

WESTERN AUSTRALIA

**ACTS AMENDMENT
(IMPRISONMENT AND PAROLE)
ACT**

No. 129 of 1987

AN ACT to amend the *Offenders Probation and Parole Act 1963*, the *Prisons Act 1981*, *The Criminal Code*, the *Offenders Probation and Parole Amendment Act 1983*, and the *Parole Orders (Transfer) Act 1984*, and for related purposes.

[Assented to 21 January 1988]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Imprisonment and Parole) Act 1987*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or such days as are respectively, fixed by proclamation.

PART II—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 and 24 and 118 of 1985.]

Section 4 amended

4. Section 4 of the principal Act is amended—

(a) in the definition of “authority” by deleting “or parole” and “, Board”;

(b) in the definition of “minimum term” by deleting “fixed in accordance with this Act” and substituting the following—

“ referred to in section 37 (a) or fixed under an enactment continued by section 37 (b) ”; and

(c) by inserting after the definition of “minimum term” the following definition—

“ “non-parole period”, in relation to a term of imprisonment in respect of which an order is made under section 37A, means the period that the prisoner is required to serve before becoming eligible under section 37A (2) to be released from prison on parole in respect of that term; ”.

Section 20R amended and transitional provision

5. (1) Section 20R of the principal Act is amended by inserting after subsection (2) the following subsections—

“ (2a) Subject to subsections (2b) and (2c) a member of an advisory committee shall hold office for such period not exceeding 3 years as is specified in the instrument of appointment of that member, or, if no period is so specified, for a period of 3 years, and is eligible for reappointment.

(2b) A member of an advisory committee may resign from office by written notice addressed to the Minister.

(2c) The Minister may, at any time, remove a member of an advisory committee from office. ”.

(2) Where at the commencement of this section a member of a community service advisory committee under section 20R of the principal Act has held office for not less than 3 years since being appointed, the office of that member shall become vacant at the commencement of this section.

Part III, Division 1 inserted

6. After the heading to Part III of the principal Act the following Division is inserted—

“ *Division 1—Preliminary*

Definitions

20T. In this Part—

“commencement date” means the day of the commencement of section 6 of the *Acts Amendment (Imprisonment and Parole) Act 1987*;

“prisoner” includes a person who is in an institution under a direction under section 666 of The Criminal Code and “prison” and “imprisonment” in relation to such a person shall be construed accordingly. ”.

Division headings inserted in Part III

7. Part III of the principal Act is amended—

(a) by inserting before section 21 the following Division heading—

“ *Division 2—The Parole Board* ”;

(b) by inserting before section 34A the following Division heading—

“ *Division 3—Special powers to release certain offenders and prisoners* ”;

and

(c) by inserting before section 35 the following Division heading—

“ *Division 4—Staff* ”.

Section 34 amended

8. Section 34 of the principal Act is amended by repealing subsections (2) and (3) and substituting the following subsections and Table—

“ (2) The Board shall—

(a) furnish a written report to the Minister with respect to—

(i) a person who is in strict custody pursuant to an order made under section 652, 653 or 693 (4) of *The Criminal Code*;

(ii) a person who is in safe custody during the pleasure of the Governor;

(iii) a person who is in safe custody pursuant to an order made before 3 October 1984 under section 679 of *The Criminal Code*; or

(iv) a person who is in strict or safe custody pursuant to an order made under section 37, 78, 79 or 282 of *The Criminal Code*,

whenever so requested in writing by the Minister;

(b) furnish a written report to the Minister with respect to a prisoner whenever so requested in writing by the Minister;

(c) whether so requested by the Minister or not, furnish a written report to the Minister with respect to a person referred to in paragraph (a) at least once in every year;

- (d) whether so requested by the Minister or not furnish a written report to the Minister with respect to a prisoner described in column 1 of an item in the Table to this section—
 - (i) on or as soon as practicable after the date specified in column 2 of that item; and
 - (ii) thereafter as soon as practicable after each period specified in column 3 of that item;
- (e) whenever so requested in writing by the Minister, furnish to the Minister a written report upon any special matter relating to the operation of this Act or to the exercise of any power or function of the Board specified in the Minister's request;
- (f) whenever the Board has, pursuant to section 34A, made an order that any person be returned to the custody of the person or authority from which the person was released by the Governor under that section, furnish to the Minister within one month after making the order, a written report setting out the reasons for the order.

(3) The Board may, at any time in circumstances that appear to the Board to be exceptional, furnish to the Minister a written report with respect to a person referred to in subsection (2) (a) or a prisoner.

(4) A report under subsection (2) (a) or (c) shall contain a recommendation as to whether or not the Governor should be advised to exercise any power vested in Her Majesty or the Governor to release the person from custody and, if release is recommended, as to the conditions (if any) upon which the person should be released.

(5) A report under subsection (2) (b) shall contain a recommendation as to whether or not the Governor should be advised to exercise any power vested in Her Majesty or the Governor to release the prisoner from prison and, if release is recommended, as to the conditions (if any) upon which the prisoner should be released.

(6) A report under subsection (2) (d), or a report under subsection (3) with respect to a prisoner, may contain a recommendation of the kind mentioned in subsection (5).

(7) A report under subsection (3) with respect to a person referred to in subsection (2) (a) may contain a recommendation of the kind mentioned in subsection (4).

(8) Where the Board furnishes a report to the Minister under subsection (2) (b) or (d) or (3) in respect of a prisoner who is undergoing a sentence of strict security life imprisonment or a sentence of life imprisonment and that report contains a recommendation that the prisoner be released from prison, the Board shall give express attention in the report to—

- (a) the nature and circumstances of the offence for which the sentence was imposed;
- (b) the degree of risk that the release of the prisoner appears to present to the community or to any individual in the community;
- (c) if release on parole is recommended, the period for which, and the extent to which, the prisoner should be supervised by a parole officer whilst on parole; and
- (d) such other matters as the Board thinks fit.

