

## **Acts Amendment (Sentencing) Bill 2004**

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Western Australia

LEGISLATIVE ASSEMBLY

**Acts Amendment (Sentencing) Bill 2004**

**A Bill for**

**An Act to amend —**

- **the *Sentence Administration Act 2003*;**
- **the *Sentencing Act 1995*; and**
- **the *Sentencing Legislation Amendment and Repeal Act 2003*.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Acts Amendment (Sentencing) Act 2004*.

5    **2. Commencement**

This Act comes into operation on a day fixed by proclamation.

## Part 2 — *Sentence Administration Act 2003* amended

### 3. The Act amended

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

5 [\* Act No. 49 of 2003.  
For subsequent amendments see Act No. 4 of 2004.]

#### 4. Section 4 amended

Section 4(2) is amended after the definition of “serious offence” by inserting the following definition —

10 “ “**“victim”** has the meaning given to that term in section 2 of the *Victims of Crime Act 1994*; „

**5. Section 7 amended**

15           (1) Section 7(1) is amended in the definition of “fixed term” after  
              “1995” by inserting —

“  
and a period of imprisonment under a warrant of  
commitment issued under the *Fines, Penalties and*  
*Infringement Notices Enforcement Act 1994*  
”

(2) Section 7(2) is amended as follows:

(a) by deleting “sentenced” and inserting instead —  
“ committed, or sentenced, ”;

25 (b) before paragraph (a) by inserting the following paragraph —

(aa) first, those that are served as a result of a warrant of commitment issued under the *Fines*,

**s. 6**

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*Penalties and Infringement Notices  
Enforcement Act 1994* are to be served  
cumulatively;

”;

- 5 (c) in paragraph (a) by deleting “firstly” and inserting  
instead —  
“ secondly ”;
- (d) in paragraph (b) by deleting “secondly” and inserting  
instead —  
10 “ thirdly ”;
- (e) in paragraph (c) by deleting “thirdly” and inserting  
instead —  
“ fourthly ”.
- (3) Section 7(4) is amended by deleting “subsection (1).” and  
15 inserting instead —  
“ subsection (2). ”.

**6. Section 16 amended**

After section 16(h) the following paragraph is inserted —

“

- 20 (ha) any statement that has been provided for  
consideration, by a victim of the offence giving  
rise to the prisoner’s sentence of imprisonment;

”.

**7. Section 22 amended**

- 25 Section 22(1)(a) is amended by deleting “not” and inserting  
instead —

“

- 30 neither a period of imprisonment under a  
warrant of commitment issued under the *Fines,  
Penalties and Infringement Notices  
Enforcement Act 1994*, nor

”.

**8. Section 23 amended**

- (1) Section 23(3) is amended by deleting “The” and inserting instead —

“ Subject to section 10, the ”.

- 5 (2) After section 23(5) the following subsections are inserted —

“

- (5a) Despite subsection (5), the CEO 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), where a prisoner is required to be kept in custody in respect of another matter, the CEO may defer the decision to release the prisoner under subsection (3)(b), and may reconsider that decision if the prisoner is no longer required to be kept in custody in respect of the other matter.

”.

- (3) Section 23(8) is amended by deleting “prisoner in deciding whether the parole order is to be supervised or unsupervised.” and inserting instead —

“

prisoner —

- (a) when deciding whether or not to make a parole order in respect of a prescribed prisoner, under subsection (3)(a); and
- (b) when deciding whether any parole order made under subsection (3) is to be supervised or unsupervised.

”.

- 30 (4) Section 23(9)(a) is amended by deleting “and (3)”.

**s. 9**

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**9. Section 28 amended**

- (1) Section 28(1)(b) is amended by deleting “supervised period” and inserting instead —
- “ parole period ”.
- 5 (2) Section 28(2), (3) and (4) are repealed.

**10. Section 31 amended**

- (1) Section 31(1) is amended by deleting “the supervised period of”.
- (2) Section 31(3) is amended by deleting “supervised period” and inserting instead —
- 10 “ parole period ”.
- (3) Section 31(5) is amended by deleting “supervised period” and inserting instead —
- “ parole period ”.

