

## Notes

<sup>1</sup> This is a compilation of the *Bail Act 1982* and includes the amendments effected by the other Acts referred to in the following Table. For amendments that had not come into operation on the date on which this compilation was prepared see endnote <sup>1a</sup>.

**Compilation table**

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Bail Act 1982</i>	86 of 1982	18 November 1982	6 February 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.263)	
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984, Part III</i>	52 of 1984	5 September 1984	3 October 1984	
<i>Bail Amendment Act 1984</i>	74 of 1984	29 November 1984	6 February 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.263)	Sections 10 and 11 repealed by <i>Bail Amendment Act 1988</i> (No. 15 of 1988 section 20)
<i>Bail Amendment Act 1988</i>	15 of 1988	6 September 1988	6 February 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.263)	
<i>Acts Amendment (Children's Court) Act 1988, Part 13</i>	49 of 1988	22 December 1988	1 December 1989 (see section 2 and <i>Gazette</i> 24 November 1989 p.4327)	
<i>Criminal Law Amendment Act 1988, Part 4</i>	70 of 1988	15 December 1988	6 February 1989 (see section 2(2)(b) and <i>Gazette</i> 27 January 1989 p.263)	
<i>Justices Amendment Act 1989, section 18 (item 1 of Schedule)</i>	33 of 1989	22 December 1989	1 June 1991 (see section 2 and <i>Gazette</i> 17 May 1991 p.2455)	

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Community Corrections Legislation Amendment Act 1990, Part 2</i>	61 of 1990	17 December 1990	3 April 1991 (see section 2 and <i>Gazette</i> 22 March 1991 p.1209)	
<i>Child Welfare Amendment Act (No. 2) 1990, section 15</i>	83 of 1990	22 December 1990	1 August 1991 (see section 2 and <i>Gazette</i> 1 August 1991 p.3983)	
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991, section 21</i>	15 of 1991	21 June 1991	9 August 1991 (see section 2(2) and <i>Gazette</i> 9 August 1991 p.4101)	
<i>Acts Amendment (Sexual Offences) Act 1992, Part 3</i>	14 of 1992	17 June 1992	1 August 1992 (see section 2 and <i>Gazette</i> 28 July 1992 p.3671)	
<i>Acts Amendment (Ministry of Justice) Act 1993, Part 3</i>	31 of 1993	15 December 1993	Deemed operative 1 July 1993 (see section 2)	Part 19: transitional <sup>2</sup>
<i>Criminal Procedure Amendment Act 1993, Part 2</i>	45 of 1993	20 December 1993	Sections 7, 8, 9, 10(2)(b): 4 March 1994 (see section 2 and <i>Gazette</i> 4 March 1994 p. 915); balance: 17 January 1994 (see section 2(2))	Section 13 : transitional <sup>3</sup>
<i>Criminal Law Amendment Act 1994, section 13(1) and (2)</i>	82 of 1994	23 December 1994	20 January 1995 (see section 2(2))	
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994, Part 3</i>	92 of 1994	23 December 1994	1 January 1995 (see section 2 and <i>Gazette</i> 30 December 1994 p.7211)	
<i>Sentencing (Consequential Provisions) Act 1995, Part 5</i>	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Coroners Act 1996</i> , section 61	2 of 1996	24 May 1996	7 April 1997 (see section 2 and <i>Gazette</i> 18 March 1997 p.1529)	
<i>Mental Health (Consequential Provisions) Act 1996</i> , Part 2	69 of 1996	13 November 1996	13 November 1997 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 21	57 of 1997	15 December 1997	15 December 1997 (see section 2)	
<i>Criminal Law Amendment Act (No. 1) 1998</i> , section 4(2)	38 of 1998	25 September 1998	23 October 1998	
<i>Bail Amendment Act 1998</i> ,	54 of 1998	11 January 1999	Parts 4 and 7 proclaimed 15 May 1999 (see section 2 and <i>Gazette</i> 11 May 1999 p.1905); Parts 2, 3 and 5 (other than section 12) proclaimed 8 March 2000 (see section 2 and <i>Gazette</i> 7 March 2000 p.1039); section 12 proclaimed 1 September 2000 (see section 2 and <i>Gazette</i> 29 August 2000 p.4985); Part 6 proclaimed 4 December 2000 (see section 2 and <i>Gazette</i> 4 December 2000 p.6799).	Section 6(2): transitional <sup>4</sup>
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999</i> , Part 3	47 of 1999	8 December 1999	18 December 1999 (see section 2 and <i>Gazette</i> 17 December 1999 pp.6175-6)	
<i>Criminal Law Amendment Act 2001</i> s. 10(1)	23 of 2001	26 November 2001	24 December 2001	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Criminal Law (Procedure) Amendment Act 2002 Pt. 4 Div. 1</i>	27 of 2002	25 Sep 2002	27 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4875)	