TABLE

Times for reporting on prisoners undergoing life and indeterminate sentences

	Column 1	Column 2	Column 3
Item	Description of prisoner	Date on or after which a report must be furnished under subsection (2) (d) (i)	Intervals after which subsequent reports must be furnished under subsection (2) (d) (ii)
1	A prisoner undergoing a sentence of strict security life imprisonment commuted pursuant to section 679 of <i>The Criminal Code</i> from a sentence of death	The date of the expiration of a period of 20 years after the sentence was so commuted	3 years
2	A prisoner undergoing a sentence of strict security life imprisonment other than a sentence mentioned in item 1	The date of the expiration of a period of 20 years after the prisoner was sentenced	3 years
3	A prisoner undergoing a sentence of life imprisonment commuted pursuant to section 679 of <i>The Criminal Code</i> from a sentence of death	The date of the expiration of a period of 10 years after the sentence was so commuted	3 years

TABLE—continued

Times for reporting on prisoners undergoing life and indeterminate sentences—continued

Item	Column 1 Description of prisoner	Column 2 Date on or after which a report must be furnished under subsection (2)(d)(i)	Column 3 Intervals after which subsequent reports must be furnished under subsection (2)(d)(ii)
4	A prisoner undergoing a sentence of life imprisonment imposed before the commencement date under section 282 (a) (ii) of <i>The Criminal Code</i>	The date of the expiration of a period of 10 years after the prisoner was sentenced	3 years
5	A prisoner undergoing a sentence of life imprisonment imposed on or after the commencement date under section 282 (a) (ii) of <i>The Criminal Code</i>	The date of the expiration of a period of 12 years after the prisoner was sentenced	3 years
6	A prisoner undergoing a sentence of life imprisonment imposed before the commencement date other than a sentence imposed under section 282 (a) (ii) of <i>The Criminal Code</i>	The date of the expiration of a period of 5 years after the prisoner was sentenced	3 years
7	A prisoner undergoing a sentence of life imprisonment imposed on or after the commencement date other than a sentence imposed under section 282 (a) (ii) of <i>The Criminal Code</i>	The date of the expiration of a period of 7 years after the prisoner was sentenced	3 years
8	A prisoner who is being detained during the Governor's pleasure in a prison pursuant to the direction of a court under section 661 of <i>The Criminal Code</i> being a direction given on or after the commencement date	The date of the expiration of a period of 2 years after the detention commenced	One year
9	A prisoner who is being detained during the Governor's pleasure in a prison pursuant to the direction of a court under section 662 (a) of <i>The Criminal Code</i> being a direction given on or after the commencement date	The date of the expiration of a period of one year after the detention commenced	One year

TABLE—*continued*Times for reporting on prisoners undergoing life and indeterminate sentences—*continued*

	Column 1	Column 2	Column 3
Item	Description of prisoner	Date on or after which a report must be furnished under subsection (2) (d) (i)	Intervals after which subsequent reports must be furnished under subsection (2) (d) (ii)
10	A prisoner who is being detained during the Governor's pleasure in a prison pursuant to a sentence imposed by a court under section 662 (b) of <i>The Criminal Code</i> being a sentence imposed on or after the commencement date	The date of the expiration of a period of one year after the detention commenced	One year

Note

Notwithstanding section 665 of *The Criminal Code*, where a prisoner is serving or liable to serve a term of imprisonment in respect of which a minimum term was fixed, or in respect of which an order was made under section 37A, and has also been directed or sentenced to be detained during the Governor's pleasure in a prison under section 661 or 662 of *The Criminal Code*, for the purposes of this Table the detention pursuant to the direction or sentence is deemed to commence at the expiration of the minimum term or non-parole period, as the case may be. "

Section 34A amended

9. Section 34A of the principal Act is amended in subsection (4) by deleting "Where" and substituting the following—

" Subject to section 26 of the *Prisons Act 1981*, where "

Section 34AA repealed and saving

10. (1) Section 34AA of the principal Act is repealed.

(2) Notwithstanding subsection (1), section 34AA of the principal Act shall continue to apply to and in relation to a person in respect of whom an order under section 19 (6a) (a) of *The Criminal Code* was made before the commencement of section 31 of this Act.

Section 34AB amended

11. Section 34AB of the principal Act is amended—

(a) in subsection (1) by deleting “42” and substituting the following—

“ 40D ”; and

(b) in subsection (3) (a) by inserting after “made” the following—

“ before 3 October 1984 ”.

Sections 37 to 40 repealed and headings and sections 37 to 40D substituted

12. Sections 37, 38, 39 and 40 of the principal Act are repealed and the following headings and sections are substituted—

“ *Division 5—Eligibility for parole after service of part of term of imprisonment*

Effect of minimum terms previously fixed

37. Notwithstanding section 12 of the *Acts Amendment (Imprisonment and Parole) Act 1987*—

- (a) the repeal of this section as enacted before the commencement date does not affect a minimum term fixed or deemed to have been fixed under or by this Act as enacted before the commencement date;
- (b) section 40 as enacted before the commencement date and any Rules of Court made under section 40 (3) as so enacted, shall continue to have effect in relation to the purported fixation of a minimum term under this Act as enacted before the commencement date; and
- (c) a person who has been sentenced to a term of imprisonment in respect of which a minimum term was fixed is eligible to be released from prison on parole at the expiration of the minimum term.

Parole eligibility by order of the court

37A. (1) Where a court sentences a person convicted of an offence to a term of imprisonment the court may, if it considers that the making of an order under this subsection is appropriate, order that the convicted person be eligible for parole.

(2) Where an order is made under subsection (1) in respect of a term of imprisonment the convicted person is eligible to be released from prison on parole—

- (a) where the term is not more than 6 years—after having served one-third of the term; or
- (b) where the term is more than 6 years—after having served 2 years less than two-thirds of the term.

(3) In determining whether the making of an order under subsection (1) is appropriate the court may have regard to all or any of the following—

- (a) the nature of the offence;
- (b) the circumstances of the commission of the offence;
- (c) the antecedents of the convicted person;
- (d) circumstances which are relevant to the convicted person or which might, in the opinion of the court, be relevant to the convicted person at the time at which the convicted person would become eligible to be released from prison on parole if an order was made under subsection (1);
- (e) any other matter that the court thinks relevant.

(4) Where a convicted person is before a court for sentencing in respect of more than one offence and the court sentences the convicted person to more than one term of imprisonment, the court may—

- (a) make an order under subsection (1) in respect of one of those terms; or
- (b) make orders under subsection (1) in respect of 2 or more of those terms,

but shall not make an order under subsection (1) in respect of a term of imprisonment comprising the aggregate of 2 or more terms, whether cumulative or concurrent.

(5) The court shall not make an order under subsection (1) in respect of a term of imprisonment of less than one year except where—

- (a) the convicted person is already serving or liable to serve a term of imprisonment in respect of which—
 - (i) a minimum term was fixed; or
 - (ii) an order was made under this section; or
- (b) the order is one of 2 or more orders made pursuant to subsection (4) (b) and the aggregate of the terms in respect of which those orders are made is not less than one year.

