

Western Australia

**Parole and Sentencing Legislation Amendment
Act 2006**

As at 22 Sep 2006

No. 41 of 2006

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Parole and Sentencing Legislation Amendment Act 2006

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Western Australia

Parole and Sentencing Legislation Amendment Act 2006

No. 41 of 2006

An Act to amend the *Sentence Administration Act 2003* as to parole and other matters and to make related and other amendments to —

- **the *Sentencing Act 1995*;**
 - **the *Criminal Law (Mentally Impaired Accused) Act 1996*;**
 - **the *Young Offenders Act 1994*; and**
 - **various other Acts,**
- and for related purposes.**

[Assented to 22 September 2006]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary matters

1. Short title

This is the *Parole and Sentencing Legislation Amendment Act 2006*.

2. Commencement

(1) Subject to this section, this Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

(3) Section 71 comes into operation on —

(a) the day on which the *Criminal Law Amendment (Criminal Property) Act 2004* Part 3 comes into operation; or

(b) the day this Act receives the Royal Assent,

whichever is the later.

(4) Sections 74 and 75 come into operation on —

(a) the day on which the *Sentencing Legislation Amendment Act 2004* section 5 comes into operation; or

(b) the day this Act receives the Royal Assent,

whichever is the later.

Part 2 — *Sentence Administration Act 2003* amended

3. The Act amended in this Part

The amendments in this Part are to the *Sentence Administration Act 2003**.

[* *Act No. 49 of 2003.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2004 p. 407.]*

4. Section 4 amended

Section 4(2) is amended as follows:

- (a) by inserting after “In this Act” —
“ , unless the contrary intention appears ”;
- (b) by deleting the definitions of “Board”, “CEO parole order”, “CEO parole order (supervised)”, “CEO parole order (unsupervised)” and “departmental officer”;
- (c) by inserting in the appropriate alphabetical positions —

“

“Board” means the Prisoners Review Board;

“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;
- (b) a person sentenced to a life term;
- (c) a person sentenced to indefinite imprisonment; or
- (d) a person in, or regarded as being in, strict or safe custody by virtue of an order made under section 282 of *The Criminal Code*;

“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;

“sentence” includes order;

“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);

”.

5. Part 2 heading amended

The heading to Part 2 is amended by deleting “about people in custody”.

6. Sections 5A, 5B and 5C inserted

After section 5 the following sections are inserted in Part 2 Division 1 —

“

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.

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.

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.

”.

7. Section 7 amended

Section 7(4) is amended by deleting “subsection (1).” and inserting instead —

“ subsection (2). ”.

8. Part 2 Division 3 heading amended

The heading to Part 2 Division 3 is amended by deleting “certain people in custody” and inserting instead —

“ **prisoners** ”.

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9. Section 11 amended

- (1) Section 11(2) is amended by deleting “ordered to be detained in strict custody” and inserting instead —

“

in, or is regarded as being in, strict custody by virtue of an order made

”.

- (2) After section 11(2) the following subsection is inserted —

“

- (3) In this section —

“**Minister**” means the Minister administering section 282 of *The Criminal Code*.

”.

10. Section 11A inserted

After section 11 the following section is inserted —

“

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;
- (b) must specify the prisoner concerned;
- (c) must specify the matters to be dealt with in a prisoner management report;

- (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;
 - (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.

”.

11. Section 12 replaced by sections 12 and 12A

Section 12 is repealed and the following sections are inserted instead —

“

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;
 - (b) whenever it thinks there are special circumstances which justify doing so; and
 - (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.
- (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 (c),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 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 section 282 of *The Criminal Code*.

