

ARRANGEMENT OF ACT

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I assent.

(L.S.)

GEORGE ABELA
President

6th December, 2011

ACT No. XXI of 2011

AN ACT to make provision for granting parole to prisoners and to provide other restorative justice measures at every stage of the criminal justice process and to provide for such matters ancillary or incidental thereto or connected therewith and to make amendments to other laws.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I

PRELIMINARY

Short title and
commencement.

1. (1) The short title of this Act is the Restorative Justice Act, 2011.

(2) This Act shall come into force on such date as the Minister responsible for Justice may by notice in the Gazette appoint and different dates may be so appointed for different purposes or provisions of this Act.

2. In this Act, unless the context otherwise requires:

Interpretation.

"conflict of interest" means a situation in which any member of any Board or Committee, established under this Act, has a private or personal interest sufficient to influence or appear to influence the objective exercise of his functions;

"Director" means the Director responsible for the Probation Services;

"Liaison Officer" means the person appointed under article 26(2);

"mediator" means a neutral, qualified and impartial person appointed to conduct victim-offender mediation proceedings;

"mediation report" means a written report prepared by the mediator during victim-offender mediation proceedings;

"Minister" means the Minister responsible for the Department of Correctional Services;

"offender" means a convicted person or a person who has formally admitted to the commission of a criminal offence in accordance with article 453 of the Criminal Code, as the case may be; Cap. 9

"Offender Assessment Board" means the Board established under article 3;

"parole" means the authorisation granted by the Parole Board to a prisoner serving one or more sentences of imprisonment to be released on parole, during a part of his term of imprisonment upon reaching the parole eligibility date, under the supervision of the parole officer and subject to the parole conditions as may be specified in the parole licence;

"parolee" means a prisoner who has been granted parole by the Parole Board and to whom a parole licence has been issued to that effect;

"Parole Board" means the Board established under article 8;

"Parole Clerk" means the person appointed under article 7;

"parole decision" means a decision taken by the Parole Board to grant or refuse parole to a prisoner following his application to be released on parole;

"parole eligibility date" means the date on which a prisoner

becomes eligible to be released on parole subject to the Parole Board's decision;

"parole licence" means a licence issued under article 15;

"parole officer" means a person appointed under article 18;

"parole period" means the period specified in the parole licence during which a parolee is placed under the supervision of a parole officer by means of a parole licence;

"Parole Unit" means the Unit established under article 5;

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"public authority" shall have the same meaning as is assigned to it in article 2 of the Freedom of Information Act;

"Remission Board" means the Board established under article 20;

"reparation agreement" means the agreement which may be reached by virtue of article 41;

"Secondary Assessment Report" means the report referred to in article 4;

"victim" means an identified, natural person who has suffered physical and, or psychological and, or material damages, directly caused by the offender's criminal acts and, or omissions or a representative of society in the case where a victim cannot be identified;

"victim-offender mediation" means the procedure established in Part VI;

"Victim Support Unit" means the Unit established under article 26(1).

PART II

Establishment and Functions of the Offender Assessment Board

Establishment
of the Offender
Assessment
Board.

3. (1) There shall be established a Board to be known as the "Offender Assessment Board" which shall discharge the functions conferred on it by this Act and such other functions as may be prescribed by regulations made under this Act, or by or under any other law:

(2) The Offender Assessment Board shall be composed of:

(a) a Chairman who shall be appointed by the Minister;
and

(b) not less than two and not more than four members to be appointed by the Minister, who shall be accomplished professionals in related fields, such as Criminal Justice, Probation and the Social Sciences amongst others.

(3) The members of the Offender Assessment Board shall hold office for a period of five years and shall be re-eligible for appointment:

Provided that upon the expiration of the abovementioned period, the members of the Offender Assessment Board shall remain in office until a new Board shall be appointed.

(4) The Minister shall also appoint substitutes for the Chairman and the members of the Offender Assessment Board to serve in cases where either the Chairman or any member of the Offender Assessment Board abstains or is prevented from acting. In that case the same conditions as those applicable to the Chairperson or members of the Board shall apply.

(5) Any member of the Offender Assessment Board having a direct or indirect personal interest on any matter being discussed by the Offender Assessment Board shall immediately declare his position to the Offender Assessment Board.

(6) The member of the Offender Assessment Board who has declared a conflict of interest shall renounce from taking any part in discussions relating to the particular case, and a substitute shall replace him with a view to address that same case.

4. (1) The Offender Assessment Board shall be responsible for:

Functions of the
Offender
Assessment
Board.

(a) carrying out an analysis of the reports prepared in respect of each prisoner prior to and after sentencing. The Offender Assessment Board shall also consider previous reports compiled in connection with previous cases. Reports prepared after sentencing shall include:

(i) a detailed analysis of the problem areas that may have contributed to the criminal act committed by the prisoner in question; and

(ii) a care plan, designed by the officials responsible for proposing various restorative justice

programmes to the prisoner, to undergo, to assist in his reformation and reintegration. Such care plan shall be reviewed and updated at regular intervals;

(b) examining the reports and reviewing documented results related to care plan adherence in relation to each prisoner who has submitted an application for parole. Subsequently, the Offender Assessment Board shall draft a report, which shall include:

(i) a risk assessment containing full details of the potential risk of danger the prisoner in question may pose upon being released on parole;

(ii) its recommendations to the Parole Board on whether the prisoner in question ought to be released on parole and the reasons thereof;

(iii) its recommendations to the Parole Board on the conditions that ought to be imposed on the prisoner upon the Parole Board's decision to grant parole to the prisoner in question and such recommendations shall be based on the reports received, in relation to each prisoner who has submitted an application for release on parole;

(c) any other function which may be assigned to it by the Director of Correctional Services, after consultation with the Minister, from time to time.

