IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S165 of 2011

BETWEEN

KEVIN GARRY CRUMP
Plaintiff

10 AND

STATE OF NEW SOUTH WALES
First Defendant

NEW SOUTH WALES STATE PAROLE AUTHORITY
Second Defendant

SUBMISSIONS OF THE FIRST DEFENDANT

20 **Part I – Publication of Submissions**

1. These submissions are in a form suitable for publication on the Internet.

Part II – The Issue

2. The issue is whether s 154A of the Crimes (Administration of Sentences) Act 1999 (NSW) ("the CAS Act") is a valid enactment of the NSW Parliament.

Filed for the State of NSW on 15 February 2012
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Part III – Section 78B Notices

3. The notices served by the plaintiff appear to be satisfactory.

Part IV – Material Facts

4. The plaintiff's statement of material facts is accepted.

Part V – Applicable Legislation

5. The plaintiff's statement of applicable constitutional provisions and legislation is accepted. The first defendant notes that, in addition to those provisions identified in Part VII of the plaintiff's submissions ("PS"), a number of additional provisions of relevance are set out in the Schedule to those submissions.

10 6. The Schedule to these submissions sets out further provisions which are referred to below but not included in the plaintiff's submissions or the Schedule to those submissions.

Part VI – The Argument

Section 154A has no operation on the judgment of McInerney J

7. In deciding whether a law offends Ch III of the Constitution, its operation and effect will define its constitutional character. The determination of a law's operation and effect "requires identification of the nature of the rights, duties, powers and privileges which the statute changes, regulates or abolishes": HA Bachrach Pty Limited v Queensland (1998) 195 CLR 547, at 561 [12]. The plaintiff's case is that s 154A
20 operates to "set aside, vary, or otherwise alter the effect of, a judgment, decree, order or sentence of the Supreme Court of NSW" in a "matter" that might be the subject of an appeal under s 73 of the Constitution.

8. Section 154A is not, however, a law of this kind. It says nothing to or about the judicial branch. Rather, it is a law that directs that the Parole Authority, which is constituted under s 183 of the CAS Act with functions which include the

determination of whether to grant parole and the conditions of any grant (s 185(1)(a)), may order the release of offenders in a particular category only in certain specified circumstances

9. The issue of whether a prisoner should be granted parole, if otherwise eligible under the relevant statute, has always been a decision for the executive branch of government: Elliott v The Queen (2007) 234 CLR 38 at 41 [5]. Justice McInerney made this point, in the context of acknowledging that many people were under a misconception as to the meaning of a minimum term under the Sentencing Act 1989 (NSW) ("Sentencing Act", now repealed) (SCB 173):

> [A] minimum term is a minimum period of imprisonment to be served because the sentencing judge considers the crime committed calls for such detention. It is a matter for the Parole Board to then determine, in accordance with the terms of s 17 of the Sentencing Act, if and when a prisoner should be released on parole. ... The mere fact that a prisoner is given a minimum sentence means only that at the expiration of the minimum term he *may* be admitted to parole. (emphasis in original)

10. His Honour's comments were reflected in s 13A(4)(a)(ii) of the Sentencing Act (SCB 62), pursuant to which the plaintiff's minimum term was set, which provided that at the same time an additional term might be set "during which the person may be released on parole" (emphasis added).

11. Release on parole has at all relevant times required the making of a parole order. At the time of McInerney J's judgment – 24 April 1997 – s 15 of the Sentencing Act (PS, Sch) prescribed that "[a] prisoner eligible for release on parole is entitled to be released on parole only if a parole order directing the release of the prisoner has been made and takes effect". Similar provision is made in s 127 of the CAS Act (PS, Sch), which has not been amended since the Act commenced. That section provides: "An offender who is eligible for release on parole may not be released on parole except in accordance with a parole order directing the release of the offender."

12. Under the Sentencing Act as in force at the time of McInerney J's judgment, there were, as there is now with respect to the Parole Authority, a number of preconditions to a grant of parole. For a "serious offender", which was defined to include an offender whose sentence had been the subject of a determination under s 13A(4) (see s 4 of the Sentencing Act and s 59 of the Correctional Centres Act 1952 (NSW) (formerly known as the Prisons Act 1952 and since repealed)), the Parole Board was required to comply both with the preconditions which applied to all prisoners with a sentence exceeding three years for whom a parole period had been set (see s 16), and conditions which were particular to serious offenders (s 22A). Accordingly, at that time, the Parole Board was prohibited from making a parole order for a serious offender whose sentence had been the subject of a determination under s 13A(4) unless it had:

(a) determined the two matters set out in s 17(1)(a) and (e);

(b) considered the matters in s 17(1)(b),(c) and (f);

(c) taken into account the matters in s 17(1)(d) (PS, Sch);

(d) formulated an initial intention pursuant to s 22D, on or immediately after giving preliminary consideration under s 22C to whether or not a prisoner should be released (PS, Sch);

(e) reconsidered its initial intention in the event of the receipt of any victim submissions (or prisoner submissions if its intent was not to make an order) and taken into account any prisoner submissions in accordance with s 22E(1)(b) and (d) (PS, Sch) (or confirmed its initial intention to make an order if there were no victim submissions or such submissions were not required, in accordance with s 22E(1)(a) and 22K(1));

(f) taken into account any submissions made by the State under s 22O; and

(g) made a decision "after reviewing all the reports, documents, submissions and other information placed before it" at a meeting held for the purposes of a hearing under ss 22H or 22I (a requirement if a notice of intention to make submissions was lodged within the time specified in the notice of initial intention issued under ss 22F or 22G), in accordance with s 22J.

13. Subsequent to McInerney J's decision, the Sentencing Act was amended to impose further conditions on the grant of parole for serious offenders the subject of a determination under s 13A(4), requiring the Parole Board to:

(a) have regard to and give "substantial weight" to "any relevant recommendations, observations and comments made by the original sentencing court when imposing the sentence concerned" and give consideration to "adopting or giving effect to their substance and the intention of the original sentencing court when making them" pursuant to s 22P(2) (PS, Sch); and

(b) have "in particular" regard to the need to preserve the safety of the community pursuant to s 22P(3) (PS, Sch).

14. Similarly, under the CAS Act, as in force immediately before the introduction of s 154A on 20 July 2001, the Parole Board was prohibited from making a parole order for a serious offender whose sentence had been the subject of a determination under s 13A(4) unless it had decided that the release of the offender was appropriate, "having regard to the principle that the public interest is of primary importance": s 135(1). By this time the Sentencing Act had been repealed and the provisions regarding determination of life sentences enacted in Schedule 1 of the Crimes (Sentencing Procedure) Act 1999 (NSW) (the "CSP Act"). In making a decision about a serious offender whose sentence had been the subject of a determination under Sch 1 (which by reason of transitional provisions included a determination made under s 13A(4) of the Sentencing Act) the Parole Board was required to:

(a) have regard to the ten matters listed in s 135(2) of the CAS Act (PS, Sch);

(b) have regard to and give "substantial weight" to "any relevant recommendations, observations and comments made by the sentencing court" and give consideration to "adopting or giving effect to any such recommendations, observations and comments and to the intention of the sentencing court when making them" pursuant to s 154(2)(a) and (b) (PS, Sch);

(c) "in particular, have regard to the need to preserve the safety of the community" pursuant to s 154(2);

(d) formulate its initial intention in accordance with s 144;

(e) consider all submissions made by victims, the offender and/or the State in accordance with ss 142-154 and to disregard all other submissions, pursuant to s 148(2) (PS, Sch);

(f) confirm or reconsider its initial intention depending on the receipt of victim or offender submissions in accordance with the principles in s 148; and

(g) make a decision after reviewing "all the reports, documents, submissions and other information placed before it" in accordance with s 149 (or confirm its initial intention to make an order if there were no victim submissions or it was not required to seek such submissions, in accordance with s 150(1)).

15. Before the enactment of s 154A, then, the prospect of a parole order being made in relation to a serious offender whose life sentence had been the subject of a determination under either the Sentencing Act or Sch 1 of the CSP Act was conditional on the view of the Parole Board, which view was formed as a result of taking certain steps and having regard to multiple prescribed considerations. Satisfaction of what the plaintiff describes (at PS [16]) as the "pre-conditions" for eligibility for release on parole in accordance with either s 14 of the Sentencing Act or s 126 of the CAS Act, essentially the expiry of all applicable minimum terms, did not confer a prospect of release on parole that was anything other than highly contingent.

16. In his judgment of 24 April 1997, McInerney J sentenced the plaintiff to a minimum term of penal servitude of 30 years – commencing on 13 November 1973 – for the murder of Mr Lamb, with an additional term for the remainder of the plaintiff's natural life (SCB 179-180). The effect of an order made under s 13A of the Sentencing Act (SCB 61-62) was to alter or vary the order of the original sentencing judge, "setting for an existing life sentence both a minimum term of imprisonment and an additional term during which the prisoner might, by the exercise of statutory authority given a non-judicial body, be released on parole": Baker v The Queen (2004) 223 CLR 513 at 529 [33] per McHugh, Gummow, Hayne and Heydon JJ.