1a On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compilation. For the text of the provisions see the endnotes referred to in the table.

#### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment and Repeal Act 1999</i> <sup>5</sup>	57 of 1999 (as amended by 62 of 2000)	16 Dec 1999	To be proclaimed (see s. 2)
<i>Criminal Investigation (Identifying People) Act 2002</i> s. 96 <sup>6</sup>	6 of 2002	4 Jun 2002	To be proclaimed (see s. 2)

2 Part 19 of the *Acts Amendment (Ministry of Justice) Act 1993* (No. 31 of 1993) reads as follows —

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### Part 19 — Savings and transitional

#### 68. Savings

If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

#### 69. Transitional

Unless the contrary intention appears, a reference, however expressed, in any law or document to the former Department of Corrective Services or Crown Law Department, the chief executive officer of either of those departments, or an office or organizational unit within either of those departments, is to be read as a reference to the Ministry of Justice, the chief executive officer of the Ministry of Justice, or the corresponding office or unit within the Ministry of Justice, as is appropriate.

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3 Section 13 of the *Criminal Procedure Amendment Act 1993* (No. 45 of 1993) reads as follows —

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**13. Transitional**

- (1) The amendments to the principal Act effected by a provision of this Part apply in relation to —
  - (a) a child arrested for any offence; and
  - (b) a person, other than a child, arrested for a serious offence,on or after the day on which that provision comes into operation.
- (2) In subsection (1) “**child**” and “**serious offence**” have the same meanings as in the principal Act.

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Section 6(2) of the *Bail Amendment Act 1998* (No. 58 of 1998) reads as follows —

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- (2) Section 16A inserted by subsection (1) applies to persons arrested for an offence referred to in subsection (2)(a) or (3) of that section on or after the day on which this section comes into operation.

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Part 2 Division 3 of the *Sentencing Legislation Amendment and Repeal Act 1999* reads as follows —

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**Division 3 — Transitional and consequential provisions**

**14. Interpretation**

- (1) In this Division —
  - “**commencement**” means the commencement of this Part;
  - “**new provisions**” means —
    - (a) the *Sentencing Act 1995* as amended by the sentencing amendments; and
    - (b) the *Sentence Administration Act 1999*;
  - “**old provisions**” means the *Sentencing Act 1995*, and the repealed Act, as they would have applied had the sentencing amendments not come into operation;
  - “**repealed Act**” means the *Sentence Administration Act 1995*;
  - “**sentencing amendments**” means the amendments and repeals made by this Part.
- (2) In this Division, words and expressions have the same definitions as in the *Sentencing Act 1995* and in particular, in Part 13 of that Act.

**15. Sentencing courts to take into account this Part’s effect**

- (1) If a court sentencing an offender to imprisonment proposes to impose a fixed term (with or without a parole eligibility order), it must impose a fixed term that is two thirds of the fixed term that it would have imposed had the old provisions been in operation at the time of sentencing.
- (2) For the purposes of subsection (1) —

