

COURT WILL BE THE MINIMUM PERIOD WHICH MUST BE SERVED BEFORE THE PRISONER IS RELEASED ON PAROLE. ALL PRISONERS WILL NO LONGER BE AUTOMATICALLY RELEASED BY THE PAROLE BOARD AT THE END OF THEIR NON-PAROLE PERIOD." [PAGE 922].

53. "IT WILL BE NOTED THAT THE AMENDMENTS ABOLISH REMISSIONS AS FROM THE DAY THE AMENDMENTS COME IN OPERATION. HOWEVER, PROVISION IS MADE TO ENSURE THAT PRISONERS WHO WERE SENTENCED ON THE BASIS THAT THEY ARE ELIGIBLE FOR REMISSIONS ARE NOT PENALISED. THE TRANSITIONAL PROVISIONS PROVIDE THAT THE ABOLITION OF REMISSIONS DOES NOT AFFECT ANY DAYS OF REMISSION ALREADY CREDITED TO THE PRISONER AND ALL PRISONERS WHO ARE ELIGIBLE FOR REMISSIONS WILL BE TAKEN TO HAVE THEIR TERM OF IMPRISONMENT AND NON-PAROLE PERIOD (IF ANY), REDUCED BY THE MAXIMUM NUMBER OF DAYS OF REMISSION THEY COULD HAVE EARNED HAD REMISSIONS NOT BEEN ABOLISHED." [PAGE 922].

54. "A DUAL SYSTEM WOULD HAVE TO BE MAINTAINED UNTIL THE PRISONER WITH THE LONGEST REMAINING NON-PAROLE PERIOD IS DISCHARGED ON PAROLE. THIS WILL BE TWENTY-ONE YEARS." [PAGE 922].

55. "67. RELEASE ON PAROLE - PRISONERS IMPRISONED FOR A PERIOD OF 5 YEARS OR MORE.

THIS SECTION PROVIDES FOR THE PAROLE OF PRISONERS IN RESPECT OF WHOM A NON-PAROLE PERIOD HAS BEEN SET AND WHO ARE SERVING A SENTENCE OF LIFE-IMPRISONMENT OR WHO ARE ~~SERVING~~ LIABLE TO SERVE A TOTAL PERIOD OF IMPRISONMENT OF ~~THE~~ 5 YEARS OR MORE.

IN SUCH CASES THE PRISONER, THE CHIEF EXECUTIVE OFFICER, OR ANY EMPLOYEE OF THE DEPARTMENT AUTHORISED BY THE CHIEF EXECUTIVE OFFICER, MAY APPLY TO THE BOARD NOT MORE THAN SIX MONTHS BEFORE THE EXPIRATION OF THE PRISONER'S NON-PAROLE PERIOD FOR THE PRISONER'S RELEASE ON PAROLE.

PROPOSED SUBSECTION (4) SETS OUT THE MATTERS THAT THE BOARD MUST

(REF. 16.)

72.

PARA 46: THIS COURT IS REQUIRED TO APPLY THE STANDARDS APPLICABLE AT THE TIME THE CRIMES WERE COMMITTED. BEARING IN MIND THE SIGNIFICANT CHANGE IN LEGISLATION THAT OCCURRED SHORTLY BEFORE THE CRIMES WERE COMMITTED, AND BEARING IN MIND THAT THE PRECISE IMPACT OF THE ERROR OF PRINCIPLE ON THE LENGTH OF THE NON-PAROLE PERIOD FIXED BY THE COURT OF CRIMINAL APPEAL IN THIS MATTER CANNOT BE IDENTIFIED WITH CERTAINTY, IT IS DIFFICULT TO DETERMINE WHETHER STANDARDS HAVE INCREASED SIGNIFICANTLY. HOWEVER, THE CROWN ACKNOWLEDGED THAT THE STANDARD FOR THE MOST SERIOUS CRIMES OF MURDER HAS INCREASED SINCE 1994. THAT CONCESSION CONFORMS WITH MY IMPRESSION.

73.

PARA 47: ...

IF TODAY'S STANDARDS WERE APPLIED, THE NON-PAROLE PERIOD WOULD BE LONGER. "

74.

