

[ ]

## REFERENCES (REF. 1.)

1. THE AUSTRALIAN CONSTITUTION (COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT, 1900)
2. THE AUSTRALIAN CONSTITUTION. POCKET EDITION, REVISED REPRINT MARCH 2012
3. SEPARATION OF POWERS (PAGE VIII) (OVERVIEW)  
 "CHAPTERS I, II AND III OF THE CONSTITUTION CONFER THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWERS OF THE COMMONWEALTH ON THREE DIFFERENT BODIES WHICH ARE ESTABLISHED BY THE CONSTITUTION — THE PARLIAMENT (CHAPTER I), THE EXECUTIVE GOVERNMENT (CHAPTER II), AND THE JUDICATURE (CHAPTER III).  
LEGISLATIVE POWER IS THE POWER TO MAKE LAWS. EXECUTIVE POWER IS THE POWER TO ADMINISTER LAWS AND CARRY OUT THE BUSINESS OF GOVERNMENT, THOUGH SUCH BODIES AS GOVERNMENT DEPARTMENTS, STATUTORY AUTHORITIES AND THE DEFENCE FORCES. JUDICIAL POWER IS THE POWER TO CONCLUSIVELY DETERMINE LEGAL DISPUTES, TRADITIONALLY EXERCISED BY COURTS IN CRIMINAL TRIALS AND LITIGATION ABOUT SUCH THINGS AS CONTRACTS AND MOTOR ACCIDENTS.
- By contrast, the SEPARATION BETWEEN THE JUDICATURE ON THE ONE HAND AND THE PARLIAMENT AND THE EXECUTIVE GOVERNMENT ON THE OTHER IS STRICT.  
ONLY A COURT MAY EXERCISE THE JUDICIAL POWER OF THE COMMONWEALTH, SO THAT, FOR EXAMPLE, THE QUESTION WHETHER A PERSON HAS CONTRAVENED A LAW OF THE PARLIAMENT (FOR EXAMPLE, BY BRINGING A 'PROHIBITED IMPORT' INTO THE COUNTRY) CAN ONLY BE CONCLUSIVELY DETERMINED BY A COURT.
4. THE STATES AND THEIR LEGISLATIVE POWERS (PAGE XIII) (OVERVIEW)  
 "HOWEVER, THE STATES ARE BOUND BY THE AUSTRALIAN CONSTITUTION, AND THE CONSTITUTIONS OF THE STATES MUST BE READ SUBJECT TO THE AUSTRALIAN CONSTITUTION (SECTIONS 106 AND 107)."
5. THE RELATIONSHIP BETWEEN COMMONWEALTH AND STATE POWERS (PAGE XIV) (OVERVIEW)  
 "ALTHOUGH THE STATE PARLIAMENTS CAN PASS LAWS ON A WIDER RANGE OF SUBJECTS THAN THE COMMONWEALTH PARLIAMENT, THE COMMONWEALTH IS GENERALLY REGARDED AS THE MORE POWERFUL PARTNER IN THE FEDERATION. ONE OF THE PRINCIPAL REASONS FOR THIS IS SECTION 109 OF THE CONSTITUTION WHICH PROVIDES THAT IF A VALID LAW OF THE COMMONWEALTH IS INCONSISTENT WITH

(REF. 2.)

A LAW OF A STATE PARLIAMENT, THE COMMONWEALTH LAW OPERATES AND THE STATE LAW IS INVALID TO THE EXTENT OF THE INCONSISTENCY.

ACCORDINGLY, THE COMMONWEALTH CAN, WITHIN THE SUBJECT MATTERS CONFERRED ON IT BY THE CONSTITUTION, OVERRIDE STATE LAWS. AS A RESULT, MANY SUBJECTS OF COMMONWEALTH POWER ARE REGULATED ALMOST ENTIRELY BY COMMONWEALTH LAW .... "

6.

FEDERAL JUDICATURE (PAGE XVI) (OVERVIEW)

"ONE OF THE HIGH COURTS PRINCIPAL FUNCTIONS IS TO DECIDE DISPUTES ABOUT THE MEANING OF THE CONSTITUTION. FOR EXAMPLE, IT IS THE HIGH COURT WHICH ULTIMATELY DETERMINES WHETHER AN ACT PASSED BY THE COMMONWEALTH PARLIAMENT IS WITHIN THE LEGISLATIVE POWERS OF THE COMMONWEALTH.

....

THE HIGH COURT IS ALSO THE FINAL COURT OF APPEAL WITHIN AUSTRALIA IN ALL OTHER TYPES OF CASES, EVEN THOSE DEALING WITH PURELY STATE MATTERS SUCH AS CONVICTION UNDER STATE CRIMINAL LAWS. "

7.

RIGHTS (PAGE XVIII) (OVERVIEW)

"THE HIGH COURT HAS ALSO RECOGNISED SOME IMPLIED RESTRICTIONS ON LEGISLATIVE POWER DERIVED FROM THE FUNDAMENTAL SYSTEM OF GOVERNMENT ~~ESTABLISHED~~ ESTABLISHED BY THE CONSTITUTION. FOR EXAMPLE, BECAUSE OF THE SEPARATION OF POWERS EFFECTED BY THE CONSTITUTION, ONLY A COURT MAY EXERCISE THE JUDICIAL POWER OF THE COMMONWEALTH. ACCORDINGLY, A LAW OF THE COMMONWEALTH PARLIAMENT CANNOT PROVIDE FOR CRIMINAL CONVICTION BY ANY BODY OTHER THAN A COURT. "

8.

SECTION 51. LEGISLATIVE POWERS OF THE PARLIAMENT

"THE PARLIAMENT SHALL, SUBJECT TO THIS CONSTITUTION, HAVE POWER<sup>12</sup> TO MAKE LAWS FOR THE PEACE, ORDER, AND GOOD GOVERNMENT OF THE COMMONWEALTH WITH RESPECT TO :

9.

(XXIV) THE SERVICE AND EXECUTION THROUGHOUT THE COMMONWEALTH OF THE CIVIL AND CRIMINAL PROCESS AND THE JUDGMENTS OF THE COURTS OF THE STATES;

(REF. 3.)

10. (XXV) THE RECOGNITION THROUGHOUT THE COMMONWEALTH OF THE LAWS, THE PUBLIC ACTS AND RECORDS, AND THE JUDICIAL PROCEEDINGS OF THE STATES; ”
11. SECTION 76. ADDITIONAL ORIGINAL JURISDICTION  
“THE PARLIAMENT MAY MAKE LAWS CONFERRING ORIGINAL JURISDICTION ON THE HIGH COURT IN ANY MATTER:  
(i) ARISING UNDER THIS CONSTITUTION, OR INVOLVING ITS INTERPRETATION;  
(ii) ARISING UNDER ANY LAWS MADE BY THE PARLIAMENT; ”
12. SECTION 109. INCONSISTENCY OF LAWS  
“WHEN A LAW OF A STATE IS INCONSISTENT WITH A LAW OF THE COMMONWEALTH, THE LATTER SHALL PREVAIL, AND THE ~~ARE~~ FORMER SHALL, TO THE EXTENT OF THE INCONSISTENCY, BE INVALID. ”
13. ACTS INTERPRETATION ACT 1915, S.A., IN FORCE AS AT MARCH 2003
14. SECTION 4. INTERPRETATION  
“4. (1) IN THIS ACT AND IN EVERY OTHER ACT OR STATUTORY INSTRUMENT, UNLESS THE CONTRARY INTENTION APPEARS  
“ STATUTORY INSTRUMENT ” MEANS  
(A) A REGULATION, RULE, BY-LAW OR STATUTE MADE UNDER AN ACT; OR  
(B) A CODE OR STANDARD MADE, APPROVED OR ADOPTED UNDER AN ACT; OR  
(C) ANY OTHER INSTRUMENT OF A LEGISLATIVE CHARACTER MADE OR IN FORCE UNDER AN ACT. ”
15. SECTION 10. EVIDENCE OF DATE OF ASSENT TO ACT  
“THE DATE APPEARING ON A COPY OF AN ACT PRINTED, OR PURPORTING TO BE PRINTED, BY THE GOVERNMENT PRINTER, AS THE DATE ON WHICH THE GOVERNOR ASSENTED TO THE ACT OR MADE ~~KNOWN~~ HER MAJESTY'S ASSENT TO THE ACT IS EVIDENCE THAT THE DATE IS THE DATE ON WHICH THE GOVERNOR SO ASSENTED, OR MADE KNOWN HER MAJESTY'S ASSENT, AND WILL BE JUDICIALLY NOTICED ACCORDINGLY. ”
16. SECTION 12. DISALLOWANCE OF REPEALING STATUTORY INSTRUMENT  
REVIVES INSTRUMENT SOUGHT TO BE REPEALED

(REF. 4.)