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

- (1) In this section —
“**prisoner**” means a person serving a sentence described in column 1 of the Table to this section.
- (2) The Board must give the Minister a written report about a prisoner at the times stated in columns 2 and 3 of the Table to this section, whether or not it has given the Minister a report about the prisoner under section 12.
- (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

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- (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 is due	When subsequent reports are due
Life imprisonment for an offence other than murder or wilful 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	At the end of the minimum period set under section 90(1) of the <i>Sentencing Act 1995</i>	Every 3 years after that
Life imprisonment for wilful murder	At the end of the minimum period set under section 90(2) of the <i>Sentencing Act 1995</i>	Every 3 years after that
Strict security life imprisonment, other than where, under section 91(3) of the <i>Sentencing Act 1995</i> , the prisoner has been ordered to be imprisoned for the whole of his or her life	At the end of the minimum period set under section 91(1) of the <i>Sentencing Act 1995</i>	Every 3 years after that
Indefinite imprisonment	One year after the day on which the sentence began	Every 3 years after that

12. Part 2 Division 4 replaced

Part 2 Division 4 is repealed and the following Division is inserted instead —

“

Division 4 — Programmes for certain prisoners

13. Board may recommend re-socialisation programmes for prisoners serving life terms or indefinite imprisonment

- (1) In this section —
“**prisoner**” means a person serving a sentence described in column 1 of the Table to section 12A.
- (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

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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.

14. Board may approve 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 prisoner serving 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.

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- (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.

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.

”.

13. Section 15 replaced

Section 15 is repealed and the following section is inserted instead —

“

15. How to interpret and apply this Part

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*.

”.

14. Section 16 repealed

Section 16 is repealed.

15. Section 17 amended

- (1) Section 17(1) is amended by deleting “on the parole” and inserting instead —

“ that deals with the release ”.

- (2) Section 17(2) is amended by deleting “parole.” and inserting instead —

“ parole under section 93(1) of the *Sentencing Act 1995*. ”.

- (3) After section 17(2) the following subsection is inserted —

“

- (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.

”.

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16. Section 18 repealed

Section 18 is repealed.

17. Section 20 amended

Section 20(2)(a) is amended by deleting “parole” and inserting instead —

“ release ”.

18. Section 21 repealed

Section 21 is repealed.

19. Section 22 amended

Section 22(1)(a) and (b) are amended by inserting after “prescribed term” —

“

or a term in respect of which a parole eligibility order has been made

”.

20. Section 23 amended

(1) After section 23(2) the following subsection is inserted —

“

(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;
- (b) any report made by the CEO under section 17; and
- (c) any other information about the prisoner brought to its attention.

”.

- (2) Section 23(3) is amended by deleting “The CEO — ” and inserting instead —
“ Subject to section 10, the Board — ”.
- (3) Section 23(4) is amended by deleting “CEO,” and inserting instead —
“ Board, ”.
- (4) After section 23(5) the following subsections are inserted —
“
(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.
”.
- (5) Section 23(8) is repealed.
- (6) Section 23(9) is amended as follows:
(a) by deleting “CEO”;
(b) in paragraph (a) by deleting “and (3)”.
- (7) Section 23(10) is amended by deleting “CEO” in both places where it occurs and inserting instead —
“ Board ”.

Note: The heading to section 23 will be altered by deleting “CEO” and inserting instead “Board”.

21. Section 24 repealed

Section 24 is repealed.

22. Sections 25, 26 and 27 amended

Section 25(1)(b), 26(1)(b) and 27(1) are amended by deleting “to the Minister under section 12 or 18.” and inserting instead —

“ under section 12 or 12A. ”.

23. Part 3 Division 5A inserted

After section 27 the following Division is inserted —

“

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

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.

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 section 282 of *The Criminal Code* 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.
- (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.

”.

24. Section 28 amended

- (1) Section 28(1)(b) is amended by deleting “supervised” and inserting instead —

“ parole ”.

- (2) Section 28(2), (3) and (4) are repealed.

25. Section 30 amended

Section 30 is amended by deleting “, the CEO”.

