of the nonparole period under exceptional circumstances only.

**Part 3.4 Revocation of parole orders**

**53 Arrest of parolee without warrant**

This clause provides that a police officer may arrest a parolee without a warrant if the police officer believes on reasonable grounds that parolee has breached their parole order.

If a police officer arrests a parolee subject to this clause, the police officer must bring the parolee before the Board as soon as practicable. This is facilitated through the Secretary.

**54 Arrest of parolee with warrant**

This clause provides that a judge of the Supreme Court or a magistrate may issue a warrant for the arrest of a parolee if the judge or magistrate believes that the parolee has breached their parole order. A person arrested on a warrant issued under this clause must be brought before the Board as soon as practicable. Warrants issued under this clause permit the extradition of a person from outside of the ACT.

**55 Duty of corrections officers relating to breaches of parole orders**

This provides that corrections officers must inform the Board if a parolee has breached any condition of their parole order.

**56 Warrant remanding parolee into custody**

This clause provides for the Board to adjourn a meeting held for an inquiry into an allegation of breach of parole and to hold the person who is the subject of the inquiry in custody until the next meeting. The Board may issue a warrant remanding the offender in custody for up to 15 days for each of the allowed two adjournments. In most circumstances a meeting regarding a breach allegation will be adjourned no more than once.

The Board is limited with regard to a second adjournment which can only be made when circumstances beyond the Board's control necessitate the adjournment in order for a decision regarding the breach allegation to be made.

**57 Inquiry into suspected breaches of parole orders**

This allows the Board to conduct inquiries into suspected breaches of parole orders and entitles a parolee to make submissions to the Board about an inquiry into the person's parole order. The submission may be oral or in writing, and may be made by the parolee or by another person on the parolee's behalf. Part 4.3 makes provisions regarding inquiries by the board.

The Board may inquire into a breach of parole whether or not the parole order has ended.

**58 Revocation of parole orders**

This provides the grounds on which the Board may revoke a parole order, the process required before the Board may revoke a parole order, and the options available to the Board for dealing with a breach of a parole order.

**59 Date of effect of revocation of parole order**

This provides that the date of effect of revocation of a parole order may be different from the date the revocation order was made. This, combined with the provisions of clause 36 (Sentence not discharged until parole period completed), provides that a person whose parole order is revoked by the Board after the period of the parole order is liable to serve the whole of the parole period in prison.

**60 Warrant by board committing parolee to prison**

This clause provides the Board with the power to issue a warrant committing a person to prison to serve the parole period if the parole has been revoked by the Board.



**61 Parole order revoked if parolee sentenced to imprisonment**

This provides that a parole order is automatically revoked if a person on parole is sentenced to a term of imprisonment that is not wholly suspended.

The automatic revocation applies whether or not the parole period has expired at the time that the new sentence is imposed.

**Part 3.5 Other provisions about parole**

**62 Regulations about parole**

This clause provides for the implementation of regulations governing the management, control, administration and supervision of parole orders. The regulations will include testing of parolees for alcohol or drug use.

They will also prescribe standard conditions for parole orders.

Functions of a corrections officer will be stipulated in the regulations.

**63 Exercise of functions by board after parole order has ended**

This clause allows the Board to exercise its functions in relation to a parole order even after the order has ended. This includes holding an inquiry into a breach allegation and revocation of a parole order.

## **Chapter 4 Sentence Administration Board**

### **Part 4.1 Establishment and membership of board**

#### **64 Establishment of board**

This clause establishes the board. This board will replace the previous Parole Board established under the *Parole Act 1976*, which is repealed under this Act.

#### **65 Functions of board**

This clause describes the functions of the board. They deal with issues regarding the release of prisoners on parole, monitoring of parole orders, dealing with breaches of parole orders, any other function provided by legislation and, upon request, the provision of advice to the Minister about sentenced offenders. This last-mentioned function is designed to include the provision of advice to the Minister about applications for release on licence.

