



Western Australia

Sentencing Legislation Amendment Act 2016

As at 07 Dec 2016

No. 45 of 2016

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Sentencing Legislation Amendment Act 2016

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Western Australia

Sentencing Legislation Amendment Act 2016

No. 45 of 2016

An Act to amend the following Acts —

- **the *Sentence Administration Act 2003*;**
- **the *Sentencing Act 1995*;**
- ***The Criminal Code*.**

[Assented to 7 December 2016]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Sentencing Legislation Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 and Part 4 Divisions 1 and 2 — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — Amendments about some long-term prisoners

Division 1 — *Sentence Administration Act 2003* amended

3. Act amended

This Division amends the *Sentence Administration Act 2003*.

4. Section 4 amended

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

Schedule 3 prisoner means a person described in
Schedule 3 column 2;

- (2) In section 4(2) in the definition of *Governor's pleasure detainee*:

- (a) in paragraph (b) delete “*Code*,” and insert:

Code; or

- (b) after paragraph (b) insert:

- (c) a person subject to a direction or sentence
under repealed section 661 or 662 of *The
Criminal Code*;

- (3) In section 4(2) in the definition of *prisoner* paragraph (b) delete
“a life” and insert:

life

5. Section 11 amended

Delete section 11(3).

6. Section 12 amended

(1) Delete section 12(2)(b) and (c) and insert:

(b) whenever it considers it necessary to do so.

(2) In section 12(4)(b) delete “(2)(b) or (c),” and insert:

(2)(b),

(3) In section 12(5)(a) delete “offence” and insert:

offence, or offences,

(4) Delete section 12(6).

7. Section 12A amended

(1) Delete section 12A(1) and (2) and insert:

(1) A report must be given under this section about a Schedule 3 prisoner regardless of whether or not a report has been given about the prisoner under section 12 (although reports may be combined under section 12B).

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

(a) described in Division 1 column 2 of that Schedule — at the times provided in columns 3

and 4 of that Division for a prisoner of that description; and

- (b) described in Division 2 column 2 of that Schedule — at the times provided in column 4 of that Division for a prisoner of that description.

(2) After section 12A(5) insert:

- (6) For the purposes of determining under subsection (2)(b) when a subsequent report is due for a prisoner described in Schedule 3 Division 2 column 2 —
 - (a) it is immaterial whether the first report was given under a provision of this Act, the *Sentence Administration Act 1995* or the *Offenders Community Corrections Act 1963* that applied (or was taken to have applied) to or in respect of the prisoner, as long as the report dealt with release considerations (however described) relating to the prisoner; and
 - (b) if a first report was not given, or was not given when it was due, then the first report is to be taken to have been given at the time provided in column 3 of that Division for a prisoner of that description.

(3) In section 12A delete the Table.

Note: The heading to amended section 12A is to read:

Reports by Board to Minister about Schedule 3 prisoners

8. Section 12B inserted

At the end of Part 2 Division 3 insert:

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

- (1) The Board may combine the following reports to form one report (a *combined report*) —
 - (a) a report that is to be given about a prisoner under section 12 (the *first report*) and a report that is due to be given about the same prisoner under section 12A within 3 months of the first report; or
 - (b) a report that is due to be given about a prisoner under section 12A at a time provided in one item of Schedule 3 (the *first report*) and another report, or reports, due to be given about the same prisoner under section 12A at a time, or times, provided in another item, or items, of Schedule 3 that is, or are, within 3 years of the first report.
- (2) A combined report given in the circumstances described in —
 - (a) subsection (1)(a) is to be taken to have been given under section 12 and under section 12A;
 - (b) subsection (1)(b), and that specifies each item of Schedule 3 in respect of which a report about the prisoner is being combined, is to be taken to satisfy the requirements of section 12A for a report about that prisoner at the time provided under each of those items.
- (3) A report under section 12A referred to in subsection (1)(a) may be a combined report given in the circumstances described in subsection (1)(b).

9. Section 13 amended

In section 13(1) delete the definition of *prisoner* and insert:

prisoner means a Schedule 3 prisoner.

Note: The heading to amended section 13 is to read:

Re-socialisation programmes for Schedule 3 prisoners

10. Section 14 amended

In section 14(1) in the definition of *prisoner* delete paragraph (b) and insert:

(b) a Schedule 3 prisoner.

