

Western Australia

Sentence Administration Act 2003

As at 22 Sep 2006

Version 00-e0-03

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Sentence Administration Act 2003

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Western Australia

Sentence Administration Act 2003

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

Part 1 — Preliminary

1. Short title

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

2. Commencement

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

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

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

4. Interpretation and abbreviations

- (1) If not defined in this Act words and expressions in this Act have the same definitions as in the *Sentencing Act 1995* and in particular, in Part 13 of that Act.
- (2) In this Act —
 - “**Board**” means the Parole Board;
 - “**CEO parole order**” means a parole order made by the CEO;
 - “**CEO parole order (supervised)**” means a CEO parole order that specifies that it is supervised;
 - “**CEO parole order (unsupervised)**” means a CEO parole order that specifies that it is unsupervised;
 - “**community corrections activities**” are activities approved as such under section 85;

“community corrections centre” means a place declared to be a community corrections centre under section 84;

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

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

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

“department” means the department principally assisting the Minister with the administration of this Act;

“departmental officer” means a person appointed under section 98(1)(a);

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

“early release order” means —

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

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

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

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

“release” means release from custody;

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

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

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

[Section 4 amended by No. 27 of 2004 s. 10.]

Part 2 — General matters about people in custody

Division 1 — Preliminary

5. Interpretation and calculations

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

Division 2 — Matters affecting the service of terms

6. When a term begins

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

7. Order of service of fixed terms

- (1) In this section —

“fixed term” includes a period of imprisonment ordered under section 58, 59 or 119A of the *Sentencing Act 1995*;

“non-parole period”, in relation to a parole term, means the period that under section 93(1) of the *Sentencing Act 1995* the prisoner has to serve before he or she is eligible to be released on parole.

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Part 2 General matters about people in custody

Division 2 Matters affecting the service of terms

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- (2) A prisoner sentenced to serve 2 or more fixed terms is to serve those terms in this order —
- (a) firstly, those that are not parole terms are to be served according to whether they are concurrent, partly concurrent or cumulative with one another;
 - (b) secondly, subject to section 94 of the *Sentencing Act 1995* and subsection (3), the non-parole periods of those that are parole terms are to be served according to whether those parole terms are concurrent, partly concurrent or cumulative with one another;
 - (c) thirdly, subject to section 94 of the *Sentencing Act 1995* and subsection (3), unless and until released on parole, the balance of any parole terms after the end of any non-parole periods are to be served —
 - (i) cumulatively if the terms are cumulative;
 - (ii) concurrently if the terms are concurrent or partly concurrent.
- (3) If after the commencement of Part 2 Division 4 of the *Sentencing Legislation Amendment and Repeal Act 2003* a prisoner who is serving, or has yet to serve, a parole term imposed before the commencement of that Division is sentenced to serve another parole term, then —
- (a) the non-parole periods of the terms are to be served according to whether the parole terms are concurrent, partly concurrent or cumulative with one another; and
 - (b) the balance of the parole terms after the end of any non-parole periods are to be served concurrently irrespective of whether the parole terms are concurrent, partly concurrent or cumulative with one another.
- (4) If while serving a fixed term a prisoner is sentenced to serve another fixed term, other than a fixed term ordered to be served partly concurrently with another term, service of the former is suspended if necessary so that the terms can then be served in the order required by subsection (1).

8. Effect of not being in custody

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

9. Effect of time before an appeal

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

10. No release if prisoner in custody for another matter

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

Division 3 — Reports about certain people in custody

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

- (1) At any time the Minister, in writing, may request the CEO to provide a report of the kind mentioned in subsection (2).
- (2) Whenever the CEO gets a written request to do so from the Minister, or whenever the CEO thinks there are special circumstances which justify doing so, the CEO must give the Minister a written report on the place or places where a person who is ordered to be detained in strict custody under section 282 of *The Criminal Code* is or should be detained in safe custody.

12. Report to Minister about a person in custody

- (1) In this section —
“**person in custody**” means —
 - (a) a prisoner sentenced to a fixed term, whether a parole term or not;
 - (b) a prisoner sentenced to a life term;
 - (c) a prisoner sentenced to indefinite imprisonment;
 - (d) a person in strict or safe custody by virtue of an order made under section 282 of *The Criminal Code*.
- (2) At any time the Minister, in writing, may request the Board to report about a person in custody.
- (3) The Board must give the Minister a written report about a person in custody —
 - (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 “person in custody” in subsection (1), at least once in every year.
- (4) A report —
- (a) must, if given under subsection (3)(a); and
 - (b) may, if given under subsection (3)(b) or (c),
- recommend whether or not the Governor should be advised to exercise any power vested in the Governor to release the person in custody and, if release is recommended, the requirements or conditions (if any) that should apply to the person's release.
- (5) If a report under subsection (3) about a person in custody recommends that the person be released, the report must, in addition to any other matters the Board thinks fit, report —
- (a) on the nature and circumstances of the offence that gave rise to the person being in custody; and
 - (b) if parole is recommended —
 - (i) on the parole considerations (within the meaning of section 16) relating to the person;
 - (ii) on the period for which the person should be on parole; and
 - (iii) on the additional requirements (if any) to which the person should be subject while on parole.

Division 4 — Releasing people in custody during the Governor's pleasure

13. 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.

14. Release may be by parole order

- (1) The release by the Governor of a person 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 to the Minister 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.

Part 3 — Parole

Division 1 — Preliminary

15. Interpretation

- (1) In this Part —
“**parole considerations**” has the meaning given by section 16.
- (2) In this Part words and expressions have the same definitions, and calculations are to be made in the same way, as in Part 13 of the *Sentencing Act 1995*.