17. The practical effect of his Honour's order was, as Dawson, Toohey and Gaudron JJ in Bugmy v The Queen (1990) 169 CLR 525 at 536 said of provisions under the Penalties and Sentences Act 1985 (Vic) for the fixing of a minimum term for prisoners serving life sentences, "that thereafter the Parole Board may, but of course need not, grant the prisoner parole: Corrections Act, s. 74(1)." As at the date of McInerney J's judgment, the plaintiff was still subject to a life sentence. He was eligible to be considered for release on parole as from 13 November 2003, but only in accordance with what would then be the current parole legislation, which by that time was the scheme provided for in the CAS Act. The legislation might equally, however, have provided a completely different regime. Justice McInerney's judgment said nothing as to whether the plaintiff would be granted parole if and when that consideration occurred. This would remain a decision for the then Parole Board and that body would make the decision according to its statutory charter.

18. The Parole Authority, in exercising its statutory functions, could not and cannot alter the sentence imposed by McInerney J. The joint judgment of Barwick CJ, Menzies, Stephen and Mason JJ in Power v The Queen (1973) 131 CLR 623 at 628-629, dealing with legislation which their Honours considered to have only immaterial differences to the Parole of Prisoners Act 1966 (NSW) (repealed), accurately described the confines of the Parole Authority's power:

> To interfere with that sentence is not within the authority of the paroling authority. Its authority is to release the prisoner conditionally from confinement in accordance with the sentence imposed upon him. The sentence stands and during its term the prisoner is simply released upon conditional parole. ... In truth there is but one sentence, that imposed by the trial judge, which cannot be altered by the paroling authority.

19. The introduction of s 154A required the Parole Board to form a view as to the matters specified in s 154A(3) before making a parole order. The judgment of McInerney J stands in its entirety, as it would, for example, if the plaintiff's conduct in prison had been such as to lead the Parole Authority to form an intention to refuse parole, or to decide not to grant parole on the basis of the matters set out in s 154(2) of the CAS Act. As the joint judgment of French CJ, Gummow, Hayne, Crennan and Kiefel JJ

pointed out in considering the South Australian sentencing regime in PNJ v The Queen [2009] HCA 6; 83 ALJR 384; 252 ALR 612 at [11]:

> It may greatly be doubted that the punishment imposed on an offender is sufficiently described by identifying only the term which the court fixes as the least period of actual incarceration that must be served. Rather, the punishment imposed on an offender will be better identified, at least for most purposes, as both the head sentence (here, life imprisonment) and the non-parole period that is fixed, for it is always necessary to recognise that an offender may be required to serve the whole of the head sentence that is imposed.

20. The plaintiff's argument depends upon the proposition – set out in para 43 of his submissions – that s 154A "operates directly upon rights or entitlements *created* by a judgment or order of the NSW Supreme Court". The entitlement in question is then described in para 56 of the plaintiff's submissions as "eligibility to be released on parole on the expiration of his or her minimum term." It is further said in para 57 that this entitlement "had no existence independent of a judgment or order of the NSW Supreme Court." Any entitlement – which was actually one to have the question of parole considered by the Parole Board under s 22C of the Sentencing Act 1989 (and later by the Parole Authority under s 143 of the CAS Act (PS, Sch)) at the determination of the minimum sentence and each year thereafter – was, however, not created by the judgment of McInerney J but by pre-existing and subsequent legislation. Justice McInerney's judgment simply enabled the plaintiff to satisfy aspects of the requirements for eligibility for parole in s 14 of the Sentencing Act (and later s 126 of the CAS Act) at the expiry of his minimum term (satisfaction of all of those requirements necessitated him not being subject to any other sentence with an unexpired non-parole period). The plaintiff certainly did not become entitled to have his parole considered in any particular manner or using any particular criteria by virtue of the fixing of a minimum term in 1997. As it happens, the question of parole in the case of the plaintiff was considered in September 2003 (SCB 192) and can still be considered under the current legislation – if an application is made – but some of the requirements for actual release have been changed.