Note: The heading to amended section 14 is to read:

Re-socialisation programmes for certain other prisoners

11. Section 25 amended

Delete section 25(1) and (1A) and insert:

(1) In this section —

prisoner means any of the following prisoners —

- (a) a prisoner serving life imprisonment for murder where —
 - (i) a minimum period has been set under section 90(1)(a) of the *Sentencing Act 1995* and the prisoner has served that minimum period; or
 - (ii) the prisoner was sentenced before 4 November 1996;

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Part 2 Amendments about some long-term prisoners

Division 1 Sentence Administration Act 2003 amended

s. 12

- (b) a prisoner serving life imprisonment for an offence other than murder where —
 - (i) the prisoner has served the period required by section 96(1) of the *Sentencing Act 1995*; or
 - (ii) the prisoner was sentenced before 4 November 1996.

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

12. Section 27A amended

In section 27A delete “people who are in custody during the Governor’s pleasure.” and insert:

a Governor’s pleasure detainee.

13. Section 27B amended

- (1) In section 27B(1) delete “person in, or regarded as being in, strict or safe custody by virtue of an order made under Chapter XXVIII of *The Criminal Code*” and insert:

person who is a Governor’s pleasure detainee

- (2) In section 27B(2) delete “12.” and insert:

12 or 12A.

14. Part 11 inserted

After section 122 insert:

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

123. Terms used

In this Part —

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

former transitional provisions means —

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

pre-1996 prisoner means a prisoner —

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

transitional period means the period —

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

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

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

- (a) each provision of the *Sentence Administration Act 1995* that would have permitted or required a person to give a report about the prisoner had the prisoner been sentenced on or after 4 November 1996 and before 31 August 2003 is taken to have applied, and the former transitional provision is taken not to have applied, to and in respect of the prisoner during that period; and
- (b) each provision of this Act that would have permitted or required a person to give a report about the prisoner had the prisoner been sentenced on or after 31 August 2003 and before commencement is taken to have applied, and the former transitional provision is taken not to have applied, to and in respect of the prisoner during that period.

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

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

126. Release on parole: pre-1996 prisoners

- (1) If the release on parole of a pre-1996 prisoner during the transitional period was not in accordance with a former transitional provision relating to the release of the prisoner on parole then —
 - (a) each provision of the *Sentence Administration Act 1995* that would have been about the release of the prisoner on parole had the prisoner been sentenced on or after 4 November 1996 and before 31 August 2003 is taken to have applied, and the former transitional provision is taken not to have applied, to and in respect of the prisoner during that period; and
 - (b) each provision of this Act that would have been about the release of the prisoner on parole had the prisoner been sentenced on or after 31 August 2003 and before commencement is taken to have applied, and the former transitional provision is taken not to have applied, to and in respect of the prisoner during that period.
- (2) In making a decision during the transitional period about the release from custody of a pre-1996 prisoner under a provision of the *Sentence Administration Act 1995* or this Act that applied by virtue of subsection (1), any of the following, according to the terms of the provision, may have been taken into account —
 - (a) any report given about the prisoner under provisions that apply to and in respect of the prisoner by virtue of section 124;
 - (b) the participation by the prisoner in any re-socialisation programme under provisions

that apply to and in respect of the prisoner by virtue of section 125.

127. Validation of parole orders: pre-1996 prisoner

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

128. Inconsistency with former transitional provisions

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

15. Schedule 3 inserted

After Schedule 2 insert:

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

[s. 12A and 13]

Division 1 — Current sentence types

Item No.	Description of prisoner	First report due	Subsequent reports due
1.	A person serving a sentence of life imprisonment for an offence other than murder	7 years after the day on which the term began or is taken to have begun	Every 3 years after that

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

Division 2 — Former sentence types

Item No.	Description of prisoner	First report due	Subsequent reports due
5.	A person serving a sentence of strict security life imprisonment commuted from a sentence of death under <i>The Criminal Code</i> section 679 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)	20 years after the sentence was commuted	Every 3 years after that

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Part 2 Amendments about some long-term prisoners

Division 1 Sentence Administration Act 2003 amended

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Item No.	Description of prisoner	First report due	Subsequent reports due
6.	A person serving a sentence of life imprisonment commuted from a sentence of death under <i>The Criminal Code</i> section 679 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)	10 years after the sentence was commuted	Every 3 years after that
7.	A person serving a sentence of strict security life imprisonment for wilful murder under <i>The Criminal Code</i> section 282(a)(i) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set	20 years after the term began	Every 3 years after that
8.	A person serving a sentence of life imprisonment for wilful murder under <i>The Criminal Code</i> section 282(a)(ii) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set	12 years after the day on which the term began or is taken to have begun	Every 3 years after that
9.	A person serving a sentence of life imprisonment for murder under <i>The Criminal Code</i> section 282(b) (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10) in respect of which no minimum term was set	7 years after the day on which the term began or is taken to have begun	Every 3 years after that