(6) The court shall not make an order under subsection (1) in respect of—

- (a) a term of imprisonment imposed in respect of a prison offence within the meaning of the *Prisons Act 1981*;
- (b) a term of imprisonment imposed on a prisoner in respect of the escape of the prisoner from lawful custody;
- (c) a term of imprisonment imposed on a person together with a direction under section 661 or 662 of *The Criminal Code* that the person is to be detained during the Governor's pleasure in a prison;
- (d) a term of imprisonment imposed on a person who is undergoing or liable to undergo detention during the Governor's pleasure in a prison pursuant to a direction or sentence under section 661 or 662 of *The Criminal Code* given or passed before that term of imprisonment was imposed; or
- (e) strict security life imprisonment or life imprisonment.

Division 6—Order of service, and remission, of sentences

Order of service of finite terms of imprisonment

38. (1) Where a person has been sentenced to a term of imprisonment in respect of which a minimum term was fixed and, before the expiration of that minimum term, has been sentenced to a further term of imprisonment in respect of which a minimum term was fixed, then the minimum term fixed in respect of the

further term is cumulative upon or concurrent with that fixed in respect of the prior term according as the further term is cumulative upon or concurrent with the prior term.

(2) Where a person has been sentenced to a term of imprisonment in respect of which a minimum term was fixed and, before the expiration of that minimum term, is sentenced to a further term of imprisonment in respect of which an order is made under section 37A, then the non-parole period of the further term is cumulative upon or concurrent with the minimum term fixed in respect of the prior term according as the further term is cumulative upon or concurrent with the prior term.

(3) Where a person has been sentenced to a term of imprisonment in respect of which an order was made under section 37A and, before the expiration of the non-parole period of that term, is sentenced to a further term of imprisonment in respect of which an order is made under section 37A, then the non-parole period of the further term is cumulative upon or concurrent with the non-parole period of the prior term according as the further term is cumulative upon or concurrent with the prior term.

(4) Where pursuant to section 37A (4) (b) orders are made under section 37A in respect of 2 or more terms of imprisonment the non-parole periods of those terms are cumulative upon or concurrent with each other according as the terms are cumulative upon or concurrent with each other.

(5) In subsection (6)—

“fixed term” means a term of imprisonment in respect of which—

- (a) no minimum term was fixed; and
- (b) no order was made under section 37A;

“mandatory period” means—

- (a) a minimum term;
- (b) a non-parole period;
- (c) an aggregate of minimum terms in accordance with subsection (1);
- (d) an aggregate, in accordance with subsection (2), of a minimum term or minimum terms and a non-parole period or non-parole periods; or
- (e) an aggregate of non-parole periods in accordance with subsection (3) or (4).

(6) Where an offender has been sentenced to several terms of imprisonment the offender shall serve those terms in the following order—

- (a) firstly, any fixed term or fixed terms;
- (b) secondly, any mandatory period;
- (c) thirdly, unless and until released on parole, the balance of any term or terms after the expiration of any mandatory period.

(7) Where during the service of any term of imprisonment an offender is sentenced to a further term of imprisonment that service shall, if necessary, be suspended in order that the terms may thereafter be served in the order required by subsection (6).

(8) Nothing in subsection (6) or (7) affects the operation of section 20 of *The Criminal Code*.

Remission of sentences

39. (1) Subject to subsection (5), section 29 of the *Prisons Act 1981* does not apply to a term of imprisonment in respect of which—

- (a) a minimum term was fixed; or
- (b) an order is made under section 37A.

(2) Regulations under this Act may provide for the reduction of minimum terms and non-parole periods as an incentive to good conduct or industry and where a prisoner is entitled to such a reduction the term or period as so reduced shall be the minimum term or non-parole period for the purposes of this Act.

(3) Regulations made under this Act may provide, in cases to which section 41 (2c) applies, for the reduction of extended service periods as an incentive to good conduct or industry.

(4) In subsection (3) “extended service period” means the period for which, under section 41 (2c), a prisoner is required to remain in prison after the completion of the aggregate of the non-parole periods.

(5) Notwithstanding Division 7, where a prisoner who—

- (a) has served the minimum term or non-parole period in respect of a term of imprisonment; and
- (b) has not been previously released on parole in respect of that term of imprisonment,

is not released on parole before the date on which the prisoner would have been released from prison, having regard to the part, if any, of that term of imprisonment that would have been remitted under section 29 of the *Prisons Act 1981* if that section had been duly applied to or with respect to the term, the prisoner shall be released from prison on that date or as soon as is practicable after that date unless the prisoner is then liable to serve or continue serving any other term of imprisonment or to be detained during the Governor's pleasure in a prison.

Division 7—Release on parole, breach of parole, cancellation and variation of parole, and transitional provisions

Release on parole after minimum term

40. (1) The Board may in its discretion by order in writing direct that a prisoner serving a term of imprisonment in respect of which a minimum term was fixed be released from prison on parole at the time determined under the order and the prisoner shall be released accordingly.

(2) The time of release on parole under the order shall be at or after the expiration of the minimum term.

(3) If at the expiration of the minimum term the prisoner is liable to serve or continue serving any other term of imprisonment or to be detained during the Governor's pleasure in a prison, an order shall not be made under subsection (1) unless—

- (a) the prisoner becomes entitled to be released from prison in respect of the other term of imprisonment or the detention; or
- (b) an order is also made for the release of the prisoner on parole in respect of the other term of imprisonment or the detention,

before the prisoner becomes entitled to be released from prison under section 39 (5) in respect of the term of imprisonment in respect of which the minimum term was fixed.

Release on parole after non-parole period

40A. (1) The Board shall by order in writing direct that a prisoner serving a term of imprisonment in respect of which an order was made under section 37A be released from prison on parole at the time determined under the order made under this subsection and the prisoner shall be released accordingly.

(2) The time of release on parole under the order made under subsection (1) shall be at the expiration of the non-parole period of the term of imprisonment.

(3) If at the expiration of the non-parole period the prisoner is liable to serve or continue serving any other term of imprisonment or to be detained during the Governor's pleasure in a prison, the prisoner shall not be released under an order made under subsection (1) unless—

- (a) the prisoner becomes entitled to be released from prison in respect of the other term of imprisonment or the detention; or
- (b) an order is also made for the release of the prisoner on parole in respect of the other term of imprisonment or the detention,

before the prisoner becomes entitled to be released from prison under section 39 (5) in respect of the term of imprisonment in respect of which the order was made under section 37A.

(4) Where the release on parole relates to 2 or more terms in respect of which orders were made under section 37A, orders may be made under subsection (1) in respect of each of those terms but an order shall not be made in respect of the aggregate of those terms.

(5) The prisoner, by notice in writing to the Board, may decline to be released on parole under this section and where the Board has received such a notice the prisoner shall not be so released and an order shall not be made under subsection (1) in respect of the prisoner unless that notice is withdrawn by the prisoner by further notice in writing to the Board.

