



Western Australia

Sentence Administration Act 2003

Compare between:

[29 Nov 2016, 02-e0-00] and [08 Dec 2016, 02-f0-03]

Western Australia

Sentence Administration Act 2003

An Act to provide for the administration of sentences and other orders imposed on offenders.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Sentence Administration Act 2003*¹.

2. Commencement

- (1) Subject to subsection (3) and to section 2(3) of the *Sentencing Legislation Amendment and Repeal Act 2003* this Act comes into operation on a day fixed by proclamation¹.
- (2) Different days may be fixed under subsection (1) for different provisions.
- (3) No part of this Act shall be proclaimed to come into operation within 6 months of Part 5 of the *Sentencing Legislation Amendment and Repeal Act 2003* coming into operation.

3. This Act to be read with *Sentencing Act 1995*

This Act is to be read with the *Sentencing Act 1995*.

4. Terms and abbreviations used

- (1) If not defined in this Act words and expressions in this Act have the same definitions as in the *Sentencing Act 1995* and in particular, in Part 13 of that Act.
- (2) In this Act, unless the contrary intention appears —
Board means the Prisoners Review Board;
CEO means the chief executive officer of the Public Sector agency principally assisting the Minister administering Part 8 in its administration;
community corrections activities are activities approved as such under section 85;
community corrections centre means a place declared to be a community corrections centre under section 84;

community corrections officer means a person appointed as a community corrections officer under section 98 and includes an honorary CCO;

community order means a community based order or an intensive supervision order imposed under the *Sentencing Act 1995*;

conditional suspended imprisonment means conditional suspended imprisonment imposed under Part 12 Division 1 of the *Sentencing Act 1995*;

departmental staff means the people appointed or engaged under section 98 and the people authorised to work as unpaid volunteers under section 99;

early release order means —

- (a) a parole order; or
- (b) a re-entry release order;

Governor's pleasure detainee means —

- (a) a person in, or regarded as being in, strict or safe custody by virtue of an order made under the repealed section 282 of *The Criminal Code*; or
- (b) a person subject to a sentence of detention imposed under section 279(5)(b) of *The Criminal Code*; or
- (c) a person subject to a direction or sentence under repealed section 661 or 662 of *The Criminal Code*;

honorary CCO means a person appointed as a community corrections officer under section 98(1)(b);

parole order means an order made under Part 3 that a prisoner be released on parole and includes a parole order made for the purposes of section 72 or 73;

parole order (unsupervised) means a parole order that specifies that it is unsupervised;

prisoner means —

- (a) a person sentenced to a fixed term, whether a parole term or not; or

- (b) a person sentenced to ~~a~~ life imprisonment; or
- (c) a person sentenced to indefinite imprisonment; or
- (d) a Governor's pleasure detainee;

re-entry release order means a re-entry release order made under Part 4 and includes a re-entry release order made for the purposes of section 72;

release means release from custody;

release considerations relating to a prisoner, has the meaning given to that term by section 5A;

re-socialisation programme means a programme of a prescribed kind that can be provided under the *Prisons Act 1981* to address the following factors insofar as they are relevant to equipping a particular prisoner for re-entry into the general community —

- (a) education;
- (b) employment;
- (c) drug and alcohol use;
- (d) mental and physical health;
- (e) attitudes and social control;
- (f) institutionalisation and life skills;
- (g) housing;
- (h) financial support and debt;
- (i) family and community networks;
- (j) any other prescribed factor;

Schedule 3 prisoner means a person described in [Schedule 3 column 2](#);

sentence includes order;

serious offence means an offence of the kind set out in Schedule 2, other than such of those offences as have been prescribed by the regulations as not to be a serious offence;

victim of an offence means —

- (a) a person who has suffered injury, loss or damage as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender; or
- (b) where the offence resulted in a death, any member of the immediate family of the deceased;

victim's submission has the meaning given to that term by section 5C(1);

work and development order means a work and development order made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

- (3) In this Act these abbreviations are used —
- CCO** for community corrections officer;
 - CSI** for conditional suspended imprisonment;
 - RRO** for re-entry release order;
 - WDO** for work and development order.

[Section 4 amended by No. 27 of 2004 s. 10; No. 41 of 2006 s. 4; No. 65 of 2006 s. 37; No. 29 of 2008 s. 39(2)-7]; No. 45 of 2016 s. 4.]

[Section 4. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

Part 2 — General matters

[Heading amended by No. 41 of 2006 s. 5.]

Division 1 — Preliminary

5. Terms used and calculations

In this Part words and expressions have the same definitions, and calculations are to be made in the same way, as in Part 13 of the *Sentencing Act 1995*.

5A. Release considerations about people in custody

In this Act a reference to the *release considerations* relating to a prisoner is a reference to these considerations —

- (a) the degree of risk (having regard to any likelihood of the prisoner committing an offence when subject to an early release order and the likely nature and seriousness of any such offence) that the release of the prisoner would appear to present to the personal safety of people in the community or of any individual in the community;
- (b) the circumstances of the commission of, and the seriousness of, an offence for which the prisoner is in custody;
- (c) any remarks by a court that has sentenced the prisoner to imprisonment that are relevant to any of the matters mentioned in paragraph (a) or (b);
- (d) issues for any victim of an offence for which the prisoner is in custody if the prisoner is released, including any matter raised in a victim's submission;
- (e) the behaviour of the prisoner when in custody insofar as it may be relevant to determining how the prisoner is likely to behave if released;
- (f) whether the prisoner has participated in programmes available to the prisoner when in custody, and if not the reasons for not doing so;

- (g) the prisoner's performance when participating in a programme mentioned in paragraph (f);
- (h) the behaviour of the prisoner when subject to any release order made previously;
- (i) the likelihood of the prisoner committing an offence when subject to an early release order;
- (j) the likelihood of the prisoner complying with the standard obligations and any additional requirements of any early release order;
- (k) any other consideration that is or may be relevant to whether the prisoner should be released.

[Section 5A inserted by No. 41 of 2006 s. 6.]

5B. Community safety paramount

The Board or any other person performing functions under this Act must regard the safety of the community as the paramount consideration.

[Section 5B inserted by No. 41 of 2006 s. 6.]

5C. Victim's submission to Board

- (1) A *victim's submission* is a written submission by a victim of an offence for which a prisoner is in custody that does either or both of the following —
 - (a) states the victim's opinion of the effect the release of the prisoner would have on the victim;
 - (b) makes suggestions about the conditions that should apply to the prisoner if released.
- (2) If a victim is personally incapable of making a victim's submission due to age, disability or infirmity, a person may make a victim's submission on the victim's behalf.
- (3) The Board and the CEO are to establish procedures for the making of victims' submissions and their receipt by or transmission to the Board.

- (4) In performing its functions, the Board is to have regard to any victim's submission received by or transmitted to it in accordance with the procedures and is to give the submission such weight as it sees fit.
- (5) The Board must not —
 - (a) give a victim's submission, or a copy of a victim's submission, to the prisoner or to any person acting for or on behalf of, or representing, the prisoner; or
 - (b) allow the prisoner or any person acting for or on behalf of, or representing, the prisoner to view a victim's submission.

[Section 5C inserted by No. 41 of 2006 s. 6.]

Division 2 — Matters affecting the service of terms

6. When a term begins

- (1) Unless this section provides otherwise or an order is made under section 87(d) or 88(3) of the *Sentencing Act 1995*, a term, other than indefinite imprisonment, begins on the day it is imposed, or if the prisoner is not then in custody, on the day he or she is arrested under a warrant issued in respect of the sentence.
- (2) If a term is cumulative on one or more other terms then that term begins on the earliest date on which the prisoner could be released in relation to the last to be served of those other terms, whether or not the release would otherwise be under —
 - (a) a parole order; or
 - (b) a recognizance release order, or a parole order, made under the *Crimes Act 1914* of the Commonwealth.

7. Order of service of fixed terms

- (1) In this section —

fixed term includes —

 - (a) a period of imprisonment ordered under section 58, 59 or 119A of the *Sentencing Act 1995*; and

- (b) a period of imprisonment specified in a warrant of commitment issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;
- non-parole period**, in relation to a parole term, means the period that under section 93(1) of the *Sentencing Act 1995* the prisoner has to serve before he or she is eligible to be released on parole.
- (2) A prisoner who has to serve 2 or more fixed terms is to serve those terms in this order —
- (a) firstly, those that are not parole terms are to be served according to whether they are concurrent, partly concurrent or cumulative with one another;
 - (b) secondly, subject to sections 94 and 95A of the *Sentencing Act 1995* and subsection (3), the non-parole periods of those that are parole terms are to be served according to whether those parole terms are concurrent, partly concurrent or cumulative with one another;
 - (c) thirdly, subject to sections 94 and 95A of the *Sentencing Act 1995* and subsection (3), unless and until released on parole, the balance of any parole terms after the end of any non-parole periods are to be served —
 - (i) cumulatively if the terms are cumulative;
 - (ii) concurrently if the terms are concurrent or partly concurrent.
- (3) If after the commencement of Part 2 Division 4 of the *Sentencing Legislation Amendment and Repeal Act 2003*² a prisoner who is serving, or has yet to serve, a parole term imposed before the commencement of that Division is sentenced to serve another parole term, then —
- (a) the non-parole periods of the terms are to be served according to whether the parole terms are concurrent, partly concurrent or cumulative with one another; and
 - (b) the balance of the parole terms after the end of any non-parole periods are to be served concurrently irrespective of whether the parole terms are concurrent, partly concurrent or cumulative with one another.

- (4) If while serving a fixed term a prisoner is sentenced to serve another fixed term, other than a fixed term ordered to be served partly concurrently with another term, service of the former is suspended if necessary so that the terms can then be served in the order required by subsection (2).

[Section 7 amended by No. 41 of 2006 s. 7; No. 3 of 2008 s. 22; No. 6 of 2014 s. 8.]

8. Effect of not being in custody

- (1) A term does not elapse while a prisoner is at large, having escaped lawful custody while serving it.
- (2) A prisoner who is returned to lawful custody after having escaped from it while serving a fixed term, must serve —
- (a) the part of the term he or she had yet to serve at the time of escaping; plus
 - (b) one-third of the lesser of —
 - (i) the period during which he or she was absent from lawful custody; or
 - (ii) the period beginning on the date of escape and ending on the date when, but for the escape, the fixed term would have ended,
- in addition to any term imposed for escaping lawful custody.
- (3) A term does not elapse while a prisoner is not in lawful custody unless this Act or another written law provides otherwise.

9. Effect of time before an appeal

- (1) Any period that a prisoner spends on bail while he or she is appealing against a conviction or a sentence does not count as time served in respect of any term that the prisoner is liable to serve.
- (2) Any period that a prisoner spends in custody while he or she is appealing against a conviction or a sentence counts as time served in respect of any term that he or she is then serving, but not in respect of any other term that he or she is liable to serve.

10. No release if prisoner in custody for another matter

Despite this Act and the *Sentencing Act 1995*, a prisoner must not be released (whether under an early release order or otherwise) in respect of a term if at the time the release could be ordered he or she is by law required to be kept in custody in respect of another matter.

Division 3 — Reports about prisoners

[Heading amended by No. 41 of 2006 s. 8.]

11. Report to Minister about the place of custody for a person in custody during Governor's pleasure

- (1) At any time the Minister, in writing, may request the CEO to provide a report of the kind mentioned in subsection (2).
- (2) Whenever the CEO gets a written request to do so from the Minister, or whenever the CEO thinks there are special circumstances which justify doing so, the CEO must give the Minister a written report on the place or places where a Governor's pleasure detainee is or should be detained in safe custody.

~~[(3) *In this section—deleted*]~~

~~*Minister means the Minister administering Chapter XXVIII of The Criminal Code.*~~

[Section 11 amended by No. 41 of 2006 s. 9; No. 29 of 2008 s. 39(3) and (4).]; No. 45 of 2016 s. 5.]

11A. Reports by CEO to Board about certain prisoners

- (1) In this section —
prisoner does not include a prisoner sentenced to a fixed term of less than the length prescribed for the purposes of this section.
- (2) At any time the Board may request the CEO to give the Board a written report about a prisoner (a **prisoner management report**).

- (3) A request —
- (a) must be in writing; and
 - (b) must specify the prisoner concerned; and
 - (c) must specify the matters to be dealt with in a prisoner management report; and
 - (d) may request the CEO to give a prisoner management report on more than one occasion, as specified in the request; and
 - (e) may request the CEO to give a prisoner management report —
 - (i) at a time specified or referred to in the request; or
 - (ii) at more than one time specified or referred to in the request.
- (4) Without limiting subsection (3)(e), the time at which a prisoner management report is to be given may be fixed by reference to a time when the Board will review the prisoner's circumstances.
- (5) The Board may give the CEO written directions in general terms about giving the Board prisoner management reports.
- (6) Matters about which the Board can give the CEO directions include —
- (a) which prisoners the CEO is to give prisoner management reports about; and
 - (b) what prisoner management reports are to deal with; and
 - (c) when prisoner management reports are to be given.
- (7) The Board may at any time give the CEO a written notice amending or cancelling a request or direction given under this section.
- (8) On receiving a request or direction given under this section the CEO must comply with it so far as is reasonably practicable.

[Section 11A inserted by No. 41 of 2006 s. 10.]

12. Reports by Board to Minister about prisoners generally

- (1) At any time the Minister, in writing, may request the Board to report about a prisoner.
- (2) The Board must give the Minister a written report about a prisoner —
 - (a) whenever it gets a written request to do so from the Minister; and
 - (b) whenever it ~~thinks there are special circumstances which justify doing so; and~~ considers it necessary to do so.
 - ~~(c) in any event, in the case of a person referred to in paragraph (d) of the definition of *prisoner* in section 4(2), at least once in every year.~~

~~[(c) deleted]~~
- (3) A report given under subsection (2) must deal with the release considerations relating to the prisoner.
- (4) A report —
 - (a) must, if given under subsection (2)(a); and
 - (b) may, if given under subsection (2)(b) ~~or (e)~~,recommend whether or not the Governor should be advised to exercise any power vested in the Governor to release the prisoner and, if release is recommended, the requirements or conditions (if any) that should apply to the prisoner's release.
- (5) If a report given under subsection (2) about a prisoner recommends that the prisoner be released, the report must, in addition to addressing the matters required by subsections (3) and (4), report —
 - (a) on the nature and circumstances of the offence, or offences, that gave rise to the prisoner being in custody; and
 - (b) if parole is recommended —

- (i) on the period for which the prisoner should be on parole; and
- (ii) on the additional requirements (if any) to which the prisoner should be subject while on parole,

and may address any other matters the Board thinks fit.

~~(6) In the case of a person referred to in paragraph (d) of the definition of **prisoner** in section 4(2) **Minister**, in this section, means the Minister administering Chapter XXVIII of *The Criminal Code*.~~

~~[(6) deleted]~~

~~[Section 12 inserted by No. 41 of 2006 s. 11; amended by No. 29 of 2008 s. 39(5)-f); No. 45 of 2016 s. 6.]~~

12A. Reports by Board to Minister about Schedule 3 prisoners serving life terms or indefinite imprisonment

- (1) ~~In~~ A report must be given under this section —

about a Schedule 3 prisoner means a person serving a sentence described in column 1 regardless of whether or not a report has been given about the Table to this ~~prisoner under section 12 (although reports may be combined under section 12B).~~

- (2) The Board must give the Minister a written report about a Schedule 3 prisoner —

(a) described in Division 1 column 2 of that Schedule — at the times stated provided in columns 2 3 and 3 4 of that Division for a prisoner of that description; and

(b) described in Division 2 column 2 of that Schedule — at the Table to this section, whether or not it has given the Minister times provided in column 4 of that Division for a report about the ~~prisoner under section 12 of that description.~~

- (3) A report given under subsection (2) must deal with the release considerations relating to the prisoner.

- (4) If a report given under subsection (2) recommends that the prisoner be released, the report must, in addition to any other matters the Board thinks fit, report on —
- (a) whether the prisoner should be released on parole; and
 - (b) if release on parole is recommended —
 - (i) the period for which the prisoner should be on parole; and
 - (ii) the additional requirements (if any) to which the prisoner should be subject while on parole.
- (5) A report given under subsection (2) may recommend whether or not the Governor should be advised to exercise any power vested in the Governor to release the prisoner, and, if release is recommended, the requirements or conditions (if any) that should apply to the prisoner's release.