Item No.	Description of prisoner	First report due	Subsequent reports due
10.	<p>A person serving a sentence of strict security life imprisonment where a minimum period has been set under —</p> <p>(a) the <i>Sentencing Act 1995</i> section 91(1) (as it was immediately before the commencement of the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 19); or</p> <p>(b) the <i>Offenders Community Corrections Act 1963</i> section 40D (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 77)</p>	At the end of the minimum period	Every 3 years after that
11.	<p>A person serving a sentence of life imprisonment for murder or wilful murder where a minimum period has been set under —</p> <p>(a) the <i>Sentencing Act 1995</i> section 90(1) or (2) (as it was immediately before the commencement of the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 19); or</p>	At the end of the minimum period	Every 3 years after that

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Part 2 Amendments about some long-term prisoners

Division 1 Sentence Administration Act 2003 amended

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Item No.	Description of prisoner	First report due	Subsequent reports due
	(b) the <i>Offenders Community Corrections Act 1963</i> section 40D (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 77)		
12.	A person serving a sentence of life imprisonment for an offence other than murder imposed before the commencement of the <i>Acts Amendment (Imprisonment and Parole) Act 1987</i> section 6	5 years after the day on which the term began or is taken to have begun	Every 3 years after that
13.	A person serving a sentence of life imprisonment for an offence other than murder imposed on or after the commencement of the <i>Acts Amendment (Imprisonment and Parole) Act 1987</i> section 6	7 years after the day on which the term began or is taken to have begun	Every 3 years after that
14.	A person subject to a direction or sentence under <i>The Criminal Code</i> section 661 or 662 (repealed by the <i>Sentencing (Consequential Provisions) Act 1995</i> section 26)	For section 661 — 2 years after the day on which the detention began For section 662 — one year after the day on which the detention began	Every year after that

Item No.	Description of prisoner	First report due	Subsequent reports due
15.	A person in, or regarded as being in, strict or safe custody by virtue of an order under <i>The Criminal Code</i> section 282 (repealed by the <i>Criminal Law Amendment (Homicide) Act 2008</i> section 10)	One year after the day on which the detention began	Every year after that

Division 2 — *The Criminal Code* amended

16. Act amended

This Division amends *The Criminal Code*.

17. Schedule 1 clause 3 amended

Delete Schedule 1 clause 3(7).

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

Division 1 — *Sentencing Act 1995* amended

18. Act amended

This Division amends the *Sentencing Act 1995*.

19. Section 89 amended

- (1) In section 89(2) delete “12” (each occurrence) and insert:

6

- (2) In section 89(4) delete “2” and insert:

one

20. Section 97A inserted

At the end of Part 13 Division 4 insert:

**97A. Declaration of serious violent offence for purposes
of *Sentence Administration Act 2003* Part 5A**

- (1) In this section —

family and domestic relationship has the meaning
given in the *Restraining Orders Act 1997* section 4(1);

offence does not include an offence specified in the
Sentence Administration Act 2003 Schedule 4;

victim has the meaning given in section 13.

- (2) This section applies if a court is sentencing an offender to imprisonment for an indictable offence.
- (3) The court may, for the purposes of the *Sentence Administration Act 2003* Part 5A, declare the offence to be a serious violent offence if the offence —
 - (a) involved the use of, or counselling or procuring the use of, or conspiring or attempting to use, serious violence against another person; or
 - (b) resulted in serious harm to, or the death of, another person.
- (4) The court must regard the existence of any of the following circumstances as an aggravating factor when deciding whether to make a declaration —
 - (a) the offender has a history of violent offending;
 - (b) the offender was in a family and domestic relationship with a victim of the offence when the offence was committed;
 - (c) a victim of the offence was under 12 years of age when the offence was committed.
- (5) A declaration may be made by the court on its own initiative or on an application by the prosecutor.

Division 2 — *Sentence Administration Act 2003* amended

21. Act amended

This Division amends the *Sentence Administration Act 2003*.

22. Section 4 amended

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

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

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

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

PSSO for post-sentence supervision order;

23. Section 22 amended

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

6

24. Section 24 deleted

Delete section 24.

25. Part 5A inserted

After section 74 insert:

Part 5A — Post-sentence supervision of certain offenders

74A. Terms used

In this Part —

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

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

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

PSSO considerations has the meaning given in section 74B;

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

serious violent offence means —

- (a) an offence specified in Schedule 4; or
- (b) an offence declared under the *Sentencing Act 1995* section 97A(3) to be a serious violent offence.

