



Tuvalu

# PAROLE ACT





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Tuvalu

## PAROLE ACT

### AN ACT TO DEAL WITH AND DECIDE PAROLE OF OFFENDERS AND FOR ANY OTHER CONNECTED PURPOSES

Commencement [31st August 2021]

#### DIVISION 1 – PRELIMINARY

##### 1 Short Title

This Act may be cited as the Parole Act .

##### 2 Interpretation

“**the board**” refers to the Prison Parole Board as established under section 3 of this Act;

“**child offender**” refers to a person who was convicted and sentenced to imprisonment of five years or more for a crime he or she committed while he or she is 18 years or below;

“**reasonable and fair minded lay observer**” is one who is presumed to be intelligent, views matters objectively, takes a balanced approach, seeks information on all matters that are relevant, and appreciates that the context forms an important part of the material which must be considered before passing judgment;

“**magistrate**” refers to any member of the judiciary that has jurisdiction to decide criminal offences or cases;

“**minister**” refers to the Minister of Justice or the Minister responsible for the administration of prisons;

“**offender**” refers to a person who had been convicted of a felony offence by a Court of law and is serving an imprisonment sentence of 5 years or more;

“**paroled offender**” refers to a person released on parole under this Act;

“**parole officers**” refers to those officers duly appointed by the Board as parole officers under section 21 of this Act;

“**secretary**” means the Secretary or other head of a Ministry or office of Government who is directly responsible to the Minister.

## DIVISION 2 – PAROLE BOARD

### 3 Establishment of Board

- (1) There is hereby established a Prison Parole Board consisting of 5 members:
  - a) A Judge of the High Court or a Magistrate, who shall be the Chairperson;
  - b) Commissioner of Police;
  - c) A member of the legal practitioners of Tuvalu;
  - d) A registered medical practitioner or a qualified Counsellor/Psychologist; and
  - e) A member of the public who is deemed to be a reasonable and fair minded lay observer.
- (2) Except for the Commissioner of Police, all the members of the Board shall be appointed by the Minister in accordance with the advice of the Cabinet, for a term of 3 years.
- (3) A member of the Board may be removed by the Minister, for disability, neglect of duty, or misconduct.
- (4) A Judge or Magistrate must not sit as a member of the Board if he or she had presided over the offender’s case. For the purposes of certainty, presided includes hearing the trial or sentencing the offender.
- (5) In the case that the Chairperson is absent or cannot attend a meeting of the Board for any reason, the quorum Board must appoint any of its members to Chair that meeting or become Chair for such duration in which the Chairperson may be absent.
- (6) A Board member who has a conflict of interest in a specific matter under the Board’s consideration must inform the Minister responsible in order for the Minister to authorise a replacement in line with subsection (2).
- (7) For the purposes of this Act, members of the Board are considered leaders and are duty bound to adhere and uphold the values, principles and obligations of the Leadership Code Act.

#### **4 Jurisdiction of the Board**

The Board has jurisdiction over persons convicted of any felony offence and is serving a sentence of 5 years of imprisonment or more and of persons released on parole under Division III of this Act while serving or after serving any such sentence.

#### **5 Meeting and Procedure of the Board**

- (1) Meetings of the Board shall be held at such times and places as the Board or the Chairman appoints.
- (2) At any meeting of the Board, three (3) members of the Board shall form a quorum.
- (3) Subject to the provisions of this Act, the Board may regulate its procedures in such manner as it thinks fit.

#### **6 Secretary of the Board**

- (1) A Secretary from the Ministry responsible for Prisons shall be the Secretariat of the Board.
- (2) He or She must record in writing the proceedings of the Board in each meeting.

#### **7 Functions and Powers of the Board**

- (1) The Board shall have the following powers:
  - (a) The release on parole of any offender eligible for parole under section 12 of this Act;
  - (b) The remission, suspension or variation of any condition of parole of any offender, or the imposition on any such offender of any additional condition of parole.
- (2) In considering any case under this section the Board may have regard to or request any person to provide any information or representation which in the Board's opinion may be of assistance in reaching a decision including any information or representation concerning –
  - (a) The safety and welfare of the public, and of any person or class or classes of persons who may be affected by the release of the offender;
  - (b) The welfare of the offender and his reformation and training in prison in which he or she is detained;
  - (c) The likelihood that the offender will re-offend before his sentence expires;

- (d) The sentence imposed by the Court and any comments by the Court when such sentence was imposed;
  - (e) Any recommendation made by the Superintendent of Prisons or the officer-in-charge of the prison;
  - (f) The probable circumstances of the offender if released;
  - (g) The likely response of the offender to supervision by the parole officer;
  - (h) Any representation made by the offender or a lawyer acting on behalf of the offender; and
  - (i) Any other information or representation which the Board may think fit.
- (3) The Board shall prepare and send to the Minister an annual report of its proceedings no later than 31<sup>st</sup> January of every year. The Minister must present the annual report of the Board to Parliament.