(6) The prisoner shall not be released on parole under an order made under this section unless a declaration in writing that the prisoner understands the requirements specified in the order and undertakes to comply with them has been made by the prisoner.

(7) The powers of the Board under subsection (1) may be exercised by the secretary to the Board, or a member, on behalf of and in the name of the Board.

(8) The secretary or a member—

- (a) shall not make an order under subsection (1) in respect of a special term as defined in section 40B (1);
- (b) shall not make an order under subsection (1) if—
 - (i) a report has been made to the Board under section 40B (2) (b); or
 - (ii) the Board has made a determination under section 40B (5) (b); and
- (c) shall not make an order of a kind referred to in section 40B (5) (a).

(9) Unless authorized to do so by the Board, the secretary or a member shall not make an order under subsection (1) imposing any requirement other than—

- (a) a prescribed requirement; or
- (b) a requirement that the prisoner named therein shall not frequently consort with reputed criminals or persons of ill-repute.

(10) The Board may issue guidelines to be observed by the secretary and members in relation to the making of orders under subsection (1).

(11) Nothing in this section limits the powers of the Board under section 44.

Board may postpone or withhold parole
after non-parole period

40B. (1) In this section—

“prisoner” means a prisoner serving a term of imprisonment
in respect of which an order was made under section 37A;

“special term” means a term of imprisonment of not less than
5 years imposed in respect of an offence under Chapter
XXVIII, XXIX, XXX, XXXIA, XXXII, XXXIII, or
XXXVIII, or section 197, of *The Criminal Code*.

(2) The permanent head may make a report in writing to the
Board for the purposes of this section—

- (a) concerning the release of a prisoner from prison on parole
in respect of a special term;
- (b) concerning the release of a prisoner from prison on parole
in respect of a term of imprisonment other than a special
term if the permanent head considers that there is a
special need to make such a report.

(3) The Board may if it thinks fit—

- (a) make an order under section 40A (1) directing that a
prisoner be released from prison on parole in respect of a
special term at a time that is later than the time at which
the prisoner would otherwise be required to be so released
under section 40A; or
- (b) determine that an order should not be made under
section 40A (1) in respect of a special term or that the
making of such an order in respect of a special term
should be deferred.

(4) In exercising its discretion under subsection (3) the Board
may have regard to all or any of the following—

- (a) the nature and circumstances of the offence in respect of
which the special term was imposed;
- (b) the degree of risk that the release of the prisoner appears
to present to the community or to any individual in the
community;
- (c) the contents of a report made to it under subsection (2)
(a) or other information concerning the prisoner that is
brought to its attention.

(5) Where the Board, having regard to the contents of a report made to it under subsection (2) (b) or to other information concerning a prisoner that is brought to its attention, considers that there are special circumstances that justify it doing so, it may—

(a) make an order under section 40A (1) directing that the prisoner be released from prison on parole in respect of a term of imprisonment other than a special term at a time that is later than the time at which the prisoner would otherwise be required to be so released under section 40A;

or

(b) determine that an order should not be made under section 40A (1) in respect of a term of imprisonment other than a special term or that the making of such an order in respect of such a term should be deferred.

(6) Where the Board has made a determination under subsection (3) (b) or (5) (b) it is not required to make an order under section 40A (1) in respect of the prisoner, but the determination does not prevent the Board from subsequently making such an order.

(7) Where the Board has made an order containing a direction under subsection (3) (a) or (5) (a) or a determination under subsection (3) (b) or (5) (b)—

(a) the Board shall notify the prisoner; and

(b) the prisoner may make representations in writing to the Board with respect to the direction or determination.

(8) Subject to section 49A the notification under subsection (7) (a) shall inform the prisoner of the reasons for the direction or determination and of the right to make representations under subsection (7) (b).

Release on parole during indeterminate sentence

40C. (1) An order in writing under this subsection may direct that—

(a) a prisoner, being an habitual criminal who is being detained in a prison during the Governor's pleasure pursuant to the direction of a court under section 661 of *The Criminal Code*;

- (b) a prisoner who is being detained otherwise than as an habitual criminal in a prison during the Governor's pleasure pursuant to a direction of a court under section 662 (a) of *The Criminal Code*; or
- (c) a prisoner detained in prison otherwise than as an habitual criminal pursuant to a sentence of a court under section 662 (b) of *The Criminal Code*,

be released from prison on parole at the time determined under the order and the prisoner shall be released accordingly.

(2) An order under subsection (1) may be made—

- (a) by the Board in its discretion, in the case of detention pursuant to a direction or sentence given or imposed before the commencement date; or
- (b) by the Governor following the furnishing of a report by the Board under section 34 (2) (b) or (d) or (3), in the case of detention pursuant to a direction or sentence given or imposed on or after the commencement date.

(3) The time of release on parole under an order under subsection (1) (a) shall be after the prisoner has been detained pursuant to the direction during a period of 2 years or such lesser period as the Governor, having regard to the circumstances of the case, on the recommendation of the Board, thinks fit.

(4) The time of release on parole under an order under subsection (1) (b) or (c) shall be after the prisoner has been detained pursuant to the direction or sentence for any period.

(5) Notwithstanding section 665 of *The Criminal Code* where a prisoner is serving or liable to serve a term of imprisonment in respect of which a minimum term was fixed, or in respect of which an order was made under section 37A, and has also been directed or sentenced to be detained during the Governor's pleasure in a prison under section 661 or 662 of *The Criminal Code*, for the purposes of this section the detention pursuant to the direction or sentence is deemed to commence at the expiration of the minimum term or non-parole period, as the case may be.

Release on parole during life sentence

40D. (1) Subject to subsection (2), following the furnishing of a report by the Board under section 34 (2) (b) or (d) or (3) the Governor may by order in writing direct that a prisoner undergoing a sentence of strict security life imprisonment or a sentence of life imprisonment be released from prison on parole at the time determined under the order and the prisoner shall be released accordingly.

(2) In the case of a prisoner undergoing a sentence of strict security life imprisonment, an order under subsection (1) shall not be made earlier than 20 years after—

- (a) the date when the sentence was commuted from a sentence of death; or
- (b) the date when the prisoner was sentenced to strict security life imprisonment,

as the case may be, except where the Governor is of the opinion that special circumstances exist.

(3) The Minister shall cause every order made under subsection (1) in respect of a prisoner undergoing a sentence of strict security life imprisonment, 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) Notwithstanding section 44 or 45, whenever a prisoner undergoing a sentence of strict security life imprisonment or a sentence of life imprisonment has been released from prison on parole (whether before, on or after the commencement date) and his parole is thereafter cancelled, he shall not be further released on parole otherwise than under this section. ”.