16. Release on parole, matters to be considered

In this Part a reference to parole considerations in relation to a sentence of imprisonment that a prisoner is serving or has yet to serve and in respect of which the prisoner may be released on parole is a reference to these considerations —

- (a) the circumstances of the commission of, and the seriousness of, the offence for which the sentence was imposed;
- (b) the behaviour of the prisoner when in custody serving the sentence in so far as it may be relevant to determining how the prisoner is likely to behave if released on parole;
- (c) whether the prisoner has participated in programmes available to him or her when in custody and if not the reasons for not doing so;
- (d) the prisoner’s performance when participating in any such programme;
- (e) the behaviour of the prisoner when subject to any release order (as defined in section 89 of the *Sentencing Act 1995*) made previously;
- (f) the likelihood of the prisoner offending when he or she is on parole;

- (g) the likelihood of the prisoner complying with the standard obligations and any additional requirements of a parole order;
- (h) the degree of risk 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;
- (i) any other consideration that is or may be relevant to whether the prisoner should be released on parole;
- (j) any remarks by a court that has sentenced the offender to imprisonment that are relevant to any of the above matters.

Division 2 — Reports about certain people eligible for parole

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

- (1) In the case of a prisoner serving a parole term the CEO must give the Board a written report on the parole considerations relating to the prisoner.
- (2) The report must be given to the Board a reasonable period of time before the date when the prisoner concerned is eligible to be released on parole.

18. Life term or indefinite imprisonment, Board to report periodically to Minister about prisoner

- (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) If a report 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) the parole considerations relating to the prisoner;
 - (b) the period for which the prisoner should be on parole; and
 - (c) the additional requirements (if any) to which the prisoner should be subject while on parole.
- (4) A report 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 term was imposed	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

Type of sentence	When report is due	When subsequent reports are due
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

Division 3 — Parole in case of parole term

19. Interpretation

In this Division —

“**prisoner**” means a prisoner serving a parole term.

20. Board may parole prisoner

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

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

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

21. Prisoner to be notified of postponement or refusal of parole

- (1) If under section 20 the Board does not make a parole order in which the release date is the day when, under section 93(1) of the *Sentencing Act 1995*, the prisoner is eligible to be released on parole, written notice of the decision must be given to the prisoner as soon as practicable.
- (2) The written notice must —
 - (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of his or her right to make submissions under subsection (3).
- (3) The prisoner may make written submissions to the Board about the Board's decision and reasons (if any are supplied).

Division 4 — Parole in case of short term

22. Application

- (1) This Division applies to a prisoner if and only if —
 - (a) the prisoner is serving one term and that term is less than 12 months and is not a prescribed term; or
 - (b) the aggregate of terms the prisoner is serving or is yet to serve is less than 12 months and neither or none of them is a prescribed term.

- (2) If subsection (1)(b) applies, a reference in this Part or Part 5, or in section 85 of the *Sentencing Act 1995*, to the term of the prisoner is taken as being a reference to the aggregate of terms.

23. CEO may parole prisoner

- (1) In this section —

“prescribed prisoner” means a prisoner who —

- (a) is serving a term for a serious offence;
 - (b) was released, whether on parole or otherwise, from serving a term for a serious offence on a date in the 5 years preceding the commencement of the term that the prisoner is serving; or
 - (c) was subject to an early release order that was made under this Act or the *Sentence Administration Act 1995* and that was cancelled under this Act or that Act on a date in the 2 years preceding the commencement of the term that the prisoner is serving.
- (2) A prisoner is eligible to be released on parole when he or she has served one-half of his or her term.
- (3) The CEO —
- (a) may, in the case of a prescribed prisoner; and
 - (b) must, in any other case,
- make a parole order in respect of the prisoner.
- (4) In the case of a parole order made under subsection (3)(a), the release date in the order is that set by the CEO, but it must not be earlier than the day when, under subsection (2), the prisoner is eligible to be released on parole.
- (5) In the case of a parole order made under subsection (3)(b), the release date is to be the day when, under subsection (2), the prisoner is eligible to be released on parole.

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

24. Prisoner to be notified of postponement or refusal of parole

- (1) If under section 23(3)(a) the CEO does not make a parole order in which the release date is the day when, under section 23(2), the prisoner is eligible to be released on parole, written notice of the decision must be given to the prisoner as soon as practicable.
- (2) The written notice must —
 - (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of the effect of section 47.

**Division 5 — Parole in case of life term or
indefinite imprisonment**

25. Life imprisonment, Governor may parole prisoner

- (1) The Governor may make a parole order in respect of a prisoner serving life imprisonment but only if —
 - (a) the prisoner has served the minimum period set by the court under section 90 of the *Sentencing Act 1995*; and
 - (b) a report about the prisoner has been given by the Board to the Minister under section 12 or 18.
- (2) The release date in the order is that set by the Governor.
- (3) The parole period in the order is to be set by the Governor and must be at least 6 months and not more than 5 years.

26. Strict security life imprisonment, Governor may parole prisoner

- (1) Unless a court has made an order under section 91(3) of the *Sentencing Act 1995*, the Governor may make a parole order in respect of a prisoner serving strict security life imprisonment but only if —
 - (a) the prisoner has served the minimum period set by the court under section 91(1) of that Act; and
 - (b) a report about the prisoner has been given by the Board to the Minister under section 12 or 18.
- (2) The release date in the order is that set by the Governor.
- (3) The parole period in the order is to be set by the Governor and must be at least 6 months and not more than 5 years.
- (4) The Minister must cause a copy of every parole order made under 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.