#### **66 Membership of board**

This clause provides for the membership of the Board, which to comprise of appointed members.

#### **67 Appointment of members**

This clause provides that the Minister must appoint Board members consisting of a Chairperson who must be a judicially qualified person, one or two deputy Chairpersons (also judicially qualified) and no more than 8 other members. A judicially qualified person must be a judge or retired judge of the Supreme Court or a magistrate or retired magistrate or a person qualified to be appointed as a resident judge of the Supreme Court. (Under the *Supreme Court Act 1933* a person under the age of 70 years is eligible to be appointed as a resident judge if the person is or has been a judge of a superior court or has been a judge of the Supreme Court; or has been a legal practitioner for not less than 5 years.)

The Chairperson and deputy Chairpersons are to be referred to as the judicial members and the other 8 members are to be referred to as the non-judicial members. An individual who holds the office of judge or magistrate will not be prevented (by the fact that he or she holds an office) from being appointed to the office of judicial member. A judicial member will be able to perform all the functions of his or her office as a judge or magistrate when occupying the position of judicial member of the board.

No legislative criteria are applied to the 8 other members who will be appointed by the Minister.

#### **68 Term of appointment of members etc**

This clause provides that a member of the Board is to be appointed for a maximum period of 3 years. (A person may be eligible for re-appointment under the *Legislation Act 2001*).

**69 Ending of appointment of members**

This clause provides the criteria under which the Minister may end a Board Member's appointment. These include: misbehaviour, incapacity, bankruptcy, failure to disclose interests (under clause 77), absence from 3 consecutive meetings without having been granted leave, conviction of an indictable offence and, for judicial members, no longer being judicially qualified.

**70 Conditions of appointment of members generally**

This clause prescribes that the Minister will decide the general conditions of the Board Members, where these conditions are not provided for in this Act or another Territory law.

**71 Divisions of board**

This clause allows the Chairperson to create divisions of the Board, which may then perform any or all of the functions of the Board. This is an efficiency measure. A division will include one or two judicial members and at least 2 and no more than 4 non-judicial members.

**Part 4.2 Proceedings of board**

**72 Time and place of board meetings**

The Board is to decide its own meeting times and venues. The Chairperson may call a meeting at any time and the Board may adjourn proceedings for any reason it considers appropriate.

**73 Presiding at board meetings**

The Chairperson or a judicial-member nominated by the Chairperson is to preside at any meeting of the Board.

**74 Conduct of board proceedings**

This clause stipulates that a Board meeting requires a quorum of three members at least one of whom is a judicial member, and at least two of whom are non-judicial members. (This applies to meetings of the Board, and to meetings of divisions.)

Issues will be decided by a majority of votes, unless the votes are equal, in which case, the Chairperson will have an additional deciding vote.

Members may be present at meetings by telephone, closed-circuit television or other communication as the Board decides.

The Board may reach a resolution when not at a meeting, providing all members agree to the proposed resolution in writing, and notice of the resolution is provided in a manner decided by the Board. This is an efficiency measure.

**75 Board procedure**

This clause provides that the Board is not bound by the rules of evidence and may inform itself in any way it considers appropriate providing it observes natural justice principles.

Board proceedings are not to be open to the public unless the Board decides that the proceeding is to be conducted completely, or partly, in public.

Board meetings are to be conducted in a non-adversarial, informal and fair manner.

Persons other than eligible persons, who are listed in this clause, are not, without permission of the presiding judicial member, entitled to be present at meetings of the Board. This provision does not limit the power of the Board to conduct all or part of its proceedings in private.

**76 Board minutes**

This clause provides that the Board must keep minutes of its proceedings.

**77 Disclosure of interests by members of board**

This clause provides that all Board Members must disclose any interest in an issue being considered or about to be considered by the Board. Any interest is to be disclosed as soon as the Member becomes aware of it, to a meeting of the Board. The disclosure is to be recorded in the minutes, and the member is to refrain from participating in any consideration of or decision regarding the issue unless the Board decides otherwise. No Member with an interest in a matter may be present when the other Members consider whether members with interest in the matter may participate in consideration of, or decision about, the issue.