"WHERE A STATUTORY INSTRUMENT THAT REVOKES ANOTHER STATUTORY INSTRUMENT, OR PART OF ANOTHER STATUTORY INSTRUMENT, IS DISALLOWED PURSUANT TO ANY ACT, THE STATUTORY INSTRUMENT OR PART SOUGHT TO BE REVOKED REVIVES."

17. SECTION 16. SAVING OF OPERATION OF REPEALED, AMENDED OR EXPIRED ACT

"16. (1) WHERE AN ACT IS REPEALED OR AMENDED, OR WHERE AN ACT OR ENACTMENT EXPIRES, THEN, UNLESS THE CONTRARY INTENTION APPEARS, THE REPEAL, AMENDMENT OR EXPIRY DOES NOT

18. (B) AFFECT THE OPERATION OF THE REPEALED, AMENDED OR EXPIRED ACT OR ENACTMENT, OR ALTER THE EFFECT OF THE DOING, SUFFERING OR OMISSION OF ANYTHING, PRIOR TO THE REPEAL, AMENDMENT OR EXPIRY; OR

19. (C) AFFECT ANY RIGHT, INTEREST, ~~TITLE~~ TITLE, POWER OR PRIVILEGE CREATED, ACQUIRED, ACCRUED, ESTABLISHED OR EXERCISABLE, OR ANY STATUS OR ~~CAPACITY~~ CAPACITY EXISTING, PRIOR TO THE REPEAL, AMENDMENT OR EXPIRY; OR

20. (D) AFFECT ANY DUTY, OBLIGATION, LIABILITY OR BURDEN OF PROOF IMPOSED, CREATED OR INCURRED, OR ANY PENALTY, FORFEITURE OR PUNISHMENT INCURRED OR IMPOSED OR LIABLE TO BE INCURRED OR IMPOSED, PRIOR TO THE REPEAL, AMENDMENT OR EXPIRY; OR

21. (E) AFFECT ANY INVESTIGATION, LEGAL PROCEEDINGS OR REMEDY IN RESPECT OF ANY SUCH RIGHT, INTEREST, TITLE, POWER, PRIVILEGE, STATUS, CAPACITY, DUTY, OBLIGATION, LIABILITY, BURDEN OF PROOF, PENALTY, FORFEITURE OR PUNISHMENT."

22. "16. (2) ANY SUCH INVESTIGATION, LEGAL PROCEEDINGS OR REMEDY MAY BE INSTITUTED, CONTINUED OR ENFORCED, AND ANY SUCH PENALTY, FORFEITURE OR PUNISHMENT MAY BE IMPOSED AND ENFORCED, AS IF THE REPEAL OR AMENDMENT HAD NOT BEEN EFFECTED OR AS IF THE EXPIRED ACT OR ENACTMENT HAD NOT EXPIRED (AS THE CASE MAY BE)."

23. "16. (3) ANY ACT OR ENACTMENT WILL, NOTWITHSTANDING ITS REPEAL, AMENDMENT OR EXPIRY, CONTINUE IN FORCE FOR THE PURPOSE OF CONTINUING AND COMPLETING ANY ACT, MATTER OR THING COMMENCED OR

(REF. 5.)

IN PROGRESS UNDER THAT ACT OR ENACTMENT, IF THERE IS NO  
SUBSTITUTED ACT OR ENACTMENT ADAPTED TO ITS CONTINUANCE AND  
COMPLETION, ”

24. “16. (4) IN THIS SECTION

“LEGAL PROCEEDING” INCLUDES ANY PROCEEDING PURSUANT TO AN ACT,  
ENACTMENT OR LAW WHETHER OF A JUDICIAL OR ADMINISTRATIVE  
NATURE. ”

25. SECTION 20. RULES OF CONSTRUCTION TO BE APPLIED IN DETERMINING  
WHETHER AN ACT BINDS THE CROWN

“20. (1) SUBJECT TO SUBSECTION (2), AN ACT PASSED AFTER 20 JUNE  
1990 WILL, UNLESS THE CONTRARY INTENTION APPEARS (EITHER EXPRESSLY OR  
BY ~~IMPL~~ IMPLICATION), BE TAKEN TO BIND THE CROWN, BUT NOT SO AS  
TO IMPOSE ANY CRIMINAL LIABILITY ON THE CROWN. ”

26. “20. (2) WHERE AN ACT PASSED AFTER 20 JUNE 1990 AMENDS AN ACT  
PASSED BEFORE THAT DATE, THE QUESTION WHETHER THE AMENDMENT BINDS  
THE CROWN WILL BE DETERMINED IN ACCORDANCE WITH PRINCIPLES  
APPLICABLE TO THE INTERPRETATION OF ACTS PASSED BEFORE 20 JUNE 1990. ”

27. SECTION 21. ACT DEEMED ALWAYS SPEAKING

“21. EVERY ACT WILL BE CONSIDERED AS SPEAKING AT ALL TIMES, AND EVERY  
ENACTMENT, WHETHER EXPRESSED IN THE PRESENT OR THE FUTURE TENSE, WILL  
BE APPLIED TO THE CIRCUMSTANCES AS THEY ARISE, SO THAT EFFECT MAY  
BE GIVEN TO EACH ACT AND EVERY PROVISION ACCORDING TO ITS SPIRIT, TRUE  
INTENT AND MEANING. ”

28. SECTION 22 A. CONSTRUCTION OF ACT SO AS NOT TO EXCEED POWER  
OF STATE.

“22 A. (1) EVERY ACT AND EVERY PROVISION OF AN ACT WILL BE CONSTRUED  
SO AS NOT TO EXCEED THE LEGISLATIVE POWER OF THE STATE. ”

29. SECTION 23. ACT TO BE DONE BY GOVERNOR TO MEAN BY HIM WITH  
ADVICE OF EXECUTIVE COUNCIL

“23. WHERE IN ANY ACT PASSED AFTER THE FIRST DAY OF JANUARY 1873,

(REF. 6.)

THE GOVERNOR IS AUTHORISED OR REQUIRED TO DO ANY ACT, MATTER OR THING, IT WILL BE TAKEN TO MEAN THAT THE ACT, MATTER OR THING MAY OR MUST BE DONE BY THE GOVERNOR WITH THE ADVICE ~~OF~~ AND CONSENT OF THE EXECUTIVE COUNCIL."

30.

SECTION 34. "MAY" IMPORTS A DISCRETION, "SHALL" IS IMPERATIVE

"34. WHERE, IN ANY ACT PASSED AFTER THE FIRST DAY OF JANUARY, 1873, THE WORD "MAY" IS USED IN CONFERRING A POWER, IT IMPLIES THAT THE POWER MAY BE EXERCISED OR NOT, AT DISCRETION; AND WHERE, IN ANY SUCH ACT THE WORD "SHALL" IS USED IN CONFERRING A POWER, IT IMPLIES THAT THE POWER MUST BE EXERCISED."