27. Indefinite imprisonment, Governor may parole prisoner

- (1) The Governor may make a parole order in respect of a prisoner sentenced to be imprisoned indefinitely but only if a report about the prisoner has been given by the Board to the Minister under section 12 or 18.
- (2) The release date in the parole order is that set by the Governor.
- (3) The parole period in the parole order is to be set by the Governor and must be at least 6 months and not more than 5 years.

Division 6 — Parole orders

28. Parole order, nature of

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

Table

Sentence Administration Act 2003

Part 3 Parole

Division 6 Parole orders

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Parole term	Parole period	Supervised period =
≤ 18 months	≤ 6 months	Parole period
	> 6 months	6 months
> 18 months and ≤ 48 months	≤ 1/3 parole term	Parole period
	> 1/3 parole term	1/3 parole term
> 48 months	≤ 24 months	Parole period
	> 24 months	24 months

Note: ≤ signifies less than or equal to

> signifies greater than

- (3) The supervised period of a parole order that is not made in respect of a parole term is the whole of the parole period.
- (4) For the purposes of this section, to calculate the length in days of one-third of a parole term —
 - (a) determine the dates on which the term as imposed by the court will begin and end and then express the term as a number of days (“**T**”); and
 - (b) then divide T by 3 and disregard any remainder.

29. Parole order, standard obligations

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

- (a) must report to a community corrections centre within 72 hours after being released, or as otherwise directed by a CCO;
- (b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change; and
- (c) must comply with section 76.

30. Parole order, additional requirements

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

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

31. CEO to ensure parolee is supervised during supervised period

- (1) The CEO must ensure that during the supervised period of a parole order a CCO is assigned to supervise the prisoner.
- (2) However, if at any time the CEO is satisfied that —
 - (a) the prisoner is complying with his or her undertaking in a satisfactory manner; and
 - (b) the risk of the prisoner re-offending if not subject to supervision by a CCO is minimal,the CEO may —
 - (c) in the case of a CEO parole order (supervised), cease the supervision of the prisoner; or
 - (d) in any other case, recommend to the Board that the prisoner no longer be supervised by a CCO.
- (3) If the CEO makes a recommendation under subsection (2)(d), the Board may direct the CEO that the prisoner need no longer be supervised during the supervised period and the CEO may cease the supervision of the prisoner.
- (4) If the CEO ceases the supervision of a prisoner, the CEO is to inform the prisoner.
- (5) The fact that a prisoner ceases to be under supervision does not affect the prisoner's duty to obey the requirements of his or her undertaking during the supervised period.
- (6) The Board at any time may cancel a direction given to the CEO under subsection (3).

Division 7 — Parole orders, general provisions

32. Parole order may relate to more than one term

A parole order may relate to more than one term.

33. Prisoner may refuse to be released on parole

- (1) A parole order is not to be made in respect of a prisoner if the prisoner has given written notice that he or she does not want to be released on parole.
- (2) In the case of a prisoner to whom Division 4 applies the written notice must be given to the CEO.
- (3) In any other case, the written notice must be given to the Board which, if the parole order is to be made by the Governor, must forward it to the Minister.

34. Prisoner's acknowledgment or undertaking

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

35. Making parole order after refusal by prisoner

- (1) If —
 - (a) a parole order was not made in respect of a prisoner because the prisoner gave notice under section 33(1); or
 - (b) a parole order was cancelled by the operation of section 34,and the prisoner subsequently gives written notice that he or she wants to be released on parole and is prepared to give the written acknowledgment or undertaking or both, the Board, the CEO or the Governor (as the case may be) may then make a parole order.
- (2) In the case of a prisoner to whom Division 4 applies the written notice must be given to the CEO.
- (3) In any other case, the written notice must be given to the Board which, if the parole order is to be made by the Governor, must forward it to the Minister.

- (4) The release date in a parole order made under subsection (1) is that set by the Board, the CEO or the Governor (as the case may be).
- (5) If the parole order is to be made in respect of a parole term, then section 20(4) applies.
- (6) If Division 4 applies to the prisoner, then section 23(6) applies.

Division 8 — Amendment of parole orders

36. Amending before release

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

- (a) by the Board, if it was made by the Board;
- (b) by the CEO, if it was made by the CEO; or
- (c) by the Governor or the Board, if it was made by the Governor.

37. Amendment of parole order during supervised period

- (1) If a parole order was made by the Board or the Governor, the Board may amend the order at any time during the supervised period of the order.
- (2) The CEO may amend a CEO parole order (supervised) at any time during the period of the order.
- (3) If a parole order is amended, the amended order applies accordingly.
- (4) Written notice of the decision to amend the order is to be given to the prisoner by the Board or the CEO, as the case may be, as soon as practicable.

Division 9 — Suspension of parole orders

38. Suspension by CEO during supervised period

- (1) The CEO may, at any time during the supervised period of a parole order, suspend the parole order, irrespective of whether it was made by the CEO, by the Board or by the Governor.
- (2) Written notice of the decision to suspend is to be given by the CEO to the Board within 3 working days after the decision and in any event before the end of the supervised period.
- (3) The written notice must include reasons for the decision.
- (4) Subsection (2) does not apply to a CEO parole order (supervised).

39. Suspension by Board during supervised period

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

40. Period of suspension

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

- (b) the period may be for a fixed or indefinite period, as the CEO thinks fit; and
- (c) the CEO may cancel the suspension at any time before the suspension period ends.