Table

Type of sentence	When report due	When subsequent reports are due
Life imprisonment for an offence other than murder	7 years after the day on which the term began or is taken to have begun	Every 3 years after that
Life imprisonment for murder where a minimum period has been set under section 90(1)(a) of the <i>Sentencing Act 1995</i>	At the end of the minimum period	Every 3 years after that
Indefinite imprisonment	One year after the day on which the sentence began	Every 3 years after that

(6) For the purposes of determining under subsection (2)(b) when a subsequent report is due for a prisoner described in Schedule 3 Division 2 column 2 —

(a) it is immaterial whether the first report was given under a provision of this Act, the *Sentence Administration Act 1995* or the *Offenders Community Corrections Act 1963* that applied (or was taken to have applied) to or in respect of the prisoner, as long as the report dealt with release considerations (however described) relating to the prisoner; and

(b) if a first report was not given, or was not given when it was due, then the first report is to be taken to have been given at the time provided in column 3 of that Division for a prisoner of that description.

[Section 12A inserted by No. 41 of 2006 s. 11; amended by No. 29 of 2008 s. 39(6-7); No. 45 of 2016 s. 7.]

12B. Combined reports may be given under sections 12 and 12A

(1) The Board may combine the following reports to form one report (a *combined report*) —

(a) a report that is to be given about a prisoner under section 12 (the *first report*) and a report that is due to be given about the same prisoner under section 12A within 3 months of the first report; or

(b) a report that is due to be given about a prisoner under section 12A at a time provided in one item of Schedule 3 (the *first report*) and another report, or reports, due to be given about the same prisoner under section 12A at a time, or times, provided in another item, or items, of Schedule 3 that is, or are, within 3 years of the first report.

(2) A combined report given in the circumstances described in —

(a) subsection (1)(a) is to be taken to have been given under section 12 and under section 12A;

(b) subsection (1)(b), and that specifies each item of Schedule 3 in respect of which a report about the prisoner is being combined, is to be taken to satisfy the requirements of section 12A for a report about that prisoner at the time provided under each of those items.

(3) A report under section 12A referred to in subsection (1)(a) may be a combined report given in the circumstances described in subsection (1)(b).

[Section 12B inserted by No. 45 of 2016 s. 8.]

Division 4 — Programmes for certain prisoners

[Heading inserted by No. 41 of 2006 s. 12.]

13. ~~Prisoners serving life terms or indefinite imprisonment, approving etc. re-~~ Re-socialisation programmes for Schedule 3 prisoners

(1) In this section —

prisoner means a ~~person serving a sentence described in column 1 of the Table to section 12A~~ Schedule 3 prisoner.

(2) At a prescribed time in the sentence of a prisoner the CEO must assess —

(a) the suitability of the prisoner for inclusion in a re-socialisation programme; and

(b) whether the prisoner's participation in a re-socialisation programme can be facilitated by the CEO.

(3) The CEO is to give the Board a written report on the outcome of an assessment made under subsection (2).

(4) If the Board —

(a) has received a report under subsection (3) advising that the CEO can facilitate the prisoner's participation in a re-socialisation programme; and

- (b) considers that the prisoner may be suitable for inclusion in a re-socialisation programme,

the Board may request the CEO to give it a detailed description of a re-socialisation programme in which the prisoner should participate before being released, and the CEO must comply with that request.

- (5) If after —
 - (a) receiving a re-socialisation programme from the CEO under subsection (4); and
 - (b) considering the release considerations relating to the prisoner,

the Board endorses the programme, with or without variations, the Board may, in a report given under section 12A(2) or at any other time, recommend to the Minister that the Governor should be advised to approve of the programme as so endorsed and of the prisoner's participation in it.

- (6) If the Governor approves of the re-socialisation programme and of the prisoner's participation in it, the Board is to provide it to the CEO as so approved.
- (7) The CEO must give a copy of the approved re-socialisation programme to the prisoner and implement it as far as is reasonably practicable unless it is suspended or cancelled in accordance with the regulations.
- (8) A prisoner is not to participate in a re-socialisation programme other than one approved by the Governor and provided to the CEO under subsection (6).
- (9) Nothing in this section limits the power of —
 - (a) the Board to recommend to the CEO any other programme in which the prisoner should participate before being released; or
 - (b) the CEO to implement any other programme before the prisoner is released.

[Section 13 inserted by No. 41 of 2006 s. ~~12~~12; amended by No. 45 of 2016 s. 9.]

14. ~~Certain other prisoners, approving re-~~Re-socialisation programmes for certain other prisoners

- (1) In this section —
prisoner does not include —
 - (a) a prisoner sentenced to a fixed term of less than the length prescribed for the purposes of section 11A; or
 - (b) a Schedule 3 prisoner ~~servicing a sentence described in column 1 of the Table to section 12A.~~
- (2) Without limiting section 11A, the Board may at any time request the CEO to assess, at a prescribed time in the sentence of a prisoner —
 - (a) the suitability of the prisoner for inclusion in a re-socialisation programme; and
 - (b) whether the prisoner's participation in a re-socialisation programme can be facilitated by the CEO.
- (3) The CEO is to give the Board a written report on the outcome of an assessment made under subsection (2).
- (4) If the Board —
 - (a) has received a report under subsection (3) advising that the CEO can facilitate the prisoner's participation in a re-socialisation programme; and
 - (b) considers that the prisoner may be suitable for inclusion in a re-socialisation programme,

the Board may request the CEO to give it a detailed description of a re-socialisation programme in which the prisoner should participate before being released, and the CEO must comply with that request.

- (5) If after —

- (a) receiving a re-socialisation programme from the CEO under subsection (4); and
- (b) considering the release considerations relating to the prisoner,

the Board approves of the programme, with or without variations, and of the prisoner's participation in it, the Board is to provide it to the CEO as so approved.

- (6) The CEO must give a copy of the approved re-socialisation programme to the prisoner and implement it as far as is reasonably practicable unless it is suspended or cancelled in accordance with the regulations.
- (7) Nothing in this section limits the power of —
 - (a) the Board to recommend to the CEO any other programme in which the prisoner should participate before being released; or
 - (b) the CEO to implement any other programme before the prisoner is released.

[Section 14 inserted by No. 41 of 2006 s. ~~12~~12; amended by No. 45 of 2016 s. 10.]

14A. Regulations as to re-socialisation programmes

Regulations may deal with —

- (a) the procedures set out in sections 13 and 14; and
- (b) the nature and content of re-socialisation programmes and their implementation, suspension, cancellation and reinstatement.

[Section 14A inserted by No. 41 of 2006 s. 12.]

Part 3 — Parole

Division 1 — Preliminary

15. Terms used and calculations

In this Part, unless the contrary intention appears, words and expressions have the same definitions, and calculations are to be made in the same way, as in Part 13 of the *Sentencing Act 1995*.

[Section 15 inserted by No. 41 of 2006 s. 13.]

[16. Deleted by No. 41 of 2006 s. 14.]

Division 2 — Reports about certain people eligible for parole

17. Parole term, CEO to give Board report about prisoner on

- (1) In the case of a prisoner serving a parole term the CEO must give the Board a written report that deals with the release considerations relating to the prisoner.
- (2) The report must be given to the Board a reasonable period of time before the date when the prisoner concerned is eligible to be released on parole under section 93(1) of the *Sentencing Act 1995*.
- (3) The CEO's duty under this section in respect of a prisoner is in addition to any duty under section 11A in respect of the prisoner unless the Board, having received a prisoner management report under section 11A in respect of the prisoner, directs the CEO not to comply with this section.

[Section 17 amended by No. 41 of 2006 s. 15.]

[18. Deleted by No. 41 of 2006 s. 16.]

Division 3 — Parole in case of parole term

19. Term used: prisoner

In this Division —

prisoner means a prisoner serving a parole term.

20. Board may parole prisoner

- (1) Before the day when, under section 93(1) of the *Sentencing Act 1995*, a prisoner is eligible to be released on parole, the Board must consider whether the prisoner should be released on parole.
- (2) If the Board, having regard to —
 - (a) the release considerations relating to a prisoner; and
 - (b) any report made by the CEO under section 17; and
 - (c) any other information about the prisoner brought to its attention,

decides that it is appropriate to release the prisoner on parole, it must make a parole order in respect of the prisoner.

- (3) The release date in the order is that set by the Board, but it must not be earlier than the day when, under section 93(1) of the *Sentencing Act 1995*, the prisoner is eligible to be released on parole.
- (4) The parole period in the order is the period that begins on the day when the prisoner is released and ends when the parole term ends.
- (5) If the Board decides it is not appropriate to release a prisoner on parole, it is not precluded from subsequently reconsidering whether the prisoner should be released on parole.

[Section 20 amended by No. 41 of 2006 s. 17.]

[21. Deleted by No. 41 of 2006 s. 18.]

Division 4 — Parole in case of short term

22. Application of Division

- (1) This Division applies to a prisoner if and only if —
 - (a) the prisoner is serving one term and that term is less than 12 months and is not a prescribed term or a term in respect of which a parole eligibility order has been made; or

- (b) the aggregate of terms the prisoner is serving or is yet to serve is less than 12 months and neither or none of them is a prescribed term or a term in respect of which a parole eligibility order has been made.
- (2) If subsection (1)(b) applies, a reference in this Part or Part 5, or in section 85 of the *Sentencing Act 1995*, to the term of the prisoner is taken as being a reference to the aggregate of terms.

[Section 22 amended by No. 41 of 2006 s. 19.]

23. Board may parole prisoner

- (1) In this section —

prescribed prisoner means a prisoner who —

- (a) is serving a term for a serious offence; or
 - (b) was released, whether on parole or otherwise, from serving a term for a serious offence on a date in the 5 years preceding the commencement of the term that the prisoner is serving; or
 - (c) was subject to an early release order that was made under this Act or the *Sentence Administration Act 1995*³ and that was cancelled under this Act or that Act on a date in the 2 years preceding the commencement of the term that the prisoner is serving.
- (2) A prisoner is eligible to be released on parole —
 - (a) if he or she is serving a term for a prescribed offence, when he or she has served the greater of —
 - (i) the mandatory minimum sentence applicable to the offence; or
 - (ii) one-half of his or her term;
 - or
 - (b) if he or she is serving a term for 2 or more prescribed offences, when he or she has served the greater of —

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- (i) the aggregate of the mandatory minimum sentences applicable to each of those prescribed offences; or
 - (ii) one-half of his or her term;
 - or
 - (c) in any other case, when he or she has served one-half of his or her term.
- (2a) In making a decision under this section in respect of a prisoner, the Board must have regard to —
- (a) the release considerations relating to the prisoner; and
 - (b) any report made by the CEO under section 17; and
 - (c) any other information about the prisoner brought to its attention.
- (3) Subject to section 10, the Board —
- (a) may, in the case of a prescribed prisoner; and
 - (b) must, in any other case,
- make a parole order in respect of the prisoner.
- (4) In the case of a parole order made under subsection (3)(a), the release date in the order is that set by the Board, but it must not be earlier than the day when, under subsection (2), the prisoner is eligible to be released on parole.
- (5) In the case of a parole order made under subsection (3)(b), the release date is to be the day when, under subsection (2), the prisoner is eligible to be released on parole.
- (5a) Despite subsection (5), the Board may defer the release date of a parole order by up to 7 days if transport arrangements cannot be made for the prisoner on the day when the prisoner is eligible for release.
- (5b) Despite subsection (5), the Board does not have to make a parole order under subsection (3)(b) while the prisoner is required to be kept in custody in respect of another matter.

- (6) The parole period in a parole order made under subsection (3) is the period that begins on the day when the prisoner is released and ends when the term ends.
- (7) A parole order made under subsection (3) must specify whether it is supervised or unsupervised.
- [(8) deleted]*
- (9) The following provisions do not apply to a parole order (unsupervised) —
- (a) section 28(1)(b);
 - (b) section 29;
 - (c) section 30;
 - (d) section 31;
 - (e) section 37;
 - (f) Division 9.
- (10) If the Board decides it is not appropriate to release a prisoner under subsection (3)(a), the Board is not precluded from subsequently reconsidering whether the prisoner should be released on parole.

[Section 23 amended by No. 41 of 2006 s. 20; No. 6 of 2014 s. 9.]

24. Transitional provision for *Sentencing Legislation Amendment Act 2014*

If a term was imposed before the *Sentencing Legislation Amendment Act 2014* Part 3 comes into operation, this Division applies to and in relation to that term as if that Part had not been enacted.

[Section 24 inserted by No. 6 of 2014 s. 10.]

Division 5 — Parole in case of life or indefinite imprisonment

[Heading amended by No. 29 of 2008 s. 39(7).]

25. Life imprisonment, Governor may parole prisoner

(1) ~~The Governor may make~~ In this section —

prisoner means any of the following prisoners —

~~(a parole order in respect of)~~ _____ a prisoner serving life imprisonment for murder ~~but only if~~where —

(~~ai~~) a minimum period has been set under section 90(1)(a) of the *Sentencing Act 1995*; and

~~(b)~~ _____ the prisoner has served ~~the~~that minimum period; ~~and~~or

~~(c)~~ _____ a report has been given by the Board to the Minister under section 12 or 12A.

~~(1A)~~ _____ The Governor may make a parole order in respect of a prisoner ~~(ii)~~ the prisoner was sentenced before 4 November 1996;

~~(b)~~ _____ a prisoner serving life imprisonment for an offence other than murder ~~but only if~~where —

(~~ai~~) the prisoner has served the period required by section 96(1) of the *Sentencing Act 1995*; ~~and~~or

~~(b)~~ _____ ~~ii)~~ the prisoner was sentenced before 4 November 1996.

~~(1A)~~ _____ The Governor may make a parole order in respect of a prisoner ~~but only if~~ a report about the prisoner has been given by the Board to the Minister under section 12 or ~~12A.~~

(2) The release date in the order is that set by the Governor.

(3) The parole period in the order is to be set by the Governor and must be at least 6 months and not more than 5 years.

[Section 25 amended by No. 41 of 2006 s. 22; No. 29 of 2008 s. 39(8)-f); No. 45 of 2016 s. 11.]

[26. Deleted by No. 29 of 2008 s. 39(9).]

27. Indefinite imprisonment, Governor may parole prisoner

- (1) The Governor may make a parole order in respect of a prisoner sentenced to be imprisoned indefinitely but only if a report about the prisoner has been given by the Board under section 12 or 12A.
- (2) The release date in the parole order is that set by the Governor.
- (3) The parole period in the parole order is to be set by the Governor and must be at least 6 months and not more than 5 years.

[Section 27 amended by No. 41 of 2006 s. 22.]

Division 5A — Releasing prisoners during the Governor's pleasure

[Heading inserted by No. 41 of 2006 s. 23.]

27A. Operation of this Division

The powers in this Division are in addition to the power of the Governor to at any time release ~~people who are in custody during the~~ Governor's pleasure detainee.

[Section 27A inserted by No. 41 of 2006 s. ~~23~~23; amended by No. 45 of 2016 s. 12.]

27B. Release may be by parole order

- (1) The release by the Governor of a person ~~in, or regarded as being in, strict or safe custody by virtue of an order made under Chapter XXVIII of The Criminal Code~~ who is a Governor's pleasure detainee may, if the Governor thinks fit, be by means of a parole order made by the Governor.
- (2) The parole order may not be made unless a report about the person has been given by the Board under section 12 or 12A.
- (3) The release date is that set by the Governor.

- (4) The parole period in the order is to be set by the Governor and must be at least 6 months and not more than 5 years.
- (5) The Minister must cause a copy of every parole order made in respect of a person described in subsection (1) and a written explanation of the circumstances giving rise to it to be tabled in each House of Parliament within 15 sitting days of that House after it is made.

[Section 27B inserted by No. 41 of 2006 s. 23; amended by No. 29 of 2008 s. 39(10)-7; No. 45 of 2016 s. 13.]

Division 6 — Parole orders

28. Parole order, nature of

- (1) A parole order is an order that on a release date specified in the order a prisoner is to be released on parole for a parole period specified in the order if he or she —
 - (a) acknowledges in writing that he or she understands the general effect of Part 5 Divisions 2 and 3 should the order be cancelled; and
 - (b) gives a written undertaking that during the parole period specified in the order he or she will comply with —
 - (i) the standard obligations in section 29; and
 - (ii) any of the additional requirements in section 30 that are specified in the parole order.