Section 41 amended

13. Section 41 of the principal Act is amended by repealing subsections (1), (1a), (2) and (3) and substituting the following subsections—

“ (1) Before a prisoner has been released from prison under a parole order made by or on behalf of the Board, the order may be cancelled, amended or varied by the Board by order in writing signed by any 2 members, and, if a parole order is so amended or varied, it applies accordingly.

(1a) Where a prisoner’s parole is cancelled under subsection (1) the prisoner—

- (a) may make representations in writing to the Board with respect to the cancellation; and
- (b) shall, subject to section 49A, be informed by the Board of the reasons for the cancellation and of the right to make representations under paragraph (a).

(1b) Before a prisoner has been released from prison under a parole order made by the Governor, the order may be cancelled, amended or varied by the Governor by order in writing, and, if a parole order is so amended or varied, it applies accordingly.

(1c) Where a prisoner’s parole is cancelled under subsection (1b) the prisoner—

- (a) may make representations in writing to the Minister with respect to the cancellation; and
- (b) shall, subject to section 49A, be informed by the Minister of the reasons for the cancellation and of the right to make representations under paragraph (a).

(2) Subject to subsection (2e), a prisoner released from prison under a parole order described in column 1 of an item in the Table to this subsection shall, after release, be under the supervision of a parole officer for the period determined under column 2 of that item.

TABLE
Parole Periods

Item	Column 1 Type of parole order	Column 2 Period of supervision after release
1.	Order under section 40	Whichever is the lesser of— (a) the period from release until the expiration of the term of imprisonment in respect of which the order is made; or (b) 2 years.
2.	Order under section 40A	Whichever is the lesser of— (a) the period from release until the expiration of the term of imprisonment in respect of which the order is made; or (b) the period calculated by deducting from the prescribed period a period equal to the pre-release period.
3.	Order under section 40C	Such period not exceeding 2 years as the Board or the Governor, as the case may be, thinks fit and specifies in the order.
4.	Order under section 40D	Such period not exceeding 5 years as the Governor thinks fit and specifies in the Order.

Note

In item 2 of this Table—

“prescribed period” means a period calculated by reference to the term of imprisonment in respect of which the parole order was made so that where that term is—

- (a) less than 18 months and section 40A (4) does not apply to the parole order—the prescribed period is 6 months;
- (b) less than 18 months and the parole order is one of 2 or more parole orders to which section 40A (4) applies—the prescribed period is equal to one-third of that term;
- (c) not less than 18 months but less than 6 years—the prescribed period is equal to one-third of that term;
- (d) not less than 6 years—the prescribed period is 2 years;

“pre-release period” in relation to a term of imprisonment means the period (if any) that began at the expiration of the non-parole period, and ended when the prisoner was released on parole but does not include any period during which the prisoner was not serving that term of imprisonment.

(2a) Subject to subsections (2b) and (2f) the parole period shall have effect from the date of release of the prisoner and where the prisoner is released under 2 or more orders the respective parole periods shall have effect concurrently.

(2b) Notwithstanding section 40A (1) or (2), if the prisoner is released under 2 or more parole orders to which section 40A (4) applies the parole periods shall have effect cumulatively or concurrently according as the terms of imprisonment are cumulative upon or concurrent with each other and, where it is necessary in order to resolve any doubt, the relevant parole orders may specify the sequence in which any cumulative parole periods shall have effect.

(2c) Notwithstanding section 40A, if the aggregate parole period that would result from the operation of subsection (2b) would exceed 2 years the prisoner shall not be released on parole until such time as release can be effected under an order or orders in respect of which the parole period does not exceed 2 years.

(2d) If the extended service period as defined by section 39 (4) is reduced under the regulations the aggregate parole period referred to in subsection (2c) shall be reduced by the same amount.

(2e) If the prisoner is released under 2 or more parole orders to which section 40A (4) applies and the aggregate of the terms of imprisonment in respect of which the parole orders were made is less than 18 months the parole period for each of those terms shall be the period calculated in accordance with the formula—

$$\begin{array}{r} A \times B \\ \hline C \end{array}$$

where—

A is the period calculated by deducting from 6 months a period equal to the period (if any) between the completion of the mandatory period under section 38 (6) (b) and release on parole;

B is the length of that term; and

C is the aggregate of those terms.

(2f) Where the prisoner is released under a parole order under section 40 and a parole order or orders under section 40A the parole periods shall have effect cumulatively or concurrently according as the terms of imprisonment are cumulative upon or concurrent with each other.

(2g) If the aggregate parole period that results from the operation of subsection (2f) exceeds 2 years the parole period in respect of each of the parole orders shall be deemed to have been completed for the purposes of this Part if and when the prisoner has been on parole for 2 years.

(2h) Where 2 or more parole orders are made in respect of the prisoner they may be made in the same document.

(2i) During the parole period the prisoner shall comply with the requirements specified in the parole order.

(3) A parole order shall specify prescribed requirements and such other requirements as the Board or the Governor, as the case may be, considers necessary in any particular case, but in every parole order there shall be inserted a requirement that the prisoner shall not frequently consort with reputed criminals or persons of ill-repute. ”.

Section 41A amended

14. Section 41A of the principal Act is amended by repealing subsection (6).

Section 42 repealed

15. Section 42 of the principal Act is repealed.

Section 43 repealed and a section substituted

16. Section 43 of the principal Act is repealed and the following section is substituted—

Sentence or detention deemed to have been served

“ 43. (1) If—

- (a) the Board does not make an order during the parole period cancelling the prisoner's parole; and
- (b) the prisoner does not commit an offence during the parole period for which offence the prisoner is sentenced to imprisonment, whether during or after the parole period,

the prisoner—

- (c) shall be regarded as having served the term of imprisonment or the detention during the Governor's pleasure in a prison, as the case may be, to which the parole period relates; and
- (d) by force of this section is wholly discharged from that imprisonment or detention and in the case of an habitual criminal ceases to be an habitual criminal,

but until the prisoner is in any way discharged from the sentence of imprisonment or the detention the prisoner, while released on parole, shall be regarded as being still under sentence for the offence to which the parole relates or under detention during the Governor's pleasure, as the case requires, and as not having suffered the punishment required under the sentence or as not having undergone detention during the Governor's pleasure and, in the case of an habitual criminal, as being an habitual criminal and liable to be further detained during the Governor's pleasure.

(2) In subsection (1) (b) “offence” includes an offence committed elsewhere than in this State but does not include an offence against section 41A. ”.

