Republic of Nauru - 18th Parliament

Criminal Justice (Amendment) Bill 2009

EXPLANATORY MEMORANDUM

BACKGROUND AND INTRODUCTION:

The *Criminal Justice Act* was passed by Parliament in 1999, with the aim of providing for new methods of dealing with offenders liable to imprisonment through a system of probation, community service and parole. Until this year, the provisions relating to parole were effectively dormant, because the Parole Board had not been established. These provisions have been brought to life with the appointment this year of the Parole Board in accordance with the Act.

Since the Parole Board commenced, a number of problems with its operation have become apparent. One problem is that the Act currently provides that the Board is to be chaired by the Chief Justice. This is a problem not only because the Chief Justice is seldom on the island, but also because he is, in most cases that come before the Parole Board, also the sentencing judge, and therefore perhaps not the most appropriate person to be making decisions as to parole. Another problem is the absence of any clear procedure for applying for parole. Under the existing Act, prisoners who are serving a life sentence automatically become eligible to have parole considered after serving a prescribed term of imprisonment, but all other prisoners will only have parole considered if a member of the Parole Board requests the Board to consider the case.

The principal objectives of this Bill are therefore to alter the composition of the Parole Board so that it no longer includes the Chief Justice, and to make provision for application to the Parole Board.

NOTES ON CLAUSES:

Clause 1 provides the short title of the Bill and provides that the Act will come into force on the date of certification.

Clause 2 defines the *Criminal Justice Act 1999* as the 'principal Act' and provides for the new short title of the principal Act as amended: the *Criminal Justice Act 1999-2009*.

Clause 3 would amend section 32 of the *Criminal Justice Act*. The effect of this amendment is that the Chief Justice would no longer be the Chairman of the Parole Board, but rather, the Chairman would be a person appointed by the Minister, who is a non-Nauruan but lives in Nauru, and who is not a judge, but who has tertiary qualifications in medicine, law, psychology, criminology or other discipline deemed by the Minister to be

relevant. The rationale behind prescribing that the person should be a non-Nauruan is to ensure that at least one member of the Board is a non-Nauruan, who is therefore unlikely to be related to or personally acquainted with the applicants for parole, and therefore better able to be completely objective in considering applications for parole.

Paragraph (b) of clause 3 would amend subsection (3) of section 32 so that instead of members being appointed for a term of three years, they may be appointed for a term of *up to* three years. This enables the appointment to be for a shorter period, if for example the person that the Minister wishes to appoint under section 32(2)(a) is going to be residing in Nauru for less than three years.

Clause 4 would amend section 34 of the principal Act by amending subsection (2), repealing subsections (3) to (7), and inserting new subsections (3) to (6). The effect of these proposed amendments would be:

- To remove the distinction between prisoners serving a life sentence for murder and those serving a life sentence for any other crime, and to remove the automatic consideration of such cases after a prescribed period (currently, after serving 10 years or five years respectively); and to provide instead that any prisoner serving a life sentence may *apply for* parole after serving 10 years of his sentence;

- To make a new provision that an offender serving 12 months or more may apply for parole after serving half of his sentence;

- To clarify that reference to sentences means the sentence imposed by the court, and does not mean the 'effective sentence' (actual sentence reduced by the amount of remission earned) under the *Correctional Service Act*;

- That the Parole Board can *only* consider applications made in accordance section 34(3), and that the Minister can impose requirements for the form and content of applications, which must be published in the Gazette;

- To remove the provision that an offender who is 'entitled to have his case considered' shall be given the opportunity of appearing before the Board at least once in every year; and to provide instead that an offender *who has applied for parole* may state his case in person before the Board; and

- To delete the provision that a member of the Board may at any time request the Board to consider a case, because this ad hoc discretionary power would be replaced by a clear process for application.

The aim of these proposed amendments is to make the process of considering and granting parole fairer and more transparent.

Clause 5 would amend subsection (1) of section 36 of the principal Act, so that 'sentence' can be taken to mean 'effective sentence' within the meaning of the Criminal Justice Act,

which means a person released on parole is on probation until the expiry of his effective sentence (sentence imposed, less remission earned). This clause would also have the effect of repealing subsection (3) of section 36, which currently provides that a person who has served his full term of imprisonment shall be on probation for one year from the time of his release. It is considered unreasonable to subject a person to probation when he has finished serving the sentence that was imposed on him by the court, and it is therefore proposed to delete this provision.