[(2) deleted]

[Section 28 amended by No. 41 of 2006 s. 24.]

29. Parole order, standard obligations

The standard obligations of a parole order are that the prisoner —

- (a) must report to a community corrections centre within 72 hours after being released, or as otherwise directed by a CCO; and

- (b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change; and
- (c) must comply with section 76.

30. Parole order, additional requirements

A parole order may contain such of these additional requirements as the Board or the Governor (as the case may be) thinks fit —

- (a) a requirement as to where the prisoner must reside;
- (b) requirements to protect any victim of an offence committed by the prisoner from coming into contact with the prisoner;
- (c) a requirement that the prisoner wear any device for monitoring purposes;
- (d) a requirement that the prisoner permit the installation of any device or equipment at the place where the prisoner resides for monitoring purposes;
- (e) a requirement that, if the CEO so directs, the prisoner —
 - (i) wear any device for monitoring purposes;
 - (ii) permit the installation of any device or equipment at the place where the prisoner resides for monitoring purposes;
- (f) a requirement that the prisoner must not leave Western Australia except with and in accordance with the written permission of the CEO;
- (g) requirements to facilitate the prisoner's rehabilitation;
- (h) a requirement that the prisoner must, in each period of 7 days, do the prescribed number of hours of community corrections activities;
- (i) a requirement that the prisoner must —
 - (i) seek or engage in gainful employment or in vocational training; or

(ii) engage in gratuitous work for an organisation approved by the CEO;

(j) prescribed requirements.

[Section 30 amended by No. 41 of 2006 s. 25.]

[Section 30. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

31. CEO to ensure parolee is supervised during supervised period

- (1) Unless the parole order is a parole order (unsupervised), the CEO must ensure that during the parole period of a parole order a CCO is assigned to supervise the prisoner.
- (2) However, if at any time the CEO is satisfied that —
 - (a) the prisoner is complying with his or her undertaking in a satisfactory manner; and
 - (b) the risk of the prisoner re-offending if not subject to supervision by a CCO is minimal,

the CEO may recommend to the Board that the prisoner no longer be supervised by a CCO.

- (3) If the CEO makes a recommendation under subsection (2), the Board may direct the CEO that the prisoner need no longer be supervised during the parole period and the CEO may cease the supervision of the prisoner.
- (4) If the CEO ceases the supervision of a prisoner, the CEO is to inform the prisoner.
- (5) The fact that a prisoner ceases to be under supervision does not affect the prisoner's duty to obey the requirements of his or her undertaking during the parole period.
- (6) The Board at any time may cancel a direction given to the CEO under subsection (3).

[Section 31 amended by No. 41 of 2006 s. 26.]

Division 7 — Parole orders, general provisions

32. Parole order may relate to more than one term

A parole order may relate to more than one term.

33. Prisoner may refuse to be released on parole

- (1) A parole order is not to be made in respect of a prisoner if the prisoner has given written notice that he or she does not want to be released on parole.

[(2) deleted]

- (3) The written notice must be given to the Board which, if the parole order is to be made by the Governor, must forward it to the Minister.

[Section 33 amended by No. 41 of 2006 s. 27.]

34. Prisoner's acknowledgment or undertaking

A prisoner must give the written acknowledgment or undertaking required by a parole order, or both, on or before the release date specified in it and if he or she does not, the parole order is to be taken as having been cancelled.

35. Making parole order after refusal by prisoner

- (1) If —
- (a) a parole order was not made in respect of a prisoner because the prisoner gave notice under section 33(1); or
 - (b) a parole order was cancelled by the operation of section 34,

and the prisoner subsequently gives written notice that he or she wants to be released on parole and is prepared to give the written acknowledgment or undertaking or both, the Board or the Governor (as the case may be) may then make a parole order.

[(2) deleted]

- (3) The written notice must be given to the Board which, if the parole order is to be made by the Governor, must forward it to the Minister.
- (4) The release date in a parole order made under subsection (1) is that set by the Board or the Governor (as the case may be).
- (5) If the parole order is to be made in respect of a parole term, then section 20(4) applies.
- (6) If Division 4 applies to the prisoner, then section 23(6) applies.

[Section 35 amended by No. 41 of 2006 s. 28.]

Division 8 — Amendment of parole orders

36. Amending before release

A parole order may be amended after it is made and before the prisoner concerned is released under it —

- (a) by the Board, if it was made by the Board; or

[(b) deleted]

- (c) by the Governor or the Board, if it was made by the Governor.

[Section 36 amended by No. 41 of 2006 s. 29.]

37. Amending during parole period

- (1) The Board may, at any time during the parole period of a parole order, amend the parole order, irrespective of whether it was made by the Board or by the Governor.

[(2) deleted]

- (3) If a parole order is amended, the amended order applies accordingly.

[Section 37 amended by No. 41 of 2006 s. 30.]

Division 9 — Suspension of parole orders

38. Suspension by CEO

- (1) The CEO may, at any time during the parole period of a parole order, suspend the parole order, irrespective of whether it was made by the Board or by the Governor.
- (2) Written notice of the decision to suspend is to be given by the CEO to the Board within 3 working days after the decision and in any event before the end of the parole period.
- (3) The written notice must include reasons for the decision.

[Section 38 amended by No. 41 of 2006 s. 31.]

39. Suspension by Board

- (1) The Board may, at any time during the parole period of a parole order, suspend the parole order, irrespective of whether it was made by the Board or by the Governor.
- (2) Subsection (1) does not apply to a parole order (unsupervised).

[Section 39 amended by No. 41 of 2006 s. 32.]

40. Period of suspension

- (1) If under section 38 the CEO, or under section 39 the Board, suspends a parole order made by the Board or the Governor —
 - (a) the Board is to set the period of suspension; and
 - (b) the period of suspension may be for a fixed or indefinite period, as the Board thinks fit; and
 - (c) the Board may cancel the suspension at any time before the suspension period ends.

[(2) deleted]

[Section 40 amended by No. 41 of 2006 s. 33.]

41. Suspension, effect on other parole orders

When a parole order is suspended any parole order applicable to the prisoner when the order is suspended is suspended by virtue of this section, irrespective of whether it had taken effect or not.

[42. Deleted by No. 41 of 2006 s. 34.]

Division 10 — Cancellation of parole orders

43. Cancellation before release

- (1) A parole order may be cancelled after it is made and before the prisoner concerned is released under it —
 - (a) by the Board, if it was made by the Board; or
 - (b) by the Governor or the Board, if it was made by the Governor.

[(2) deleted]

[Section 43 amended by No. 41 of 2006 s. 35.]

44. Cancellation after release

- (1) The Board may cancel a parole order made by the Board or the Governor at any time during the parole period.

[(2), (3) deleted]

- (4) If the parole order is a parole order (unsupervised), the Board's power to cancel cannot be exercised unless, during the parole period, the prisoner is charged with or is convicted of an offence.

[Section 44 amended by No. 41 of 2006 s. 36.]

[45. Deleted by No. 41 of 2006 s. 37.]

46. Cancellation, effect on other parole orders

If under section 43 or 44 a parole order is cancelled, any parole order applicable to the prisoner when the order is cancelled is

cancelled by virtue of this section, irrespective of whether it had taken effect or not.

Division 11 — Miscellaneous

[47. Deleted by No. 41 of 2006 s. 38.]

48. Parole ordered by Governor, Minister to be advised of amendment, suspension or cancellation

- (1) If in respect of a prisoner subject to a parole order made by the Governor —
- (a) under section 31, the Board —
 - (i) directs the CEO that the prisoner need no longer be supervised; or
 - (ii) cancels such a direction;
 - or
 - (b) under section 36 or 37, the order is amended; or
 - (c) under Division 9, the order is suspended and the suspension is not cancelled by the Board within 30 days afterwards; or
 - (d) under Division 10, the order is cancelled,
- the Board must give the Minister as soon as practicable —
- (e) written notice of and reasons for the decision; and
 - (ea) a summary of the grounds and any submissions in an application for a review made by the prisoner under section 115A; and
 - (f) if the parole order has been cancelled, a report containing a recommendation as to whether or not the Governor should be advised to again exercise the power to release the prisoner on parole.
- (2) The Governor may cancel a decision referred to in subsection (1).

[Section 48 amended by No. 41 of 2006 s. 39.]

49. Resolution of doubtful cases

- (1) If a doubt or difficulty arises to which this section applies and neither this Act nor the *Sentencing Act 1995* nor the *Sentencing Legislation Amendment and Repeal Act 2003* makes adequate provision for it, the CEO may apply in a summary way to a judge of the Supreme Court for an order resolving the doubt or difficulty.
- (2) On such an application the judge may make any order he or she considers just and for that purpose may make a declaration as to —
 - (a) the length of any term, any part of a term, or any parole period; or
 - (b) any date relevant to a sentence of imprisonment or to the parole or release of a prisoner; or
 - (c) the manner in which the Board or the CEO is to determine such matters.
- (3) This section applies to doubts or difficulties as to —
 - (a) the effect of any sentence of imprisonment, including the date it commences, how it is served in relation to other such sentences, when it ends, and when it has been or has been deemed to have been served; or
 - (b) any matter relating to parole, including the date when a prisoner is eligible to be released on parole, the parole period applicable in any case and the effect of the suspension or cancellation of parole; or
 - (c) the term to be served by a prisoner who escapes from lawful custody,

irrespective of when the sentence was imposed.

[Section 49 amended by No. 41 of 2006 s. 40.]

Part 4 — Re-entry release orders

50. Certain prisoners may apply to Board for RRO

A prisoner may apply to the Board to be released under a re-entry release order if —

- (a) he or she is not serving a parole term; and
- (b) he or she is not serving life imprisonment or indefinite imprisonment; and
- (ca) he or she is not subject to an order made under the *Dangerous Sexual Offenders Act 2006* section 17(1)(a); and
- (c) he or she is not a person referred to in section 27B(1); and
- (d) at the release date that would be specified in the RRO if it were made, he or she will have been in custody under sentence for a continuous period of at least 12 months; and
- (e) within 6 months after the release date that would be specified in the RRO if it were made, he or she would in any event be eligible for release.

[Section 50 amended by No. 41 of 2006 s. 41; No. 29 of 2008 s. 39(11); No. 17 of 2016 s. 52.]

51. CEO to report to Board about RRO applicants

- (1) The CEO must report to the Board about every prisoner who applies to be released under an RRO.
- (2) A report by the CEO under subsection (1) must be given to the Board as soon as practicable after a prisoner applies to be released under an RRO.
- (3) A report by the CEO under subsection (1) must address the release considerations relating to the prisoner.

[Section 51 amended by No. 41 of 2006 s. 42.]

52. Board may make RRO

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- (1) The Board must consider the case of every prisoner who applies to be released under an RRO and may, in respect of such a prisoner —
 - (a) make an RRO to come into effect on a date specified by the Board; or
 - (b) defer the making of an RRO; or
 - (c) refuse to make an RRO.
- (2) When deciding whether or not to make an RRO in respect of the prisoner the Board is to have regard to the release considerations relating to a prisoner.
- (3) In particular the Board must have regard to whether the personal safety of people in the community or of any individual in the community would be better assured if the prisoner were released under an RRO instead of at the time when he or she would otherwise have to be released.

[(4) deleted]

- (5) An RRO may relate to more than one term.

[Section 52 amended by No. 41 of 2006 s. 43.]

[53. Deleted by No. 41 of 2006 s. 44.]

54. RRO, nature of

- (1) An RRO is an order that on a release date specified in the order a prisoner is to be released if he or she —
 - (a) acknowledges in writing that he or she understands the general effect of Part 5 Divisions 2 and 3 should the order be cancelled;
 - (b) gives a written undertaking that while the RRO is in force he or she will comply with —
 - (i) the standard obligations in section 55; and
 - (ii) such of the primary requirements in section 56 as the RRO contains; and

- (iii) any additional requirements imposed by the Board under section 57.
- (2) An RRO ceases to be in force when the period of the RRO ends, or when it is cancelled, whichever happens first.
- (3) The period of an RRO is the period —
 - (a) beginning on the day when the prisoner is released under the RRO; and
 - (b) ending on the date when under section 95 of the *Sentencing Act 1995*, the prisoner must be released.
- (4) A prisoner who is released under an RRO is nevertheless still subject to the sentence or sentences of imprisonment to which the RRO relates.

[Section 54 amended by No. 41 of 2006 s. 45.]

55. RRO, standard obligations

The standard obligations of an RRO are that the prisoner —

- (a) must report to a community corrections centre within 72 hours after being released, or as otherwise directed by a CCO; and
- (b) must, in each period of 7 days, do the prescribed number of hours of community corrections activities; and
- (c) must not leave the State; and
- (d) must not change address or place of employment without the prior permission of a CCO; and
- (e) must comply with section 76.

[Section 55. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

56. RRO, primary requirements

- (1) Every RRO must contain at least one of these primary requirements —

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- (a) a requirement that the prisoner must —
 - (i) seek or engage in gainful employment or in vocational training; or
 - (ii) engage in gratuitous work for an organisation approved by the CEO;
 - (b) a requirement that the prisoner must engage in activities, as ordered by a CCO, that will facilitate the prisoner's re-entry into the community after being released from custody.
- (2) If a requirement under subsection (1)(b) is included in an RRO, a CCO may give the prisoner any reasonable order that the CCO considers will facilitate the prisoner's re-entry into the community, including but not limited to the following —
- (a) an order to attend educational, vocational, or personal development programmes or courses;
 - (b) an order to undergo counselling in relation to behavioural matters.

57. RRO, additional requirements

- (1) The Board may impose such additional requirements as it thinks fit in an RRO.
- (2) Without limiting the generality of subsection (1), additional requirements may include —
 - (a) requiring the prisoner to wear any device for monitoring purposes;
 - (b) requiring the prisoner to permit the installation of any device or equipment at the place where the prisoner resides for monitoring purposes.

58. Prisoner's undertaking

- (1) A prisoner must give the written acknowledgment and undertaking required by section 54 on or before the release date

specified in the RRO and if he or she does not, the RRO is to be taken as having been cancelled.

- (2) If an RRO is cancelled by the operation of subsection (1) and the prisoner subsequently gives the Board written notice that he or she is prepared to give the required written acknowledgment and undertaking, the Board, if it thinks fit, may then make an RRO.

59. CEO to ensure prisoner is supervised during RRO

- (1) The CEO must ensure that during the period of an RRO a CCO is assigned to supervise the prisoner.
- (2) However, if at any time the CEO is satisfied that —
 - (a) the prisoner is complying with his or her undertaking in a satisfactory manner; and
 - (b) the risk of the prisoner re-offending if not subject to supervision by a CCO is minimal,

the CEO may recommend to the Board that the prisoner no longer be supervised by a CCO.

- (3) If the CEO makes a recommendation under subsection (2), the Board may direct the CEO that the prisoner need no longer be supervised during the period of the RRO and the CEO may cease the supervision of the prisoner.
- (4) If the CEO ceases the supervision of a prisoner the CEO is to inform the prisoner.
- (5) The fact that a prisoner ceases to be under supervision does not affect the prisoner's duty to obey the requirements of his or her undertaking during the period of the RRO.
- (6) The Board may at any time cancel a direction given to the CEO under subsection (3).

[60. Deleted by No. 41 of 2006 s. 46.]

61. Suspension by Board or CEO

- (1) The Board or the CEO may suspend an RRO at any time during the period of the order.
- (2) The period of suspension may be for a fixed or indefinite period as the Board or the CEO (as the case may be) thinks fit.
- (3) Without limiting subsection (1), if a prisoner subject to an RRO is charged with or convicted of an offence, or if the CEO is satisfied that a prisoner has failed to comply with a requirement of an RRO, the CEO may do either or both of the following —
 - (a) suspend the RRO;
 - (b) refer the prisoner's case to the Board for consideration.
- (4) If the CEO suspends the RRO of a prisoner who is charged with an offence the CEO must, when the charge has been determined —
 - (a) if the prisoner is not convicted of the charge — cancel the suspension; or
 - (b) if the prisoner is convicted of the charge —
 - (i) cancel the suspension; or
 - (ii) suspend the order for a further period; or
 - (iii) refer the prisoner's case to the Board for consideration.
- (5) If the CEO suspends an RRO for a fixed period of one month or more, or if an indefinite suspension extends for a month, the CEO must refer the prisoner's case to the Board to consider.
- (6) If the CEO suspends an RRO and the prisoner's case is not referred to the Board, the CEO may cancel the suspension of the RRO at any time before the suspension ends.
- (7) If the Board suspends an RRO, it may cancel the suspension at any time before the suspension ends.