- (a) it does not matter that the court may be proposing to suspend the fixed term under Part 11 of the *Sentencing Act 1995*; and
  - (b) a reference to imposing a fixed term includes a reference to dealing with an offender under section 80 of the *Sentencing Act 1995* in respect of a sentence of suspended imprisonment imposed under the old provisions.
- (3) Despite subsection (1), if the sentence required by that subsection would contravene section 86 of the *Sentencing Act 1995*, the court must use one of the sentencing options in section 39(2)(a) to (e) of that Act instead of sentencing the offender to imprisonment.
- (4) A court does not have to apply this section if, in sentencing an offender, the court follows the practice of the court as established in accordance with the new provisions and this section.
- (5) This section does not apply if —
- (a) the statutory penalty for the offence for which the offender is being sentenced has been amended since the new provisions commenced;
  - (b) a guideline judgment given under section 143 of the *Sentencing Act 1995* since the new provisions commenced applies to the offender or the offence for which the offender is being sentenced;
  - (c) the application of this section would be inconsistent with or contrary to any other judgment given since the new provisions commenced that binds the sentencing court;
  - (d) a court is imposing a term under section 401(4) of *The Criminal Code*; or
  - (e) a court is sentencing an offender to a term that, under the old provisions, would have been a prescribed term within the meaning of section 85 of the *Sentencing Act 1995*.

[Section 15 amended by No. 62 of 2000 s. 4.]

**16. Application of Interpretation Act 1984, s 36**

Section 36 of the Interpretation Act 1984 applies as if the Sentence Administration Act 1995 had been repealed and re-enacted by the Sentence Administration Act 1999.

**17. Community orders imposed before commencement**

If immediately before commencement —

- (a) a community based order, or an intensive supervision order, made under the *Sentencing Act 1995* is in force; or
- (b) a WDO made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is in force,

then on and after commencement —

- (c) the *Sentence Administration Act 1999* applies to and in respect of the order; and
- (d) the reference in the order to section 76 of the *Sentence Administration Act 1995* is to be taken to be a reference to section 89 of the *Sentence Administration Act 1999*.

**18. Sentences of imprisonment imposed before commencement**

- (1) If immediately before commencement a person is subject to a fixed term that is not a parole term and to which the old provisions apply, then on and after commencement the old provisions continue to apply to that term and to the release of the person in respect of that term.
- (2) If immediately before commencement a person is subject to a parole term to which the old provisions apply, then on and after commencement —
  - (a) the old provisions apply for the purpose of calculating —
    - (i) when the person is eligible to be released on parole;
    - (ii) the parole period for the person; and
    - (iii) when the person is discharged from the sentence and must be released;
  - (b) the new provisions apply for the purpose of determining whether the person is to be released on parole;
  - (c) if the person is to be released on parole, the release is to be by means of a parole order (supervised) made under Part 3 of the *Sentence Administration Act 1999* and for that purpose —
    - (i) the parole period in the order is to be the parole period calculated under the old provisions; and
    - (ii) the supervised period for the order is to be the same as the parole period;and
  - (d) if the person is released on parole, the *Sentence Administration Act 1999* applies to and in respect of the person and the order except to the extent that paragraph (a) or (c) provides otherwise.
- (3) If immediately before commencement a person is in custody serving a life term to which the old provisions apply, then on and after commencement the new provisions apply to that term.
- (4) If immediately before commencement a person is in custody serving indefinite imprisonment, then on and after commencement the new provisions apply in respect of that person.
- (5) If immediately before commencement a person is detained in strict or safe custody during the Governor's pleasure under an order made under section 282 of *The Criminal Code*, then on and after commencement the new provisions apply in respect of that person.

**19. Early release orders made before commencement**

If immediately before commencement a person is subject to a parole order, a home detention order, or a work release order, made under the repealed Act, then on and after commencement the repealed Act continues to apply to and in respect of that order.

**20. WROs**

- (1) If immediately before commencement a person is subject to a sentence of imprisonment to which the old provisions apply, then on or after commencement—

- (a) subject to Part 4 of the repealed Act, a work release order may be made in respect of the person; and
  - (b) Parts 4, 6, 7 and 8 of the repealed Act continue to operate for those purposes and in respect of any such order, subject to subsection (2).
- (2) If on or after commencement—
- (a) a work release order is made under the repealed Act in respect of the person; and
  - (b) after the order is made it is cancelled under section 70 of the repealed Act by reason of the person having been sentenced to imprisonment for a crime tried on indictment,

the Board must not make another work release order under the repealed Act in respect of the person in relation to the sentence to which the cancelled order related unless satisfied there are exceptional reasons for making another order.

