



ANNO TRICESIMO SECUNDO

# ELIZABETHAE II REGINAE

A.D. 1983

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No. 99 of 1983

An Act to amend the Prisons Act, 1936.

[Assented to 20 December 1983]

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

1. (1) This Act may be cited as the "Prisons Act Amendment Act (No. 2), 1983". Short title.
- (2) The Prisons Act, 1936, is in this Act referred to as "the principal Act".
2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of any specified provisions of this Act until a day fixed by the proclamation, or a day to be fixed by subsequent proclamation.
3. Section 3 of the principal Act is amended by striking out the item: Amendment of s.3—Arrangement.  

PART IVB—CONDITIONAL RELEASE

and substituting the following item:  

PART IVB—REMISSION OF SENTENCE
4. Section 5 of the principal Act is amended by striking out the definition of "conditional release". Amendment of s.5—Interpretation.
5. Section 6aa of the principal Act is repealed and the following section is substituted: Repeal of s.6aa and substitution of new section.
  - 6aa. (1) In this section—
    - "the amending Act" means the Prisons Act Amendment Act (No. 2), 1983: Transitional provisions relating to the Prisons Act Amendment Act (No. 2), 1983.
    - "the parole board" means the parole board as constituted under this Act immediately prior to the commencement of the amending Act.

(2) An order of the parole board in force immediately prior to the commencement of the amending Act shall, upon that commencement, remain in force for the purposes of, and subject to, this Act, as amended by the amending Act, as if it were an order for release on parole made under this Act as so amended.

(3) Where an application for the release of a prisoner on parole was before the board but had not been finally disposed of at the commencement of the amending Act, the following provisions apply:

(a) in the case of a prisoner in respect of whom a non-parole period has been fixed (whether or not that non-parole period has expired), the application shall be deemed to have been withdrawn and the conditions upon which the prisoner is to be released on parole pursuant to this Act, as amended by the amending Act, shall be fixed by the parole board in accordance with this Act as so amended;

and

(b) in the case of a prisoner in respect of whom a non-parole period has not been fixed, his application shall be disposed of by the parole board in accordance with this Act as if the amending Act were not in force.

(4) All other proceedings before the parole board and not finally disposed of at the commencement of the amending Act shall be disposed of by the parole board in accordance with this Act, as amended by the amending Act.

(5) Upon the commencement of the amending Act, all members of the board shall vacate their respective offices for the purpose of enabling new appointments to those offices to be made but, notwithstanding that vacation of office, those persons shall continue as members of the parole board for so long as is necessary to enable it to complete its business under this section.

Amendment of  
s. 14—  
Regulations.

6. Section 14 of the principal Act is amended by striking out paragraph (b).

Amendment of  
s. 26—  
Term of  
imprisonment in  
any labour prison.

7. Section 26 of the principal Act is amended by striking out the passage "the regulations in force as to remission of sentences" and substituting the passage "this Act or any other Act or law".

Repeal of s. 41  
and substitution  
of new section.

8. Section 41 of the principal Act is repealed and the following section is substituted:

Release of a  
prisoner from  
prison.

41. The Director may, by instrument in writing, authorize the release of a prisoner from prison on any day during the period of one month preceding the day on which he is due to be released from prison pursuant to any other provision of this Act.

Amendment of  
s. 42—  
Interpretation.

9. Section 42 of the principal Act is amended by striking out the definition of "probationary release".

Amendment of  
s. 42a—  
The Parole Board  
of South  
Australia.

10. Section 42a of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

- (a) one, who shall be the chairman of the board, shall be—
- (i) a Judge of the Supreme Court;
  - (ii) a person who holds judicial office under the Local and District Criminal Courts Act, 1926;
  - (iii) a person who has retired from the office of Judge of the Supreme Court or from judicial office under the Local and District Criminal Courts Act, 1926, but who has not attained the age of seventy years;
- or
- (iv) a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of criminology or penology, or any other related science; ;
- (b) by striking out from paragraph (b) of subsection (2) the passage “psychology or”;
- (c) by inserting in paragraph (c) of subsection (2) after the passage “the science of” the passage “criminology or”;
- (d) by inserting in subsection (3) after the word “woman” the passage “and at least one a man”;
- and
- (e) by inserting after subsection (3) the following subsections:
- (4) At least one of the members of the board must be a person of Aboriginal descent.
  - (5) The Governor—
    - (a) shall appoint one of the members of the board to be the deputy chairman of the board;
 and
    - (b) may appoint a suitable person to be the deputy of any member of the board other than the chairman or deputy chairman.
  - (6) If a member of the board is for any reason absent or unable to act in his capacity as a member of the board, his deputy may act as a member of the board.