74B. PSSO considerations

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

- (a) issues for any victim of a serious violent offence for which the prisoner is in custody, including any matter raised in a victim's submission;
- (b) the behaviour of the prisoner when in custody insofar as it may be relevant to determining how the prisoner is likely to behave if released;
- (c) whether the prisoner has participated in programmes available to the prisoner when in custody, and if not the reasons for not doing so;
- (d) the prisoner's performance when participating in a programme mentioned in paragraph (c);
- (e) the behaviour of the prisoner when subject to any PSSO made previously;
- (f) the likelihood of the prisoner committing a serious violent offence when subject to a PSSO;
- (g) the likelihood of the prisoner complying with the standard obligations and any additional requirements of any PSSO;

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

74C. Reports by CEO to Board about prisoners

- (1) The CEO must give the Board a written report about every prisoner that addresses the PSSO considerations relating to the prisoner.
- (2) The report must be given to the Board no later than 3 months before the end of the prisoner's term.
- (3) This section applies whether or not the prisoner is subject to an early release order.

74D. Board may make PSSO

- (1) Before the end of a prisoner's term, the Board must consider whether a post-sentence supervision order should be made in respect of the prisoner.
- (2) Subsection (1) applies whether or not the prisoner is subject to an early release order.
- (3) If the Board, having regard to —
 - (a) the PSSO considerations relating to the prisoner; and
 - (b) the report made by the CEO under section 74C; and
 - (c) any other information about the prisoner brought to its attention,

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

74E. Nature of PSSO

- (1) A PSSO is an order that the person specified in the order (the *supervised offender*) must during the PSSO period comply with —
 - (a) the standard obligations in section 74F; and
 - (b) any of the additional requirements in section 74G that are specified in the PSSO.
- (2) Subject to section 74K(2), the *PSSO period* is the period of 2 years beginning on —
 - (a) if the supervised offender is not released on parole — the day on which the offender is released after serving the offender's term; or
 - (b) if the supervised offender is released on parole — the day after the day on which the offender's term ends.

74F. Standard obligations of PSSO

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

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

74G. Additional requirements of PSSO

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

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

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Part 3 Amendments about parole and post-sentencing supervision

Division 2 Sentence Administration Act 2003 amended

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

- (ii) engage in gratuitous work for an organisation approved by the CEO;
- (j) prescribed requirements.

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

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

74I. Amendment of PSSO

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

74J. Cancellation of PSSO

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

74K. Subsequent PSSO after cancellation for committing offence

- (1) If a PSSO is cancelled under section 74J(2) (the *cancelled PSSO*), the Board may subsequently make another PSSO in respect of the prisoner.
- (2) The PSSO period in the subsequent PSSO is to be set by the Board but —

- (a) must begin on the day when the prisoner is released; and
 - (b) must not be longer than the remaining PSSO period of the cancelled PSSO.
- (3) Subsection (2) does not apply if the offence by virtue of which the PSSO is cancelled under section 74J(2) is a serious violent offence.

74L. Offence for breach of PSSO

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

Penalty: imprisonment for 3 years.

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

26. Section 75 amended

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

RRO, a PSSO

27. Section 77 amended

After section 77(c) insert:

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

28. Section 78 amended

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

order, an RRO or a PSSO —

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

order or a PSSO —

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

order or a PSSO.

29. Section 83 amended

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

RRO, a PSSO

30. Section 94 amended

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

RROs, PSSOs

Sentencing Legislation Amendment Act 2016

Part 3 Amendments about parole and post-sentencing supervision

Division 2 Sentence Administration Act 2003 amended

s. 31

31. Section 107B amended

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

or supervised offender

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

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

32. Section 107C amended

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

or the supervised offender

33. Section 109 amended

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

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

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

person

Note: The heading to amended section 109 is to read:

Board may require person to appear before it

34. Section 111 amended

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

RRO, a PSSO

35. Section 112 amended

In section 112:

(a) after paragraph (g) insert:

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

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

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

and PSSOs

36. Section 114 amended

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

or supervised offender

37. Section 115A amended

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

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

38. Part 11 heading amended

In the heading to Part 11 (as inserted by section 14 of this Act) delete “**for *Sentencing Legislation Amendment Act 2016 Part 2***”.

39. Part 11 Division 1 heading inserted

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

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

40. Section 123 amended

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

Division

41. Section 127 amended

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

Division

42. Section 128 amended

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

Division

43. Part 11 Division 2 inserted

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

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

129. Continued application of former Part 3 Division 4

- (1) In this section —
commencement day means the day on which the *Sentencing Legislation Amendment Act 2016* section 23 comes into operation;
former Division means Part 3 Division 4 as in force immediately before commencement day.
- (2) If the former Division applied to a prisoner immediately before commencement day then on and after that day the former Division continues to apply to and in relation to the prisoner as if the *Sentencing Legislation Amendment Act 2016* section 23 had not come into operation.

