

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Corrections Amendment Bill 2022

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Mr Speaker, I move that the Bill now be read a second time.

The Corrections Amendment Bill 2022 (the Bill) amends s 71 of the *Corrections Act 1997* (the Act).

On 9 December 2020 the Full Court of the Supreme Court of Tasmania handed down the decision of *Director of Corrective Services v Nguyen* [2020] TASFC 11. In a majority decision, the Court clarified the operation of s 71 of the Act which concerns, amongst other things, the calculation of sentences when an offender is subject to more than one non-parole period.

The Full Court's decision can be seen to confer an unintended benefit to a cohort of offenders. In the event that an offender is sentenced to a second sentence when still subject to a much earlier original sentence, the minimum non-parole period is calculated as commencing at the end of the non-parole period for the earlier sentence. In these circumstances, the second non-parole period may commence prior to when the second offence was committed.

Our Government does not consider it desirable for the law to operate in such a way that a non-parole period for a later sentence (such as for an offence committed while an offender is on parole) is effectively back-dated, with it potentially commencing before the offence was even committed, and continuing to be served during any time the person was in the community on parole in respect of the earlier sentence.

The Government is concerned that s 71 of the Act, as drafted, does not reflect community expectations. In our view, it leads to a perverse outcome where an offender may complete a non-parole period for an offence before that offence has been committed. The Full Court noted this potential problem, and that it was a matter for Parliament if a different interpretation was intended.

Therefore, I consider that, in certain circumstances, the current operation of s71 is contrary to sentencing principles, and this Corrections Amendment Bill 2022 will now address this issue.

The concept of a 'designated sentence' is relevant to determining prison periods where an offender is subject to more than one non-parole period.

The Bill provides that the definition of a 'designated sentence' is subject to a new sub-section 6. The new sub-section 6 provides that where a person becomes eligible for release on parole, each designated sentence to which the person is subject ceases to be a 'designated sentence' for the purposes of calculating a minimum term in respect of a new designated sentence.

The effect of this is that a later sentence's non-parole period is taken to commence at the beginning of that later sentence, not at the end of the last non-parole period.

The Bill also inserts new sub-section 7 which clarifies that the operation of sub-section 6 can apply more than once. For example, a person may be released on parole, sentenced to another non-parole period, then released on parole again. In all cases, the prior non-parole periods would be disregarded when calculating the commencement of the new periods.

Further, the new sub-section 7 clarifies that this will also apply to sentences imposed before the commencement of the amendment, but only when a person is eligible for parole on commencement of the amending Act, or becomes eligible for parole at a later date. The effect of this is that the Bill does not change existing parole calculations. This avoids any adverse effects on prisoners of undue retrospectivity, while ensuring that any prisoner currently eligible for parole will be subject to the new scheme for any future sentences.

When a prisoner does become eligible for parole, and is then subject to a later sentence, new sub-section 8 clarifies the default position in that the non-parole period starts on the date of the later sentence unless otherwise ordered.

Mr Speaker, this Bill resolves the issue raised by the Court's interpretation of s 71 as currently drafted, with an appropriate balance of community expectations and sentencing totality.

The Bill will help provide community confidence in sentencing by ensuring the calculation of sentences are transparent and properly reflective of the criminality of the conduct.

The Bill also provides clarity for sentencing judges in determining when minimum terms commence, while providing discretion for a court imposing the new designated sentence. The Bill also provides greater certainty for sentence administration practices at the Tasmania Prison Service.

Consultation was undertaken on a draft version of this Bill with targeted stakeholders and also made available for public consultation via the Department of Justice's website in the usual manner.

The Bill is to commence on a day to be proclaimed. This will ensure that necessary processes and systems are updated to reflect the new manner in which non-parole

periods are calculated, prior to the commencement of the provisions, and that education on the changes can be provided.

I would like to emphasise again that the amendments to the Act made by the Bill will not change existing parole calculations or effect current parole eligibility dates a prisoner may have. The provisions will apply to the commencement of any new non-parole periods for subsequent sentences on an offender who is currently eligible for parole, or on parole.

Mr Speaker, I commend the Bill to the House.