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**ATTORNEY GENERAL**

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MINISTER FOR JUSTICE AND LEGAL AFFAIRS;  
ELECTORAL AFFAIRS; PEEL AND THE SOUTH WEST

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FOR WESTERN AUSTRALIA

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Ms Mia Betjemam  
Clerk Assistant  
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Parliament House  
Harvest Terrace  
PERTH WA 6000

Dear Ms Betjemam

**REPORT OF THE STANDING COMMITTEE ON LEGISLATION IN  
RELATION TO THE *SENTENCING LEGISLATION AMENDMENT AND  
REPEAL BILL 2002* AND THE *SENTENCE ADMINISTRATION BILL 2002*  
(REPORT 18)**

Thank you for forwarding a copy of the Legislation Committee's report into the *Sentencing Legislation Amendment and Repeal Bill 2002* and the *Sentence Administration Bill 2002*. Please find attached the Government's response to the Committee's report which Hon Nick Griffiths MLC will table when Council resumes sitting on 10 June 2003.

**JIM MCGINTY MLA  
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*Attach x 1*

**5 JUN 2003**

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# GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON LEGISLATION IN RELATION TO THE

## INQUIRY INTO THE *SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002* AND THE *SENTENCE ADMINISTRATION BILL 2002*

### 1. Recommendations Supported and Requiring Drafting Amendments

#### Recs 2 and 3: Review of CEO Parole decisions

The Committee supported the introduction of CEO Parole and recognised that prisoners should have access to an external review of CEO's decisions to postpone or refuse parole. It is likely that there would be very limited numbers of prisoners who would seek a review of a CEO Parole decision (estimated to be 15-30 per year).

The Government supports the Committee's recommendation that the Parole Board be responsible for reviewing CEO Parole.

#### Recs 4 and 5: "Prescribed Class" of Prisoners to be Included in Primary Legislation

The Committee was of the view that the 'prescribed class' of prisoners (in relation to both CEO Parole and 'auto parole') should not be in the regulations. This was based on the Committee's view that being in such a 'class' could affect the duration of a prisoner's detention. Therefore the Committee recommended that the 'prescribed class' be designated in the Act.

The Department of Justice considers that there should be some flexibility in dealing with this issue. If every aspect of CEO discretionary release is in the legislation that could prejudice prisoners. For example, if it was considered that a class of prisoners specified in the legislation should be altered, that could not be done until Parliament amended the legislation. In the meantime, prisoners within that class, who might otherwise be released automatically, would remain in prison for a longer period. This also has the potential to adversely impact on prisoner population levels.

Both the Committee's recommendation and the Department's concerns could be met by:

- amending the Bill to more clearly specify the classes of prisoners to whom the CEO can exercise discretion; and
- allowing regulations to specify the specific offence groupings that apply to these classes.

The Government agrees that the Bill be amended and regulations drafted encapsulating the offences as indicated on Page 17 of the Committee's report.

Rec 6: Re-entry Release Orders

The Committee recommended that Re-entry Release Orders (RROs) be available to long-term, non-parole prisoners, as it considered that these offenders could benefit most from a reintegration process and that such supervised reintegration would be in the best interests of the general public. The proposed amendment needs to be clear that section 51(2)(b) will only apply to non-parole prisoners.

The Government supports this recommendation.

Rec 9: Amendments to deal with retrospective breaches of Pre-sentence Orders

The Committee was of the view that where an offender receives a conditional sentence (Intensive Supervision Order, Suspended Sentence or Community Based Order) as a result of a Pre-sentence Order (PSO) and during the conditional sentence, is dealt with in relation to an offence committed during the PSO, the courts should be empowered to treat it as a breach of the conditional sentence.

The intent and objective of this recommendation is supported. However, it is considered that implementation can be achieved in a more appropriate manner.

A more appropriate course of action would be to have the offender's sentence recalled and for the court to then impose a new sentence having regard to the fact that the offender has breached the condition of their PSO.

To give effect to this recommendation, amendments to the *Sentencing Legislation Amendment and Repeal Bill 2002* and the *Sentence Administration Bill 2002* would need to be made to provide a process for the recall of a sentence in such circumstances.

The Government supports amending the legislation as described above to achieve the Committee's objective.