## **8 Proceedings to be Confidential**

- (1) All evidence given to the Board relating to an offender or a paroled offender shall be and remain confidential.
- (2) A copy of a written or verbal report by any officer or person relevant to the proceedings of the Board and furnished to the Board must be made available to-
  - (a) Any person or body who, in the opinion of the Board has a legitimate professional interest in the information contained in the report; and
  - (b) The subject of the report and his or her lawyer; and
  - (c) Any person, as authorized by the Board, for the purposes of research or study or for statistical purposes.

## **9 Saving of Board Members from Liability**

- (1) Members of the Board shall not be held liable to any action or suit whatsoever in the performance of its duties, or the doing of an act, error or omission in the diligent exercise of its functions and powers conferred on the Board under this Act or any other Act.
- (2) Provided that criminal liability of a member or members in the ill conduct or arbitrary exercise or abuse of the Board functions or powers are not exempted under this section.

## **10 Allowances of Members**

- (1) Every member of the Board shall be paid such appropriate allowances as may from time to time be fixed by the Board in consultation with the Minister.

- (2) Any monies paid out in pursuant to this section must be appropriated by Parliament.

## **DIVISION 3 – RELEASE AND SUBSEQUENT SUPERVISION OF OFFENDERS**

### **11 Eligibility for Parole Consideration**

- (1) Every offender that is serving a prison sentence of five years or more shall be eligible for consideration by the Board for release on parole upon the expiry of the following periods from the date of his reception in a prison after sentencing:
  - (a) 15 years in the case of every prisoner undergoing imprisonment for life or such period as may be fixed by the Court after having regard to the particular circumstances of the case and offender;
  - (b) in the case of any other offender except child offenders, one-half of the term of imprisonment or such period as may be fixed by the Court for that offender having regard to the particular circumstances of the case and offender;
  - (c) in the case of child offenders, one third of the term of imprisonment or such period as may be fixed by the Court for that offender having regard to the particular circumstances of the case and offender;
- (2) For the avoidance of doubt, the parole period set by a Court of law shall have priority over the parole period as set out in this Act, save for section 12(1) of this Act.
- (3) The Board shall consider the case of every offender as soon as practicable after the expiry of the terms as provided in subsection (1) of this section and at least once in every period of twelve months thereafter.
- (4) After any prisoner has become entitled to have his case considered for the first time under subsection (1) of this section, he may from time to time apply to the Board for the further consideration of his case. Provided that no application under this subsection shall be made to the Board at any time within 12 months after the making of a previous application under this subsection.
- (5) In considering any case under this section the Board or any member authorized in writing by the Board may interview the offender at the prison in which he is detained or require the prison officer to bring such offender to attend before the meeting of the Board.

## **12 Eligibility for Parole Consideration under Special Circumstances**

- (1) In special circumstances such as the old age or sickly status of the offender either physically or mentally, or any other circumstances for which the life of the offender is at great risk if he or she is to remain in prison, the Board may consider his or her case upon application.
- (2) The burden of proof lies on the Applicant offender to prove that he or she is eligible for parole consideration under special circumstances.

## **13 Annual Reports on Certain Prisoners**

For the purposes of this Act the Superintendent of Prisons or any other person authorized by him shall submit an annual report to the Board by 1<sup>st</sup> November each year. The report must provide clearly the general condition of each offender, the term of imprisonment, and the general condition of every offender who is serving –

- (a) imprisonment for life;
- (b) a sentence of imprisonment of five years or more; and
- (c) any other offender who is detained in prison or by the Police.

## **14 Terms of Parole**

- (1) Where any offender who is serving a sentence of imprisonment of five years or more and not being imprisoned for life is released from prison before the expiry of the maximum term, for which he is liable to be imprisoned under the sentence, he shall be on parole from the time of his release, until the expiry of the term of his sentence.
- (2) Where any offender who is imprisoned under a sentence of imprisonment for life is released from detention, he shall be on parole for the rest of his life.

## **15 Parole Order**

- (1) The Board may by order release on parole any offender subject to the general conditions set out in section 16 of this Act and any special conditions as the Board thinks fit, which shall be incorporated in such parole order.
- (2) All parole order or orders made by the Board shall be
  - (a) in writing;
  - (b) signed and sealed by the Chairman of the Board or any other member as authorized by the Board to be Chair under section 3(5) of this Act;
  - (c) published for public information;
  - (d) given to the Officer in Charge of prisons or any other prison officer authorized to receive such order; and

(e) given to the offender prior to his release from prison.