- (8) If the case of a prisoner is referred to the Board, the Board may vary the suspension period of or cancel the CEO's suspension order, or cancel the RRO.

[62. Deleted by No. 41 of 2006 s. 47.]

63. Cancellation by Board

- (1) The Board may cancel an RRO at any time during the period of the order.
- (2) Without limiting subsection (1) or affecting the operation of section 67 the Board may cancel an RRO if, during the period of the order, the prisoner is charged with or is convicted of an offence.

[64. Deleted by No. 41 of 2006 s. 48.]

Part 5 — Provisions applying to early release orders

Division 1 — General

65. Period of early release order counts as time served

If during the period of an early release order —

- (a) the prisoner does not commit an offence (in this State or elsewhere) for which he or she is sentenced to imprisonment (whether the sentence is imposed during or after that period); and
- (b) the early release order is not cancelled,

then the period of the early release order is to be taken as time served in respect of the term or terms to which the early release order relates.

66. Prisoner under sentence until discharged

- (1) Subject to this Part, a person sentenced to imprisonment and released under an early release order remains under and subject to that sentence until discharged from it.
- (2) Subject to this Part, a person sentenced to imprisonment is discharged from the sentence —
 - (a) if released under a parole order — at the end of the parole period; or
 - (b) if released under an RRO — at the end of the period of the RRO unless the sentence is a parole term.
- (3) Subsections (1) and (2) do not affect the operation of section 65 and Divisions 2 and 3.

Division 2 — Automatic cancellation

67. Cancellation automatic if prisoner imprisoned for offence committed on early release order

- (1) If a prisoner, while subject to an early release order, commits an offence (in this State or elsewhere) and is sentenced to imprisonment for that offence —
 - (a) any early release order applicable to the prisoner when the offence was committed is cancelled by virtue of this section; and
 - (b) any early release order made in respect of the prisoner on or after the date on which the offence was committed and before the sentence of imprisonment was imposed is cancelled by virtue of this section, irrespective of whether it had taken effect or not.
- (2) For the purposes of subsection (1) it does not matter if the sentence of imprisonment for the offence committed while subject to the early release order is imposed on the prisoner —
 - (a) after the period of the order; or
 - (b) after the date when, but for the cancellation of the order by virtue of subsection (1), the prisoner would have served or be taken to have served the term to which the order relates.

Division 3 — Consequences of suspension and cancellation

68. Suspension, effect of

- (1) If an early release order in respect of a prisoner serving a fixed term is suspended, the prisoner is then liable to resume serving the fixed term in custody and, unless the suspension ceases, is not entitled to be released until he or she has served the whole of that term.

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- (2) If a parole order in respect of a prisoner serving life imprisonment is suspended, the prisoner is then liable to resume serving the sentence in custody.
- (3) The suspension of an early release order ceases at the end of the suspension period or when, before then, the suspension is cancelled.
- (4) When the suspension of an early release order ceases, the early release order and any other early release order taken to be suspended again have effect unless during the period of suspension the early release order was itself cancelled.
- (5) Nothing in this section prevents another early release order being made under this Act in respect of a prisoner.

[Section 68 amended by No. 29 of 2008 s. 39(12).]

69. Cancellation, effect of

- (1) If an early release order in respect of a prisoner serving a fixed term is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the fixed term in custody and, subject to subsection (1b), is not entitled to be released until he or she has served the whole of that term.
 - (1a) Subsection (1b) applies to a prisoner who resumes serving a fixed term in custody under subsection (1) if —
 - (a) the early release order was an RRO; and
 - (b) the fixed term is not a parole term and was imposed on or before 30 August 2003.
 - (1b) Subject to Part 2 Division 2, a prisoner to whom this subsection applies is entitled to be released when he or she has served two-thirds of the fixed term.
- (2) If a parole order in respect of a prisoner serving life imprisonment is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the sentence in custody.

- (3) If a parole order in respect of a prisoner serving indefinite imprisonment is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the indefinite imprisonment in custody.
- (4) If a parole order in respect of a person referred to in section 27B(1) is cancelled after the person is released under the order, the person is liable to be again kept in strict or safe custody at the Governor's pleasure.
- (5) Subject to Division 4, this section does not prevent another early release order being made in respect of a prisoner.
- (6) For the purposes of this section, to calculate the length in days of two-thirds of a fixed term imposed on or before 30 August 2003 —
 - (a) determine the date on which the term as imposed by the court began and will end, and then express the term as a number of days (*T*);
 - (b) then divide *T* by 3 and disregard any remainder;
 - (c) then subtract that result from *T* and add to the result the number of days of remission that the prisoner has been ordered to forfeit under the *Prisons Act 1981* (if any).

[Section 69 amended by No. 41 of 2006 s. 49; No. 29 of 2008 s. 39(13).]

70. Returning prisoner to custody

- (1) When an early release order is suspended or cancelled, the warrant of commitment that relates to the sentence of imprisonment to which the early release order relates is again in force and the prisoner may be arrested and kept in custody under that warrant.
- (2) Despite subsection (1), if an early release order is suspended or cancelled as mentioned in subsection (1), a warrant to have the prisoner arrested and returned to custody may be issued, whenever necessary during the period of the order —

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- (a) by a Supreme Court judge or a District Court judge; or
 - (b) by the Board if it suspended or cancelled the order; or
 - (c) by the CEO if the CEO suspended the order.
- (3) If a warrant under subsection (2) is issued because of the suspension of an early release order, the prisoner may be arrested, whether under that warrant or under the warrant of commitment referred to in subsection (1), at any time during the period of the order.
- (4) Notwithstanding section 65 or 74, if a warrant under subsection (2) is issued because of the cancellation of an early release order, the prisoner may be arrested, whether under that warrant or under the warrant of commitment referred to in subsection (1), at any time —
- (a) during or after the period of the order; or
 - (b) after the date when, but for the cancellation of the order, the prisoner would have served or be taken to have served the term or terms to which the order relates.

[Section 70 amended by No. 41 of 2006 s. 50.]

[Section 70. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

71. Clean street time counts as time served

- (1) Subject to subsection (2), if an early release order in respect of a prisoner serving a fixed term is cancelled after the prisoner is released under the order —
- (a) the period beginning on the day when the prisoner was released under the order and ending on the day when the order is cancelled counts as time served in respect of the fixed term; and
 - (b) the period (if any) beginning on the day when the order is cancelled and ending on the day when the prisoner

concerned is returned to custody does not count as time served in respect of the fixed term.

- (2) If an early release order in respect of a prisoner serving a fixed term is suspended and, without the suspension ceasing, is subsequently cancelled, then —
 - (a) the period beginning on the day when the prisoner was released under the order and ending on the day when the order is suspended counts as time served in respect of the fixed term;
 - (b) the period (if any) beginning on the day when the order is suspended and ending on the day when the prisoner is returned to custody does not count as time served in respect of the fixed term.
- (3) For the purposes of subsection (1), the day when an early release order is cancelled is —
 - (a) if it is cancelled by a decision of the Board — the day of the decision; or
 - (b) if it is cancelled by virtue of section 67 —
 - (i) the day when the offence that resulted in the cancellation was committed; or
 - (ii) if the CEO cannot ascertain the day when that offence was committed — the latest day on which that offence could have been committed, as determined by the CEO.
- (4) For the purposes of subsection (2), the day when an early release order is suspended is the day of the decision to suspend the order.

[Section 71 amended by No. 41 of 2006 s. 51.]

Division 4 — Re-release after cancellation

72. Re-release after cancellation of order made by Board

- (1) If an early release order made by the Board —

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- (a) is cancelled under section 43, 44 or 63; or
- (b) is cancelled by virtue of section 67,

then the Board may, subject to Parts 3 and 4, subsequently make another early release order in respect of the prisoner.

- (2) If the subsequent early release order is a parole order, the parole period in it is the period that begins on the day when the prisoner is released and ends when the term ends.

[Section 72 amended by No. 41 of 2006 s. 52.]

73. Re-release after cancellation of parole order made by Governor

- (1) If a parole order made by the Governor is cancelled under section 43 or 44 or by virtue of section 67, the Governor may subsequently make another parole order in respect of the prisoner.
- (2) The parole period in the subsequent parole order is to be set by the Governor and must be at least 6 months, not more than 5 years, and not longer than the parole period of the cancelled parole order.

[Section 73 amended by No. 41 of 2006 s. 53.]

74. Parole period under new parole order deemed to be time served

If —

- (a) for the purposes of section 72 or 73 a parole order is made in respect of a prisoner; and
- (b) the Board does not cancel the parole order under Part 3 Division 10; and
- (c) the prisoner does not commit an offence (in this State or elsewhere) during the parole period for which he or she is sentenced to imprisonment (whether the sentence is imposed during or after the parole period),

Part 6 — Provisions applying to offenders on community corrections orders

75. Terms used

In this Part —

centre means a community corrections centre;

community corrections order means a community order, a sentence of CSI, a parole order, an RRO or a WDO.

[Section 75 amended by No. 27 of 2004 s. 12.]

76. Offender's obligations

(1) In this section and section 77 —

offender means an offender who is subject to a pre-sentence order or a community corrections order.

(2) An offender must comply with the lawful orders or directions of any CCO.

(3) An offender who under a community corrections order is required —

(a) to do community work —

(i) must do such community work as the manager of a centre determines and directs; and

(ii) must do that work to the satisfaction of the person supervising the work;

(b) to do community corrections activities —

(i) must do such community corrections activities as the manager of a centre determines and directs; and

(ii) must do those activities to the satisfaction of the person supervising them.

-
- (4) An offender who under a pre-sentence order or a community corrections order is at a centre, or is doing community work or community corrections activities, or is performing any requirement of a programme requirement applicable to the offender —
- (a) must not be in possession of, use, or be under the influence of alcohol, a drug (other than a drug prescribed for him or her), glue, petrol or any other substance capable of adversely affecting a person; and
 - (b) must, if so directed by the manager of a centre, submit to testing for any substance referred to in paragraph (a); and
 - (c) must not disturb or interfere with another offender doing anything under a community corrections order; and
 - (d) must not commit any act or omission of insubordination or misconduct that is subversive of the good order or management of a centre or of the conduct of anything required to be done under a community corrections order; and
 - (e) must not assault, threaten, insult or use abusive language to a member of the departmental staff; and
 - (f) must comply with any prescribed obligations; and
 - (g) must comply with any written instructions issued by the CEO under section 86.
- (5) A CCO is to ensure, so far as is practicable, that orders given to an offender do not —
- (a) conflict with the offender's religious or cultural beliefs; or
 - (b) result in interference with the times, if any, when the offender normally works or attends an educational or vocational training establishment.

[Section 76 amended by No. 65 of 2006 s. 43(1).]

s. 77

77. Consequences of contravening s. 76 obligations

If an offender contravenes any requirement of section 76, the manager of a centre may reprimand the offender or —

- (a) if the offender is subject to a pre-sentence order, report the matter to the CEO and recommend that the CEO issue a warrant under section 33P of the *Sentencing Act 1995*; or
- (b) if the offender is subject to a community order, report the matter to the CEO and recommend that the offender be charged with an offence under section 131 of the *Sentencing Act 1995*; or
- (ba) if the offender is subject to CSI, report the matter to the CEO and recommend that the offender be charged with an offence under section 84J(1) of the *Sentencing Act 1995*; or
- (c) if the offender is subject to a parole order or an RRO —
 - (i) report the matter to the CEO; or
 - (ii) report the matter to the Board, and recommend that the order be suspended or cancelled under Part 3 or 4 (as the case may be); or
- (d) if the offender is subject to a WDO, report the matter to the CEO and recommend that the order be cancelled under section 52 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[Section 77 amended by No. 27 of 2004 s. 11 and 12; No. 65 of 2006 s. 43(1).]

78. CEO may suspend requirements in case of illness etc.

- (1) In this section —
 - minimum hours requirement*** —
 - (a) in relation to a community service requirement in a community order — means the requirement that the

offender do at least 12 hours unpaid community work in any 7 day period;

- (b) in relation to a parole order or an RRO — means any requirement in the order to do the prescribed number of hours of community corrections activities in each period of 7 days;
- (c) in relation to a WDO — means the requirement in section 50(1)(b) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to do the prescribed number of the required hours of community corrections activities in each period of 7 days;

offender means an offender who is subject to a community corrections order.

- (2) If the CEO is satisfied that an offender is ill or that there are other exceptional circumstances, the CEO —
 - (a) if the offender is subject to a community order or a sentence of CSI — may permit the offender not to comply with all or any of the requirements of any primary requirement of the order for such period or periods as the CEO thinks fit, but they must not total more than 12 weeks;
 - (b) if the offender is subject to a community service requirement in a community order — may, in relation to the minimum hours requirement, permit the offender to do less than 12 hours community work in a 7 day period, the actual number of hours to be decided by the CEO, but it must be at least 6 hours;
 - (c) if the offender is subject to an early release order — permit the offender not to comply with the minimum hours requirement for such period or periods as the CEO thinks fit;
 - (d) if the offender is subject to a WDO — permit the offender not to comply with the minimum hours requirement for such period or periods as the CEO thinks fit, but they must not total more than 12 weeks.

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- (3) A decision made under subsection (2) does not affect the term of a community order, the suspension period of a sentence of CSI or the period of an early release order.
- (4) An offender's duty under a community service requirement in a community order to do unpaid community work for a number of hours set by the court is not affected by a decision made under subsection (2).
- (5) An offender's duty under section 50(1)(a) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to do community corrections activities for the required hours is not affected by a decision made under subsection (2).

[Section 78 amended by No. 27 of 2004 s. 12.]

79. Community service requirement, offender may be directed to do activities

- (1) This section applies in the case of an offender who is subject to a community service requirement in a community order but not subject to a programme requirement in the order.
- (2) The CEO may direct the offender to do community corrections activities for as many hours as the CEO directs, but the hours must not amount to more than a quarter of the hours of community work set by the court.
- (3) Hours of community corrections activities done in compliance with such a direction count as hours of community work done under the community service requirement.

80. Programme requirement, CEO may give offender additional directions

- (1) This section applies in the case of an offender who is subject to a programme requirement in a pre-sentence order or a community order or a sentence of CSI.
- (2) If a CCO is satisfied that in respect of the offender there are personal factors which contributed to the offender's criminal

behaviour that were not identified at the time the programme requirement was imposed, the CCO may give the offender such other directions as could be given under a programme requirement and as the CCO thinks fit, in addition to any specified by the court.

[Section 80 amended by No. 27 of 2004 s. 12.]

81. Compensation for injury to offenders

- (1) An offender, while doing community work or community corrections activities under a community corrections order is to be regarded for the purposes of the *Workers' Compensation and Injury Management Act 1981* as a worker employed by the Crown.
- (2) For the purposes of the *Workers' Compensation and Injury Management Act 1981* an offender's weekly earnings shall be taken to be the amount that the Minister considers reasonable in the circumstances.

[Section 81 amended by No. 42 of 2004 s. 174.]

82. Regulations

Regulations made for the purposes of this Part may —

- (a) prescribe obligations applicable to community corrections orders generally or to specific types of community corrections orders;
- (b) make provision for the authorisation of absences from attendance at community work or community corrections activities;
- (c) regulate the consequences of injury and sickness with respect to community corrections orders;
- (d) prescribe forms.

Part 7 — Community corrections centres

Division 1 — Preliminary

83. Terms used

In this Part —

centre means a community corrections centre;

community corrections order means a pre-sentence order, a community order, a sentence of CSI, a parole order, an RRO or a WDO;

offender means an offender who is subject to a community corrections order.

[Section 83 amended by No. 27 of 2004 s. 12.]

84. Community corrections centres, declaration of

- (1) The Minister may by notice declare any place to be a community corrections centre.
- (2) The Minister, by notice, may amend or cancel a notice under subsection (1).
- (3) In this section —

notice means notice published in the *Gazette*.

[Section 84. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

85. Community corrections activities, approval of

- (1) The CEO may approve activities as community corrections activities.
- (2) Activities that may be approved as community corrections activities include, but are not restricted to, any of these —
 - (a) charitable, community or voluntary work;

- (b) programmes for the treatment of people who abuse alcohol, drugs or other substances or who are addicted to gambling;
- (c) counselling;
- (d) social and life skills courses;
- (e) educational, vocational and personal development courses.