Section 44 amended

17. Section 44 of the principal Act is amended—

- (a) in subsection (1) by deleting “, including a prisoner to whom section forty-two of this Act applies,”;
- (b) by repealing subsection (1d);
- (c) in subsection (2) by deleting “or a law of another State or a Territory corresponding to section fifty R of this Act”;
- (d) in subsection (3) by deleting “may, whenever necessary, by warrant signed by any two members,” and substituting the following—

“ 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 ”;

- (e) by repealing subsection (3a) and substituting the following subsection—

“ (3a) A warrant issued by the Board under subsection (3) or (5) may be signed by any 2 members of the Board and it is not necessary for the Board to meet before a warrant is signed and issued. ”;

- (f) by inserting after subsection (3b) (a) the following paragraph—

“ (aa) may, subject to subsection (3e), restore the previous parole order in which case the previous parole period shall be resumed and the cancellation of the prisoner’s parole shall have no further effect; ”;

- (g) by inserting after subsection (3b) the following subsections—

“ (3c) Where the prisoner is again released on parole under subsection (3b) (a) from a term of imprisonment, the parole period for the purposes of this Part is whichever is the lesser of—

- (a) a period equal to the previous parole period; or
- (b) the period from the time the prisoner is so released until the expiration of the term of imprisonment.

(3d) Where the prisoner is again released on parole under subsection (3b) (a) from detention during the Governor's pleasure in a prison, the parole period for the purposes of this Part is such period not exceeding 2 years as the Board thinks fit and specifies when directing the release of the prisoner.

(3e) The power conferred by subsection (3b) (aa), shall not be exercised where the cancellation of the prisoner's parole occurs by operation of subsection (2) and results from a sentence to a term of imprisonment exceeding 3 months.

(3f) Where a prisoner's parole is cancelled or suspended under subsection (1) and the prisoner is returned to prison or another institution—

- (a) the prisoner may make representations in writing to the Board with respect to the cancellation or suspension; and
- (b) on being so returned, the prisoner shall, subject to section 49A, be informed of the reasons for the cancellation or suspension and of the right to make representations under paragraph (a).

(3g) Where representations are made under subsection (3f) (a) by a prisoner whose parole is cancelled and who is returned to prison to continue serving a sentence of strict security life imprisonment or a sentence of life imprisonment, the Board shall furnish to the Minister—

- (a) a copy or summary of the representations; and
- (b) a report containing a recommendation as to whether or not the Governor should be advised to take any further action under section 40D in relation to the prisoner. ”;

(3h) Where a prisoner's parole is cancelled under subsection (1) or by operation of subsection (2) that cancellation or suspension applies to the parole orders in respect of—

- (a) the parole period or periods being served by the prisoner at the time of the cancellation or suspension; and

(b) any parole period which was to have had effect cumulatively upon the parole period or periods referred to in paragraph (a) and which has not commenced at the time of the cancellation or suspension.

(3i) Where, after the cancellation of a prisoner's parole, a parole order is restored under subsection (3b) (aa) any other parole order to which the cancellation applied is also restored.

(3j) Where, after the suspension of a prisoner's parole, a parole order is revived by subsection (1c) any other parole order to which the suspension applied is also revived.

(h) in subsection (4) by deleting "but where a prisoner is released on parole pursuant to subsection (3b) of this section the Board may, if it thinks fit, order that all or any of the parole period prior to the prisoner being so released on parole shall be regarded as time served in respect of that term or detention, unless his parole is cancelled on a subsequent occasion";

(i) by inserting after subsection (4) the following subsections—

" (4a) Where a prisoner is released on parole from a term of imprisonment, other than a sentence of strict security life imprisonment or life imprisonment, and the prisoner's parole is cancelled, one-half of the period completed on parole by the prisoner in respect of the term of imprisonment shall be regarded as time served in respect of the term of imprisonment.

(4b) In subsection (4a) "period completed on parole by the prisoner" means the period beginning when the prisoner was released on parole and ending—

(a) where the prisoner's parole has been cancelled under subsection (1), on the day on which the cancellation took effect; or

(b) where the prisoner's parole has been cancelled by operation of subsection (2)—

(i) on the day on which the offence that brought about the cancellation occurred; or

(ii) where the permanent head cannot ascertain the day referred to in subparagraph (i), on the latest day on which the offence that brought about the cancellation could have occurred. ";

- (j) in subsection (5) by deleting “may whenever necessary, by warrant signed by any two members of the Board,” and substituting the following—

“ 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 ”; and

- (k) by repealing subsection (6) and substituting the following subsection—

“ (6) In the case of a sentence of strict security life imprisonment or life imprisonment a reference in this section to serving the unexpired portion of a term of imprisonment shall be construed as a reference to resuming the service of the sentence. ”.

Section 45 amended

18. Section 45 of the principal Act is amended—

- (a) by inserting after the section designation “45.” the subsection designation “(1)”; and
- (b) by inserting the following subsections—

“ (2) Where a prisoner is released under subsection (1) from a term of imprisonment, the parole period for the purposes of this Part is whichever is the lesser of—

(a) a period equal to the previous parole period; or

(b) the period from the time the prisoner is so released until the expiration of the term of imprisonment.

(3) Where a prisoner is released under subsection (1) from detention during the Governor’s pleasure in a prison, the parole period for the purposes of this Part is such period not exceeding 2 years as the Board thinks fit and specifies when ordering the release of the prisoner. ”.

Section 48 repealed and a section substituted

19. Section 48 of the principal Act is repealed and the following section is substituted—

Existing and previous parolees

“ 48. This Part as modified by Schedule 1 shall have effect in relation to a prisoner in respect of whose term of imprisonment a minimum term was fixed and who—

(a) is on parole immediately before the commencement date;

or

(b) is in prison immediately before the commencement date having been returned to prison under section 44 (3). ”.

Section 49 amended

20. Section 49 of the principal Act is amended—

(a) in paragraph (a) by deleting “date of the coming into operation of this Part of this Act” and substituting the following—

“ commencement date ”;

(b) in paragraph (b) by inserting after “date” in the second place where it occurs the following—

“ or another conviction or sentence after that date ”;

(c) by inserting after paragraph (b) the following paragraph—

“ (ba) any prisoner whose parole was suspended at that date; ”; and

(d) by deleting “or minimum term or may direct that such term or minimum term” and substituting the following—

“ , part of a term of imprisonment, date or parole period or may direct that any such term, part of a term, period or date ”.

Section 49A inserted

21. After section 49 of the principal Act the following section is inserted—

Withholding of reasons for decisions

“ 49A. (1) 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 section 40B (8), 41 (1a) (b) or 44 (3f) (b), the Board may so withhold the reason or reasons.

(2) Where the Minister 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 section 41 (1c) (b), the Minister may so withhold the reason or reasons. ”.

