

## Legislative Council

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South Australia

# Correctional Services (Parole) Amendment Bill 2005

A BILL FOR

An Act to amend the *Correctional Services Act 1982*.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Correctional Services (Parole) Amendment Act 2005*.

## 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

## 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

# Part 2—Amendment of *Correctional Services Act 1982*

## 4—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *drug* insert:

*immediate family* of a victim means—

- (a) a spouse (including a putative spouse);
- (b) a parent;
- (c) a grandparent;
- (d) a child (including an adult child);
- (e) a grandchild (including an adult grandchild);
- (f) a brother or sister;

*injury* means physical or mental injury, and includes pregnancy, mental shock and nervous shock;

- (2) Section 4(1)—after the definition of *non-parole period* insert:

*parent* includes a person who stands in the position, and undertakes the responsibilities, of a parent;

- (3) Section 4(1)—after the definition of *prisoner* insert:

*registered victim* includes a member of a victim's immediate family whose name is entered in the Victims Register;

- (4) After the definition of *sentence of indeterminate duration* insert:

*sexual offence* means any of the following offences (including a substantially similar offence against the law of another place):

- (a) rape;
- (b) indecent assault;
- (c) incest;
- (d) an offence involving unlawful sexual intercourse;
- (e) an offence involving an act of gross indecency;
- (f) an offence against Part 3 Division 12 of the *Criminal Law Consolidation Act 1935*;
- (g) an attempt to commit, or assault with intent to commit, any of the offences referred to in the above paragraphs;

- (h) any other offence (such as homicide or abduction), if there are reasonable grounds to believe that a sexual offence was also committed by the same person in the course of, or as part of the events surrounding, the commission of that offence,

and includes any other offence that is a child sexual offence;

- (5) Section 4(1)—delete the definition of *victim* and substitute:

*victim* of an offence means a person who suffers injury as a result of the offence;

*Victims Register*—see section 5;

## 5—Insertion of section 5

After section 4 insert:

### 5—Victims Register

- (1) The Chief Executive Officer must keep a Victims Register for the purposes of this Act.
- (2) The victim of an offence for which a prisoner is serving a sentence of imprisonment or, if the victim is dead or under an incapacity or in prescribed circumstances, a member of the victim's immediate family, may apply in writing to the Chief Executive Officer to have the following information entered in the Victims Register:
  - (a) the applicant's name, contact address and (if supplied) telephone number;
  - (b) any information (including the name of the prisoner) in the applicant's possession that may assist the Chief Executive Officer to identify the prisoner.
- (3) The Chief Executive Officer is entitled to assume the accuracy of information supplied under subsection (2) without further inquiry.
- (4) The Victims Register must also contain any other information prescribed by the regulations.
- (5) The Chief Executive Officer must, when requested to do so by the Board, provide the Board with information derived from the Victims Register.

## 6—Amendment of section 55—Continuation of Parole Board

Section 55(2), (3) and (3a)—delete subsections (2), (3) and (3a) and substitute:

- (2) The Board will consist of nine members appointed by the Governor.
- (3) The membership of the Board must include—
  - (a) —
    - (i) a judge of the Supreme Court; or
    - (ii) a District Court judge; or

- (iii) a person who has retired from the office of judge of the Supreme Court or District Court judge; or
  - (iv) a legal practitioner of at least seven years standing who has, in the opinion of the Governor, extensive knowledge of, and experience in, the criminal justice system; or
  - (v) a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, the science of criminology, penology, or any other related science; and
- (b) a legally qualified medical practitioner who has, in the opinion of the Governor, extensive knowledge of, and experience in, the practice of psychiatry; and
  - (c) a person who has, in the opinion of the Governor, extensive knowledge of, and experience in, criminology, sociology or any other related science; and
  - (d) a person who has, in the opinion of the Governor, extensive knowledge of, or experience in, matters related to the impact of crime on victims and the needs of victims of crime in relation to the criminal justice system; and
  - (e) a former police officer; and
  - (f) a person of Aboriginal descent; and
  - (g) both women and men.
- (3a) One member of the Board, being a person referred to in subsection (3)(a), must be appointed by the Governor to be the presiding member of the Board.

#### **7—Amendment of section 56—Term of office of members**

- (1) Section 56(1)—delete subsection (1)
- (2) Section 56(2)—delete "other than the presiding member"

#### **8—Amendment of section 59—Deputies**

- (1) Section 59(1)(a)—before "deputy presiding member" insert:  
first
- (2) Section 59(1)—after paragraph (a) insert:
  - (ab) must appoint one of the members of the Board to be the second deputy presiding member of the Board; and
- (3) Section 59(1)(b)—delete "the deputy presiding member" and substitute:  
either of the deputy presiding members

## **9—Amendment of section 60—Proceedings of the Board**

- (1) Section 60(3)—delete subsection (3) and substitute:
  - (3) A division of the Board will be constituted as follows:
    - (a) the presiding member and two other members of the Board;
    - (b) the first deputy presiding member and two other members of the Board;
    - (c) the second deputy presiding member and two other members of the Board.
- (2) Section 60(4)(a)—delete paragraph (a) and substitute:
  - (a) —
    - (i) the presiding member will preside; or
    - (ii) if the presiding member is absent—the first deputy presiding member will preside; or
    - (iii) if both the presiding member and the first deputy presiding member are absent—the second deputy presiding member will preside; or
    - (iv) if none of the members mentioned in the preceding subparagraphs is present—a member chosen from those members present will preside;
- (3) Section 60(4)(b)—delete "four" and substitute:

five
- (4) Section 60(5)(a)—delete paragraph (a) and substitute:
  - (a) the presiding member or first or second deputy presiding member will preside at proceedings before the division of which he or she is a member;
- (5) Section 60(5)(d)—delete "two"

## **10—Amendment of section 64—Reports by Board**

- (1) Section 64(1)—after paragraph (a) insert:
  - (b) the number of applications for parole during the previous financial year that were refused by the Board; and
- (2) Section 64—after subsection (1) insert:
  - (1a) The Minister must, within 12 sitting days after receiving a report prepared under subsection (1), cause a copy of the report to be tabled in each House of Parliament.