**21. HDOs**

If immediately before commencement a person is subject to a sentence of imprisonment to which the old provisions apply, then on or after commencement—

- (a) Part 5 of the repealed Act applies for the purpose of determining—
  - (i) whether the person is eligible to be released under a home detention order; and
  - (ii) the period of any such order;
- (b) if a home detention order is to be made in respect of the person, the order is to be made under Part 5 of the *Sentence Administration Act 1999* and for that purpose the period of the order is to be the period calculated under the repealed Act; and
- (c) if a home detention order is made in respect of the person, the *Sentence Administration Act 1999* applies to an in respect of the person and the order except to the extent that paragraph (a) or (b) provide otherwise.

**22. Warrants in force at commencement**

A warrant issued under the repealed Act and in force immediately before commencement remains in force despite the repeal of the repealed Act.

**23. CEO's instructions for community corrections centres**

- (1) If rules made under section 86 of the repealed Act are in force immediately before commencement, then on and after commencement the rules are to be taken to be written instructions issued under section 99 of the *Sentence Administration Act 1999* until written instructions are issued under that section.
- (2) When written instructions are issued under section 99 of the *Sentence Administration Act 1999* a reference in the repealed Act to rules made under section 86 of the repealed Act is to be taken to be a reference to those written instructions.



**24. Parole Board's report**

The Board's annual report made under section 125 of the *Sentence Administration Act 1999* must report on the operation of the repealed Act to the extent that it continues to operate by virtue of this Division and the *Interpretation Act 1984*.

**24A. Offenders serving sentences of imprisonment imposed before 4 November 1996**

- (1) In this section —  
“**1995 Act**” means the *Sentencing (Consequential Provisions) Act 1995*.
- (2) If immediately before commencement a person to whom section 82 of the 1995 Act applies is in custody subject to the sentence referred to in section 82, then on and after commencement section 82 continues to apply but —
  - (a) the references to the *Sentencing Act 1995* and the *Sentence Administration Act 1995* are to be read as references to those Acts as they would have applied had the sentencing amendments not come into operation; and
  - (b) section 20 of this Act applies to the person.
- (3) If immediately before commencement a person to whom section 83 of the 1995 Act applies is in custody subject to the sentence referred to in section 83, then on and after commencement section 83, other than paragraphs (a) and (c), continues to apply but —
  - (a) any release of the person on parole in respect of the sentence is to be by means of a parole order (supervised) made under Part 3 Division 7 of the *Sentence Administration Act 1999*; and
  - (b) Part 3 Divisions 8 to 12 and Parts 4, 6 and 8 to 12 of the *Sentence Administration Act 1999* apply to and in respect of the person and the parole order (supervised).
- (4) If immediately before commencement a person to whom section 84 of the 1995 Act applies is in custody subject to the sentence referred to in section 84, then on and after commencement section 84 continues to apply but —
  - (a) the references to the *Sentencing Act 1995* and the *Sentence Administration Act 1995* are to be read as references to those Acts as they would have applied had the sentencing amendments not come into operation; and
  - (b) sections 18(2) and 20 of this Act apply to the person.
- (5) If immediately before commencement a person to whom section 86 of the 1995 Act applies is in custody subject to the sentence referred to in section 86, then on and after commencement section 86, other than paragraphs (a), (b) and (c), continues to apply but —
  - (a) any release of the person on parole in respect of the sentence is to be by means of a parole order (supervised) made by the Governor under Part 3 Division 7 of the *Sentence Administration Act 1999*;
  - (b) the parole period for the parole order (supervised) is that provided by section 24(3) of the *Sentence Administration Act 1999*; and