44. Schedule 4 inserted

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

Schedule 4 — Serious violent offences

[s. 74A]

Enactment	Description of offence
1. <i>The Criminal Code</i>	

Sentencing Legislation Amendment Act 2016

Part 3 Amendments about parole and post-sentencing supervision

Division 2 Sentence Administration Act 2003 amended

s. 44

Enactment	Description of offence
s. 279	Murder
s. 280	Manslaughter
s. 281	Unlawful assault causing death
s. 283	Attempt to unlawfully kill
s. 294	Act intended to cause grievous bodily harm or prevent arrest
s. 297	Grievous bodily harm
s. 320	Sexual offences against child under 13
s. 321	Sexual offences against child of or over 13 and under 16
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent
s. 326	Aggravated sexual penetration without consent
s. 327	Sexual coercion
s. 328	Aggravated sexual coercion
s. 330	Sexual offences against incapable person
s. 392	Robbery, if the offence is committed in circumstances described in s. 392(c) or in circumstances of aggravation

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

Part 4 — Other amendments to the *Sentencing Act 1995*

Division 1 — Preliminary

45. Act amended

This Part amends the *Sentencing Act 1995*.

Division 2 — Amendments about circumstances of aggravation

46. Section 145A inserted

After section 145 insert:

145A. Existence of circumstances of aggravation is question for judge to determine

(1) In this section —

circumstances of aggravation means circumstances in which an offence is committed that —

- (a) are not elements of the offence; and
- (b) increase the statutory penalty for the offence.

(2) If, on a plea of guilty by the accused, a superior court is required to determine in proceedings under this Act whether the offence was committed in circumstances of aggravation, that determination is the determination of a question of fact for the purposes of section 146.

47. Section 150AB inserted

After section 150A insert:

150AB. Application of *Sentencing Legislation Amendment Act 2016* amendments about circumstances of aggravation

- (1) In this section —
commencement means the coming into operation of the *Sentencing Legislation Amendment Act 2016* Part 4 Division 2.
- (2) This Act, as amended by the *Sentencing Legislation Amendment Act 2016* Part 4 Division 2, applies to the determination under section 146 of whether an offence was committed in circumstances of aggravation —
 - (a) even if the offence was committed before commencement; and
 - (b) even if the offender pleaded guilty before commencement; and
 - (c) even if the determination has arisen as a result of an appeal against a sentence imposed before commencement.

Division 3 — Amendments about suspended fines

48. Section 14 amended

In section 14(2):

- (a) in paragraph (b) delete “fine,” and insert:

fine; or

(b) after paragraph (b) insert:

(c) under Part 8A impose a suspended fine,

49. Section 39 amended

After section 39(2)(c) insert:

(ca) with or without making a spent conviction order, under Part 8A impose a suspended fine;
or

50. Section 40 amended

In section 40(2):

(a) in paragraph (b) delete “fine.” and insert:

fine; or

(b) after paragraph (b) insert:

(c) under Part 8A impose a suspended fine.

51. Section 44 amended

In section 44(1):

(a) in paragraph (a)(i) delete “(b) and (c); or” and insert:

(b), (c) and (ca); or

(b) in paragraph (a)(ii) delete “(c)” and insert:

(c), (ca)

52. Part 8A inserted

After section 60 insert:

Part 8A — Suspended fine

60A. When fine may be suspended

- (1) A court that sentences an offender to a fine may order that the fine be suspended for a period set by the court that is not to be more than 24 months.
- (2) A suspended fine is not to be imposed unless a fine equal to that suspended would, if it were not possible to suspend the fine, be appropriate in all the circumstances.

60B. Effect of suspending fine

- (1) An offender sentenced to a suspended fine is not to pay any part of the fine that is suspended unless —
 - (a) during the suspension period the offender commits an offence (in this State or elsewhere); and
 - (b) a court makes an order under section 60E.
- (2) The suspension period begins on the day on which the sentence is imposed.
- (3) An offender who is sentenced to a suspended fine is to be taken to be discharged from the sentence at the end of the suspension period.
- (4) Subsection (3) does not affect the operation of subsection (1) or section 60C or 60E.

60C. Re-offender may be dealt with or committed

- (1) If a court convicts a person of an offence and that offence was committed during the suspension period of a suspended fine imposed on the person in relation to another offence, the court —
 - (a) if it is the Magistrates Court or the Children’s Court, must deal with the person under section 60E unless the suspended fine was imposed —
 - (i) by the Magistrates Court or the Children’s Court for an indictable offence; or
 - (ii) by a superior court,
in which case the court must commit the person to the court that imposed the suspended fine and that court must deal with the person under section 60E; or
 - (b) if it is the District Court, must deal with the person under section 60E unless the suspended fine was imposed by the Children’s Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the court must commit the person to the court that imposed the suspended fine and that court must deal with the person under section 60E; or
 - (c) if it is the Supreme Court, must deal with the person under section 60E.
- (2) The powers in subsection (1) may be exercised by a court at any time, even if the suspension period has ended.