31.

CRIMINAL LAW CONSOLIDATION ACT 1935, S.A., IN FORCE AS AT 2005 (?)

32.

SECTION 5. INTERPRETATION

"5.(1) IN THIS ACT -

"COURT" MEANS, EXCEPT WHERE A CONTRARY INTENTION APPEARS OR IS INDICATED FROM THE CONTEXT, THE SUPREME COURT, THE DISTRICT COURT OR A COURT OF SUMMARY JURISDICTION;

"THE PAROLE BOARD" MEANS THE PAROLE BOARD OF SOUTH AUSTRALIA."

33.

SECTION 237. DEFINITIONS

"237. IN THIS PART -

"JUDICIAL BODY" MEANS A COURT OR ANY TRIBUNAL, BODY OR PERSON INVESTED BY LAW WITH JUDICIAL OR QUASI-JUDICIAL POWERS, OR WITH AUTHORITY TO MAKE ANY INQUIRY OR TO RECEIVE EVIDENCE;

"JUDICIAL OFFICER" MEANS A PERSON WHO ALONE OR WITH OTHERS CONSTITUTES A JUDICIAL BODY;

"JUDICIAL PROCEEDINGS" MEANS PROCEEDINGS OF ANY JUDICIAL BODY;

"STATE INSTRUMENTALITY" MEANS AN AGENCY OR INSTRUMENTALITY OF THE CROWN OR ANY BODY (WHETHER OR NOT INCORPORATED) THAT IS ESTABLISHED BY OR UNDER AN ACT AND -

(A) IS COMPRISED OF PERSONS, OR HAS A GOVERNING BODY COMPRISED OF PERSONS, A MAJORITY OF WHOM ARE APPOINTED BY THE GOVERNOR,

( REF. 7. )

A MINISTER OR AN AGENCY OR INSTRUMENTALITY OF THE CROWN, OR

(B) IS SUBJECT TO CONTROL OR DIRECTION BY A MINISTER. "

34. CRIMINAL LAW (SENTENCING) ACT 1988, S.A., IN FORCE AS AT MAY 2006

35. SECTION 3. INTERPRETATION.

"3. (1) IN THIS ACT, UNLESS THE CONTRARY INTENTION APPEARS -

"COURT" -

(A) MEANS ANY COURT OF CRIMINAL JURISDICTION; AND

(B) IN RELATION TO THE EXERCISE OF POWERS UNDER THIS ACT WITH RESPECT TO THE VARIATION, REVOKATION OR ENFORCEMENT OF AN ORDER OF COURT OR OTHER RELATED MATTERS, MEANS THE COURT THAT MADE THE ORDER OR A COURT OF CO-ORDINATE JURISDICTION;

"THE PAROLE BOARD" MEANS THE PAROLE BOARD OF SOUTH AUSTRALIA ESTABLISHED UNDER THE CORRECTIONAL SERVICES ACT 1982, S.A.;

"SENTENCE" MEANS -

(A) THE IMPOSITION OF A PENALTY; OR

(B) THE DECISION OF A COURT TO OFFER A DEFENDANT AN OPPORTUNITY TO ENTER INTO A BOND; OR

(C) THE FIXING OR EXTENDING OF A NON-PAROLE PERIOD; OR

(D) THE MAKING OF ANY OTHER ORDER OR DIRECTION AFFECTING PENALTY. "

36. SECTION 6. DETERMINATION OF SENTENCE

"6. FOR THE PURPOSE OF DETERMINING SENTENCE, A COURT -

(A) IS NOT BOUND BY THE RULES OF EVIDENCE; AND

(B) MAY INFORM ITSELF ON MATTERS RELEVANT TO THE DETERMINATION AS IT THINKS FIT. "

37. SECTION 9. COURT TO INFORM DEFENDANT OF REASONS ETC. FOR SENTENCE

"9. (1) A COURT MUST, UPON SENTENCING A DEFENDANT WHO IS PRESENT IN COURT -

(B) CAUSE AN EXPLANATION OF THE LEGAL EFFECT AND OBLIGATIONS OF THE SENTENCE AND, WHERE APPROPRIATE, OF THE CONSEQUENCES OF NON-COMPLIANCE WITH IT, TO BE GIVEN IN SIMPLE LANGUAGE TO THE DEFENDANT. "

(REF. 8.)

38. SECTION 32. DUTY OF COURT TO FIX OR EXTEND NON-PAROLE PERIODS
39. "32. (3) WHERE A PRISONER IS SERVING A SENTENCE OF IMPRISONMENT BUT IS NOT SUBJECT TO AN EXISTING ~~NON-PAROLE~~ NON-PAROLE PERIOD, THE SENTENCING COURT MAY, SUBJECT TO SUBSECTION (5), FIX A NON-PAROLE PERIOD, ON APPLICATION BY THE PRISONER OR THE PRESIDING MEMBER OF THE PAROLE BOARD."
40. "32. (6) THE DIRECTOR OF PUBLIC PROSECUTIONS OR THE PRESIDING MEMBER OF THE PAROLE BOARD OR TRAINING CENTRE REVIEW BOARD (AS THE CASE MAY REQUIRE) 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 THE NON-PAROLE PERIOD WAS FIXED BEFORE OR AFTER THE COMMENCEMENT OF THIS ACT."
41. "32. (6A) THE DIRECTOR OF PUBLIC PROSECUTIONS MUST BE NOTIFIED OF ANY APPLICATION MADE BY THE PRESIDING MEMBER OF THE PAROLE BOARD OR TRAINING CENTRE REVIEW BOARD UNDER THIS SECTION."
42. "32. (7) IN FIXING OR EXTENDING THE NON-PAROLE PERIOD, THE COURT —
- (A) MUST, IF THE PERSON IN RESPECT OF WHOM THE NON-PAROLE PERIOD IS TO BE FIXED OR EXTENDED IS IN PRISON OR A TRAINING CENTRE SERVING A SENTENCE OF IMPRISONMENT OR DETENTION, TAKE INTO ACCOUNT THE PERIOD ALREADY SERVED; AND
  - (B) IN THE CASE OF AN APPLICATION BY THE DIRECTOR OF PUBLIC PROSECUTIONS OR THE PRESIDING MEMBER OF THE PAROLE BOARD OR TRAINING CENTRE REVIEW BOARD UNDER SUBSECTION (6), MUST HAVE REGARD TO —
    - (i). THE LIKELY BEHAVIOUR OF THE PERSON THE SUBJECT OF THE APPLICATION SHOULD HE OR SHE BE RELEASED FROM CUSTODY; AND
    - (ii) THE NECESSITY (IF ANY) TO PROTECT SOME OTHER PERSON OR PERSONS GENERALLY SHOULD THE PERSON BE RELEASED FROM CUSTODY; AND
    - (iii) THE BEHAVIOUR OF THE PERSON WHILE IN CUSTODY, BUT ONLY INsofar AS IT MAY ASSIST THE COURT TO DETERMINE HOW THE PERSON IS LIKELY



(REF. 9.)

TO BEHAVE SHOULD HE OR SHE BE RELEASED; AND

(iv) SUCH OTHER MATTERS AS THE COURT THINKS RELEVANT."

43.

"32. (9) THE PAROLE BOARD OR THE TRAINING CENTRE REVIEW BOARD (AS THE CASE MAY REQUIRE) MUST, AT THE REQUEST OF A SENTENCING COURT, MAKE A REPORT TO THE COURT ON ANY PERSON IN RESPECT OF WHOM THE COURT PROPOSES TO FIX OR EXTEND A NON-PAROLE PERIOD."

SECTION 32.

44.