Division 2 — Management

86. Instructions about management etc., issue of etc.

- (1) With the approval of the Minister, the CEO may issue written instructions for the management, control and security of —
 - (a) centres generally or a specified centre; and
 - (b) offenders.
- (2) The instructions are to complement regulations made under section 93 and if there is an inconsistency between an instruction and a regulation, the instruction, to the extent of the inconsistency, is to be read and has effect subject to the regulation.
- (3) The instructions may confer a discretionary authority on any person or class of person.
- (4) Sections 41 and 42 of the *Interpretation Act 1984* do not apply to the instructions.
- (5) The CEO must ensure that relevant instructions are published in such a manner as to bring them to the attention of departmental staff, offenders, and people visiting centres.
- (6) The CEO must take reasonable steps to ensure that the instructions are made known to every offender —
 - (a) who is illiterate;
 - (b) who does not understand English, in a language the offender does understand.

87. Managers of centres, functions of etc.

- (1) The CCO in control of a centre is, while in control, the manager of the centre.
- (2) The manager is responsible to the CEO for the management, security and good order of the centre.
- (3) For the purposes of this Part, a manager may give reasonable orders or directions to any person in a centre, including any member of the departmental staff.
- (4) A manager may not direct that a search of a person or a place be made except as provided by section 90.
- (5) A manager must advise an offender of his or her obligations under the community corrections order, and this obligation is to be taken as having been performed if a written statement of those obligations is attached to the order given to the offender.
- (6) A manager must report as soon as possible to the CEO on any use of force by the manager or any other person to compel —
 - (a) an offender to obey an order or direction; or
 - (b) a person to obey an order to leave the centre.

[Section 87 amended by No. 65 of 2006 s. 43(1).]

88. Functions of CCOs at centres

- (1) A CCO —
 - (a) subject to subsection (5), must comply with the reasonable directions of the manager of the centre at which the CCO is working; and
 - (b) must maintain the good order of the centre at which the CCO is working; and
 - (c) must report immediately to the manager anything which might reasonably be thought to jeopardise the management, security or good order of the centre.

- (2) A CCO may give such reasonable orders or directions to offenders and other persons as are necessary for the management, security or good order of a centre.
- (3) A CCO may use reasonable force to compel an offender to obey an order or direction given to that offender if the CCO believes on reasonable grounds that the use of force is necessary —
 - (a) to prevent the offender or another person being killed or seriously injured; or
 - (b) to prevent serious damage to property.
- (4) A CCO may, if necessary, use reasonable force to compel a person to obey an order by a manager to leave a centre.
- (5) For the purpose of subsection (1)(a), a direction given by a manager is not reasonable if it is a direction —
 - (a) to use reasonable force to compel an offender to obey an order or direction given to that offender; or
 - (b) to use reasonable force to compel a person to obey an order to leave a centre; or
 - (c) to search any person wishing to enter or remain in a centre or anything in the person's possession or under the person's control.

[Section 88 amended by No. 65 of 2006 s. 43(1).]

89. Access to centres

- (1) The manager of a centre may impose such conditions as he or she thinks fit on any person (including an offender) entering or remaining in the centre.
- (2) A person who is not an offender may be refused entry to a centre by the manager of it.
- (3) An offender may be refused entry to a centre by the manager of it if the offender —
 - (a) contravenes a condition imposed under subsection (1);
or

- (b) does anything which, in the manager's opinion, threatens the management, security or good order of the centre.
- (4) A person (including an offender) who is in a centre may be ordered by the manager to leave the centre immediately if the person, while in the centre —
 - (a) contravenes this Act, the regulations or any written instructions issued under section 86; or
 - (b) contravenes a direction given by the manager; or
 - (c) contravenes a condition imposed under subsection (1); or
 - (d) does anything which, in the manager's opinion, threatens the management, security or good order of the centre.
- (5) A person who disobeys an order to leave a centre given under subsection (4) commits an offence.

Penalty: \$1 000.

[Section 89 amended by No. 65 of 2006 s. 43.]

90. Searches

- (1) If the manager of a centre believes that it is necessary for the security or good order of a centre or the offenders in it, he or she may at any time —
 - (a) cause a prescribed person to search the centre or any part of it or anything in it; or
 - (b) order a person wishing to enter or remain in a centre, or anything in the person's possession or under the person's control, to be searched by a prescribed person.
- (2) If a person refuses to submit to such a search, the manager may order the person to leave the centre immediately.
- (3) A manager may at any time order a search to be stopped.

- (4) A person who disobeys a manager's order under subsection (2) commits an offence.

Penalty: \$1 000.

[Section 90 amended by No. 65 of 2006 s. 43.]

91. Seizure

- (1) In carrying out a search under section 90, a prescribed person may seize anything found in a centre, whether in a person's possession or not, that the manager of the centre believes on reasonable grounds jeopardises or is likely to jeopardise the security or good order of the centre or the safety of persons in it.
- (2) A drug prescribed for a person and in that person's possession must not be seized under subsection (1).
- (3) Anything seized by a prescribed person must be given to the manager of the centre immediately.
- (4) Anything seized must be dealt with by the manager under the regulations.

[Section 91 amended by No. 65 of 2006 s. 43(1).]

Division 3 — Miscellaneous

92. Department to report on centres

The annual report of the accountable authority of the Public Sector agency of which the CEO is the chief executive officer prepared for the purposes of the *Financial Management Act 2006* is to include a report on the operations of centres and community corrections activities and other operations of the agency under this Part.

[Section 92 amended by No. 65 of 2006 s. 38; No. 77 of 2006 s. 6 and Sch. 1 cl. 155.]

93. Regulations

Regulations made for the purposes of this Part may —

- (a) prescribe powers of persons conducting anything being done under a community corrections order;
- (b) provide for the transport of offenders required to do anything under a community corrections order;
- (c) regulate the procedure for searches and seizures carried out under this Part;
- (d) prescribe forms.

Part 8 — Staff

Division 1 — Chief executive officer

94. Functions

- (1) Subject to the control of the Minister, the CEO's functions include —
 - (a) the proper administration of pre-sentence orders, community orders, sentences of CSI, parole orders, RROs and WDOs; and
 - (b) the control and management of community corrections centres.
- (2) The CEO has the functions of a CCO.
- (3) Where this Act, the *Sentencing Act 1995*, the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, or the *Bail Act 1982* empowers or requires the CEO to do any thing, any exercise of that power must be done in writing and signed by the CEO or, if the power is exercised by a delegate, by the delegate.
- (4) The CEO may review and confirm, amend or cancel a decision made, or a direction or order given, by a member of the departmental staff.
- (5) The CEO may —
 - (a) consult and collaborate with; and
 - (b) make use of the assistance of,

any individual or organisation in any way that the CEO considers expedient for the purpose of the performance of a function under this Act, the *Sentencing Act 1995*, the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, or the *Bail Act 1982*.

[Section 94 amended by No. 27 of 2004 s. 12; No. 65 of 2006 s. 39.]

95. Delegation by CEO

- (1) The CEO may delegate to any person any power or duty of the CEO —
 - (a) under another provision of this Act;
 - (b) under the *Sentencing Act 1995*;
 - (c) under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (2) The delegation must be in writing signed by the CEO.
- (3) A person to whom a power or duty is delegated under this section cannot delegate the power or duty.
- (4) A person exercising or performing a power or duty that has been delegated under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by a person as a delegate of the CEO was signed by a person in the performance of a function that at the time was delegated to the person by the CEO.
- (6) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.

96. CEO may confer functions of CCO on person

The CEO may confer some or all of the functions of a CCO on a member of the departmental staff who is not a CCO and a reference elsewhere in the Act to a CCO includes a reference to a person on whom a function has been so conferred.

97. CEO to make information available to Board

- (1) This section operates despite any other written law that requires the CEO not to disclose information.
- (2) Subject to any directions given by the Board to the CEO, the CEO must, in any report about a prisoner that the CEO has to

give the Board under this Act, include all information in relation to the prisoner that is in the possession of the CEO and that is or may be relevant to any decision the Board may make under this Act in respect of the prisoner.

- (3) Without limiting subsection (2) but subject to any directions given by the Board to the CEO, if a breach of an early release order comes to the knowledge of the CEO, the CEO must forthwith report the matter to the Board and must provide such other information about the breach as the Board requires.
- (4) The CEO must allow the Board's members and staff access to information about prisoners in custody on information systems controlled and managed by the CEO but only to the extent necessary for the performance of the Board's functions.

[Section 97 inserted by No. 41 of 2006 s. 55.]

97A. Disclosing information about offender for community safety

The CEO may disclose information about an offender to the public if the CEO is of the opinion that it is necessary to do so for the safety of the community.

[Section 97A inserted by No. 65 of 2006 s. 40.]

97B. Disclosing and requesting information

- (1) In this section —
contractor has the meaning given to that term in section 3 of the *Court Security and Custodial Services Act 1999*;
public authority means —
 - (a) a department of the Public Service; or
 - (b) a State agency or instrumentality; or
 - (c) a court or tribunal to the extent that it is an agency for the purposes of the *Freedom of Information Act 1992*; or
 - (d) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a written law;

relevant information means information that, in the opinion of the CEO, is, or is likely to be, relevant to —

- (a) the management of an offender; or
- (b) the performance of a function under this Act, the *Sentencing Act 1995*, the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, or the *Bail Act 1982*;

research means research to promote the development of criminology or corrective services;

service provider means —

- (a) an individual or organisation mentioned in section 94(5); or
 - (b) an individual or organisation involved in providing support services to an offender or the family of an offender.
- (2) The CEO may disclose relevant information to a public authority, service provider or contractor.
 - (3) The CEO may request a public authority, service provider or contractor that holds relevant information to disclose the information to the CEO.
 - (4) A request under subsection (3) —
 - (a) may relate to particular information or information of a particular kind; and
 - (b) may relate to information that may be held from time to time.
 - (5) A public authority, service provider or contractor may disclose information in compliance with a request under subsection (3).
 - (6) The CEO may disclose information regarding offenders to a public authority or other body for use in research.
 - (7) A public authority, service provider, contractor or other body may disclose information regarding offenders to the CEO for use in research.

- (8) The CEO must establish procedures for the disclosure of information under subsection (2) or (6).
- (9) The regulations may include provisions about —
 - (a) the receipt and storage of information disclosed under this section; and
 - (b) the restriction of access to such information.

[Section 97B inserted by No. 65 of 2006 s. 40.]

97C. Disclosing information to agencies outside WA

- (1) The Minister may, from time to time, approve circumstances in which, or purposes for which, information relating to an offender may be disclosed by the CEO to a person or class of persons in another Commonwealth, State, Territory or overseas government department or agency.
- (2) The CEO may disclose information as approved under subsection (1).

[Section 97C inserted by No. 65 of 2006 s. 40.]

97D. Disclosing information to victims

- (1) In this section —
victim of an offender means —
 - (a) a person who has suffered injury, loss or damage as a direct result of an offence committed by the offender, whether or not that injury, loss or damage was reasonably foreseeable by the offender; or
 - (b) where an offence committed by the offender resulted in a death, any member of the immediate family of the deceased.
- (2) The CEO may disclose information of a prescribed kind regarding an offender to a victim of the offender or a person acting on a victim's behalf.

[Section 97D inserted by No. 65 of 2006 s. 40.]

97E. Disclosure under s. 97A, 97B, 97C and 97D not subject to other laws etc.

- (1) Information may be disclosed under section 97A, 97B, 97C or 97D despite any written law relating to confidentiality or secrecy.
- (2) If information is disclosed, in good faith, under section 97A, 97B, 97C or 97D —
 - (a) no civil or criminal liability is incurred in respect of the disclosure; and
 - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

[Section 97E inserted by No. 65 of 2006 s. 40.]

Division 2 — Other staff

98. Appointment

- (1) The staff, including community corrections officers, needed for the purposes of this Act, the *Sentencing Act 1995* and Part VIA of the *Bail Act 1982* —
 - (a) may be appointed or engaged under the *Public Sector Management Act 1994*; or
 - (b) may be appointed on an honorary basis.
- (2) A person who is a member of the Police Force is not to be an honorary CCO.
- (3) A member of the Police Force who holds a designated position (as defined in the *Witness Protection (Western Australia) Act 1996*) may be an honorary CCO for the purposes of supervising an offender who is a participant in the State Witness Protection Program established under that Act.

- (4) The regulations may prescribe classes of staff and their functions.

[98AA.^{1M} *Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.*]

98A. Duties of CCOs

A CCO must comply with this Act and any other written law conferring functions on CCOs and with the orders and directions of the CEO.

[Section 98A inserted by No. 65 of 2006 s. 41.]

99. Volunteers

- (1) The CEO may authorise a person to work as an unpaid volunteer.
- (2) A volunteer is under the control of the CEO.
- (3) The CEO may at any time cancel the authorisation of a volunteer.

Division 3 — Miscellaneous

100. Compensation for injury to volunteers etc.

If under Division 2 a person is appointed on an honorary basis or authorised to work as a volunteer —

- (a) the person is, while performing the functions of the position, to be regarded for the purposes of the *Workers' Compensation and Injury Management Act 1981* as a worker employed by the Crown; and
- (b) for the purposes of that Act, the person's weekly earnings are to be taken to be the amount that the Minister considers is reasonable in the circumstances.

[Section 100 amended by No. 42 of 2004 s. 174.]

101. Assistance by police officers

- (1) Subject to the directions of the Commissioner of Police, a member of the Police Force may, if so requested by the CEO or a CCO, assist in the exercise or performance of any function conferred or imposed by this Act.
- (2) A member of the Police Force acting under subsection (1) has the same functions and protection from liability as a CCO would have in the same situation.
- (3) The functions and protection conferred by subsection (2) are in addition to those conferred or imposed on a member of the Police Force by any other written law.

Part 9 — Prisoners Review Board

[Heading inserted by No. 41 of 2006 s. 56.]

102. Board established

- (1) A board called the Prisoners Review Board is established.
- (2) The Board is to be taken to be a continuation of the Parole Board established previously.

[Section 102 inserted by No. 41 of 2006 s. 57.]

103. Membership

- (1) The members of the Board are —
 - (a) a chairperson, to be nominated by the Minister and appointed by the Governor; and
 - (b) at least 2 deputy chairpersons, to be nominated by the Minister and appointed by the Governor; and
 - (c) as many community members as are necessary to deal with the workload of the Board, to be nominated by the Minister and appointed by the Governor; and
 - (d) as many officers of the Public Sector agency of which the CEO is the chief executive officer as are necessary to deal with the workload of the Board, to be appointed by the CEO; and
 - (e) as many police officers as are necessary to deal with the workload of the Board, to be appointed by the Commissioner of Police.
- (2) The Minister must not nominate a person as the chairperson unless —
 - (a) the person —
 - (i) is a judge of the Supreme Court or the District Court; or
 - (ii) is a retired judge of one of those courts;and

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- (b) if paragraph (a)(i) applies to the person, the Minister has consulted the Chief Justice or the Chief Judge of the District Court (as the case may be) about the nomination.
- (3) The Minister must not nominate a person as a deputy chairperson unless the person has, in the Minister's opinion, extensive or special knowledge of matters involved in the performance of the Board's functions.
- (4) The Minister must not nominate a person as a community member unless the Minister is satisfied —
 - (a) that the person is able to make an objective and reasonable assessment of the degree of risk that the release of a prisoner would appear to present to the personal safety of people in the community or of any individual in the community; and
 - (b) that the person has one or more of the following attributes —
 - (i) the person has a knowledge and understanding of the impact of offences on victims;
 - (ii) the person has a knowledge and understanding of Aboriginal culture local to this State;
 - (iii) the person has a knowledge and understanding of a range of cultures among Australians;
 - (iv) the person has a knowledge and understanding of the criminal justice system;
 - (v) the person has a broad experience in a range of community issues such as issues relating to employment, substance abuse, physical or mental illness or disability, or lack of housing, education or training.
- (5) In nominating persons as community members the Minister is to ensure that at all times at least one community member has the attribute mentioned in subsection (4)(b)(i) and at least one

community member is an Aboriginal person who has the attribute mentioned in subsection (4)(b)(ii).

