SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

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

Presented by Hon Jon Ford MLC (Chairman)

Report 18
May 2003

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

"**1. Legislation Committee**

1.1 A *Legislation Committee* is established.

1.2 The Committee consists of five members.

1.3 The functions of the Committee are to consider and report on any bill or other matter referred by the House.

1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3 at the second reading or any subsequent stage is excluded from the Committee's consideration."

Members as at the time of this inquiry:

Hon Jon Ford MLC (Chairman)

Hon Giz Watson MLC (Deputy Chair)

Hon Kate Doust MLC

Hon Peter Foss MLC

Hon Bill Stretch MLC

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Note

The Eighteenth Report of the Standing Committee on Legislation consists of a Report, and a Minority Report of Hon Peter Foss MLC and Hon Bill Stretch MLC.

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Government Response

This Report is subject to Standing Order 337:

> *After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.*

The four-month period commences on the date of tabling.

GLOSSARY

Auto Parole	The term used to refer to those parole cases that are released by order of the Parole Board Secretary (on the advice of the Department of Justice), without formal consideration by the Board.
Bills	The Sentencing Legislation Amendment and Repeal Bill 2002 and the Sentence Administration Bill 2002.
CEO Parole	Parole by the CEO of the Department of Justice in relation to offenders serving a sentence of less than 12 months.
Concurrent Sentence	Where an offender is sentenced for more than one offence, the sentences may be ordered to be served concurrently, that is, at the same time.
Committee	The Standing Committee on Legislation.
Community Based Order	This is an order that involves an offender complying with either a supervision requirement, a programme requirement or a community service requirement. An offender can be dealt with for re-offending or breaching the order.
Cumulative Sentence	Where an offender is sentenced for more than one offence, the sentences may be ordered to be served cumulatively, that is, one after the other.
Hammond Committee	The Committee established on October 2 1996 which conducted a review of remission and parole in Western Australia and which was chaired by the Chief Judge of the District Court, His Honour Judge KJ Hammond.
Home Detention Order	A prisoner may apply for release on a Home Detention Order six months before the end of their sentence. The order requires the offender to remain at a particular residence except when permitted and to complete community work. The offender may also be subject to electronic monitoring. This is to be distinguished from Home Detention issued before sentencing instead of remand in custody.

Intensive Supervision Order	This is an order that requires the offender to be regularly monitored in the community and receive regular counselling. The order may also contain a programme requirement, community service requirement and/or a curfew requirement. An offender can be dealt with for re-offending or breaching the order.
Non-parole Period	The non-parole period is the time that a prisoner serves in prison before they are eligible to be released on parole.
Parole	Parole is a mechanism which allows a prisoner to be released from prison upon completion of the minimum term of his/her sentence with the remainder of the sentence to be served in the community.
Parole Eligibility Order	When an offender is sentenced to a term of imprisonment, the court determines whether to make a Parole Eligibility Order. Once an offender has served the "non-parole period" of the sentence, the Parole Board then determines whether to release the offender on parole.
Parole Period	The "parole period" is the period that an offender released on parole remains on parole.
Pre-sentence Order	An order that may be made that defers sentencing for a period of time to enable an offender to undertake treatment or other steps to address their offending behaviour prior to the court proceeding with sentencing.
Re-entry Release Order	Re-entry Release Orders involve an early release from prison to enable prisoners to undertake employment related activities and activities that will facilitate their re-entry into the community after being released from prison.
Remission	A system whereby part of a prison sentence is remitted or cancelled. Remission is currently one third of a sentence.
Suspended Sentence	When a court sentences an offender to a term of imprisonment of 60 months or less, it may order that the sentence is suspended and the offender does not serve

	the term. However, if the offender re-offends during the suspended sentence, they may be ordered to serve the suspended term.
Totality Principle	When the court is sentencing an offender for more than one offence, or when the offender being sentenced is, or has been, serving a sentence for another offence, the court should consider the totality of the criminality for which the offender is being punished and ensure that the aggregate sentence does not exceed what is appropriate.
Work Release Order	Work Release Orders involve an early release from prison and require the offender to primarily undertake community corrections activities and seek or engage in gainful employment or engage in gratuitous work.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

EXECUTIVE SUMMARY

1 The Sentencing Legislation Amendment and Repeal Bill 2002 and the Sentence Administration Bill 2002 ("the Bills") were referred to the Legislation Committee ("Committee") on December 19 2002.

2 The Sentencing Legislation Amendment and Repeal Bill 2002 amends the *Sentencing Act 1995* and repeals other sentencing legislation including the *Sentence Administration Act 1995*. The Sentence Administration Bill 2002 replaces the *Sentence Administration Act 1995* and replicates some, but not all, of its provisions

3 The Bills introduce a number of amendments to sentencing in Western Australia including amendments to parole and remission, the abolition of sentences of six months or less and the creation of a new Pre-sentence Order. Through the amendments contained in these Bills, the Government seeks to:

- make the sentencing process clear and understandable for both the community and the judiciary;
- enact "truth in sentencing" or transparency in sentencing by implementing a number of the recommendations of the *Report of the Review of Remission and Parole*; and
- reduce the rate and associated cost of imprisonment in Western Australia.

4 In its consideration of the Bills, the Committee dealt with the key issues raised in submissions. In relation to the Sentencing Legislation Amendment and Repeal Bill 2002 the key issues are:

- the introduction of Pre-sentence Orders and the ability for the court to adjourn sentencing for up to 12 months;
- the amendment to Parole Eligibility Orders such that there is no presumption in favour of parole;
- the amendment of parole to 50% of the sentence;
- the abolition of remission;
- the abolition of sentences of six months or less;
- the amendments in relation to partly cumulative sentences; and

- the transitional provisions for the adjustment of sentences to take account of the amendments to parole and remission.

5 The Committee dealt with the key issues raised in submissions in relation to the Sentence Administration Bills 2002 which are:

- a clause setting out a number of criteria that must be addressed when release on parole is considered;
- in relation to sentences of imprisonment of less than 12 months, the abolition of Home Detention Orders and the introduction of Chief Executive Officer ("CEO") Parole;
- an amendment to the "parole period" of a sentence; and
- the abolition of Work Release Orders and the introduction of Re-entry Release Orders.

6 The submissions to the Committee also raised the issue of the impact of the Bills in remote and regional areas of the State. The Committee draws the attention of the House to recommendation 21 in this regard.

7 The Committee has recommended a number of amendments to the Bills which address the key issues and has also made a number of recommendations that the Committee believes that the Government should consider.

RECOMMENDATIONS

8 Recommendations are grouped as they appear in the text at the page number indicated:

Page 20

Recommendation 1: The Committee recommends that the Government reconsider the abolition of Home Detention Orders.

Page 24

Recommendation 2: The Committee recommends that clause 24(3) of the Sentence Administration Bill 2002 be amended in the following manner:

Page 16, line 21 - To delete "CEO" and insert instead -

" Board ".

Page 24

Recommendation 3: The Committee recommends that a new clause 24(4) be inserted into the Sentence Administration Bill 2002 in the following manner:

Page 16, after line 22 - To insert the following -

" (4) The Board may consider the submissions and may make a decision in substitution for the decision made by the CEO. ".

Page 24

Recommendation 4: The Committee recommends that the "class prescribed" for the purpose of clause 23(2) of the Sentence Administration Bill 2002 with respect to "CEO Parole", be included in the Sentence Administration Bill 2002 and not in regulations.

Page 24

Recommendation 5: The Committee recommends that the "prescribed class" for the purposes of clause 106(4) of the Sentence Administration Bill 2002, with respect to those parole decisions which may be delegated to the Parole Board Secretary or other authorised person, be included in the Sentence Administration Bill 2002 and not in regulations.

Page 31

Recommendation 6: The Committee recommends that clause 51(2) of the Sentence Administration Bill be amended in the following manner:

Page 30, line 4 - To insert after "that" -

" -

(a) "

Page 30, line 6 - To insert after "community" where it second appears -

"; or

(b) the safety of people in the community or of any individual in the community would be better assured by the prisoner spending time on supervised re-entry release than by being released at the end of the sentence without any supervised release."

This amendment would have the effect that clause 51(2) would read as follows:

(2) The Board must not make an RRO in respect of a prisoner unless satisfied that:
(a) the prisoner is a person whose release would pose a low risk to the personal safety of people in the community or of any individual in the community; or
(b) the safety of people in the community or of any individual in the community would be better assured by the prisoner spending time on supervised re-entry release than by being released at the end of the sentence without any supervised release.

Page 32

Recommendation 7: The Committee recommends that the Re-entry Release Order provisions be amended to enable the Parole Board to determine the duration of the Order up to a period of six months and for this purpose the Committee recommends that clause 51(1) of the Sentence Administration Bill 2002 be amended in the following manner:

Page 29, line 30 - To insert after "RRO" -

" to come into effect on a date specified by the Board. ".

Page 51

Recommendation 8: The Committee recommends that the Government place a high priority on the development and implementation of any proposed Drug Court legislation and in preparing that legislation explores the use of conditional suspended sentences.

Page 51

Recommendation 9: The Committee recommends that the Government consider an amendment to Division 2 of Part 2 of the Sentencing Legislation Amendment and Repeal Bill 2002 to incorporate provisions to deal with offences committed during the duration of a Pre-sentence Order that are dealt with after the expiration of the Pre-sentence Order.

Page 52

Recommendation 10: The Committee recommends that clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 6, line 10 - To delete "12 months" and insert instead -

" 2 years ".

Page 52

Recommendation 11: The Committee recommends that the limitation on the length of a curfew order made as part of a Pre-sentence Order be capable of being exceeded or extended by a speciality court. To give effect to this the Committee recommends that clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 10, lines 28 to 31 - To delete the lines and insert instead -

"(3) The curfew requirement may only be imposed for a term of six months or less, as set by the court, beginning when the PSO is made or as ordered by the speciality court or as extended by the speciality court. ".

Page 11, lines 7 to 9 - To delete the lines.

Page 52

Recommendation 12: The Committee recommends that, to provide more flexibility in speciality courts and to take into account case management, clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 13, line 15 - To insert after "court" -

" and in the form and at a forum directed by the speciality court ".

Page 52

Recommendation 13: The Committee recommends that performance reports for Pre-sentence Orders be made available to speciality court officers in addition to those persons already proposed and for this purpose clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 14, line 2 - To insert after "offender" -

" and to speciality court officers ".

Page 53

Recommendation 14: The Committee recommends that the Sentencing Legislation Amendment and Repeal Bill 2002 be amended to enable Pre-sentence Orders to be amended by the court to allow offenders further time to comply with the requirements of the Pre-sentence Order and for this purpose proposed section 33N in clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 16 line 14 - To insert after "so," -

" or if the offender requests, ".

Page 53

Recommendation 15: The Committee recommends that the Government consider an amendment to add a further element in Pre-sentence Orders to incorporate a requirement that an offender can be taken under compulsion (at the cost of the State) by an authorised person to another location for the purposes of the Pre-Sentence Order. The Committee recommends that the provisions of the *Protective Custody Act 2000* be used as a guide in the drafting of the amendment. In view of section 46 of the *Constitution Acts Amendment Act 1899* and the financial implications of this amendment the Committee observes that this amendment may need to be made in the Legislative Assembly .

Page 70

Recommendation 16: The Committee recommends that in order to avoid complicated transitional provisions and parole terms of greater than two years, the Government seriously consider altering the amendment to section 93 in clause 20 of the Sentencing Legislation Amendment and Repeal Bill 2002 to substitute part with a provision that more closely follows the current provision but without the automatic remission of one third which would be removed before passing sentence. Thus clause 20 of the Sentencing Legislation Amendment and Repeal Bill 2002 could be amended in the following manner:

Page 27, lines 9 and 10 - To delete the words "when he or she has served one-half of the term" and insert instead -

" -

(a) if the term served is four years or less - when he or she has served one-half of the term; or

(b) if the term served is more than four years - when he or she has served 2 years less than the term. "

Similarly clause 2 of Schedule 1 could be amended so that the clause reads in the following terms:

"(1) If a court sentencing an offender to imprisonment proposes to impose a fixed term (with or without a parole eligibility order), it must impose a fixed term that is two thirds of the fixed term that it would have imposed had the old provisions been in operation at the time of sentencing.

(2) For the purposes of subsection (1) —

(a) it does not matter that the court may be proposing to suspend the fixed term under Part 11 of the *Sentencing Act 1995*; and

(b) a reference to imposing a fixed term includes a reference to dealing with an offender under section 80 of the *Sentencing Act 1995* in respect of a sentence of suspended imprisonment imposed under the old provisions.

(3) Despite subclause (1), if the sentence required by that subclause would contravene section 86 of the *Sentencing Act 1995*, if the court considers that a term of imprisonment is warranted in all the circumstances, the court may impose a term of more than 6 months.

(4) A court does not have to apply this clause if, in sentencing an offender, the court follows the practice of the court as established in accordance with the new provisions and this clause.

(5) This clause does not apply if —

(a) the statutory penalty for the offence for which the offender is being sentenced has been amended since the new provisions commenced;

(b) a guideline judgment given under section 143 of the *Sentencing Act 1995* since the new provisions commenced applies to the offender or the offence for which the offender is being sentenced;

(c) the application of this clause would be inconsistent with or contrary to any other judgment given since the new provisions commenced that binds the sentencing court;

(d) a court is imposing a term under section 401(4) of *The Criminal Code*; or

(e) a court is sentencing an offender to a term that, under the old provisions, would have been a prescribed term within the meaning of section 85 of the *Sentencing Act 1995*."

The means to achieve this in the House would be to amend clause 2 of Schedule 1 in the following manner:

Page 76, line 29 to page 77, line 2 - To delete the lines and insert instead -

" impose a fixed term that is two thirds of the fixed term that it would have imposed had the old provisions been in operation at the time of sentencing."

Page 77, line 3 - To delete "(2)" and insert instead -

" (1) ".

Page 77, line 5 - To insert after "*1995*. -

" and ".

Page 77, lines 10 to 17 - To delete the lines.

Page 77, line 18 - To delete "(2)" and insert instead -

" (1) ".

Page 88

Recommendation 17: The Committee recommends that Part 5 of the Sentencing Legislation Amendment and Repeal Bill 2002 be proclaimed separately from the remainder of the Bill so as to enable the effects on sentencing to be more clearly distinguished.

Page 88

Recommendation 18: The Committee recommends a review of Part 5 of the Sentencing Legislation Amendment and Repeal Bill 2002 be undertaken two years after that Part is proclaimed.

Page 88

Recommendation 19: The Committee recommends that the amendments to the *Criminal Code* summary offence of racial harassment and incitement to racial hatred retain the option of a prison sentence and that clause 51(2) of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 47, line 16 - To delete "$6 000" and insert instead -

" imprisonment for 12 months. "

Page 96

Recommendation 20: The Committee recommends that as a matter of urgency the Government work with the judiciary to resolve the problems with the operation of section 88 of the *Sentencing Act 1995* as amended by clause 17 as discussed in Chapter 6 the Committee's report.

Page 98

Recommendation 21: The Committee draws the attention of the House to the matters raised in Chapter 7 of the Committee's report and recommends that:

(a) as a matter of urgency the Government consider establishing an inquiry into sentencing, law enforcement and penalties in remote and regional areas of

Western Australia with the intention of reducing the rate of imprisonment;
(b) a judicial officer at the level of a magistrate conduct the inquiry; and
(c) the judicial officer be provided with assistance by the relevant agencies, authorities and government departments including the Department of Justice, the Department of Transport and the Western Australian Police Service.

Page 98

Recommendation 22: The Committee recommends that the Sentence Administration Bill 2002 be passed subject to recommendations 1 through to 7.

Page 98

Recommendation 23: The Committee recommends that the Sentencing Legislation Amendment and Repeal Bill 2002 be passed subject to recommendations 9 through to 14 and 16 through to 19.

There was dissent from recommendation 23.

CHAPTER 1
INTRODUCTION

REFERENCE

1.1 The Sentencing Legislation Amendment and Repeal Bill 2002 and Sentence Administration Bill 2002 ("the Bills") were referred to the Standing Committee on Legislation ("the Committee") on December 19 2002. The Committee was to report to the Legislative Council by March 20 2003.

1.2 Pursuant to the Committee's requests, the Legislative Council granted an extension of time within which to report until May 6 2003 and further extensions to May 16 2003 and May 23 2003.

1.3 Paragraph 1.4 of Schedule 1 to the Standing Orders of the Legislative Council provides that unless otherwise ordered, the policy of a bill referred at the second reading or any subsequent stage is excluded from the Committee's consideration. When the Bills were referred to the Committee, the Legislative Council resolved that the Committee has power to consider and report on the policy of the Bills.

PROCEDURE

1.4 The Committee wrote to stakeholders inviting submissions on the Bills. A list of these stakeholders is attached as Appendix 1.

1.5 The Committee invited submissions from the general public. On January 11 and 18 2003, the Committee advertised in *The West Australian* newspaper for written submissions in relation to the Bills. A list of the submissions received by the Committee is attached as Appendix 2.

1.6 The Committee held hearings on February 11, March 5, 12 and 19 2003. A list of witnesses who appeared before the Committee is attached as Appendix 3.

1.7 The Committee thanks the individuals and organisations that provided submissions and gave evidence before the Committee.

BACKGROUND TO THE BILLS

1.8 The Sentencing Legislation Amendment and Repeal Bill 2002 amends the *Sentencing Act 1995* and repeals other sentencing legislation including the *Sentence Administration Act 1995*. The Sentence Administration Bill 2002 replaces the *Sentence Administration Act 1995*. Both Bills introduce significant changes to sentencing in Western Australia.

1.9 The *Sentencing Act 1995* and the *Sentence Administration Act 1995* were the product of work undertaken by a Working Party established by the then Attorney General, Hon Cheryl Edwardes MLA. It is relevant to note that the provisions in relation to parole and remission were unchanged by the *Sentencing Act 1995* and the *Sentence Administration Act 1995* which both commenced operation on November 4 1996.[1]

1.10 On October 2 1996, the then Attorney General, Hon Peter Foss QC MLC, commissioned a review of the system of remission and parole in Western Australia. The impetus for the review was the concern expressed by members of the community and some judges that the system of parole and remission reduced the credibility and effectiveness of sentences.[2] A committee chaired by the Chief Judge of the District Court, His Honour Judge KJ Hammond, conducted the review. That Committee became known as "the Hammond Committee" and reported in February 1998.

1.11 In late 1998, the Sentencing Legislation Amendment and Repeal Bill 1998 and the Sentence Administration Bill 1998 were introduced into Parliament. The Sentencing Legislation Amendment and Repeal Bill 1998 contained reforms in relation to remission and parole, the introduction of a sentencing matrix, and changes to sentencing legislation concerning suspended sentences, driver's licence disqualification, restitution and compensation.[3] The Sentence Administration Bill 1998 was to replace the *Sentence Administration Act 1995.*

1.12 In the Legislative Council, the sentencing matrix provisions were removed from the Sentencing Legislation Amendment and Repeal Bill 1998 when that Bill was divided during committee stage of the Legislative Council. The sentencing matrix reforms became the Sentencing Matrix Bill 1999 and were referred to the Standing Committee on Legislation.[4] That Bill passed through Parliament with amendments and was assented to on December 6 2000 as the *Sentencing Amendment Act 2000*.

1.13 The Sentencing Legislation Amendment and Repeal Bill 1998 and the Sentence Administration Bill 1998, excluding the sentencing matrix reforms, passed through Parliament, were assented to on December 16 1999 and became the *Sentencing Legislation Amendment and Repeal Act 1999* and the *Sentence Administration Act 1999.*

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1 Opening Statement of Mr Malcolm Penn, Principal Legislation and Policy Officer, Community and Juvenile Justice Division, Department of Justice, tabled February 11 2003, pp. 1-2.

2 *Report of the Review of Remission and Parole*, Western Australia, Ministry of Justice, March 1998, pp. iii and v.

3 Opening Statement of Mr Malcolm Penn, Principal Legislation and Policy Officer, Community and Juvenile Justice Division, Department of Justice, tabled February 11 2003, p. 2.

4 See Standing Committee on Legislation, Parliament of Western Australia, Legislative Council, *Sentencing Matrix Bill 1999*, Report Number 53, October 10 2000.