At the end of each financial year, the Chairperson must inform the Minister of any disclosure of interest during the financial year.

**78 Authentication of board documents**

Any document requiring authentication is authentic if signed by the judicial member presiding over the relevant proceeding or, in the absence of that member, any other member who was present at the relevant proceeding or the secretary.

**79 Evidentiary certificate about board decisions**

A certificate provided by the Secretary recording any decision of the Board is admissible evidence in any legal proceeding.

**80 Proof of certain matters relating to board not required**

The Board is not required to produce evidence of its constitution; any decision or recommendation; the appointment of, or holding office by, any member; or the presence or nature of a quorum at any Board meeting until evidence is given that the above requirements of the Board have not been met.

**81 Application of pt 4.2 and pt 4.3 to divisions of board**

This provides that this part and part 4.3 (Inquiries by board) apply to divisions of the Board in the same manner as they apply to the Board, except where stipulated otherwise.

### **Part 4.3 Inquiries by board**

#### **82 Board may hold inquiries and hearings**

This clause provides that the Board may hold inquiries, including conducting hearings, to undertake any of its functions.

#### **83 Sentenced offenders to appear before board**

This clause applies to parolees, that is people subject to parole orders, who are the subject of an inquiry by the Board.

The Board may call on the parolee to appear before it and if the person fails to appear, the board may issue a warrant for the person's arrest. The board may also issue a warrant if it believes that the person will not appear if called to do so, or if it considers the issuing of a warrant appropriate for any other reason.

A warrant issued by the board is to be signed by the Chairperson, or the deputy Chairperson or the Secretary of the Board. The warrant will empower any police officer to arrest the person, place them in custody, and bring them before the Board as soon as practicable.

#### **84 Board may require attendance of people and production of documents**

This clause provides for a judicial member of the Board to summon witnesses and require the provision of documents for evidence by way of a notice in writing. The notice must state the time and place that the attendance of a witness or provision of documents is required.

The clause provides penalties for failure to comply with the requirements of this clause.

The clause also provides that a person is not required to provide to the Board a document that the Minister has certified may endanger a person or otherwise be contrary to the public interest.

#### **85 Giving evidence and answering questions before board**

This clause provides rules for the giving of evidence and answering of questions by people who appear before the Board. It also places limitations on the use of information provided by witnesses before the Board in criminal proceedings.

#### **86 Offences relating to hearings by board**

This clause provides offences and penalties for providing untrue or misleading statements or documents to the Board or for failing to take an oath or affirmation or to answer a question when required without a reasonable excuse.

#### **87 Misconduct before the board**

This clause provides for offences and penalties relating to misconduct before the Board.

#### **88 Reports for the board**

This clause provides for the Board to require a report from a corrections officer, or authority of New South Wales regarding a person who is serving a term of imprisonment or who is subject to a parole order.

**89 Rights of sentenced offenders making submissions to board**

This clause outlines the rights of people who are entitled to make submissions to the Board under this Act.

**90 Allowances and expenses payable to board witness**

This clause provides that a person required to appear to give evidence before the Board, other than the person to whom the proceedings relate, or a witness who is in a prison or remand centre, is entitled to be paid allowances and expenses, as decided by the Board.

**Part 4.4 Other provisions about the board**

**91 Effect of board warrants**

This clause provides that a warrant issued by the Board has the same effect and powers as a warrant issued by a court, and, as such, all persons acting judicially, or with regard to the warrant, must take notice of a warrant issued by the Board.

**92 Secretary and assistant secretaries**

This clause provides that the Chief Executive may appoint a Secretary and Assistant Secretaries of the Board. Assistant Secretaries may perform the function of the Secretary as decided by the Chief Executive.