- (6) On appointing a member of the Board under subsection (1)(d) or (e), the CEO or the Commissioner of Police, as the case may be, must give written notice of the appointment to —
- (a) the person appointed; and
 - (b) the registrar of the Board.

[Section 103 inserted by No. 41 of 2006 s. 57.]

104. Training of members

- (1) The chairperson and deputy chairpersons are responsible for directing the education, training, and professional development of members of the Board.
- (2) The Minister is to ensure that appropriate provision is made for the education, training, and professional development of members of the Board.

[Section 104 inserted by No. 41 of 2006 s. 57.]

104A. Registrar and other staff

- (1) A person is to be appointed as the registrar of the Board.
- (2) The registrar and any other staff of the Board are to be appointed under Part 3 of the *Public Sector Management Act 1994*.

[Section 104A inserted by No. 41 of 2006 s. 57.]

105. Tenure, meetings etc. (Sch. 1)

Schedule 1 has effect in relation to the Board.

106. Functions

- (1) The functions of the Board are set out in this Act.

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- (2) The Board may do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.
- (3) A member of the Board, other than the chairperson, must comply with any relevant public sector standard or code of ethics established under section 21 of the *Public Sector Management Act 1994* when performing functions as a member of the Board.

[Section 106 amended by No. 41 of 2006 s. 58.]

107. Board to have powers of Royal Commission

- (1) For the purpose of carrying out its functions, the Board and its chairperson and members have and may exercise the powers that a Royal Commission and its chairman and commissioners have under the *Royal Commissions Act 1968*.
- (2) The *Royal Commissions Act 1968*, with any necessary changes, has effect in relation to the Board, its chairperson and members.

107A. Board may use experts etc.

The Board may appoint a person with relevant knowledge or experience to assist the Board in relation to a matter within the Board's functions by providing a report, advice or professional services.

[Section 107A inserted by No. 41 of 2006 s. 59.]

107B. Notification of Board's decisions

- (1) The Board must give a prisoner written notice of any decision made under this Act in respect of the person as soon as practicable after the decision is made.
- (2) The Board must give the CEO written notice of any decision made under this Act in respect of a prisoner as soon as practicable after the decision is made.

- (3) Without limiting subsections (1) and (2), they apply —
- (a) to a decision, whether by the Board or the Governor, not to make an early release order in respect of a prisoner; and
 - (b) to a decision to make a parole order in which the release date is not the day when, under section 23(2) or section 93(1) of the *Sentencing Act 1995*, the prisoner is eligible to be released on parole; and
 - (c) to a decision, whether by the Governor or the Board, to amend, suspend or cancel an early release order; and
 - (d) to a decision by the Board not to make a request under section 13(4) after receiving a report under section 13(3) or not to endorse, with or without variations, a re-socialisation programme received under section 13(4),
- and, in the case of subsection (1) —
- (e) to a decision by the CEO to suspend an early release order.
- (4) Subject to section 114, a notice under subsection (1) or (2) must include the reasons for the decision.
- (5) If the decision is a reviewable decision, as that term is defined in section 115A, a notice under subsection (1) must inform the prisoner of the effect of section 115A.

[Section 107B inserted by No. 41 of 2006 s. 59.]

107C. Publication of Board's decisions

- (1) This section operates despite section 119.
- (2) The chairperson of the Board may make public a decision of the Board or the reasons for it if the chairperson considers it is in the public interest to do so having regard to all the circumstances including the interests of the prisoner concerned and the interests of any victim.

[Section 107C inserted by No. 41 of 2006 s. 59.]

108. Orders by Board

- (1) In this section —
authorised person means —
 - (a) the registrar or a member of the Board; or
 - (b) a departmental officer performing the functions of a prescribed office or an office of a prescribed class.
- (2) An order giving effect to a decision made by the Board is to be signed by 2 members of the Board.
- (3) A notice of a decision made by the Board may be signed by an authorised person.
- (4) Despite subsection (2), an authorised person, on behalf of and in the name of the Board, may make a parole order in accordance with guidelines issued by the Board except in respect of a prisoner serving a parole term of at least 2 years for a serious offence.
- (5) The Board may issue guidelines to be observed by authorised persons when making parole orders under subsection (4).

[Section 108 amended by No. 41 of 2006 s. 60.]

109. Board may require prisoner to appear before it

- (1) At any time while a prisoner is subject to a parole order (other than a parole order (unsupervised)) or an RRO, the Board, by order, may require him or her to appear before the Board.
- (2) For the purposes of subsection (1), the Board may issue a warrant to have the prisoner arrested and brought before the Board.
- (3) The powers in this section may be exercised whether or not the Board has amended, suspended, cancelled or otherwise made a decision in relation to the order concerned.

[Section 109 amended by No. 41 of 2006 s. 61.]

110. Issue of warrants by Board

- (1) If this Act empowers the Board to issue a warrant to have a person arrested, it is not necessary for the Board to meet before the warrant is issued.
- (2) A warrant issued by the Board to have a person arrested must be signed by —
 - (a) 2 members of the Board; or
 - (b) the chairperson of the Board if he or she is a judge of the Supreme Court or the District Court.

[Section 110 amended by No. 41 of 2006 s. 62.]

111. Judicial notice of appointment and signature

- (1) Judicial notice must be taken of —
 - (a) the fact that a person is or was a member or the registrar of the Board; and
 - (b) the official signature of such a person.
- (2) Evidence of a parole order, an RRO or a decision made by the Board may be given by producing a copy of the order or decision certified by the registrar of the Board as a true copy.

[Section 111 amended by No. 41 of 2006 s. 63.]

112. Annual report to Minister

Before 1 October in each year, the Board is to give a written report to the Minister on —

- (a) the performance of the Board's functions during the previous financial year;
- (b) the number of prisoners who became eligible to be released under a parole order during the previous financial year;
- (c) the number of prisoners who applied to be released under an RRO during the previous financial year;

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- (d) the number of prisoners who were refused an early release order by the Board or the Governor during the previous financial year;
- (e) the number of prisoners released under an early release order by the Board or the Governor during the previous financial year;
- (f) the number of prisoners who completed an early release order during the previous financial year;
- (g) the number of early release orders suspended or cancelled during the previous financial year and the reasons for suspension or cancellation;
- (h) the number of prisoners for whom participation in a re-socialisation programme was approved by the Board or the Governor during the previous financial year;
- (i) the number of prisoners who completed re-socialisation programmes during the previous financial year;
- (j) the operation of this Act and relevant parts of the *Sentencing Act 1995* so far as they relate to early release orders and to the activities of CCOs in relation to those orders during the previous financial year.

[Section 112 inserted by No. 41 of 2006 s. 64.]

113. Special reports to Minister

- (1) The Minister, in writing, may request the Board to report about any specified special matter relating to —
 - (a) the operation of this Act or the *Sentencing Act 1995* so far as it is relevant to the Board; or
 - (b) the performance of any function of the Board.
- (2) If so requested, the Board must provide a written report as soon as practicable.

Part 10 — Miscellaneous

114. Reasons for decision may be withheld

- (1) This section applies to those sections in this Act which refer to it.
- (2) If a person is required to give a prisoner reasons for a decision, then if the person decides that it would be in the interest of the prisoner or any other person, or the public, to withhold from the prisoner any or all of the reasons, the person may do so.

115. Rules of natural justice excluded

The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under Parts 2 to 6 by —

- (a) the Governor; or
- (b) the Minister; or
- (c) the Board; or
- (d) an authorised person as defined in section 108(1); or
- (e) the CEO.

115A. Board may review decisions about release

- (1) In this section —
reviewable decision has a meaning in accordance with subsections (2), (3) and (4).
- (2) Subject to subsection (4), a decision made —
 - (a) by the Board not to make an early release order; or
 - (b) by the Board to make a parole order in which the release date is not the day when, under section 23(2) or section 93(1) of the *Sentencing Act 1995*, the prisoner is eligible to be released on parole; or
 - (c) by the Board to suspend or cancel an early release order;
or
 - (d) by the CEO to suspend an early release order; or

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- (e) by the Board not to make a request under section 13(4) after receiving a report under section 13(3) or not to endorse, with or without variations, a re-socialisation programme received under section 13(4); or
- (f) by the Board as to the nature or content of a re-socialisation programme endorsed under section 13(5) or approved under section 14(5),

is a reviewable decision.

- (3) The regulations may provide that a decision of a prescribed kind made under the regulations is a reviewable decision.
- (4) A decision under subsection (8), or by the Board on further considering a matter pursuant to a decision under subsection (8), is not a reviewable decision.
- (5) A prisoner about whom a reviewable decision is made may request the Board to review the decision.
- (6) A request may only be made on the grounds that the person who made the decision —
 - (a) did not comply with this Act or the regulations; or
 - (b) made an error of law; or
 - (c) used incorrect or irrelevant information or was not provided with relevant information.
- (7) A request must —
 - (a) be in writing; and
 - (b) state the grounds for it; and
 - (c) include any submissions that the applicant wants to make to the Board about the decision concerned and the reasons for it.
- (8) When a request is made, the chairperson of the Board must consider any submissions included in it and review the decision concerned and may —
 - (a) confirm, amend or cancel the decision; or

- (b) make another decision; or
 - (c) refer the decision to the Board for further consideration.
- (9) The chairperson may delegate the functions in subsection (8) to a deputy chairperson.
- (10) A deputy chairperson to whom the functions in subsection (8) are delegated must not decide any question of law but must refer it to the chairperson to decide.
- (11) The Board must give the applicant written notice of any decision on a review requested under this section.

[Section 115A amended by No. 41 of 2006 s. 65.]

116. Arrest warrant may be issued if warrant of commitment in force

- (1) If a court has issued a warrant of commitment in respect of an offender that requires the offender to be imprisoned for a period, then at any time before the prisoner has served the period the CEO may issue a warrant to have the offender arrested and taken to a prison to serve or to continue to serve the period.
- (2) A warrant must not be issued under subsection (1) if the offender has been released pursuant to an order made in accordance with this Act or another written law in respect of the sentence or made in the exercise of the Royal Prerogative of Mercy.
- (3) Without limiting subsection (1) or affecting subsection (2), a warrant may be issued under subsection (1) if in error an offender is released before having served the period of imprisonment specified in the warrant of commitment.
- (4) Subsection (1) does not limit any power to arrest a person who has escaped lawful custody.

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117. Issue and execution of warrants

- (1) If this Act or the *Sentencing Act 1995* empowers a person to issue a warrant to have a person arrested, the warrant must be in the prescribed form and such a warrant has effect according to its wording.
- (2) In the absence of evidence to the contrary, it is to be presumed that —
 - (a) the person who issued the warrant is empowered to do so; and
 - (b) the signature on the warrant is that of the person who issued it.
- (3) A person to whom the warrant is directed must give effect to the warrant as soon as practicable.
- (4) The warrant itself is sufficient authority to the person to whom it is directed to arrest the person concerned and to hold the person in custody for the purposes of taking him or her, as soon as practicable, to the place specified in the warrant.

118. Monitoring equipment, retrieval of etc.

- (1) In this section —

monitoring equipment means any device or equipment installed under this Act or the *Sentencing Act 1995* or the *Bail Act 1982* at the place where a person lives or lived to keep the person under surveillance or to monitor the person.
- (2) The CEO may give the occupier of a place where monitoring equipment is installed a direction to deliver the equipment to the CEO within a set period.
- (3) A person who contravenes a direction given under subsection (2) commits an offence.
- (4) A CCO may, at any time, enter a place where monitoring equipment is installed to retrieve the equipment.

- (5) A person who hinders a CCO exercising the power in subsection (4) commits an offence.
- (6) A person who unlawfully interferes with the operation of any monitoring equipment commits an offence.
- (7) A person who wilfully and unlawfully destroys or damages any monitoring equipment commits an offence.
Penalty: \$12 000 or imprisonment for 12 months.

119. Information, disclosure and use of by departmental staff etc.

- (1) A person who is or has been in a position to which this section applies must not, whether directly or indirectly, record, disclose, or make use of any information obtained because of being in that position, except —
 - (a) for the purposes of and in the due exercise of functions under this Act; or
 - (b) when ordered by a court or a judge to do so; or
 - (c) in circumstances approved, or of a kind approved, by the Minister.

Penalty: \$2 500.

- (2) The positions to which this section applies are —
 - (a) a member, a deputy of a member, an acting member, the registrar or a member of the staff of the Board; and
 - (b) the CEO; and
 - (c) a member of the departmental staff.

[Section 119 amended by No. 41 of 2006 s. 66; No. 65 of 2006 s. 42.]

120. Protection from personal liability for torts

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act or the *Sentencing Act 1995*.

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- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act or the *Sentencing Act 1995* had been enacted.
- (3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

121. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

122. Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after —
 - (a) 1 July 2007; and
 - (b) the expiry of each 5 yearly interval after that day.
- (2) The Minister must prepare a report based on each review under subsection (1) and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the relevant day or expiry), must cause it to be laid before each House of Parliament.

[Section 122 inserted by No. 41 of 2006 s. 67.]

Part 11 — Transitional and validation provisions for Sentencing Legislation Amendment Act 2016 Part 2

[Heading inserted by No. 45 of 2016 s. 14.]

123. Terms used

In this Part —

commencement means the day on which the *Sentencing Legislation Amendment Act 2016 Part 2* comes into operation;

former transitional provisions means —

- (a) the *Sentencing (Consequential Provisions) Act 1995* section 83, 86, 87 or 91(1), as affected by the *Sentencing Legislation Amendment and Repeal Act 2003* Schedule 1 clause 13; and
- (b) the *Offenders Community Corrections Act 1963* as continued in operation by any of those provisions of the *Sentencing (Consequential Provisions) Act 1995*;

pre-1996 prisoner means a prisoner —

- (a) sentenced before 4 November 1996; and
- (b) to whom the *Sentencing (Consequential Provisions) Act 1995* section 83, 86, 87 or 91(1) applied;

transitional period means the period —

- (a) beginning on 4 November 1996; and
- (b) ending immediately before commencement.

[Section 123 inserted by No. 45 of 2016 s. 14.]

124. Reports during the transitional period: pre-1996 prisoners

If a report given during the transitional period about a pre-1996 prisoner was not given in accordance with a former transitional provision that permitted or required a person to give a report about the prisoner then —

- (a) each provision of the *Sentence Administration Act 1995* that would have permitted or required a person to give a

report about the prisoner had the prisoner been sentenced on or after 4 November 1996 and before 31 August 2003 is taken to have applied, and the former transitional provision is taken not to have applied, to and in respect of the prisoner during that period; and

- (b) each provision of this Act that would have permitted or required a person to give a report about the prisoner had the prisoner been sentenced on or after 31 August 2003 and before commencement is taken to have applied, and the former transitional provision is taken not to have applied, to and in respect of the prisoner during that period.

[Section 124 inserted by No. 45 of 2016 s. 14.]

125. Participation in re-socialisation programmes: pre-1996 prisoners

If a pre-1996 prisoner participated, or purported to participate, in a re-socialisation programme on or after 28 January 2007 and before commencement, then each provision of this Act that would have permitted the prisoner to participate in the programme had the prisoner been sentenced on or after 28 January 2007 is taken to have applied to and in respect of that prisoner during that period.

[Section 125 inserted by No. 45 of 2016 s. 14.]

126. Release on parole: pre-1996 prisoners

- (1) If the release on parole of a pre-1996 prisoner during the transitional period was not in accordance with a former transitional provision relating to the release of the prisoner on parole then —

- (a) each provision of the *Sentence Administration Act 1995* that would have been about the release of the prisoner on parole had the prisoner been sentenced on or after 4 November 1996 and before 31 August 2003 is taken to have applied, and the former transitional provision is

taken not to have applied, to and in respect of the prisoner during that period; and

- (b) each provision of this Act that would have been about the release of the prisoner on parole had the prisoner been sentenced on or after 31 August 2003 and before commencement is taken to have applied, and the former transitional provision is taken not to have applied, to and in respect of the prisoner during that period.

- (2) In making a decision during the transitional period about the release from custody of a pre-1996 prisoner under a provision of the *Sentence Administration Act 1995* or this Act that applied by virtue of subsection (1), any of the following, according to the terms of the provision, may have been taken into account —

- (a) any report given about the prisoner under provisions that apply to and in respect of the prisoner by virtue of section 124;
- (b) the participation by the prisoner in any re-socialisation programme under provisions that apply to and in respect of the prisoner by virtue of section 125.