1.14 However, prior to proclamation it became apparent that there were potential anomalies with certain provisions in those Acts.[5] Consequently, the *Sentencing Amendment (Adjustment of Sentences) Act 2000* was introduced into Parliament and assented to on December 7 2000.

1.15 Neither the *Sentence Administration Act 1999* nor the *Sentencing Amendment Act 2000* have been proclaimed. Some aspects of the *Sentencing Legislation Amendment and Repeal Act 1999* were proclaimed. These included reforms in relation to licence disqualification, restitution and compensation. However, the primary reforms in relation to remission and parole were not proclaimed.

1.16 The Sentencing Legislation and Amendment and Repeal Bill 2002 repeals the following legislation:

- *Sentence Administration Act 1995;*
- *Sentence Administration Act 1999;*
- *Sentencing Legislation Amendment and Repeal Act 1999;* and
- *Sentencing Amendment Act 2000.*

1.17 The Sentence Administration Bill 2002, which replaces the *Sentence Administration Act 1995* (and the *Sentence Administration Act 1999*), is to be read with the *Sentencing Act 1995* as amended by the Sentencing Legislation Amendment and Repeal Bill 2002.[6]

1.18 In order to assist the Committee to compare the Bills with the provisions contained in the 1995 and 1999 Acts, the Department of Justice prepared two tables setting out the comparable sections and clauses in each Act and the Bills. On the basis of those tables, the Committee compiled two further comparative tables incorporating annotations in relation to the amendments. At Appendix 4 is the table compiled by the Committee in relation to the Sentencing Legislation Amendment and Repeal Bill. At Appendix 5 is the table compiled by the Committee in relation to the Sentence Administration Bill 2002. Whilst these tables have been prepared for the convenience of discussion, they are not necessarily a complete reflection of the changes and interested readers should consult the 1995 and 1999 Acts and the Bills.

1.19 Hon Tom Stephens MLC set out the intention of the Bills in the Second Reading Speech in the Legislative Council. He stated:

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5 Opening Statement of Mr Malcolm Penn, Principal Legislation and Policy Officer, Community and Juvenile Justice Division, Department of Justice, tabled February 11 2003, p. 3.

6 Clause 3 of the Sentence Administration Bill 2002.

> *The Government is committed to ensuring that the sentencing process is easy to understand while at the same time allowing sufficient flexibility to address the individual circumstances of particular cases. Against this backdrop, the Government has developed a range of reforms in the sentencing area that seek to make the sentencing process easier to understand for both the community in general and those people who are directly involved in the criminal justice system. A package of reforms has been put together, through the Sentencing Legislation Amendment and Repeal Bill and Sentence Administration Bill which addresses six key areas of sentencing reform…*
>
> And further:
>
> *The Sentencing Legislation Amendment and Repeal Bill 2002, taken with the Sentence Administration Bill 2002, seeks to make significant changes to sentencing legislation to reduce the rate and cost of imprisonment in Western Australia. The Bills also enact truth in sentencing by giving effect to many of the recommendations of the Hammond review of remission and parole. The end result will be a more understandable and workable sentencing regime, which will increase community confidence in the sentencing process.*[7]

1.20 Therefore, through the amendments contained in these Bills, the Government seeks to:

- make the sentencing process clear and understandable for both the community and the judiciary;
- enact "truth in sentencing" or transparency in sentencing by implementing a number of the recommendations of the Hammond Committee in relation to remission and parole; and
- reduce the rate and associated cost of imprisonment in Western Australia.

1.21 In relation to this last aim, the Committee observes that the Crime and Justice Statistics for Western Australia 2001, indicate that based on average daily prisoner population, Western Australia has the second highest rate of adult imprisonment in Australia. Further, Western Australia exceeds all other states and territories in relation to Aboriginal rates of imprisonment.[8]

1.22 The major reforms contained in the Bills that seek to implement these aims are outlined.

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7 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, December 3 2002, p. 3764 and p. 3767.

8 Fernandez, JA and Loh, NSN, *Crime and Justice Statistics for Western Australia: 2001*, p. 141.

OVERVIEW OF THE BILLS

The Sentence Administration Bill 2002

1.23 The major changes contained in this Bill are:

- a clause setting out a number of criteria that must be addressed when release on parole is considered;
- in relation to sentences of imprisonment of less than 12 months, the introduction of Chief Executive Officer ("CEO") Parole instead of Home Detention Orders;
- an amendment to "parole period" of a sentence; and
- the abolition of Work Release Orders and the introduction of Re-entry Release Orders.

The Sentencing Legislation Amendment and Repeal Bill 2002

1.24 The major changes contained in this Bill are:

- the introduction of Pre-sentence Orders and the ability for the court to adjourn sentencing for up to 12 months;
- an amendment to Parole Eligibility Orders such that there is no presumption in favour of parole;
- the amendment of parole to 50% of the sentence;
- the abolition of remission;
- the abolition of sentences of six months or less;
- the amendments in relation to partly cumulative sentences; and
- transitional provisions for the adjustment of sentences given the amendments to parole and remission.

1.25 In this Report, the Committee does not address each of the new clauses and amendments introduced by the Bills but addresses the major changes made by the Bills and canvassed in the submissions.

1.26 The Committee thanks the staff for having done an excellent job in making sense of a difficult and complex area of the law.

CHAPTER 2

SENTENCE ADMINISTRATION BILL 2002

OVERVIEW

2.1 In this Chapter, the Committee considers the major reforms contained in the Sentence Administration Bill 2002 with one exception. That exception is the amendment to the "parole period" of a sentence in clause 20(4) of the Sentence Administration Bill 2002. That term relates to the operation of parole and the Committee considers that it is more appropriate to consider that amendment in Chapter 4 where the Committee addresses the amendments to parole and remission.

RELEASE ON PAROLE - MATTERS TO BE CONSIDERED

Overview

2.2 Section 16 of the *Sentence Administration Act 1999* introduced criteria to be addressed by the Parole Board of Western Australia ("Parole Board") when release on parole is considered. Although assented to, this Act was not proclaimed.

2.3 Clause 16 of the Sentence Administration Bill 2002 is the same as section 16 of the *Sentence Administration Act 1999* and sets out criteria that must be addressed when release on parole is considered.

2.4 In addressing the changes created by this clause, a distinction needs to be drawn between the role of the courts and the role of the Parole Board in relation to parole.

2.5 When an offender is sentenced to a term of imprisonment, the court determines whether to make a Parole Eligibility Order. A Parole Eligibility Order cannot be made in relation to sentences of less than 12 months.[9] The criteria applied by the court in making a Parole Eligibility Order are contained in section 89 of the *Sentencing Act 1995*. The Sentencing Legislation Amendment and Repeal Bill 2002 amends this section and the amendments are considered in Chapter 6.

2.6 Once the court has made a Parole Eligibility Order in relation to a prisoner, the Parole Board is responsible for determining whether to release a prisoner once he/she has served the custodial portion of their sentence. In making that determination, the Parole Board is currently directed by section 18 of the *Sentence Administration Act*

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9 The court currently cannot make a Parole Eligibility Order in relation to a term of imprisonment of less than 12 months. See section 89(3) of the *Sentencing Act 1995*. Section 89 is repealed by clause 18 of the Sentencing Legislation Amendment and Repeal Bill 2002 and clause 89(2) is inserted which also provides that a Parole Eligibility Order must not be made in relation to sentences of less than 12 months.

1995, to give paramount consideration to the *"…protection and interest of the community"*.

2.7 In reviewing the operation of parole in Western Australia, the Hammond Committee recommended that clear statutory guidelines be established setting out the factors to be considered by the Parole Board in determining whether to release an offender on parole.[10] The Hammond Committee indicated that the practice of the Parole Board is to take into account a number of relevant matters however, it is not always clear either to the community or the offender what these criteria are.[11]

2.8 Clause 16 of the Sentence Administration Bill 2002 reads as follows:

> ***16. Release on parole, matters to be considered***
>
> *In this Part a reference to parole considerations in relation to a sentence of imprisonment that a prisoner is serving or has yet to serve and in respect of which the prisoner may be released on parole is a reference to these considerations —*
>
> *(a) the circumstances of the commission of, and the seriousness of, the offence for which the sentence was imposed;*
>
> *(b) the behaviour of the prisoner when in custody serving the sentence in so far as it may be relevant to determining how the prisoner is likely to behave if released on parole;*
>
> *(c) whether the prisoner has participated in programmes available to him or her when in custody and if not the reasons for not doing so;*
>
> *(d) the prisoner's performance when participating in any such programme;*
>
> *(e) the behaviour of the prisoner when subject to any release order (as defined in section 89 of the Sentencing Act 1995) made previously;*
>
> *(f) the likelihood of the prisoner offending when he or she is on parole;*

10 *Report of the Review of Remission and Parole*, Western Australia, Ministry of Justice, March 1998, p. 28.

11 Ibid.

> *(g) the likelihood of the prisoner complying with the standard obligations and any additional requirements of a parole order;*
>
> *(h) the degree of risk that the release of the prisoner would appear to present to the personal safety of people in the community or of any individual in the community;*
>
> *(i) any other consideration that is or may be relevant to whether the prisoner should be released on parole;*
>
> *(j) any remarks by a court that has sentenced the offender to imprisonment that are relevant to any of the above matters.*

2.9 During the Second Reading Speech, in relation to clause 16, Hon Kim Chance MLC stated that:

> *The inclusion in the Bill of these factors provides for the community generally, and for offenders and victims specifically, to benefit from greater transparency in decision-making concerning release on parole*.[12]

2.10 The parole considerations are to be utilised by the Parole Board[13] in relation to sentences of 12 months or more and the CEO of the Department of Justice in relation to sentences of less than 12 months for a "prescribed class" of prisoners.[14]

Issues raised by the Submissions

2.11 The Parole Board, whose operations will be directly affected by this amendment, supports the inclusion of clause 16 and state in their submission that:

> *The Parole Board supports the implementation of this clause in the interests of transparency, and notes that it directly reflects the Board's existing practices (and was drafted with some Parole Board input).*[15]

2.12 The Parole Board indicates that this clause is unlikely to cause major changes with respect to the Parole Board's decisions about release on parole.[16]

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12 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, December 5 2002, p. 4036.

13 Clause 20(2).

14 Clause 23(7).

15 Submission Number 3, Parole Board, pp. 1-2.

16 Ibid, p. 2.

2.13 Dr Neil Morgan, the Director of Studies at the Crime Research Centre of the University of Western Australia ("Dr Morgan"), supports the inclusion of clause 16 for the same reasons as the Parole Board.[17] The Western Australian Police Service also welcomes the inclusion of clause 16.[18]

Observations

2.14 Based on the submissions received, the Committee understands that this amendment is welcomed by relevant stakeholders. The Committee supports this amendment.

SENTENCES OF LESS THAN 12 MONTHS – ABOLITION OF HOME DETENTION AND INTRODUCTION OF CEO PAROLE

Overview

2.15 Currently, the courts cannot make a Parole Eligibility Order in relation to a term of imprisonment of less than 12 months.[19] However, prisoners who are sentenced to a term of imprisonment of less than 12 months are able to apply to the CEO of the Department of Justice to be released pursuant to a Home Detention Order.[20] This is to be distinguished from Home Detention which is imposed as a condition of bail when a person would otherwise be remanded in custody ("Home Detention on bail").

2.16 A Home Detention Order requires the offender to remain at a particular residence, except when permitted, and to complete community work.[21] The offender may also be subject to electronic monitoring.[22]

2.17 The Hammond Committee recommended that Home Detention Orders for offenders serving sentences of less than 12 months be abolished. In reaching this conclusion, the Hammond Committee stated that:

> *The low level of confidence the public currently has is attributable in part to the use of early release programs such as Home Detention and Work Release which further shorten the custodial portion of the sentence imposed by the court.*[23]

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17 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 29.

18 Submission Number 7, Western Australian Police Service, p. 2.

19 Section 89(3) of the *Sentencing Act 1995*.

20 Section 59 of the *Sentence Administration Act 1995*.

21 Section 61 of the *Sentence Administration Act 1995*.

22 Section 62(2) of the *Sentence Administration Act 1995*.

23 *Report of the Review of Remission and Parole*, Western Australia, Ministry of Justice, March 1998, p. 29.

2.18 The Hammond Committee indicated that they doubted whether Home Detention Orders were of significant assistance in the community reintegration of offenders serving short sentences.[24]

2.19 In July 1999, the Department of Justice published a *Review of the Home Detention Scheme with Special Reference to Improving the Effectiveness of the Management of Special/High Risk Offenders*. As part of that Report, the success rates for Home Detention were considered for the years 1995 to 1998. Over those years, the successful completion rates for Home Detention Orders were 81.95%-83.33% and 44.44%-48.98% for Home Detention on bail.[25] The Report indicated that the lower reported success rates for Home Detention on bail appeared to reflect the fact that participants can often be facing serious charges, may remain on the program for long periods of time and have no clear sense of predicability as they have yet to be sentenced.[26]

2.20 The Crime and Justice Statistics for Western Australia for 2001, indicate that compared with 2000, the use of Home Detention generally decreased by about 3.3 per cent. In 2001, there were 499 orders issued in relation to both types of Home Detention. Of these, 168 were Home Detention on bail and 331 were Home Detention Orders. In relation to Home Detention on bail, 15.5% of offenders breached conditions of their orders, 51.8% successfully completed orders or had them lifted and the court terminated 15.5%. Of the Home Detention Orders, 10 per cent were breached by offenders but a majority of 78.9 per cent were completed successfully.[27]

2.21 The Sentencing Legislation Amendment and Repeal Bill 2002 abolishes Home Detention Orders[28] and Part 3, Division 4 of the Sentence Administration Bill 2002 replaces them with administrative parole for terms of imprisonment of less than 12 months. The CEO of the Department of Justice is empowered to make a parole order in relation to prisoners serving a sentence of less than 12 months.[29] This form of parole was referred to in the Second Reading Speech as "CEO Parole". This Report will adopt that description.

2.22 Under the proposed system of CEO Parole, a prisoner sentenced to a term of imprisonment of less than 12 months is eligible to be released on parole after he or she

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24 Ibid.

25 *Review of the Home Detention Scheme with Special Reference to Improving the Effectiveness of the Management of Special/High Risk Offenders*, July 1999, Western Australia, Ministry of Justice, p. 9.

26 Ibid.

27 Fernandez, JA and Loh, NSN, *Crime and Justice Statistics for Western Australia: 2001*, p. 160.

28 By virtue of clause 29 which repeals the *Sentence Administration Act 1995* under which Home Detention Orders are currently made.

29 Clause 22(1) and clause 23.

has served half of the term.[30] The Sentence Administration Bill 2002 creates two categories of prisoners in relation to CEO Parole. These are:

- **The "prescribed class" of prisoners** - The CEO has a discretion as to whether to release such prisoners on parole;[31] and
- **All other prisoners** - The CEO must order parole for these prisoners and therefore parole is automatic unless they decline to be released.[32]

2.23 The "prescribed class" of prisoners is not set out in the Sentence Administration Bill 2002 and will be contained in regulations.

2.24 The CEO must determine whether the parole order should be supervised or unsupervised and in making this determination is to have regard to the parole considerations set out in clause 16.[33]

2.25 The CEO, like the Parole Board, also has the power to amend, suspend or cancel a CEO Parole order.[34]

Issues raised by the Submissions - Abolition of Home Detention Orders

2.26 Of the submissions received by the Committee, only Dr Morgan's submission commented on the abolition of Home Detention Orders.

2.27 In his Opening Statement, Dr Morgan stated that:

> *I also welcome, in principle, the abolition of Home Detention Orders on sentences under 12 months. It has been absurd that the most intrusive levels of monitoring have been reserved for the least serious offenders.*[35]

2.28 However, Dr Morgan then indicated that he has significant concerns with CEO Parole.[36]

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30 Clause 23(1).

31 Clause 23(2) uses the term *"…a prisoner of the class prescribed for the purposes of this paragraph."* This Report will use the term "prescribed class".

32 Clause 23(2).

33 Clause 23(6) and Clause 23(7).

34 Clauses 36, 38 and 43.

35 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2002, p. 2.

36 Ibid.

Issues raised by the Submissions - Introduction of CEO Parole

Discretionary release decisions being vested in the Department of Justice

2.29 It was submitted to the Committee that as a matter of principle, discretionary decisions about the release of prisoners should not be vested in the agency responsible for prison management.[37] In particular, there is the danger that CEO Parole decisions may be subject to managerial and/or political influences that are absent from the decision-making process of the Parole Board.[38] It was further submitted that vesting discretion in the CEO in relation to release, suspension and cancellation of parole without an independent process of review, exacerbates this problem.[39]

2.30 Apart from the objections of principle, it was submitted that there could be inconsistencies in practice between the CEO and the Parole Board in relation to release on parole. For example, there may be inconsistencies in:

- the weight given to factors such as prison behaviour; and
- the conditions applied to parole orders.[40]

2.31 Consequently, it was submitted that parole decisions in relation to sentences of less than 12 months should also be vested in the Parole Board and that this could be achieved by developing the "auto parole" regime.[41] In light of this submission, it is appropriate for the concept of "auto parole" to be briefly examined.

2.32 "Auto parole" is a term used to refer to those parole cases that are released by order of the Parole Board Secretary (on advice from the Department of Justice), without formal consideration by the Parole Board.[42] The Parole Board indicated in their submission that the term is *"…most confusing as there is nothing automatic about any parole release at present"*.[43] As Parole Eligibility Orders may not be made in relation to sentences of less than 12 months, the "auto parole" regime currently does not apply to these sentences.

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37 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 27; Submission Number 3, Parole Board, p. 2.

38 Submission Number 3, Parole Board, p. 2.

39 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 28.

40 Submission Number 3, Parole Board, p. 2; Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, pp. 27-28.

41 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003, p. 4; Submission Number 3, Parole Board, p. 3.

42 Submission Number 3, Parole Board, p. 3.

43 Ibid.

2.33 Dr Morgan is a Parole Board member and represented the Parole Board at a hearing before the Committee on March 19, 2003. He outlined the "auto parole" process as follows:

> *Basically the legislation at present divides prisoners into two main categories. There are special term prisoners, who are people serving three years or more for offences of a violent or sexual nature. In the case of all those prisoners the Parole Board itself - the full Parole Board - must consider their possible release. It must come before the board, and they are called special term prisoners. In the case of other prisoners the Parole Board itself does not need to consider the case. A process is authorised by legislation for the secretary of the Parole Board to be the person who formally issues the parole order. However, there is also a process whereby, if there is any concern about the release of that prisoner, the case will be referred to the board itself. Basically, the Department of Justice prepares the file, including prison reports, reports from community direction staff, reports from any specialist who has been involved with the prisoner and reports from the victim mediation unit. If everything looks straightforward the secretary can issue the parole order. If there is any problem at all, that will be referred to the Parole Board*.[44]

2.34 Currently, section 108 of the *Sentence Administration Act 1995* allows the "auto parole" process to occur. This section provides that the Secretary or a Member of the Parole Board, may make a parole order unless the parole term is a "special term" (which is defined in section 19(4)) or the prisoner has been the subject of a CEO report under section 19(1).

2.35 Section 19(4) provides that:

> *In this section -*
>
> ***"special term"** means a parole term of at least 3 years imposed for an offence -*
>
> *(a) under any of these chapters of The Criminal Code -*
>
> *(i) Chapter XXVIII - Homicide: Suicide: Concealment of birth;*
>
> *(ii) Chapter XXIX - Offences endangering life or health;*
>
> *(iii) Chapter XXX - Assaults;*

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44 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, March 19 2003, p. 6.

(iv) Chapter XXXI - Sexual Offences;

(v) Chapter XXXIII - Offences against liberty;

(vi) Chapter XXXIIIA - Threats;

(vii) Chapter XXXIIIB - Intimidation;

(viii) Chapter XXXVIII - Stealing with Violence: Extortion by threats; or

(b) under any of these repealed enactments in The Criminal Code -

(i) section 197;

(ii) Chapter XXXIA - Sexual Assaults;

(iii) Chapter XXXII - Assaults on females: Abduction.[45]

2.36 Therefore, the full Parole Board considers:

- parole release decisions of the more serious "special term" offenders; and
- any "auto parole" matters referred by the Parole Board Secretary.