(2) The Offender Assessment Board shall forward to the Parole Clerk all relevant documents referred to in sub-article (1) which shall then be included in the parole *dossier* for the purposes of assisting the Parole Board to take a parole decision.

PART III

Establishment of the Parole Unit

5. (1) There shall be established a Unit to be known as the Parole Unit, which shall be headed by the Director, the purpose and functions of which are assigned by this Act.

(2) Without prejudice to the duties assigned to the Director in the Probation Act, the Director shall have the following duties:

(a) to assign parole officers to prisoners applying for parole and to prepare reports regarding the reintegration of prisoners;

Establishment
of the Parole
Unit.

Cap.446.

(b) to assign parole officers to parolees and to prepare reports;

(c) to assign mediators for victim-offender mediation processes;

(d) to manage and direct the Parole Unit and to organise and supervise parole services;

(e) to give direction to parole officers;

(f) to give direction on record keeping and time management;

(g) to supervise parole officers and periodically receive verbal or written reports on parolees from the parole officers;

(h) to keep a register of parolees; and

(i) such other duties as may be assigned by the Minister from time to time.

(3) The Director may delegate any of the above duties to a senior member of staff.

6. The Minister shall appoint a sufficient number of qualified persons to be parole officers, who shall, under the general direction of the Director, perform the duties prescribed by this Act or such other duties as may be prescribed by regulations made under this Act, or by any other law. Appointment of parole officers.

7. (1) There shall be appointed Parole Clerks who shall have sufficient clerical qualifications and administrative experience to perform the duties pertaining to the post. Parole Clerks.

(2) The Parole Clerks shall:

(a) act as Parole Clerks to the Parole Board to assist in the parole process and be responsible to keep contact with the Director of Correctional Services;

(b) have access to the prisoner's sentence plan, kept at the Correctional Facility, to be able to keep a log of the parole eligibility date of each prisoner eligible for parole;

(c) make the necessary arrangements to inform each prisoner who would be eligible for parole, four months before the parole eligibility date so that if the prisoner wishes, he may apply to the Parole Board to be considered for parole; and

(d) make the necessary arrangements to compile the parole *dossier* which would include all documents listed in article 13(1); and ensure that the parole *dossier* shall reach the Parole Board at least three months before the parole eligibility date.

(3) The Parole Clerks shall hold office for three years and shall be reeligible for appointment after the end of each of their respective term of office.

(4) The Parole Clerks shall be accountable to the Parole Board in terms of the fulfilment of duties prescribed by the Act.

PART IV

Establishment and Functions of the Parole Board and Parole Procedure.

Establishment
of the Parole
Board.

8. (1) There shall be a Board to be known as "the Parole Board", which shall discharge the functions conferred on it by this Act and such other functions as may be prescribed by regulations made under this Act, or by any other law.

(2) The Parole Board shall consist of:

(a) a Chairman who shall be appointed by the Minister, being a retired member of the judiciary; and

(b) eight other members to be appointed by the Minister from amongst persons who are involved in the criminal justice field and, or any other relevant professionals.

(3) The members of the Parole Board shall hold office for a period of five years and shall be re-eligible for appointment after the end of their term of office:

Provided that upon the expiration of the abovementioned period, the members of the Parole Board shall remain in office until a new Parole Board is appointed:

Provided further that the Parole Board, in exercise of the powers assigned to it by or under this Act and any other law, shall not be subject to the direction or control of any other person or authority.

(4) A member of the Board shall be disqualified in such circumstances as would disqualify a judge in terms of Sub-Title II of Title II of Book Third of the Code of Organization and Civil Procedure; and in such case that member shall be substituted by

another member appointed for the purpose by the Minister.

(5) The Minister shall also appoint a Deputy Chairman, and substitutes for the members of the Parole Board to serve in cases where either the Chairman or any member of the Parole Board is absent, abstains or is prevented from acting. In that case the same conditions as those applicable to the Chairman and the members of the Board, as the case may be, shall apply.

(6) Any member of the Parole Board having a direct or indirect personal interest on any matter being discussed by the Parole Board shall immediately declare his position to the Parole Board.

(7) The member of the Parole Board who has declared a conflict of interest shall renounce from taking any part in discussions relating to the particular case, and a substitute shall replace him with a view to address that same case.

9. (1) The Parole Board's principal functions shall include: Principal functions of the Parole Board.

(a) evaluating the applications for parole, taking into consideration victims' interests;

(b) administering sentences of all prisoners being considered for parole;

(c) having exclusive discretion to take a parole decision and to grant, amend, suspend or revoke, a parole licence issued under article 15;

(d) imposing the necessary conditions referred to in article 14, after taking into consideration all the relevant information contained in the parole *dossier*;

(e) making recommendations as may be required in relation to petitions under article 93 of the Constitution of Malta;

(f) liaising with the Offender Assessment Board and the relevant departments and units, as may be deemed necessary;

(g) issuing certificates of good conduct to mark successful completion of the prisoner's parole period; and

(h) any other function as may be prescribed by the Minister from time to time.