[Section 126 inserted by No. 45 of 2016 s. 14.]

127. Validation of parole orders: pre-1996 prisoner

A parole order made in relation to the release from custody of a pre-1996 prisoner is, and is taken to have always been, as valid as it would have been if this Part had been in force when it was made.

[Section 127 inserted by No. 45 of 2016 s. 14.]

128. Inconsistency with former transitional provisions

If a provision of this Act, or the *Sentence Administration Act 1995*, that applies by virtue of this Part is inconsistent with a provision of the former transitional provisions, the provision of this Act, or the *Sentence Administration Act 1995*, prevails.

[Section 128 inserted by No. 45 of 2016 s. 14.]

Schedule 1 — Provisions applying to the Prisoners Review Board

[s. 105]

[Heading inserted by No. 41 of 2006 s. 68.]

1. Term used: member

In this Schedule —

member means a member of the Board.

[Clause 1 inserted by No. 41 of 2006 s. 68.]

2. Term etc. of office

- (1) A member appointed by the Governor is a member for the period (not more than 5 years) specified in the instrument of appointment, but is eligible for reappointment.
- (2) If a person who is a judge is appointed as the chairperson —
 - (a) the person's service as the chairperson is to be taken for all purposes to be service in the person's office of judge; and
 - (b) the person's appointment does not prevent the person from performing the functions of the person's office of judge.
- (3) The office of a deputy chairperson or a community member is to be held on a full-time basis, part-time basis or sessional basis.
- (4) The office of a member appointed by the CEO or the Commissioner of Police is to be held in conjunction with the member's employment in the Public Sector or appointment as a police officer, as the case may be.
- (5) The chairperson, if a judge, ceases to be a member by resignation under clause 3, or on ceasing to be a judge.
- (6) The chairperson, if a retired judge, ceases to be a member by resignation under clause 3, or when the chairperson's appointment is terminated under clause 4.
- (7) A member appointed by the CEO ceases to be a member by resignation under clause 3, or on ceasing to be an officer of the Public Sector agency of which the CEO is the chief executive officer, or

when the CEO cancels the appointment, or when the member's appointment is terminated under clause 4.

- (8) A member appointed by the Commissioner of Police ceases to be a member by resignation under clause 3, or on ceasing to be a police officer, or when the Commissioner cancels the appointment, or when the member's appointment is terminated under clause 4.

[Clause 2 inserted by No. 41 of 2006 s. 68.]

3. Resignation

- (1) A member appointed by the Governor may resign by giving the Minister a signed letter of resignation.
- (2) A member appointed by the CEO may resign by giving the CEO a signed letter of resignation.
- (3) A member appointed by the Commissioner of Police may resign by giving the Commissioner a signed letter of resignation.
- (4) A resignation has effect when it is received by the relevant person or at such later date as it specifies.

[Clause 3 inserted by No. 41 of 2006 s. 68.]

4. Terminating appointments

- (1) For the purposes of this clause, grounds to terminate the appointment of a member exist if the member —
- (a) has been convicted of an indictable offence or an offence committed under the law of another place that would, if it had been committed in this State, be an indictable offence; or
 - (b) is incapable of performing the functions of a member; or
 - (c) has neglected without a reasonable cause to perform the functions of a member; or
 - (d) has been negligent or careless in performing the functions of a member; or
 - (e) is unfit to be a member due to misconduct.
- (2) The Governor, on the recommendation of the Minister, may terminate the appointment of a member appointed by the Governor, other than a member who is a judge, if grounds to terminate the appointment exist.

cl. 5

- (3) The Minister may terminate the appointment of a member, other than a member appointed by the Governor, if grounds to terminate the appointment exist.
- (4) Subclause (3) does not affect the power under clause 2(7) or (8) of the CEO or the Commissioner of Police, as the case may be, to cancel an appointment.

[Clause 4 inserted by No. 41 of 2006 s. 68.]

5. Meetings

- (1) The chairperson is to decide when and where the Board meets.
- (2) The Board, constituted in accordance with this clause, may meet and perform its functions even if at the same time the Board, constituted in accordance with this clause but by different individuals, is also meeting and performing the Board's functions.
- (3) At a meeting of the Board the chairperson or a deputy chairperson is to preside.
- (4) At a meeting of the Board —
 - (a) a quorum consists of 3 members as follows —
 - (i) the chairperson or a deputy chairperson;
 - (ii) one community member;
 - (iii) one of the persons appointed under section 103(1)(d) or (e);and
 - (b) questions arising are to be determined by a majority of the members present and voting; and
 - (c) if there is a tie in voting, the presiding member has a second vote.
- (5) Any question of law that arises at a meeting of the Board must be decided by the chairperson or, if the chairperson is not at the meeting, referred to the chairperson to decide.
- (6) The Board may, if it thinks fit, conduct a meeting at which all or some members participate by telephone or other similar means, but any member who speaks on a matter at the meeting must be able to be heard by the other members at the meeting.

- (7) Subject to this clause the chairperson is to determine the procedure for convening and conducting meetings of the Board.

[Clause 5 inserted by No. 41 of 2006 s. 68.]

6. Conditions of service

- (1) Members appointed by the Governor, other than a member who is a judge, are entitled to the remuneration and allowances set by the Governor from time to time on the recommendation of the Public Sector Commissioner.
- (2) Any remuneration and allowances paid to a member who is a retired judge do not affect the member's entitlements under the *Judges' Salaries and Pensions Act 1950*.
- (3) The other conditions of service of members appointed by the Governor are to be determined by the Governor from time to time.

[Clause 6 inserted by No. 41 of 2006 s. 68; amended by No. 39 of 2010 s. 89.]

7. Leave of absence

The Minister may grant leave of absence to a member on such conditions as the Minister determines.

[Clause 7 inserted by No. 41 of 2006 s. 68.]

Schedule 2 — Serious offences

[s. 4]

[Heading amended by No. 6 of 2014 s. 11(1).]

A serious offence is an offence under any of these provisions of *The Criminal Code* —

- (a) Chapter XXVIII — Homicide: Suicide: Concealment of birth
- (b) Chapter XXIX — Offences endangering life or health
- (c) Chapter XXX — Assaults
- (d) Chapter XXXI — Sexual offences
- (e) Chapter XXXIII — Offences against liberty
- (f) Chapter XXXIIIA — Threats
- (g) Chapter XXXIIIB — Stalking
- (h) Chapter XXXVIII — Robbery: Extortion by threats
- (i) Section 187 — Facilitating sexual offences against children outside Western Australia,

or an offence under —

- (j) section 60 of the *Censorship Act 1996*⁴; or
- (k) section 61(1) or (2a) of the *Restraining Orders Act 1997*.

[Schedule 2 amended by No. 4 of 2004 s. 5(2); No. 41 of 2006 s. 69; No. 6 of 2014 s. 11(2).]

Schedule 3 — Reports and re-socialisation programmes for certain prisoners

[s. 12A and 13]

[Heading inserted by No. 45 of 2016 s. 15.]

Division 1 — Current sentence types

[Heading inserted by No. 45 of 2016 s. 15.]

<u>Item No.</u>	<u>Description of prisoner</u>	<u>First report due</u>	<u>Subsequent reports due</u>
1.	<u>A person serving a sentence of life imprisonment for an offence other than murder</u>	<u>7 years after the day on which the term began or is taken to have begun</u>	<u>Every 3 years after that</u>
2.	<u>A person serving a sentence of life imprisonment for murder where a minimum period has been set under the <i>Sentencing Act 1995</i> section 90(1)(a)</u>	<u>At the end of the minimum period</u>	<u>Every 3 years after that</u>
3.	<u>A person serving a sentence of indefinite imprisonment</u>	<u>One year after the day on which the sentence began</u>	<u>Every 3 years after that</u>
4.	<u>A Governor's pleasure detainee subject to a sentence of detention imposed under <i>The Criminal Code</i> section 279(5)(b)</u>	<u>One year after the day on which the detention began</u>	<u>Every year after that</u>

[Division 1 inserted by No. 45 of 2016 s. 15.]

Sentence Administration Act 2003

Schedule 3 Reports and re-socialisation programmes for certain prisoners

Division 2 Former sentence types

Division 2 — Former sentence types

[Heading inserted by No. 45 of 2016 s. 15.]

<u>Item No.</u>	<u>Description of prisoner</u>	<u>First report due</u>	<u>Subsequent reports due</u>
<u>5.</u>	<u>A person serving a sentence of strict security life imprisonment commuted from a sentence of death under <i>The Criminal Code</i> section 679 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)</u>	<u>20 years after the sentence was commuted</u>	<u>Every 3 years after that</u>
<u>6.</u>	<u>A person serving a sentence of life imprisonment commuted from a sentence of death under <i>The Criminal Code</i> section 679 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)</u>	<u>10 years after the sentence was commuted</u>	<u>Every 3 years after that</u>
<u>7.</u>	<u>A person serving a sentence of strict security life imprisonment for wilful murder under <i>The Criminal Code</i> section 282(a)(i) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set</u>	<u>20 years after the term began</u>	<u>Every 3 years after that</u>

<u>Item No.</u>	<u>Description of prisoner</u>	<u>First report due</u>	<u>Subsequent reports due</u>
<u>8.</u>	<u>A person serving a sentence of life imprisonment for wilful murder under <i>The Criminal Code</i> section 282(a)(ii) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set</u>	<u>12 years after the day on which the term began or is taken to have begun</u>	<u>Every 3 years after that</u>
<u>9.</u>	<u>A person serving a sentence of life imprisonment for murder under <i>The Criminal Code</i> section 282(b) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set</u>	<u>7 years after the day on which the term began or is taken to have begun</u>	<u>Every 3 years after that</u>
<u>10.</u>	<u>A person serving a sentence of strict security life imprisonment where a minimum period has been set under —</u> <u>(a) the <i>Sentencing Act 1995</i> section 91(1) (as it was immediately before the commencement of the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 19); or</u>	<u>At the end of the minimum period</u>	<u>Every 3 years after that</u>

Sentence Administration Act 2003

Schedule 3 Reports and re-socialisation programmes for certain prisoners

Division 2 Former sentence types

<u>Item No.</u>	<u>Description of prisoner</u>	<u>First report due</u>	<u>Subsequent reports due</u>
	<u>(b) the Offenders Community Corrections Act 1963 section 40D (repealed by the Sentencing (Consequential Provisions) Act 1995 section 77)</u>		
<u>11.</u>	<u>A person serving a sentence of life imprisonment for murder or wilful murder where a minimum period has been set under —</u> <u>(a) the Sentencing Act 1995 section 90(1) or (2) (as it was immediately before the commencement of the Criminal Law Amendment (Homicide) Act 2008 section 19); or</u> <u>(b) the Offenders Community Corrections Act 1963 section 40D (repealed by the Sentencing (Consequential Provisions) Act 1995 section 77)</u>	<u>At the end of the minimum period</u>	<u>Every 3 years after that</u>
<u>12.</u>	<u>A person serving a sentence of life imprisonment for an offence other than murder imposed before the commencement of the Acts Amendment (Imprisonment and Parole) Act 1987 section 6</u>	<u>5 years after the day on which the term began or is taken to have begun</u>	<u>Every 3 years after that</u>

<u>Item No.</u>	<u>Description of prisoner</u>	<u>First report due</u>	<u>Subsequent reports due</u>
<u>13.</u>	<u>A person serving a sentence of life imprisonment for an offence other than murder imposed on or after the commencement of the <i>Acts Amendment (Imprisonment and Parole) Act 1987</i> section 6</u>	<u>7 years after the day on which the term began or is taken to have begun</u>	<u>Every 3 years after that</u>
<u>14.</u>	<u>A person subject to a direction or sentence under <i>The Criminal Code</i> section 661 or 662 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)</u>	<u>For section 661 — 2 years after the day on which the detention began</u> <u>For section 662 — one year after the day on which the detention began</u>	<u>Every year after that</u>
<u>15.</u>	<u>A person in, or regarded as being in, strict or safe custody by virtue of an order under <i>The Criminal Code</i> section 282 (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10)</u>	<u>One year after the day on which the detention began</u>	<u>Every year after that</u>

[Division 2 inserted by No. 45 of 2016 s. 15.]

Notes

¹ This is a compilation of the *Sentence Administration Act 2003* and includes the amendments made by the other written laws referred to in the following table ^{1M, 1a, 5}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Sentence Administration Act 2003</i>	49 of 2003	9 Jul 2003	s. 1 and 2: 9 Jul 2003; Act other than s. 1 and 2: 31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833)
<i>Criminal Code Amendment Act 2004 s. 5</i>	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Sentencing Legislation Amendment Act 2004 Pt. 2 Div. 2</i>	27 of 2004	14 Oct 2004	31 May 2006 (see s. 2 and <i>Gazette</i> 30 May 2006 p. 1965)
<i>Workers' Compensation Reform Act 2004 s. 174</i>	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Parole and Sentencing Legislation Amendment Act 2006 Pt. 2⁶</i>	41 of 2006	22 Sep 2006	28 Jan 2007 (see s. 2 and <i>Gazette</i> 29 Dec 2006 p. 5867)
<i>Prisons and Sentencing Legislation Amendment Act 2006 Pt. 3</i>	65 of 2006	8 Dec 2006	4 Apr 2007 (see s. 2 and <i>Gazette</i> 3 Apr 2007 p. 1491)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 6 and Sch. 1 cl. 155</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 1: The <i>Sentence Administration Act 2003</i> as at 20 Jul 2007 (includes amendments listed above)			
<i>Fines Legislation Amendment Act 2008 Pt. 4</i>	3 of 2008	12 Mar 2008	28 Mar 2008 (see s. 2(c) and <i>Gazette</i> 27 Mar 2008 p. 899)
<i>Criminal Law Amendment (Homicide) Act 2008 s. 39</i>	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
<i>Public Sector Reform Act 2010 s. 89</i>	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
Reprint 2: The <i>Sentence Administration Act 2003</i> as at 1 Apr 2011 (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment Act 2014</i> Pt. 3	6 of 2014	22 Apr 2014	23 Apr 2014 (see s. 2(b))
<i>Dangerous Sexual Offenders Legislation Amendment Act 2016</i> Pt. 6	17 of 2016	11 Jul 2016	10 Sep 2016 (see s. 2(b) and <i>Gazette</i> 9 Sep 2016 p. 3871)
Sentencing Legislation Amendment Act 2016 Pt. 2 Div. 1	45 of 2016	7 Dec 2016	8 Dec 2016 (see s. 2(b))

^{1M} Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 20 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

^{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 this 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>Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016</i> Pt. 3-Div. 7 ⁷	49 of 2016	29 Nov 2016	To be proclaimed 1 Jul 2017 (see s. 2(b)) and <i>Gazette</i> 7 Feb 2017 p. 1157
Sentencing Legislation Amendment Act 2016 Pt. 3 Div. 2 ⁸	45 of 2016	7 Dec 2016	1 Jul 2017 (see s. 2(c) and <i>Gazette</i> 7 Feb 2017 p. 1159)

² The *Sentencing Legislation Amendment and Repeal Act 2003* Pt. 2 Div. 4 commenced 31 Aug 2003 (see *Gazette* 29 Aug 2003 p. 3833).

³ Repealed by the *Sentencing Legislation Amendment and Repeal Act 2003*.

⁴ Section 60 of the *Censorship Act 1996*, which is now known as the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*, was deleted by

the *Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010* s. 9.

- ⁵ The *Sentencing Legislation Amendment and Repeal Act 2003* Pt. 6 requires a review of certain provisions. It was deleted by the *Parole and Sentencing Legislation Amendment Act 2006* (No. 41 of 2006) s. 94 (commenced on 28 Jan 2007, see s. 2 and *Gazette* 29 Dec 2006 p. 5867).
- ⁶ The *Parole and Sentencing Legislation Amendment Act 2006* Pt. 7 reads as follows:

Part 7 — Transitional provisions

98. Arrangements for CEO parole orders

- (1) In this section —
amended provisions means the *Sentence Administration Act 2003* Part 3 Divisions 4 and 7 to 10 as amended by this Act;
commencement means the coming into operation of section 20;
former provisions means the *Sentence Administration Act 2003* Part 3 Division 4 as enacted before being amended by this Act;
prescribed period means the period ending 2 months after the day of the commencement,
and other terms used have the same meanings as they have in the amended provisions.
- (2) If immediately before the commencement a person is subject to a parole order made by the CEO under the former provisions, then on and after the commencement the amended provisions apply to and in respect of that person and that parole order as if the parole order had been made by the Board.
- (3) Despite anything in the amended provisions, during the prescribed period the CEO may exercise —
- (a) the power conferred on the Board by section 23 of the amended provisions; and
 - (b) the powers conferred on the Board by the amended provisions in relation to a parole order made under section 23 of the former provisions or section 23 of the amended provisions.
- (4) A power exercised under subsection (3) is to be regarded as having been exercised by the Board.

