

WESTERN AUSTRALIA

ACTS AMENDMENT (COMMUNITY CORRECTIONS CENTRES) ACT

No. 38 of 1988

AN ACT to amend the *Offenders Probation and Parole Act 1963* and the *Justices Act 1902* to provide for work release orders and work and development orders and for related purposes.

[Assented to 24 November 1988]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Community Corrections Centres) Act 1988*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation for the coming into operation of the *Community Corrections Centres Act 1988*.

PART 2—OFFENDERS PROBATION AND PAROLE ACT 1963

Principal Act

3. In this Part the *Offenders Probation and Parole Act 1963** is referred to as the principal Act.

[*Reprinted as approved 11 June 1984 and amended by Acts Nos. 52 of 1984, 24 and 118 of 1985 and 47, 113 and 129 of 1987.]

Section 4 amended

4. Section 4 of the principal Act is amended by deleting the full stop at the end of the definition of “Territory”, substituting a semicolon and inserting the following definition—

“ “work release order” means an order made by the Board for the release of a prisoner under section 50X. ”.

Part IIIB inserted

5. After Part IIIA of the principal Act, the following Part is inserted—

“ PART IIIB—WORK RELEASE ORDERS

Release on work release order

50X. (1) Subject to this section, the chief executive officer may refer the case of a prisoner who satisfies the conditions in subsection (2) to the Board for consideration whether an order under this section (known as a work release order) should be made and the Board shall consider every case so referred.

(2) A work release order may be made in respect of a prisoner only if each of the following conditions is satisfied—

- (a) the prisoner is not less than 17 years of age;
- (b) the prisoner has served not less than 12 months' imprisonment;

- (c) the prisoner is entitled to be discharged from prison or released from prison on parole or is eligible to be considered for release on parole within 6 months of the day specified for the prisoner's release in the work release order;
- (d) the prisoner has been rated by the chief executive officer under a rating system approved by the Minister as a prisoner whose absence from the prison would impose a minimum risk to the security of the public; and
- (e) the chief executive officer has referred the case of the prisoner to the Board for consideration whether a work release order should be made.

(3) A work release order must not be made by the Board except with the prior approval of the Governor in respect of a prisoner who is—

- (a) undergoing strict security life imprisonment;
- (b) in strict custody;
- (c) in safe custody;
- (d) detained during the Governor's pleasure under section 661 or 662 of *The Criminal Code* in consequence of a direction made after the commencement of the *Acts Amendment (Imprisonment and Parole) Act 1987*;
- (e) undergoing life imprisonment; or
- (f) serving a term of imprisonment, or an aggregate of terms of imprisonment (without regard to remission) of more than 15 years.

(3a) Where a work release order is made in respect of a prisoner who is undergoing strict security life imprisonment the Attorney General shall cause the order, together with an explanatory note as to the circumstances, to be tabled in each House of Parliament within 15 sitting days of that House after the making of the order.

(4) Upon consideration of a reference under subsection (1), the Board may, in its discretion—

- (a) by order in writing direct that the prisoner be released from prison on the day specified in the order subject to the terms and conditions applicable to work release orders under this Act and the *Community Corrections Centres Act 1988*;
- (b) defer the making of a work release order; or
- (c) decline to make a work release order.

(5) A work release order entitles a prisoner to be released from prison—

- (a) for the purpose of engaging in a community based programme under the *Community Corrections Centres Act 1988*; and
- (b) for the purpose of seeking or engaging in gainful employment; or
- (c) engaging gratuitously in work for a charitable or voluntary organization approved by the chief executive officer.

(6) A prisoner shall be released from prison in accordance with a work release order only after making a declaration in writing that he understands the conditions of a work release order and the obligations imposed on a person subject to such an order and undertakes to comply with them.

(7) Except in the case of a prisoner who is undergoing strict security life imprisonment, if the Board declines in a particular case to make a work release order, the Board shall cause the offender to be given written notice to that effect and the offender may make written submissions concerning his case to the Board which shall consider those submissions and may in its discretion make a further order under subsection (4).

