

***ACTS AMENDMENT (SENTENCING) BILL 2004***  
**Explanatory Notes**

*Clause 1 Short title*

Short title of the Act.

*Clause 2 Commencement*

The provisions contained in the Bill will come into operation on a day to be fixed by proclamation.

*Clause 3 The Act amended*

The amendments contained in Part 2 of the Bill are amendments to various provisions of the *Sentence Administration Act 2003*.

*Clause 4 Section 4 amended*

Section 4 of the *Sentence Administration Act 2003* is to be amended to insert a definition of “victim”. This is necessary so as to provide meaning to the proposed amendments contained in Clause 6 of the Bill concerning consideration of victim submission at parole hearings. The proposed definition of “victim” is identical to that provided for in the Victims of Crime Act 1994.

*Clause 5 Section 7 amended*

Section 7 of the *Sentence Administration Act 2003* deals with the order of service of sentences for offenders who may be serving a variety of different terms.

It is proposed to amend section 7 of the *Sentence Administration Act 2003* to provide that any cumulative imprisonment being served for non-payment of fines, is served prior to any other terms the offender may be serving. This amendment is specifically relevant in relation to offenders serving a sentence of less than 12 months, and who would ordinarily be eligible for CEO Parole consideration, but are currently precluded because of the cumulative imprisonment required to be served last in respect of non-payment of fines.

The *Sentence Administration Act 2003* enables prisoners serving sentences of less than 12 months to be released on parole by order of the CEO of the Department of Justice. Often prisoners are serving sentences for non-payment of fines and it is not appropriate that such prisoners should be released early on parole as this would undermine the fines enforcement scheme which operates in Western Australia.

The amendment to section 7 the *Sentence Administration Act 2003* will enable prisoners who are serving general imprisonment and imprisonment for non-payment of fines, to still be considered for CEO Parole, by suspending service of their general imprisonment in order to complete their imprisonment for fine default. By doing this they can then still be released on CEO Parole for their general imprisonment terms.

Clause 6 Section 16 amended

Section 16 of the *Sentence Administration Act 2003* contains a range of matters that must be taken into consideration when deciding upon the release of a prisoner on parole. These matters are required to be taken into account by the Parole Board and the CEO.

It is proposed to amend section 16 of the *Sentence Administration Act 2003* to require the Parole Board, and the CEO, to consider any submissions made by a victim. Such an amendment would be beneficial as: it would align the *Sentence Administration Act 2003* with guideline 10 of the *Victims of Crime Act 1994*; it would give a 'victim submission' a legislated status as an important document in parole considerations; and it would enhance the Parole Board's transparency in its decision-making.

Clause 7 Section 22 amended

Section 22 of the *Sentence Administration Act 2003* outlines those prisoners serving sentences of less than 12 months for whom CEO Parole consideration applies.

It is proposed to amend section 22 of the Act to clarify that prisoners serving imprisonment for non-payment of fines cannot be considered for release on CEO Parole. This amendment is necessary as to allow for such consideration would undermine the fines enforcement scheme which operates in Western Australia. The proposed amendment is complementary to the amendments to section 7 of the Act contained in clause 5 of the Bill.

Clause 8 Section 23 amended

Under Part 3 of the *Sentence Administration Act 2003* the CEO can make a parole order in respect of offenders serving sentence of less than 12 months. For certain offenders, such as those who are serving their sentence for serious offences or who have breached supervision orders in the past, the CEO has a discretion whether to make a parole order. For all other offenders, the CEO must make a parole order.

Issues arise when releasing offenders on parole, particularly in regional areas, where offenders need to make arrangements to return to their usual place of residence. When the Parole Board considers parole it can defer the release in order for the offender to be discharged from prison on a day which coincides with transport arrangements back to the place of residence. However, there is no provision for the CEO to do the same, especially in relation to those offenders for whom the CEO must make an order.

It is proposed to amend the CEO Parole provision in section 23 of the *Sentence Administration Act 2003*, in respect of those offenders for whom an order must be made, to allow the CEO to defer the release for a period of up to 7 days in order to coincide with transport provisions. In addition, situations often arise where a prisoner is eligible for release on parole but is also facing additional charges before the courts. Generally, the Parole Board would defer parole consideration pending determination or the granting of bail for the additional charges. At present, there is no capacity for the CEO to defer parole for these reasons. It is proposed to amend the CEO Parole provisions contained in the *Sentence Administration Act 2003* to enable the CEO to exercise such a power. These changes are effected through proposed new subsection 23(5a) and (5b).

In addition, it is proposed to amend section 23(8) of the *Sentence Administration Act 2003* to better clarify when the CEO is to have regard to parole considerations. At present the CEO has regard to these matters only when deciding whether an order should be supervised or not. It is proposed that the CEO should have regard to these matters also in deciding whether to release prisoners on parole, for whom the CEO has discretion to do so.

Clause 9 Section 28 amended

Section 28 of the *Sentence Administration Act 2003* outlines the nature of a parole order. Subsection 28(1)(b) provides that during the supervised period of a parole order, the offender is subject to certain obligations.