**11. Section 42c of the principal Act is repealed and the following sections are substituted:**

Repeal of s. 42c and substitution of new sections.

**42c. (1) Subject to this section, the board shall sit as a full board.**

Proceedings of the board.

(2) If the chairman thinks it necessary or desirable for the purpose of expediting the determination of proceedings before the board, the board may sit in separate divisions.

(3) The chairman or deputy chairman and any two other members of the board constitute a division of the board.

(4) Where the board sits as a full board, the following provisions apply—

- (a) the chairman or, in his absence, the deputy chairman, shall preside and, in the absence of both the chairman and the deputy chairman, a member chosen from amongst their own number by the members present shall preside;
  - (b) four members shall constitute a quorum and the board shall not proceed with the hearing or determination of any matter unless a quorum is present;
  - (c) a question arising for decision by the board shall be decided by a majority of the votes cast by the members present;
- and
- (d) each member present shall be entitled to one vote and, in the event of an equality of votes, the person presiding shall be entitled to a second or casting vote.

(5) Where the board sits in separate divisions, the following provisions apply—

- (a) the chairman shall preside at proceedings before the division of which he is a member and the deputy chairman shall preside at proceedings before the division of which he is a member;
  - (b) a division of the board shall not proceed with the hearing or determination of any matter unless all members of the division are present;
  - (c) a decision in which all the members of a division of the board concur shall be a decision of the board;
- and
- (d) the two divisions of the board may sit concurrently for the purpose of hearing and determining separate proceedings.

(6) Where the members of a division of the board are unable to concur in a decision in any proceedings before that division, the person presiding over that division shall refer the proceedings to the board sitting as a full board for fresh hearing and determination.

(7) Subject to this Act, the board, or a division of the board, may conduct its proceedings as it thinks fit.

42ca. (1) No act or proceeding of the board is invalid by reason of a vacancy in its membership or a defect in the appointment of a member.

(2) No liability attaches to a member of the board for an act or omission by him, or by the board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties, under this Act.

(3) A liability that would, but for subsection (2), attach to a member of the board shall lie against the Crown.

Validity of acts of the board and immunity of its members.

Amendment of s. 42f—  
Powers of the board.

12. Section 42f of the principal Act is amended by striking out from paragraphs (a), (c) and (d) of subsection (1) the passage “the chairman or” wherever it occurs.

**13. Section 42g of the principal Act is amended—**

(a) by striking out from paragraph (a) of subsection (1) the passage “probationary release” and substituting the word “parole”;

(b) by inserting in subsection (2) after the passage “indeterminate duration” the passage “, and every prisoner serving a sentence for a term of more than one year in respect of whom a non-parole period has not been fixed”;

and

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

(2a) The board shall, before preparing a report on a prisoner referred to in subsection (2), interview the prisoner in person.

Amendment of  
s. 42g—  
Reports on  
certain prisoners.

**14. Section 42i of the principal Act is amended—**

(a) by striking out from subsection (1) the passage “three months” wherever it occurs and substituting, in each case, the passage “one year”;

(b) by striking out from subsection (1) the passage “by order, fix” and substituting the passage “unless it thinks there is special reason for not doing so, make an order fixing”;

(c) by inserting in paragraph (a) of subsection (2) after the passage “a person” the passage “who is on parole or”;

(d) by striking out from paragraph (c) of subsection (2) the passage “three months” and substituting the passage “one year”;

(e) by striking out from subsection (2) the passage “subject to subsection (4), fix a period during which the person shall not be released on parole, or” and substituting the passage “unless it thinks there is special reason for not doing so, and subject to subsection (4), fix a period during which the person shall not be released on parole, or shall”;