2.37 Ms Angela Rabbitt, Manager, Parole Release, with the Department of Justice provided evidence to the Committee that the Parole Board releases 75 per cent of cases referred by the Department of Justice to the Parole Board Secretary, without further consideration by the full Parole Board.[46] Dr Morgan gave evidence that out of an average of 40 to 50 files at each Parole Board meeting, about eight or nine files relate to "auto parole" matters that have been referred to the Parole Board for further consideration.[47]

2.38 In light of the submissions received, the Committee asked the Department of Justice why the Sentence Administration Bill 2002 proposes that parole for sentences of less than 12 months be vested in the CEO rather than the Parole Board. In a letter dated

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45 The definition of "special term" in section 19(4) is not replicated in the Sentence Administration Bill 2002. Instead the offences that are to be the subject of "auto parole" for the purposes of clause 106 (which, in part, replicates section 108) will be prescribed in the regulations. The Explanatory Notes indicate that initially the prescribed classes will correspond with those terms identified in section 19(4) of the existing Act.

46 *Transcript of evidence*, Mr Malcolm Penn, Ms Jacqueline Tang and Ms Angela Rabbitt, Department of Justice, February 11 2003, p. 18.

47 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board, March 19 2003, p. 6.

March 4 2003, the Director General of the Department of Justice ("Director General") stated:

> *Such 'executive' release has been available since 1991 when the current Home Detention provisions were originally enacted. Parliament enacted these provisions when passing the original enabling legislation in 1990 [Part 5 of the Community Corrections Legislation Amendment Act 1990]. Parliament further confirmed its views on this matter when the current provisions were enacted [Part 5 of the Sentence Administration Act 1995].*
>
> *The Government believes that it is far more appropriate for the Board to exercise its collective minds to the more serious offenders serving sentences of 12 months and more [and lifers etc] than to ask the Board exercise functions for less serious offenders.*[48]

2.39 At a hearing on February 11 2003, the Committee asked officers of the Department of Justice whether it would cause difficulties at an administrative level for parole in relation to sentences of less than 12 months to be vested in the Parole Board. The evidence of Ms Angela Rabbitt, Manager, Parole Release was as follows:

> *It would not make a great deal of difference. We currently use this process with auto parole people. The difference with the CEO references is that the process would stop at the sentence management directorate, where a decision would be made.*[49]

2.40 The Parole Board submitted that if they were allocated the responsibility for parole decisions in relation to sentences of less than 12 months, there would be some workload implications. However, workload implications would also arise in the Department of Justice and any increase in workload may be offset by a reduction in work for the Parole Board due to the prospect of less Parole Eligibility Orders being made by the courts.[50]

2.41 The Committee received the following evidence relating to the current resourcing of the Parole Board:

> *The way we do business in Western Australia is utterly different from the way it is done in Victoria, for example. I sat in on Parole Board meetings in Victoria last year. Its parole board regularly calls in*

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48 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 6.

49 *Transcript of evidence*, Mr Malcolm Penn, Ms Jacqueline Tang and Ms Angela Rabbitt, Department of Justice, February 11 2003, p. 19.

50 Submission Number 3, Parole Board, p. 3. In Chapter 6, the Committee considers the amendment in relation to Parole Eligibility Orders.

> *parolees and reads the riot act to them. The board visits the prisons and meet prisoners before the parole date. It is actively engaged in the process. Our Parole Board sits and waits for the files to arrive. We usually get the files on a Friday afternoon. I will often get four suitcases of files consisting of around 80 cases that I have to try and read in between my other commitments for a meeting on the following Tuesday or Thursday. That is an example of the current resourcing of the Parole Board.*[51]

Prescribed class of prisoners

2.42 As indicated in the Overview, the Sentence Administration Bill 2002 proposes that the CEO have discretion as to whether to order parole in relation to the "prescribed class" of prisoners. It was submitted to the Committee that as the "prescribed class" of prisoners is not set out in the Sentence Administration Bill 2002, it is not clear what offences will be encompassed.[52]

2.43 The Explanatory Notes to clause 23 of the Sentence Administration Bill 2002 do not set out any details of the "prescribed class" of prisoners.[53]

2.44 The Committee asked the Department of Justice for details of the class of prisoners to be prescribed for clause 23. In a letter dated March 4 2003, the Director General stated:

> *At this stage it is envisaged that this group will be:*
>
> - *those serving sentences for the offences under the following provisions of the Criminal Code:*
>
> *(i) Chapter XXVIII - Homicide: Suicide: Concealment of birth;*
>
> *(ii) Chapter XXIX - Offences endangering life or health;*
>
> *(iii) Chapter XXX - Assaults;*
>
> *(iv) Chapter XXXI - Sexual Offences;*
>
> *(v) Chapter XXXIII - Offences against liberty;*
>
> *(vi) Chapter XXXIIIA - Threats;*

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51 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board, March 19 2003, p. 8.

52 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 27; Submission Number 3, Parole Board, p. 3.

53 Explanatory Notes to the Sentence Administration Bill 2002, p. 7.

(vii) Chapter XXXIIIB - Stalking;

(viii) Chapter XXXVIII - Robbery: Extortion by threats.

- *those who have served a term of imprisonment in the preceding five (5) years for such offences; or*
- *those who have had an early release order cancelled in the preceding two (2) years*.[54]

2.45 The Chapters and offences of the *Criminal Code* referred to correlate with those Chapters and offences that currently fall within the meaning of "special term" under the *Sentence Administration Act 1995* and as such are excluded from the "auto parole" regime.

2.46 The Committee asked the Department of Justice why the details of the "prescribed class" of prisoners were not included in the Sentence Administration Bill 2002. In a letter dated March 4 2003, the Director General stated:

> *The Bill proposes that these discretionary classes be contained in regulations rather than the Act itself. Providing such a "list" by way of regulation will provide greater flexibility and enables the scope of such provisions to be amended as required.*[55]

2.47 In this context, the Committee also notes that currently section 19(4) of the *Sentence Administration Act 1995* contains the meaning of "special term" which is used for the "auto parole" regime operated under section 108 of that Act. The Sentence Administration Bill 2002 does not replicate section 19(4) of the *Sentence Administration Act 1995* and thus the definition of "special term" does not appear in that Bill. Clause 106 of the Sentence Administration Bill 2002 generally replicates section 108 of the *Sentence Administration Act 1995*.[56] However, for the purposes of clause 106, the offences that are to be the subject of "auto parole" will be prescribed in regulations. The Explanatory Notes indicate that initially the "prescribed class" will correspond with those terms currently identified in section 19(4) of the *Sentence Administration Act 1995*.[57]

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54 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 7.

55 Ibid.

56 Explanatory Notes to the Sentence Administration Bill 2002, p. 25.

57 Ibid.

Delegation of CEO Parole decisions

2.48 The submissions that are critical of the vesting of discretionary release decisions in the CEO assert that it is not clear to whom the CEO will delegate this function.[58] Clause 93 of the Sentence Administration Bill 2002 permits the CEO to delegate to any person any power or duty under the Act.

2.49 Given the importance of parole release decisions to prisoners, the Committee understands that the concern is to ensure that the CEO delegates the function to a person with relevant expertise.

2.50 The Committee sought details from the Department of Justice about the delegation of this power. In a letter dated March 4 2003, the Director General stated:

> *The proposal currently being considered (but not yet finalised) by the Department of Justice is that the position of Manager Parole Release, which is part of the Operational Services and Sentence Management Directorate, be delegated the necessary authority*.[59]

2.51 The Committee also asked the Department of Justice whether there is a mechanism to ensure that the delegate has the appropriate expertise. In a letter dated March 4 2003, the Director General stated:

> *The position of Manager Parole Release is a senior position within the Department of Justice requiring the existence of significant knowledge and experience within the area of parole release prior to appointment to that position.*
>
> *That position is also the CEO's delegate on the Parole Board, thus attending Board meetings each week and as a member of the Board participating in the decision-making process regarding the release of prisoners on parole. Consequently, that officer has an intimate knowledge of the Board's policies and views with regard to release matters.*
>
> *In addition, the Manager Parole Release assesses all prisoners subject to 'auto' parole release. This requires determining whether a prisoner is suitable for release and, if so, recommending to the Parole Board Secretary to issue an order for release on parole. This is dealt with administratively by the Secretary and is not referred to the*

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58 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 27; Submission Number 3, Parole Board, p. 3.

59 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 6.

> *Board. If such release is not recommended, then the Manager refers the case to the Parole Board for further consideration.*
>
> *Thus, in view of the extensive involvement in the assessment of 'auto' parole cases as well as the experience and knowledge gained as a Parole Board member, the position of Manager Parole Release is well placed to act as the CEO's delegate in relation to CEO parole.*[60]

Observations

Abolition of Home Detention Orders

2.52 It is clear based on the statistics at paragraphs 2.19 and 2.20, that the use of Home Detention Orders as opposed to Home Detention on bail has been reasonably successful. The Committee understands that the views of the Hammond Committee in relation to the abolition of Home Detention Orders arose out of the low level of public confidence in the sentencing system and the intention of implementing "truth in sentencing".

2.53 However, the Committee is of the view that this objective should be weighed against the need for re-integration options for prisoners. Later in this Chapter, the Committee considers the new Re-entry Release Order provisions which are contained in the Sentence Administration Bill 2002. These Orders are designed to assist in the reintegration of prisoners into the community. Recommendation 6 of the Committee is directed to ensuring that these Orders meet the needs of long-term, non-parole prisoners.

2.54 The Committee is of the view that it is 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. This could be achieved by the retention of Home Detention Orders which are currently available under the *Sentence Administration Act 1995* and their modification to operate in relation to long-term, non-parole prisoners.

Recommendation

Recommendation 1: The Committee recommends that the Government reconsider the abolition of Home Detention Orders.

Introduction of CEO Parole

2.55 The Committee has considered the submissions that have suggested that parole in relation to sentences of less than 12 months should be vested in the Parole Board and operated through the development of the "auto parole" regime currently functioning

60 Letter from the Director General of the Department of Justice, dated March 4 2003, pp. 6-7.

under section 108 of the *Sentence Administration Act 1995*. The operation of "auto parole" is generally replicated and continued in section 106 of the Sentence Administration Bill 2002.

2.56 Whilst the Committee notes the matters of principle that are raised in the submissions, it supports the introduction of CEO Parole.

2.57 The Committee is of the view that the person who actually makes the release decision should be responsible for the release decision.

2.58 The Committee received evidence from the Department of Justice that the Sentence Management Directorate of the Department of Justice assesses "auto parole" matters and that 75 per cent of these matters are released by the Parole Board Secretary, without further consideration by the Full Parole Board.[61] Further, Dr Morgan indicated that out of an average of 40 to 50 files at each Parole Board meeting about eight or nine cases of "auto parole" are referred by the Parole Board Secretary to the full Parole Board for consideration.[62]

2.59 It is apparent that the majority of the current "auto parole" matters are not considered by the full Parole Board and the release decision is effectively made at an administrative level within the Sentence Management Directorate of the Department of Justice. If release decisions for prisoners serving sentences of less than 12 months were vested in the Parole Board with a process akin to "auto parole", the Committee considers it likely that the majority of the decisions would be made at an administrative level within the Department of Justice. As the Committee considers that those making release decisions should be responsible for them, it does not agree with the vesting of these release decisions in the Parole Board.

2.60 The Committee's view could change if the Parole Board was enabled to consider all release matters in detail. However, the present resources of the Parole Board do not allow it to undertake this task. The Committee acknowledges that the Government is aware of the resourcing issues facing the Parole Board and is currently considering these issues.[63] If there was to be a change to the resourcing of the Parole Board this may influence the Committee's conclusion in relation to the vesting of these release decisions in the Parole Board.

2.61 Given the Committee's conclusion that the CEO should remain responsible for release decisions in relation to parole for prisoners serving sentences of less than 12 months,

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61 *Transcript of evidence*, Mr Malcolm Penn, Ms Jacqueline Tang and Ms Angela Rabbitt, Department of Justice, February 11 2003, p. 18.

62 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board, March 19 2003, p. 6.

63 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Assembly, November 28 2002, p. 3665.

it is appropriate to address the issue of "review rights", which was raised in Dr Morgan's submission.

2.62 Dr Morgan submitted to the Committee that if CEO Parole remains part of the Sentence Administration Bill 2002, any decisions to deny or defer release should be subject to an independent external review process, probably through the Parole Board. Dr Morgan also submitted that any parole conditions other than the standard conditions should also be subject to an external review.[64]

2.63 The Committee reiterates that the CEO will only have discretion in relation to the release decision for prisoners of the "prescribed class". If the CEO postpones or refuses to make a parole order, clause 24(1) of the Sentence Administration Bill 2002 provides that the prisoner is to be provided with written notice of the decision and is to be informed of the right under clause 24(3) to make written submissions to the CEO about the CEO's decision and reasons.[65]

2.64 The CEO's obligation to provide reasons is subject to clause 112 of the Sentence Administration Bill 2002 which provides that if a person is required to give a prisoner reasons for a decision but decides it would be in the interests of the prisoner or any other person or the public to withhold any or all of the reasons, the person may do so. In addition, clause 113 provides that the rules of natural justice do not apply to acts or omissions of the Governor, the Minister, the Parole Board and the CEO. These clauses reflect sections 114 and 115 of the *Sentence Administration Act 1995*. The Criminal Lawyers' Association submitted to the Committee that it was questionable whether the exclusion of the rules of natural justice can be sustained given that an individual's liberty is being considered.[66]

2.65 In relation to the right to make submissions under clause 24(3), the Department of Justice advised the Committee that it is currently considered delegating CEO Parole decisions to the Manager, Parole Release. Where a decision is made to not release a prisoner on parole, the prisoner would have the opportunity for the decision to be reviewed by a more senior officer within the Department of Justice, namely the Director, Operational Services and Sentence Management.[67]

2.66 The Committee sought evidence from the Department of Justice about the workload that it anticipates will arise as a result of applications for a review from the CEO's

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64 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 29.

65 The Committee notes that this does not extend to the provision of reasons as to why a prisoner may receive supervised parole as opposed to unsupervised parole.

66 Submission Number 10, Criminal Lawyers' Association of Western Australia, p. 7.

67 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 6.

decision to postpone or refuse parole. In a letter dated April 17 2003, the Acting Director General stated:

> *The Department of Justice anticipates that approximately 600 prisoners a year would be eligible for consideration under the proposed CEO Parole provisions of the Sentence Administration Bill 2002. Of this group it is likely that around 150-200 prisoners per year would fall into the prescribed groupings for which the CEO would have discretion not to release on parole.*
>
> *Of these 150-200 prisoners it is anticipated that approximately 10-15%, or around 15-30 prisoners, will either not be granted CEO Parole or have their release postponed. The Department anticipates that the majority of such prisoners, it not all of them, will seek a review of the decision under clause 24 of the Sentence Administration Bill 2002.*[68]

2.67 The Committee's conclusion that parole decisions for sentences of less than 12 months should be vested in the CEO is partly due to the resource limitations faced by the Parole Board. However, in light of the evidence from the Department of Justice about the very limited numbers of prisoners who will seek a review of the decision of the CEO to postpone or refuse their release, the Committee accepts Dr Morgan's submission that these decisions should be subject to an external review through the Parole Board (see recommendations 2 and 3).

2.68 The Committee observes that the "prescribed class" of prisoners for the purposes of CEO Parole will be contained in the regulations. As a general principle, the Committee does not support substantive rights being dependent on regulations. The Committee observes that it is arguable that inclusion in a "prescribed class" does not entirely deny the right to release on parole but it changes it from an automatic act to one subject to discretion. However, the Committee is of the view that there is no adequate justification for the inclusion of the "prescribed class" of prisoners in the regulations, as opposed to primary legislation (see recommendation 4).

2.69 The Committee's view in this regard also applies to inclusion in regulations of the "prescribed class" of prisoners to whom the "auto parole" regime under clause 106(4) will apply (see recommendation 5).

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[68] Letter from the Acting Director General of the Department of Justice, dated April 17 2003, p. 2 of attachment 1.

Recommendation 2: The Committee recommends that clause 24(3) of the Sentence Administration Bill 2002 be amended in the following manner:

Page 16, line 21 - To delete "CEO" and insert instead -

" Board ".

Recommendation 3: The Committee recommends that a new clause 24(4) be inserted into the Sentence Administration Bill 2002 in the following manner:

Page 16, after line 22 - To insert the following -

" (4) The Board may consider the submissions and may make a decision in substitution for the decision made by the CEO. ".

Recommendation 4: The Committee recommends that the "class prescribed" for the purpose of clause 23(2) of the Sentence Administration Bill 2002 with respect to "CEO Parole", be included in the Sentence Administration Bill 2002 and not in regulations.

Recommendation 5: The Committee recommends that the "prescribed class" for the purposes of clause 106(4) of the Sentence Administration Bill 2002, with respect to those parole decisions which may be delegated to the Parole Board Secretary or other authorised person, be included in the Sentence Administration Bill 2002 and not in regulations.

ABOLITION OF WORK RELEASE ORDERS AND INTRODUCTION OF RE-ENTRY RELEASE ORDERS

Overview

2.70 Currently, section 46 of the *Sentence Administration Act 1995*, provides that if an offender is six months from their date of release and has been in custody for a continuous period of at least 12 months, they may apply to the Parole Board for a Work Release Order. An offender may make this application whether or not they are subject to a Parole Eligibility Order.[69] The Parole Board must not make a Work

[69] Section 46. They must also be at least 17 years of age and not a person referred to in section 16(1)(a) or (b) or serving a life term of indefinite imprisonment.

Release Order unless satisfied that the offender *"…would pose a minimum risk to the personal safety of people in the community or of any individual in the community"*.[70]

2.71 A Work Release Order primarily requires an offender to undertake community corrections activities and seek or engage in gainful employment or engage in gratuitous work.[71]

2.72 The Hammond Committee recommended that Work Release Orders be abolished for offenders subject to Parole Eligibility Orders.[72] In reaching this conclusion, the Hammond Committee stated that:

> *The low level of confidence the public currently has is attributable in part to the use of early release programs such as Home Detention and Work Release which further shorten the custodial portion of the sentence imposed by the court. Work Release in particular was originally presented as a means of offsetting the effects of long-term imprisonment. However, in recent years it has come to be regarded purely as a measure of combating the rate of imprisonment. In commenting on an earlier draft of this Report, the Chairman of the Parole Board indicated that he can see no justification in law or principle for Work Release except for those who have been refused parole and need a resocialisation time prior to release. The Committee believes that very little purpose is served by maintaining Work Release for offenders serving a sentence of which parole is a component.*[73]

2.73 The Hammond Committee's recommendation to abolish Work Release Orders was made in conjunction with a recommendation that for prisoners serving sentences of 12 months or more that are not subject to a Parole Eligibility Order, a period of community re-integration should be provided.[74] In relation to this latter recommendation, the Hammond Committee stated:

> *The Committee is strongly of the opinion that for those offenders serving sentences where eligibility for parole has been refused, some form of community transition needs to take place. This transition should be aimed primarily at offsetting the effects of long-term imprisonment but also can achieve some level of community*

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70 See section 48.

71 Section 51.

72 *Report of the Review of Remission and Parole,* Western Australia, Ministry of Justice, March 1998, p. 30.

73 Ibid, p. 29.

74 Ibid, p. 30.

> *protection by ensuring supervision of the offender while making the transition from prison to the community.*
>
> *The length of the program and conditions (if any) that would apply, need to be carefully considered. The current Work Release program serves as a useful supervision and monitoring model in this regard.*[75]

2.74 When the Sentence Administration Bill 2002 was introduced into the Legislative Assembly, Work Release Orders were replicated in the Bill. As a result of amendments in the Legislative Assembly, Work Release Orders were removed from the Sentence Administration Bill 2002 and Re-entry Release Orders were inserted.[76]

2.75 The provisions relating to Re-entry Release Orders are framed in a similar fashion to Work Release Orders. However, whilst employment related activities are still mandatory, community corrections activities are replaced with activities ordered by the Community Corrections Officer that *"…will facilitate the prisoner's re-entry into the community after being released from custody"*.[77]

2.76 Re-entry Release Orders also vary from Work Release Orders in that, before making an order, the Parole Board must be satisfied the offender *"…would pose a low risk* [rather than a minimum risk] *to the personal safety of people in the community or of any individual in the community"*.[78]

Issues raised by the Submissions - Abolition of Work Release

2.77 The Committee received submissions from Dr Morgan and the Parole Board supporting the abolition of Work Release Orders.[79]

Issues raised by the Submissions - Introduction of Re-entry Release Orders

2.78 Before outlining the issues raised in the submissions, the Committee notes that the Department of Justice appears to be contemplating further reforms to the Re-entry Release Order provisions. In a letter dated March 4 2003, the Director General stated that:

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75 Ibid.