- (3) Subsection (1) does not affect the powers of the court that convicts the person of the offence committed during the suspension period to deal with the person for that offence.
- (4) A court that under subsection (1) commits a person to another court must certify that the person has been convicted of an offence committed during the suspension period.
- (5) A certificate by a court under subsection (4) is, in the absence of evidence to the contrary, evidence of its contents.

60D. Alleging re-offending in court

- (1) If —
 - (a) a person (the *offender*) has been convicted and dealt with (in this State or elsewhere) for an offence; and
 - (b) that offence was committed during the suspension period of a suspended fine imposed on the offender in relation to another offence,a written notice alleging those matters may be lodged in a court in accordance with this section.
- (2) The notice may be lodged at any time up until 2 years after the last day of the suspension period.
- (3) The notice may be signed by a police officer or another person referred to in the *Criminal Procedure Act 2004* section 20(3).
- (4) The notice must be in a prescribed form and be signed in the presence of a JP or a prescribed court officer (as defined in the *Criminal Procedure Act 2004* section 3(1)) who may issue a summons to the offender.

- (5) The notice must be lodged with, and the summons must direct the offender to appear before, the court that imposed the suspended fine.
- (6) The *Criminal Procedure Act 2004* section 32, with any necessary changes, applies to and in respect of a summons issued under this section.
- (7) An offender who appears before a court as a result of a summons issued under this section must be dealt with by the court under section 60E.

60E. How re-offender to be dealt with

- (1) If satisfied that a person has been convicted (in this State or elsewhere) of an offence and that the offence was committed during the suspension period of a suspended fine, a court that must deal with the person under this section must deal with the person by one of these methods —
 - (a) unless an order under this paragraph or paragraph (b) has already been made, it may order the person to pay the fine that was suspended;
 - (b) unless an order under paragraph (a) has already been made, it may order the person to pay part of the fine that was suspended;
 - (c) unless the suspension period has ended, it may substitute another suspension period of not more than 24 months for the suspension period originally set, and the new suspension period is to begin on the day it is substituted;
 - (d) it may make no order in respect of the suspended fine.
- (2) The powers in subsection (1) may be exercised as often as is necessary.

- (3) A court must make an order under subsection (1)(a) unless it decides that it would be unjust to do so in view of all the circumstances that have arisen, or have become known, since the suspended fine was imposed.
- (4) If a court does not make an order under subsection (1)(a), it must give written reasons for not doing so.
- (5) If a court deals with a person under subsection (1)(d), then, unless the suspension period has ended, the sentence of a suspended fine remains in effect and the suspension period continues to elapse.
- (6) An order by a superior court under subsection (1) in a case where the sentence of a suspended fine was imposed for an offence for which the person had not been convicted on indictment is to be taken, for the purposes of an appeal against the sentence, as being made following a conviction on indictment.

Division 4 — Amendments about victim impact statements

53. Section 23A inserted

At the beginning of Part 3 Division 4 insert:

23A. Terms used

In this Division —

family victim, in relation to an offence, means a person who was, at the time the offence was committed, a member of the primary victim's immediate family, and includes such a person whether or not the person has suffered personal harm as a result of the offence;

member of the primary victim's immediate family

means —

- (a) the primary victim's spouse; or
- (b) the primary victim's de facto partner; or
- (c) a person to whom the primary victim is engaged to be married; or
- (d) a parent, grandparent, guardian, step-parent or step-grandparent of the primary victim; or
- (e) a child, grandchild, step-child or step-grandchild of the primary victim or some other child for whom the primary victim is the guardian; or
- (f) a brother, sister, half-brother, half-sister, step-brother or step-sister of the primary victim; or
- (g) if, at the time of the offence, the primary victim was an Aboriginal person or a Torres Strait Islander requiring care, a person who, in the opinion of the court, is regarded under the customary law or tradition of the primary victim's community as the equivalent of the primary victim's guardian or carer;

personal harm means bodily harm or psychological or psychiatric harm;

primary victim, in relation to an offence, means —

- (a) a person against whom the offence was committed; or
- (b) a person who was a witness to the offence if it included any of the following —
 - (i) actual or threatened violence;
 - (ii) sexual assault;
 - (iii) bodily harm;

(iv) death;

requiring care, in relation to a person, means a person who —

- (a) is under 18 years of age; or
- (b) in the absence of positive evidence as to age, appears to be under 18 years of age; or
- (c) because of a mental or physical impairment, is unable to give a victim impact statement;

victim means a primary victim or a family victim;

victim impact statement means a statement containing particulars of —

- (a) in the case of a primary victim, any personal harm suffered by the victim as a direct result of the offence; or
- (b) in the case of a family victim, the impact of the primary victim's personal harm on the members of the primary victim's immediate family.