26. Section 31 amended

- (1) Section 31(1) is amended as follows:

- (a) by deleting “The CEO” and inserting instead —

“

Unless the parole order is a parole order
(unsupervised), the CEO

”;

- (b) by deleting “supervised” and inserting instead —

“ parole ”.

- (2) Section 31(2) is amended by deleting from “the CEO may —” to the end of the subsection and inserting instead —

“

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

”.

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- (3) Section 31(3) is amended as follows:
 - (a) by deleting “subsection (2)(d),” and inserting instead —
“ subsection (2), ”;
 - (b) by deleting “supervised period” and inserting instead —
“ parole period ”.
- (4) Section 31(5) is amended by deleting “supervised” and inserting instead —
“ parole ”.

27. Section 33 amended

- (1) Section 33(2) is repealed.
- (2) Section 33(3) is amended by deleting “In any other case, the” and inserting instead —
“ The ”.

28. Section 35 amended

- (1) Section 35(1) is amended by deleting “, the CEO”.
- (2) Section 35(2) is repealed.
- (3) Section 35(3) is amended by deleting “In any other case, the” and inserting instead —
“ The ”.
- (4) Section 35(4) is amended by deleting “, the CEO”.

29. Section 36 amended

Section 36 is amended as follows:

- (a) after paragraph (a) by inserting —
“ or ”;
- (b) by deleting paragraph (b) and “or” after it.

30. Section 37 amended

- (1) Section 37(1) and (2) are repealed and the following subsection is inserted instead —

“

- (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) Section 37(4) is repealed.

31. Section 38 amended

- (1) Section 38(1) is amended as follows:

- (a) by deleting “supervised” and inserting instead —
“ parole ”;
- (b) by deleting “by the CEO,”.

- (2) Section 38(2) is amended by deleting “supervised” and inserting instead —

“ parole ”.

- (3) Section 38(4) is repealed.

Note: The heading to section 38 will be altered by deleting “during supervised period”.

32. Section 39 amended

- (1) Section 39(1) is amended by deleting “supervised” and inserting instead —

“ parole ”.

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- (2) Section 39(2) is repealed and the following subsection is inserted instead —

“

- (2) Subsection (1) does not apply to a parole order (unsupervised).

”.

Note: The heading to section 39 will be altered by deleting “during supervised period”.

33. Section 40 amended

Section 40(2) is repealed.

34. Section 42 repealed

Section 42 is repealed.

35. Section 43 amended

Section 43(2) is repealed.

36. Section 44 amended

- (1) Section 44(1) is amended by deleting “Subject to subsection (2), the” and inserting instead —

“ The ”.

- (2) Section 44(2) and (3) are repealed.

- (3) Section 44(4) is amended as follows:

- (a) by deleting “CEO”;
- (b) by deleting “CEO’s” and inserting instead —
“ Board’s ”.

Note: The heading to section 44 will be altered by deleting “by Board or CEO” and inserting instead “after release”.

37. Section 45 repealed

Section 45 is repealed.

38. Section 47 repealed

Section 47 is repealed.

39. Section 48 amended

- (1) Section 48(1)(a)(i) is amended by deleting “during the supervised period”.
- (2) Section 48(1) is amended by deleting paragraph (e) and “and” after it and inserting instead —

“

- (e) written notice of and reasons for the decision;
- (ea) a summary of the grounds and any submissions in an application for a review made by the prisoner under section 115A; and

”.

40. Section 49 amended

Section 49(3)(b) is amended by deleting “, the supervision period applicable in any case”.

41. Section 50 amended

Section 50 is amended as follows:

- (a) by deleting paragraph (a) and inserting instead —

“

- (a) he or she is not serving a parole term;

”;

- (b) in paragraph (c) by deleting “14(1)” and inserting instead —

“ 27B(1) ”;

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- (c) in paragraph (e) by deleting “(whether under a parole order or not)”.

42. Section 51 amended

Section 51(3) is repealed and the following subsection is inserted instead —

“

- (3) A report by the CEO under subsection (1) must address the release considerations relating to the prisoner.