76 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, November 12 2002, pp. 2988-2992.

77 Clause 55 (1)(b).

78 Clause 51(2).

79 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 26; Submission Number 3, Parole Board, p. 3.

> *A range of measures are currently under consideration aimed at proving* [sic] *greater support for prisoners re-entering the community. In this regard, further legislative reforms in this area are under development, which in part will canvass possible reforms to the RRO provisions of the Sentence Administration Act.*[80]

2.79 The Committee sought further information from the Department of Justice in relation to possible reforms to the Re-entry Release Order provisions. In a letter dated April 17 2003, the Acting Director General indicated that as the reforms are in the developmental phase, it is difficult at this time to provide advice as to the nature of the amendments, if any, to the Re-entry Release Order provisions.[81]

Limitation of Re-entry Release Orders to non-parole prisoners

2.80 Work Release Orders are currently available to both parole prisoners (namely those subject to Parole Eligibility Orders) and non-parole prisoners. The Sentence Administration Bill 2002 provides that Re-entry Release Orders are also to be available to both parole and non-parole prisoners.[82]

2.81 Based on the Hammond Committee recommendations, it was submitted to the Committee that Re-entry Release Orders should be limited to non-parole prisoners.[83] It was also submitted to the Committee that prisoners subject to Parole Eligibility Orders already receive a significant benefit and should not be given an additional privilege.[84]

2.82 The Committee asked the Department of Justice why Re-entry Release Orders will apply to both parole prisoners and non-parole prisoners. In a letter dated March 4 2003, the Director General indicated that:

> *The social disadvantages faced by many prisoners applies equally for prisoners being discharged to freedom and those who might be the subject of some form of supervision in the community. For that reason, the RRO provisions, which expand upon the current work*

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80 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 5.

81 Letter from the Acting Director General of the Department of Justice, dated April 17 2003, p. 1 of attachment 2.

82 Clause 49.

83 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003 p. 3; Submission Number 3 from the Parole Board, p. 3.

84 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003, p. 3.

> *release components, will be available to both categories of prisoners.*[85]

Re-entry Release Orders and the criteria of "low risk"

2.83 Clause 51(2) of the Sentence Administration Bill 2002 provides that the Parole Board must not make a Re-entry Release Order unless satisfied that the prisoner would pose a "low risk" to the personal safety of people in the community or of any individual in the community.

2.84 Currently, section 48(2) of the *Sentence Administration Act 1995* provides that the Parole Board must not make a Work Release Order unless satisfied that the prisoner would pose a "minimum risk" to the personal safety of people in the community or any individual in the community.

2.85 The Committee notes that prior to amendments in the Legislative Assembly, clause 51 of the Sentence Administration Bill 2002 related to Work Release Orders and although generally replicating section 48 of the *Sentence Administration Act 1995*, it changed the criteria for the Parole Board assessment from "minimum risk" to "low risk".

2.86 The Explanatory Notes to clause 51 indicate that this change in criteria was because the Parole Board believed that the use of "low risk" would more accurately reflect the considerations currently undertaken by the Parole Board and would be more easily understood than "minimum risk".[86]

2.87 Additionally, in a letter dated March 4 2003, the Director General indicated that:

> *The change in definition from "minimum" to "low" risk was brought about as a result of concerns expressed by the Parole Board some 2-3 years ago. The Board was concerned that the current risk rating prevented a number of suitable prisoners from being released onto a Work Release Order. It was for this reason that the risk rating was amended so as to give the Board more flexibility in its decision making for these orders.*[87]

2.88 In the Legislative Assembly, clause 51 (and the entirety of Part 4 of the Sentence Administration Bill 2002) was amended to relate to Re-entry Release Orders.[88]

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85 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 5.

86 Explanatory Notes to the Sentence Administration Bill 2002, p. 13.

87 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 5.

88 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, November 12 2003, pp. 2988-2992.

However, the amendment of the criteria to "low risk" remained part of the clause. It is the criteria of "low risk" that has been the subject of criticism in the submissions relating to Re-entry Release Orders.

2.89 It was submitted that Re-entry Release Orders are very similar to Work Release Orders and that like Work Release Orders, fail to meet the needs of prisoners who require a reintegration process by including the criteria of "minimum" or "low risk".[89] As part of this submission, it was asserted that as Re-entry Release Orders are only available for "low risk" offenders, it will be very unlikely for a long-term offender who has been denied parole by the courts to be assessed by the Parole Board as "low risk".[90] For example, the record of a recidivist armed robber or sex offender may preclude an assessment of "low risk". However, these more serious offenders are those who would most benefit from a reintegration process.[91]

2.90 Consequently, it was submitted to the Committee that the provisions in relation to Re-entry Release Orders should be omitted or completely re-cast to meet the needs of long-term, non-parole prisoners.[92]

Maximum period for Re-entry Release Orders

2.91 As with Work Release Orders, an offender can apply to be released under a Re-entry Release Order six months before they are eligible for release (whether under a parole order or not).[93]

2.92 The Parole Board submitted to the Committee that the period of Re-entry Release Orders should be set at six months or 10% of the sentence, up to a maximum of six months.[94]

2.93 This submission was elucidated at a hearing held on March 19 2003. Dr Morgan, who appeared on behalf of the Parole Board, stated:

> *The Parole Board has taken that out of the Hammond committee report. The Hammond committee, of which I was a member,*

89 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003 pp. 3-4; Submission Number 3, Parole Board, p. 4.

90 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 25.

91 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 25.

92 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003, p. 5.

93 Clause 49(e) of the Sentence Administration Bill 2002 and section 46(e) of the *Sentence Administration Act 1995* in relation to Work Release Orders.

94 Submission Number 3, Parole Board, p. 4.

> *identified this core problem with non-parole prisoners who ought to be assisted and supervised upon release. The Hammond committee came up with a rule of thumb that the maximum period for a re-entry release order should be 10 per cent of a prisoner's sentence up to a maximum of six months, because it was not meant to be the same as parole…Arguments can be had about the proper duration of that type of order. The Parole Board considers that that matter needs further discussion.*[95]

Observations

Abolition of Work Release Orders

2.94 In relation to the abolition of Work Release Orders, the Committee notes the following matters:

- the abolition of Work Release Orders was recommended by the Hammond Committee; and
- the Parole Board supports the abolition of Work Release Orders.

Introduction of Re-entry Release Orders

2.95 In relation to the introduction of Re-entry Release Orders, the Committee observes that they appear to be Work Release Orders with additional "re-entry" activities. The Committee considers that they do not address the recommendation of the Hammond Committee for an order allowing a period of community reintegration.[96] Further, Re-entry Release Orders depart from the Hammond Committee recommendation in that they are not limited only to non-parole prisoners.[97]

2.96 The Committee was particularly concerned to ensure that those offenders who could benefit most from a reintegration process, namely long-term, non-parole prisoners, will benefit from Re-entry Release Orders, where such supervised reintegration would be in the best interests of the general public.

2.97 Consequently, the Committee drafted an addition to clause 51(2) of the Sentence Administration Bill 2002 with a view to meeting this aim.

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95 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board, March 19 2003, pp. 8-9.

96 See recommendation 10, *Report of the Review of Remission and Parole,* Western Australia, Ministry of Justice, March 1998, p. 30.

97 Ibid.

2.98 The Committee sought the views of the Department of Justice, the Parole Board and Dr Morgan in relation to the proposed addition to clause 51(2).

2.99 The Attorney General is supportive of the Committee's proposed addition to clause 51(2).[98] The Committee considers that clause 51(2) should be amended (see recommendation 6).

2.100 The Parole Board broadly welcomes the proposed amendment but maintains its view that Re-entry Release Orders should be limited to non-parole prisoners as recommended by the Hammond Committee.[99] Dr Morgan also submitted that Re-entry Release Orders should be limited to non-parole sentences.[100]

2.101 In addition, Dr Morgan and the Parole Board submitted that the duration of Re-entry Release Orders should be addressed.[101] In relation to this issue, the Committee is of the view that Re-entry Release Orders should operate for such period up to six months as the Parole Board considers appropriate (see recommendation 7).

2.102 The Parole Board and Dr Morgan also submitted that the proposed addition to clause 51(2) could be drafted to include reference to the *"…reintegration of the offender into society"*.[102] The Committee is of the view that this should not be included. The reintegration of the offender should result from the granting of the Re-entry Release Order. The critical test for the granting of the Re-entry Release Order should be the benefit to the public.

Recommendations

Recommendation 6: The Committee recommends that clause 51(2) of the Sentence Administration Bill be amended in the following manner:

Page 30, line 4 - To insert after "that" -

" -

(a) "

Page 30, line 6 - To insert after "community" where it second appears -

"; or

98 Letter from Hon Jim McGinty MLA, Attorney General, dated May 1 2003.

99 Letter from the Parole Board, dated April 17 2003.

100 Letter from Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, dated April 17 2003.

101 Letter from the Parole Board dated April 17 2003; Letter from Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, dated April 17 2003.

102 Ibid.

(b) the safety of people in the community or of any individual in the community would be better assured by the prisoner spending time on supervised re-entry release than by being released at the end of the sentence without any supervised release."

This amendment would have the effect that clause 51(2) would read as follows:

(2) The Board must not make an RRO in respect of a prisoner unless satisfied that:
(a) the prisoner is a person whose release would pose a low risk to the personal safety of people in the community or of any individual in the community; or
(b) the safety of people in the community or of any individual in the community would be better assured by the prisoner spending time on supervised re-entry release than by being released at the end of the sentence without any supervised release.

Recommendation 7: The Committee recommends that the Re-entry Release Order provisions be amended to enable the Parole Board to determine the duration of the Order up to a period of six months and for this purpose the Committee recommends that clause 51(1) of the Sentence Administration Bill 2002 be amended in the following manner:

Page 29, line 30 - To insert after "RRO" -

" to come into effect on a date specified by the Board. ".

CHAPTER 3

AMENDMENT AND REPEAL BILL 2002 - INTRODUCTION OF PRE-SENTENCE ORDERS

OVERVIEW

3.1 Currently, section 16(2) of the *Sentencing Act 1995* allows sentencing after conviction, to be adjourned for up to six months to allow processes such as the preparation of a pre-sentence report, a victim impact statement or a mediation report to occur. The purpose of this limitation on the adjournment of sentencing is to ensure that a person who is found guilty is sentenced expeditiously and not held as an unsentenced prisoner.[103]

3.2 Section 16 of the *Sentencing Act 1995* remains unaltered by the Sentencing Legislation Amendment and Repeal Bill 2002. However, Part 2, Division 2 of the Sentencing Legislation Amendment and Repeal Bill 2002 introduces Pre-sentence Orders in a new Part 3A which is to be inserted in the *Sentencing Act 1995*. That Part allows courts to defer sentencing for a period of up to 12 months when a Pre-sentence Order is made.[104]

3.3 In relation to Pre-sentence Orders, Hon Tom Stephens MLC when delivering the Second Reading Speech, stated that:

> *The purpose of this new pre-sentence order is to give an offender who is facing a term of imprisonment an opportunity to take steps to address his or her offending behaviour prior to the court proceeding with sentencing.*[105]

3.4 Proposed section 33A sets out the circumstances in which a Pre-sentence Order can be made. These circumstances include:

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103 In their Thirty Sixth Report, the Legislation Committee (1989-2001) considered the Sentencing Bill 1995 and the introduction of section 16(2). In relation to this section, the Committee stated at p.3 that: *"Judicial officers are expected to sentence offenders expeditiously. This provision provides a maximum time in which an offender must be sentenced, which reinforces the duty to sentence expeditiously."*

104 Clause 6, proposed section 33B(2).

105 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, December 3 2002, p. 3765.

- when the court is sentencing an offender for one or more imprisonable offences;[106] and

- where the court has received a Pre-sentence Report about the offender.[107]

3.5 Importantly, the circumstances also include when the court considers that:

- the seriousness of the offence warrants a term of imprisonment;

- the Pre-sentence Order would allow the offender to address his or her criminal behaviour and any factors which contributed to the behaviour; and

- if the offender were to comply with the Pre-sentence Order, the court might not impose a term of imprisonment.[108]

3.6 After the making of the Pre-Sentence Order and before sentencing day[109], the offender must comply with standard obligations such as notification as to a change of address or place of employment.[110] The offender must also complete one of the following requirements:[111]

- a "supervision requirement" which involves monitoring and counselling;[112]

- a "programme requirement" which involves assessing and providing an opportunity for the offender to recognise and take steps to control and if necessary, receive treatment for any personal factors that led to the offending;[113] or

- a "curfew requirement" that involves restricting the movement of the offender during periods when there is a high risk of re-offending.[114]

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106 Clause 6, proposed section 33A(2). "Imprisonable offence" is defined in clause 6, proposed section 33A(1) to mean an offence the statutory penalty for which is or includes mandatory imprisonment or an offence under s. 79 of the *Prisons Act 1981*.

107 Clause 6, proposed section 33A(5).

108 Clause 6, proposed section 33A(3).

109 Proposed section 33B(1) provides that the "sentencing day" is the time and place specified in the Pre-sentence Order when the offender is to appear to be sentenced.

110 Clause 6, proposed section 33D.

111 Clause 6, proposed section 33E

112 Clause 6, proposed section 33F.

113 Clause 6, proposed section 33G.

114 Clause 6, proposed section 33H.

3.7 The offender may be required to appear before the court on other dates prior to sentencing day.[115] The relevant Community Corrections Officer provides a performance report to the court on or before the adjourned sentencing day.[116]

3.8 The provisions relating to Pre-sentence Orders are to apply in all courts. Clause 4 of the Sentencing Legislation Amendment and Repeal Bill 2002 amends section 4 of the *Sentencing Act 1995* to insert a definition of "speciality courts" which provides that these courts are to be prescribed by regulations. A "speciality court" is able to vary the standard obligations under proposed section 33D and instead of an offender being required to follow the directions of a Community Corrections Officer under a programme requirement, the "speciality court" may make relevant orders. Presumably, these provisions enable a "speciality court" to adapt Pre-sentence Orders to meet the particular needs of the court and have a role in monitoring the order.

3.9 The Committee sought information from the Department of Justice as to those courts which are to be prescribed as "speciality courts". In a letter dated April 17 2003, the Acting Director General advised that:

> *It is envisaged that the first court to be prescribed as a "speciality court" under the proposed amendments to the Sentencing Act 1995, will be the pilot Drug Court operating out of the Perth Court of Petty Sessions and presided over by Magistrate Wager*.[117]

3.10 In outlining the proposed Part 3A in the Second Reading Speech, Hon Tom Stephens MLC stated:

> *Members would be aware of the operations of the Drug Court, which is managed by Magistrate Wager. In the context of the operations of that court, these increased adjournment provisions will be of considerable benefit in the management of offenders with drug problems.*[118]

3.11 The submissions received by the Committee in relation to proposed Part 3A were primarily directed to the effect of the Part on the work of the Drug Court. Consequently, it is appropriate to briefly outline the operations of the Drug Court.

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115 Clause 6, proposed section 33C(3).

116 Clause 6, proposed section 33I.

117 Letter from Acting Director General of the Department of Justice, dated April 17 2003, p. 1 of attachment 2.

118 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, December 3 2002, p. 3764.

The Perth Drug Court

3.12 The Perth Drug Court was established on December 4 2000 as a two-year pilot. As two years have elapsed since the pilot commenced, the Crime Research Centre of the University of Western Australia is currently conducting a qualitative and quantitative evaluation of the pilot.[119] In a letter dated April 17 2003, Dr Morgan advised the Committee that the Crime Research Centre has completed its evaluation of the operations of the Drug Court and on April 14 2003, submitted a draft report to the Department of Justice.[120]

3.13 The Drug Court operates in the Perth Court of Petty Sessions and Ms Julie Wager, Stipendiary Magistrate presides. The Drug Court also operates in the Perth Children's Court (in a more limited way[121]) and the District Court. District Court Drug Court matters are referred to and managed by the Court of Petty Sessions Drug Court.[122]

3.14 The Drug Court does not operate pursuant to a specific legislative basis. The Drug Court uses the adjournment power under section 16(2) of the *Sentencing Act 1995* and bail conditions under the *Bail Act 1982* to operate.[123] As the Court relies upon these legislative provisions which operate before sentencing, the Drug Court is a pre-sentence option.[124] As the Drug Court is non-adversarial, an offender can only participate if they have entered a plea of guilty.[125]

3.15 The Drug Court is available to offenders who plead guilty to offences arising out of illicit drug use and mainly deals with offences of burglary, stealing and receiving.[126]

3.16 The Drug Court was established to operate with three tiers of intervention:

- **Drug Court Regime** - This is the most intensive regime and is for offenders with serious offending and complex drug histories. These participants are

119 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p.1.

120 Letter from Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, dated April 17 2003.

121 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p.15.

122 Ibid, p. 3.

123 Ibid, p. 1.

124 Opening Statement of Ms Julie Wager, Stipendiary Magistrate, Drug Court, tabled March 5 2003, p. 1.

125 Ibid.

126 *Transcript of debate at Community Drug Summit*, Wednesday August 15 2001, Ms Julie Wager, Stipendiary Magistrate, Drug Court, p. 15.

intensively case managed by the Drug Court team and generally appear in court each week.[127]

- **Supervised Treatment Intervention Regime** - This involves a four-month contractual agreement for mid-range offenders with substance abuse problems. The agreement is for the participant to undergo treatment and assessment and appear in court each month.[128] Magistrate Wager advised the Committee that this level of intervention had not worked effectively.[129]

- **Brief Intervention Regime** - This is for cannabis offenders only and requires attendance at a three-session, drug education programme with sentencing in the Drug Court.[130]

3.17 The Committee understands that Pre-sentence Orders would assist in managing Drug Court Regime matters.

ISSUES RAISED BY THE SUBMISSIONS

3.18 The Committee received one submission supporting proposed Part 3A in its entirety.[131]

3.19 The Committee also received submissions that supported the concept of Pre-sentence Orders in principle but highlighted certain difficulties with the operation and application of proposed Part 3A.[132]

3.20 Dr Morgan submitted that given difficulties with the operation of proposed Part 3A, it should be removed from the Bill and Drug Court legislation developed.[133]

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127 Magistrate Wager *"How is the Drug Court going? - The Magistrate's perspective"*, Newsbeat, Issue 11, Spring 2001, p. 4.

128 Ibid.

129 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p. 7.

130 Magistrate Wager *"How is the Drug Court going? - The Magistrate's perspective"*, Newsbeat, Issue 11, Spring 2001, p. 4; *"Drug Courts - The Positive Choice"*, www.justice.wa.gov.au.

131 Submission Number 9, Law Society, pp. 3-4.

132 Submission Number 10, Criminal Lawyers' Association of Western Australia, p. 2; Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 3; Opening Statement of Ms Julie Wager, Stipendiary Magistrate, Drug Court tabled March 5 2003, p. 1.

133 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003, p. 5.

Pre-sentence Orders do not meet the needs of the Drug Court

3.21 The Second Reading Speech and parliamentary debate on the Sentencing Legislation Amendment and Repeal Bill 2002 indicates that although Pre-sentence Orders have a wider operation, they are designed to assist in the operation of the Drug Court.[134]

3.22 As indicated, the Committee received submissions including a submission from Magistrate Wager, asserting that whilst Pre-sentence Orders appear to be a worthwhile concept, they will be of limited use in the Drug Court and specific Drug Court legislation is required.[135] Magistrate Wager indicated she was concerned the proposed Part 3A will take the place of any future legislation specifically supporting the Drug Court.[136] Magistrate Wager provided evidence to the Committee that the evaluation of the Drug Court will indicate what type of legislation, if any, will be appropriate for a Drug Court and what form, if any, a Drug Court should take.[137]

3.23 In this Chapter, the Committee considers a number of issues raised in the submissions relating to the application of Pre-sentence Orders in the Drug Court. However, Magistrate Wager and the Criminal Lawyers' Association made it clear to the Committee that beyond these problems, Pre-sentence Orders do not address the Drug Court's need for specific legislation. Her Worship provided to the Committee a number of reasons in support of specific Drug Court legislation. These do not need to be traversed in detail for the purposes of this Report but include:

- the Drug Court requires legislation that recognises a holistic approach to offending including health, vocation and lifestyle changes;
- the admissions of participants should be protected from disclosure; and
- the Drug Court should be a post-sentence option.[138]

3.24 Dr Morgan submitted to the Committee that as Pre-sentence Orders do not meet the needs of the Drug Court, the proposed Part 3A should be deleted and specific Drug Court legislation developed.[139]

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134 See Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, November 6 2002, p. 2687.