**Section 50 repealed and a section substituted,
and application provision**

22. (1) Section 50 of the principal Act is repealed and the following section is substituted—

Exclusion of rules of natural justice

“ 50. 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 Governor;
- (b) the Board, the secretary to the Board, or a member or members;
- (c) the Minister; or
- (d) the permanent head. ”.

(2) The doing or omission of any act, matter, or thing before the commencement of subsection (1) shall be deemed to have always been as valid and effectual as it would have been if section 50 of the *Offenders Probation and Parole Act 1963* as enacted by subsection (1) had been in operation when the act, matter, or thing was done or omitted.

Amendments to Parts IIIA and IV

23. (1) Division 2 of Part IIIA of the principal Act is repealed.

(2) Sections 50U to 50W and 51A are amended as set out in the Table—

TABLE

Provision amended	Amendment
Section 50U (1)	Delete “or subsection (7) of section fifty Q of this Act”.
Section 50V (1)	Delete “Parole Board, or other prescribed authority,” substitute “prescribed authority”.
	Delete “Board, or other authority,” substitute “other authority”.
Section 50V (2)	Delete “the Board”.
Section 50V (2) (a)	Delete “Parole Board, or other”.
	Delete “or parole”.
Section 50V (3)	Delete “or a prisoner”.
	Delete “, or parole order”.
	Delete “or parole” in the second and third places where it occurs.
	Delete “or prisoner’s”.
Section 50V (4) (a)	Delete “and parole”.
	Delete “or parole”.
	Delete “or prisoner”.
Section 50W (1)	Delete “, or a parole order,”.
Section 50W (1) (a)	Delete “or parole order, as the case may be,”.
Section 50W (2)	Delete “or the Board”.
Section 51A (2) (a)	Delete “and Division 2 of Part IIIA”.

Schedule 1 added

24. After section 53 of the principal Act the following Schedule is added—

“ **SCHEDULE 1** **(Section 48)**

Provisions as to Existing and Former Parolees

Definition

1. In this Schedule—

“commencement date” means the day of the commencement of section 6 of the *Acts Amendment (Imprisonment and Parole) Act 1987*;

“prescribed prisoner” means a prisoner in respect of whose term of imprisonment a minimum term was fixed.

Calculation of parole period for existing parolees

2. (1) Where, immediately before the commencement date, a prescribed prisoner is on parole and has been on that parole for a period of not less than 2 years the parole period is the period expiring on the commencement date.

(2) Where, immediately before the commencement date, a prescribed prisoner is on parole and has been on that parole for a period of less than 2 years the parole period expires—

- (a) at the expiration of the term of imprisonment from which the prisoner was released on parole; or
- (b) when the prisoner has been on parole for 2 years,

whichever occurs first.

Calculation of further parole periods for existing and former parolees

3. Where—

- (a) a prescribed prisoner who is on parole and has been on that parole since before the commencement date is again released on parole under section 44 (3b);
- (b) a prescribed prisoner who was on parole immediately before the commencement date and who has been returned to prison under section 44 (3) is again released on parole under section 45; or
- (c) a prescribed prisoner who is in prison having been returned to prison before the commencement date under section 44 (3) is again released on parole under section 45,

the parole period is whichever is the lesser of—

- (d) the period from the time the prisoner is so released until the expiration of the term of imprisonment from which the prisoner is so released; or
- (e) 2 years. ”.

PART III—*PRISONS ACT 1981*

Principal Act

25. In this Part the *Prisons Act 1981** is referred to as the principal Act.

[*Act No. 115 of 1981 as amended by Acts Nos. 66 of 1982, 28 and 52 of 1984 and 98 of 1985.]

Section 3 amended

26. Section 3 of the principal Act is amended by inserting, in the appropriate alphabetical positions, the following definitions—

“ “extended service period” has the meaning given to that expression by section 39 (4) of the *Offenders Probation and Parole Act 1963*; ”;

“ “non-parole period” has the meaning given to that expression by section 4 of the *Offenders Probation and Parole Act 1963*; ”.

Section 26 amended

27. Section 26 of the principal Act is amended by repealing subsection (2) and substituting the following subsections—

“ (2) In the case of a prisoner who is in safe custody at the direction of the Governor or who is undergoing a sentence of strict security life imprisonment—

(a) the Governor may make an order of the kind mentioned in subsection (1); and

(b) the permanent head may make an order under subsection (1) if and only if—

(i) the permanent head is of the opinion that an emergency requires the order to be made without delay; or

(ii) a person is returned to custody under section 34A of the *Offenders Probation and Parole Act 1963* and the permanent head is of the opinion that it would be impracticable or unsuitable for the detention of the person to be effected at the place specified in the order of the Governor that is continued in force under subsection (4) of that section.

(3) An order made in accordance with subsection (2) (b) shall be expressed to be either temporary or to have effect pending the further consideration of the Governor. ”.

Section 77 amended

28. Section 77 of the principal Act is amended in subsection (1) by deleting paragraph (c) and substituting the following paragraph—

- “ (c) forfeiture of not more than 3 days’ remission of sentence to which the prisoner is or may become entitled under section 29 or not more than 3 days’ reduction from a minimum term of sentence or a non-parole period or extended service period, being a reduction granted or able to be granted to the prisoner under the *Offenders Probation and Parole Regulations 1964*; ”.

Section 78 amended

29. Section 78 of the principal Act is amended in subsection (1) by deleting paragraph (d) and substituting the following paragraph—

- “ (d) forfeiture of not more than 28 days’ remission of sentence to which the prisoner is or may become entitled under section 29 or not more than 28 days’ reduction from a minimum term of sentence or a non-parole period or extended service period, being a reduction granted or able to be granted to the prisoner under the *Offenders Probation and Parole Regulations 1964*; ”.

PART IV—THE CRIMINAL CODE

The Code

30. In this Part “the Code” means *The Criminal Code**.

*[*Reprinted as approved 13 December 1983 as the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Act Compilation Act 1913, and amended by Acts Nos. 13, 52 and 121 of 1984 and 14, 74 and 119 of 1985.]*

Section 19 amended

31. Section 19 of the Code is amended by deleting paragraph (6a).

Section 662 amended

32. Section 662 of the Code is amended—

- (a) in paragraph (a) by deleting “in a prison”; and

(b) in paragraph (b) by deleting “forthwith committed to a prison, and to be detained there” and substituting the following—

“ detained ”.

Section 663 amended

33. Section 663 of the Code is amended by deleting “in a prison”.

Section 665 amended

34. Section 665 of the Code is amended in subsection (2) by deleting “Indeterminate” and substituting the following—

“ Subject to section 666 (2), indeterminate ”.