41. Suspension, effect on other parole orders

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

42. Prisoner to be notified

- (1) If under this Division a parole order made by the Board or the Governor is suspended, written notice of the decision to suspend is to be given by the Board to the prisoner as soon as practicable after he or she is returned to custody.
- (2) If under this Division a CEO parole order is suspended, written notice of the decision to suspend is to be given by the CEO to the prisoner as soon as practicable after he or she is returned to custody.
- (3) The written notice under subsection (1) or (2) must —
 - (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of the effect of section 47.

Division 10 — Cancellation of parole orders

43. Cancellation before release

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

- (2) A CEO parole order made under section 23(3)(a) may be cancelled by the CEO after it is made and before the prisoner concerned is released under it.

44. Cancellation by Board or CEO

- (1) Subject to subsection (2), the Board may cancel a parole order made by the Board or the Governor at any time during the parole period.
- (2) The Board's power to cancel cannot be exercised after the supervised period of the parole order unless, during the parole period, the prisoner is charged with or is convicted of an offence.
- (3) Subject to subsection (4), the CEO may cancel a CEO parole order at any time during the parole period.
- (4) If the parole order is a CEO parole order (unsupervised), the CEO's power to cancel cannot be exercised unless, during the parole period, the prisoner is charged with or is convicted of an offence.

45. Cancellation, prisoner to be notified

- (1) If under section 43(1) or 44(1) a parole order is cancelled, written notice of the decision to cancel is to be given by the Board to the prisoner as soon as practicable.
- (2) If under section 43(2) or 44(3) a parole order is cancelled, written notice of the decision to cancel is to be given by the CEO to the prisoner as soon as practicable.
- (3) The written notice under subsection (1) or (2) must —
- (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of the effect of section 47.

46. Cancellation, effect on other parole orders

If under section 43 or 44 a parole order is cancelled, any parole order applicable to the prisoner when the order is cancelled is cancelled by virtue of this section, irrespective of whether it had taken effect or not.

Division 11 — Miscellaneous

47. Decision to refuse etc. parole, Board may review

- (1) A prisoner given notice under section 42(1) or 45(1) of a decision of the Board may request the Board to review its decision and may make submissions to the Board about its decision and reasons (if any are supplied).
- (2) A prisoner given notice under section 24(1), 42(2) or 45(2) of a decision of the CEO may request the Board to review the CEO's decision and may make submissions to the Board about the CEO's decision and reasons (if any are supplied).
- (3) Any such request or submissions must be made in writing.
- (4) On a request made under subsection (1), the Board must consider any such submissions and review its decision and may confirm or amend it or cancel it and make another decision.
- (5) On a request made under subsection (2), the Board must consider any such reasons and submissions and review the CEO's decision and may confirm it or —
 - (a) if the CEO's decision was made under section 23(3)(a), make a parole order in accordance with section 23 as if it were the CEO;
 - (b) if the CEO's decision was made under section 38(1), cancel or amend it; or
 - (c) if the CEO's decision was made under section 44(3), make a parole order in accordance with section 23 as if it were the CEO.

- (6) Any such parole order made by the Board is to be taken to be a CEO parole order for the purposes of this Act.
- (7) The Board must give the prisoner written notice of its decision on a review conducted under this section.

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

- (1) If in respect of a prisoner subject to a parole order made by the Governor —
 - (a) under section 31, the Board —
 - (i) directs the CEO that the prisoner need no longer be supervised during the supervised period; or
 - (ii) cancels such a direction;
 - (b) under section 36 or 37, the order is amended;
 - (c) under Division 9, the order is suspended and the suspension is not cancelled by the Board within 30 days afterwards; or
 - (d) under Division 10, the order is cancelled,the Board must give the Minister as soon as practicable —
 - (e) written notice of and reasons for the decision and a summary of any submissions made by the prisoner under section 47; and
 - (f) if the parole order has been cancelled, a report containing a recommendation as to whether or not the Governor should be advised to again exercise the power to release the prisoner on parole.
- (2) The Governor may cancel a decision referred to in subsection (1).

49. Resolution of doubtful cases

- (1) If a doubt or difficulty arises to which this section applies and neither this Act nor the *Sentencing Act 1995* nor the *Sentencing*

Legislation Amendment and Repeal Act 2003 makes adequate provision for it, the CEO may apply in a summary way to a Judge of the Supreme Court for an order resolving the doubt or difficulty.

- (2) On such an application the Judge may make any order he or she considers just and for that purpose may make a declaration as to —
- (a) the length of any term, any part of a term, or any parole period;
 - (b) any date relevant to a sentence of imprisonment or to the parole or release of a prisoner; or
 - (c) the manner in which the Board or the CEO is to determine such matters.
- (3) This section applies to doubts or difficulties as to —
- (a) the effect of any sentence of imprisonment, including the date it commences, how it is served in relation to other such sentences, when it ends, and when it has been or has been deemed to have been served;
 - (b) any matter relating to parole, including the date when a prisoner is eligible to be released on parole, the parole period applicable in any case, the supervision period applicable in any case and the effect of the suspension or cancellation of parole; or
 - (c) the term to be served by a prisoner who escapes from lawful custody,
- irrespective of when the sentence was imposed.

Part 4 — Re-entry release orders

50. Certain prisoners may apply to Board for RRO

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

- (a) he or she is at least 17 years of age;
- (b) he or she is not serving a life term or indefinite imprisonment;
- (c) he or she is not a person referred to in section 14(1);
- (d) at the release date that would be specified in the RRO if it were made, he or she will have been in custody under sentence for a continuous period of at least 12 months; and
- (e) within 6 months after the release date that would be specified in the RRO if it were made, he or she would in any event be eligible for release (whether under a parole order or not).