Sentence deemed served

50Y. If—

- (a) a work release order is not cancelled during its currency; and
- (b) the prisoner has completed the performance of his obligations under the order,

the prisoner shall be regarded as having served the term of imprisonment to which the work release order relates and by force of this section is wholly discharged from that imprisonment, but until the prisoner is discharged from the sentence of imprisonment, the prisoner, while released on the work release order, shall be regarded as being still under sentence for the offence to which the work release order relates and as not having suffered the punishment required under the sentence.

Where offender charged with offence

50Z. (1) If an offender subject to a work release order is charged with or convicted of any offence, the chief executive officer may—

- (a) suspend the work release order;
- (b) refer the case for the consideration of the Board; or
- (c) suspend the work release order and refer the case for the consideration of the Board.

(2) Where the chief executive officer has suspended a work release order of an offender who is charged with any offence the chief executive officer must—

- (a) if the determination of the charge does not result in a conviction, lift the suspension;
- (b) if the determination of the charge does result in a conviction—
 - (i) lift the suspension;
 - (ii) further suspend the work release order for a specified or indefinite period; or
 - (iii) refer the case for the consideration of the Board.

(3) Where under this section a work release order is suspended for a period of one month or longer or an indefinite suspension extends for a month, the chief executive officer must refer the case for the consideration of the Board.

(4) If under this section the case of an offender who is subject to a work release order is referred to the Board, the Board may cancel the work release order.

(5) Where the Board cancels a work release order under this section, the Board must cause notice of the cancellation to be given to the offender including a statement of the Board's reasons for the cancellation.

Breach of condition of work release order

50ZA. (1) If the chief executive officer is satisfied that an offender who is subject to a work release order has failed to comply with a condition of the work release order, the chief executive officer may—

- (a) suspend the work release order;
- (b) refer the case for the consideration of the Board; or
- (c) suspend the work release order and refer the case for the consideration of the Board.

(2) Where a work release order is suspended under this section by the chief executive officer for a period of one month or longer or an indefinite suspension extends for a month, the chief executive officer must refer the case for the consideration of the Board.

(3) Where a case is referred under this section to the Board, the Board may, if satisfied that the offender has failed to comply with a condition of the work release order, cancel the work release order.

(4) Where the Board cancels a work release order under this section, the Board must cause notice of the cancellation to be given to the offender, including a statement of the Board's reasons for the cancellation.

Discretionary power of Board
to cancel work release order

50ZB. (1) The Board may in its absolute discretion at any time cancel a work release order.

(2) Where the Board cancels a work release order under this section, the Board must cause notice of the cancellation to be given to the offender including a statement of the Board's reasons for the cancellation.

Discretionary power of chief
executive officer to suspend order

50ZC. The chief executive officer may, in his absolute discretion, suspend the operation of a work release order, but if a work release order is suspended for a period of one month or longer or an indefinite suspension extends for a month, the chief executive officer must refer the case for the consideration of the Board.

Warrant for apprehension on
cancellation of work release order

50ZD. (1) If a work release order is cancelled, the Board or a Judge or District Court Judge (including the judicial member of the Board if that member holds office as a Judge or District Court Judge) may, whenever necessary, by warrant authorize any member of the Police Force or other officer to apprehend the offender and return him to prison.

(2) A warrant issued by the Board under subsection (1) may be signed by any 2 members of the Board.

(3) If a work release order is suspended, the chief executive officer may, wherever necessary, by warrant authorize any member of the Police Force or other officer to apprehend the offender and return him to prison.

Effect of cancellation or suspension
of work release order

50ZE. (1) Where an offender's work release order is cancelled or suspended, the original warrant of commitment or other authority for his imprisonment or detention from which he was released under the work release order is again in force and except as provided by this section no part of the time between his being so released and his recommencing to serve the unexpired portion of his term of imprisonment or detention shall be regarded as time served in respect of that term or detention.

(2) If a work release order is cancelled and the offender is returned to prison, one-half of the period completed by the offender under the work release order shall be regarded as time served in respect of the term of imprisonment.

(3) In subsection (2), “period completed under the work release order” means the period beginning on the day when the offender was released from prison under the work release order and ending—

- (a) where cancellation or suspension of the work release order is under section 50ZA or 50ZB, on the day of cancellation or, if the work release order was suspended prior to cancellation, on such earlier day as the offender was returned to prison; or
- (b) where cancellation or suspension of the work release order is under section 50Z—
 - (i) on the day on which the offence that brought about the cancellation occurred; or
 - (ii) where the chief executive officer cannot ascertain the day referred to in subparagraph (i), on the latest day on which the offence that brought about the cancellation might have occurred.