## **Chapter 5 Miscellaneous**

### **93 Chief Minister may make arrangements with NSW**

This clause provides that the Chief Minister may make arrangements with the Governor of New South Wales in relation to persons sentenced in the ACT and serving their sentences in NSW. It allows for officers of NSW to perform their functions with regard to ACT prisoners as though they were prisoners of NSW, and for reports prepared by NSW officers regarding ACT prisoners to be given to ACT authorities.

### **94 Exercise of prerogative of mercy and other laws not affected**

This clause provides that the exercise of the royal prerogative of mercy or the operation of any Act or any other law in force in the Territory relating to remandees or offenders is not affected by this Act.

### **95 Security of certain information**

This clause provides that any report or document, or part thereof, may be withheld from a person if a judicial member considers that to allow the person access to the information would create a situation of risk to security in a prison or remand centre, jeopardise a lawful investigation, endanger someone or prejudice the public interest.

### **96 Corrections officers**

This clause provides that the Chief Executive may appoint public servants to be corrections officers for this Act.

### **97 Approved forms**

This clause provides that the Minister may approve forms for the purposes of this Act, and that such forms must be used for the purposes for which they are approved. Approved forms are notifiable instruments and are to be notified in the Gazette.

### **98 Regulation-making power**

This clause provides for the Executive to make regulations pursuant to this Act, and the regulations may prescribe what constitutes an offence against the regulations and prescribe a maximum penalty of not more than 10 penalty units for an offence against the regulations.

### **99 Review of home detention provisions**

This clause provides that the Minister must review parts of this Act that relate to home detention as soon as possible 2 years after commencement of the Act and must present a report to the Assembly on the operation of the Act, within 6 months after 2 years of the commencement.

## **Chapter 6 Transitional provisions, repeals and amendments**

This chapter makes provision for arrangements to allow for orders made and other powers exercised under the *Parole Act 1976* to remain in force, as though they were made under this Act. It repeals the *Parole Act 1976* and provides for amendments to other legislation to support the provisions of this Act.

### **100 Definitions for ch 6**

This clause provides definitions for this chapter.

**Clauses 101 – 107** provide for transitional arrangements for the *Parole Act 1976*.

### **107 – Appointments to former board**

This clause provides that the chairperson of the Parole Board under the *Parole Act 1976* is, upon commencement of this Act, to be taken to have been appointed as the chairperson of the sentence administration board under this Act, for a period of three years.

It also provides that members of the former Parole Board are, upon the commencement of this Act, to be taken to have been appointed as members of the sentence administration board, for a period of three years.

This clause provides that instruments of appointment, mentioned at section 68(2) are not required in relation to the appointments mentioned in this section.

This clause has been included in the Bill to ensure that there is an operational sentence administration board from the date of commencement of this Act. Given the likely time of the commencement of this Act, and the proximity of an election, caretaker government procedures may prevent appointment of members to the sentence administration board in the usual fashion.

### **108 Regulations about transitional matters**

This clause provides for regulations to be made about transitional matters, necessary or useful for this Act. This includes regulations about matters that provide links between the *Parole Act 1976* and this Act. Regulations made under this clause must be applied consistently with provisions of this Act, as far as that is possible. The provisions of this clause are in addition to those of clause 109.

### **109 Regulations modifying ch 6**

This clause provides for regulations to be made that modify provisions of this chapter that, in the Executive's opinion are not adequately dealt with in this chapter. It also provides for regulations to be made in relation to matters that are not dealt with in this chapter.



**110 Repeals**

This clause provides for the repeal of the *Parole Act 1976* and the *Parole Board (Fees) Regulation SL 1977*.

**111 Acts amended – sch 1**

This clause provides for Acts listed in schedule 1 of this Act to be amended as indicated in the schedule.

**112 Expiry of ch 6**

This clause provides that this chapter will expire one year after commencement.