Rec 10: Pre-sentence Orders to apply for up to two years

Currently PSOs apply for up to 12 months. Evidence was heard by the Committee that problems arise with the continuity of services between the Drug Court programme and the Department of Justice Community Based Orders, which may operate following sentencing in the Drug Court. The Committee agreed with this view and recommended that PSOs be able to be applied for up to two years.

It is recognised that these problems exist. However, PSOs of two years duration may be particularly onerous and impact on the motivation of offenders to complete the PSO requirements. If PSOs of two years duration are frequently applied this may require additional resources to enable supervision of offenders on PSOs. However it is anticipated that the potential negative impact will be recognised at the point of sentencing and this provision is likely to be used rarely.

The Government supports this recommendation.

Rec 11: Extension of curfew order made by speciality court

The Committee endorsed Magistrate Wager's recommendation that curfew requirements in PSOs be able to be extended by a speciality court from the current six month limit.

The Government supports the Committee's recommendation.

Rec 12: Performance reports for speciality courts

The Committee endorsed Magistrate Wager's recommendation that proposed section 33I, that relates to performance reports, should be amended to allow performance reports to be in the form and presented at forums as directed by the speciality court. This recommendation is intended to allow more flexibility in speciality courts and better case management.

The Government supports the Committee's recommendation.

Rec 13: Performance reports to be made available to speciality court officers

The Committee endorsed Magistrate Wager's recommendation that performance reports for PSOs be made available to speciality court officers in addition to the prosecutor and the offender as proposed in section 33I. This recommendation is intended to allow more flexibility in speciality courts and better case management.

The Government supports the Committee's recommendation.

Rec 14: Amendment of Pre-sentence Orders by the court

The Committee noted that the criteria for amending a PSO did not encompass a situation where an offender simply required more time to complete a treatment programme. This recommendation is intended to allow for the court to amend a PSO to allow an offender more time to comply with the requirements of the order.

The Government supports the Committee's recommendation.

Rec 19: Retention of prison sentence option for offences of racial harassment and incitement to racial hatred

The Committee recommended an increase to the summary conviction penalty for offences relating to racial harassment and incitement to racial hatred from \$6000 to 'imprisonment for 12 months'.

The Government supports the Committee's recommendation.

## 2. Recommendations Not Supported

### Rec 15: Conveyance of offenders on Pre-Sentence Orders to treatment and similar facilities

For PSOs to operate effectively in remote communities, the Committee recommends that there is a need for the legislation to provide for the conveyance of offenders, at the cost of the State, to treatment centres and similar facilities rather than back to the court. It is not readily apparent from the Committee's recommendation whether it is proposed that offenders be taken against their will to treatment places for treatment or for purposes of reporting. If the Committee's recommendation is that offenders be forcibly taken for treatment, the Government would not support the recommendation as PSOs are directed at offenders who have not yet been sentenced.

There is currently no legislation in place that would provide for a service provider to keep an offender against his or her will. If it is the Committee's intention that offenders are placed in treatment against their will, then this is a similar issue to that of 'declared places' as prescribed in the *Criminal Law (Mentally Impaired Defendant's) Act 1996*. To date, no places have been declared under the Act and defendants are currently held at Graylands Hospital or in a prison.

The Government does not support this recommendation.

### Rec 17: Separate proclamation of Part 5 of the Sentencing Legislation Amendment and Repeal Bill 2002

The Committee highlighted its concern that there had been no evaluation of the impact of the abolition of sentences of three months or less. It thus recommended that Part 5 of the Bill, that relates to the abolition of sentences less than six months, be proclaimed separately from the remainder of the Bill so as to enable its effect on sentencing to be more clearly distinguished.

There is merit in proclaiming Part 5 of the Bill separately to enable such an evaluation. However, there would need to be a significant amount of time between proclamations (12 – 18 months) to be able to determine the impact of the changes of abolishing sentences of less than six months.

The cost of undertaking such an evaluation and the effectiveness of such an evaluation need to be considered.

The Government is of the view that separate proclamation not be determined until further evaluation of the Committee's recommendation has been undertaken.