15 **11. Section 37 amended**

Section 37(1) is amended by deleting “supervised”.

**12. Section 38 amended**

- (1) Section 38(1) is amended by deleting “supervised”.
- (2) Section 38(2) is amended by deleting “supervised period” and inserting instead —
- 20 “ parole period ”.

**13. Section 39 amended**

Section 39(1) is amended by deleting “supervised”.



**14. Section 44 amended**

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

- 5 (2) Section 44(2) is repealed.

**15. Section 64A inserted**

After section 64 the following section is inserted in Part 4 —

“

**64A. Decision to suspend or cancel RRO: Board may review**

10

- (1) A prisoner given notice under section 62 or 64, of a decision to suspend or cancel an RRO, may request the Board to review the decision and may make submissions to the Board about the decision and reasons for the decision (if any are supplied).

15

- (2) The request or submissions must be made in writing.

- (3) On a request made under subsection (1), the Board must consider any such submissions and review the decision and may confirm or amend it, or cancel it and make another decision.

20

- (4) The Board must give the prisoner written notice of its decision on a review conducted under this section.

”.

**16. Section 69 amended**

- 25 (1) Section 69(1) is amended by deleting “If” and inserting instead —

“ Subject to subsections (1a) and (1b), if ”.

**s. 16**

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

“

5            (1a) If an RRO in respect of a prisoner, who is serving a fixed term that is not a parole term that was imposed on or before 30 August 2003, is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the fixed term in custody.

10           (1b) A prisoner who resumes serving a fixed term under subsection (1a) is discharged from that sentence when he or she has served two thirds of that term and, subject to Part 2 Division 2 of the *Sentence Administration Act 2003*, must be released then.

”.

(3) After section 69(5) the following subsection is inserted —

“

15           (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 —

20           (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;

25           (c) then subtract that result from T and add to the result the number of days of remission that the offender has been ordered to forfeit under the *Prisons Act 1981* (if any).

”.

**17. Section 72 amended**

Section 72(2) is repealed and the following subsection is inserted instead —

“

- 5           (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.

”.

10   **18. Section 73 amended**

Section 73(3) is repealed.

**19. Section 97 amended**

Section 97 is amended by deleting “a WRO” and inserting instead —

- 15           “ an RRO ”.

## **Part 3 — *Sentencing Act 1995* amended**

### **20. The Act amended**

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

[\* *Reprint 3 as at 10 October 2003.*

5                      *For subsequent amendments see Western Australian  
Legislation Information Tables for 2003, Table 1, p. 349 and  
Acts Nos. 50 of 2003 and 4 of 2004.]*

### **21. Section 33A amended**

(1) After section 33A(2) the following subsections are inserted —

10                      “

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

15                      (a) while the offender was subject to an early  
release order for another offence; or

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

20                      (2b) In subsection (2a)(a) —  
“early release order” means —

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

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

”.

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

“ the ”.

**22. Section 33O amended**

Section 33O(5)(a)(iii) is amended by deleting “offender.” and inserting instead —

“

5

offender;

or

”

**23. Section 33P amended**

Section 33P(1) is amended as follows:

10

- (a) by deleting the second paragraph designation “(a)” and inserting instead the paragraph designation “(c)”;
- (b) by deleting the second paragraph designation “(b)” and inserting instead the paragraph designation “(d)”.

**Part 4 — Sentencing Legislation Amendment and  
Repeal Act 2003 amended**

**24. The Act amended**

5 The amendments in this Part are to the *Sentencing Legislation  
Amendment and Repeal Act 2003*\*.

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

**25. Section 107 amended**

Section 107(1)(b) is amended before “of the” by inserting —  
“ and Part 4 ”.

10 **26. Schedule 1 amended**

(1) Schedule 1 clause 5(1) is amended after “old provisions” by  
inserting —

“ , other than Part 4 of the repealed Act, ”.

15 (2) Schedule 1 clause 5 is amended after “commencement” by  
inserting —

“ of the *Acts Amendment (Sentencing) Act 2004* ”.

(3) Schedule 1 is amended by deleting clause 7.

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