R v. JARRETT [2002] SASC 289 (11 DECEMBER, 2001, 9 SEPTEMBER, 2002)

75.

R v. JARRETT (2002) 83 SASR 583

"PRELIM

BOTH THE SENTENCING JUDGE AND THE COURT OF CRIMINAL APPEAL SENTENCED THE PETITIONER BEFORE TRUTH IN SENTENCING LAWS CAME INTO FORCE IN AUGUST 1994, SO THE NON-PAROLE PERIOD WAS FIXED IN LIGHT OF THEIR KNOWLEDGE THAT THE PETITIONER WOULD BE ENTITLED TO AUTOMATIC REMISSIONS OF UP TO ONE-THIRD ON SENTENCE UNDER THE LEGISLATION AS IT STOOD AT THE TIME AND TAKING INTO ACCOUNT THE TRANSITIONAL PROVISIONS IN THE TRUTH IN SENTENCING LEGISLATION. THOSE TRANSITIONAL PROVISIONS WOULD HAVE REDUCED THE NON-PAROLE PERIOD FIXED BY THE SENTENCING JUDGE FROM 28 YEARS AND SIX MONTHS TO 19 YEARS AND THE NON-PAROLE PERIOD SET BY THE COURT OF CRIMINAL APPEAL FROM 39 YEARS TO 26 YEARS. "

(REF. 36.)

SITTING AS COMMISSIONER WITHOUT THE BENEFIT OF ANY EXPERIENCE  
IN CRIMINAL LAW SENTENCING OR PENOLOGY."

193.

"HON. G. GAGO

THE BOARD WOULD SATISFY THEMSELVES THAT THEY HAD BEEN COOPERATIVE. THEY  
CAN ACCESS A NUMBER OF REPORTS THAT THEY WOULD CONSIDER; FOR INSTANCE,  
A REPORT FROM THE COMMISSIONER OF POLICE ALONG WITH OTHER REPORTS  
LIKE THE COMMUNITY SAFETY REPORTS UNDER SECTION 3A. AND SECTION 4,  
AND OTHER MATTERS CONTAINED UNDER SECTION 7 AND SECTION 6."

194.

WATSON V. THE STATE OF SOUTH AUSTRALIA [2010] SASCF 69 (9. DECEMBER 2010)

"PARA. 11: THE FACT THAT THE NON-PAROLE PERIOD IS PART OF THE SENTENCE IS IMPLICIT  
IN THE OBSERVATIONS OF THE HIGH COURT IN PNJ V THE QUEEN [2009] HCA 6;  
(2009) 83 ALJR 384 AT [11],

PARA. 16: IF THE BOARD REFUSES AN APPLICATION BY THE PRISONER FOR RELEASE ON  
PAROLE, IT MUST GIVE THE PRISONER WRITTEN REASONS FOR THE REFUSAL; THE CSA  
S 67(9).

PARA. 21: I EMPHASISE THIS POINT BECAUSE IT LEADS TO A SIGNIFICANT DIFFERENCE IN  
THE REGIME FOR A PRISONER SERVING A LIFE SENTENCE. IN RELATION TO SUCH A  
PRISONER THE BOARD HAS NO POWER TO ORDER RELEASE. ITS ONLY FUNCTION IS TO  
CONSIDER AN APPLICATION FOR RELEASE ON PAROLE AND EITHER TO REFUSE THE APPLICATION  
OR RECOMMEND TO THE GOVERNOR THAT THE PRISONER BE RELEASED ON PAROLE. SECTION  
67(6) OF THE CSA...

IN THIS RESPECT THE REGIME FOR A PRISONER SERVING A SENTENCE OF LIFE  
IMPRISONMENT IS QUITE DIFFERENT.

PARA. 24: IF THE PAROLE BOARD HAS RECOMMENDED RELEASE, THE GOVERNOR WILL CONSIDER  
THE RECOMMENDATION ~~BY THE~~ AND MAY ORDER RELEASE. ...

IT IS IMPLICIT IN THE PROVISION THAT THE GOVERNOR MAY DECLINE TO ORDER THE RELEASE  
OF A PRISONER.