(f) by inserting after subsection (2) the following subsections:

(2a) A person who—

(a) was in prison immediately prior to the commencement of the Prisons Act Amendment Act (No. 2), 1983;

(b) is serving a sentence of life imprisonment, a term of imprisonment exceeding one year or a number of terms under which he is liable to imprisonment for more than one year;

and

(c) has not had a non-parole period fixed in respect of that sentence, or those sentences,

may apply to the sentencing court for an order fixing a non-parole period in respect of that sentence, or those sentences.

(2b) The Crown may apply to the sentencing court for an order extending a non-parole period fixed in respect of the sentence, or sentences, of a prisoner, whether so fixed

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

before or after the commencement of the Prisons Act Amendment Act (No. 2), 1983.;

(g) by striking out from subsection (3) the word “and” preceding paragraph (b) and inserting after that paragraph the following paragraphs:

(c) in the case of an application by a prisoner under subsection (2a), shall not have regard to the behaviour of the prisoner while in prison;

and

(d) in the case of an application by the Crown under subsection (2b), shall have regard to—

(i) the likely behaviour of the prisoner should he be released on parole;

(ii) the behaviour of the prisoner while in prison only insofar as it may assist the court in assessing the behaviour referred to in subparagraph (i);

and

(iii) such other matters as the court thinks relevant.;

(h) by inserting after subsection (3) the following subsection:

(3a) The court shall not make an order extending the non-parole period of a prisoner pursuant to an application under subsection (2b) unless it is satisfied that it is necessary to do so for the protection of any other person, or of other persons generally.;

(i) by inserting in subsection (4) after the passage “The court shall not fix a non-parole period” the passage “under subsection (2)”;

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

(4a) In determining an application by a prisoner under subsection (2a), the court shall, if the prisoner has already served a period of imprisonment that would be equal to, or exceed, a non-parole period determined in accordance with subsections (2) and (3) as reduced by the total number of days of remission credited to the prisoner after the commencement of the Prisons Act Amendment Act (No. 2), 1983, make an order fixing a non-parole period in respect of that prisoner that expires on the day on which the order is made.;

and

(k) by inserting after subsection (5) the following subsection:

(6) For the purposes of this section—

(a) a court that orders that a suspended sentence of imprisonment be carried into effect shall be

deemed to have sentenced the person to whom the order relates to imprisonment;

(b) the Crown and the prisoner shall both be parties to an application under this section;

and

(c) "the sentencing court" means—

(i) where the prisoner is subject to a single sentence of imprisonment, or a number of sentences imposed by the one court, or by a number of courts of the one jurisdiction—that court, or a court of the same jurisdiction as that court or those courts;

or

(ii) where the prisoner is subject to a number of sentences of imprisonment imposed by courts of different jurisdictions—the court of the highest jurisdiction, or a court of the same jurisdiction as that court.

15. Sections 42k, 42l and 42m of the principal Act are repealed and the following section is substituted:

42k. (1) The board shall order that a prisoner be released from prison on parole—

(a) in the case of a prisoner whose non-parole period expired before the commencement of the Prisons Act Amendment Act (No. 2), 1983—as soon as practicable after that commencement;

(b) in the case of a prisoner whose non-parole period was fixed or last extended before the commencement of the Prisons Act Amendment Act (No. 2), 1983, but had not expired before the commencement of that Act—when the period he has served in prison during the non-parole period and the total number of days of remission credited to him after that commencement together equal the non-parole period;

or

(c) in the case of a prisoner whose non-parole period is fixed or extended after the commencement of the Prisons Act Amendment Act (No. 2), 1983—when the period he has served in prison during the non-parole period and the total number of days of remission credited to him during that period, but after that commencement, together equal the non-parole period.

(2) The release of a prisoner on parole—

(a) shall be subject to the conditions—

(i) that the prisoner shall not commit any offence;

and

Repeal of ss. 42k, 42l and 42m and substitution of new section.

Board shall order release of a prisoner upon parole.