(4) If a work release order is suspended and the offender is returned to prison, the period completed by the offender under the work release order shall be regarded as time served in respect of the term of imprisonment, but if during the period of suspension the work release order is cancelled, subsections (2) and (3) shall apply and prevail to the extent of any inconsistency otherwise occurring in relation to this subsection.

Power to make more than one work release order

50ZF. The Board may, from time to time, make a work release order under section 50X in respect of a prisoner notwithstanding the cancellation of a work release order or orders made previously in respect of the same term of imprisonment.

Withholding of reasons for decisions

50ZG. Where the Board is of the opinion that it would be in the interest of the prisoner or any other person, or of the public, to withhold from the prisoner any or all of the reasons referred to in sections 50X (7), 50Z (5), 50ZA (4) and 50ZB (2), the Board may so withhold the reason or reasons.

Exclusion of the rules of natural justice

50ZH. 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 this Part by—

- (a) the Board, the secretary to the Board, or a member or members; or
- (b) the chief executive officer. ”.

PART 3—*JUSTICES ACT 1902*

Principal Act

6. In this Part the *Justices Act 1902** is referred to as the principal Act.

[*Reprinted as approved 9 November 1984 and amended by Acts Nos. 69 of 1984, 15 and 119 of 1985, 71 and 81 of 1986 and 65 of 1987.]

Section 4 amended

7. Section 4 of the principal Act is amended by inserting after the definition of “Summary Conviction” the following definition—

“ “work and development order” means an order issued under Part VIAA in respect of an offender subject to commitment to prison under section 157 or 158; ”.

Part VIAA inserted

8. After Part VI of the principal Act the following Part is inserted—

“ PART VIAA—WORK AND DEVELOPMENT ORDERS

Issue of work and development order prior to
issue of warrant of commitment

171AA.(1) Where under section 157 or 158 a justice may issue a warrant of commitment in respect of a person who is in default of a payment to which this Part applies, the person shall report to a community corrections officer.

(2) Where a person in default reports to an officer under subsection (1) and the supervisor of a community corrections centre is satisfied that the payment in default is a payment to which this Part applies, the supervisor shall issue to the person in default (in this Part referred to as the offender) a work and development order subject to the terms and conditions applicable to such orders under this Part and the *Community Corrections Centres Act 1988*.

Issue of work and development order after issue of
warrant of commitment

171AB.(1) Where under section 157 and 158 a justice has issued a warrant of commitment in respect of a person who is in default of a payment to which this Part applies, the person may, whether or not the warrant has been executed, by notice in writing given to the chief executive officer of the department principally assisting the Minister responsible for the administration of the *Community Corrections Centres Act 1988*, advise the chief executive officer of the issue of the warrant.

(2) Upon receiving a notice under subsection (1) and being satisfied that the payment in default is a payment to which this Part applies, the chief executive officer—

- (a) shall issue to the person in default (in this Part referred to as the offender) a work and development order subject to the terms and conditions applicable to such orders under this Part and the *Community Corrections Centres Act 1988*; and
- (b) if the offender is in prison by reason only of the warrant of commitment, shall cause the offender to be released forthwith from prison.

Extension of work and development order

171AC. (1) Where a work and development order has been issued to an offender under section 171AA or 171AB, the offender may, by notice in writing given to a community corrections officer,

advise the officer that there are additional payments in respect of which the offender is in default whether such payments arise from a court of petty sessions held at a place specified for the purposes of section 171AI or from some other court of petty sessions.

(2) Upon receiving a notice under subsection (1) the community corrections officer shall cause enquiries to be made to confirm details of the additional payments in default referred to by the offender and at any time while the offender is subject to a work and development order may amend the order to take into account those additional payments.

Effect of a work and development order

171AD. (1) A work and development order is of no effect until the offender to whom it relates signs a declaration in writing that he or she understands the conditions of and the obligations imposed by the order and undertakes to comply with them.