51. CEO to report to Board about RRO applicants

- (1) The CEO must report to the Board about every prisoner who applies to be released under an RRO.
- (2) A report by the CEO under subsection (1) must be given to the Board as soon as practicable after a prisoner applies to be released under an RRO.
- (3) A report by the CEO under subsection (1) must report about the risk that the release of the prisoner under an RRO will or may pose to the personal safety of people in the community or of any individual in the community.

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52. Board may make RRO

- (1) The Board must consider the case of every prisoner who applies to be released under an RRO and may, in respect of such a prisoner —
 - (a) make an RRO to come into effect on a date specified by the Board;
 - (b) defer the making of an RRO; or
 - (c) refuse to make an RRO.
- (2) The Board must not make an RRO in respect of a prisoner unless satisfied that the prisoner is a person whose release would pose a low risk to the personal safety of people in the community or of any individual in the community.
- (3) 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 the personal safety of people in the community or of any individual in the community would be better assured if the prisoner were released under an RRO instead of at the time when he or she would otherwise have to be released.
- (4) Except with the prior approval of the Governor, an RRO must not be made in respect of a prisoner serving a fixed term, or an aggregate of fixed terms, of more than 15 years.
- (5) An RRO may relate to more than one term.

53. Prisoner to be notified of refusal to make RRO

- (1) If the Board refuses to make an RRO, written notice of the decision is to be given by the Board to the prisoner as soon as practicable.
- (2) The written notice must —
 - (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of his or her right to make submissions under subsection (3).

- (3) A prisoner whose release on an RRO has been refused may make written submissions to the Board about the Board's decision and the reasons for it (if any are supplied).
- (4) The Board must consider the submissions and may make a further decision under section 52.

54. RRO, nature of

- (1) An RRO is an order that on a release date specified in the order a prisoner is to be released if he or she —
 - (a) acknowledges in writing that he or she understands the general effect of Part 5 Divisions 2 and 3 should the order be cancelled;
 - (b) gives a written undertaking that while the RRO is in force he or she will comply with —
 - (i) the standard obligations in section 55;
 - (ii) such of the primary requirements in section 56 as the RRO contains; and
 - (iii) any additional requirements imposed by the Board under section 57.
- (2) An RRO ceases to be in force when the period of the RRO ends, or when it is cancelled, whichever happens first.
- (3) The period of an RRO is the period —
 - (a) beginning on the day when the prisoner is released under the RRO; and
 - (b) ending on the first to occur of —
 - (i) the release date in a parole order made in respect of the prisoner;
 - (ii) the date when under section 93 or 95 of the *Sentencing Act 1995*, the prisoner must be released.

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- (4) A prisoner who is released under an RRO is nevertheless still subject to the sentence or sentences of imprisonment to which the RRO relates.

55. RRO, standard obligations

The standard obligations of an RRO are that the prisoner —

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

56. RRO, primary requirements

- (1) Every RRO must contain at least one of these primary requirements —
- (a) a requirement that the prisoner must —
 - (i) seek or engage in gainful employment or in vocational training; or
 - (ii) engage in gratuitous work for an organisation approved by the CEO;
 - (b) a requirement that the prisoner must engage in activities, as ordered by a CCO, that will facilitate the prisoner's re-entry into the community after being released from custody.

- (2) If a requirement under subsection (1)(b) is included in an RRO, a CCO may give the prisoner any reasonable order that the CCO considers will facilitate the prisoner's re-entry into the community, including but not limited to the following —
 - (a) an order to attend educational, vocational, or personal development programmes or courses;
 - (b) an order to undergo counselling in relation to behavioural matters.

57. RRO, additional requirements

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

58. Prisoner's undertaking

- (1) A prisoner must give the written acknowledgment and undertaking required by section 54 on or before the release date specified in the RRO and if he or she does not, the RRO is to be taken as having been cancelled.
- (2) If an RRO is cancelled by the operation of subsection (1) and the prisoner subsequently gives the Board written notice that he or she is prepared to give the required written acknowledgment and undertaking, the Board, if it thinks fit, may then make an RRO.

59. CEO to ensure prisoner is supervised during RRO

- (1) The CEO must ensure that during the period of an RRO a CCO is assigned to supervise the prisoner.

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- (2) However, if at any time the CEO is satisfied that —
- (a) the prisoner is complying with his or her undertaking in a satisfactory manner; and
 - (b) the risk of the prisoner re-offending if not subject to supervision by a CCO is minimal,

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

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

60. Prisoner may be paroled or returned to custody after RRO

- (1) The making of an RRO does not affect the operation of Part 3.
- (2) If under Part 3 the Board refuses to make a parole order, or if a prisoner subject to an RRO refuses to be released on parole or to give the written acknowledgment or undertaking, or both, required by a parole order, the Board may cancel the RRO.

61. Suspension by Board or CEO

- (1) The Board or the CEO may suspend an RRO at any time during the period of the order.
- (2) The period of suspension may be for a fixed or indefinite period as the Board or the CEO (as the case may be) thinks fit.

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

62. Suspension, prisoner to be notified

Written notice of a decision to suspend an RRO is to be given by the Board or the CEO (as the case may be) to the prisoner as soon as practicable.

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63. Cancellation by Board

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

64. Cancellation, prisoner to be notified

- (1) If an RRO is cancelled, written notice of the decision to cancel is to be given by the Board to the prisoner as soon as practicable.
- (2) The written notice must, subject to section 114, include the reasons for the decision.