(ii) that the prisoner shall be under the supervision of a parole officer and shall obey the reasonable directions of the parole officer,

until the expiration of the period of his parole;

and

(b) may be subject to any other condition fixed by the board or, in the case of a prisoner serving a sentence of life imprisonment, recommended by the board and approved by the Governor, to be effective until the expiration of the period of his parole, or for such lesser period as may be specified in the order.

(3) Where a prisoner who is serving a sentence of life imprisonment is to be released on parole, the board—

(a) shall recommend to the Governor the period, being a period of not less than three years nor more than ten, for which the prisoner should continue on parole;

and

(b) shall forward a copy of its recommendations as to the period of parole and the conditions to which the release on parole is to be subject to the Governor for approval.

(4) In fixing or recommending conditions to which the release on parole of a prisoner will be subject, the board shall have regard to the following matters:

(a) the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment;

(b) the behaviour of the prisoner while in prison;

(c) the behaviour of the prisoner during any previous period of release on parole;

(d) any reports tendered to the board on the health, behaviour or psychological condition of the prisoner, or on any other matter relating to him;

(e) the probable circumstances of the prisoner after his release from prison;

and

(f) any other matters that the board considers relevant.

(5) A prisoner shall not be released pursuant to this section until—

(a) the conditions to which his release on parole will be subject have been fixed or recommended by the board and, if the case so requires, approved by the Governor, pursuant to this section;

and

(b) the prisoner has accepted those conditions in writing.

(6) Where a prisoner refuses or fails to accept the conditions to which his release on parole is to be subject, the board shall review



the circumstances of the prisoner at intervals fixed by the board, being not less than three months nor more than one year.

(7) If, after carrying out a review pursuant to subsection (6), the board is of the opinion that the prisoner will accept the conditions to which his release on parole is to be subject, the board may order the release of the prisoner from prison on parole in accordance with this Act upon the written acceptance by the prisoner of those conditions.

16. Section 42na of the principal Act is amended by striking out from subsection (1) the passage "the period fixed by" and substituting the passage "the period recommended by the board and approved by".

Amendment of s. 42na—  
Duration of parole and subsequent expiry of sentence in relation to prisoners serving life sentences.

17. Section 42nb of the principal Act is amended by inserting after subsection (3) the following subsections:

Amendment of s. 42nb—  
Variation or revocation of parole conditions.

(3a) The board may recommend to the Governor that a condition to which the release on parole of a person serving a sentence of life imprisonment is subject be varied or revoked, and the Governor may, upon receiving such a recommendation, order accordingly.

(3b) The board shall not make a recommendation under subsection (3a) unless it has given reasonable notice of the proposed recommendation to the person to whom it relates and considered any submissions made by him on the matter.

18. Section 42nc of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

Amendment of s. 42nc—  
Prisoner on parole (other than life prisoner) may apply for discharge from parole.

(3) Where a person has been discharged from parole under this section, his sentence, or sentences, of imprisonment shall, subject to section 42nf, be deemed to have been wholly satisfied.

19. Section 42nd of the principal Act is repealed.

Repeal of s. 42nd.

20. Section 42ne of the principal Act is amended—

Amendment of s. 42ne—  
Cancellation of parole for breach of condition.

(a) by inserting in subsection (1) after the passage "cancel his release" the passage "and direct that he serve his sentence, or sentences, of imprisonment for such further period, not exceeding three months, as the board thinks appropriate";

(b) by inserting in subsection (3) after the passage "pursuant to this section" the passage "before the commencement of the Prisons Act Amendment Act (No. 2), 1983";

and

(c) by inserting after subsection (3) the following subsections:

(4) A person who has been returned to prison pursuant to this section after the commencement of the Prisons Act Amendment Act (No. 2), 1983, shall, unless released earlier under any other provision of this Act or any other Act or law, be released from prison on parole when he has served the period for which he was returned.

(5) The release of a prisoner on parole under subsection (4) shall be deemed to be pursuant to the order of the board

by virtue of which he was first released on parole under section 42k.

Amendment of s. 42nf—  
Cancellation is automatic.

