

REPUBLIC OF KIRIBATI
(No. 8 of 2005)

I assent,

Beretitenti
30/12/2005

AN ACT TO AMEND THE *PAROLE BOARD ACT 1986*.

Commencement:
2005

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

1. Short title

This Act may be cited as the *Parole Board (Amendment) Act 2005*.

2. Definition of principal Act

In this Act, ‘principal Act’ means the *Parole Board Act 1986*.

3. Amendment of section 11

Section 11 of the principal Act is amended by-

(a) repealing subsection (1) and substituting the following subsection-

“(1) Every offender undergoing a sentence of imprisonment of two 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) in the case of an offender undergoing imprisonment for life – such period as may be fixed by the court under subsection (1A) or, where no such period has been fixed, 10 years;

(b) in the case of any other offender – one-half of the term of imprisonment.”;

(b) inserting after subsection (1) the following subsections-

“(1A) Where a court sentences an offender to imprisonment for life, it may, at the time of passing sentence, and having regard to the particular circumstances of the case, fix a period longer or shorter than the standard period of 10 years referred to in paragraph (a) of subsection (1).

- (1B) Subsection (1A) applies only in relation to an offence committed-
- (a) after the commencement of the *Parole Board (Amendment) Act 2005*; or
 - (b) before the commencement of that Act if, at that commencement, the offender has not been sentenced for the offence.
- (1C) For the avoidance of doubt, a person detained under section 144(4) or section 146(2) or (3) of the *Criminal Procedure Code* (dealing with the detention of persons of unsound mind), or any similar provision, is deemed not to be serving a sentence of imprisonment for the purposes of this section.”.

4. New section 13

Section 13 of the principal Act is repealed and the following section substituted-

“13. Term of Parole

- (1) Where an offender to whom section 11(1)(a) applies is released under section 14, he shall be on parole from the time of his release for the rest of his life, unless sooner recalled under section 16.
- (2) Where an offender to whom section 11(1)(b) applies is released under section 14, he shall be on parole from the time of his release until the expiry of the term of his sentence, unless sooner recalled under section 16.”.

PAROLE BOARD (AMENDMENT) ACT 2005**EXPLANATORY MEMORANDUM**

In a number of High Court cases the Chief Justice has called for changes to be made to the law to expand the court's sentencing options when dealing with persons convicted of murder (most recent in High Court Criminal Case 65 of 2004, *The Republic v. Tioti Toromon and Tokantetaake Katia*). At present the Court has no option but to sentence such persons to life imprisonment, with eligibility for parole after 10 years. The Court therefore has no discretion to reflect the particular circumstances of a case by passing a lighter (or tougher) sentence than as usual.

The amendments introduced by this Act will enable the Court, when sentencing an offender to imprisonment for life, to order that the offender be eligible for parole at a time either earlier or later than the usual 10 years. One advantage offered by this approach will be that the court can ensure that a person convicted of a particular serious murder will remain imprisoned for a longer than normal. The court can also, by ordering that the offender be eligible for parole sooner than might usually be the case, reflect any extenuating circumstances, such as where the offender has pleaded guilty. Those guilty of murder will still be sentenced to imprisonment for life, so the seriousness with which the community views the crime of murder is not diminished. Once released on parole, such offenders will remain on parole for the rest of their lives.

The opportunity is also taken to clarify the language of some of the other provisions of the *Parole Board Act* ("the principal Act") to address problems of interpretation that have been experienced in its application.

Section 3(a) of this Act replaces subsection (1) of section 11 of the principal Act, principally to improve the wording of the original subsection.

Section 3(b) inserts three new subsections into section 11. The new subsection (1A) introduces the concept of a court being able to vary the non-parole period for an offender sentenced to imprisonment for life. Subsection (1B) limits the application of the new sentencing discretion to cases which come before the court after the Act becomes law. Those already serving life sentences at the time the new provisions come into force will remain eligible for parole after 10 years. Subsection (1C) takes a concept that was contained in the former subsection (1) and states it more clearly, to avoid any misconceptions that the principal Act might apply to those who are detained indefinitely, either because they were of unsound mind at the time the offence was committed or because their mental illness rendered them unfit to stand trial.

Section 4 replaces section 13 of the principal Act with a more straightforward restatement of the existing law.

Titabu Tabane
Attorney General
2 May 2005