Part 5 — Provisions applying to early release orders

Division 1 — General

65. Period of early release order counts as time served

If during the period of an early release order —

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

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

66. Prisoner under sentence until discharged

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

Division 2 — Automatic cancellation

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

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

Division 3 — Consequences of suspension and cancellation

68. Suspension, effect of

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

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

69. Cancellation, effect of

- (1) If an early release order in respect of a prisoner serving a fixed term is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the fixed term in custody and is not entitled to be released until he or she has served the whole of that term.
- (2) If a parole order in respect of a prisoner serving a life term is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the life term in custody.
- (3) If a parole order in respect of a prisoner serving indefinite imprisonment is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the indefinite imprisonment in custody.
- (4) If a parole order in respect of a person referred to in section 14(1) is cancelled after the person is released under the order, the person is liable to be again kept in strict or safe custody at the Governor's pleasure.
- (5) Subject to Division 4, this section does not prevent another early release order being made in respect of a prisoner.

70. Returning prisoner to custody

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

71. Clean street time counts as time served

- (1) Subject to subsection (2), if an early release order in respect of a prisoner serving a fixed term is cancelled after the prisoner is released under the order —

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

Division 4 — Re-release after cancellation

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

- (1) If an early release order made by the Board or the CEO —
- (a) is cancelled under section 43, 44 or 63; or
 - (b) is cancelled by virtue of section 67,

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

- (2) If the subsequent early release order is a parole order —
- (a) the parole period in it is the period that begins on the day when the prisoner is released and ends when the term ends;
 - (b) if it is made by the Board, the supervised period of it is to be such period of it as the Board decides but must not —
 - (i) end after the parole term ends; or
 - (ii) be longer than 24 months;and
 - (c) if it is a CEO parole order (supervised), the supervised period of it is the whole of it.

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

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

5 years, and not longer than the parole period of the cancelled parole order.

- (3) The supervised period of the subsequent parole order is to be such period as the Governor decides.

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

If —

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

then the prisoner is taken to have served the term, or the aggregate of terms, to which the parole order relates.

Part 6 — Provisions applying to offenders on community corrections orders

75. Interpretation

In this Part —

“**centre**” means a community corrections centre;

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

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

76. Offender’s obligations

(1) In this section and section 77 —

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

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

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

(a) to do community work —

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

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

(b) to do community corrections activities —

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

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

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

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77. Consequences of contravening the obligations

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

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

[Section 77 amended by No. 27 of 2004 s. 11 and 12.]

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

(1) In this section —

“minimum hours requirement” —

- (a) in relation to a community service requirement in a community order — means the requirement that the offender do at least 12 hours unpaid community work in any 7 day period;

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

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

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

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

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

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

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

80. Programme requirement

- (1) This section applies in the case of an offender who is subject to a programme requirement in a pre-sentence order or a community order or a sentence of CSI.
- (2) If a CCO is satisfied that in respect of the offender there are personal factors which contributed to the offender's criminal behaviour that were not identified at the time the programme

requirement was imposed, the CCO may give the offender such other directions as could be given under a programme requirement and as the CCO thinks fit, in addition to any specified by the court.

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

81. Compensation for injury

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

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

82. Regulations

Regulations made for the purposes of this Part may —

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

Part 7 — Community corrections centres

Division 1 — Preliminary

83. Interpretation

In this Part —

“**centre**” means a community corrections centre;

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

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

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

84. Community corrections centres

- (1) The Minister may by notice declare any place to be a community corrections centre.
- (2) The Minister, by notice, may amend or cancel a notice under subsection (1).
- (3) In this section —
“**notice**” means notice published in the *Gazette*.

85. Community corrections activities

- (1) The CEO may approve activities as community corrections activities.
- (2) Activities that may be approved as community corrections activities include, but are not restricted to, any of these —
 - (a) charitable, community or voluntary work;
 - (b) programmes for the treatment of people who abuse alcohol, drugs or other substances or who are addicted to gambling;
 - (c) counselling;

- (d) social and life skills courses;
- (e) educational, vocational and personal development courses.

Division 2 — Management

86. CEO may issue written instructions

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

87. Supervisors of centres

- (1) The CCO in control of a centre is, while in control, the supervisor of the centre.

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

88. Functions of CCOs at centres

- (1) A CCO —
 - (a) subject to subsection (5), must comply with the reasonable directions of the supervisor of the centre at which the CCO is working;
 - (b) must maintain the good order of the centre at which the CCO is working; and
 - (c) must report immediately to the supervisor anything which might reasonably be thought to jeopardise the management, security or good order of the centre.
- (2) A CCO may give such reasonable orders or directions to offenders and other persons as are necessary for the management, security or good order of a centre.
- (3) A CCO may use reasonable force to compel an offender to obey an order or direction given to that offender if the CCO believes on reasonable grounds that the use of force is necessary —

- (a) to prevent the offender or another person being killed or seriously injured; or
 - (b) to prevent serious damage to property.
- (4) A CCO may, if necessary, use reasonable force to compel a person to obey an order by a supervisor to leave a centre.
- (5) For the purpose of subsection (1)(a), a direction given by a supervisor is not reasonable if it is a direction —
- (a) to use reasonable force to compel an offender to obey an order or direction given to that offender;
 - (b) to use reasonable force to compel a person to obey an order to leave a centre; or
 - (c) to search any person wishing to enter or remain in a centre or anything in the person's possession or under the person's control.