PARA. 25: THE CSA DOES NOT IN TERMS REQUIRE THE GOVERNOR TO GIVE REASONS FOR  
A DECISION ON A RECOMMENDATION BY THE BOARD. NOR DOES IT REQUIRE REASONS FROM  
THE BOARD, BECAUSE IN SUCH A CASE THE BOARD HAS NOT REFUSED AN APPLICATION FOR

(REF. 40.)

TO WHAT MATTERS MAY THE GOVERNOR HAVE REGARD IN MAKING A DECISION UNDER  
S 67(7)?

PARA. 68: ... UNDER THE STATUTORY ~~SCHEME~~ SCHEME A NON-PAROLE PERIOD CAN BE  
EXTENDED OR NEGATED (SEE ABOVE). A COURT WILL DECIDE THESE MATTERS. BY  
IMPLICATION, ALTHOUGH NOT SPELT OUT IN HIS SUBMISSIONS, THE DPP OR THE ATTORNEY-  
GENERAL ARE INTENDED (BY PARLIAMENT) TO INVOKE THE POWERS REFERRED TO IF A  
PRISONER IS NOT FIT FOR RELEASE ON PAROLE, OR IF THE PRISONER'S BEHAVIOUR OR THE  
PROTECTION OF THE COMMUNITY (S 32(7) OF THE SENTENCING ACT) OR THE ~~PROTECTION~~<sup>SAFETY</sup>  
OF THE COMMUNITY (S 33A(7) OF THE SENTENCING ACT) CALL FOR A LONGER  
NON-PAROLE PERIOD OR THE NEGATION OF THE NON-PAROLE PERIOD. IN THAT CONTEXT,  
IF THE NON-PAROLE PERIOD HAS ~~NOT~~ NOT BEEN ALTERED, AND ITS EXPIRY IS  
APPROACHING, PARLIAMENT INTENDED THAT IF THE BOARD RECOMMENDS RELEASE THE  
GOVERNOR WILL ACT ON THE RECOMMENDATION UNLESS THERE IS GOOD REASON NOT  
TO DO SO, OR UNLESS THE BOARD HAS FAILED TO CONSIDER ALL RELEVANT MATTERS.  
ALTERNATIVELY, AS THE EXPIRY OF A NON-PAROLE PERIOD APPROACHES, A BOARD  
RECOMMENDATION FOR RELEASE SHOULD ORDINARILY BE ACTED UPON, BECAUSE IF IT  
WAS NOT APPROPRIATE TO DO SO, THE STATUTORY ~~SCHEME~~ MECHANISM FOR EXTENDING  
OR NEGATING A NON-PAROLE PERIOD COULD AND SHOULD HAVE BEEN INVOKED.

PARA. 69: THIS SUBMISSION TREATS THE POWER OF THE GOVERNOR UNDER S 67(7)  
OF THE CSA AS A CONFINED POWER.

PARA. 70: MR MEADS OTHER MAIN SUBMISSION IS THAT THE THOROUGH CONSIDERATION  
GIVEN BY THE BOARD TO THE QUESTION OF RELEASE, THE ABSENCE OF ANY RELEVANT  
MATERIAL NOT ADVERTED TO BY THE BOARD, THE REPEATED DECISIONS NOT TO RELEASE  
MR WATSON, COUPLED WITH THE FAILURE BY THE DPP TO APPLY FOR AN EXTENSION  
OF THE NON-PAROLE PERIOD AND THE FAILURE OF THE ATTORNEY-GENERAL TO APPLY  
FOR AN ORDER THAT WOULD HAVE THE EFFECT OF NEGATING THE NON-PAROLE  
PERIOD, ALL COMBINE TO INDICATE THAT THE DECISION WAS UNREASONABLE OR  
IRRATIONAL, AND SO INVALID.

PARA. 80: FIRST, <sup>THERE</sup> ~~IS~~ IS NOTHING IN THE TERMS OF S 67(7) OF THE CSA, OR S 67  
AS A WHOLE, THAT LIMITS THE SCOPE OF THE POWER CONFERRED ON THE GOVERNOR.