”.

43. Section 52 amended

- (1) Section 52(2) is repealed and the following subsection is inserted instead —

“

- (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.

”.

- (2) Section 52(3) is amended by deleting “If in the case of a prisoner who is not serving a parole term the Board is not satisfied under subsection (2), the Board may nevertheless make an RRO in respect of the prisoner if satisfied that” and inserting instead —

“ In particular the Board must have regard to whether ”.

- (3) Section 52(4) is repealed.

44. Section 53 repealed

Section 53 is repealed.

45. Section 54 amended

Section 54(3)(b) is deleted and the following paragraph is inserted instead —

“

- (b) ending on the date when under section 95 of the *Sentencing Act 1995*, the prisoner must be released.

”.

46. Section 60 repealed

Section 60 is repealed.

47. Section 62 repealed

Section 62 is repealed.

48. Section 64 repealed

Section 64 is repealed.

49. Section 69 amended

- (1) Section 69(1) is amended by inserting after “and” —

“ , subject to subsection (1b), ”.

- (2) After section 69(1) the following subsections are inserted —

“

- (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.

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- ”.
- (3) Section 69(4) is amended by deleting “14(1)” and inserting instead —
- “ 27B(1) ”.
- (4) After section 69(5) the following subsection is inserted —
- “
- (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).
- ”.

50. Section 70 amended

Section 70(2)(c) is amended by deleting “or cancelled”.

51. Section 71 amended

Section 71(3)(a) is amended by deleting “or the CEO (as the case may be)”.

52. Section 72 amended

- (1) Section 72(1) is amended as follows:
- (a) by deleting “or the CEO” in the first place where it occurs;

- (b) by deleting “or the CEO, as the case may be,”.
- (2) Section 72(2) is repealed and the following subsection is inserted instead —
- “
- (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.

”.

Note: The heading to section 72 will be altered by deleting “or CEO”.

53. Section 73 amended

Section 73(3) is repealed.

54. Section 74 amended

Section 74(b) is amended by deleting “or the CEO”.

55. Section 97 replaced

Section 97 is repealed and the following section is inserted instead —

“

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.

”.

56. Part 9 heading replaced

The heading to Part 9 is deleted and the following heading is inserted instead —

“

Part 9 — Prisoners Review Board

”.

57. Sections 102, 103 and 104 replaced by sections 102, 103, 104 and 104A

Sections 102 to 104 are repealed and the following sections are inserted instead —

“

102. Prisoners Review 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.

103. Membership

- (1) The members of the Board are —

- (a) a chairperson, to be nominated by the Minister and appointed by the Governor;
 - (b) at least 2 deputy chairpersons, to be nominated by the Minister and appointed by the Governor;
 - (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;
 - (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
 - (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.

104. Training

- (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.

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*.

”.

58. Section 106 amended

After section 106(2) the following subsection is inserted —

“

- (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.

”.

59. Sections 107A, 107B and 107C inserted

After section 107 the following sections are inserted —

“

107A. Board may call on expert or professional assistance

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.

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;
 - (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;
 - (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.

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.

”.

60. Section 108 amended

Section 108(1) is amended in paragraph (a) of the definition of “authorised person” by deleting “secretary” and inserting instead —

“ registrar ”.

61. Section 109 amended

Section 109(1) is amended by deleting “CEO parole order” and inserting instead —

“ parole order (unsupervised) ”.

62. Section 110 amended

Section 110(2)(b) is amended as follows:

- (a) by deleting “judicial member” and inserting instead —
“ chairperson ”;
- (b) by deleting “Judge” and inserting instead —
“ judge ”.

63. Section 111 amended

Section 111(1)(a) and (2) are amended by deleting “secretary” and inserting instead —

“ registrar ”.

64. Section 112 replaced

Section 112 is repealed and the following section is inserted instead —

“

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;
- (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.

”.

