

# House of Assembly

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South Australia

## Correctional Services (Parole) Amendment Bill 2015

A BILL FOR

An Act to amend the *Correctional Services Act 1982*; and to make a related amendment to the *Freedom of Information Act 1991*.

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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 2015*.

#### 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 33—Prisoners' mail

Section 33(7)—after paragraph (ba) insert:

(bb) to the Parole Administrative Review Commissioner

#### 5—Amendment of section 64—Reports by Board

Section 64(4)—delete subsection (4)

#### 6—Amendment of section 67—Release on parole by application to Board

- (1) Section 67(5) to (7c)—delete subsections (5) to (7c) (inclusive) and substitute:
- (5) Subject to subsections (6) to (7b) (inclusive), the Board may, on an application under this section, order that a prisoner be released from prison on parole on a day specified in the order.
  - (6) Without derogating from subsections (3a) and (4), the Board must not order that a prisoner serving a sentence of life imprisonment for an offence of murder be released on parole unless the Board is satisfied that the prisoner has satisfactorily cooperated in the investigation of the offence (whether the cooperation occurred before or after the prisoner was sentenced to imprisonment).

- (7) For the purposes of subsection (6), the Board must take into account any report tendered to the Board from the Commissioner of Police evaluating the prisoner's cooperation in the investigation of the offence, including—
- (a) the nature and extent of the prisoner's cooperation; and
  - (b) the timeliness of the cooperation; and
  - (c) the truthfulness, completeness and reliability of any information or evidence provided by the prisoner; and
  - (d) the significance and usefulness of the prisoner's cooperation.
- (7a) If the Board orders the release on parole of a prisoner who is serving a sentence of life imprisonment—
- (a) the Board must provide a copy of the order and a written statement of the reasons for making the order to the following persons:
    - (i) the CE;
    - (ii) the prisoner;
    - (iii) the Attorney-General;
    - (iv) the Commissioner of Police;
    - (v) the Commissioner for Victims' Rights;
    - (vi) if, in relation to an offence for which the prisoner was imprisoned, there is a registered victim—the registered victim, unless the victim has indicated to the Board that he or she does not wish to be so notified; and
  - (b) the day of release specified in the order must be a day that falls after the period within which an application for review of the order under Division 4 may be made.
- (7b) If an order for release on parole of a prisoner who is serving a sentence of life imprisonment is stayed by operation of section 77F(1) (as a result of an application for review of the order being made under Division 4), the release of the prisoner will not take effect on the day specified in the order (and, a copy of the application for review served on the CE is sufficient authority for the continued detention of the prisoner in custody pending determination of the review).
- (2) Section 67(8)—delete "or the Governor"
- (3) Section 67—after subsection (10) insert:
- (11) For the purposes of this section, a reference to an *offence of murder* includes—
- (a) an offence of conspiracy to murder; and
  - (b) an offence of aiding, abetting, counselling or procuring the commission of murder.

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

- (1) Section 68(1)(a)(ia)—before "that the prisoner" insert:
  - a condition
- (2) Section 68(1)(a)(iii)—delete "in the order of the Governor under section 67" and substitute:
  - by the Board
- (3) Section 68(1)(b)—delete paragraph (b) and substitute:
  - (b) may be subject to any other condition to be effective until the expiration of the period of parole (or such earlier date as is specified by the Board), including a condition that, for the period of up to 1 year commencing on the day on which the prisoner is released, the prisoner must—
    - (i) reside at specified premises (including premises declared under this Act to be a probation and parole hostel or a prison); and
    - (ii) undertake at specified places such activities and programs as determined by the Board from time to time to assist in the reintegration of the prisoner into the community.
- (4) Section 68—after subsection (1) insert:
  - (1aaa) In addition, the Board must consider imposing a condition on the release on parole of a prisoner serving a sentence of life imprisonment that the prisoner be monitored by use of an electronic device to be effective until the expiration of the period of parole (or such earlier date as is specified by the Board).
- (5) Section 68(1b) and (2)—delete "or recommending" wherever occurring

## **8—Amendment of section 69—Duration of parole**

Section 69—after its present contents (now to be designated as subsection (1)) insert:

- (2) A prisoner serving a sentence of life imprisonment who is released on parole after the commencement of this subsection will, unless the release is cancelled or suspended, or the sentence is extinguished, remain on parole for the remainder of the sentence.

## **9—Repeal of section 70**

Section 70—delete the section

## **10—Amendment of section 71—Variation or revocation of parole conditions**

- (1) Section 71(2) and (3)—delete subsections (2) and (3) and substitute:
  - (2) Where a person has been released on parole from a sentence of life imprisonment, the Board may, on the application of that person or an interested person, or of its own motion, vary or revoke a condition to which the parole is subject.