(2) Where a work and development order is issued to an offender, the offender is obliged to participate in a community corrections programme under the *Community Corrections Centres Act 1988* for a period specified in the order and consisting of—

- (a) one week, where the period for which the offender is liable to be imprisoned according to the scale in section 167 is less than 7 days;
- (b) one week in respect of each period of 7 days for which the offender is liable to be imprisoned according to the scale in section 167 and an additional week in respect of any period for which the offender is so liable to be imprisoned of less than 7 days that is not otherwise taken into account for the purposes of this subsection.

(3) The period for which an offender is liable to be imprisoned shall be ascertained for the purposes of subsection (2) taking into account whether terms of imprisonment in respect of which a work and development order is to be issued are to be served concurrently or cumulatively.

(4) Notwithstanding subsection (2), where the period for which an offender is liable to be imprisoned as ascertained in accordance with subsection (3) for the purposes of subsection (2) amounts to an aggregate of more than 12 months, that period shall for the purposes of subsection (2) (but for no other purpose) be taken to be 12 months and the work and development order shall be issued accordingly.

(5) Notwithstanding sections 157 and 158, upon the issue of a work and development order under this Part and during such period as the work and development order is in force or suspended—

- (a) a warrant of commitment may not be issued under either of those sections in respect of any payment in default in respect of which the work and development order was issued;
- (b) any warrant of commitment that was issued but not executed before the issue of the work and development order shall cease to have effect if the warrant is in respect of a payment in default in respect of which the work and development order was issued; and
- (c) in a case to which subsection (4) applies, a warrant of commitment may not be issued under either of those sections in respect of any part of a payment in default that by reason of that subsection was not taken into account in ascertaining the period specified in the work and development order.

Effect of completion of programme

171AE. Where a work and development order is not cancelled during the period that the offender is obliged to participate in a community corrections programme and the offender completes the performance of his obligations under the order, the offender shall be regarded for the purposes of this Act as if the offender had served the period of imprisonment that might have been provided for in a warrant of commitment in respect of the payment in default.

Effect of payment

171AF.(1) Where an offender who is subject to a work and development order pays the sum mentioned in the order as the amount of the payment in default, the work and development order shall be regarded as cancelled.

(2) Where an offender who is subject to a work and development order pays a portion of the sum mentioned in the order as the amount of the payment in default, the period during which the offender is obliged to participate in a community corrections programme under the order as determined under section 171AC shall be recalculated (and if appropriate reduced) having regard to the reduction in the period of imprisonment which would have applied under section 167 (4) in like circumstances in the case of a person imprisoned under a warrant of commitment.

Cancellation of work and development order

171AG. (1) The chief executive officer may, in his absolute discretion, cancel a work and development order by instrument signed by him and if practicable, given to the offender.

(2) Where a work and development order is cancelled during the period that the offender is obliged to participate in a community corrections programme—

- (a) the offender shall be regarded for the purposes of this Act as if the offender had served the period of imprisonment for which the offender was liable to be imprisoned in respect of the period during which the offender participated in a community corrections programme prior to cancellation of the work and development order; and
- (b) the chief executive officer may issue a warrant of commitment in respect of the remainder of the period of imprisonment for which the offender was liable to be imprisoned after taking into account the period regarded as served under paragraph (a).

(3) A warrant of commitment issued under subsection (2) (b) shall be—

- (a) in the prescribed form;
- (b) directed to all police officers; and
- (c) given effect to as if it were a warrant issued by a justice.

(4) Notwithstanding sections 171AA and 171AB, a further work and development order shall not be issued in respect of a payment in default in respect of which a work and development order was issued and subsequently cancelled.

Exclusion of rules of natural justice

171AH. 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 this Part by the chief executive officer.

Application of Part

171AI.(1) This Part applies to a payment in default—

- (a) that consists of a fine or penalty of a kind required to be paid to the Treasurer by the *Fines and Penalties Appropriation Act 1909*; and
- (b) subject to section 171AC, that arises from a court of petty sessions held at a place specified for the purposes of this section by the Minister by notice published in the *Gazette*.

(2) This Part does not apply to a payment in default if the court of petty sessions directs at the time the fine or other obligation was imposed by that court that a work and development order must not be issued if payment should be in default. ”.

Transitional

9. Part VIAA of the *Justices Act 1902* does not apply to a payment in default that consists of a fine or penalty imposed before the day of commencement of this Act.