Section 666 inserted

35. After section 665 of the Code the following section is inserted—

Imprisonment and detention of juveniles

“ 666. (1) In this section “institution” means an institution provided or managed by the Department for Community Services.

(2) Where a person under the age of 18 years is convicted of an indictable offence and sentenced to a term of imprisonment the court before which the person is convicted may direct that all or part of the sentence be served in an institution.

(3) For the purposes of section 29 of the *Prisons Act 1981*—

(a) a person serving a sentence in an institution pursuant to a direction under subsection (2) shall be deemed to be a prisoner to whom that section applies;

(b) a person who is a prisoner to whom that section applies shall be deemed to have been such a prisoner during any part of the sentence that was served in an institution pursuant to a direction under subsection (2).

(4) Where a court—

(a) gives a direction under section 662 (a) for the detention of a person under the age of 18 years; or

(b) sentences a person under the age of 18 years to detention under section 662 (b),

the court may also direct that all or part of the detention be served in an institution.

(5) A person in respect of whom a direction is given under this section shall be confined in such institution as the permanent head of the Department for Community Services thinks fit.

(6) Where a person who is in an institution under a direction under this section attains the age of 18 years the permanent head of the Department for Community Services may, at any time, arrange for the person to be transferred to a prison, and if such a transfer takes place the direction ceases to have effect.

(7) Where a person under the age of 18 years is in an institution under a direction under this section the court that imposed the direction may, on the application of the permanent head of the Department for Community Services, cancel the direction.

(8) On the hearing of an application under subsection (7) the person concerned shall be brought before the court and the court may inform itself in such manner as it thinks fit in order to decide upon the application.

(9) A sentence referred to in subsection (2) or (4) (b) or a direction referred to in subsection (4) (a) is not affected by a direction under this section ceasing to have effect under subsection (6) or being cancelled under subsection (7). ”.

Section 703 amended

36. Section 703 of the Code is amended in the definition of the expression “sentence” by inserting after “thing” the following—

“ , an order under section 37A of the *Offenders Probation and Parole Act 1963* ”.

PART V—OFFENDERS PROBATION AND PAROLE AMENDMENT ACT 1983

Sections 8, 9 and 10 repealed

37. Sections 8, 9 and 10 of the *Offenders Probation and Parole Amendment Act 1983** are repealed.

[*Act No. 68 of 1983.]

PART VII—*PAROLE ORDERS (TRANSFER) ACT 1984*

Principal Act

38. In this Part the *Parole Orders (Transfer) Act 1984** is referred to as the principal Act.

[*Act No. 45 of 1984.]

Section 3 amended

39. Section 3 of the principal Act is amended by deleting the definitions of “section” and “subsection”.

Section 9 amended

40. Section 9 of the principal Act is amended by repealing subsection (4) and substituting the following subsections—

“ (4) If the parole order registered under this Act has never before been in force in Western Australia the parole period from the day of registration shall be—

- (a) where the person was undergoing imprisonment for life when the parole order was made—such period not exceeding 5 years as the Minister thinks fit and specifies in the instrument under section 5 (1);
- (b) where the person was undergoing detention for an indeterminate period when the parole order was made—such period not exceeding 2 years as the Minister thinks fit and specifies in the instrument under section 5 (1);
- (c) in any other case, whichever is the lesser of—
 - (i) the period by which the unexpired portion of the term of imprisonment exceeds the period that has elapsed since the person was released under the parole order; or
 - (ii) 2 years.

(5) If the parole order registered under this Act has previously been in force in Western Australia the parole period from the day of registration shall be—

- (a) in a case referred to in subsection (4) (a) or (b)—the portion of the previous parole period that remained to be completed when the parole order ceased to be in force in Western Australia;
- (b) in any other case, whichever is the least of—
 - (i) the portion of the previous parole period that had not been completed when the parole order ceased to be in force in Western Australia;
 - (ii) the period by which the unexpired portion of the term of imprisonment exceeds the period that has elapsed since the person was released under the parole order; or
 - (iii) 2 years.

(6) In subsection (5) “the previous parole period” means—

- (a) the parole period that was applicable to the parole order under the laws of Western Australia when the parole order was previously in force in Western Australia; or
- (b) where the parole order has previously been in force in Western Australia during 2 or more separate periods, the parole period that was applicable to the parole order during the most recent of those periods.

(7) Where a parole order registered under this Act is cancelled by or by operation of a law of Western Australia the person to whom the parole order related shall be liable—

- (a) where the person was undergoing imprisonment for life when the parole order was made, to resume serving the sentence which imposed that imprisonment;
- (b) where the person was undergoing detention for an indeterminate period when the parole order was made, to be further detained at the Governor’s pleasure;
- (c) in any other case, to serve a period of imprisonment equal to the unexpired portion of the term of imprisonment less the reduction applicable under subsection (8) and any reduction applicable under subsection (10).

(8) The period to be served under subsection (7) (c) shall be reduced by one-half of the period beginning on the day on which the parole order was registered under this Act and ending—

- (a) where the parole order was cancelled under section 44 (1) of the *Offenders Probation and Parole Act 1963*, on the day on which the cancellation took effect; or
- (b) where the parole order was cancelled by operation of section 44 (2) of the *Offenders Probation and Parole Act 1963*—
 - (i) on the day on which the offence that brought about the cancellation occurred; or
 - (ii) where the permanent head under that Act cannot ascertain the day referred to in subparagraph (i), on the latest day on which the offence that brought about the cancellation could have occurred.

(9) Where a parole order has been registered under this Act on 2 or more occasions subsection (8) refers to the most recent registration.

(10) The period to be served under subsection (7) (c) shall, in addition to the reduction under subsection (8), be reduced by one-half of each previous period (if any) for which the parole order was in force in Western Australia.

(11) In subsections (4) (c) (i), (5) (b) (ii) and (7) (c) “the unexpired portion of the term of imprisonment” means the period of imprisonment which, at the time of the release of the person under the parole order, remained to be served before the expiration of the term of imprisonment ”.

Section 10 amended

41. Section 10 of the principal Act is amended in subsection (2) (b) by inserting before “the force” the following—

“ subject to section 9 (5) (b), ”.

Section 10A inserted

42. (1) After section 10 of the principal Act the following section is inserted—

Exclusion of rules of natural justice

“ 10A. The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to a direction, request, or decision given or made by the Minister under this Act. ”.

(2) The doing or omission of any act, matter, or thing before the commencement of subsection (1) shall be deemed to have always been as valid and effectual as it would have been if section 10A of the *Parole Orders (Transfer) Act 1984* as enacted by subsection (1) had been in operation when the act, matter, or thing was done or omitted.