135 Submission Number 11, Criminal Lawyers' Association of Western Australia, p. 2; Opening Statement of Magistrate Wager tabled March 5 2003, p. 1.

136 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p. 1.

137 Ibid.

138 Opening Statement of Ms Julie Wager, Stipendiary Magistrate, Drug Court, tabled March 5 2003, pp. 3-6.

139 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003, p. 2 and p. 5.

3.25 The submissions asserting that specific Drug Court legislation is required overarch the other submissions that suggest amendments to proposed Part 3A to ensure that it operates effectively in the Drug Court.

The requirement that the seriousness of the offence would warrant a term of imprisonment

3.26 Proposed section 33A(3)(a) provides, amongst other things, that the court may make a Pre-sentence Order if it considers the seriousness of the imprisonable offence or offences warrant(s) a term of imprisonment under Part 13 of the *Sentencing Act 1995.*

3.27 The Committee received a number of submissions indicating that the work of the Drug Court extends beyond offenders whose offending behaviour warrants a term of imprisonment as is required by proposed section 33A(3)(a).[140] It was submitted to the Committee that this limitation on the application of Pre-sentence Orders would exclude from the Drug Court, a group of offenders who currently benefit from the intervention of that Court.[141]

3.28 The Committee raised this issue with Her Worship, Ms Julie Wager at a hearing held on March 5 2003. Her Worship provided evidence to the Committee that in about 90 per cent of Drug Court matters, the offender has committed an offence the seriousness of which would warrant a term of imprisonment. For the other 10 per cent, the existing legislation namely section 16(2) of the *Sentencing Act 1995* and the *Bail Act 1982*, which provide for an adjournment of six months, could be utilised. On this basis, Her Worship indicated she did not have a difficulty with the wording of proposed section 33A.[142]

3.29 The Committee explored with Magistrate Wager the question of whether Pre-sentence Orders have a role for people who do not face immediate imprisonment.

3.30 In the Drug Court context, offenders who do not face immediate imprisonment fall within the Supervised Treatment Intervention Regime. Her Worship indicated that this Regime has not worked because of the level of supervision involved and the lack of incentive for these offenders to agree to be subject to supervision.[143] Her Worship advised the Committee that for these "mid-level" offenders, the contract they enter

140 Submission Number 6, Mr A Robson, Manager of the Duty Lawyer and Prisons Visiting Service and Drug Court Unit, Legal Aid Commission of Western Australia, pp. 3-4; Submission Number 10, Criminal Lawyers' Association, p. 2.

141 Ibid.

142 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p. 5.

143 Ibid, p. 7 and p. 15.

into with the Drug Court involves an indicative sentence at the bottom of the range should they successfully complete the programme.[144]

3.31 In relation to the question of whether Pre-sentence Orders have a role for offenders who do not face imprisonment, Her Worship stated:

> *I get back to the reason that the supervised treatment intervention regime has not been successful. It has involved too much monitoring. I am concerned that if a PSO relates to those people as well, there will be too much monitoring, whereas if we were simply using section 16(2) of the Sentencing Act, the deferral could happen and they could do whatever. If they do not do it, there is no stick; if they do do it, there is the big carrot.*[145]

Sentencing - appropriate judicial officer

3.32 Proposed section 33K(3) provides that the court sentencing an offender who has been subject to a Pre-sentence Order need not be constituted by the same judicial officer as constituted the court when the Pre-sentence Order was made.

3.33 It was submitted to the Committee that if the judicial officer who ordered the Pre-sentence Order is not the same judicial officer who sentences the offender, that judicial officer may not be aware of the sentence that the original judicial officer contemplated.[146]

3.34 Consequently, the Committee asked the Department of Justice why proposed section 33K(3) was included in the Sentencing Legislation Amendment and Repeal Bill 2002. In a letter dated March 4 2003, the Director General responded as follows:

> *This is a more procedural issue concerning case management in courts. Generally a case will be heard by the same judicial officer from start to finish. The Sentencing Act 1995 doesn't require the same judicial officer to hear the whole of a case as this is left to normal court practice to manage. During the course of drafting the Pre-Sentence Order reforms Judge Hammond commented that perhaps the Act ought to make provision that where a court imposes a PSO, it isn't necessary for that particular judicial officer to be the one at the end of the day who sentences the offender at the end of the PSO. This view is shared by Dr Morgan…It was in light of the comments from Judge Hammond and Dr Morgan, that the proposed*

144 *Transcript of evidence,* Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p. 15.

145 Ibid.

146 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 2 of cover letter.

> *subsections 33K(3) and 33N(4) were inserted into the Sentencing Legislation Amendment and Repeal Bill 2002*.[147]

3.35 The Committee raised this issue with Magistrate Wager. It is important to note that the Drug Court uses indicative sentences as part of the Drug Court Regime and as part of the Supervised Treatment Intervention Regime. These indicative sentences are given to offenders when the Pre-sentence Order is made. In relation to Drug Court Regime matters offenders are given the top of the sentencing range as part of their contract and the Supervised Treatment Intervention Regime offenders are given the bottom of their range as part of their contract.[148] Her Worship advised the Committee that the District Court is reluctant to use indicative sentences.[149]

3.36 In response to the Committee's query as to whether sentencing should go back to the judicial officer who made the Pre-sentence Order, Magistrate Wager stated:

> *With regard to the sentencing in every other court using a PSO, I do not think it is anticipated that a District Court judge, a Supreme Court judge or a magistrate would want to give an indicative sentence; that is, that he would say this is the sentence that will apply. There is nothing in the legislation to indicate that that would occur. I would like to see something in the legislation to indicate that it is preferable for it to go back before the same judicial officer who ordered the report*.[150]

3.37 However, Her Worship went on to indicate it might be possible for this requirement to be achieved through a Practice Direction, namely, a procedural direction issued by the relevant court, or a method similar to a Practice Direction.[151]

Duration of Pre-sentence Order

3.38 Proposed section 33B allows a court making a Pre-sentence Order to defer the sentencing day for not more than 12 months after the Pre-sentence Order is made.

3.39 The Committee received submissions and evidence indicating that in relation to the operations of the Drug Court, it would be more appropriate for the sentencing day to be adjourned for up to two years.[152]

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147 Letter from Director General of the Department of Justice, dated March 4 2003, p. 2.

148 *Transcript of evidence* Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p. 15.

149 Ibid, p. 8.

150 Ibid.

151 Ibid.

3.40 The rationale behind these submissions was 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.[153] In her Opening Statement to the Committee, Magistrate Wager submitted that:

> *At present, a number of Drug Court participants have pleaded with the court to continue on the Drug Court regime rather than to be sentenced to a community based order. Sentencing means the supports of the Drug Court psychologist, Court Assessment and Treatment Services officer, defence lawyer and police prosecutor who are known to the offender and weekly judicial case management is withdrawn. In many cases the participant is required to see a new psychologist, new treatment provider and new case officer. Given the limited resources of Community Justice Services the participant may have to wait six to eight weeks for a first appointment with a psychologist or treatment provider. Not surprisingly some Drug Court participants have not been able to maintain their commitment and abstinence during this changeover period*.[154]

3.41 Her Worship also provided to the Committee a letter from a Drug Court participant which explained in clear terms the problems facing participants moving between the Drug Court programme and Department of Justice programmes.[155]

3.42 The Committee asked the Department of Justice why a time frame of 12 months and not a longer period, is specified in proposed section 33B. The Director General indicated that this period would provide sufficient time to enable an offender to take steps to address their offending behaviour. Further, as sentencing will not have occurred, it would not be prudent to delay sentencing too far into the future.[156]

3.43 The Committee notes that in Victoria where there is specific Drug Court legislation, the Victorian *Sentencing Act 1991* provides that the Drug Court can impose a drug

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152 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p. 5; Submission Number 6, Mr A Robson, Manager of the Duty Lawyer and Prison Visiting Service and Drug Court Unit, Legal Aid Commission of Western Australia, pp. 3-4.

153 Submission Number 6, Mr A Robson, Manager of the Duty Lawyer and Prison Visiting Service and Drug Court Unit, Legal Aid Commission of Western Australia, p. 3.

154 Opening Statement of Ms Julie Wager, Stipendiary Magistrate, Drug Court, tabled March 5 2003, p. 6.

155 Appendix to Opening Statement of Ms Julie Wager, Stipendiary Magistrate, Drug Court, tabled March 5 2003.

156 Letter from Director General of the Department of Justice, dated March 4 2003, p. 1.

treatment order with a supervision and treatment element that operates for two years.[157]

Drafting amendments

3.44 In her Opening Statement, Magistrate Wager raised a number of drafting amendments to the provisions relating to Pre-sentence Orders directed to ensuring that they are able to operate more effectively in the Drug Court.[158]

3.45 First, Her Worship suggested an amendment to proposed section 33H(3). This section deals with a curfew requirement in a Pre-sentence Order. The section imposes a 6-month limit on any curfew requirement contained in a Pre-sentence Order. Magistrate Wager submitted that many Drug Court participants require a curfew period greater than six months and therefore the section should be amended to allow the duration of the curfew requirement to be extended by a "speciality court". Her Worship also suggested that proposed section 33H(5), which provides that the aggregate of unexpired terms must not exceed six months, should also be omitted.[159]

3.46 Secondly, Magistrate Wager submitted that proposed section 33I, which relates to performance reports should be amended. Proposed section 33I(1) requires the Community Corrections Officer to provide a performance report to the court on or before sentencing day. The performance report must set out the offender's behaviour while subject to the Pre-sentence Order. Magistrate Wager submitted that Case Review Meetings, which are part of the Drug Court process are currently held in the absence of the offender but this section does not allow this to occur. Further, the section does not allow for the release of information to a treatment provider or psychologist.[160] Therefore, Her Worship suggested an amendment to the wording of this provision to allow the performance report to take place *"…in the form and at a forum directed by the speciality court"*.[161]

3.47 Thirdly, Her Worship suggested an amendment to proposed section 33I(6) to enable the court to order that a performance report be made available not only to the prosecutor and the offender but also to "speciality court" officers on such conditions as the court thinks fit.[162]

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157 Section 18ZC.

158 Opening Statement of Ms Julie Wager, Stipendiary Magistrate, Drug Court, tabled March 5 2003, pp. 7-8.

159 Ibid, p. 7.

160 Ibid.

161 Ibid.

162 Ibid, p. 8.

3.48 Finally, during the hearing with Her Worship, the Committee raised the terms of proposed section 33N which relates to the ability of the court to amend a Pre-sentence Order. The Committee noted that the criteria for amending a Pre-sentence Order do not appear to encompass a situation where an offender simply requires more time to complete a treatment programme. The Committee asked Magistrate Wager whether it would assist the Drug Court if proposed section 33N was amended to permit a Pre-sentence Order to be varied to allow the offender more time to comply with the requirements of the order. Her Worship indicated that this amendment would assist.[163]

Issues of enforcement

3.49 As indicated, proposed section 33I(1) provides that the Community Corrections Officer must provide the court with a performance report which describes the offender's behaviour while subject to the Pre-sentence Order, on or before sentencing day.[164]

3.50 Proposed section 33K(1) provides that on sentencing day, the court must take into account the offender's behaviour while subject to a Pre-sentence Order.

3.51 In relation to performance reports, Dr Morgan raised concerns about the differential enforcement practices of Community Corrections Officers.[165] The submission referred to the report issued by the Auditor General for Western Australia, *Implementing and Managing Community Based Sentences: Performance Review*, which examined the effectiveness of Community Based Orders and Intensive Supervision Orders administered by the Department of Justice.[166]

3.52 Dr Morgan asserted that similar problems are likely to arise with Pre-sentence Orders but the consequence of these differential enforcement practices will be more significant. In the context of an Intensive Supervision Order or a Community Based Order, the conduct of the Community Corrections Officer will influence breach actions. In relation to a Pre-sentence Order, performance reports by Community Corrections Officers will directly influence the sentence imposed.

Re-offending whilst subject to Pre-sentence Orders

3.53 Proposed section 33O provides that if a court convicts a person on a Pre-sentence Order of another offence, whilst the Pre-sentence Order is in force, the statutory penalty for which is or includes imprisonment, the court may confirm, amend or

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163 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p. 11.

164 Clause 6, proposed section 33I(3).

165 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 11.

166 Auditor General of Western Australia *Implementing and Managing Community Based Sentences: Performance Review*, Perth, 2001, p. 5.

cancel the Pre-sentence Order. However, Dr Morgan submitted to the Committee that there is no power for the court to take any action in relation to retrospective breaches of a Pre-Sentence Order.[167]

3.54 In a letter dated April 17 2003, Dr Morgan elucidated this submission with the following example:

- ***January 2003****: John Smith is convicted of robbery. The court defers sentence and places Mr Smith on a 12 month PSO*
- ***October 2003****: Mr Smith is charged by the police with a burglary offence but decides to plead not guilty*
- ***January 2004****: The court sentences Mr Smith for the robbery. He has been compliant with all the terms of the PSO and the burglary charges have not been dealt with. Given the presumption of innocence, the court must sentence Mr Smith without regard to the outstanding burglary charge. The court decides to impose a CBO or an ISO or a Suspended Sentence*
- ***April 2005****: The burglary offence is dealt with. Mr Smith is sentenced for this offence but the question is whether he can also be resentenced for breaching the PSO.*[168]

3.55 Dr Morgan explained to the Committee that the burglary cannot constitute a breach of an Intensive Supervision Order, Community Based Order or Suspended Sentence because it was committed before those sentences came into force. Further, it cannot breach the Pre-sentence Order because proposed section 33O only provides the court with the power to deal with convictions for further offences while the Pre-sentence Order is in force.[169]

3.56 In this regard, a Pre-sentence Order differs from an Intensive Supervision Order, Community Based Order or Suspended Sentence. In relation to these sentences, the court is given specific power to deal with offences committed during the sentence in relation to which the offender is convicted after the expiration of the sentence.[170]

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167 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 12.

168 Letter from Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, dated April 17 2003.

169 Ibid.

170 Letter from Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, dated April 17 2003.

3.57 Dr Morgan submitted to the Committee that a practical consequence of this problem is that offenders undergoing a Pre-sentence Order who are charged with a further offence, would be well advised to plead not guilty. If the further charge is deferred until the Pre-sentence Order is completed, the court will have to ignore the outstanding charge on sentencing day because of the presumption of innocence.[171]

3.58 Dr Morgan submitted that although legislative amendments could empower the courts to deal with retrospective breaches, it would be inappropriate in principle for this to occur because a Pre-sentence Order is superseded by the actual sentence.[172]

Risk of prejudice associated with failing a Pre-Sentence Order

3.59 The Committee received a joint submission from the Western Australian State Council of the Aboriginal and Torres Strait Islander Commission ("ATSIC") and the Aboriginal Legal Service of Western Australia (Inc), which asserted that there is the risk that an offender who does not successfully complete a Pre-sentence Order may be prejudiced on sentencing day by failing to complete the Order.[173]

3.60 The submission suggests that to ensure an offender is not prejudiced in this manner, the legislation could require the court to inform the offender, at the commencement of the Pre-sentence Order, of the term of imprisonment that they will face if they do not complete the order. They indicate that such a process currently occurs in the Drug Court and it is understood that the submission is referring to the use of "indicative sentences" in that Court.[174] At paragraph 3.35 the Committee has outlined the use of "indicative sentences" in the Drug Court.

3.61 The Committee asked Magistrate Wager whether it would be appropriate to include a provision in the proposed Part 3A requiring the court to provide an indicative sentence when making a Pre-sentence Order. Her Worship advised the Committee that such a provision would be the source of further submissions given the reluctance of other courts to use indicative sentences.[175]

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171 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 12.

172 Ibid.

173 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 3.

174 Ibid.

175 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, pp. 8-9.

Resources and remote communities

3.62 The Committee received a submission from the Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku indicating that the benefit of Pre-sentence Orders in Ngaanyatjarra Communities and other remote communities will, at best, be limited.[176]

3.63 The Ngaanyatjarra Communities are located approximately 950 km northeast of Kalgoorlie. Appendix 6 contains a map showing the location of the Communities which was included in the submission from the Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku. The Ngaanyatjarra Communities made the following submission to the Committee in relation to Pre-sentence Orders:

> *While such an order may have merit in urban settings, it would prove problematic both for the Ngaanyatjarra community members before the courts, and for officers of the Department of Justice and the Western Australian Police Service.*
>
> *Under Part 3A(5), the requirement for a pre-sentence report specific to the suitability of the offender for a PSO would prove onerous for legal and/or court officers, and may require the attendance of Department of Justice officers at all court cases. Given that many Ngaanyatjarra community members face court in Warburton (some 950km from Kalgoorlie), logistical difficulties would be expected. Repeat appearance before the court as required by s 33C(2), 33C(3) and 33C(4) where court and place of residence are geographically distant would give rise to breaches rather than compliance.*[177]

3.64 In their joint submission, the Western Australian State Council of ATSIC and the Aboriginal Legal Service of Western Australia (Inc) contended that for Pre-sentence Orders to be effective, State and Commonwealth government funded community-based initiatives in remote areas should be developed in partnership with ATSIC funded programs. They further contended that without such action, the benefits of Pre-sentence Orders will be lost on Aboriginal people and will do nothing to reduce the rate of imprisonment of Aboriginal people.[178]

3.65 The Committee raised the issue of resources for the application of Pre-sentence Orders in remote communities with the Department of Justice. In a letter dated March 4 2003, the Director General stated:

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176 Submission Number 5, Shire of Ngaanyatjarraku and Ngaanyatjarra Communities, p. 18.

177 Ibid.

178 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 4.

> *The current ability to provide both regular personal supervision and intervention programs is limited within remote communities. With the provision of funding through the Gordon Enquiry there is provision for four program officers to work in the regional areas; Kimberley, Pilbara, Eastern Goldfields and the Gascoyne/Murchison. The funding to employ these officers will become available during July 2003. Their role will be to work with the remote communities to provide programs directly to the community in addition to assisting communities to deliver their own programs where it is considered appropriate to do so. Funding is also available to extend the number of community supervision agreements.*[179]

3.66 The Director General also detailed the manner in which Pre-sentence Orders might apply (albeit in a circumscribed manner) within remote communities.[180]

OBSERVATIONS

3.67 As a general matter, the Committee supports the introduction of Pre-sentence Orders. The Committee understands that the introduction of Pre-sentence Orders involves a pragmatic approach to addressing the needs of offenders and the implementation of the principle of imprisonment as a last resort.

3.68 The Committee acknowledges the criticisms of Pre-sentence Orders that have been raised in the submissions and addresses some of those criticisms through the recommendations at the end of this Chapter (see recommendations 9 to 15).

3.69 Only time will tell whether Pre-sentence Orders will operate effectively to provide an opportunity for offenders to address their offending behaviour but the Committee supports their introduction. The procedures of the Drug Court and the legislation needed to support it will be a process of continual refinement based on practical experience.

Pre-sentence Orders and the Drug Court

3.70 The Committee accepts that the Drug Court requires specific legislation and that Pre-sentence Orders do not meet all the legislative requirements of the Drug Court. The Committee is of the view that following the review of the Drug Court pilot it would be appropriate for the Government to place a high priority on the development and implementation of any proposed Drug Court legislation (see recommendation 8).

3.71 Pending such legislation, it is clear that the operations of the Drug Court have been circumscribed by the limitation on the power of adjournment in section 16(2) of the

179 Letter from the Director General of the Department of Justice, dated March 4 2003, pp. 1-2.

180 Ibid.

Sentencing Act 1995.[181] Although Magistrate Wager contended that Pre-sentence Orders may be of limited use in the Drug Court, Her Worship also made submissions to the Committee in relation to a number of amendments that would facilitate the use of Pre-sentence Orders in the Drug Court. Therefore, although Pre-sentence Orders do not meet all the requirements of the Drug Court, it appears that the extended power to adjourn sentencing contained in the proposed Part 3A may assist in the operations of that Court subject to some amendments.