- (3) The Board cannot—
- (a) in the case of a person released on parole from a sentence other than a sentence of life imprisonment—exercise its powers under this section of its own motion, unless it has given reasonable notice of its intention to do so to that person and has considered any submissions made by the person on the matter; or
  - (b) in the case of a person released on parole from a sentence of life imprisonment—exercise its powers under this section—
    - (i) of its own motion, unless it has given reasonable notice of its intention to do so to that person and each interested person and has considered any submissions made by any such person on the matter; or
    - (ii) on application from the person unless it has given reasonable notice of its intention to do so to each interested person and has considered any submissions made by any such person on the matter.

(2) Section 71(4)—delete "or recommendation"

(3) Section 71—after subsection (5) insert:

(6) In this section—

*interested person* means any of the following persons:

- (a) the Attorney-General;
- (b) the Commissioner of Police;
- (c) the Commissioner for Victims' Rights.

## 11—Insertion of Part 6 Division 4

After Part 6 Division 3 insert:

### **Division 4—Review of release on parole of life prisoners**

#### **Subdivision 1—Preliminary**

##### **77A—Interpretation**

In this Division—

*Australian Parliament* means—

- (a) the Parliament of this State or any other State of the Commonwealth; or
- (b) the Parliament of the Commonwealth; or
- (c) a Legislative Assembly of a Territory of the Commonwealth;

**Commissioner** means the person appointed under Subdivision 2 as the Parole Administrative Review Commissioner, or the person from time to time appointed under that Subdivision to act as the Parole Administrative Review Commissioner;

**judicial body** means a court, tribunal, body or person invested by law with judicial or quasi-judicial powers;

**judicial officer** means a person who alone or with others constitutes a judicial body;

**prescribed reviewable decision** means a reviewable decision of a kind referred to in paragraph (b) or (c) of the definition of **reviewable decision**;

**reviewable decision** means any of the following decisions of the Board in relation to a prisoner serving a sentence of life imprisonment:

- (a) a decision to order the release of the prisoner on parole;
- (b) a decision as to the conditions to be imposed on the parole by the Board;
- (c) a decision to vary or revoke a condition to which the parole is subject.

## **Subdivision 2—Parole Administrative Review Commissioner**

### **77B—Appointment of Commissioner**

- (1) There is to be a Parole Administrative Review Commissioner.
- (2) The Commissioner is to be appointed by the Governor for a term not exceeding 5 years, on terms and conditions determined by the Governor.
- (3) A person appointed to be the Commissioner is, at the end of a term of appointment, eligible for reappointment.
- (4) A person is only eligible for appointment as the Commissioner if the person—
  - (a) is a former judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth; and
  - (b) is not a judicial officer or member of an Australian Parliament.
- (5) The Commissioner's appointment may be terminated by the Governor on the ground that the Commissioner—
  - (a) has been guilty of misconduct; or
  - (b) has been convicted of an offence punishable by imprisonment; or
  - (c) is appointed to judicial office; or

- (d) is nominated for election as a member of an Australian Parliament; or
  - (e) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (f) has, because of mental or physical incapacity, failed to carry out the duties of the Commissioner satisfactorily.
- (6) The Commissioner may resign by notice in writing to the Governor.
- (7) The Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

### **77C—Acting Commissioner**

- (1) The Governor may appoint a person to act as the Parole Administrative Review Commissioner—
- (a) during any period for which no person is for the time being appointed as the Commissioner or the Commissioner is absent from, or unable to discharge, official duties; or
  - (b) if the Commissioner is unable for any other reason to act in a matter.
- (2) The eligibility criteria that apply to the appointment of the Commissioner apply to the appointment of a person as acting Commissioner.
- (3) The terms and conditions of appointment of an acting Commissioner will be as determined by the Governor.
- (4) The acting Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

### **77D—Staff**

The Commissioner may, under an arrangement established by a Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

### **Subdivision 3—Reviews by Commissioner**

#### **77E—Right of review of Board decision to release life prisoners on parole etc**

- (1) Any of the following persons may apply for a review by the Commissioner of a reviewable decision:
- (a) the Attorney-General;
  - (b) the Commissioner of Police;
  - (c) the Commissioner for Victims' Rights.