"32. (10) FOR THE PURPOSE OF THIS SECTION -

(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 CO-ORDINATE JURISDICTION - THAT COURT, OR A COURT OF CO-ORDINATE JURISDICTION; OR

(ii) WHERE THE <sup>PRISONER</sup> ~~PRISONER~~ IS SUBJECT TO A NUMBER OF SENTENCES OF IMPRISONMENT IMPOSED BY COURTS OF DIFFERENT JURISDICTION - THE COURT OF THE HIGHEST JURISDICTION OR A COURT WHOSE JURISDICTION IS CO-ORDINATE ~~WITH~~ WITH THE JURISDICTION OF THAT COURT."

45.

SECTION 56. ENFORCEMENT MUST BE TAKEN UNDER THIS PART.

"56. (1) PROCEEDINGS FOR ENFORCEMENT OF A SENTENCE MAY NOT BE COMMENCED EXCEPT AND IN ACCORDANCE WITH THIS ACT."

46.

STATUTES AMENDMENT (TRUTH IN SENTENCING) ACT 1994, S.A.

47.

STATUTES AMENDMENT (CORRECTIONAL SERVICES) ACT 1995 NO. 21, S.A.

48.

R V. ANDERSON [2006] SASC 108 (13 APRIL 2006).

49.

TELFORD V. SEVERIN AND ANOR [2007] HCA TRANS 427 (9 AUGUST 2007).

50.

INGE V. THE QUEEN [1999] HCA 55 (7 OCTOBER 1999).

51.

HANSARD OF HOUSE OF ASSEMBLY, S.A., THURSDAY 21 APRIL 1994, PAGE 921  
2ND READING FOR 'STATUTES AMENDMENT (TRUTH IN SENTENCING) BILL'  
PAGES 921, 922 AND 923

52.

"REMISSIONS ARE ABOLISHED AND THE NON-PAROLE PERIOD FIXED BY THE

(REF. 10.)

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 ~~5~~ 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. 11.)

HAVE REGARD TO IN DETERMINING THE APPLICATION.

56.

THE BOARD MAY ORDER THAT AN APPLICANT BE RELEASED FROM PRISON ON A DAY SPECIFIED IN THE ORDER EXCEPT IN THE CASE OF A LIFE PRISONER, WHERE THE GOVERNOR MAY ORDER THE RELEASE OF THE PRISONER ON THE RECOMMENDATION OF THE BOARD. A LIFE PRISONER MUST REMAIN ON PAROLE FOR A PERIOD OF NOT LESS THAN THREE YEARS AND NOT MORE THAN TEN YEARS DETERMINED BY THE GOVERNOR ON THE RECOMMENDATION OF THE BOARD.

57.

SUBSECTION (8) REQUIRES THAT THE BOARD, NOT MORE THAN 30 DAYS REFUSING AN APPLICATION BY A PRISONER FOR RELEASE ON PAROLE, NOTIFY THE PRISONER IN WRITING OF ITS REFUSAL, THE REASONS FOR THE REFUSAL AND THE EARLIEST DATE AT WHICH THE PRISONER MAY REAPPLY FOR PAROLE. HOWEVER THE BOARD MAY ACCEPT A FURTHER APPLICATION BY A PRISONER FOR RELEASE ON PAROLE BEFORE THAT DATE WHERE SPECIAL CIRCUMSTANCES EXIST."

[PAGE 923].

58.

" PART 5 TRANSITIONAL PROVISIONS

CLAUSE 21: SENTENCES IMPOSED AFTER COMMENCEMENT OF THIS ACT.

THIS CLAUSE PROVIDES THAT COURTS, WHEN FIXING A TERM OF IMPRISONMENT OR IN FIXING OR EXTENDING A NON-PAROLE PERIOD MUST, WHEN LOOKING TO PRECEDENT SENTENCES IMPOSED DURING THE OPERATION OF THE REMISSION SYSTEM, TAKE INTO ACCOUNT THE FACT THAT THE REMISSION SYSTEM HAS BEEN ABOLISHED.

59.

REDUCED SENTENCES ARE TO APPLY WHETHER THE OFFENCE IN RELATION TO WHICH THEY ARE FIXED OCCURED BEFORE ~~OR AFTER~~ AND AFTER THE COMMENCEMENT OF THIS ACT." [PAGE 923].

60.

HANSARD OF HOUSE OF ASSEMBLY, S.A., WEDNESDAY 28 NOVEMBER 2012, PAGE 3951 2ND READING FOR 'STATUTES AMENDMENT (APPEALS) BILL'

61.

" OTHER MEASURES

(REF. 12.)

THE BILL ALSO ADDRESSES TWO RELATIVELY STRAIGHTFORWARD ISSUES REGARDING THE APPEAL PROCESS.

THE FIRST ISSUE AT PRESENT IF A DEFENDANT APPEALS HIS OR HER SENTENCE, THE PROSECUTION HAS NO RIGHT OF CROSS-APPEAL. THE DEFENDANT HAS 'NOTHING TO LOSE' BY APPEALING HIS OR HER SENTENCE. THE COURT CANNOT INCREASE SENTENCE ON A DEFENCE APPEAL, NO MATTER HOW UNTENABLE THE APPEAL MAY BE."

62. TRANSCRIPT OF OPENING OF POLICE ASSOCIATION OF SOUTH AUSTRALIA ANNUAL CONFERENCE, TUESDAY 18 OCTOBER 2011.

HON. MIKE RANN MP

PREMIER

"TACKLING CRIME

SINCE 2005, OUR GOVERNMENT HAS — WHEN IT IS CONSIDERED NECESSARY IN THE PUBLIC INTEREST — TAKEN A DIFFERENT VIEW TO THE PAROLE BOARD AND REFUSED TO GRANT PAROLE TO EIGHT CONVICTED MURDERERS SERVING LIFE SENTENCES.

....

OR PERHAPS BEVAN SPENCER VON EINEM, WHOSE NON-PAROLE PERIOD ELAPSED IN 2007 AND WHO I HAVE REPEATEDLY MAINTAINED WOULD NEVER BE RELEASED UNDER A GOVERNMENT THAT I LED."

63. HANSARD OF LEGISLATIVE COUNCIL, S.A., THURSDAY 10 NOVEMBER 2011, PAGES 4374 AND 4375

'CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL'

"HON. ANN BRESSINGTON

HOWEVER, PRIOR TO 2002, NO SOUTH AUSTRALIAN GOVERNMENT HAD EXERCISED POWER TO DENY PAROLE TO AN INMATE. SINCE THE RANN LABOUR GOVERNMENT AND THE RISE OF THE LAW AND ORDER POLITICS, IT IS HERALDED. HOWEVER, THE PAROLE BOARD REPORTED TO ME THAT LESS THAN 50% OF APPLICATIONS ARE

(REF. 13.)

ACTUALLY GRANTED BY EXECUTIVE COUNCIL." [PAGE 4374]  
"MEMBERS MAY RECOGNISE THE NAME MICHAEL WEBB FROM THE RECENT  
TODAY TONIGHT STORY BY PRODUCER GRAHAM ARCHER, WHICH  
REVEALED THAT MR WEBB'S CO-ACCUSED, MS VERONICA HAY, WHOM  
IN SENTENCING THE TRIAL JUDGE, JUDGE DEBELLE, DESCRIBED  
AS EQUALLY CULPABLE OF THE VICIOUS MURDER IN 1991, HAD BEEN  
RELEASED FOLLOWING THE EXPIRATION OF HER NON-PAROLE  
PERIOD IN DECEMBER 2005, WHILE MR WEBB REMAINS  
INCARCERATED SOME SIX YEARS LATER.

LETTER BY DEBELLE

"DEAR MINISTER,

... MURDER OF MR PATRICK AT MT GAMBIER IN 1991.