(2) Every case brought before the Parole Board shall be

considered on its own merits.

(3) The Parole Board shall submit a yearly report to the Minister, which shall include:

- (a) the number of prisoners granted or refused parole;
- (b) the number of parole licences amended, suspended and revoked during that year and reasons thereof; and
- (c) any matters effecting the operation of the Parole Board in the fulfilment of its functions and duties excluding any administrative issues.

(4) The Minister shall lay a copy of such report on the Table of the House and present a copy of the same report to the Parliamentary Social Affairs Committee.

(5) Without prejudice to the preceding sub-article, the Parole Board, whenever so required by the Minister, shall also submit a report on any matter in connection with the administration of the relevant legislation.

(6) The Parole Board shall have access to all records of the Parole Unit, relating to all prisoners applying for parole, and subject to the provisions of this Act, the Parole Board shall regulate its own procedures.

Prisoners
eligible for
parole.

10. (1) Subject to the provisions of this Act, parole may only be granted to prisoners serving a sentence of imprisonment of a term of one year or more, irrespective of whether such term results from a single sentence or from a number of sentences that amount to an aggregate of at least one year.

(2) Parole shall also apply with respect to prisoners who have previously served and concluded a prison sentence.

(3) Notwithstanding the provisions of sub-articles (1) and (2) prisoners falling under the following categories shall not be eligible for parole:

- (a) prisoners sentenced to a term of imprisonment of less than one year;
- (b) detainees under the provisions of the Immigration Act;
- (c) prisoners subject to extradition proceedings;

Cap. 217.

(d) third-country nationals who are to be deported at the end of their sentence;

(e) prisoners who are being detained for subverting or attempting to subvert the Government of Malta, or conspiring against the State as stipulated in article 56(1) and (2), and in article 57(1) and (2) of the Criminal Code; Cap 9.

(f) prisoners sentenced for acts of terrorism, funding terrorism, and ancillary offences as stipulated in article 328A to article 328M of the Criminal Code; and Cap 9.

(g) prisoners sentenced to life imprisonment.

11. (1) Subject to the provisions of this Act, the parole eligibility date of a prisoner serving a sentence of imprisonment for a term of one year and not exceeding two years shall be calculated at thirty-three per cent of his term of imprisonment. Parole eligibility date.

(2) Subject to the provisions of this Act, the parole eligibility date of a prisoner serving a sentence of imprisonment for a term of more than two years and not exceeding seven years of imprisonment shall be calculated at fifty per cent of his term of imprisonment.

(3) Subject to the provisions of this Act, the parole eligibility date of a prisoner serving a sentence of imprisonment for a term of more than seven years of imprisonment shall be calculated at fifty-eight per cent of his term of imprisonment.

(4) Notwithstanding the provisions of sub-articles (1), (2) and (3), the Court may include in its judgment an earlier parole eligibility date in the case of offenders who have not yet attained the age of sixteen years at the time of the commission of the offence, or the Court may, taking into consideration the particular circumstances of the case, deem it to be justifiable that a different date be established in order for the offender to reform himself better.

(5) Notwithstanding the provisions of sub-article (1), the parole eligibility date of a person sentenced to more than one sentence of imprisonment, following the coming into force of this Act, shall be calculated at fifty per cent of his total term of imprisonment.

(6) Notwithstanding the provisions of sub-articles (1), (2), (3) and (4) in cases of breach of prison regulations, the parole eligibility date may be pushed back accordingly as a disciplinary measure taken by the Remission Board.

Cap. 9.

(7) The computation of the terms referred to in sub-articles (1), (2) and (3) shall be made in accordance with article 22 of the Criminal Code.

(8) Notwithstanding the provisions of sub-articles (1) to (5), prisoners eligible for parole may, on the grounds of terminal illness, apply to the Parole Board to be considered for parole before reaching the parole eligibility date:

Provided that the Parole Board shall first acquire the prisoner's authorisation in writing to interview the medical specialist responsible for the prisoner's care, regarding the prisoner's health condition before the Parole Board may take a decision to grant parole to the prisoner.

(9) The parole eligibility date shall be calculated exclusively on the basis of the prison term or aggregate of prison terms of any relevant court sentences.

(10) The payment or otherwise of court fines shall be taken into consideration by the Offender Assessment Board, the Parole Board and the Remission Board in their deliberations.

Earlier
eligibility for
reformed
persons.

12. When a person, who has previously served a sentence of imprisonment and has been granted parole or remission in accordance with the provisions of this Act, is convicted of a further offence committed prior to his having served the previous sentence, and is certified to be presently free of any dependencies, that person may be considered for parole upon the commencement of the subsequent sentence of imprisonment, unless the Court in its judgment has decided to the contrary:

Cap.446.

Provided that the Parole Board shall impose on the parolee in his parole licence the condition to perform community service work and the relevant provisions of the Probation Act shall *mutatis mutandis* apply, together with any other condition the Parole Board may deem necessary to impose.

Procedure.