### 3 Recommendations Supported But Not Requiring Drafting Amendments

#### Rec 1: Government to reconsider the abolition of Home Detention Orders

The Committee made this recommendation based on the view that Home Detention Orders (HDOs) have been reasonably successful, and based on the ongoing need for re-integration options for prisoners. The Committee considered it preferable for long-term, non-parole prisoners to be provided with some form of community re-integration rather than to be simply released into the community. It considered that this could be achieved by the retention of HDOs and their modification to operate in relation to long-term, non-parole prisoners. The intent of the Committee's recommendation is supported however it is considered that the intent of the Committee's recommendation can be achieved through a Re-entry Release Order, including electronic monitoring and home detention.

The Government supports the Committee's recommendation.

#### Rec 7: Parole Board to determine duration of Re-entry Release Orders

The Committee agreed with the view of the Parole Board and Dr Neil Morgan that the legislation should address the duration of RROs. The Committee recommended that RROs should operate for up to six months, as the Parole Board considers appropriate.

No amendment is needed to achieve or implement the Committee's recommendation. This is because the Bill allows for RROs to be made for up to 6 months with the release date being determined by the Parole Board.

The Government supports the Committee's recommendation.

#### Rec 8: Development and implementation of any proposed Drug Court legislation and consideration of conditional suspended sentences

The Committee recommended that in the development of any Drug Court legislation that consideration be given to the use of conditional suspended sentences. This recommendation was made in light of advice by Magistrate Wager that the Drug Court should be a post-sentence option involving a conditional suspended sentence of imprisonment, which in the event that an offender does not successfully complete a drug treatment order, then comes into effect. This issue will be considered in the context of the Drug Court evaluation.

The Government supports the Committee's recommendation.

#### Rec 16: Amendment to proposed section 93 of the Sentencing Legislation Amendment and Repeal Bill 2002

The Committee:

- considered the proposed transitional provisions overly complex; and
- recommended that the Government 'seriously consider' altering the amendment to section 93 to substitute a provision that more closely follows the current provision but without the automatic remission of one third that would be removed before passing sentence.

While it is appreciated that a uniform system will be easier for the public to comprehend, the Committee's recommendation warrants serious consideration on the basis that:

- the proposed two-tiered formula is less complex than the current regime; and
- over time the public will come to understand its operation.

The Government supports the Committee's recommendation that this be given serious and ongoing consideration with further amendments to the legislation to be considered in the light of experience.

Rec 18: Review of abolition of sentences under six months

The Committee noted its concern that no evaluation had been undertaken of the abolition of sentences under three months. The Committee has recommended a review of Part 5 of the *Sentencing Legislation Amendment and Repeal Bill 2002* be undertaken two years after that Part is proclaimed.

The Government supports the Committee's recommendation.

Rec 20: Government work with the judiciary to resolve problems with the operation of section 88 of the Sentencing Act 1995

Section 88 relates to concurrent, cumulative or partly cumulative terms. The Committee:

- accepted views that highlighted difficulties in implementing section 88 of the *Sentencing Act 1995*;
- accepted evidence that the proposed amendments in the Bill would not adequately address these problems;
- did not consider that, based on the material before it, it could recommend alternative solutions to the problems; and
- recommended that the Government in conjunction with the judiciary, explore the possible solutions to the problems raised.

The Committee's view that this issue continues to be problematic is acknowledged. The Department of Justice has attempted to find solutions in the development of the Bill, and is of the view that the suggested amendments provide a partial solution.

The Government is of the view that the legislation proceed as is, on the understanding that the Department of Justice will continue to work with the judiciary to find a better solution. If a satisfactory solution is found, then a proposal for legislative change could be put up in the future.

Rec 21: Inquiry into sentencing, law enforcement and penalties in remote and regional areas

The Committee recognised that sentencing processes do not adapt readily to all parts of the State, particularly remote areas. Factors impacting on the operation of sentencing processes were identified as geographical isolation, the varying needs of remote communities, and the availability of services in remote areas.

The need for an inquiry that would inform and have positive impacts on other Government priorities is supported, including reducing re-offending and the rate and cost of imprisonment. This will be consistent with current activities, such as the Kimberley Justice Project.

Implementation of this recommendation would incur significant resources and costs. It is noted that the Committee has recommended that the inquiry be led by a magistrate.

The Government supports the Committee's recommendation.