3.72 As indicated at paragraph 3.39, the Committee received submissions indicating that in the context of the Drug Court it would be more appropriate for proposed section 33B to allow the sentencing day to be adjourned for up to two years rather than 12 months. The Committee agrees with this and recommends that proposed section 33B be amended accordingly.

3.73 The Committee notes that Pre-sentence Orders are not simply limited to the Drug Court and are intended to operate in other courts and therefore, the amendment to proposed section 33B will impact on other courts. The Committee considers that this amendment will also be appropriate in the context of the operation of Pre-sentence Orders in other courts (see recommendation 10).

3.74 The Committee also considers that the drafting amendments proposed by Magistrate Wager at paragraphs 3.44 to 3.48 are appropriate and will facilitate the operation of Pre-sentence Orders in the Drug Court (see recommendations 11 to 15).

Pre-sentence Orders and retrospective breaches

3.75 The Committee notes the submission of Dr Morgan in relation to retrospective breaches of Pre-sentence Orders.

3.76 The Committee is of the view that where an offender receives a conditional sentence (such as an Intensive Supervision Order, Suspended Sentence or Community Based Order) as a result of a Pre-sentence Order and, during the conditional sentence, is dealt with in relation to an offence committed during the Pre-sentence Order, the courts should be empowered to treat it as a breach of the conditional sentence (see recommendation 9).

Pre-sentence Orders and remote communities

3.77 Based on the evidence received by the Committee it is apparent that for many remote communities, Pre-sentence Orders are not a viable alternative to current sentencing processes.

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181 *Transcript of debate at Community Drug Summit*, Wednesday, August 15 2001, Ms Julie Wager, Stipendiary Magistrate, Drug Court, p. 16.

3.78 The Committee is of the view that the submissions that set out the problems with the application of Pre-sentence Orders in remote communities serve to emphasise the fact that sentencing processes do not adapt readily to all parts of the State. It is apparent that different parts of the State, and particularly remote areas, have different requirements and may require different solutions.

3.79 One of the most significant factors affecting the application of sentencing processes in remote communities is their geographical isolation. For example, for the Ngaanyatjarra Communities, the nearest police station is at Laverton, which is 550 km from Warburton.[182]

3.80 Given this factor, if Pre-sentence Orders are to operate effectively in remote communities, the Committee considers that there is a need for court orders to be able to provide for the conveyance of offenders to treatment centres and similar facilities. There is currently no ability for a court to make an order to this effect (see recommendation 15).

3.81 Another factor affecting the application of sentencing processes in remote communities is that the needs of various remote communities are not necessarily the same. The Committee received a submission from the Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku in relation to the justice issues facing their communities which extend beyond problems with the application of Pre-sentence Orders. However, the needs of those communities may well differ from those of communities in another area of the State. Further, in Aboriginal Communities where customary law is strong, there may be less need for sentencing practices to be adapted for the community in comparison to other Aboriginal Communities where customary law may not operate to the same extent.

3.82 Funding for services in remote areas is another important factor affecting the application of Pre-sentence Orders and other sentencing alternatives. This was emphasised in the joint submission of the Western Australian State Council of ATSIC and the Aboriginal Legal Service of Western Australia (Inc).[183] The Committee is of the view that there is a demonstrable need for the sentencing process to be adapted to meet the needs of remote communities.

3.83 The Committee also considers that issues impacting on the sentencing process in remote communities should be analysed and addressed as a matter of priority and draws the attention of the House to these matters. In Chapter 7 the Committee further considers this issue and makes recommendation 21.

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182 *Transcript of evidence*, Mr Charles Staples, Ngaanyatjarra Communities and Shire of Ngaanyatjarraku, March 12 2003, p. 11.

183 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 4.

Appropriate judicial officer and indicative sentences

3.84 The Committee observes that if there is no provision for a matter to be referred back to the judicial officer who made the Pre-sentence Order, there is the risk that an offender who has received an indicative sentence will not receive a sentence proportionate with the indicative sentence. This has the potential to undermine the value of indicative sentences which are used in the Drug Court. There is also the risk that on sentencing day an offender will be prejudiced by a failure to complete a Pre-sentence Order.

3.85 Magistrate Wager advised the Committee that the Drug Court operates on the basis of setting boundaries.[184] Currently, those boundaries are set in the Drug Court in the Court of Petty Sessions by the use of indicative sentences. However, Magistrate Wager advised the Committee that the Drug Court should be a post-sentence option involving a conditional suspended sentence of imprisonment.[185] The suspended sentence is in place whilst an offender undertakes a drug treatment order and in the event that they do not complete it successfully, the sentence comes into effect.[186]

3.86 Consequently, the Committee is of the view that in the preparation of any Drug Court legislation, the Government should explore the use of conditional suspended sentences (see recommendation 8).

RECOMMENDATIONS

Recommendation 8: The Committee recommends that the Government place a high priority on the development and implementation of any proposed Drug Court legislation and in preparing that legislation explores the use of conditional suspended sentences.

Recommendation 9: The Committee recommends that the Government consider an amendment to Division 2 of Part 2 of the Sentencing Legislation Amendment and Repeal Bill 2002 to incorporate provisions to deal with offences committed during the duration of a Pre-sentence Order that are dealt with after the expiration of the Pre-sentence Order.

184 Opening Statement of Ms Julie Wager, Stipendiary Magistrate, Drug Court, tabled March 5 2003, p. 5.

185 Opening Statement of Ms Julie Wager, Stipendiary Magistrate, Drug Court, tabled March 5 2003, p. 3 and p. 5.

186 *Transcript of evidence*, Ms Julie Wager, Stipendiary Magistrate, Drug Court, March 5 2003, p. 9.

Recommendation 10: The Committee recommends that clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 6, line 10 - To delete "12 months" and insert instead -

" 2 years ".

Recommendation 11: The Committee recommends that the limitation on the length of a curfew order made as part of a Pre-sentence Order be capable of being exceeded or extended by a speciality court. To give effect to this the Committee recommends that clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 10, lines 28 to 31 - To delete the lines and insert instead -

"(3) The curfew requirement may only be imposed for a term of six months or less, as set by the court, beginning when the PSO is made or as ordered by the speciality court or as extended by the speciality court. ".

Page 11, lines 7 to 9 - To delete the lines.

Recommendation 12: The Committee recommends that, to provide more flexibility in speciality courts and to take into account case management, clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 13, line 15 - To insert after "court" -

" and in the form and at a forum directed by the speciality court ".

Recommendation 13: The Committee recommends that performance reports for Pre-sentence Orders be made available to speciality court officers in addition to those persons already proposed and for this purpose clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 14, line 2 - To insert after "offender" -

" and to speciality court officers ".

Recommendation 14: The Committee recommends that the Sentencing Legislation Amendment and Repeal Bill 2002 be amended to enable Pre-sentence Orders to be amended by the court to allow offenders further time to comply with the requirements of the Pre-sentence Order and for this purpose proposed section 33N in clause 6 of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 16 line 14 - To insert after "so," -

" or if the offender requests, ".

Recommendation 15: The Committee recommends that the Government consider an amendment to add a further element in Pre-sentence Orders to incorporate a requirement that an offender can be taken under compulsion (at the cost of the State) by an authorised person to another location for the purposes of the Pre-Sentence Order. The Committee recommends that the provisions of the *Protective Custody Act 2000* be used as a guide in the drafting of the amendment. In view of section 46 of the *Constitution Acts Amendment Act 1899* and the financial implications of this amendment the Committee observes that this amendment may need to be made in the Legislative Assembly .

CHAPTER 4

PAROLE AND REMISSION

OVERVIEW

4.1 One of the aims of the Bills is to achieve what is termed "truth in sentencing", namely the sentence imposed by the court truly represents the time that an offender will spend in prison, or is liable to spend in prison. There are two principal factors that affect the amount of time that an offender spends in prison which may mean that there is a wide divergence between the sentence and the time served: remission and parole. Both Bills affect the operation of remission and parole.

4.2 In the Second Reading Speech in the Legislative Council in relation to the Sentencing Legislation Amendment and Repeal Bill 2002, Hon Tom Stephens stated:

> [T]*he concept of truth in sentencing is enshrined in the two Bills. The current system of providing an automatic one-third remission of sentences is to be removed. Likewise, the current two-tiered parole eligibility date formula, which is often difficult to interpret and understand, will be removed. In their place will be a system whereby offenders will be under sanction for the whole of the sentence imposed by a court. For some offenders this will mean serving their whole sentence in prison. For others, parole will be a consideration, and if released from custody, the offender will be subject to a range of conditions for the remainder of his or her sentence*.[187]

4.3 As indicated in the Second Reading Speech, the amendments to enact "truth in sentencing" are contained in the two Bills. In this Chapter, the Committee addresses those amendments that are contained in the Sentencing Legislation Amendment and Repeal Bill 2002 namely the amendments to:

- remission;
- eligibility for parole; and
- the consequential sentence adjustment provisions.

4.4 The Committee also considers the amendment to the "parole period" of a sentence which is contained in the Sentence Administration Bill 2002. It is more appropriate to consider this amendment in this Chapter as it affects the operation of parole.

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187 Western Australian *Parliamentary Debates (Hansard)*, Legislative Council, December 3 2002, p. 3764.

THE ABOLITION OF REMISSION

Overview

4.5 Currently, there is an automatic remission of one third of sentences of imprisonment. The legislative basis for remission is section 95 of the *Sentencing Act 1995* which provides that:

> *(1) A prisoner serving a fixed term that is neither a prescribed term nor a parole term is discharged from that sentence when he or she has served two thirds of the term and, subject to Division 2 of Part 2 of the Sentence Administration Act 1995, must be released then.*
>
> *(2) If a prisoner serving a parole term has not been released on parole before he or she has served two thirds of the term, then the prisoner is discharged from that sentence when he or she has served two thirds of the terms and, subject to Division 2 of Part 2 of the of the Sentence Administration Act 1995, must be released then.*

4.6 The Hammond Committee recommended that remission be abolished. That Committee was of the view that the threat of the removal of remission is not necessary as a motivator of positive prison conduct.[188]

4.7 Section 95 was repealed and replaced in the *Sentencing Legislation Amendment and Repeal Act 1999* with a new section 95 to the effect that a prisoner is only discharged from a sentence at the end of the term. However, this section was not proclaimed.

4.8 Clause 20 of the Sentencing Legislation Amendment and Repeal Bill 2002 repeals section 95 and replaces it with the following section:

> ***95. Release from fixed term that is not parole term***
>
> *A prisoner serving a fixed term that is not a parole term is discharged from that sentence at the end of the term and, subject to Part 2 Division 2 of the Sentence Administration Act 2002, must be released then.*

4.9 The Explanatory Notes to this amendment state:

> *Currently the 1/3 remission is provided in s. 95 of the Sentencing Act 1995 which provides that offenders serving terms that are not parole*

188 *Report of the Review of Remission and Parole*, Western Australia, Ministry of Justice, March 1998, p. 17.

> *terms must be discharged after 2/3 of the term. As a result of the Review of Remission and Parole the 1/3 remission of sentences is to be abolished. The proposed new s. 95 provides that such offenders will have the* [sic] *serve the entire term.*[189]

Observations

4.10 The Committee did not receive submissions relating to the abolition of remission. The Committee is of the view that there appears to be no reason to impose a sentence that contains a one third component that will never be served and supports clause 20 of the Sentencing Legislation Amendment and Repeal Bill 2002 in this regard.

ELIGIBILITY FOR PAROLE - AMENDMENT TO 50 PER CENT OF THE SENTENCE

Overview

4.11 In addition to the one third remission of the sentence, there is a further reduction of the remaining two thirds of the sentence where the court has made a Parole Eligibility Order. Where the court makes such an order, a prisoner is eligible to be released on parole based on the formula contained in section 93 of the *Sentencing Act 1995.* As indicated in Chapter 2, the Parole Board determines whether to release the prisoner on parole.

4.12 In short, for the majority of sentences, this formula means that one of the remaining two thirds of the sentence can be served on parole. This has led to the general public believing that for any given sentence, only one third is served in prison. However, this is not correct for sentences over six years and for sentences of less than 12 months, a Parole Eligibility Order may not be made.

4.13 The formulation in section 93 is that an offender serving a parole term is eligible to be released on parole when he or she has served one third of the term, if the sentence is six years or less. If the term is more than six years, the offender is eligible to be released after the expiration of two thirds of the term, minus two years.

4.14 However, as indicated above, this formula produced some confusion amongst the general public as to the length of time an offender would spend in prison. Further, as the Hammond Committee noted, along with remission, it produced community disquiet as to the length of time in custody relative to the sentence that was originally imposed by the court.[190]

4.15 In reviewing the system of parole, the Hammond Committee considered a wide range of alternative parole models. In this context, the Hammond Committee stated:

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189 Explanatory Notes to the Sentencing Legislation Amendment and Repeal Bill 2002, p. 9.

190 *Report of the Review of Remission and Parole*, Western Australia, Ministry of Justice, March 1998, p. 1.

> *Recent public criticism has centred around the proportion of the sentence actually served in relation to the sentence imposed by the court. In order to maintain issues of parity, and to address concerns expressed by the public concerning the proportion of the sentence that is actually served, a system whereby all offenders who have been made eligible for release on parole would be eligible for consideration after having served 50% of the sentence may be favourably received by the community.*[191]

4.16 Consequently, the Hammond Committee recommended that where a Parole Eligibility Order is made, the offender should become eligible for release on parole after serving half of the term. However, in relation to sentences of more than 12 years, the offender should become eligible for release after having served two years less than two thirds of the term.[192] The recommendation was made on the basis that it was required to ensure that offenders serving longer terms do not serve less time in custody than under existing arrangements.[193]

4.17 In the *Sentencing Legislation Amendment and Repeal Act 1999* section 93 was repealed and replaced with a new section 93 that required prisoners serving parole terms to serve one half of the term in prison before being eligible to be released on parole. This section was not proclaimed.

4.18 Clause 20 of the Sentencing Legislation Amendment and Repeal Bill 2002 also repeals and replaces section 93 of the *Sentencing Act 1995* to require prisoners serving parole terms to serve one half of the term before becoming eligible to be released on parole.

4.19 Clause 20 does not adopt the recommendation of the Hammond Committee in relation to terms of imprisonment greater than 12 years. The Committee was concerned to ensure that this departure from the Hammond Committee recommendations did not cause the problems that they foreshadowed and asked the Department of Justice about this issue. In a letter dated March 4 2003, the Director General stated as follows:

> *Clause 20 of the Sentencing Legislation Amendment and Repeal Bill 2002, which in part replaces the existing section 93 of the Sentencing Act 1995, contemplates that a prisoner eligible for parole must serve at least one-half of his/her sentence before becoming eligible for parole. This differs in part from the approach taken in the Hammond report, which recommended that in respect of longer term sentences, the existing parole formulae should be maintained. In the interests of*

191 Ibid, p. 26.

192 Ibid.

193 Ibid, pp. 25-26.

clarity and public understanding, the Bill adopts a consistent approach to the treatment of parole throughout by applying a uniform 50% requirement.

Clause 2 of Schedule 2 of the Sentencing Legislation Amendment and Repeal Bill 2002 provides for the adjustment of sentences to ensure that a person spends no more time or less time in prison than is currently the case.[194]

AMENDMENT TO "PAROLE PERIOD"

Overview

4.20 In relation to offenders for whom a Parole Eligibility Order is made, a distinction needs to be made between the "non-parole period" of the sentence and the "parole period" of the sentence.

4.21 The "non-parole period" is defined in section 8 of the *Sentence Administration Act 1995* to be the period under section 93(1) of the *Sentencing Act 1995* that the prisoner has to serve before he or she is eligible to be released on parole.[195] Therefore, the "non-parole period" is the time that a prisoner serves in prison before they are eligible to be released on parole and the length of that period depends upon the formula in section 93. Section 93 was considered at paragraph 4.13 of this Report.

4.22 The "parole period" is defined in section 22 of the *Sentence Administration Act 1995*. The "parole period" is the period that an offender released on parole remains on parole. Section 22 contains a detailed formula for ascertaining the "parole period." Essentially, once an offender is released on parole, the "parole period" lasts for a period equivalent to one third of the sentence up to a maximum of two years. Therefore, once released on parole, an offender is not on parole until the end of their sentence but is on parole for a period up to a maximum of two years. In addition, the last one third of the sentence is currently remitted.

4.23 The Hammond Committee recommended that an offender who has been released on parole remain under supervision for a period equivalent to one third of the sentence up to a maximum of two years. As they noted, this reflects the current provisions of the *Sentence Administration Act 1995*.[196] In reaching this conclusion, the Hammond Committee stated that:

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194 Letter from the Director General of the Department of Justice, dated March 4 2003, pp. 7-8.

195 This is replicated in clause 7 of the Sentence Administration Bill 2002.

196 *Report of the Review of Remission and Parole,* Western Australia, Ministry of Justice, March 1998, p. 29.

> *There is clear support that an extensive period of supervision can have a detrimental effect on the chances of reducing recidivism. The current practice of limiting supervision to a maximum period of 2 years appears to achieve a reasonable balance between ensuring compliance and reducing over intrusion in an offender's life which can "set him/her up to fail".*[197]

4.24 However, the Hammond Committee also recommended that following the supervision period, offenders released on parole or to community reintegration, be "at risk" of being returned to prison for the commission of any offence committed during the remainder of the sentence.[198] In reaching this view, the Hammond Committee stated:

> *As pointed out above, greater "truth" or "clarity" in sentencing is being called for by the public. The notion of remittal of 1/3 of a sentence cuts across any notion of truth or clarity. The United Kingdom system of an "at risk" component would appear to alleviate a number of these concerns although it is likely that prison musters will increase as the result of more breaches. However, given that a breach will not occur until the offender has been sentenced to imprisonment for an offence committed during the "at risk" portion of the sentence, the offender would already be in custody on the other matter(s).*[199]

4.25 In the *Sentence Administration Act 1999* the term "parole period" was defined to be the period beginning on the day when the prisoner is released and ending when the parole term ends.[200] Therefore, prisoners were to be on parole for the remainder of their sentence. However, the *Sentence Administration Act 1999* created two distinct forms of parole. These were summarised by Dr Morgan in an article on the *Sentence Administration Act 1999* and the *Sentencing Legislation Amendment and Repeal Act 1999* as follows:

> *Supervised parole is 'parole as we know it'; the parolee is subject to conditions and supervised by a community corrections officer. ...Unsupervised parole reflects the Hammond Committee's concept of a person simply being at 'at risk'. Like supervised parole, it is automatically cancelled if the parolee is sentenced to a term of imprisonment for an offence committed during the order. However, the order is not breached in any other way.*

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197 *Report of the Review of Remission and Parole*, Western Australia, Ministry of Justice, March 1998, p. 29.

198 Ibid, p. 31.

199 Ibid pp. 30-31.

200 Section 22(4).

And further:

> *If the person is released, the parole period lasts for the balance of the sentence and will generally consist of a supervised portion followed by an unsupervised portion. The minimum period for supervision is six months and the maximum is two years. Subject to those limitations, the supervised period is one-third of the sentence.*[201]

4.26 As the *Sentence Administration Act 1999* was not proclaimed the new definition of "parole period" and the distinction between supervised and unsupervised parole did not come into effect.

4.27 The term "parole period" is defined in clause 20(4) of the Sentence Administration Bill 2002 and this clause adopts the same meaning of "parole period" as was used in the *Sentence Administration Act 1999*. The term is defined to be the period beginning on the day that the prisoner is released and ending when the parole term ends, that is, when the sentence is completed.[202]

4.28 In the Second Reading Speech in relation to this amendment, Hon Kim Chance MLC stated:

> *With the changes to sentencing and parole, in future prisoners will be required to be on parole for the balance of their sentence; that is, if they are released on parole after serving half of their sentence, they will be on parole for the remaining half.*[203]

4.29 Therefore, prisoners released on parole will be on parole for the remainder of their sentence.

4.30 Although the prisoner will be on parole for the remainder of their sentence, clause 28(1) the Sentence Administration Bill 2002 provides that the parole order will specify a "supervised period". The length of the "supervised period" is to be determined using a table set out in clause 28(2) which in effect provides that the supervised period is a period equal to one third of the sentence up to a maximum of two years. (This equates to the current "parole period" under the *Sentence Administration Act 1995*.)