13. (1) Following the prisoner's application to be considered for parole, the responsible Parole Clerk shall forward to the Parole Board the parole *dossier* which shall include:

- (a) the prisoner's application to be considered for parole;
- (b) the sentence details of the prisoner;
- (c) other relevant police and, or court records and, or

the Attorney General's advice particularly in cases when the prisoner in question has other pending cases;

(d) the report from the Parole Unit as provided for in article 5(2)(a):

Provided that the information for onward transmission to the victim or victims of crime shall consist of the month of discharge of the prospective parolee, the length of time he would be subject to the Parole Licence, and details about the general area of release as the case may be;

(e) the Offender Assessment Board's recommendations;
and

(f) subject to the provisions of the Data Protection Act, Cap. 440. any other information or reports which the Offender Assessment Board may deem relevant to include and, or which the Parole Board may require for the case in question.

(2) The Liaison Officer, appointed under this Act, shall notify in writing the victim or victims of the prisoner, when applicable, of the prisoner's application for parole and shall make his recommendations to the Parole Board following consultation with the victim.

(3) Prior to the Parole Board taking a decision as to whether it shall grant or refuse the prisoner's application for parole, the Parole Board:

(a) shall examine all documents provided in the parole *dossier* and shall give due consideration to the Offender Assessments Board's recommendations which are principally based on:

(i) the voluntary and active participation of the prisoner in restorative justice programmes available and recommended during his time in the Correctional Facility;

(ii) the risk of a further offence being committed should the prisoner be granted parole; and

(iii) any other relevant evidence, including whether the prisoner in question has registered any improvement in various areas related to the reform process;

(b) shall take into consideration the recommendations

made by the Liaison Officer in relation to the victim and, when deemed necessary by the Parole Board, interview the victim or victims of the prisoner applying for parole;

(c) may, if deemed necessary, interview the prisoner applying for parole; and

(d) may, if deemed necessary, interview the officials of the Board of Visitors of the Prisons and, or correctional facility officials and, or any other person as may be deemed necessary to be interviewed by the Parole Board.

(4) By not later than three weeks prior to the parole eligibility date, the Parole Board shall determine whether to grant parole.

(5) By not later than one week from the date when the decision was taken, the Parole Board shall inform the Parole Clerk who shall forward a copy of the Parole Board's decision to:

(a) the Director;

(b) the Director of Correctional Services;

(c) the prisoner making the request; and

(d) the Liaison Officer of the Victim Support Unit who shall then have the responsibility to inform in writing and explain the Parole Board's decision to the victim or victims concerned, as the case may be.

(6) Upon the Parole Board's refusal to grant parole to the prisoner, unless the Parole Board has fixed a date, in consideration of the circumstances of the case, the prisoner shall once again become eligible to re-apply for parole after the expiration of six months from the date of the Parole Board's decision.

Parole
conditions

14. (1) When granting parole to a prisoner, the Parole Board may impose any conditions as may be deemed necessary and such conditions may include:

(a) the provision of monetary compensation to the victim which may be deducted from the parolee's monthly income and, or any other service the Parole Board shall request the parolee to provide to the victim, subject to the victim's approval;

(b) deprivation of any contact with the victim and, or the victim's family members;

(c) any condition which may be recommended by the victim to the Parole Board to be imposed on the parolee;

(d) to undergo an electronic monitoring programme;

(e) that the parolee undergoes any treatment programmes as may be specified by the Parole Board;

(f) the participation of the parolee in educational, vocational and, or training programmes as may be specified by the Parole Board;

(g) the performance of community service work;

(h) day time or night time restrictions which may include the parolee's obligation to return to the Correctional Facility during specified days of the week or specified hours of the day as the Parole Board may deem necessary;

(i) the obligation to reside within a designated area and not leave such designated area without the Parole Board's explicit approval; and

(j) any other conditions which the Parole Board may deem fit to impose in the circumstances.

(2) The parolee shall be under such supervision of the parole officer or parole officers, as established by the Parole Unit, throughout the parole period. The parolee shall be required to:

(a) meet up with the parole officer in accordance with such instructions as may be given by the Parole Board from time to time; and

(b) comply with the instructions of the parole officer.

(3) All conditions imposed on the parolee may be amended or revoked or additional conditions may be further specified by the Parole Board, on its own initiative or following recommendations made by the victim, the Offender Assessment Board or the parole officer or parole officers assigned to supervise the parolee at any time during the parole period.

(4) The Police and, or relevant governmental or non-governmental organizations may also make their recommendations to the Parole Board as regards parole conditions that ought to be imposed.

(5) Notwithstanding recommendations made to the Parole Board, the Parole Board shall have exclusive competence on the conditions that shall be imposed on the parolee.

(6) The Parole Clerk shall immediately inform and clearly explain to the prisoner granted parole, the conditions that are to be imposed on him and upon his refusal to abide by any of the abovementioned conditions the Parole Board shall immediately revoke its decision.

Parole licence.

15. (1) Upon the Parole Board's decision to grant parole to the prisoner, the Parole Board shall issue a parole licence which shall include:

(a) the name and surname and other personal details of the parolee;

(b) the date on which the prisoner shall be released on parole;

(c) the period during which the parolee shall be on parole and during which he shall be supervised by the parole officer or parole officers; and

(d) all conditions which the Parole Board, on its own accord or following recommendations from the victim, the police, the Director or any relevant governmental or non-governmental organizations, shall deem necessary for the parolee to comply with.

(2) The Parole Clerk shall immediately forward a copy of the parole licence to:

(a) the parolee;

(b) the Director;

(c) the Director, of Correctional Services;

(d) the Attorney General; and

(e) the Commissioner of Police;

which parole licence shall be duly signed by the parolee.