Throughout the Bill, there are a range of amendments to various provisions of the *Sentence Administration Act 2003* to remove references to the supervised period of a parole order. Under the Act, offenders released on parole are required to be supervised for a period of their order. The length of the supervision period is generally equivalent to one-third of the sentence, up to a maximum of 2 years. The 'parole supervision' provisions contained in the Act, were originally drafted on the basis of a uniform parole period of 50% regardless of length of sentence. During the passage of the Act through Parliament last year, amendments were made by the Opposition which have resulted in a two-tiered parole formula. As a consequence, the 'parole supervision' provisions are ambiguous and require amendment.

It is proposed that the 'parole supervision' provisions of the *Sentence Administration Act 2003* be amended to provided that an offender is to be supervised for the whole of their parole period. Section 28 of the Act requires amendment to give effect to this proposal.

Clause 10 Section 31 amended

Section 31 of the *Sentence Administration Act 2003* requires the CEO to ensure that a parolee is supervised during the supervision period of their parole order.

As indicated in the notes to clause 9 of the Bill, it is proposed that the 'parole supervision' provisions of the *Sentence Administration Act 2003* be amended to provided that an offender is to be supervised for the whole of their parole period. Section 31 of the Act requires amendment to give effect to this proposal.

Clause 11 Section 37 amended

Section 37 of the *Sentence Administration Act 2003* enables a parole order to be amend during its supervised period.

As indicated in the notes to clause 9 of the Bill, it is proposed that the 'parole supervision' provisions of the *Sentence Administration Act 2003* be amended to provided that an offender is to be supervised for the whole of their parole period. Section 37 of the Act requires amendment to give effect to this proposal.

Clause 12 Section 38 amended

Section 38 of the *Sentence Administration Act 2003* enables the CEO to suspend a parole order during the supervised period of the order.

As indicated in the notes to clause 9 of the Bill, it is proposed that the ‘parole supervision’ provisions of the *Sentence Administration Act 2003* be amended to provided that an offender is to be supervised for the whole of their parole period. Section 38 of the Act requires amendment to give effect to this proposal.

Clause 13 Section 39 amended

Section 38 of the *Sentence Administration Act 2003* enables the Parole Board to suspend a parole order during the supervised period of the order.

As indicated in the notes to clause 9 of the Bill, it is proposed that the ‘parole supervision’ provisions of the *Sentence Administration Act 2003* be amended to provided that an offender is to be supervised for the whole of their parole period. Section 39 of the Act requires amendment to give effect to this proposal.

Clause 14 Section 44 amended

Section 44 of the *Sentence Administration Act 2003* enables the Parole Board to cancels a parole order. However under subsection 44(2) the Board cannot cancel an order after the end of the supervised period unless it is because the offenders has been charged with or convicted of an offence.

As indicated in the notes to clause 9 of the Bill, it is proposed that the ‘parole supervision’ provisions of the *Sentence Administration Act 2003* be amended to provided that an offender is to be supervised for the whole of their parole period. Section 44 of the Act requires amendment to give effect to this proposal and as such the restriction in subsection 44(2) of the Act is removed.

Clause 15 Section 64A inserted

The *Sentence Administration Act 2003* enables offenders who have been denied parole by the Parole Board, or have had their parole suspended or cancelled, to seek a review of such decisions by the Board. In terms of Re-entry Release Orders, where the prisoner is refused release they can seek review by the Board. However, if their order is suspended or cancelled, the Act does not make any provisions for the offender to seek a review of these decisions.

It is proposed to amend the Re-entry Release Order provisions of the *Sentence Administration Act 2003*, by inserting a new section 64A, to enable offenders to seek a review of decisions to suspend or cancel their orders. Such review provisions are along identical lines to those already provided under section 47 of the Act in relation to similar decisions in relation to parole.

Clause 16 Section 69 amended

Due to the transitional arrangements following the introduction of the *Sentence Administration Act 2003*, two forms of early release program operate. Prisoners sentenced after 31 August 2003 are eligible for Re-entry Release Orders under the 2003 Act, and those sentenced prior to that date are eligible for either a Re-entry Release Order under the 2003 Act or a Work Release Order made under the former *Sentence Administration Act 1995*.

For prisoners sentenced before 31 August 2003 who are also eligible for parole, there is no significant difference between electing for either order. However, non-parole prisoners sentenced prior to 31 August 2003 who breach a Re-entry Release Order would be required to serve the balance of their sentence in prison and forfeit their entitlement to remission on their sentence. This consequence is likely to deter eligible prisoners from applying for a Re-entry Release Order.

The former *Sentence Administration Act 1995* contained a protection against loss of remission if a Work Release Order was breached. It is therefore proposed to amend section 69 of the *Sentence Administration Act 2003* to include a similar protection if a non-parole prisoner breaches a Re-entry Release Order. The benefits of this proposed amendment will be to encourage the use of Re-entry Release Orders, which are superior to Work Release Orders in assisting a prisoner's transition back into the community.