21. The plaintiff's contention that s 154A constituted a legislative revision to McInerney J's judgment further depends upon establishing the proposition described in para 18 of his submissions that eligibility for parole necessarily confers some prospect of release, because otherwise the concept of eligibility would be rendered illusory, as would the intention of the legislature, referred to in Bugmy v The Queen, that the minimum term is a benefit to the prisoner. The statutory concept of eligibility for release, however, operates as a legal qualification to having the question of parole considered in a particular case. That concept retains its operation and effect whether or not there is any prospect of the offender being released after the question is considered. Any prospect of the plaintiff being released on parole, as a matter of law, has at all relevant times been subject to the completion of further steps and the formation of a view by the Parole Authority or its predecessor. In Bugmy v The Queen, Mason CJ and McHugh J observed (at 531) that "although the fixing of a minimum term confers a benefit on the prisoner, it serves the interests of the community rather than those of the prisoner". Their Honours later described release on parole as a "concession" made at the time the Parole Board makes its decision (at 532). Justices Dawson, Toohey and Gaudron explained that the relevant "benefit" to the prisoner lay in providing a "basis for hope of earlier release ... The fact is, though, that the sentence remains, in the present case, one of life imprisonment" (at 536-537). The same is true of the plaintiff's case.

22. Following the enactment of s 154A, the plaintiff's basis for hope of release as a result of a favourable parole decision has been reduced, but not by varying the effect of McInerney J's judgment. Section 154A regulates the powers and duties of the Parole Authority, but this of itself is not a basis for invalidity.

Ambit of the Kable Principle

23. There has, therefore, been no change to the plaintiff's sentence but only – as the title of the CAS Act suggests – to its administration. As Gleeson CJ noted in Baker v The Queen at 520 [7]:

> Such regimes [laws affecting the sentencing and custodial regimes which apply to prisoners already serving sentences] are almost always affected in various

ways by legislative, judicial, and administrative decision-making. To take the most obvious example, conditions of incarceration alter from time to time with changes in executive policy. In New South Wales, the system of release on parole historically involved both judicial and administrative decisions, and the interaction of that system with administrative procedures concerning remission of sentence gave rise to the problems that were addressed by the *Sentencing Act 1989* (NSW). The history of those problems, and an explanation of the legislative solution, may be seen in *R v Maclay* [(1990) 19 NSWLR 112]. As the judgment in that case makes clear, and as should in any event be obvious, legislative and administrative changes to systems of parole and remissions usually affect people serving existing sentences. The longer the original sentence, the more likely it is that an offender will be affected by subsequent changes in penal policy.

24. It is important to recall that the principle first set out in Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51 was concerned with legislation that conferred a function on a court – being a court in which federal jurisdiction had been invested under Ch III – that was incompatible with exercise of that jurisdiction. The principle extends to legislation that confers what would otherwise be an appropriate function on the court in question, but requires the function to be carried out in a way that is inconsistent with the nature of judicial power. This was the finding in relation to the legislation in question in International Finance Trust Co Limited v New South Wales Crime Commission (2009) 240 CLR 319 and in Wainohu v New South Wales (2011) 243 CLR 181 (notwithstanding the fact that in the later case the legislative direction concerned a function conferred on a judicial officer not as a member of the relevant court, but as a *persona designata*).

25. The associated concept of interference with judicial power, exemplified in its most extreme form perhaps by the decision in Liyanage v The Queen [1967] 1 AC 259, may lead to the invalidation of legislation that is directed to a court in the exercise of judicial functions. See for example, Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs (1992) 176 CLR 1 at 34 per Brennan, Deane and Dawson JJ. The function of granting parole is not a judicial function and, in any event, is not exercised by the court under the relevant legislation. The Parliament

may, and in this case has, chosen to have parole determined by a non-judicial body. Different considerations to those arising where the relevant powers are exclusively judicial will apply when considering whether legislation affecting the power to order parole usurps judicial power: see HA Bachrach Pty Limited v Queensland at 563 [18].

Legislation affecting decisions of a court

26. Even if some entitlement to future consideration of the question of parole for the plaintiff had been created by the judgment of McInerney J – which it has already been submitted it was not – it might be noted, as the plaintiff appears to concede at para 43, that it is open by way of legislation to affect the rights of parties that have been the subject of a judgment of a court by altering the legal rights and obligations upon which that judgment is based, including if that alteration renders the prior decision otiose.

27. In Federated Engine-Drivers and Firemen's Association of Australasia v Broken Hill Proprietary Co Limited (1913) 16 CLR 245 the High Court had held the union in question was not entitled to be registered under the relevant federal legislation, but that legislation was then amended so that the union was eligible for registration. All members of the Court considered that the legislation could validly – and retrospectively – have this effect, although the Court divided on whether the legislation operated to validate the union's claim retrospectively.