65. Section 115A inserted

After section 115 the following section is inserted —

“

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;

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- (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;
- (c) by the Board to suspend or cancel an early release order;
- (d) by the CEO to suspend an early release order;
- (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;
 - (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;
 - (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;
 - (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.

”.

66. Section 119 amended

Section 119(2)(a) is amended by deleting “or the secretary” and inserting instead —

“ , the registrar or a member of the staff ”.

67. Section 122 inserted

After section 121 the following section is inserted —

“

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.

”.

68. Schedule 1 replaced

Schedule 1 is repealed and the following Schedule is inserted instead —

“

Schedule 1 — Provisions applying to the Prisoners Review Board

[s. 105]

1. Meaning of “member”

In this Schedule —

“**member**” means a member of the Board.

2. Tenure 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.

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.

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;
 - (b) is incapable of performing the functions of a member;
 - (c) has neglected without a reasonable cause to perform the functions of a member;
 - (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.
- (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.

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);
 - (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.

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 Minister for Public Sector Management.
- (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.

7. Leave of absence

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

”.

69. Schedule 2 amended

Schedule 2 is amended after paragraph (i) by deleting the full stop and inserting a comma and —

“

or an offence under —

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

”.

Part 3 — *Sentencing Act 1995* amended

70. The Act amended in this Part

The amendments in this Part are to the *Sentencing Act 1995**.

[* *Reprint 4 as at 12 August 2005.*

For subsequent amendments see Act No. 75 of 2004.]

71. Sections 8 and 16 amended

- (1) Section 8(6) is amended in paragraph (b) of the definition of “criminal property confiscation” by deleting “Crown” and inserting instead —

“ State ”.

- (2) Section 16(1)(f) is amended by deleting “Crown” and inserting instead —

“ State ”.

72. Section 33A amended

- (1) After section 33A(2) the following subsection is inserted —

“

- (2a) This section does not apply if a court is sentencing an offender for one or more offences that were committed —

(a) while the offender was subject to —

(i) a parole order, home detention order, or work release order, made under the *Sentence Administration Act 1995*; or

(ii) a parole order, or re-entry release order, made under the *Sentence Administration Act 2003*,

for another offence; or

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- (b) during the suspension period of a suspended term of imprisonment imposed for another offence.

”.

- (2) Section 33A(4) is amended after “sentencing” by inserting —
“ the ”.

73. Section 33O amended

Section 33O(5) is amended by deleting the full stop after paragraph (a) and inserting a semicolon instead.

74. Section 84E replaced and consequential amendment to *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004*

- (1) Section 84E is repealed and the following section is inserted instead —

“

84E. Alleging re-offending in court

- (1) If —
 - (a) a person (the “**offender**”) has been convicted and dealt with (in this State or elsewhere) for an offence the statutory penalty for which is or includes imprisonment; and
 - (b) that offence was committed during the suspension period of CSI imposed on the offender in relation to another offence,

a written notice alleging those matters may be lodged in a court in accordance with this section.

- (2) The notice may be lodged at any time up until 2 years after the last day of the suspension period.

- (3) The notice may be signed by the CEO, a police officer, or a person referred to in section 80(2)(a) to (e) of the *Criminal Procedure Act 2004*.
- (4) The notice must be in a prescribed form and be signed in the presence of a JP or a prescribed court officer (as defined in section 3 of the *Criminal Procedure Act 2004*) who may issue a summons to the offender.
- (5) If the contents of the notice are verified on oath by the person signing it, a magistrate, on the application of that person, may issue an arrest warrant for the offender.
- (6) Subject to section 84P(3), the notice must be lodged with, and the summons must direct the offender to appear before, or the warrant must direct that the offender be brought before the court that imposed the CSI.
- (7) Sections 31 and 32 of the *Criminal Procedure Act 2004*, with any necessary changes, apply respectively to and in respect of a warrant and summons issued under this section.
- (8) If an offender does not obey such a summons, the court concerned may issue a warrant to have the offender arrested and brought before it.
- (9) If an offender is arrested under a warrant issued under this section, the offender must be given a copy of the notice as soon as practicable after being arrested.
- (10) An offender who appears before a court as a result of a summons or warrant issued under this section must be dealt with by the court under section 84F.