(3) The parole licence shall, unless it has been previously revoked under article 16, remain in force until the expiry of the parole period specified in the parole licence, that is, the date on which the

parolee's sentence of imprisonment expires.

16. (1) The Parole Board may amend, suspend or revoke a parole licence if it is reported to the Parole Board, by the Director or his representative, or any public authority including the Commissioner of Police and the Attorney General that the parolee:

Amendment,
suspension or
revocation of
parole licence.

(a) has not complied with any of the parole conditions;
or

(b) presents, to the parole officer or parole officers or police officials, reasonable suspicion that he might commit a further crime or

(c) is charged with committing a further crime.

(2) Upon revocation or suspension of the parole licence, the parolee shall immediately be returned to the Correctional Facility to serve the rest of his sentence and will not be re-eligible for parole during the course of the sentence being served:

Provided that whenever the parole licence has been revoked or suspended in accordance with sub-article (1)(a) and (b), the provisions of article 12 shall not apply:

Provided further that whenever the parole licence has been revoked or suspended in accordance with sub-article (1)(c), the parolee shall be eligible for parole in terms of article 11 on serving his second or subsequent sentence.

(3) The Parole Board may also amend, suspend or revoke a parole licence if it receives such information that, had it been received prior to the issuing of the parole licence, the Parole Board would not have granted parole.

(4) The amendment, suspension or revocation of the parole licence shall be effective from such date when the Parole Board has taken its decision to amend, suspend or revoke the parole licence.

17. (1) The Parole Board, prior to considering whether to amend, suspend or revoke the parole licence, may consult the victim or victims concerned, as the case may be.

Notification of
amendment,
suspension or
revocation of
the parole
licence to victim
and parolee.

(2) (a) The Parole Board, upon taking its decision to amend, suspend or revoke the parole licence, shall ensure that the parolee and the victim or victims concerned, as the case may be, be served with an information notice.

(b) The notice referred to in paragraph (a) shall include the reasons for such amendment, suspension or revocation of the parole licence.

(c) The information notice shall also include the period of suspension of the parole licence and shall also be duly signed by the parolee.

Selection of
parole officers.

18. Once a parole licence has been issued, the Director shall assign a parole officer to be responsible for the supervision of a parolee:

Provided that more than one parole officer may be assigned to the same parolee, each dealing with a particular aspect of the case as the Director may determine.

Duties of parole
officers.

19. Subject to the conditions stipulated in the parole licence, it shall be the duty of the parole officer –

(a) to supervise, advise and assist the parolee;

(b) to receive feedback from the parolee and from professionals, as may be deemed necessary;

(c) to draft a plan, monitor and assist the parolee in fulfilling the conditions of the parole licence;

(d) to further assist the parolee in understanding the harm the parolee caused to the victim of crime and society;

(e) to provide the Parole Board with bi-monthly progress reports of the parolee;

(f) to assist the parolee in furthering appropriate social and educational endeavours;

(g) where necessary, to assist the parolee in finding suitable employment;

(h) to report immediately to the Parole Board, after a breach of any of the conditions imposed by the Parole Board, specified in the parole licence; and

(i) such other duties as the Minister may prescribe by regulations or as may be specified by the Director from time to time.

PART V

Remission

20. (1) There shall be appointed a Board to be known as "the Remission Board," which shall be composed of:

Establishment
of the
Remission
Board.

- (a) a Chairman;
- (b) the Director of Correctional Services; and
- (c) not more than two other members to be appointed by the Minister.

(2) The Remission Board shall be responsible for deciding on the awarding, forfeiture and awarding back of remission days forfeited.

21. (1) Offenders may be awarded remission of sentence on the grounds of performance at work, at training, during educational and rehabilitation programmes, adherence to the care plan as approved by the Offender Assessment Board, and the offenders' general overall good conduct. The Remission Board shall establish a system whereby remission days are awarded to each individual offender according to objective criteria.

Remission of
sentence.

(2) Remission shall be earned, forfeited and awarded back in accordance with this Act, any regulations made under this Act and the criteria laid down by the Remission Board.

22. (1) In the case of offenders serving a sentence of imprisonment of a term of more than one month, the Remission Board may award, order the forfeiture and award back remission days forfeited:

Remission.

Provided that the provisions of this article shall not permit the reduction of the term of imprisonment to less than thirty-one days.

(2) Remission shall not apply to an offender serving a sentence of imprisonment for life.

(3) Remission earned shall not exceed one third of the total of:

(a) the term of a sentence of imprisonment as reduced under article 22 of the Criminal Code; and

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(b) any period, during which the accused was kept in custody prior to conviction, for the offence or offences for which the offender was imprisoned.

Remission:
forfeiture of
prospective
remission,
special award
and
cancellation.

23. (1) The Remission Board may order the forfeiture of not more than three-hundred and sixty-five days of remission, whether earned or prospective, in the case of offenders who escape or attempt to escape from the Correctional Facility, who cause disturbance within the Facility or who commit a criminal offence within the Facility, including being found positive to narcotic testing or in possession of any illicit substances or objects.

(2) The Remission Board may order the forfeiture of not more than one-hundred and twenty days of remission, whether earned or prospective, in the case of offenders infringing prison regulations or any disciplinary measures, including being found in possession of substances or objects not permitted by prison regulations.