89. Access to centres

- (1) The supervisor of a centre may impose such conditions as he or she thinks fit on any person (including an offender) entering or remaining in the centre.
- (2) A person who is not an offender may be refused entry to a centre by the supervisor of it.
- (3) An offender may be refused entry to a centre by the supervisor of it if the offender —
- (a) contravenes a condition imposed under subsection (1); or
 - (b) does anything which, in the supervisor's opinion, threatens the management, security or good order of the centre.
- (4) A person (including an offender) who is in a centre may be ordered by the supervisor to leave the centre immediately if the person, while in the centre —

- (a) contravenes this Act, the regulations or any written instructions issued under section 86;
 - (b) contravenes a direction given by the supervisor;
 - (c) contravenes a condition imposed under subsection (1);
or
 - (d) does anything which, in the supervisor's opinion, threatens the management, security or good order of the centre.
- (5) A person who disobeys an order to leave a centre given under subsection (4) commits an offence.
Penalty: \$1 000.

90. Searches

- (1) If the supervisor of a centre believes that it is necessary for the security or good order of a centre or the offenders in it, he or she may at any time —
- (a) cause a prescribed person to search the centre or any part of it or anything in it; or
 - (b) order a person wishing to enter or remain in a centre, or anything in the person's possession or under the person's control, to be searched by a prescribed person.
- (2) If a person refuses to submit to such a search, the supervisor may order the person to leave the centre immediately.
- (3) A supervisor may at any time order a search to be stopped.
- (4) A person who disobeys a supervisor's order under subsection (2) commits an offence.
Penalty: \$1 000.

91. Seizure

- (1) In carrying out a search under section 90, a prescribed person may seize anything found in a centre, whether in a person's possession or not, that the supervisor of the centre believes on

reasonable grounds jeopardises or is likely to jeopardise the security or good order of the centre or the safety of persons in it.

- (2) A drug prescribed for a person and in that person's possession must not be seized under subsection (1).
- (3) Anything seized by a prescribed person must be given to the supervisor of the centre immediately.
- (4) Anything seized must be dealt with by the supervisor under the regulations.

Division 3 — Miscellaneous

92. Department to report on centres

The annual report of the accountable officer of the department prepared for the purposes of the *Financial Administration and Audit Act 1985* is to include a report on the operations of centres and community corrections activities and other operations of the department under this Part.

93. Regulations

Regulations made for the purposes of this Part may —

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

Part 8 — Staff

Division 1 — Chief executive officer

94. Functions

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

[Section 94 amended by No. 27 of 2004 s. 12.]

95. Delegation by CEO

- (1) The CEO may delegate to any person any power or duty of the CEO —
 - (a) under another provision of this Act;
 - (b) under the *Sentencing Act 1995*;
 - (c) under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (2) The delegation must be in writing signed by the CEO.

- (3) A person to whom a power or duty is delegated under this section cannot delegate the power or duty.
- (4) A person exercising or performing a power or duty that has been delegated under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by a person as a delegate of the CEO was signed by a person in the performance of a function that at the time was delegated to the person by the CEO.
- (6) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.

96. CEO may confer functions of CCO on person

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

97. CEO to notify Board of certain breaches

Subject to any directions issued by the Board to the CEO, if a breach of a parole order (other than a CEO parole order) or a WRO comes to the knowledge of the CEO he or she must forthwith report the matter to the Board and must provide such other information about the breach as the Board requires.

Division 2 — Other staff

98. Appointment

- (1) The staff, including community corrections officers, needed for the purposes of this Act, the *Sentencing Act 1995* and Part VIA of the *Bail Act 1982* —
 - (a) may be appointed or engaged under the *Public Sector Management Act 1994*; or
 - (b) may be appointed on an honorary basis.

- (2) A person who is a member of the Police Force is not to be an honorary CCO.
- (3) A member of the Police Force who holds a designated position (as defined in the *Witness Protection (Western Australia) Act 1996*) may be an honorary CCO for the purposes of supervising an offender who is a participant in the State Witness Protection Program established under that Act.
- (4) The regulations may prescribe classes of staff and their functions.

99. Volunteers

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

Division 3 — Miscellaneous

100. Compensation for injury

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

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

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

101. Assistance by police officers

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

Part 9 — Parole Board

102. Parole Board established

A board called the Parole Board is established.

103. Membership

- (1) There are to be 7 members on the Board —
 - (a) a judicial member nominated by the Attorney General and appointed by the Governor;
 - (b) 3 persons appointed by the Governor;
 - (c) the CEO;
 - (d) a departmental officer nominated by the CEO; and
 - (e) a police officer nominated by the Commissioner of Police.
- (2) A person must not be nominated as the judicial member unless he or she —
 - (a) is a Judge of the Supreme Court or the District Court and the Chief Justice or the Chief Judge of the District Court (as the case may be) consents to the nomination; or
 - (b) is a retired Judge of one of those courts.

104. Secretary

Under Part 3 of the *Public Sector Management Act 1994* a person is to be appointed to be the secretary of the Board.

105. Schedule 1 applies

Schedule 1 has effect in relation to the Board.

106. Functions

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

- (2) The Board may do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.

107. Board to have powers of Royal Commission

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

108. Orders by the Board

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

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109. Board may require prisoner to appear before it

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

110. Issue of warrants by Board

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

111. Judicial notice of appointment and signature

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

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 released on parole by the Board or the Governor during the previous financial year; and
- (c) the operation of this Act and relevant parts of the *Sentencing Act 1995* so far as they relate to parole orders (other than CEO parole orders), to RROs and to the activities of CCOs in relation to those orders during the previous financial year.

113. Special reports to Minister

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

Part 10 — Miscellaneous

114. Reasons for decision may be withheld

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

115. Exclusion of rules of natural justice

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

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

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

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

offender is released before having served the period of imprisonment specified in the warrant of commitment.