”.

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- (2) *The Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004** section 59 is repealed.

[* Act No. 84 of 2004.]

75. Section 84P amended and consequential amendment to Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004

- (1) Section 84P(3) is amended as follows:
- (a) by deleting “complaint” and inserting instead —
“ notice ”;
 - (b) by deleting “filed” and inserting instead —
“ lodged ”;
 - (c) by deleting “under section 84E(4)” and inserting instead —
“ issued under section 84E ”.

- (2) *The Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004** section 65 is amended in the Table by deleting the row relating to “s. 84P(3)”.

[* Act No. 84 of 2004.]

76. Section 89 amended

- (1) Section 89(2) is repealed and the following subsection is inserted instead —

“

- (2) A parole eligibility order must not be made if the fixed term, or the aggregate of the fixed terms, imposed by the court is less than 12 months, except where the offender, at the date of the sentence, is serving or has yet to serve —
- (a) a parole term imposed previously; or

- (b) a fixed term or fixed terms imposed previously —
 - (i) which, or the aggregate of which, is less than 12 months; and
 - (ii) which, with the term or terms imposed by the court, would result in an aggregate of 12 months or more.

”.

(2) After section 89(5) the following subsections are inserted —

“

(5a) If, in a case to which subsection (2)(b) applies, a court decides that an offender is to be eligible for parole, it is to make a single parole eligibility order in respect of the fixed term or fixed terms it imposes and the term or terms imposed previously.

(5b) If, in any other case —

- (a) a court decides that an offender is to be eligible for parole; and
- (b) at the date of the sentence the offender is serving or has yet to serve a fixed term or fixed terms imposed previously which, or the aggregate of which, is less than 12 months,

the court may make a single parole eligibility order in respect of a fixed term or fixed terms that it imposes and the term or terms imposed previously.

”.

77. Section 94 amended

The Table to section 94 is amended as follows:

- (a) in column 4 of the first example by deleting “Non-parole period = 3 years.” and inserting instead —
“ Non-parole period = 4 years. ”;

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- (b) in column 4 of the second example by deleting “Non-parole period = 5 years.” and inserting instead —
“ Non-parole period = 8 years. ”;
- (c) in column 4 of the third example by deleting “Non-parole period on term 2 = 3 years.” and inserting instead —
“ Non-parole period on term 2 = 4 years. ”;
- (d) in column 4 of the third example by deleting “serve 4 years.” and inserting instead —
“ serve 5 years. ”.

78. Section 150 inserted

After section 149 the following section is inserted —

“

150. 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.

”.

79. References to “Crown” amended

Each provision in the Table to this section is amended by deleting “Crown” in each place where it occurs and inserting instead —

“ State ”.

Table

s. 8(3)	s. 51(8)	s. 52(5)
s. 33(2)	s. 52(2) (3 times)	s. 60(7)
s. 51(1) (2 times)	s. 52(4)	s. 139

**Part 4 — *Criminal Law (Mentally Impaired Accused)*
Act 1996 amended**

80. The Act amended in this Part

The amendments in this Part are to the *Criminal Law (Mentally Impaired Accused) Act 1996**.

[* *Reprint 2 as at 12 August 2005.*]

81. Section 33 amended

(1) Section 33(5) is amended as follows:

- (a) by deleting the full stop after paragraph (e) and inserting a semicolon instead;
- (b) by inserting after paragraph (e) the following paragraph —

“

- (f) any statement received from a victim of the alleged offence in respect of which the accused is in custody.

”.

(2) After section 33(5) the following subsection is inserted —

“

(6) In this section —

“**victim**” of an alleged offence, means —

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

”.