... MS HAY WAS SENTENCED TO A NON-PAROLE PERIOD OF  
20 YEARS IMPRISONMENT. MR WEBB WAS SENTENCED TO  
A NON-PAROLE PERIOD OF 19 YEARS AND 9 MONTHS." "

[PAGE 4375]

64. R v. SELLECK [2000] SASC 190 (19 JUNE, 17 OCTOBER 2000)

"PARA 92: HAVING EXAMINED THE HISTORY OF THESE PROVISIONS, I NOW  
TURN TO THE ~~THE~~ CANONS OF STATUTORY INTERPRETATION.

PARA 93: AS WAS SAID BY LORD LOWRY IN HARRISON v TEE<sup>7</sup>, (WITH  
THE ASSENT OF THE OTHER LAW LORDS):

"ONE MUST DISTINGUISH BETWEEN AFFIRMATIVE AND NEGATIVE  
PROVISIONS: THE COMMON LAW CAN CO-EXIST WITH A  
STATUTORY PROVISION WITH WHICH IT IS NOT INCONSISTENT.  
... TO COKE, INSTITUTES OF THE LAWS OF ENGLAND (1817),  
CAP 20, P 200 (CO 2 INST 200):

'IT IS A MAXIM IN THE COMMON LAW, THAT A STATUTE  
MADE IN THE AFFIRMATIVE, WITHOUT ANY NEGATIVE  
EXPRESSED OR IMPLIED, DOES NOT TAKE AWAY THE  
COMMON LAW !...'"

(REF. 14.)

PARA 94: "THE FIRST IS THAT CLEAR AND UNMISTAKABLE WORDS WILL BE REQUIRED FOR THE ABROGATION OF A LONG-STANDING RULE OF LAW: SEE MAXWELL ON INTERPRETATION OF STATUTES (12TH ED, 1969), P. 116.

"IT IS A WELL ESTABLISHED PRINCIPLE OF CONSTRUCTION THAT A STATUTE IS NOT TO BE TAKEN AS AFFECTING FUNDAMENTAL ALTERATION IN THE GENERAL LAW UNLESS IT USES WORDS THAT POINT UNMISTAKABLY TO THAT CONCLUSION" (DEVLIN J IN NATIONAL ASSISTANCE BOARD V WILKINSON [1952] 2 QB 648 AT 661)."

PARA 103: BOLLEN J (WITH WHOM KING CJ AGREED) SAID:

"... DIRECTS THE COURT THAT IT SHOULD HAVE REGARD TO SUCH OF THE FOLLOWING MATTERS AS ARE RELEVANT."

"RELEVANT" MUST MEAN 'RELEVANT TO ~~THE~~ THE CASE AT BAR'."

PARA 117: AS EARLIER OBSERVED IT IS A WELL ESTABLISHED PRINCIPLE OF CONSTRUCTION THAT A STATUTE IS NOT TO BE TAKEN AS AFFECTING A FUNDAMENTAL ALTERATION IN THE GENERAL LAW UNLESS PARLIAMENT HAS ENACTED WORDS THAT POINT UNMISTAKABLY TO THAT CONCLUSION.<sup>16</sup> IT IS A FURTHER PRINCIPLE OF STATUTORY CONSTRUCTION THAT A COURT LEANS AGAINST AN INTERPRETATION WHICH PRODUCES UNJUST AND ARBITRARY CONSEQUENCES.<sup>17</sup>

65. R v. STAFFORD [2009] QCA 407

"PARA 38: THE CONCEPT OF MISCARRIAGE OF JUSTICE IS AS WIDE AS THE POTENTIAL FOR ERROR. INDEED, IT IS WIDER, FOR NOT ALL MISCARRIAGES INVOLVE ERROR. PROCESS IS RELATED TO OUTCOME, IN THAT THE OBJECT OF DUE PROCESS IS TO SECURE ~~THE~~ A JUST RESULT. JUSTICE, HOWEVER, MEANS JUSTICE ACCORDING TO LAW, AND THE OBSERVANCE OF THE ~~REQUIREMENTS~~ REQUIREMENTS OF LAW ACCORDING TO WHICH A

(REF. 15.)

CRIMINAL TRIAL IS TO BE CONDUCTED HAS A PUBLIC AS WELL AS A PRIVATE PURPOSE. AN UNJUST CONVICTION IS ONE FORM OF MISCARRIAGE. ANOTHER IS FAILURE OF PROCESS OF SUCH A KIND THAT IT IS IMPOSSIBLE FOR AN APPELLATE COURT TO DECIDE WHETHER A CONVICTION IS JUST. ANOTHER IS A FAILURE OF PROCESS WHICH DEPARTS FROM THE ESSENTIAL REQUIREMENTS OF A FAIR TRIAL, "

66. R v. MURPHY [2002] SASC 299 (11 DECEMBER, 2001, 28 JUNE AND 9 SEPTEMBER, 2002)

R v. MURPHY (2002) 83 SASR 574

" HELD: ...

67. (2) AN APPEAL COURT SHOULD BE RELUCTANT TO IMPOSE A NON-PAROLE PERIOD GREATER THAN THAT IMPOSED BY THE SENTENCING JUDGE UNLESS CONVINCED THAT THE PERIOD FIXED BY THE SENTENCING JUDGE IS MANIFESTLY INADEQUATE. [5]

68. (3) THE 18 YEAR NON-PAROLE PERIOD FIXED BY THE SENTENCING JUDGE WAS MANIFESTLY INADEQUATE IN ALL THE CIRCUMSTANCES. [12]

69. (8) IN ALL THE CIRCUMSTANCES AND APPLYING THE STANDARDS APPLICABLE AT THE TIME THE CRIMES WERE COMMITTED, THE APPEAL CONSTITUTED BY REFERENCE SHOULD BE ALLOWED AND A NON-PAROLE PERIOD OF 23 YEARS SHOULD BE SUBSTITUTED FOR THE ONE OF 25 YEARS PREVIOUSLY FIXED BY THE COURT OF CRIMINAL APPEAL. [48]

70. (9) IF THE CURRENT STANDARDS APPLIED, THE NON-PAROLE PERIOD WOULD BE LONGER. [47]

71. " PARA 2: THE CRIMES WERE COMMITTED ON 17 AUGUST 1994.

~~BARMUNCO, WESTERN AUSTRALIA COURT OF APPEAL, AS CITED IN~~

(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. 17.)

“ HELD: ....

(1) THE COURT OF CRIMINAL APPEAL HAD ERRED IN CONSIDERING THE RELEVANCE OF THE PETITIONER'S YOUTH WHEN FIXING THE PETITIONER'S NON-PAROLE PERIOD AND THAT THEREFORE THE NON-PAROLE PERIOD SHOULD BE CONSIDERED AFRESH, [5]

INGE V THE QUEEN (1999) 199 CLR 295, R V MURPHY (2002) 83 SASR 574, CONSIDERED.

76.

(2) AN APPEAL COURT SHOULD BE RELUCTANT TO INCREASE THE NON-PAROLE PERIOD FIXED BY A SENTENCING JUDGE UNLESS THE COURT IS CONVINCED THAT THAT PERIOD WAS MANIFESTLY INADEQUATE. [6]

R V MURPHY (2002) 83 SASR 574, CONSIDERED.

77.

(3) APPLYING THE STANDARDS THAT APPLIED AT THE TIME, THE APPEAL CONSTITUTED BY REFERENCE SHOULD BE ALLOWED AND A NON-PAROLE PERIOD OF 24 YEARS, WITH A REDUCTION OF 18 MONTHS FOR TIME ALREADY HELD IN CUSTODY AT THE TIME OF ORIGINAL SENTENCING, SHOULD BE SUBSTITUTED FOR THE NON-PAROLE PERIOD OF 28 YEARS AND SIX MONTHS FIXED BY THE SENTENCING JUDGE. [16]

78.

(4) IF THE CURRENT STANDARDS APPLIED, THE NON-PAROLE PERIOD WOULD BE LONGER. [14] ”

79.

“ PARA 2: THE CRIME WAS COMMITTED ON 4 JANUARY 1992.

80.