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201 Dr Neil Morgan *"Now You See It, Now You Don't: Truth and Justice Under the New Sentencing Laws"* October 2000, 29(2) UWALR 251 at p. 264.

202 "Parole term" is defined in section 85 of the *Sentencing Act 1995* to mean the term to which a Parole Eligibility Order applies. This definition is not affected by the Sentencing Legislation Amendment and Repeal Bill 2002.

203 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, December 5 2002, p. 4036.

4.31 Although the definition and terminology may be different it provides a similar legal result as in the *Sentence Administration Act 1999*.

4.32 The "supervised period" is not otherwise defined in the Sentence Administration Bill 2002 but clause 28(1) provides that as part of a parole order the prisoner is required to give a written undertaking that during the "supervised period" he or she will comply with the standard obligations of clause 29 and any additional requirements as set out in clause 30.

4.33 The Explanatory Notes also indicate that clause 28 of the Sentence Administration Bill 2002 corresponds to section 30 of the *Sentence Administration Act 1995*. Therefore "supervised parole" is essentially parole in its current form with an additional formula that limits its duration to a period equivalent to one third of the sentence up to a maximum of two years. As indicated earlier, this period of time is equivalent to the "parole period" under the *Sentence Administration Act 1995*.

4.34 During the "supervised period", the parole order may be suspended or amended.[204] At any time during the entire "parole period" the Parole Board may cancel the Parole Order.[205] Therefore, once the "supervised period" expires, the Parole Board may cancel the parole order at any time until the end of the sentence. However, the Parole Board may not exercise its power to cancel the parole order after the "supervised period" unless the prisoner is "charged with or convicted" of an offence.[206]

4.35 The concept of the "supervised period" appears to implement the Hammond Committee recommendation that an offender released on parole remain under supervision for a period equivalent to one third of the term up to a maximum of two years.[207]

4.36 Clause 44 of the Sentence Administration Bill 2002 which provides that the parole order may be cancelled after the expiration of the "supervised period" when an offender is charged with or convicted of a further offence appears to adopt the Hammond Committee recommendation for the offender to remain "at risk" of being returned to custody for the commission of any offence committed during the remainder of the sentence.[208] However, the Committee notes that the Hammond Committee recommendation appears to relate to an offender being convicted for an offence committed during the "at risk" period and not simply being "charged with" an

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204 Clauses 37 and 38.

205 Clause 44.

206 Clause 44(2).

207 *Report of the Review of Remission and Parole*, Western Australia, Ministry of Justice, March 1998, p. 29.

208 Ibid, p. 31.

offence as is provided in clause 44(2) of the Sentence Administration Bill 2002. This issue is considered briefly in the next section.

Issues raised by the Submissions

4.37 The Committee did not receive any submissions that related directly to the amendment of the term "parole period". However, in relation to the sentence adjustment provisions contained within the transitional provisions of the Sentencing Legislation Amendment and Repeal Bill 2002, the Committee received a submission which suggested that anomalies with these provisions could be resolved by an amendment to the "parole period".[209] The Committee considers that it is more appropriate to consider this submission in the context of the sentence adjustment provisions of the Sentencing Legislation Amendment and Repeal Bill 2002 that are considered in the next section.

4.38 In relation to cancellation of a parole order during the "parole period", Dr Morgan submitted to the Committee that a parole order should not be cancelled simply where an offender is "charged with" a further offence. However, he also indicated that the practice of the Parole Board is not to cancel parole orders when an offender is merely charged with an offence rather, if an offender is remanded in custody for the further offence, the parole order is suspended.[210]

4.39 The Committee decided not to consider this issue further but highlights the concerns raised by Dr Morgan.

4.40 The Committee also notes that clause 61 of the Sentence Administration Bill 2002 which relates to Re-entry Release Orders which were considered in Chapter 2 also provides that such an order may be cancelled if an offender is "charged with" a further offence. Dr Morgan also raised concerns with this provision and the Criminal Lawyers' Association submitted that the phrase "charged with" should be omitted to safeguard the presumption of innocence.[211] Again, the Committee highlights this issue.

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209 Submission Number 3, Parole Board, p. 6.

210 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board, March 19 2003, pp. 12-13.

211 Submission Number 10, Criminal Lawyers' Association, p. 6; *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board, March 19 2003, pp. 12-13.

TRANSITIONAL PROVISIONS - SENTENCE ADJUSTMENT

Overview

4.41 In this Chapter, the Committee has considered the changes to parole and remission that are contained in the Bills. In particular, the Committee has considered the abolition of remission, the amendment to parole to require offenders to serve half of the sentence before they are eligible to be released on parole and the amendment to the "parole period" of a sentence.

4.42 When the Hammond Committee recommended changes to parole and remission it observed that such changes can lead to major unintended increases in prisoner numbers.[212] Consequently, the Hammond Committee recommended that:

> [T]*he sentencing court be required by statute to adjust sentences so that the actual time served is no greater than that which would have been served if the existing provisions relating to remission and parole still applied.*[213]

4.43 The *Sentencing Legislation and Repeal Act 1999* and the *Sentence Administration Act 1999* were assented to on December 16 1999.

4.44 As outlined earlier in this Chapter, these Acts contained the following reforms:

- One third remission was abolished.
- All parole eligibility was to occur after half of the sentence was served.

4.45 Consequently, the *Sentencing Legislation and Repeal Act 1999* contained section 15, a transitional provision, directed to the issue of the sentence adjustment.

4.46 However, prior to proclamation it became apparent that there were some potential anomalies with certain provisions.[214] These anomalies included the sentence adjustment provisions.[215]

4.47 The problems that arose in relation to section 15 were:

- concerns as to what factors to take into account when working out when the prisoner would have been eligible for release under the current regime

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212 *Report of the Review of Remission and Parole*, Western Australia, Ministry of Justice, March 1998, p. 13.

213 Ibid, p. 31.

214 Opening Statement of Mr Malcolm Penn, Principal Legislation and Policy Officer, Community and Juvenile Justice Division, Department of Justice, tabled February 11 2003, p. 3.

215 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, September 6 2000, Hon Peter Foss QC MLC, Attorney General, p. 738.

(considering work release, home detention, good behaviour, remission etc);[216] and

- the disparity in the treatment of parole and non-parole prisoners.

4.48 It was the latter of these two problems that caused the greatest difficulty. By way of example:

- if you assume two offenders (possibly both involved in the same offence) both receive a sentence of nine years under the current regime however, one is eligible for parole and the other, (because of his greater role and very poor record), is not eligible for parole;

  then,

- under the *Sentence Administration Act 1995* and the *Sentencing Act 1995*, the former, who would be eligible for parole after four years (two years less than two thirds of the sentence), would receive an adjusted sentence of eight years with parole eligibility. The latter, who would not be eligible for parole, would receive an adjusted sentence of six years without parole.

4.49 Furthermore, if the prisoner with the sentence of eight years with parole eligibility for some reason missed out on parole (prison offences, or offences while on parole) he might well serve the whole eight years, whereas the most that the other offender could be forced to serve would be six years.

4.50 A further complication for judges was that the calculation (by reference back to the 1995 regime) would always have to be performed. It was unclear when the system would cease to be in transition and the sentence adjustment exercise no longer performed.

4.51 Consequently, the *Sentencing Amendment (Adjustment of Sentences) Act 2000* was introduced into Parliament and assented to on December 7 2000. The *Sentencing Amendment (Adjustment of Sentences) Act 2000* amended the *Sentencing Legislation Amendment and Repeal Act 1999* to overcome the sentence adjustment anomalies by reducing all sentences by one third.

4.52 The *Sentence Administration Act 1999* was not proclaimed and only parts of the *Sentencing Legislation Amendment and Repeal Act 1999* were proclaimed. Section 15 was not one of the sections that was proclaimed.

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216 For further discussion, see Dr Neil Morgan *"Now You See It, Now You Don't: Truth and Justice Under the New Sentencing Laws"* October 2000, 29(2) UWALR 251.

4.53 The transitional sentence adjustment provisions of the *Sentencing Legislation Amendment and Repeal Act 1999* (as amended by the *Sentencing Amendment (Adjustment of Sentences) Act 2000*) have not been adopted in the Sentencing Legislation Amendment and Repeal Bill 2002.

4.54 The Director General advised the Committee that the transitional sentence adjustment provisions of the *Sentencing Legislation Amendment and Repeal Act 1999* (as amended) also created anomalies including the fact that prisoners serving lengthy terms would be eligible for parole significantly earlier than under the current system.[217] The Director General provided the following example to the Committee:

> *Currently, a prisoner serving a nine (9) year sentence with eligibility for parole, could be released on parole under the two-formulae system, after serving four (4) years. Under the Sentencing Legislation Amendment and Repeal Act 1999, a nine (9) year sentence would firstly be adjusted by the court to six (6) years (due to the abolition of one-third remission). On the adjusted six (6) year sentence, the prisoner could be released on parole after only serving three (3) years based on the one-half formula. As a consequence, the longer the sentence, the greater the disparity. [On a 15 year parole sentence, the 1999 legislation would have seen the offender eligible for release 3 years earlier than is currently the case.]*[218]

4.55 Schedule 1 of the Sentencing Legislation Amendment and Repeal Bill 2002 contains the transitional provisions for both Bills (see clauses 22 and 29(2) of the Sentencing Legislation Amendment and Repeal Bill 2002). Clause 2 which is the sentence adjustment provision is framed as a general admonition to ensure that the actual time served in custody is no greater or less than that which would have been served if the current provisions still applied.

Issues raised by the Submissions

Sentence adjustment anomalies

4.56 The Committee received a submission from the Parole Board that highlighted difficulties with the operation of clause 2 of Schedule 1.

4.57 Clause 2(2) of Schedule 1 requires the court to adjust a sentence if the effect of the new provisions would be that the offender would serve greater or less time in custody. Clause 2(3)(c) indicates that if the court decides the offender is to be eligible for parole, the court must assume that under both the old and new provisions the offender

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217 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 8.

218 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 8.

would have been released from prison as soon as he or she is eligible to be released on parole.

4.58 The difficulties that are highlighted by the Parole Board are the same anomalies that arose with the *Sentencing Legislation Amendment and Repeal Act 1999* that were previously outlined. They are illustrated by the following table which was included in the Parole Board submission.[219]

Sentence imposed by court	*Time spent in prison with parole eligibility*	*Time spent in prison without parole eligibility*
15-year sentence under current law	8 years (and 2 years on parole)	10 years
Under proposed legislation, 15-year sentence under current law will be adjusted to either:		
(a) 16 years with parole, or	(a) 8 years in prison (and 8 years on parole)	
(b) 10 years without parole.		(b) 10 years

4.59 The example again illustrates that for two co-offenders where one gets a Parole Eligibility Order and the other does not, the offender who gets the Parole Eligibility Order could receive a longer total sentence and possibly longer time in prison than the offender who is not eligible for parole.

4.60 The Parole Board notes that the courts merely make the Parole Eligibility Order, but the Parole Board determines whether to release a prisoner on parole. As such, there is always the risk that the Parole Board will not release the offender and they will serve the entire term.[220]

4.61 The Parole Board submitted that these anomalies could be overcome if the following model was adopted:

- the judiciary be required to reduce all sentences by one third; and
- that the "parole period" be set at 50 per cent of the total sentence up to a maximum of two years.[221]

219 Submission Number 3, Parole Board, p. 5.

220 Submission Number 3, Parole Board, p. 5.

221 Ibid, p. 6.

4.62 The Committee asked the Department of Justice for its views in relation to the anomalies raised by the Parole Board submission. In a letter dated April 7 2003, the Director General stated:

> *The submission from the Parole Board is noted. However, the sentencing of offenders is not an exact science. For that reason courts take into account a range of factors and issues in arriving at an appropriate sentencing option for an offender's crimes. The provisions of clause 1 of Schedule 2 of the Sentencing Legislation Amendment and Repeal Bill 2002 which relate to "adjustment of sentences" are merely another factor or issue that courts will take into account when imposing a sentence. The Government is satisfied that courts will apply the provisions of clause 1 of Schedule 2 of the Sentencing Legislation Amendment and Repeal Bill 2002 in an appropriate manner when sentencing offenders to terms of imprisonment*.[222]

Increase in the prison population

4.63 The Law Society of Western Australia ("the Law Society") submitted that notwithstanding the transitional provisions, there will be a substantial increase in the prison population as a result of the amendments to Parole Eligibility Orders.[223]

4.64 The Committee addresses this issue in Chapter 6 where the amendments to Parole Eligibility Orders are considered.

Longer custody time

4.65 The Committee received a joint submission from the Western Australian State Council of ATSIC and the Aboriginal Legal Service of Western Australia (Inc) in relation to the interaction between the sentence adjustment provisions and the amendment to section 89 of the *Sentencing Act 1995* which removes the current presumption in favour of the courts making Parole Eligibility Orders.[224] The amendments to section 89 are considered in Chapter 6.

4.66 They submitted that the amendment to Parole Eligibility Orders in section 89 has the potential to lead to more prisoners serving more time in custody. However, they submit that the sentence adjustment provisions should alleviate this problem except that:

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222 Letter from the Director General of the Department of Justice, dated April 7 2003, p. 3.

223 Submission Number 9, Law Society, pp. 5-6.

224 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 7.

> [I]*t is unclear what will happen to those offenders who are refused parole under the new provisions but arguably would have been granted parole under the old provisions…The requirement for the court to adjust the sentence does not include an obligation to take into account the fact that offenders will be less likely to be granted parole eligibility.*[225]

4.67 In this regard, the Committee notes the comments of Dr Morgan on the sentence adjustment provisions in the *Sentencing Legislation Amendment and Repeal Act 1999* (before they were amended). In particular, Dr Morgan stated that:

> [I]*t appears that the courts are to disregard the more restrictive rules about parole eligibility. For example, if the court is considering adjustment to a sentence of three years without parole, it is irrelevant that it would have made the person eligible for parole under the old laws.*[226]

4.68 In relation to the issue raised in the joint submission of the Western Australian State Council of ATSIC and the Aboriginal Legal Service of Western Australia (Inc), the Committee prepared the following table to illustrate the problems that arise:

Current		**2003 (Step 1)**		**2003 (Step 2)**	
Current Sentence	**Result**	**2003 sentence -equivalent**	**Result**	**2003 sentence -remove parole**	**Result**
9 years with parole	4 years prison 2 years parole	8 years with parole	4 years prison 4 years parole	8 years without parole	8 years prison
9 years without parole	6 years prison	6 years without parole	6 years prison	6 years without parole	6 years prison

Observations

4.69 The Committee supports the abolition of remission.

4.70 In relation to the amendments to parole and the sentence adjustment provisions, the Committee is of the view that the sentence adjustment provisions generally repeat the 1999 format with the attendant problems that were outlined in relation to disparity between offenders. The Committee sees no benefit in this format.

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225 Ibid.

226 Dr Neil Morgan *"Now You See It, Now You Don't: Truth and Justice Under the New Sentencing Laws"* October 2000, 29(2) UWALR 251 at p. 280.

4.71 Whilst the Committee can understand the philosophical basis for the response of the Department of Justice to the effect that the sentence adjustment provisions in Schedule 1 of the transitional provisions are only another factor to be taken into account by the court in imposing a sentence, in the face of an example such as that in paragraph 4.68, it is difficult to see how a court could do anything other than set the transitional provisions aside when actually sentencing.

4.72 The Committee is of the view that what the proposals in relation to parole achieve in simplicity for public understanding of an individual sentence, is lost in the complexity that arises for the sentencing judges when undertaking the sentence adjustment process.

4.73 With these problems in mind, the Committee has reviewed the amendments to parole and the issue of sentence adjustment provisions. The Committee has serious concerns about the impact of the changes to parole and the sentence adjustment provisions. The Committee does not support parole eligibility arising after an offender has served half of the sentence. Instead, the Committee is of the view that parole eligibility should arise:

a) For sentences of four years or less, after one half of the sentence has been served.

b) For sentences of greater than four years, at two years before the completion of the sentence.

4.74 The Committee has made a recommendation to this effect (see recommendation 16)

4.75 In relation to sentence adjustment, the courts should simply remove one third from the current tariffs, so that the one third remission is removed before passing sentence. The Committee has made a recommendation to this effect (see recommendation 16).

4.76 This formulation means that prisoners under the new regime will serve the same amount of time as they currently serve. It also has the benefit of not requiring a sentence adjustment process that would lead to the anomalies outlined by the Committee in this Chapter.

RECOMMENDATIONS

Recommendation 16: The Committee recommends that in order to avoid complicated transitional provisions and parole terms of greater than two years, the Government seriously consider altering the amendment to section 93 in clause 20 of the Sentencing Legislation Amendment and Repeal Bill 2002 to substitute part with a provision that more closely follows the current provision but without the automatic remission of one third which would be removed before passing sentence. Thus clause 20 of the Sentencing Legislation Amendment and Repeal Bill 2002 could be amended in the following manner:

Page 27, lines 9 and 10 - To delete the words "when he or she has served one-half of the term" and insert instead -

" **-**

(a) if the term served is four years or less - when he or she has served one-half of the term; or

(b) if the term served is more than four years - when he or she has served 2 years less than the term. "

Similarly clause 2 of Schedule 1 could be amended so that the clause reads in the following terms:

"(1) If a court sentencing an offender to imprisonment proposes to impose a fixed term (with or without a parole eligibility order), it must impose a fixed term that is two thirds of the fixed term that it would have imposed had the old provisions been in operation at the time of sentencing.

(2) For the purposes of subsection (1) —

(a) it does not matter that the court may be proposing to suspend the fixed term under Part 11 of the *Sentencing Act 1995*; and

(b) a reference to imposing a fixed term includes a reference to dealing with an offender under section 80 of the *Sentencing Act 1995* in respect of a sentence of suspended imprisonment imposed under the old provisions.

(3) Despite subclause (1), if the sentence required by that subclause would contravene section 86 of the *Sentencing Act 1995*, if the court considers that a term of imprisonment is warranted in all the circumstances, the court may impose a term of more than 6 months.

(4) A court does not have to apply this clause if, in sentencing an offender, the court follows the practice of the court as established in accordance with the new provisions and this clause.

(5) This clause does not apply if —

(a) the statutory penalty for the offence for which the offender is being sentenced has been amended since the new provisions commenced;

(b) a guideline judgment given under section 143 of the *Sentencing Act 1995* since the new provisions commenced applies to the offender or the offence for which the offender is being sentenced;

(c) the application of this clause would be inconsistent with or contrary to any other judgment given since the new provisions commenced that binds the sentencing court;

(d) a court is imposing a term under section 401(4) of *The Criminal Code*; or

(e) a court is sentencing an offender to a term that, under the old provisions, would have been a prescribed term within the meaning of section 85 of the *Sentencing Act 1995*.".

The means to achieve this in the House would be to amend clause 2 of Schedule 1 in the following manner:

Page 76, line 29 to page 77, line 2 - To delete the lines and insert instead -

“ impose a fixed term that is two thirds of the fixed term that it would have imposed had the old provisions been in operation at the time of sentencing.”

Page 77, line 3 - To delete “(2)” and insert instead -

“ (1) ”.

Page 77, line 5 - To insert after “*1995*. -

“ and ”.

Page 77, lines 10 to 17 - To delete the lines.

Page 77, line 18 - To delete “(2)” and insert instead -

“ (1) ”.