82. Section 42 replaced by sections 42 and 42A

Section 42 is repealed and the following sections are inserted instead —

“

42. Members

- (1) The members of the Board are —
 - (a) the person who is the chairperson of the Prisoners Review Board appointed under section 103(1)(a) of the *Sentence Administration Act 2003*;
 - (b) the persons who are community members of the Prisoners Review Board appointed under section 103(1)(c) of the *Sentence Administration Act 2003*;
 - (c) a psychiatrist appointed by the Governor; and
 - (d) a psychologist appointed by the Governor.
- (2) The Governor may appoint a psychiatrist to be the deputy of the psychiatrist appointed to the Board and a psychologist to be the deputy of the psychologist.
- (3) The person referred to in subsection (1)(a) is the chairperson of the Board.
- (4) Those members of the Board who are also members of the Prisoners Review Board are members of the Board only while they are members of the Prisoners Review Board.
- (5) Schedule 1 to the *Sentence Administration Act 2003* (other than clause 5) applies in respect of the psychiatrist and the psychologist appointed as members of the Board as if they were members of the Prisoners Review Board appointed by the Governor.

42A. Meetings

At a meeting of the Board —

- (a) the chairperson and 2 other members of the Board constitute a quorum; and
- (b) clause 5 (other than subclause (2)) of Schedule 1 to the *Sentence Administration Act 2003* otherwise applies.

”.

83. Section 43 replaced

Section 43 is repealed and the following section is inserted instead —

“

43. Registrar and staff

- (1) The registrar of the Prisoners Review Board appointed under section 104A of the *Sentence Administration Act 2003* is also the registrar of the Board.
- (2) Any other Prisoners Review Board staff referred to in section 104A of the *Sentence Administration Act 2003* are also the staff of the Board.

”.

84. Section 46 amended

- (1) Section 46(1)(c) is amended by deleting “judicial member” and inserting instead —

“ chairperson ”.

- (2) Section 46(1)(d) is amended by deleting “judicial member” and inserting instead —

“ chairperson ”.

- (3) Section 46(3)(b) is amended by deleting “judicial member” and inserting instead —
“ chairperson ”.

Part 5 — Young Offenders Act 1994 amended

85. The Act amended in this Part

The amendments in this Part are to the *Young Offenders Act 1994**.

[* *Reprint 3 as at 15 July 2005.*

For subsequent amendments see Act No. 34 of 2004.]

86. Section 15A amended

Section 15A(5)(b)(i) is amended by deleting “Parole Board” and inserting instead —

“ Prisoners Review Board ”.

87. Section 133 amended

(1) After section 133(1)(b) the following paragraph is inserted —

“

- (ba) the Board has considered any statement received from a victim of the offence in respect of which the detainee is in custody;

”.

(2) After section 133(2) the following subsection is inserted —

“

(3) In this section —

“**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 results in a death, any member of the immediate family of the deceased.

”.

88. Section 152 amended

Section 152(1) is amended as follows:

- (a) by deleting “5” and inserting instead —
“ 6 ”;
- (b) in paragraph (b) by inserting after “Governor” —
“ under subsection (3)(a) and (b) ”;
- (c) by inserting after paragraph (b) —
“
 - (ba) one person with an understanding of
victims’ interests and concerns
appointed by the Governor;”.

Part 6 — Other Acts amended

89. Constitution Acts Amendment Act 1899 amended

- (1) The amendments in this section are to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 13 as at 18 March 2005.*

For subsequent amendments see Acts Nos. 20, 34, 53, 59, 70 & 75 of 2004, 1, 2, 24 and 38 of 2005.]

- (2) Schedule V Part 3 is amended as follows:

(a) by deleting “The Parole Board established under the *Sentence Administration Act 2003*.”;

(b) by inserting in the appropriate alphabetical position —

“

The Prisoners Review Board established under the *Sentence Administration Act 2003*.

”.