PARA 14: THIS COURT MUST APPLY THE SENTENCING STANDARDS APPLICABLE IN 1992. ”

81.

BARMINCO, WESTERN AUSTRALIA COURT OF APPEAL, AND CITED ABOVE IN TELFORD V. SEVERIN AND ANOR [2007] HCA TRANS 427 (9-8-2007).

82.

JURISDICTIONAL ERROR - ERRONEOUS EXERCISE OF DISCRETION

‘AN ERRONEOUS VIEW OF THE NATURE AND LIMITS OF A DISCRETION MAY CONSTITUTE JURISDICTIONAL ERROR FOR THE PURPOSES OF CERTIORARI:

SAID V. JUDGE OF THE DISTRICT COURT OF NSW (1996) 39 NSWLR 47

(REF. 18.)

AT 56; 85 A CRIM R 489 PER GLEESON CJ (PRIESTLY AND MEAGHER JJA AGREEING).'

83.

"IN CRAIG V. THE STATE OF SOUTH AUSTRALIA (1995) 184 CLR 163; 69 ALJR 873, THE HIGH COURT IN A JOINT JUDGMENT OF BRENNAN, DEANE, TOOHEY, GAUDRON AND McHUGH JJ CONSIDERED THE JUDGMENT OF LORD REID IN ANISMINE V. FOREIGN COMPENSATION COMMISSION [1969] 2 AC 147; [1969] 1 ALL ER 208, AND DREW A DISTINCTION IN ITS APPLICATION TO INFERIOR COURTS AND ADMINISTRATIVE TRIBUNALS. THEIR HONOURS CONCLUDED "THAT LORD REID'S COMMENTS SHOULD NOT BE ACCEPTED HERE AS AN AUTHORITATIVE STATEMENT OF WHAT CONSTITUTES JURISDICTIONAL ERROR BY AN INFERIOR COURT FOR THE PURPOSES ~~OF~~ OF CERTIORARI". BUT A "CRITICAL DISTINCTION" ARISES BETWEEN ADMINISTRATIVE TRIBUNALS AND COURTS OF LAW. IN RESPECT TO TRIBUNALS THEIR HONOURS OBSERVED:

IF SUCH AN ADMINISTRATIVE TRIBUNAL FALLS INTO ERROR OF LAW WHICH CAUSES IT TO IDENTIFY A WRONG ISSUE, TO ASK ITSELF A WRONG QUESTION, TO IGNORE RELEVANT MATERIAL, TO RELY ON IRRELEVANT MATERIAL OR, AT LEAST IN SOME CIRCUMSTANCES, TO MAKE AN ERRONEOUS FINDING OR TO REACH A MISTAKEN CONCLUSION, AND THE TRIBUNAL'S EXERCISE OR PURPORTED EXERCISE OF POWER IS THEREBY AFFECTED, IT EXCEEDS ITS AUTHORITY OF POWERS. SUCH AN ERROR OF LAW IS JURISDICTIONAL ERROR WHICH WILL INVALIDATE AN ORDER OR DECISION OF THE TRIBUNAL WHICH REFLECTS...

SEE: MARKSMAN TRAINING SYSTEMS PTY LTD V. INDUSTRIAL RELATIONS COMMISSION OF SA (1998) 71 SASR 72.

SEE ALSO: FINN, "JURISDICTIONAL ERROR: CRAIG V. SOUTH AUSTRALIA" (1996) "

(REF. 19.)

84. CRIMINAL LAW (SENTENCING) ACT 1988, S.A., IN FORCE AS AT MAY 2006.  
"AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO SENTENCING AND THE ENFORCEMENT OF SENTENCES; AND TO PROVIDE FOR OTHER RELATED MATTERS."

85. CORRECTIONAL SERVICES ACT 1982, S.A., IN FORCE AS AT AUGUST 2000  
"AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND MANAGEMENT OF PRISONS AND OTHER CORRECTIONAL INSTITUTIONS; TO REGULATE THE MANNER IN WHICH PERSONS IN CORRECTIONAL INSTITUTIONS ARE TO BE TREATED BY THOSE RESPONSIBLE FOR THEIR ~~DET~~ DETENTION AND CARE; AND FOR ANY OTHER PURPOSES."

~~86. CORRECTIONAL~~

86. CORRECTIONAL SERVICES ACT 1982, S.A., IN FORCE AS AT FEBRUARY 2010  
"AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND MANAGEMENT OF PRISONS AND OTHER CORRECTIONAL INSTITUTIONS; TO REGULATE THE MANNER IN WHICH PERSONS IN CORRECTIONAL INSTITUTIONS ARE TO BE TREATED BY THOSE RESPONSIBLE FOR THEIR DETENTION AND CARE; AND FOR OTHER PURPOSES."

87. SECTION 4. INTERPRETATION

"4.(1) IN THIS ACT, UNLESS THE CONTRARY INTENTION APPEARS -

"NON-PAROLE PERIOD" MEANS A PERIOD FIXED BY A COURT AS A PERIOD DURING WHICH A PRISONER MAY NOT BE RELEASED ON PAROLE;

88. SECTION 24. CHIEF EXECUTIVE OFFICER HAS CUSTODY OF PRISONERS

"24.(1) THE CHIEF EXECUTIVE OFFICER HAS THE CUSTODY OF A PRISONER..."

89. SECTION 37A. RELEASE ON HOME DETENTION

"37A.(6) IN THIS SECTION -

NON-PAROLE PERIOD, IN RELATION TO A PRISONER SERVING A SENTENCE IMPOSED FOR AN OFFENCE AGAINST A LAW OF THE COMMONWEALTH, INCLUDES..."

90. SECTION 60A. VALIDITY OF ACTS OF THE BOARD AND IMMUNITY OF ITS MEMBERS \* [2000 VERSION BUT DELETED BY

84/2009 s 73 1-2-2010 ]

(REF. 20.)

91. "60A. (3) A LIABILITY THAT WOULD, BUT FOR SUBSECTION (2), ATTACH TO A MEMBER OF THE BOARD LIES AGAINST THE CROWN."

92. SECTION 63. POWERS OF THE BOARD

"63. (3) THE BOARD MAY (AND MUST, IF A PRISONER IS OF A PRESCRIBED CLASS SO REQUESTS) INTERVIEW A PRISONER AT ANY TIME AND, IF SUCH AN INTERVIEW IS TO BE CONDUCTED OUTSIDE THE PRISON, MAY REQUEST THE MANAGER OF THE PRISON TO CAUSE THE PRISONER TO BE BROUGHT BEFORE THE BOARD AT A SPECIFIED TIME AND PLACE."

93. "63. (5) FOR THE PURPOSE OF THIS SECTION, A PRISONER IS OF A PRESCRIBED CLASS IF THE PRISONER IS SERVING —  
(A) A SENTENCE OF LIFE IMPRISONMENT; OR"

94. SECTION 67. RELEASE ON PAROLE BY APPLICATION TO THE BOARD

95. "67. (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 FOR THE PRISONER; AND
- (C) THE PRISONER IS NOT SERVING A SENTENCE OF INDEFINITE DURATION."

96. "67. (2) IF THIS SECTION APPLIES TO A PRISONER —

- (A) THE PRISONER; OR
- MAY APPLY IN THE ~~THE~~ PRESCRIBED MANNER TO THE BOARD FOR THE PRISONER'S RELEASE ON PAROLE."

97. "67. (3) AN APPLICATION CANNOT BE MADE UNDER SUBSECTION (1) MORE THAN SIX MONTHS BEFORE THE EXPIRATION OF THE NON-PAROLE PERIOD FIXED IN RESPECT OF THE PRISONER'S SENTENCE."

98. "67. (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."