- (2) An application under this section—
  - (a) must be made within 60 days after notification of the reviewable decision; and
  - (b) must, within 3 days of being made—
    - (i) be served personally on—
      - (A) the CE; and
      - (B) the prisoner; and
    - (ii) be served in a manner determined by the Commissioner on the Board and each of the other persons who may apply under subsection (1) for a review of a reviewable decision.
- (3) On a review, the Commissioner—
  - (a) will examine the reviewable decision on the evidence or material before the Board; and
  - (b) may consider further evidence or material that the Commissioner decides, in the circumstances of the particular case, to admit for the purposes of the review.
- (4) The Commissioner, on a review—
  - (a) is not bound by the rules of evidence but may inform himself or herself as the Commissioner thinks fit; and
  - (b) must act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms.
- (5) The Commissioner must, on a review, give due weight to the reviewable decision and the reasons for it and not depart from the decision except for cogent reasons.
- (6) The Commissioner may, on a review under this section—
  - (a) affirm the reviewable decision; or
  - (b) vary the reviewable decision; or
  - (c) set aside the reviewable decision and—
    - (i) substitute his or her own decision; or
    - (ii) send the matter back to the Board for reconsideration in accordance with any directions or recommendations that the Commissioner considers appropriate,

and, in any case, may make any order the Commissioner considers appropriate (including any interim order pending the reconsideration and determination of the matter by the Board, or any ancillary or consequential order, that the Commissioner considers appropriate).
- (7) The Commissioner must advise the parties to the review and the prisoner of his or her decision on the review.



- (8) The Commissioner must, if required to do so by the Supreme Court, provide the Court with a copy of the reasons for his or her decision on a particular review.

**77F—Effect of review proceedings on Board's decision**

- (1) The commencement of proceedings for the review of a reviewable decision, other than a prescribed reviewable decision, stays the operation of the decision.
- (2) The commencement of proceedings for the review of a prescribed reviewable decision does not affect the operation of the decision or prevent the imposition, variation or revocation of a condition of parole (as the case requires) unless an order is made under subsection (3).
- (3) On or after the commencement of proceedings for the review of a prescribed reviewable decision, the Commissioner may, on application or on his or her own initiative, make an order staying or varying the operation or the implementation of the whole or a part of the prescribed reviewable decision pending the determination of the matter, or until such time (whether before or after the determination of the matter) as the Commissioner may specify, if the Commissioner is satisfied that it is just and reasonable in the circumstances to make the order.
- (4) An order by the Commissioner under this section—
- (a) is subject to such conditions as are specified in the order; and
  - (b) may be varied or revoked by further order of the Commissioner.

**77G—Proceedings to be heard in private**

Proceedings for the review of a reviewable decision before the Commissioner must be heard in private.

**77H—Board to assist Commissioner**

- (1) In proceedings for the review of a reviewable decision, the Board must use its best endeavours to help the Commissioner so that the Commissioner can make his or her decision on the review.
- (2) Without limiting subsection (1), the Board must provide the following to the Commissioner within a period specified by the Commissioner (which must be reasonable):
- (a) a written statement of the reasons for the reviewable decision;
  - (b) any document or thing in the Board's possession or control that may be relevant to the Commissioner's review of the reviewable decision.

- (3) The Board must, in providing any document or thing under subsection (2), take reasonable steps to identify the documents or things that were taken into account in making the reviewable decision.
- (4) If the Commissioner considers that there are additional documents or things in the Board's possession or control that may be relevant to the Commissioner's review of the reviewable decision, the Commissioner may, by written notice, require the Board to provide the documents or things.
- (5) If the Commissioner considers that the statement of reasons given under subsection (2)(a) is not adequate, the Commissioner may, by written notice, require the Board to give the Commissioner an additional statement containing stated further particulars.
- (6) The Board must comply with a notice given under subsection (4) or (5) within the period stated in the notice.
- (7) A requirement under this section that the Board give the Commissioner information or a document or thing applies despite any provision in another Act prohibiting or restricting the disclosure of the information or the information contained in the document or thing.
- (8) The Commissioner may examine any document or thing provided under this section and draw any conclusions of fact it considers proper.

#### **77I—Parties**

The applicant and the Board are the parties to proceedings for the review of a reviewable decision, and each of the other persons who may apply under section 77E(1) for a review of a reviewable decision has a right to appear and be heard in the proceedings.

#### **77J—Compulsory conferences for prescribed reviewable decisions**

- (1) The Commissioner must, as soon as is reasonably practicable after the commencement of proceedings for the review of a prescribed reviewable decision, require the parties to the proceedings to attend a compulsory conference before the presiding member or deputy presiding member of the Board for the purpose of attempting to resolve the matters in dispute.
- (2) A conference under this section is to be held in private.
- (3) Subject to subsection (4), evidence of anything said or done in the course of a conference under this section is inadmissible in proceedings before the Commissioner except by consent of all parties to the proceedings.