90. Freedom of Information Act 1992 amended

- (1) The amendments in this section are to the *Freedom of Information Act 1992**.

[* *Reprint 4 as at 10 September 2004.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004 p. 179.]

- (2) Schedule 2 is amended by deleting “The Parole Board.” and inserting instead —

“ The Prisoners Review Board. ”.

91. Juries Act 1957 amended

- (1) The amendments in this section are to the *Juries Act 1957**.

[* *Reprint 4 as at 2 September 2005.*

For subsequent amendments see Act No. 24 of 2005.]

(2) The Second Schedule Part I clause 2 is amended as follows:

(a) by deleting paragraph (l) and inserting instead —

“

(l) member of the Mentally Impaired Accused Review Board under the *Criminal Law (Mentally Impaired Accused) Act 1996*;

”;

(b) in paragraph (m) by deleting “Parole Board” and inserting instead —

“ Prisoners Review Board ”.

92. Parole Orders (Transfer) Act 1984 amended

(1) The amendments in this section are to the *Parole Orders (Transfer) Act 1984**.

[* Reprinted as at 9 August 2002.

For subsequent amendments see Western Australian Legislation Information Tables for 2004 p. 326]

(2) Section 3 is amended as follows:

(a) by deleting the definition of “Parole Board”;

(b) by inserting in the appropriate alphabetical position —

“

“Prisoners Review Board” means the Prisoners Review Board established under the *Sentence Administration Act 2003*;

”.

(3) Section 8(2)(a) is amended by deleting “Parole Board” and inserting instead —

“ Prisoners Review Board ”.

93. Prisoners (Release for Deportation) Act 1989 amended

(1) The amendments in this section are to the *Prisoners (Release for Deportation) Act 1989**.

s. 94

[* *Reprint 1 as at 3 October 2003.*]

- (2) Section 3 is amended as follows:
- (a) by deleting the definition of “the Parole Board”;
 - (b) by inserting in the appropriate alphabetical position —
“

“Prisoners Review Board” means the Prisoners Review Board established under the *Sentence Administration Act 2003*.

”.
- (3) Each provision in the Table to this section is amended by deleting “Parole Board” in each place where it occurs and in each place inserting instead —
“ Prisoners Review Board ”.

Table

s. 4(1) s. 4(2) s. 4(3) s. 4(6)

94. Sentencing Legislation Amendment and Repeal Act 2003 amended

- (1) The amendment in this section is to the *Sentencing Legislation Amendment and Repeal Act 2003**.

[* *Act No. 50 of 2003.*]

- (2) Part 6 is repealed.

95. Sentencing Legislation Amendment Act 2004 amended

- (1) The amendments in this section are to the *Sentencing Legislation Amendment Act 2004**.

[* *Act No. 27 of 2004.*]

- (2) Section 14(2) is repealed.

- (3) Section 15 is repealed.

96. Spent Convictions Act 1988 amended

- (1) The amendments in this section are to the *Spent Convictions Act 1988**.

[* Reprint 4 as at 8 July 2005.

For subsequent amendments see *Gazette 4 Nov 2005*
p. 5319-20.]

- (2) Schedule 3 clause 1(1) is amended in the Table as follows:

- (a) in item 1 by deleting “Parole Board” and inserting
instead —

“ Prisoners Review Board ”;

- (b) by inserting after item 1A the following item —

“

- 1B. The Mentally Impaired Accused Review Division 4
Board established by the *Criminal Law*
(*Mentally Impaired Accused*) Act 1996.

”.

97. Victims of Crime Act 1994 amended

- (1) The amendments in this section are to the *Victims of Crime Act 1994**.

[* Reprint 1 as at 4 March 2005.]

- (2) Section 2 is amended in the definition of “public officers and bodies” by deleting paragraph (f) and inserting instead —

“

(f) the Prisoners Review Board;

(fa) the Mentally Impaired Accused Review Board;

”.

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.

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