## **Schedule 1 Consequential amendments**

This schedule contains provisions to amend other Acts to enable the effective operation of the provisions of this Act.

### **Part 1.1 Custodial Escorts Act 1998**

#### **1.1 Section 3 definition of arrested person, paragraph (a)(i)**

In this section the term 'for an offence' is omitted from the definition of 'arrested person' to allow the Custodial Escorts Act (CEA) to cover persons who have been arrested but not in relation to an offence. This is required to enable the CEA to apply to people arrested for breach of home detention and parole, neither of which is an offence.

#### **1.2 Section 3, definition of court**

The definition of a court is amended to include the Sentence Administration Board. This allows for custodial escorts to perform their functions in response to the Sentence Administration Board as they would to a court.

### **Part 1.2 Director of Public Prosecutions Act 1990**

#### **1.3 Section 6 (1) (ga)**

This amendment allows the Director of Public Prosecutions to attend a meeting of the Sentence Administration Board.

### **Part 1.3 Evidence (Miscellaneous Provisions) Act 1991**

#### **1.5 Section 14, definition of territory court, paragraph (e)**

This provides for the Sentence Administration Board to be included in the definition of Territory court.

### **Part 1.4 Parole Orders (Transfer) Act 1983**

#### **1.6 Section 3, new definition of board**

This amends "board" in the *Parole Orders (Transfer) Act 1983* to refer to the Sentence Administration Board.

#### **1.7 Section 3, definition of Parole Board**

The definition of Parole Board is omitted as the Board is re-defined as the Sentence Administration Board.

#### **1.8 Section 3, definition of parole order, paragraph (a)**

*Parole Act 1976* is omitted and *Rehabilitation of Offenders Act* is substituted to allow for orders made under this Act.

#### **1.9 Section 3, new definition of Rehabilitation of Offenders Act**

This amendment allows references to *Rehabilitation of Offenders Act* to be taken as references to the *Rehabilitation of Offenders (Interim) Act 2001*.

#### **1.10 Section 7 (1) (d)**

Parole Board is substituted with the term board which refers to the Sentence Administration Board.

**1.10 Section 9 (2) (b)**

This clause omits 'forward to the Chairman of the Parole Board' which is to be replaced with 'give the chairperson of the board'.

**1.12-13 Section 10 (2) (c) and (4)**

This replaces the current reference to the *Parole Act 1976* with a reference to the *Rehabilitation of Offenders (Interim) Act 2001*.

**Part 1.5 Periodic Detention Act 1995**

**1.14 Section 33**

Section 33 of the *Periodic Detention Act 1995* is amended so that references to the *Parole Act 1976* are replaced with references to the *Rehabilitation of Offenders (Interim) Act 2001*. In addition an error in subsection 33 (b) is corrected.

**Part 1.6 Remand Centres Act 1976**

**1.12 New section 15 (1) (r)**

This provides for two new categories of persons who may be detained in a remand centre. This amendment is to allow the holding of these categories of people in Canberra, for practical reasons. Sentenced prisoners, undergoing assessment of suitability for a home detention order may, as a result of this provision, remain in remand custody in the ACT. This provides for easy access by corrections officers undertaking the assessment. The holding of people between appearances before the Sentence Administration Board complements the power in this Bill for the board to issue warrants for the holding of parolees in custody between Board hearings. The capacity to hold people in a remand centre pending appearance before the Board provides flexibility of location for the detention of such people, who currently may only be held in police custody.

**Part 1.7 Removal of Prisoners Act 1968**

**1.17 Section 3 (1), definition of authorised officer**

This includes the Chairperson, deputy chairperson or secretary of the Sentence Administration Board as authorised officers under the *Removal of Prisoners Act 1968*. This amendment provides for the board to issue commitment warrants to allow for the imprisonment of ACT parolees.

**Dictionary**

The dictionary provides definitions of terms used in the Act, which apply to the use of these terms in the Act, unless otherwise specified (for example, in relation to a section or part).