99. "67. (4) THE BOARD MUST ALSO TAKE THE FOLLOWING MATTERS INTO CONSIDERATION WHEN DETERMINING AN APPLICATION UNDER THIS SECTION:

- (C) WHERE THE PRISONER WAS IMPRISONED FOR AN OFFENCE OR OFFENCES

(REF. 21.)

INVOLVING VIOLENCE, THE CIRCUMSTANCES AND GRAVITY OF THE OFFENCE, OR OFFENCES, FOR WHICH THE PRISONER WAS SENTENCED TO IMPRISONMENT (BUT THE BOARD MAY NOT SUBSTITUTE ITS VIEW OF THESE MATTERS FOR THE VIEW EXPRESSED BY THE COURT IN PASSING SENTENCE); AND

...  
(H) ANY OTHER MATTERS THE BOARD THINKS ARE RELEVANT. ”

100.

“ 67. (6) THE BOARD MAY, ON APPLICATION UNDER THIS SECTION IN RESPECT OF A PRISONER WHO IS SERVING A SENTENCE OF LIFE IMPRISONMENT, RECOMMEND TO THE GOVERNOR THAT THE PRISONER BE RELEASED FROM PRISON ON PAROLE AND, IF THE BOARD SO RECOMMENDS, THE BOARD -

(A) MUST RECOMMEND TO THE GOVERNOR -

(i) A DAY ON WHICH THE PRISONER IS TO BE RELEASED ON PAROLE; AND

(ii) A PERIOD OF NOT LESS THAN THREE YEARS OR MORE THAN TEN YEARS,

FOR WHICH THE PRISONER SHOULD CONTINUE ON PAROLE; AND

(B) MUST FORWARD A COPY OF ITS RECOMMENDATIONS TO THE GOVERNOR FOR APPROVAL. ”

101.

“ 67. (7) THE GOVERNOR MAY, ON RECEIVING THE BOARD'S RECOMMENDATIONS, ORDER THAT THE PRISONER BE RELEASED FROM PRISON ON PAROLE ON A DAY AND FOR A PERIOD SPECIFIED IN THE ORDER, BEING NOT LESS THAN THREE YEARS AND NOT MORE THAN TEN YEARS. ”

102.

\* SECTIONS 67. (7A), (7B) AND (7C) INSERTED BY  
24/2012 S. 41(3) 31-8-2012

103.

“ 67. (7A) IF THE GOVERNOR DOES NOT APPROVE THE RECOMMENDATION OF THE BOARD THAT A PRISONER BE RELEASED ON PAROLE, THE MINISTER MUST, WITHIN 30 DAYS AFTER BEING REQUESTED TO DO SO BY THE BOARD, ADVISE THE BOARD OF MATTERS (IF ANY) THAT THE MINISTER BELIEVES MIGHT ASSIST THE PRISONER IN MAKING ANY FURTHER APPLICATION

(REF. 22.)

FOR PAROLE. ”

104. “ 67. (7B) THE BOARD MUST NOT DISCLOSE ADVICE GIVEN BY THE MINISTER UNDER SUBSECTION (7A). ”

105. “ 67. (7C) THE MINISTER AND THE BOARD CANNOT BE REQUIRED TO DISCLOSE ADVICE GIVEN BY THE MINISTER UNDER SUBSECTION (7A) BY ANY LAW OF THE STATE OR FOR THE PURPOSE OF ANY PROCEEDINGS BEFORE A COURT, TRIBUNAL OR ANY OTHER BODY. ”

106. “ 67. (8) THE BOARD OR THE GOVERNOR CANNOT SPECIFY A RELEASE DATE UNDER THIS SECTION THAT IS EARLIER THAN THE DAY ON WHICH THE PRISONER'S NON-PAROLE PERIOD EXPIRES. ”

107. “ 67. (9) THE BOARD MUST, NOT MORE THAN 30 DAYS AFTER REFUSING AN APPLICATION BY A PRISONER FOR RELEASE ON PAROLE, NOTIFY THE PRISONER IN WRITING OF -

(A) ITS REFUSAL; AND

108. (B) THE REASONS FOR ITS REFUSAL AND ANY MATTERS THAT MIGHT ASSIST THE PRISONER IN MAKING ANY FURTHER APPLICATION FOR PAROLE; AND

(C) A DATE NOT LESS THAN SIX MONTHS OR MORE THAN ONE YEAR AFTER THE DATE ON WHICH THE BOARD REFUSES ~~AT~~ THE APPLICATION, BEFORE WHICH THE BOARD WILL NOT ACCEPT ANY FURTHER APPLICATION BY THE PRISONER FOR RELEASE ON PAROLE. ”

109. “ 67. (10) THE BOARD IS NOT OBLIGED TO (BUT MAY, IF IN ITS OPINION GOOD REASON EXISTS FOR DOING SO), ACCEPT A FURTHER APPLICATION BY A PRISONER FOR RELEASE ON PAROLE BEFORE THE DATE NOTIFIED BY THE BOARD UNDER SUBSECTION (9). ”

110. SECTION 77. PROCEEDINGS BEFORE THE BOARD

111. “ 77. (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 : ”

(REF. 23.)

112. "77. (2) FOR THE PURPOSES OF ANY PROCEEDINGS UNDER THIS PART —  
(C) THE PERSON TO WHOM THE PROCEEDINGS RELATE MAY MAKE SUCH  
SUBMISSIONS TO THE BOARD IN WRITING AS HE OR SHE THINKS FIT."
113. "77. (3) THE PERSON TO WHOM ANY PROCEEDINGS BEFORE THE BOARD RELATE IS  
ENTITLED TO BE REPRESENTED IN THOSE PROCEEDINGS BY A LEGAL PRACTITIONER."
114. SCHEDULE 1. — APPLICATION OF TRUTH IN SENTENCING ACT AMENDMENTS  
CLAUSE 1. INTERPRETATION.  
"IN THIS SCHEDULE —  
"SUBSEQUENT AMENDING ACT" MEANS AN ACT (OTHER THAN THE CORRECTIONAL  
SERVICES (APPLICATION OF TRUTH IN SENTENCING) AMENDMENT ACT 2008)  
BROUGHT INTO OPERATION AFTER THE COMMENCEMENT OF THE TRUTH IN  
SENTENCING ACT THAT AMENDS OR SUBSTITUTES A PROVISION OF THIS  
ACT ;"
115. CLAUSE 2. TRUTH IN SENTENCING CLARIFICATION
116. "2. (1) THE AMENDMENTS TO THIS ACT MADE BY THE TRUTH IN SENTENCING ACT  
APPLY, AND HAVE ALWAYS APPLIED, IN RESPECT OF ALL PRISONERS SERVING  
SENTENCES OF IMPRISONMENT IMMEDIATELY BEFORE THE COMMENCEMENT  
OF THOSE AMENDMENTS, REGARDLESS OF WHEN THE PRISONERS WERE  
SENTENCED."
117. "2. (2) IT FOLLOWS THAT ANYTHING DONE OR OMITTED TO HAVE BEEN DONE IN  
RELATION TO SUCH PRISONERS BEFORE THE COMMENCEMENT OF THIS  
CLAUSE ON THE BASIS REFERRED TO IN SUBCLAUSE (1) HAS ~~DONE~~ BEEN,  
AND HAS ALWAYS BEEN, VALIDLY DONE OR OMITTED TO HAVE BEEN DONE."
118. "2. (3) THIS CLAUSE AFFECTS RIGHTS AND LIABILITIES ARISING BETWEEN  
PARTIES TO PROCEEDINGS INITIATED BEFORE THE COMMENCEMENT OF THIS  
CLAUSE TO THE EXTENT TO WHICH THOSE RIGHTS AND LIABILITIES ARISE  
FROM, OR ARE AFFECTED BY, AN ACT OR OMISSION REFERRED TO  
IN SUBCLAUSE (2) ;  
HOWEVER, THIS CLAUSE DOES NOT AFFECT ANY SUCH RIGHTS

(REF. 24.)