(3) Offenders who escape or attempt to escape from the Correctional Facility, who cause disturbance within the facility or who commit a criminal offence within the facility, including being found positive to narcotic testing, or in possession of illicit substances or other substances and, or objects in infringement of relevant prison regulations, shall not be awarded back any remission days forfeited.

(4) In the case of an offence against discipline committed by an unconvicted prisoner, a punishment of forfeiture may be awarded notwithstanding that the prisoner has not, or had not at the time of the offence, been sentenced.

(5) Offenders infringing prison regulations on three occasions shall not be awarded back any remission days forfeited.

Conditions for
award of
remission

24. Offenders awarded remission may be required to fulfil conditions as may be specified by the Remission Board. Such conditions may include:

(a) following rehabilitative and, or restorative justice programmes as may be specified by the Remission Board; and

(b) conducting community work.

Remission
Register

25. The Director of Correctional Services shall record in an appropriate register the remission awarded to each offender. Such record shall be entered in the register at regular intervals of not more than one month. The Director of Correctional Services, following consultation with the Remission Board, shall communicate to each offender at reasonable intervals the amount of remission awarded to him.

PART VI

Establishment of the Victim Support Unit

26. (1) There shall be established a Unit within the Department of Probation Services to be known as the "Victim Support Unit";

Establishment of the Victim Support Unit.

(2) The Head of the Victim Support Unit shall assume the role of Liaison Officer and the functions of the Liaison Officer may be delegated to members of staff, as may be deemed necessary.

27. (1) The functions of the Victim Support Unit shall include:

Functions of the Victim Support Unit.

(a) the establishment of a Victims of Crime Charter, to be approved by the Minister, to regulate the coordination of services to satisfy the needs of victims of crime including all the necessary procedures to be followed;

(b) the provision and management of a victims' register in accordance with article 28;

(c) the drawing up of, in collaboration with the Malta Mediation Centre, a code of ethics to be followed by mediators during victim-offender mediation proceedings;

(d) the facilitation of better access to victim-offender mediation through the publication of information, guidelines and related documentation;

(e) the promotion of victim-offender mediation as a means of reparation for both the victim and the offender at any stage of the criminal justice process;

(f) the provision of assistance to the victim in claiming compensation for injury and other damages sustained through crime in accordance with the Criminal Injuries Compensation Regulations;

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(g) the drawing up and publication of an annual report on the progress of the Victim Support Unit, which shall include:

(i) the number of victim-offender mediation processes made and the results thereof during that year; and

(ii) any other matter, which may be deemed

appropriate for inclusion in the report, excluding any administrative issues.

(h) the collaboration with any victim support voluntary organisation as the Victim Support Unit may deem necessary; and

(i) the performance of such other functions as may be assigned to the Victim Support Unit by this Act or by any other law or by any regulations which may, from time to time, be prescribed by the Minister.

Victims'
Register.

28. (1) The Liaison Officer shall set up and manage a Victims' Register, hereinafter referred to in this Part as "the register" which shall contain full details of victims of crime.

(2) All contents of the register shall be treated confidentially and the Liaison Officer shall ensure that no information included in the register shall be disclosed to any third party, save under a Court order.

Establishment
of the Victim-
Offender
Mediation
Committee.

29. (1) There shall be a Committee to be known as "the Victim-Offender Mediation Committee" hereinafter referred to in this Part as "the Committee" which shall discharge the functions conferred on it by this Act and such other functions as may be prescribed by regulations made under this Act, or by or under any other law.

(2) The Committee shall consist of:

(a) a Chairman, who shall be the Director;

(b) two other members with the required expertise in the field of mediation who shall be appointed by the Minister after consultation with the Malta Mediation Centre and shall remain in office for a period of two years and may be eligible for reappointment in such office for a further period of two years; and

(c) another member who shall be appointed by the Director after consultation with the Director for Correctional Services and shall remain in office for a period of two years and may be eligible for reappointment in such office for a further period of two years.

(3) Any member of the Committee having a direct or indirect personal interest on any particular matter being discussed by the Committee shall immediately declare his position to the Committee.

(4) The member of the Committee who has declared a conflict of interest shall refrain from any discussion on the matter in which he has declared any conflict of interest.

(5) Any member who abstains or is prevented from acting, under the provisions of this article, shall be substituted by any member, to be appointed by the Director.

30. (1) The Committee's principal duties shall include: Duties of the Committee.

(a) to determine the victim's, the offender's and the offence's suitability for victim-offender mediation;

(b) to determine the victim's and offender's eligibility for victim-offender mediation;

(c) to supervise mediators and periodically receive verbal or written reports on the victim-offender mediation processes taking place;

(d) to determine the location where victim-offender mediation is to take place;

(e) the responsibility to make recommendations to the Minister and in consultation with the Malta Mediation Centre regarding:

(i) the drawing up of a list of mediators to assist in victim offender mediation;

(ii) the drawing up of the criteria for the appointment of mediators; and

(f) such other duties that may be assigned to it by the Minister.

(2) Every case brought before the Committee shall be considered by the Committee on its own merits.

(3) The Committee shall have access to all records of the Victim Support Unit and, subject to the provisions of this Act and any direction by the Minister, the Committee shall regulate its own procedures.