28. In HA Bachrach Pty Limited v Queensland, the Queensland Planning and Environment Court had rejected a development proposal. An appeal was filed but in the meantime legislation was enacted that had the effect of allowing the proposed development. The Court said (at 562 [16]) in relation to this legislation:

> It does not follow that the legislature was acting beyond power, or interfering in any relevant sense with the exercise of judicial power. Parliament had the power to enact a special law relating to the use of land at Morayfield. It was not deprived of that power by pending, or threatened, legal proceedings under another law which it had previously enacted, and which it could repeal or amend as it saw fit.

29. It might be added that the legislation not only affected pending proceedings but also negated the effect of the decision of the Planning and Environment Court.

30. If McInerney J's judgment created an entitlement to the future consideration of the plaintiff's parole, all that s 154A did was to alter the law to be applied by the Parole Authority upon its future consideration of the parole question. Section 154A does not make a legislative variation to that entitlement or declare the law applicable before McInerney J to be different to what his Honour said it was.

Legislation affecting pending litigation

31. Although it is not this case, for completeness the authorities indicating that legislation may also affect the rights of parties to pending litigation illustrate how directly the legislature can affect the exercise of judicial power without impermissibly usurping such power, or requiring courts to exercise judicial power in a manner inconsistent with its nature.

32. In Australian Building Construction Employees' and Builders' Labourers Federation v Commonwealth (1986) 161 CLR 88 (the BLF Case) the union had brought proceedings in the High Court to quash a declaration of the then Conciliation and Arbitration Commission which allowed the relevant Minister to order the deregistration of the union. Prior to the application being heard, however, the registration was cancelled by federal legislation. The Court said (at 96) in relation to this legislation:

> It is well established that Parliament may legislate so as to affect and alter rights in issue in pending litigation without interfering with the exercise of judicial power in a way that is inconsistent with the Constitution.

33. At the same time the Court noted a passage from the judgment of Mason J in R v Humby; Ex parte Rooney (1973) 129 CLR 231, at 250:

> Chapter III contains no prohibition, express or implied, that rights in issue in legal proceedings shall not be the subject of legislative declaration or action.

34. Justice Mason had referred in turn to Nelungaloo Pty Ltd v Commonwealth (1948) 75 CLR 495 where the plaintiff challenged an acquisition of wheat by the Commonwealth and the challenged acquisition order was validated by subsequent legislation.

35. Referring to the BLF Case in Nicholas v The Queen (1998) 193 CLR 173, Gummow J noted (at 230-231 [141]) that it upheld the validity of a law that entailed "the alteration or abrogation by statute of antecedent private substantiative rights or status which are at stake in, or which provide the foundation for, particular pending civil litigation."

36. This was also the effect of the legislation in question in Building Construction Employees and Builders' Labourers Federation of NSW v Minister of Industrial Relations (1986) 7 NSWLR 372 where an appeal had been filed concerning the cancellation of the registration of the union. The legislation stated that the registration of the union was for all purposes to be taken to have been cancelled on a date prior to the date of the original hearing from which the appeal was to be brought. A majority of the NSW Court of Appeal – Glass, Mahoney and Priestley JJA – did not, in terms, refer to the legislation as being a direction to the Court as to how it should carry out its function, with Mahoney JA's analysis permitting Parliament to "intervene in the present exercise of judicial power in a particular case" (at 413) and Priestley JA (Glass JA agreeing) stating the question in terms of invasion of the judicial function or legislative judgment (at 415).

37. Similarly in Werrin v Commonwealth (1938) 59 CLR 150 federal legislation enacted after the plaintiff's claim for the recovery of money paid as sales tax barred the claim. Those members of the Court – constituting a majority – who considered the legislation took the view that it was valid. Justice Dixon noted that there was "no constitutional provision preventing the Parliament from extinguishing a cause of action against the Commonwealth" (at 165).

Part VII - Conclusion

38. The Writ of Summons should be dismissed with costs or alternatively the demurrer of the first defendant should be allowed with costs.

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SCHEDULE

ADDITIONAL APPLICABLE LEGISLATIVE PROVISIONS

Sentencing Act 1989 (NSW) (as at 24 April 1997)

Part 3 Parole

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Division 2 Parole orders–sentences of more than 3 years

...

Subdivision 3 Serious offenders

...

22F Preliminary notice to victims of initial intention to make parole order

(1) As soon as practicable after formulating its initial intention to make a parole order, the Board is (subject to and in accordance with the regulations) required to give a preliminary notice of its intention to victims of the prisoner whose names are recorded in the Victims Register.