## 16 General Conditions Parole

- (1) Where any offender is released on parole, the following general conditions may apply:
  - (a) within 24 hours after his release on parole he shall report in person to the parole officer at the place stated in the parole order or if he does not proceed directly to that place, then he shall report to some other parole officer within 48 hours of his release on parole;
  - (b) he shall report to the parole officer under whose supervision he is for the time being as and when he is required to do so by the parole officer;
  - (c) he shall give to the parole officer or the Superintendent of Prisons reasonable notice of his intention to move from his known address and if he moves to any other address, he shall within 48 hours after his arrival at that other address, notify his parole officer of his arrival, his new address, and the nature and place of his employment (if any);
  - (d) he shall not reside at an address that is not approved by the parole officer;
  - (e) he shall not continue in any employment, or continue to engage in any occupation, that is not approved by the parole officer in writing;
  - (f) he shall not associate with any specified person, or with persons of any specified class, with whom the parole officer has in writing warned him not to associate;
  - (g) he shall be of good behaviour and shall not commit any offence against the law.
- (2) Every paroled offender shall be under the supervision of a parole officer in whose area of authority he resides for the time being, or of such other parole officer as the Chief Parole Officer may from time to time direct.
- (3) Any paroled offender, a representative of the paroled offender or his parole officer may at any time apply to the Board for the remission, suspension, or variation of any general or special condition of parole.
- (4) Any parole officer may apply to the Board for the imposition of any additional condition of parole in respect of any paroled offender under his supervision.
- (5) Any power or function of the parole officer under this Act must not be exercised unreasonably or arbitrarily at the expense and at the prejudice of the paroled offender.

## **17 Recall of Offender Released on Parole**

- (1) The Board may for any reasonable grounds at any time direct in writing that a paroled offender be recalled. On the giving of the direction, the parole order shall be deemed to be cancelled, and the paroled offender may be arrested without a warrant by any police officer or prison or parole officer and shall continue to serve his sentence unless he is again released on parole by the Board under this Act or under any other law as the case may be.
- (2) The rules of natural justice shall apply to any application for parole or to any act of the Board. The rights of audi alteram partem and disqualification for bias shall apply in all cases except if it is in the interest of justice that they must not be applied.

## **18 Term of Parole Deemed Part of Sentence**

Whenever any person detained under any sentence is released on parole before the expiry of the sentence, the term of the sentence shall continue to run while he is on parole as if he were still serving the sentence and the date of expiry of the sentence shall be determined accordingly.

## **19 Discharge from Parole**

- (1) Where a parolee's period of parole has expired, the Board shall discharge the order for parole.
- (2) On the discharge of an order for parole under subsection (1), the person to whom the order is made is deemed to have served his sentence in full.

## **20 Offence to Breach Conditions of Parole**

- (1) Every paroled offender who contravenes or fails to comply with any condition of his parole commits an offence and shall be liable on conviction to imprisonment for a term of 12 months or to a fine of \$1000.
- (2) Where any parole or prison or police officer believes on reasonable grounds that any paroled offender has committed a breach of a condition of his parole, he may arrest the offender without warrant.
- (3) The conviction and sentencing of any paroled offender under this section shall not limit the power of recall conferred by this Act.

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**DIVISION 4 – PAROLE OFFICERS****21 Parole Officers**

- (1) A Chief Parole Officer and such other parole officers as are required for the purposes of this Act shall be appointed by the Board from amongst suitable persons employed in the Police and Prison Services.
- (2) The Commissioner of Police must recommend the names of police officers or prison officers to the Board for their appointment as parole officers under this Act.
- (3) Every parole officer duly appointed under this Act shall be paid proper allowances as determined by the Board from time to time.
- (4) Any parole officer may be removed by the Board for disability, gross neglect of duty, or misconduct.

**22 Powers and Duties of Parole Officers**

- (1) A parole officer may and shall when so required by the Board -
  - (a) report to the Board on the character and personal history of any offender released on parole or undergoing a sentence of imprisonment with a view to assisting the Board in determining the most suitable method of dealing with his case; and
  - (b) in such report advise the Board whether the offender would be likely to respond satisfactorily to parole and whether any special condition of parole should be imposed.
- (2) It shall be the duty of every parole officer –
  - (a) to supervise all persons placed under his supervision under this Act or under the Prisons Act or Regulation with a view to assisting their social rehabilitation and preventing the commission of further offences; and
  - (b) to perform such other duties as may be prescribed by this Act.
- (3) In the exercise of his powers and duties under this Act, every parole officer shall have the powers, protection and privileges of a police officer.

**DIVISION 5 – MISCELLANEOUS****23 Regulations**

The Minister may make regulations generally for the purpose of carrying this Act into effect and for the due administration thereof and in particular for the following matters –

- (a) the forms required to be prescribed under this Act;
- (b) any other matter that may be required to be prescribed under the Act