31. (1) The Court may, at any stage of criminal proceedings, refer the case to the Committee to determine the suitability and eligibility or otherwise for the case to be referred to victim-offender mediation. Case referral to victim-offender mediation.

(2) The prosecutor, and, or the advocate of the offender and, or the probation officer, as the case may be, may also, at any time during the criminal proceedings request the Court, through an application, to refer the case to the Committee to determine the suitability and eligibility or otherwise for the case to be referred to victim-offender mediation.

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(3) If the Court, instead of sentencing the offender to imprisonment, subjects the offender to any order provided under the Probation Act, or to a suspended sentence provided under the Criminal Code, the probation officer or the surveillance officer, as the case may be, responsible for supervising the offender, may at any stage during the duration of the probation or operational period, request the Court, by means of an application, to refer the case to the Committee to determine the suitability and eligibility or otherwise for the case to be referred to victim-offender mediation.

(4) The Offender Assessment Board and, or the Parole Board and, or the Remission Board, as the case may be, may at any post-sentencing stage refer a case to the Committee to determine the suitability and eligibility or otherwise for a case to be referred to victim-offender mediation.

Eligibility.

32. (1) Prior to referring the victim and the offender to victim-offender mediation, the Committee shall determine the victim's and the offender's eligibility.

(2) An offender is eligible for victim-offender mediation if:

(a) the offender is capable of agreeing to take part in victim-offender mediation;

(b) the offender agrees voluntarily to take part in victim-offender mediation; and

(c) the offender has formally admitted to committing an offence.

(3) A victim of an offence is eligible for victim-offender mediation if:

(a) the offence perpetrated against the victim is committed by an eligible offender;

(b) the victim is capable of agreeing to take part in victim-offender mediation; and

(c) the victim agrees voluntarily to take part in victim-

offender mediation.

33. In deciding whether victim-offender mediation is suitable for an offence, the Committee shall consider, amongst other matters, the following:

Suitability of offence for victim-offender mediation.

(a) the nature of the offence, including the level of harm caused by or violence involved in its commission; and

(b) any potential power imbalance between the persons who are to take part in victim-offender mediation.

34. In deciding whether victim-offender mediation is suitable for an eligible victim, the Committee shall consider, amongst other matters, the following:

Suitability of victim for victim-offender mediation.

(a) the victim's personal characteristics;

(b) the victim's motivation to take part in victim-offender mediation;

(c) the impact of the offence on the victim; and

(d) the potential psychological effects victim-offender mediation may have on the victim.

35. In deciding whether victim-offender mediation is suitable for an eligible offender, the Committee shall consider, amongst other matters, the following:

Suitability of the offender for victim-offender mediation.

(a) the offender's personal characteristics;

(b) the offender's motivation to take part in victim-offender mediation;

(c) the impact of the offence as perceived by the offender; and

(d) the extent (if any) of the offender's contrition or remorse for the offence.

36. The Committee shall refer the victim and the offender to victim-offender mediation if all of the following pre-requisites are satisfied:

Requisites for victim-offender mediation.

(a) there is an eligible victim;

(b) there is an eligible offender; and

(c) the Committee determines the suitability of the victim, the offender and the offence for victim-offender mediation:

Provided that upon the Committee's refusal to refer a case to victim-offender mediation if any of the abovementioned pre-requisites have not been satisfied, shall not preclude the possibility for the case to be referred to victim-offender mediation at a later stage once all pre-requisites are satisfied.

Functions of the mediator.

37. Upon being assigned to a case, the mediator shall:

(a) make sure to be informed of all the relevant facts of the case after being provided with all necessary documents by the Committee;

(b) contact the victim and the offender to fix a date, time and place for an individual pre-mediation meeting with each of the parties and to hold a preliminary hearing in relation to the case, inform them about the victim-offender mediation process and rules, and their respective rights:

Provided that in the case where the offender is in the Correctional Facility, the mediator shall obtain the necessary authorization from the Director of Correctional Services to visit the offender or to hold a meeting with the offender outside the Correctional Facility;

(c) make sure that the victim-offender mediation session shall be based on the relevant facts of the case and on the needs and wishes of the parties;

(d) help facilitate dialogue in an impartial manner between the parties;

(e) respect the dignity and sensitivity of the parties and ensure that the parties respect each other's rights and opinions during the process;

(f) facilitate the negotiations leading to a reparation agreement between the parties; and

(g) any other function as the Victim Support Unit, after consultation with the Committee, may assign from time to time.

Parties' rights.

38. There is no obligation on a victim or on an offender to:

(a) take part in the victim-offender mediation process;

and

(b) continue to take part in victim-offender mediation after commencement of the proceedings.

39. Victim-offender mediation proceedings shall be resorted to by the parties in person, without any legal representation: Proceedings.

Provided that without prejudice to the confidentiality provisions herein contained, where a party to the mediation communicates to the mediator a threat of serious bodily harm or death to be inflicted on any person or a threat of significant damage to property and the mediator has reason to believe the party has the intent and ability to act on the threat, the mediator shall convey such information to the appropriate authorities or to the person or persons concerned.

40. Victim-offender mediation shall be terminated when either of the following circumstances occur: Termination of victim-offender mediation.

(a) the parties negotiate and sign a reparation agreement;

(b) if in the opinion of the mediator, the parties cannot reach a reparation agreement; or

(c) either or both of the parties no longer wish to continue with the victim-offender mediation proceedings:

Provided that victim-offender mediation proceedings shall not exceed three sessions, unless further sessions are duly authorized by the Committee.