(2) The preliminary notice must:

(a) give an indication of the Board's initial intention, and

(b) state that there will be an opportunity for submissions to be made by victims of the prisoner about the making of a parole order in relation to the prisoner, and

(c) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged with the Secretary of the Board by a victim, and

(d) be in a form approved by the Board.

(3) In circumstances where preliminary notice need not be given of its initial intention to make a parole order, the Board may, subject to section 22N, proceed immediately to confirm its initial intention.

22G Preliminary notice to prisoner of initial intention not to make a parole order

(1) As soon as practicable after formulating its initial intention not to make a parole order, the Board is required to give a preliminary notice of its intention to the prisoner.

(2) The preliminary notice must:

(a) give an indication of the Board's initial intention, and

(b) state that there will be an opportunity for submissions to be made by the prisoner about the making of a parole order in relation to the prisoner, and

(c) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged with the Secretary of the Board by the prisoner, and

(d) except as provided by section 49, be accompanied by copies of the reports and other documents intended to be used by the Board in deciding whether the prisoner should be released on parole, and

(e) be in a form approved by the Board.

22H Procedure following preliminary notice to victims of initial intention to make parole order

(1) If a notice of intention to make submissions is lodged with the Secretary of the Board by a victim within the period specified in the notice under section 22F, the Board must set a date (occurring as soon as practicable, but not earlier than the end of that period) on which the Board will conduct a hearing at a meeting for the purpose of receiving and considering those submissions.

(2) Subject to section 22J (2), the Board may postpone or adjourn any such hearing for any reason that seems appropriate to it.

(3) A person who lodges such a notice of intention within that period:

(a) is entitled to receive reasonable notice of the hearing and any postponed or adjourned hearing, and

(b) is entitled to be present at any such hearing and to have a reasonable opportunity to make relevant submissions at the hearing.

(4) The prisoner concerned is entitled to receive reasonable notice of any such hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make any relevant submissions at the hearing.

(5) Submissions can be made in either or both of the following ways:

(a) Submissions can be made in writing and can be presented to the Board in advance of the hearing or at the hearing.

(b) Submissions can be made orally, but in the case of victim submissions only with the approval of the Board.

22I Procedure following preliminary notice to prisoner of initial intention not to make a parole order

(1) If a notice of intention to make submissions is lodged with the Secretary of the Board by the prisoner within the period specified in a notice under section 22G, the Board must set a date (occurring as soon as practicable) on which the Board will conduct a hearing at a meeting for the purposes of receiving and considering submissions by the prisoner.

(2) Subject to section 22J (2), the Board may postpone or adjourn any such hearing for any reason that seems appropriate to it.

(3) The prisoner is entitled to receive reasonable notice of the hearing and any postponed or adjourned hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make relevant submissions at the hearing.

(4) On or before setting a date for a hearing under subsection (1), the Board is (subject to and in accordance with the regulations) required to give notice to victims of the prisoner whose names are recorded in the Victims Register that it proposes to give them an opportunity to make submissions about the making of a parole order in relation to the prisoner.

(5) The notice under subsection (4) must:

(a) give an indication of the Board's initial intention not to make a parole order, but must indicate that this intention could be reversed, and

(b) specify a period of at least 14 days during which a notice of intention to make submissions to the Board may be lodged with the Secretary of the Board, and

(c) be in a form approved by the Board.

(6) A victim who lodges such a notice of intention within that period is entitled to receive reasonable notice of any such hearing, and is entitled to be present at any such hearing and to have a reasonable opportunity to make any relevant submissions at the hearing.

(7) Submissions can be made in either or both of the following ways:

(a) Submissions can be made in writing and can be presented to the Board in advance of the hearing or at the hearing.

(b) Submissions can be made orally, but in the case of victim submissions only with the approval of the Board.

22J Decision following review

(1) At a meeting held for the purposes of a hearing under section 22H or 22I, the Board is required, after reviewing all the reports, documents, submissions and other information placed before it, to decide whether or not the prisoner should be released on parole or whether, for reasons specified by the Board in its minutes, the making of that decision should be deferred.

(2) That decision:

(a) may be deferred once only, and

(b) may not be deferred for more than 2 months.

(3) If, under this section, the Board decides that a prisoner should be released on parole, the Board may make an order under section 22L.