99. Arrangements for RROs

- (1) In this section —

amended provisions means the *Sentence Administration Act 2003* Part 4 as amended by this Act;

commencement means the coming into operation of section 41;

former provisions means the *Sentence Administration Act 2003* Part 4 as enacted before being amended by this Act,

and other terms used have the same meanings as they have in the amended provisions.

- (2) If immediately before the commencement a person is subject to an RRO made under the former provisions, then on and after the commencement the former provisions continue to apply to and in respect of that person and that order.
- (3) Despite section 50 of the amended provisions, a prisoner serving a parole term imposed before the commencement may apply under the amended provisions to be released under an RRO.
- (4) An application mentioned in subsection (3) is to be dealt with in accordance with the amended provisions but, if the RRO is made —
 - (a) sections 54(3)(b) and 60 of the former provisions apply in respect of it and the making of it; and
 - (b) section 54(3)(b) of the amended provisions does not apply in respect of it.

100. Arrangements for members of existing Parole Board

- (1) In this section —

commencement means the coming into operation of section 57;

Parole Board means the Board as established under section 103 as enacted before the commencement;

Prisoners Review Board means the Board to be established under section 103 as it is set out in section 57;

section 103 means the *Sentence Administration Act 2003* section 103.
- (2) The person holding office as the judicial member of the Parole Board immediately before the commencement is to hold office as the chairperson of the Prisoners Review Board for the remainder of the period for which the person was appointed as the judicial member.
- (3) Immediately before the commencement the office of any person, other than the judicial member, who is then a member of, acting member of, or deputy of a member of, the Parole Board becomes vacant.

- (4) Subsection (3) does not prevent a person mentioned in that subsection from being nominated, being appointed, or holding office, as a member of the Prisoners Review Board.

⁷ On the date as at which this compilation was prepared, the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* Pt. 3 Div. 7 had not come into operation. It reads as follows:

Part 3 — Consequential amendments to other Acts

Division 7 — *Sentence Administration Act 2003* amended

106. Act amended

This Division amends the *Sentence Administration Act 2003*.

107. Section 4 amended

In section 4(2) delete the definition of *victim* and insert:

victim of an offender or prisoner has the meaning given in section 5D;

108. Section 5A amended

In section 5A(d) delete “an offence for which the prisoner is in custody if the prisoner” and insert:

the prisoner if the prisoner

109. Section 5C amended

In section 5C(1) delete “offence for which a prisoner” and insert:

offender who

110. Section 5D inserted

At the end of Part 2 Division 1 insert:

5D. Term used: victim of an offender or prisoner

- (1) In this Act —

victim of an offender or prisoner means —

- (a) a person who has suffered injury, loss or damage as a direct result of an offence committed by the offender or prisoner, whether or not that injury, loss or damage was reasonably foreseeable by the offender or prisoner; or
- (b) where an offence committed by the offender or prisoner resulted in a death, any member of the immediate family of the deceased; or
- (c) a person protected by a family violence restraining order under the *Restraining Orders Act 1997* to which the offender or prisoner is a respondent; or
- (d) a person who can demonstrate, to the satisfaction of the CEO that —
 - (i) the person is the victim of a violent personal offence previously committed by the offender or prisoner; and
 - (ii) the violent personal offence occurred in the context of a family relationship, as defined in the *Restraining Orders Act 1997* section 4, with the offender or prisoner.

violent personal offence means —

- (a) an offence specified in the *Restraining Orders Act 1997* section 63(4AA)(a); or
 - (b) a violent personal offence as defined in the *Restraining Orders Act 1997* section 63A(1A).
- (2) For the purposes of subsection (1) in the definition of **victim** paragraph (c) or (d), it is irrelevant that the family violence restraining order or the previous violent personal offence, as the case requires, is unrelated to the offence referred to in paragraph (a) or (b) of that definition.

111. Section 30 amended

In section 30(b) delete “an offence committed by the prisoner” and insert:

a prisoner

112. Section 97D amended

Delete section 97D(1).

⁸ On the date as at which this compilation was prepared, the *Sentencing Legislation Amendment Act 2016* Pt. 3 Div. 2 had not come into operation. It reads as follows:

**Part 3 — Amendments about parole and
post-sentencing supervision**

Division 2 — *Sentence Administration Act 2003* amended

21. Act amended

This Division amends the *Sentence Administration Act 2003*.

22. Section 4 amended

(1) In section 4(2) insert in alphabetical order:

post-sentence supervision order means a post-sentence
supervision order made under Part 5A;

supervised offender has the meaning given in section 74E(1);

(2) In section 4(3) insert in alphabetical order:

PSSO for post-sentence supervision order;

23. Section 22 amended

In section 22(1)(a) and (b) delete “12” and insert:

6

24. Section 24 deleted

Delete section 24.

25. Part 5A inserted

After section 74 insert:

**Part 5A — Post-sentence supervision of
certain offenders**

74A. Terms used

In this Part —

breach, in relation to a PSSO, means to contravene any obligation or requirement of the order;

cancelled PSSO has the meaning given in section 74K(1);

prisoner means a prisoner who is serving a fixed term for a serious violent offence;

PSSO considerations has the meaning given in section 74B;

PSSO period has the meaning given in section 74E(2);

serious violent offence means —

(a) an offence specified in Schedule 4; or

(b) an offence declared under the *Sentencing Act 1995* section 97A(3) to be a serious violent offence.

74B. PSSO considerations

In this Part a reference to the PSSO considerations is a reference to these considerations —

(a) issues for any victim of a serious violent offence for which the prisoner is in custody, including any matter raised in a victim's submission;

(b) the behaviour of the prisoner when in custody insofar as it may be relevant to determining how the prisoner is likely to behave if released;

(c) whether the prisoner has participated in programmes available to the prisoner when in custody, and if not the reasons for not doing so;

(d) the prisoner's performance when participating in a programme mentioned in paragraph (c);

(e) the behaviour of the prisoner when subject to any PSSO made previously;

(f) the likelihood of the prisoner committing a serious violent offence when subject to a PSSO;

(g) the likelihood of the prisoner complying with the standard obligations and any additional requirements of any PSSO;

(h) any other matter that is or may be relevant to whether the prisoner should be subject to a PSSO after the prisoner's release.

74C. Reports by CEO to Board about prisoners

(1) The CEO must give the Board a written report about every prisoner that addresses the PSSO considerations relating to the prisoner.

(2) The report must be given to the Board no later than 3 months before the end of the prisoner's term.

(3) This section applies whether or not the prisoner is subject to an early release order.

74D. Board may make PSSO

(1) Before the end of a prisoner's term, the Board must consider whether a post-sentence supervision order should be made in respect of the prisoner.

(2) Subsection (1) applies whether or not the prisoner is subject to an early release order.

(3) If the Board, having regard to —

(a) the PSSO considerations relating to the prisoner; and

(b) the report made by the CEO under section 74C; and

(c) any other information about the prisoner brought to its attention,

decides that it is appropriate to make a post-sentence supervision order in respect of the prisoner, the Board must do so.

74E. Nature of PSSO

(1) A PSSO is an order that the person specified in the order (the *supervised offender*) must during the PSSO period comply with —

(a) the standard obligations in section 74F; and

(b) any of the additional requirements in section 74G that are specified in the PSSO.

(2) Subject to section 74K(2), the *PSSO period* is the period of 2 years beginning on —

(a) if the supervised offender is not released on parole — the day on which the offender is released after serving the offender's term; or

(b) if the supervised offender is released on parole — the day after the day on which the offender's term ends.

74F. Standard obligations of PSSO

The standard obligations of a PSSO are that the supervised offender —

(a) must report to a community corrections centre within 72 hours after being released, or as otherwise directed by a CCO; and

(b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change; and

(c) must comply with section 76.

74G. Additional requirements of PSSO

A PSSO may contain any of these additional requirements as the Board thinks fit —

(a) a requirement relating to where the supervised offender must reside;

(b) requirements relating to the protection of any victim of an offence committed by the supervised offender from coming into contact with the offender;

(c) a requirement that the supervised offender must wear any device for monitoring purposes;

(d) a requirement that the supervised offender permit the installation of any device or equipment at the place where the offender resides for monitoring purposes;

(e) a requirement that, if the CEO so directs, the supervised offender —

(i) wear any device for monitoring purposes;

(ii) permit the installation of any device or equipment at the place where the offender resides for monitoring purposes;

(f) a requirement that the supervised offender must not leave Western Australia except with and in accordance with the written permission of the CEO;

(g) requirements to facilitate the supervised offender's rehabilitation;

(h) a requirement that the supervised offender must, in each period of 7 days, do the prescribed number of hours of community corrections activities;

(i) a requirement that the supervised offender must —

(i) seek or engage in gainful employment or in vocational training; or

(ii) engage in gratuitous work for an organisation approved by the CEO;

(j) prescribed requirements.

74H. CEO to ensure person subject to PSSO is supervised

The CEO must ensure that a CCO is assigned to supervise a supervised offender for the duration of the PSSO period.

74I. Amendment of PSSO

- (1) The Board may amend a PSSO at any time before the end of the PSSO period.
- (2) If a PSSO is amended, the amended PSSO applies accordingly.

74J. Cancellation of PSSO

- (1) The Board may cancel a PSSO at any time before the commencement of the PSSO period.
- (2) If a supervised offender, during the PSSO period, commits an offence (in this State or elsewhere) and is sentenced to imprisonment for that offence, the PSSO applicable to the supervised offender is cancelled by operation of this section.

74K. Subsequent PSSO after cancellation for committing offence

- (1) If a PSSO is cancelled under section 74J(2) (the *cancelled PSSO*), the Board may subsequently make another PSSO in respect of the prisoner.
- (2) The PSSO period in the subsequent PSSO is to be set by the Board but —
 - (a) must begin on the day when the prisoner is released; and
 - (b) must not be longer than the remaining PSSO period of the cancelled PSSO.
- (3) Subsection (2) does not apply if the offence by virtue of which the PSSO is cancelled under section 74J(2) is a serious violent offence.

74L. Offence for breach of PSSO

A supervised offender who breaches a PSSO, without reasonable excuse (proof of which is on the offender), commits a crime.

Penalty: imprisonment for 3 years.

Summary conviction penalty: a fine of \$18 000 and imprisonment for 18 months.

26. Section 75 amended

In section 75 in the definition of *community corrections order* delete “RRO” and insert:

RRO, a PSSO

27. Section 77 amended

After section 77(c) insert:

(ca) if the offender is subject to a PSSO, report the matter to the CEO and recommend that the offender be charged with an offence under section 74L; or

28. Section 78 amended

(1) In section 78(1) in the definition of *minimum hours requirement* paragraph (b) delete “order or an RRO —” and insert:

order, an RRO or a PSSO —

(2) In section 78(2)(c) delete “order —” and insert:

order or a PSSO —

(3) In section 78(3) delete “order.” and insert:

order or a PSSO.

29. Section 83 amended

In section 83 in the definition of *community corrections order* delete “RRO” and insert:

RRO, a PSSO

30. Section 94 amended

In section 94(1)(a) delete “RROs” and insert:

RROs, PSSOs

31. Section 107B amended

(1) In section 107B(1) and (2) after “prisoner” insert:

_____ or supervised offender

_____ (2) After section 107B(3)(c) insert:

_____ (ca) to a decision by the Board to make, amend or cancel a
PSSO; and

32. Section 107C amended

_____ In section 107C(2) after “prisoner” insert:

_____ or the supervised offender

33. Section 109 amended

_____ (1) In section 109(1) delete “prisoner is subject to a parole order
(other than a parole order (unsupervised)) or an RRO,” and insert:

_____ person is subject to a parole order (other than a parole order
(unsupervised)), an RRO or a PSSO,

_____ (2) In section 109(2) delete “prisoner” and insert:

_____ person

_____ Note: The heading to amended section 109 is to read:
Board may require person to appear before it

34. Section 111 amended

_____ In section 111(2) delete “RRO” and insert:

_____ RRO, a PSSO

35. Section 112 amended

_____ In section 112:

_____ (a) after paragraph (g) insert:

(ga) the number of prisoners who were the subject of a report under section 74C during the previous financial year;

(gb) the number of persons released subject to PSSOs during the previous financial year;

(b) in paragraph (j) after “orders” (1st occurrence) insert:

and PSSOs

36. Section 114 amended

In section 114(2) after “prisoner” (each occurrence) insert:

or supervised offender

37. Section 115A amended

After section 115A(2)(d) insert:

(da) by the Board to make a PSSO; or

38. Part 11 heading amended

In the heading to Part 11 (as inserted by section 14 of this Act)

delete “**for Sentencing Legislation Amendment Act 2016 Part 2**”.

39. Part 11 Division 1 heading inserted

After the heading to Part 11 (as inserted by section 14 of this Act) insert:

Division 1 — Provisions for the *Sentencing Legislation Amendment Act 2016 Part 2*

40. Section 123 amended

In section 123 (as inserted by section 14 of this Act) delete “Part” and insert:

Division

41. Section 127 amended

In section 127 (as inserted by section 14 of this Act) delete “Part” and insert:

Division

42. Section 128 amended

In section 128 (as inserted by section 14 of this Act) delete “Part” and insert:

Division

43. Part 11 Division 2 inserted

After section 128 (as inserted by section 14 of this Act) insert:

Division 2 — Provisions for the *Sentencing Legislation Amendment Act 2016* Part 3 Division 2

129. Continued application of former Part 3 Division 4

(1) In this section —

commencement day means the day on which the *Sentencing Legislation Amendment Act 2016* section 23 comes into operation;

former Division means Part 3 Division 4 as in force immediately before commencement day.

(2) If the former Division applied to a prisoner immediately before commencement day then on and after that day the former Division continues to apply to and in relation to the prisoner as if the *Sentencing Legislation Amendment Act 2016* section 23 had not come into operation.

44. Schedule 4 inserted

After Schedule 3 (as inserted by section 15 of this Act) insert:

Schedule 4 — Serious violent offences

[s. 74A]

<u>Enactment</u>	<u>Description of offence</u>
<u>1.</u>	
<u><i>The Criminal Code</i></u>	
<u>s. 279</u>	<u>Murder</u>
<u>s. 280</u>	<u>Manslaughter</u>
<u>s. 281</u>	<u>Unlawful assault causing death</u>
<u>s. 283</u>	<u>Attempt to unlawfully kill</u>
<u>s. 294</u>	<u>Act intended to cause grievous bodily harm or prevent arrest</u>
<u>s. 297</u>	<u>Grievous bodily harm</u>
<u>s. 320</u>	<u>Sexual offences against child under 13</u>
<u>s. 321</u>	<u>Sexual offences against child of or over 13 and under 16</u>
<u>s. 324</u>	<u>Aggravated indecent assault</u>
<u>s. 325</u>	<u>Sexual penetration without consent</u>
<u>s. 326</u>	<u>Aggravated sexual penetration without consent</u>
<u>s. 327</u>	<u>Sexual coercion</u>
<u>s. 328</u>	<u>Aggravated sexual coercion</u>
<u>s. 330</u>	<u>Sexual offences against incapable person</u>

<u>Enactment</u>	<u>Description of offence</u>
<u>s. 392</u>	<u>Robbery, if the offence is committed in circumstances described in s. 392(c) or in circumstances of aggravation</u>
<u>s. 444(1)</u>	<u>Criminal damage, if the offence is committed in circumstances described in s. 444(1)(a)</u>
<u>s. 445A</u>	<u>Breach of s. 444A duty</u>
<u>2.</u> <u><i>Bush Fires Act 1954</i></u>	
<u>s. 32(2)</u>	<u>Offences of lighting or attempting to light fire likely to injure</u>
<u>3.</u> <u><i>Road Traffic Act 1974</i></u>	
<u>s. 59</u>	<u>Dangerous driving causing death or grievous bodily harm</u>