- (c) Part 3 Divisions 8 to 12 and Parts 4, 6 and 8 to 12 of the *Sentence Administration Act 1999* apply to and in respect of the person and the parole order (supervised).
- (6) If immediately before commencement a person to whom section 87 of the 1995 Act applies is in custody subject to the sentence referred to in section 87, then on and after commencement section 87, other than paragraphs (a), (b) and (c), continues to apply but —
- (a) any release of the person on parole in respect of the sentence is to be by means of a parole order (supervised) made by the Governor under Part 3 Division 7 of the *Sentence Administration Act 1999*;
  - (b) the parole period for the parole order (supervised) is that provided by section 25(3) of the *Sentence Administration Act 1999*; and
  - (c) Part 3 Divisions 8 to 12 and Parts 4, 6 and 8 to 12 of the *Sentence Administration Act 1999* apply to and in respect of the person and the parole order (supervised).
- (7) If immediately before commencement a person to whom section 88(1) of the 1995 Act applies is in custody subject to the order referred to in section 88(1), then on and after commencement section 88(1) continues to apply but the reference to the *Sentence Administration Act 1995* is to be read as a reference to the *Sentence Administration Act 1999*.
- (8) If immediately before commencement a person to whom section 90(1) of the 1995 Act applies is in custody subject to the order referred to in section 90(1), then on and after commencement section 90 continues to apply but the reference to the *Sentence Administration Act 1995* is to be read as a reference to the *Sentence Administration Act 1999*.
- (9) If immediately before commencement a person to whom section 91(1) of the 1995 Act applies is in custody subject to the direction or sentence referred to in section 91(1), then on and after commencement section 91, other than paragraphs (a), (b) and (c) of section 91(1), continues to apply but —
- (a) any release of the person on parole in respect of the sentence is to be by means of a parole order (supervised) made by the Governor under Part 3 Division 7 of the *Sentence Administration Act 1999*;
  - (b) the parole period for the parole order (supervised) is that provided by section 26(3) of the *Sentence Administration Act 1999*; and
  - (c) Part 3 Divisions 8 to 12 and Parts 4, 6 and 8 to 12 of the *Sentence Administration Act 1999* apply to and in respect of the person and the parole order (supervised).

[Section 24A inserted by No. 62 of 2000 s. 5.]

## **25. Transitional regulations**

- (1) If there is no sufficient provision in this Division or in the old provisions or in the new provisions to provide for matters in relation to —

- (a) the application of the old provisions to a sentence of imprisonment imposed before commencement;
- (b) the effect after commencement of a sentence of imprisonment imposed before commencement;
- (c) the imposition after commencement of sentences of imprisonment on offenders who are subject to sentences of imprisonment imposed before commencement;
- (d) the combined effect of a sentence of imprisonment imposed before commencement and of a sentence of imprisonment imposed after commencement;
- (e) the application of the *Sentence Administration Act 1995* or the *Sentence Administration Act 1999* to orders made under the old provisions or under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*,

the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to those matters.

- (2) Regulations made under subsection (1) may provide that specific provisions of this Part, or of the old provisions, or of the new provisions —
  - (a) do not apply; or
  - (b) apply with specific modifications,
 to or in relation to any matter.
- (3) Regulations made under subsection (1) —
  - (a) must be made within 12 months after commencement; and
  - (b) may be made so as to have effect on a day that is earlier than the day on which they are published in the *Gazette* but not earlier than commencement.
- (4) The Governor may make any regulations that are necessary or convenient for preventing any doubt or difficulty from arising as to the application or operation of section 15 or for resolving any doubt or difficulty that may have arisen in that regard.

*[Section 25 amended by No. 62 of 2000 s. 6.]*

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6 On the date as at which this compilation was prepared, the *Criminal Investigation (Identifying People) Act 2002* s. 96, which gives effect to Sch. 2, had not come into operation. It reads as follows:

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**96. Consequential amendments (Schedule 2)**

Schedule 2 has effect.

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Schedule 2 reads as follows:

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**Schedule 2 — Consequential amendments**

[s. 96]

1. ***Bail Act 1982***

Section 12 is amended by deleting “and section 50AA of the *Police Act 1892.*” and inserting instead —

“

, section 50AA of the *Police Act 1892* and Parts 6 and 7 of the *Criminal Investigation (Identifying People) Act 2002.*

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