41. (1) Successful victim-offender mediation proceedings shall result in the negotiation of a reparation agreement between the parties. Reparation agreements.

(2) Reparation agreements may include:

(a) the offender providing compensation for damages suffered by the victim;

(b) the offender providing compensation for non-pecuniary damages suffered by the victim;

(c) the offender performing personal work for the victim;

(d) the offender performing community work;

(e) the offender to undertake any relevant rehabilitation programmes;

(f) restitution to the victim of any item stolen by the offender;

(g) a formal apology by the offender to the victim; or

(h) any other reasonable agreement as may be agreed to by the parties:

Provided that a reasonable reparation agreement shall be construed as an agreement reached by both the victim and the offender and which is considered to be objectively and reasonably justified, in the particular circumstances, by the mediator and attested by the Committee.

Evidence given
in mediation
proceedings.

42. (1) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to victim offender mediation is admissible in any proceedings, and disclosure of such evidence shall not and may not be compelled in any proceedings:

Provided that disclosure of the content of the agreement resulting from mediation shall be permitted, subject to the consent of the parties concerned:

Provided further that any other information acquired by the mediator during mediation proceedings may be disclosed whenever:

(a) the mediator considers that this is necessary for overriding considerations of public policy or national security; or

(b) such information concerns any threat to commit a criminal offence; or

(c) the mediator considers that a criminal offence is likely to be committed.

(2) All communications or settlement discussions by and between participants in the course of mediation shall remain confidential:

Provided that information falling within the scope of the second proviso of sub-article (1) may be communicated to the authorities or persons concerned.

(3) Except as required under sub-article (4), a mediator may

not submit to any court or adjudicatory body any evidence, report, assessment, evaluation, or finding of any kind concerning a mediation conducted by him other than a report that is mandated by the Court or adjudicatory body, and which only states whether an agreement was reached.

(4) A mediator may only divulge such information as established under sub-article (3) to a Court or adjudicatory body as long as all parties to the mediation expressly agree in writing.

43. (1) The mediators shall inform the Court, the Offender Assessment Board, the Parole Board or the Director whenever an agreement has been reached by the parties, whenever the parties have failed to reach an agreement, or where mediation sessions had to be interrupted for any other reason.

Mediators to inform the Court, the Offender Assessment Board, the Parole Board or the Director.

(2) Whenever an agreement is reached, the mediator shall be responsible to forward a written copy of the reparation agreement to the entity that referred the case to victim-offender mediation whenever the parties give their consent to such disclosure.

(3) Outcomes of victim-offender mediation proceedings during the pre-sentencing stage shall be taken into consideration by the Court when passing judgement:

Provided that, upon the parties having reached a reparation agreement, nothing shall prevent the Court from prescribing any other punishment on the offender which it may deem appropriate:

Provided further that participation of the offender in mediation shall not be used as evidence of admission of guilt by the offender.

PART VII

Miscellaneous

44. The Minister may make regulations:

Regulations.

(a) providing for the duties of the Director in addition to those prescribed by this Act;

(b) providing for any duties of parole officers in addition to those prescribed by this Act;

(c) providing for any duties of all the Boards and the Committee established under this Act in addition to those prescribed by this Act;

(d) providing for any duties of the Parole Clerk in addition to those prescribed by this Act;

(e) providing for the conditions that shall be imposed in a parole licence in addition to those prescribed by this Act;

(f) providing for the manner in which and the conditions under which a remission of a portion of the sentence may be earned by industry, good conduct and adherence to the care plan;

(g) prescribing standard operational procedures in consultation with the Director for any of the functions stipulated under this Act or any of the functions that may be added from time to time; and

(h) generally for the better carrying out of the purposes and provisions of this Act.

Amendment of
article 11 of the
Criminal Code.
Cap. 9

45. Sub-article (3) of article 11 of the Criminal Code shall be substituted by the following:

"(3) In default of payment of a fine (*multa*) within the period prescribed in article 14, such fine (*multa*) shall be converted into imprisonment at the rate of one day for every thirty-five euro (35) or part thereof:

Provided that in no case (save as provided in article 17(g) and in article 29(1)) shall imprisonment in substitution of a fine (*multa*) exceed six months if the fine is not higher than seven thousand euro (7,000), one year if the fine is not higher than thirty thousand euro (30,000), eighteen months if the fine is not higher than eighty thousand euro (80,000) and two years if it is higher than eighty thousand euro (80,000)."

Amendment of
article 586 of
the Criminal
Code.
Cap. 9

46. In subarticle (1) of article 586 of the Criminal Code, for the words "accused or the surety," there shall be substituted the words "accused or the surety:" and immediately thereafter there shall be added the following new proviso:

"Provided that in no case shall detention for non-payment of the sum in which a person has bound himself exceed six months if the amount is not higher than seven thousand euro (7,000), one year if the amount is not higher than thirty

thousand euro (30,000), eighteen months if the amount is not higher than eighty thousand euro (80,000) and two years if it is higher than eighty thousand euro (80,000)."

Passed by the House of Representatives at Sitting No. 416 of the 29th November, 2011.

MICHAEL FRENDU

Speaker

PAULINE ABELA

Clerk to the House of Representatives