(4) If, under this section, the Board decides that a prisoner should not be released on parole or defers making a decision, the Board is required:

(a) to cause the reason for the decision or deferral to be recorded in the minutes of the Board, and

(b) to cause the prisoner to be advised, by notice in writing served on the prisoner, of the decision or deferral and the reason for the decision or deferral.

22K Decision where no review

(1) The Board is required to confirm its initial intention to make a parole order if there are no victim submissions or if it is not required to seek victim submissions.

(2) The Board is required to confirm its initial intention not to make a parole order if there are no prisoner submissions.

(3) If, under this section, the Board confirms its initial intention to make a parole order, the Board is required to make an order under section 22L.

(4) If, under this section, the Board confirms its initial intention not to make a parole order, the Board is required:

(a) to cause the reason for its refusal to make a parole order to be recorded in the minutes of the Board, and

(b) to cause the prisoner to be advised, by notice served on the prisoner, of the refusal and the reason for the refusal.

...

22O Submissions by the State

(1) The State may also make submissions to the Parole Board concerning the release on parole of a prisoner.

(2) If the State does so, the Parole Board is not to make a final decision concerning the release of the prisoner until it has taken any such submission into account.

(3) The regulations may make provision with respect to submissions by the State under this section, including provisions relating to the application of this Subdivision in connection with any such submission.

(4) The powers of the State under this section may be exercised, subject to those regulations, by any agent of the State.

Crimes (Administration of Sentences) Act 1999 (as at 19 July 2001)

Part 6 Parole

Division 1 Release on Parole

...

132 Sentence continues to run while offender on parole

An offender who, while serving a sentence, is released on parole in accordance with the terms of a parole order is taken to continue serving the sentence during the period:

(a) that begins when the offender is released, and

(b) that ends when the sentence expires or (if the parole order is sooner revoked) when the parole order is revoked.

Division 2 Parole orders for sentences of more than 3 years

...

Subdivision 3 Serious offenders

...

144 Formulation of Parole Board's initial intention

On or immediately after giving its preliminary consideration as to whether or not a serious offender should be released on parole, the Parole Board must formulate and record its initial intention either:

(a) to make a parole order in relation to the offender, or

(b) not to make such a parole order.

145 Notice to victims of initial intention to make parole order

(1) As soon as practicable after formulating its initial intention to make a parole order, the Parole Board is (subject to and in accordance with the regulations) required to give a preliminary notice of its intention to victims of the offender whose names are recorded in the Victims Register.

(2) The preliminary notice:

(a) must give an indication of the Parole Board's initial intention, and

(b) must state that there will be an opportunity for victims to make submissions to the Parole Board about the making of a parole order, and

(c) must specify a period of at least 14 days during which a victim may lodge with the Secretary of the Parole Board a notice of intention to make submissions to the Parole Board.

(3) If a victim duly lodges with the Secretary of the Parole Board a notice of intention to make submissions, the Parole Board:

(a) subject to and in accordance with the regulations, must give notice to the offender that it proposes to give the offender an opportunity to make submissions about the making of a parole order in relation to the offender, and

(b) must set a date (occurring as soon as practicable) on which the Parole Board will conduct a hearing for the purpose of receiving and considering both offender submissions and victim submissions, and

(c) must notify the offender and any such victim of the date, time and place for the hearing.

(4) The notice referred to in subsection (3) (a):

(a) must give an indication of the Parole Board's initial intention to make a parole order, but must indicate that this intention could be reversed, and

(b) must specify a period of at least 14 days during which a notice of intention to make submissions to the Parole Board may be lodged with the Secretary of the Parole Board by the offender.

(5) In circumstances where preliminary notice need not be given of its initial intention to make a parole order, the Parole Board may, subject to section 152, proceed immediately to confirm its initial intention.

146 Notice to offender of initial intention not to make parole order

(1) As soon as practicable after formulating its initial intention not to make a parole order, the Parole Board must give a preliminary notice of its intention to the offender.

(2) The preliminary notice:

(a) must give an indication of the Parole Board's initial intention, and

(b) must state that there will be an opportunity for the offender to make submissions to the Parole Board about the making of a parole order, and

(c) must specify a period of at least 14 days during which the offender may lodge with the Secretary of the Parole Board a notice of intention to make submissions to the Parole Board, and

(d) must be accompanied by copies of the reports and other documents intended to be used by the Parole Board in deciding whether the offender should be released on parole.