- (4) The presiding member or deputy presiding member of the Board who presided over a conference under this section must report to the Commissioner on whether a settlement was reached at the conference and, if so, the terms of the settlement and the Commissioner may, without further inquiry, make such determination or order as may be necessary to give effect to the settlement.

### **77K—Powers and procedures of Commissioner**

- (1) The Commissioner may, for the purposes of proceedings before the Commissioner—
- (a) by summons signed by the Commissioner, require the attendance of a person before the Commissioner; or
  - (b) by summons signed by the Commissioner, require a person to produce any relevant documents; or
  - (c) require a person to furnish the Commissioner with a written report or information in relation to any aspect of a matter before the Commissioner; or
  - (d) require a person to make an oath or affirmation to answer truly any questions put by the Commissioner, or a person appearing before the Commissioner, that are relevant to any matter before the Commissioner; or
  - (e) require any written report or information to be verified by statutory declaration.
- (2) A person who—
- (a) having been served with a summons, fails, without reasonable excuse, to attend, or to produce documents, as required by the summons; or
  - (b) misbehaves before the Commissioner, wilfully insults the Commissioner, or interrupts proceedings before the Commissioner; or
  - (c) refuses, when required to do so by the Commissioner, to be sworn or to affirm, or to answer any relevant question that the person would be compellable to answer before a court,

is guilty of an offence.

Maximum penalty: \$10 000.

- (3) The Commissioner cannot allow intervention in proceedings before the Commissioner by a person who is not a party to the proceedings, other than a person who has a right to appear and be heard in the proceedings under section 77I (an *interested person*).
- (4) The Commissioner must give the parties and any interested person who has given written notice of an intention to appear in proceedings reasonable notice of the time and place of the proceedings.

- (5) The Commissioner may make a determination in any proceedings in the absence of a party to the proceedings or an interested person who has given notice under subsection (4) if satisfied that the party or person (as the case requires) was given reasonable opportunity to appear but failed to do so.
- (6) If proceedings on a review are part-heard when a person ceases to hold office as a Commissioner, the person may continue to act in the office of Commissioner for the purpose of completing the review.

#### **77L—Commissioner to proceed expeditiously**

The Commissioner must—

- (a) commence any review as soon as possible after receipt of an application for review (taking into account section 77J (if relevant)); and
- (b) proceed as quickly as a proper conduct of the review allows; and
- (c) endeavour to complete any review as quickly as possible.

#### **Subdivision 4—Other matters**

##### **77M—Immunity from liability**

No liability attaches to the Commissioner for any act or omission in good faith in the exercise or purported exercise of powers or functions under this Division.

##### **77N—Privilege and public interest immunity not affected**

Nothing in this Division affects any rule or principle of law relating to—

- (a) legal professional privilege; or
- (b) public interest immunity.

##### **77O—Confidentiality of information**

A person must not disclose, or cause to be disclosed, information or evidence relating to a review under this Division, or details relating to proceedings conducted for the purposes of a review under this Division, except—

- (a) as authorised by the Commissioner or a court; or
- (b) as otherwise authorised or required by this Act, the regulations or any other Act or law.

Maximum penalty: \$10 000.

### **77P—Proof of decision of Commissioner**

An apparently genuine document purporting to be a copy of a determination, decision or finding of the Commissioner and to be certified as such by the Commissioner will be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of a determination, decision or finding of the Commissioner.

## **Schedule 1—Related amendment and transitional provision**

### **Part 1—Related amendment to *Freedom of Information Act 1991***

#### **1—Amendment to Schedule 2—Exempt agencies**

Schedule 2—after paragraph (j) insert:

- (ja) the Parole Administrative Review Commissioner;

### **Part 2—Transitional provision**

#### **2—Transitional provision**

- (1) The amendments to the *Correctional Services Act 1982* made by Part 2 of this Act do not apply to a prisoner who has been sentenced to life imprisonment if, prior to the commencement of this clause—
  - (a) the prisoner has been released on parole; or
  - (b) the Governor has ordered that the prisoner be released on parole; or
  - (c) the Board has recommended to the Governor that the prisoner be released on parole but the Governor has not, as at that commencement, made a decision as to whether or not to approve the recommendation.
- (2) However, if, after the commencement of this clause—
  - (a) the release on parole of a prisoner who has been sentenced to life imprisonment is cancelled; or
  - (b) the Governor does not approve the recommendation of the Board that a prisoner who has been sentenced to life imprisonment be released on parole,the amendments to the *Correctional Services Act 1982* made by Part 2 of this Act will apply to the prisoner (including any application for release on parole made by the prisoner after that commencement).