Clause 17 Section 72 amended

Section 72 of the *Sentence Administration Act 2003* enables the an offender who has had their parole order etc cancelled by the Board or CEO to be re-released back into the community on another such order. Subsection 72(2) contains a reference to the supervised period in any such subsequent parole order.

As indicated in the notes to clause 9 of the Bill, it is proposed that the 'parole supervision' provisions of the *Sentence Administration Act 2003* be amended to provided that an offender is to be supervised for the whole of their parole period. Section 72(2) of the Act requires amendment to give effect to this proposal.

Clause 18 Section 73 amended

Section 73 of the *Sentence Administration Act 2003* enables the an offender who has had their "Governor's" parole order cancelled, to be re-released back into the community on another such order. Subsection 72(3) contains a reference to the supervised period in any such subsequent parole order.

As indicated in the notes to clause 9 of the Bill, it is proposed that the 'parole supervision' provisions of the *Sentence Administration Act 2003* be amended to provided that an offender is to be supervised for the whole of their parole period. Section 73(3) of the Act is no longer relevant and is therefore proposed to be repealed.

Clause 19 Section 97 amended

Section 97 of the *Sentence Administration Act 2003* requires the CEO to notify the Board about breaches of certain orders. This section contains an incorrect reference to a Work Release Order [WRO]. These orders used to exist under the *Sentence Administration Act 1995* but have been replaced in the *Sentence Administration Act 2003* with a Re-entry Release Order [RRO]. It is therefore necessary to amend section 97 of the Act to correct this error.

Clause 20 The Act amended

The amendments contained in Part 3 of the Bill are amendments to various provisions of the *Sentencing Act 1995*.

Clause 21 Section 33A amended

Under Part 3A of the *Sentencing Act 1995*, when a court is considering imposing imprisonment on an offender it can adjourn the sentencing and release the offender under conditions contained in a Pre-Sentence Order. Under the *Sentence Administration Act 2003*, where an offender is imprisoned for an offence committed while they were subject to an early release order, the order in question is automatically cancelled. It would therefore not be appropriate for a court to make a Pre-Sentence Order for such offences where the offence in question was committed while the offender was on parole.

It is proposed to amend section 33A of the *Sentencing Act 1995* dealing with the imposition of Pre-Sentence Orders to prohibit the making of such orders where the offences committed by the offender occurred while the offender was subject to supervision under a parole order or other forms of early release. In addition, this exclusion will apply where the offence in question was committed while the offender was under suspended imprisonment for other offences.

Clause 22 Section 33O amended

Section 33O of the *Sentencing Act 1995* deals with the powers of a court when dealing with an offender who has re-offended while they were subject to a Pre-Sentence Order. Subsection 33O(5)(a)(iii) contains a typographical drafting error which requires correction. The effect of the section is not changed in any way.

Clause 23 Section 33P amended

Section 33P of the *Sentencing Act 1995* deals with the powers of a court when dealing with an offender who has breached the requirements of their Pre-Sentence Order. Subsection 33P(1) contains a typographical drafting error which requires correction. The effect of the section is not changed in any way.

Clause 24 The Act amended

The amendments contained in Part 4 of the Bill are amendments to various provisions of the *Sentencing Legislation Amendment and Repeal Act 2003*.

Clause 25 Section 107 amended

Section 107 of the *Sentencing Legislation Amendment And Repeal Act 2003* requires that the Minister carry out a review of the recent changes to the *Sentencing Act 1995* and the new parole provisions contained in Part 3 of the *Sentence Administration Act 2003*. This review is to be completed in 4 years.

The *Sentence Administration Act 2003* also contains new provisions dealing with Re-Entry Release Orders for prisoners. While the review of the legislation is likely to include a review of such orders, there is no statutory requirement to do so. In the context of the recent sentencing reforms, it would be prudent for the statutory review to also include a review of the operations and effectiveness of the new Re-entry Release Orders. It is therefore proposed that the 'review' provisions contained in section 107 of the *Sentencing Legislation Amendment and Repeal Act 2003* include a review of the provisions of Part 4 of the *Sentence Administration Act 2003* which deal with Re-entry Release Orders.

Clause 26 Schedule 1 amended

Schedule 1 to the *Sentencing Legislation Amendment And Repeal Act 2003* contains transitional provisions as a consequence of the changes to the *Sentencing Act 1995* made in 2003 and the enactment of the *Sentence Administration Act 2003*.

Clauses 5 and 6 contains provisions in relation to the availability of Work Release Order to offenders who were sentenced prior to 31 August 2003 [the date when the 2003 reforms came into operation]. As a consequence of, and complementary to, the changes proposed to section 69 of the *Sentence Administration Act 2003* in clause 16 of the Bill, clauses 5 and 7 of Schedule 1 to the *Sentencing Legislation Amendment And Repeal Act 2003* are to be amended to clarify the non-availability of Work Release Orders under the former *Sentence Administration Act 1995* in relation to non-parole prisoners.