**21. Section 42nf of the principal Act is amended—**

- (a) by inserting in subsection (1) after the passage “on parole he is” the passage “(except in the case of a person in respect of whom a non-parole period is fixed)”;

and

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

(3) The board, as soon as practicable after a person is returned to prison pursuant to this section, shall interview him in person.

Amendment of s. 42ng—  
Apprehension of prisoner whose parole has been, or may be, cancelled.

**22. Section 42ng of the principal Act is amended by inserting after subsection (3) the following subsection:**

- (4) If it thinks good reason exists for doing so, the board may, by order, cancel a warrant issued pursuant to this section that has not been executed.

Amendment of s. 42nh—  
Proceedings before the board.

**23. Section 42nh of the principal Act is amended—**

- (a) by striking out subsection (1);

- (b) by striking out from paragraph (c) of subsection (2) the word “prisoner” and substituting the passage “person to whom the proceedings relate”;

and

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

(3) The person to whom any proceedings before the board for cancellation of parole, or for discharge from parole, relate is entitled to be represented in those proceedings by a legal practitioner.

Repeal of s. 42ni.

**24. Section 42ni of the principal Act is repealed.**

Amendment of s. 42q—  
Regulations.

**25. Section 42q of the principal Act is amended by striking out paragraph (a) and substituting the following paragraph:**

- (a) prescribe the manner and form in which applications under this Part shall be made;

Repeal of Part IVB and substitution of new Part.

**26. Part IVB of the principal Act is repealed and the following Part is substituted:**

**PART IVB**

**REMISSION OF SENTENCE**

**42ra. (1) This section applies to—**

- (a) a prisoner who is serving a sentence of life imprisonment and in respect of whom a non-parole period is fixed,

Remission for certain life prisoners or prisoners serving sentences exceeding three months.

whether before or after the commencement of the Prisons Act Amendment Act (No. 2), 1983;

and

- (b) a prisoner who is serving a sentence of imprisonment for a term exceeding three months, or a number of sentences under which he is liable to imprisonment for more than three months,

but does not apply in relation 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 pursuant to section 42ne.

(2) Subject to subsection (3), the Director shall, at the end of each month served in a prison by a prisoner to whom this section applies, consider the behaviour of the prisoner during that month and may, if he is of the opinion that the prisoner has been of good behaviour, credit him with such number of days of remission, not exceeding fifteen, as he considers appropriate.

(3) The Director shall not, in considering the behaviour of a prisoner for the purposes of subsection (2), take into account unsatisfactory behaviour in respect of which the prisoner is likely to be dealt with under any other provision of this Act or any other Act or law.

(4) Where the Director makes a decision under this section to credit, or not to credit, a prisoner with any days of remission, he shall notify the prisoner in writing of that decision and of his reasons for the decision.

(5) Where, at the end of a month served in a prison by a prisoner, it appears that the prisoner, if he were to be credited with fifteen days of remission at the end of the next month, would be entitled to be released from prison before the expiration of that next month, the Director shall thereupon credit the prisoner with fifteen days of remission.

(6) Notwithstanding any other provision of this Act, a prisoner, other than a prisoner to whom subsection (7) applies, 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 him and the period he has served in prison together equal the term, or terms, of imprisonment to which he was sentenced.

(7) Notwithstanding any other provision of this Act—

- (a) a prisoner returned to prison upon cancellation of parole pursuant to section 42nf (whether before or after the commencement of the Prisons Act Amendment Act (No. 2), 1983);

or

- (b) a prisoner returned to prison upon cancellation of parole pursuant to section 42ne before that commencement,

in respect of whom a non-parole period has not been fixed 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 him after cancellation and the period he has served in prison after cancellation together equal the total period of imprisonment that he was, upon that cancellation, liable to serve.

Sentences deemed to be wholly satisfied upon release.

42rb. Upon a prisoner being released from prison pursuant to this Part, his sentence, or sentences, of imprisonment shall be deemed to have been wholly satisfied.

Amendment of s. 47—  
Punishment.

27. Section 47 of the principal Act is amended by striking out from paragraph (c) of subsection (1) the passage “or conditional release”.

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

D. B. DUNSTAN, Governor