## **11—Amendment of section 66—Automatic release on parole for certain prisoners**

- (1) Section 66—delete "The" and substitute:

Subject to subsection (2), the

- (2) Section 66—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (2) Subsection (1) does not apply to—
    - (a) a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of a sexual offence; or
    - (b) a prisoner of a class excluded by the regulations from the application of subsection (1).

## **12—Amendment of section 67—Release on parole by application to the Board**

- (1) Section 67(1) and (2)—delete subsections (1) and (2) and substitute:
- (1) This section applies to a prisoner if—
    - (a) section 66 does not apply to the prisoner; and
    - (b) a non-parole period has been fixed for the prisoner; and
    - (c) the prisoner is not serving a sentence of indeterminate duration.
  - (2) If this section applies to a prisoner—
    - (a) the prisoner; or
    - (b) the Chief Executive Officer, or any employee of the Department authorised by the Chief Executive Officer,  
may apply in the prescribed manner to the Board for the prisoner's release on parole.
- (2) Section 67—after subsection (3) insert:
- (3a) The paramount consideration of the Board when determining an application under this section for the release of a prisoner on parole must be the safety of the community.
- (3) Section 67(4)—delete "In determining an application under this section for the release of a prisoner on parole, the Board must have regard to the following matters" and substitute:
- The Board must also take the following matters into consideration when determining an application under this section
- (4) Section 67(4)(c)—delete "but only insofar as it may assist the Board to determine how the prisoner is likely to behave should the prisoner be released on parole" and substitute:
- (but the Board may not substitute its view of these matters for the view expressed by the court in passing sentence)
- (5) Section 67(4)—after paragraph (c) insert:
- (ca) if, in relation to an offence for which the prisoner was imprisoned, there is a registered victim—the impact that the release of the prisoner on parole is likely to have on the registered victim and the registered victim's family; and

- (6) Section 67(4)(f)—delete paragraph (f) and substitute:
- (f) any reports tendered to the Board—
    - (i) on the social background, or the medical, psychological or psychiatric condition, of the prisoner;
    - (ii) from community corrections officers or other officers or employees of the Department; and

### **13—Amendment of section 68—Conditions of release on parole**

- (1) Section 68—after subsection (1a) insert:
- (1b) The paramount consideration of the Board when fixing or recommending conditions to which the release of a prisoner on parole will be subject must be the safety of the community.
- (2) Section 68(2)—delete "In fixing or recommending conditions to which the release of a prisoner on parole will be subject, the Board must have regard to the following matters" and substitute:
- The Board must also take the following matters into consideration when fixing or recommending conditions to which the release of a prisoner on parole will be subject
- (3) Section 68(2)—after paragraph (c) insert:
- (ca) if, in relation to an offence for which the prisoner was imprisoned, there is a registered victim—the impact that the release of the prisoner on parole is likely to have on the registered victim and the registered victim's family; and
- (4) Section 68(2)(f)—delete paragraph (f) and substitute:
- (f) any reports tendered to the Board—
    - (i) on the social background, or the medical, psychological or psychiatric condition, of the prisoner;
    - (ii) from community corrections officers or other officers or employees of the Department; and

### **14—Amendment of section 77—Proceedings before the Board**

- (1) Section 77(1)—delete subsection (1) and substitute:
- (1) The Board must, on receiving an application under this Part, notify the following persons of the receipt of the application and the day and time fixed for the hearing of the application:
    - (a) the prisoner to whom the application relates;
    - (b) the Chief Executive Officer;
    - (c) the Commissioner for Police;
    - (d) if, in relation to an offence for which the prisoner was imprisoned, there is a registered victim—the registered victim.

- (1a) However, the Board is not required to notify the registered victim if the victim has indicated to the Board that he or she does not wish to be so notified.
- (2) Section 77(2)(ba)—delete paragraph (ba) and substitute:
  - (ba) the registered victim may make such submissions to the Board as he or she thinks fit in writing or, by prior arrangement with the Board, in person; and

### **15—Amendment of section 85C—Confidentiality**

- (1) Section 85C—after "parolee," insert:
  - or derived from the Victims Register,
- (2) Section 85C(e)—delete "or parolee" and substitute:
  - , parolee or registered victim

### **16—Amendment of section 85D—Release of information to registered victims etc**

- Section 85D(2)(a)—delete paragraph (a) and substitute:
  - (a) a registered victim in relation to an offence for which the prisoner is imprisoned; or

## **Schedule 1—Transitional provision**

### **1—Transitional provision**

- (1) A member of the Board holding office under the *Correctional Services Act 1982* (the *principal Act*) immediately before the commencement of this Schedule will, on that commencement, continue in office for the balance of the person's term, subject to section 58 of the principal Act.
- (2) The amendments made by Part 2 of this Act to Part 6 Division 3 of the principal Act are intended to apply in respect of prisoners serving sentences of imprisonment immediately before the commencement of this Schedule regardless of when the prisoners were sentenced.
- (3) However, if, before the commencement of this Schedule, the Board had, under section 66 of the principal Act, ordered a prisoner to be released from prison or home detention on parole, the prisoner is, subject to the provisions of Part 6 Division 3 of that Act as in force immediately before that commencement, to be released on parole.