(3) If a serious offender duly lodges with the Secretary of the Parole Board a notice of intention to make submissions, the Parole Board:

(a) subject to and in accordance with the regulations, must give notice to all victims of the offender whose names are recorded in the Victims Register that it proposes to give them an opportunity to make submissions about the making of a parole order in relation to the offender, and

(b) must set a date (occurring as soon as practicable) on which the Parole Board will conduct a hearing for the purpose of receiving and considering both offender submissions and victim submissions, and

(c) must notify the offender, and any victim who duly lodges a notice of intention to make submissions, of the date, time and place for the hearing.

(4) The notice referred to in subsection (3) (a):

(a) must give an indication of the Parole Board's initial intention not to make a parole order, but must indicate that this intention could be reversed, and

(b) must specify a period of at least 14 days during which a victim may lodge with the Secretary of the Parole Board a notice of intention to make submissions to the Parole Board.

147 Submissions by offender and victims

(1) At any hearing notified under section 145 or 146, both the offender and any victim who duly lodges a notice of intention to make submissions are entitled to be present and to have a reasonable opportunity to make relevant submissions.

(2) The Parole Board may postpone or adjourn a hearing for any reason that seems appropriate to it.

(3) Submissions may be made in either or both of the following ways:

(a) they may be made in writing, and presented to the Parole Board either in advance of or at the hearing,

(b) they may be made orally (but, in the case of victim submissions, only with the approval of the Parole Board).

...

149 Decision following review

(1) After reviewing all the reports, documents, submissions and other information placed before it, the Parole Board must decide:

(a) whether or not the offender should be released on parole, or

(b) whether, for reasons specified by the Parole Board in its minutes, the question of whether or not the offender should be released on parole should be deferred.

(2) The question of whether or not the offender should be released on parole:

(a) may be deferred once only, and

(b) may not be deferred for more than 2 months.

(3) If the Parole Board decides than the offender should be released on parole, it must make an order directing the release of the offender on parole on a day specified in accordance with section 151.

(4) If the Parole Board decides that the offender should not be released on parole, the Parole Board:

(a) must cause the reasons for its decision to be recorded in its minutes, and

(b) must cause notice that it does not intend to make a parole order to be served on the offender.

150 Decision where no review

(1) The Parole Board must confirm its initial intention to make a parole order if there are no victim submissions or if it is not required to seek victim submissions.

(2) The Parole Board must confirm its initial intention not to make a parole order if there are no offender submissions.

(3) If the Parole Board confirms its initial intention to make a parole order, it must make an order directing the release of the offender on parole on a day specified in accordance with section 151.

(4) If the Parole Board confirms its initial intention not to make a parole order:

(a) it must cause the reasons for its decision to be recorded in its minutes, and

(b) it must cause notice that it does not intend to make a parole order to be served on the offender.

151 Day of release

(1) The day of release to be specified in a parole order under section 149 or 150 is to be:

(a) if the day on which the offender becomes eligible for release on parole occurs before the order is made or on or before the seventh day after the order is made, a specified day within 7 days after the seventh day after the order is made, or

(b) if the day on which the offender becomes eligible for release on parole occurs after the seventh day after the order is made, the day on which the offender becomes eligible for release on parole.

(2) If an application is made to the Court of Criminal Appeal within 7 days after a parole order is made, the order is suspended:

(a) until the application is dealt with by the Court or the application is withdrawn, or

(b) if the direction of the Court of Criminal Appeal includes a requirement that the Parole Board reconsider its decision in the light of the direction, until the Parole Board revokes the order or confirms it with or without modifications.

(3) Any such suspension automatically lapses at the end of the period of 28 days after the date on which a direction referred to in subsection (2) (b) is given if during that period the Parole Board neither revokes the parole order nor confirms it with or without modifications.

152 Reasons to be provided for rejection of Review Council's advice

(1) If the Parole Board rejects the advice of the Review Council concerning the release on parole of a serious offender, the Parole Board must state in writing its reasons for rejecting that advice.

(2) The Parole Board must forward a copy of those reasons to the Review Council.

(3) The Review Council may make submissions to the Parole Board concerning the rejection of its advice within 21 days of that rejection.

(4) The Parole Board is not to make a final decision concerning the release of the offender during the period referred to in subsection (3).

153 Submissions by State

(1) The State may at any time make submissions to the Parole Board concerning the release on parole of a serious offender.

(2) If the State does so, the Parole Board is not to make a final decision concerning the release of the offender until it has taken any such submission into account.

(3) The regulations may make provision for or with respect to submissions by the State under this section, including provisions relating to the application of this Subdivision in connection with any such submission.

(4) The powers of the State under this section may be exercised, subject to the regulations, by any agent of the State.