- (4) Subsection (1) does not limit any power to arrest a person who has escaped lawful custody.

117. Issue and execution of warrants

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

118. Monitoring equipment

- (1) In this section —
- “monitoring equipment”** means any device or equipment installed under this Act or the *Sentencing Act 1995* or the *Bail Act 1982* at the place where a person lives or lived to keep the person under surveillance or to monitor the person.

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- (2) The CEO may give the occupier of a place where monitoring equipment is installed a direction to deliver the equipment to the CEO within a set period.
- (3) A person who contravenes a direction given under subsection (2) commits an offence.
- (4) A CCO may, at any time, enter a place where monitoring equipment is installed to retrieve the equipment.
- (5) A person who hinders a CCO exercising the power in subsection (4) commits an offence.
- (6) A person who unlawfully interferes with the operation of any monitoring equipment commits an offence.
- (7) A person who wilfully and unlawfully destroys or damages any monitoring equipment commits an offence.
Penalty: \$12 000 or imprisonment for 12 months.

119. Secrecy

- (1) A person who is or has been in a position to which this section applies must not, whether directly or indirectly, record, disclose, or make use of any information obtained because of being in that position, except —
 - (a) for the purposes of and in the due exercise of functions under this Act;
 - (b) when ordered by a court or a judge to do so; or
 - (c) in circumstances approved from time to time by the Minister.Penalty: \$2 500.
- (2) The positions to which this section applies are —
 - (a) a member, a deputy of a member, an acting member or the secretary of the Board;
 - (b) the CEO; and
 - (c) a member of the departmental staff.

120. Protection from liability for wrongdoing

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

121. Regulations

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

Schedule 1 — Provisions applying to the Parole Board

[s. 105]

1. Interpretation

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

2. Terms of office

- (1) A member appointed by the Governor is a member for the period (not more than 3 years) specified in the instrument of appointment, but is eligible for reappointment.
- (2) A person who is a member by reason of being the CEO ceases to be a member when he or she ceases to be the CEO.
- (3) A person who is a member by reason of being a departmental officer ceases to be a member when he or she resigns as a member or ceases to be a departmental officer or when another departmental officer is nominated by the CEO.
- (4) A person who is a member by reason of being a police officer ceases to be a member when he or she resigns as a member or ceases to be a police officer or when another police officer is nominated by the Commissioner of Police.

3. Resignation

- (1) A member appointed by the Governor may resign by giving his or her written resignation to the Minister.
- (2) The member who is a member by reason of being a departmental officer may resign by giving his or her written resignation to the CEO.
- (3) The member who is a member by reason of being a police officer may resign by giving his or her written resignation to the Commissioner of Police.
- (4) A written resignation has effect when it is received by the relevant person or at such later date as it specifies.

4. Deputies of members

- (1) The Minister may appoint a person to be the deputy of a member appointed by the Governor, other than the judicial member.
- (2) The CEO may nominate a departmental officer to be his or her deputy.
- (3) The CEO may nominate a departmental officer to be the deputy of the member who is a departmental officer.
- (4) The member who is a police officer may nominate another police officer to be his or her deputy.
- (5) The deputy of a member may attend a meeting of the Board when the member is absent and may perform the member's functions.
- (6) This clause does not affect the operation of section 52 of the *Interpretation Act 1984*.

5. Meetings

- (1) The judicial member is the chairperson of the Board.
- (2) The chairperson is to decide when the Board meets.
- (3) At a meeting of the Board the chairperson is to preside, or in his or her absence, the longest serving member.
- (4) If in the absence of the judicial member more than one of the other members is eligible to preside, the other members are to appoint one of the eligible members to preside.
- (5) At a meeting of the Board —
 - (a) the presiding member and 2 other members constitute a quorum;
 - (b) questions arising are to be determined by a majority of the members present and voting;
 - (c) if there is a tie in voting, the presiding member has a second vote; and
 - (d) the chairperson alone decides any question of law.
- (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

Schedule 1 Provisions applying to the Parole Board

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 Board is to determine the procedure for convening and conducting its meetings.

6. Remuneration and allowances

- (1) Members, deputies and acting members, other than a judicial member who is a Judge, are entitled to the remuneration and allowances set by the Governor.
- (2) Any remuneration and allowances paid to a judicial member who is a retired Judge does not affect his or her entitlements under the *Judges' Salaries and Pensions Act 1950*.

7. Leave of absence

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

Schedule 2 — Prescribed offences

[s. 4]

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

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

[Schedule 2 amended by No. 4 of 2004 s. 5.]

Notes

¹ This is a compilation of the *Sentence Administration Act 2003* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and Year	Assent	Commencement
<i>Sentence Administration Act 2003</i>	49 of 2003	9 Jul 2003	31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833)
<i>Criminal Code Amendment Act 2004</i> s. 5	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Sentencing Legislation Amendment Act 2004</i> Pt. 2 Div. 2	27 of 2004	14 Oct 2004	31 May 2006 (see s. 2 and <i>Gazette</i> 30 May 2006 p. 1965)
<i>Workers' Compensation Reform Act 2004</i> s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)

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

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Parole and Sentencing Legislation Amendment Act 2006</i> Pt. 2 and 7 ²	41 of 2006	22 Sep 2006	To be proclaimed (see s. 2)

² On the date as at which this compilation was prepared, the *Parole and Sentencing Legislation Amendment Act 2006* Pt. 2 and 7 had not come into operation. They read as follows:

“

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*.

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** ”.

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
 - (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 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.

- (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.

”.

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.

”.

(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 ”.

- (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) ”;

- (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.

”.

- (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;
 - (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 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.

”.