54. Section 25 amended

Delete section 25(1).

55. Section 26 amended

After section 26(2) insert:

- (3) A court must, after imposing a sentence of imprisonment on an offender, make available to the Prisoners Review Board a copy of any victim impact statement given to the court under section 24.

Note: The heading to amended section 26 is to read:

Court's functions in relation to victim impact statement

Division 5 — Amendments about CROs

56. Section 49 amended

Delete section 49(1) and insert:

- (1) In this section —
CEO (DOTAG) means the chief executive officer of the Public Sector agency principally assisting the Minister in the administration of this Part.
- (1A) A court making a CRO may impose any requirements on the offender it decides are necessary to secure the good behaviour of the offender.
- (1B) Without limiting subsection (1A), the court may impose a requirement that the offender participate in an activity approved by the CEO (DOTAG).
- (1C) For the purposes of a requirement imposed by a court under subsection (1B), the CEO (DOTAG) may approve —
 - (a) any educational, vocational or personal development programme; or
 - (b) any unpaid work; or
 - (c) any other activity the CEO (DOTAG) considers appropriate.
- (1D) The number of hours set by a court for a requirement imposed by it under subsection (1B) must be at least 10 and not more than 60.
- (1E) As part of a requirement imposed by a court under subsection (1B), the court may require an offender to record the offender's compliance with the requirement in a log book approved by the court.

57. Section 51 amended

- (1) In section 51(1) delete “or a surety for the offender or both have —” and insert:

has —

- (2) Delete section 51(3), (4) and (5).

58. Section 52 amended

- (1) In section 52(2):
(a) delete “If” and insert:

Subject to subsections (3) and (7), if

- (b) delete the passage that begins with “State —” and continues to the end of the subsection and insert:

State, must order that the full amount agreed to be paid or deposited by the offender be paid or forfeited (as the case may be) to the State.

- (2) Delete section 52(4).

- (3) After section 52(6) insert:

- (7) Despite subsection (2), the court may order that only part of the amount agreed to be paid or deposited by the offender be paid or forfeited (as the case may be) to the State if —
(a) the breach of the CRO relates to a failure to complete a requirement under section 49(1B);
and

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- (b) the court is satisfied that —
 - (i) the offender has completed part of the requirement; and
 - (ii) it would be unjust to order the payment or forfeiture of the full amount.
- (8) The part of the amount ordered to be paid or forfeited under subsection (7) is to be a sum the court considers appropriate in the circumstances.

59. Section 131 amended

After section 131(1) insert:

- (1A) Subsection (1) does not apply to the breach of a CRO if the breach relates to a failure to complete a requirement referred to in section 49(1B).

60. Section 133 amended

In section 133(2) delete “section 52(2).” and insert:

section 52(2) or (7).

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61. Section 4 amended

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

parole eligibility order has the meaning given in section 89(1);

prescribed means prescribed in the regulations;

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

written reasons includes reasons that are —

- (a) given orally and subsequently transcribed; and
- (b) given orally but also recorded electronically in a format that enables them to be subsequently transcribed.

- (2) In section 4(1) in the definition of ***superior court*** delete “Court.” and insert:

Court;

- (3) After section 4(3) insert:

- (4) In this Act a reference to the suspension of a term or terms of imprisonment is a reference to a suspension of —
- (a) the whole of the term or terms; or
 - (b) part of the term or terms.

62. Section 9G amended

In section 9G(1) delete “under section 89”.

63. Section 22 amended

In section 22(1)(b) delete “21 days after being ordered.” and insert:

14 days before the sentencing day.

64. Section 33A amended

Delete section 33A(7).

65. Section 35 amended

Delete section 35(4).

66. Section 45 amended

After section 45(1) insert:

- (1A) In addition to subsection (1), under section 39(2), a court sentencing an offender is not to make a spent conviction order in respect of an offender who is subject to a PSO unless —
- (a) the offence to which the PSO applies is a simple offence; and
 - (b) the court is satisfied that the offender has complied with any programme requirements imposed as part of the PSO.

67. Section 75 amended

After section 75(8)(a) insert:

- (aa) for the purpose of the paid employment of the offender; or

68. Section 76 amended

In section 76(1) delete “the whole of”.

69. Section 80 amended

- (1) Delete section 80(5A).

- (2) In section 80(5)(b) delete “order under section 89,” and insert:

order,

- (3) After section 80(7) insert:

- (7A) If an order is made under subsection (1)(c) or (d) under which a sentence of suspended imprisonment remains in effect and continues to elapse, the court must make the order subject to a supervision requirement in accordance with section 71 as if the sentence were an ISO.