- OR LIABILITIES ARISING BETWEEN PARTIES TO PROCEEDINGS HEARD AND FINALLY DETERMINED BEFORE COMMENCEMENT OF THIS CLAUSE. "
119. "2. (4) NOTHING IN THIS CLAUSE AFFECTS THE OPERATION OF A SUBSEQUENT AMENDING ACT (AND ANY SUCH ACT HAS EFFECT ACCORDING TO ITS TERMS). "
120. CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT ACT 2009, S.A., SCH 2, IN FORCE AS AT 2009
121. CLAUSE 1. TRANSITIONAL PROVISION  
"1. (1) THE AMENDMENTS MADE BY PART 2 OF THIS ACT TO SECTION 66 OF THE CORRECTIONAL SERVICES ACT 1982 (THE PRINCIPAL ACT) ARE INTENDED TO APPLY IN RESPECT OF PRISONERS SERVING SENTENCES OF IMPRISONMENT IMMEDIATELY BEFORE THE COMMENCEMENT OF THIS CLAUSE REGARDLESS OF WHEN THE PRISONERS WERE SENTENCED. "
122. "1. (2) HOWEVER, IF, BEFORE THE COMMENCEMENT OF THIS CLAUSE, 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 THE PRINCIPAL ACT AS IN FORCE IMMEDIATELY BEFORE THAT COMMENCEMENT, TO BE RELEASED ON PAROLE. "
123. CORRECTIONAL SERVICES ACT AMENDMENT ACT, 1984, S.A., No. 94  
IN FORCE AS AT 19-8-1985.
124. SECTION 39.
125. "SECTIONS 66, 67 AND 68 OF THE PRINCIPAL ACT ARE REPEALED AND THE FOLLOWING SECTION IS SUBSTITUTED :
126. 66. (1) THE BOARD SHALL ORDER THAT A PRISONER IN RESPECT OF WHOM A NON-PAROLE PERIOD HAS BEEN FIXED BE RELEASED FROM PRISON ON PAROLE ON A DAY SPECIFIED BY THE BOARD, BEING A DAY NOT LATER THAN THIRTY DAYS AFTER THE DAY WHEN THE PERIOD THE PRISONER HAS SERVED IN PRISON DURING THE NON-PAROLE PERIOD AND THE TOTAL NUMBER OF DAYS OF REMISSION CREDITED TO HIM DURING THAT



(REF. 25.)

PERIOD (BUT AFTER THE COMMENCEMENT OF THE PRISONS ACT  
AMENDMENT ACT (No 2), 1983) TOGETHER EQUAL THE NON-PAROLE  
PERIOD.

127.

66. (2) THE RELEASE OF A PRISONER ON PAROLE —

(A) SHALL BE SUBJECT TO THE CONDITIONS —

....  
(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.

128.

66. (3) WHERE A ~~PRISONER~~ 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~~  
GOVERNOR FOR APPROVAL. ”

129.

CORRECTIONAL SERVICES ACT AMENDMENT ACT (No. 2), 1990, S.A., No. 76

IN FORCE AS AT 21-12-1990.

130.

SECTION 25. BOARD MUST ORDER RELEASE ON PAROLE AT END OF ~~THE~~ NON-  
PAROLE PERIOD.

“ 25. SECTION 66 OF THE PRINCIPAL ACT IS AMENDED —

(A) ....

(B) ....

(C) .... ”

(REF. 26.)

131. TELFORD V. SEVERIN AND ANOR [2007] HCA TRANS 427 (9 AUGUST 2007)

"MR CHURCHES: ... I NOTE THAT OUR ORIGINAL SUBMISSIONS DID REFER TO THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS, GUMMOW J: THE RELEVANT PROVISION OF ARTICLE 7, "NOR SHALL A HEAVIER PENALTY BE IMPOSED THAN THE ONE THAT WAS APPLICABLE AT THE TIME THE CRIMINAL OFFENCE WAS COMMITTED."

132. SUNDAY MAIL NEWSPAPER ARTICLE, 31-5-2015, 'SOUTH AUSTRALIA, STATE'

PAGE 2, TITLE "PUSH TO END GOVERNMENTS PAROLE VETO"  
SUB-TITLE "END THE INTERFERENCE, SAYS NELSON"

AUTHOR - MEAGAN DILLON

"BOARD CHAIRWOMAN FRANCES NELSON, Q.C., SAID

"THE EXECUTIVE COUNCIL HAD BEEN ACTING AS A

"DE FACTO SENTENCING TRIBUNAL"

AND INTERFERING WITH THE INDEPENDENCE OF JUDICIARY."

"I DON'T THINK THE EXECUTIVE ARM OF GOVERNMENT HAS ANY PLACE IN THE JUDICIARY," SHE TOLD THE SUNDAY MAIL."

133. THE QUEEN V. DALE (CCA NO. 70 OF 1989), SOUTH AUSTRALIA, DELIVERED 23-10-1989; THE QUEEN V. DALE (1989) 153 L.S.J.S. AT PAGE 491

134. HOARE AND EASTON V. THE QUEEN (1989) 86 A.L.R. p. 361, DELIVERED 30-6-1989, DECISION ~~OF~~ OF THE HCA, AND CITED ABOVE IN THE QUEEN V. DALE (CCA NO. 70 OF 1989), SOUTH AUSTRALIA

135. MARR V. ROWBOTTOM (1989) 39 A CRIM R 113.

AS DESCRIBED WITHIN:

"CRIMINAL LAW SOUTH AUSTRALIA" LOOSELEAF SERVICE (SERVICE 57), PAGE 8031 FROM COMMENTARY ON CRIMINAL LAW (SENTENCING) ACT 1988.

"[10,010.3] TRANSITIONAL PROVISIONS: THESE ARE SET OUT IN SS 79-80 OF STATUTES AMENDMENT AND REPEAL (SENTENCING) ACT (NO 51 OF 1988) AND ARE EXTRACTED BELOW. SOME OF THESE TRANSITIONAL PROVISIONS ARE CONTAINED IN THE SCHEDULE AT THE END OF THE SENTENCING ACT. WHERE A SENTENCE PRONOUNCED BEFORE THE COMMENCEMENT OF THE SENTENCING ACT IS SET

(REF. 27.)

ASIDE ON APPEAL AFTER THE COMMENCEMENT OF THAT ACT, THE OFFENDER MAY STILL BE SENTENCED UNDER THE STATUTORY PROVISIONS WHICH WERE IN FORCE WHEN HE WAS ORIGINALLY SENTENCED: MARR V. ROWBOTTOM (1989) 39 A CRIM R 113."

136. HANSARD OF HOUSE OF ASSEMBLY, S.A., THURSDAY 21 APRIL 1994, PAGE 921  
2ND READING FOR 'STATUTES AMENDMENT (TRUTH IN SENTENCING) BILL'  
PAGES 921, 922 AND 923

137. "REMISSIONS CANNOT SIMPLY BE ABOLISHED — THE CONSEQUENCES OF THEIR ABOLITION NEED TO BE DEALT WITH.  
UNDER SECTION 12 OF THE CRIMINAL LAW (SENTENCING) ACT 1988 COURTS ARE REQUIRED TO TAKE ACCOUNT OF REMISSIONS WHEN FIXING A SENTENCE OR A NON-PAROLE PERIOD." [PAGE 922].

138. "THE GOVERNMENT BELIEVES THAT IT WOULD BE UNDESIRABLE FOR THERE TO BE TWO GROUPS OF PRISONERS, PRE-AMENDMENT PRISONERS WHO CONTINUE TO BE ELIGIBLE FOR REMISSIONS AND POST-AMENDMENT PRISONERS NOT BEING ELIGIBLE FOR REMISSIONS. SUCH A SITUATION WOULD BE CONFUSING FOR BOTH PRISONERS AND PRISON OFFICERS." [PAGE 922].