70. Section 84F amended

- (1) Delete section 84F(5A).
(2) In section 84F(5)(b) delete “order under section 89,” and insert:

order,

71. Section 84L amended

In section 84L(3)(b) delete “order under section 89,” and insert:

order,

72. Section 85 amended

In section 85(1) delete the definition of *parole eligibility order*.

73. Section 86 amended

In section 86:

- (a) delete “of 6 months” and insert:

of 3 months

- (b) in paragraph (a) delete “6 months; or” and insert:

3 months; or

Note: The heading to amended section 86 is to read:

Term of 3 months or less not to be imposed

74. Section 87 amended

- (1) In section 87:

- (a) delete “If” and insert:

- (1) If

- (b) delete paragraph (a) and insert:

- (a) the offender has previously spent time —

- (i) in custody in respect of the offence for which the offender is being sentenced;
or

- (ii) in custody in respect of another offence, while on bail for the offence for which the offender is being sentenced;

and

(2) At the end of section 87 insert:

- (2) Subsection (1)(a)(i) does not apply if the time in custody has already been taken into account in sentencing for another offence under subsection (1)(a)(ii).

75. Section 89 amended

Delete section 89(1) and insert:

- (1) A court sentencing an offender to a fixed term of imprisonment may make an order (a *parole eligibility order*) that the offender be eligible to be considered for parole in respect of that term by the Prisoners Review Board.

76. Section 98 amended

In section 98(1)(c) delete “under Part 13”.

77. Part 18 Division 6 inserted

At the end of Part 18 insert:

Division 6 — Functions of speciality courts

136A. Application of Division

This Division applies if —

- (a) the court that imposes a community order on an offender is a speciality court; or
- (b) an offender is committed for trial or sentence for an offence to a superior court by a speciality

court and a community order is imposed on the offender by the superior court and the superior court orders that this Division is to apply.

136B. Term used: court

In this Division —

court means a speciality court and includes a superior court referred to in section 136A(b).

136C. Court may direct offender on community order to appear

- (1) The court may order that the offender appear or reappear before the court after the imposition of the community order —
 - (a) at a time and place fixed by the court; or
 - (b) if and when summonsed by the court,so that the court can ascertain whether the offender is complying with the sentence.
- (2) An order may be made under subsection (1) on any reappearance of the offender pursuant to a previous order made under subsection (1).
- (3) If an offender does not reappear before the court at the time and place fixed or in response to a summons issued by the court, the court may issue a warrant to have the offender arrested and brought before the court.
- (4) On a reappearance ordered under subsection (1), or compelled under subsection (1) or (3), the court may amend a community order.

136D. Court to deal with re-offender

- (1) If this Division applies and a court other than the court convicts the offender of an offence as referred to in

section 128, that court must commit the offender to the court and the court must deal with the offender under section 130.

- (2) Section 128(2) to (4) apply for the purposes of subsection (1).
- (3) If this Division applies, a notice under section 129(1) must be lodged with the court and a summons or warrant issued under section 129 must direct the offender to appear or be brought before the court.

136E. Court to deal with application to amend or cancel community order

If this Division applies, an application under section 126 is to be made to the court.

136F. Court to deal with proceedings for breaches

If this Division applies, a prosecution for an offence against section 131(1) is to be commenced in, and heard and determined by, the court and, if the offender is convicted, the court must deal with the offender under sections 132 and 133.

78. Part 18A inserted

Before Part 19 insert:

Part 18A — Review of conditional orders

136G. Terms used

In this Part —

CEO means —

- (a) in relation to a CRO — the CEO (DOTAG);

- (b) in relation to a CSI, ISO or PSO — the CEO (corrections);

conditional order means any of the following —

- (a) a CRO;
- (b) a CSI;
- (c) an ISO;
- (d) a PSO.

136H. Application to review

- (1) The CEO may apply to a court to review a conditional order if the CEO is of the opinion that the offender subject to the order might not be able to comply with its requirements.
- (2) The application must be made to the court that imposed the conditional order.
- (3) The application must be made in accordance with the regulations.

136I. Court may confirm, amend or cancel

- (1) If on an application under section 136H a court is satisfied that an offender subject to a conditional order might not be able to comply with its requirements, the court may make an order under subsection (2) but otherwise it must confirm the conditional order.
- (2) If a court may make an order under this subsection, it may either —
 - (a) amend the conditional order so as to change the requirement; or
 - (b) if the court thinks that the circumstances of the offender have so altered since the court passed sentence that it is necessary and just to do so, cancel the conditional order and sentence the

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person for the offence for which the conditional order was imposed in any manner the court could if it had just convicted the person of that offence.

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