CHAPTER 5

AMENDMENT AND REPEAL BILL 2002 - ABOLITION OF SENTENCES OF SIX MONTHS OR LESS

OVERVIEW

5.1 In 1991 the Joint Select Committee on Parole of the Western Australian Parliament recommended that sentences of three months or less, with certain exceptions for offences of violence against the person, should be abolished or repealed. In their Report, the Joint Select Committee indicated that it had:

> *…serious doubts about the effectiveness of a short term of imprisonment except where offences of violent or sexual assault are involved. The "short, sharp shock" theory has begun to lose ground in favour of the belief that there is the potential for greater harm for an offender from exposure to the prison system.*[227]

5.2 When the *Sentencing Act 1995* was enacted, it introduced section 86 which prohibited sentences of three months or less (with limited exceptions). When delivering the Second Reading Speech in relation to this aspect of the Sentencing Bill 1995, Hon Peter Foss MLC stated:

> *An important feature of the Bill is that it provides for the abolition of prison sentences of three months or less - of which there were 134 in prison during 1993 - 1994. The reason for this abolition is that such short sentences serve little useful purpose: They fail as a deterrent, fail as a means of protecting the community, and fail as a means of addressing a prisoner's offending behaviour. The intensive supervision order and suspended prison sentence introduced in this Bill will provide a more effective means of achieving these ends. This initiative implements a recommendation of the 1991 Joint Select Committee on Parole, of which the Attorney General is a member. In addition, it will assist in reducing the number of relatively minor offenders serving short terms of imprisonment. This is particularly so in relation to members of the Aboriginal community, who have been proportionally overrepresented in prisons and police lockups*.[228]

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227 Parliament of Western Australia, *Report of the Joint Select Committee on Parole* (August 1991), pp. 90-91.

228 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, August 22 1995, p. 6505.

5.3 Clause 33(3) of the Sentencing Legislation Amendment and Repeal Bill 2002 amends section 86 to prohibit sentences of six months or less. When delivering the Second Reading Speech in relation to this aspect of the Bill, Hon Tom Stephens MLC stated:

> *The Government believes that short prison sentences serve no useful purpose, and therefore seeks to prohibit prison sentences of six months and less. This is a natural progression from the current prohibition on sentences of three months and less*.[229]

5.4 Hon Tom Stephens also indicated that the abolition of sentences of six months or less is a key element of the Government's Reducing Imprisonment Strategy.[230] The Crime and Justice Statistics for 2001 indicate that there were 1009 sentences of less than six months (and greater than three months) which amounted to 32.8% of sentenced prison receivals.[231]

ISSUES RAISED BY THE SUBMISSIONS

5.5 The Committee appreciates the detailed submission made by the Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku that highlighted the problems faced by their Communities in relation to these amendments. Their submission is reinforced by the joint submission of the Western Australian State Council of ATSIC and the Aboriginal Legal Service of Western Australian (Inc).

5.6 The Committee received the following submissions that, in part, support the abolition of sentences of six months or less:

- The Law Society supports the abolition of sentences of six months or less on the basis that it recognises that these sentences are usually useless and counter-productive. However, the Law Society submitted that it would be concerned if the effect in practice was to encourage the imposition of longer periods of imprisonment than would otherwise have been ordered, so as to circumvent the effect of the legislation.[232]

- The Criminal Lawyers' Association supports the amendments that remove imprisonment for certain offences but oppose the amendments that increase the penalties for various offences.[233]

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229 Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, December 3 2002, p. 3765.

230 Ibid, p. 3764.

231 Fernandez, JA and Loh, NSN, *Crime and Justice Statistics for Western Australia: 2001*, p. 144-145.

232 Submission Number 9, Law Society, pp. 6-7.

233 Submission Number 10, Criminal Lawyers' Association, p. 4.

5.7 The Committee also received a number of submissions that raised concerns with the abolition of sentences of six months or less.

Evaluation of the impact of the abolition of short sentences

5.8 The Committee received submissions indicating that in the absence of an evaluation of the impact of the abolition of sentences of three months or less as introduced by the *Sentencing Act 1995*, the amendments that abolish sentences of six months or less should not be passed.[234]

5.9 The Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku submitted that the proscription of prison terms of three months or less in the *Sentencing Act 1995* resulted in a profound change to social stability in remote Aboriginal communities.[235] The Committee understands that short custodial sentences were used effectively by the Ngaanyatjarra Communities in dealing with problems such as volatile substance abusers.[236]

5.10 The Committee asked the Department of Justice whether a formal or informal evaluation of the impact of the abolition of sentences of three months or less as introduced by the *Sentencing Act 1995* had been undertaken. The Department of Justice advised that no such evaluation had been undertaken[237] and it would appear that the Department does not have a method of retrospectively undertaking this evaluation.

5.11 In the absence of an evaluation by the Department of Justice, the Committee sought to ascertain whether other states or territories in Australia have also abolished short sentences with a view to obtaining information from these jurisdictions. However, as far as the Committee could ascertain Western Australia is the only Australian jurisdiction with a prohibition on short sentences.[238] Therefore, there does not appear to be information from other states or territories that the Committee can use as a guide in relation to the impact of abolishing short sentences.

5.12 In this regard, the Committee notes that in November 2001, the Report of the Select Committee of the NSW Parliament on *The Increase in Prisoner Population* made reference to the proposed abolition of sentences of six months or less in Western

234 Submission Number 5 Shire of Ngaanyatjarraku and Ngaanyatjarra Communities, p. 7; Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003, p. 5.

235 Submission Number 5, Shire of Ngaanyatjarraku and Ngaanyatjarra Communities, p. 7 and p. 9.

236 Ibid, p. 9.

237 *Transcript of evidence*, Mr Malcolm Penn, Ms Jacqueline Tang, Ms Angela Rabbitt, Department of Justice, February 11 2003, p. 6.

238 Bernard Lagan, "Truth of Sentencing", *Bulletin*, September 17 2002, p. 29.

Australia. That Committee recommended that the NSW Attorney-General commission research to investigate the impact of abolishing sentences of six months or less in NSW.[239]

The need for a short custodial option

5.13 The Committee received submissions opposing the abolition of sentences of six months or less on the basis that such sentences serve a useful role for offending behaviour that can be appropriately dealt with by a short "time out" in custody.[240]

5.14 The Criminal Lawyers' Association submitted that short-term sentences are extremely useful in cases where a "drying out" or "cooling off" period in custody provides both a penalty and "time out" for the offender.[241]

5.15 As outlined above, the Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku oppose the abolition of sentences of six months or less and seek the ability to impose short sentences under community by-laws.[242]

5.16 The Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku informed the Committee that prior to abolition of sentences of three months or less in 1995, the Ngaanyatjarra Council utilised the *Aboriginal Communities Act 1979* to make by-laws in relation to the prohibition, restriction or regulation of the possession, use or supply of alcoholic liquor or deleterious substances. Pursuant to section 7(2)(d) of the *Aboriginal Communities Act 1979*, the penalties for breaches of these by-laws included a fine and/or imprisonment of less than three months.[243]

5.17 The Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku submitted that sentences of three months or less were used effectively in dealing with problems such as volatile substance abusers.[244] These offenders were given custodial sentences or directed to the Kanpa Substance Abuse Centre ("Kanpa").[245] The Department of Justice advised the Committee that Kanpa is a satellite community of Warburton that

239 Parliament of New South Wales, Parliamentary Paper Number 924, *Select Committee on the Increase in Prisoner Population (Final Report)*, November 2001, pp. 111-113.

240 Submission Number 5, Shire of Ngaanyatjarraku and Ngaanyatjarra Communities, p. 9; Submission Number 10, Criminal Lawyers' Association, p. 5

241 Submission Number 10, Criminal Lawyers' Association, p. 5.

242 Submission Number 5, Shire of Ngaanyatjarraku and Ngaanyatjarra Communities, p. 8.

243 Ibid, p. 9.

244 Ibid.

245 Ibid.

is funded through ATSIC and the National Illicit Drug Strategy. It operates as a bail facility and a venue for the short-term treatment of substance abusers.[246]

5.18 The *Sentencing (Consequential Provisions) Act 1995* amended section 7(2)(d) of the *Aboriginal Communities Act 1979* to remove a sentence of three months or less as a penalty for a breach of a by-law. This penalty was replaced with a fine not exceeding $5,000.00.[247]

5.19 The Committee sought information from the Department of Justice about the breakdown of offences lodged at the Warburton Court of Petty Sessions in 2002 and the breakdown of court outcomes for those matters. The Warburton courthouse is the closest court to the Ngaanyatjarra Communities. The Department of Justice provided statistics to the Committee that indicated that 23.1% of matters lodged in the Warburton Court of Petty Sessions in 2002 related to Offences against Government (Community by-laws).[248] At 23.1% of all offences lodged at Warburton Court of Petty Sessions, these offences exceeded all other offences. The charge outcomes for the offences lodged in the Warburton Court of Petty Sessions in 2002 indicate that 75.6% of the Offences against Government were dealt with by the imposition of a fine.[249]

5.20 The Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku have submitted that the imposition of fines for breaches of community by-laws has been relatively unsuccessful in deterring breaches of by-laws. They submit that there is a high prevalence of fine defaulters amongst Ngaanyatjarra people.[250]

5.21 The current process of fine default is designed for an urban community and is ineffective and inordinately delayed when applied in remote communities and importantly, it can and does ultimately lead to imprisonment. The submissions of the Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku; and ATSIC's Western Australian State Council and the Aboriginal Legal Service of Western Australia (Inc) emphasised that fine default by Aboriginal people is a substantial cause of imprisonment for Aboriginal people.[251] In their joint submission the Western

246 Letter from the Director General of the Department of Justice, dated March 4 2003, pp. 8-9.

247 Section 147 of the *Sentencing (Consequential Provisions) Act 1995.*

248 Letter from the Director General of the Department of Justice, dated April 7 2003.

249 Letter from the Director General of the Department of Justice, dated April 7 2003. The Department of Justice also provided to the Committee statistics in relation to Children's Court matters. The statistics for juveniles in relation to offences against community by-laws broadly correlated to those for adult offenders.

250 Submission Number 5, Shire of Ngaanyatjarraku and Ngaanyatjarra Communities, p. 8 and p. 9.

251 Submission Number 5, Shire of Ngaanyatjarraku and Ngaanyatjarra Communities, p. 11; Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 5.

Australia State Council of ATSIC and the Aboriginal Legal Service of Western Australia (Inc) stated:

> *A substantial number of Aboriginal people and Torres Strait Islanders in prison in Western Australia are there for fine default. This is because the Western Australian Fines Enforcement Agency will suspend a person's driving licence if they have not paid a fine within 28 days. For many Aboriginal people and Torres Strait Islanders, life in a community and their low levels of literacy may mean the notice of their licence suspension will never be read. They are then imprisoned for (unknowingly) driving on a suspended licence.*
>
> *The following case study provided by the Ngaanyatjarra Community in a submission to the Attorney General in April 2002 is indicative:*
>
> > *"B was driving to Laverton and was stopped by police who were doing a routine licence check. B had her licence in the car and was informed by the police officer that her licence was actually suspended. B was unaware that her licence had been suspended under s43 of the FEA for fine default on the failure to renew her firearm licence."*[252]

Distortion of the "sentencing ladder"

5.22 Dr Morgan submitted to the Committee that the abolition of sentences of six months or less distorts the "sentencing ladder".[253] The "sentencing ladder" is contained in section 39 of the *Sentencing Act 1995*. This section reads as follows:

> *(1) This section applies to an offender who is a natural person.*
>
> *(2) Subject to sections 41 to 45, a court sentencing an offender may —*
>
> *(a) with or without making a spent conviction order, under Part 6 impose no sentence and order the release of the offender;*
>
> *(b) with or without making a spent conviction order, under Part 7 impose a CRO and order the release of the offender;*
>
> *(c) with or without making a spent conviction order, under Part 8 impose a fine and order the release of the offender (unless an order under section 58 is made);*

252 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), pp. 5-6.

253 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 2 of covering letter.

(d) with or without making a spent conviction order, under Part 9 impose a CBO and order the release of the offender;

(e) under Part 10 impose an ISO and order the release of the offender;

(f) under Part 11 impose suspended imprisonment and order the release of the offender; or

[(g) deleted]

(h) under Part 13 impose a term of imprisonment.

(3) A court must not use a sentencing option in subsection (2) unless satisfied, having regard to Division 1 of Part 2, that it is not appropriate to use any of the options listed before that option.

5.23 Section 39(3) requires the court in imposing a sentencing option, to conclude that each of the previous "steps" in the ladder are inappropriate.

5.24 The last "step" before a term of imprisonment is a Suspended Sentence (see section 39(2)(f)). Dr Morgan submitted to the Committee that the "sentencing ladder" already involves a significant step up from a Suspended Sentence to a sentence of more than three months. This "step" will be increased to at least a seven-month sentence by the abolition of sentences of six months or less.[254] Dr Morgan submitted that ideally, there should be a graduated hierarchy of sentences and that the abolition of sentences of six months or less creates a "gap" in the sentencing ladder.[255]

5.25 Dr Morgan submitted to the Committee that the effect of section 39(3) and the abolition of sentence of six months or less might be that the courts will simply impose longer sentences. In particular, Dr Morgan contended that:

> *Under the existing scheme, judicial officers should have eliminated all other options and decided that only a sentence of imprisonment is appropriate before imposing a prison sentence, with a starting point of three months. In other words, they have concluded that there really is no alternative to immediate imprisonment. There is an obvious danger that, in future, they will reach precisely the same conclusion: namely that imprisonment is the only option. If so, they will be forced to impose a longer sentence*.[256]

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254 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 13.

255 Opening Statement of Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, tabled March 19 2003, p. 3.

256 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 13.

5.26 Dr Morgan indicated that there have been suggestions from practitioners to the effect that the abolition of sentences of three months or less led to an upward movement in sentences.[257]

5.27 The Criminal Lawyers' Association submitted that there should be a specific requirement in the legislation requiring courts to impose a sentence other than prison where they would have previously imposed a sentence of six months or less.[258]

5.28 The Committee sought statistical information from the Department of Justice about the effect on the prison population if instead of receiving a non-custodial sentence, offenders were sentenced to longer terms in prison. The Director General of the Department of Justice advised the Committee that if prisoners were instead sentenced to seven months, two additional beds would be required. If prisoners were instead sentenced to eight months, 16 additional beds would be required and if prisoners were instead sentenced to nine months, 31 additional beds would be required.[259]

Effective abolition of sentences of nine months or less

5.29 Dr Morgan submitted to the Committee that the combined effect of the abolition of sentences of six months or less and the transitional provisions is to abolish sentences of nine months or less.[260]

5.30 The example provided to the Committee was that on a nine-month sentence, a prisoner could presently be released from custody after three months. Adjusted to produce the same custody time it would require a sentence of six months. However, a sentence of six months will no longer be permitted.[261]

5.31 The Committee raised this submission with the Department of Justice at a hearing held on February 11 2003. Mr Malcolm Penn of the Department of Justice indicated that the difficulty with the example provided was that the "time in custody" on a nine-month sentence is six months and not three months. This is because one third is removed for remission and there is currently no parole on short sentences but Home Detention is available. However, he was of the view that Home Detention is part of the custodial sentence.[262]

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257 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 13.

258 Submission Number 10, Criminal Lawyers' Association, p. 5.

259 Letter from the Director General of the Department of Justice, dated May 1 2003 at p. 2.

260 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 16.

261 Ibid.

262 *Transcript of evidence*, Mr Malcolm Penn, Ms Jacqueline Tang and Ms Angela Rabbitt, Department of Justice, pp. 7-8.

Amendments to penalties

5.32 Part 5 of the Sentencing Legislation Amendment and Repeal Bill 2002 contains an extensive range of amendments to statutory penalties in about 70 Acts as a result of the prohibition on sentences of six months or less.[263]

5.33 The Department of Justice advised the Committee that the vast majority of the consequential amendments remove imprisonment as a statutory penalty.[264] It appears that in these instances, the relevant penalty was imprisonment and/or a fine and imprisonment has simply been deleted from the penalty provisions.

5.34 Apart from those Acts where imprisonment has been removed as a penalty, there are a number of Acts where one of the following has occurred:

- imprisonment has been removed as a penalty and the relevant monetary penalty has been increased;
- the term of imprisonment has been increased to nine or 12 months; or
- the term of imprisonment has been changed to a fine.

5.35 The Committee limits its comments to those consequential amendments raised in the submissions and those that the Committee considers require further examination.

Increases in monetary penalties

5.36 There are 12 Acts where imprisonment is removed as a penalty and the relevant monetary penalty has been increased namely:

- *Aboriginal Affairs Planning Authority Act 1972.*
- *Aboriginal Heritage Act 1972.*
- *Bail Act 1982.*
- *Credit (Administration) Act 1984.*
- *Criminal Code.*
- *Electricity Corporation Act 1994.*
- *Firearms Act 1973.*

263 Opening Statement of Mr Malcolm Penn, Principal Legislation and Policy Officer, Community and Juvenile Justice Division, Department of Justice, tabled February 11 2003, p. 5.

264 Ibid.

- *Fish Resources Management Act 1994.*
- *Fuel, Energy and Power Resources Act 1972.*
- *Growers Charge Act 1940.*
- *Guardianship and Administration Act 1990.*
- *Police Act 1892.*
- *Prisons Act 1981.*

5.37 The Committee received a joint submission from ATSIC's Western Australian State Council and the Aboriginal Legal Service of Western Australia (Inc) that asserted that terms of imprisonment have not been replaced with representative fines but increased penalties.[265]

5.38 By way of example of the increased penalties, the submission points to the increased penalty under section 54 of the *Police Act 1892*, which relates to the offence of disorderly conduct. Currently, an offence of disorderly conduct involves a penalty of $500.00 for every such offence or imprisonment for a term not exceeding six months or both a fine and imprisonment. This will be replaced with a fine of $2,500.00. It was submitted to the Committee that this represents a five-fold increase in the monetary penalty.[266]

5.39 Similarly, section 90A of the *Police Act 1892* (which relates to false reports to Police) is also amended. The current penalty is $500.00 and a term of imprisonment not exceeding six months or both. This penalty is replaced with a penalty of $4,000.00 and a term of imprisonment not exceeding 12 months. It was submitted to the Committee that this represents an eightfold increase in the monetary penalty whilst the term of imprisonment is doubled.[267]

5.40 In relation to the effect of these types of monetary increases, ATSIC's Western Australian State Council and the Aboriginal Legal Service of Western Australia (Inc) submitted that:

> *It is important to note that increased fines (such as under s. 85(15) Sentencing Legislation Amendment and Repeal Bill 2002 fines of $200, $500 etc, planned to be increased to figures in the order of $2,500 and $4,500) will not be able to be paid by a vast majority of Aboriginal people and Torres Strait Islanders due to their poor*

265 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 5.

266 Ibid.

267 Ibid.

> *economic status. In remote areas in particular, the only form of employment for most Aboriginal people and Torres Strait Islanders is through the ATSIC CDEP program. This means that, although imprisonment has been taken away as a penalty option, Aboriginal people and Torres Strait Islanders will find themselves imprisoned for fine default.*[268]

5.41 This issue of imprisonment rates for Aboriginal people as a result of fine default was discussed at paragraph 5.21.

Increases in terms of imprisonment

5.42 There are a number of Acts where a sentence of six months imprisonment is removed and replaced with a sentence of nine or 12 months.

5.43 Dr Morgan submitted that an enhanced maximum is generally regarded as an indication that Parliament intends the offence to be dealt with more severely. He also noted that the courts *"…steer by the maximum"* and should be prepared to impose the maximum in the worst type of case.[269]

5.44 Dr Morgan submitted that the offences most likely to currently attract immediate imprisonment will continue to have a term of imprisonment as a penalty. They include:

- damages offences under the *Police Act 1892* (12 months)*;*
- under the *Road Traffic Act 1974* offences including offences relating to dangerous driving causing bodily harm, first or second reckless driving, second offence of dangerous driving, second offence of driving under the influence and second offence of failing to provide a sample (nine months); and
- restraining orders offences (nine months).[270]

5.45 Dr Morgan also drew to the Committee's attention the fact that a term of imprisonment of 12 months enables the Police to utilise the *Criminal Investigation (Identifying People) Act 2002*. This Act empowers Police to obtain an "identifying particular" of a suspect that is reasonably suspected will afford evidence of whether or

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268 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 5.

269 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 14.

270 Ibid, pp. 14-15.

not the suspect committed a "serious offence" that he or she is reasonably suspected of having committed.[271]

5.46 An "identifying particular" includes a print, photo and DNA profile.[272] A "serious offence" is defined to include an offence the statutory penalty for which is strict security life imprisonment, life imprisonment or imprisonment for 12 months or more.[273]

Criminal Code - racist harassment and incitement to racial hatred

5.47 Clause 51 of the Sentencing Legislation and Repeal Bill 2002 amends a number of sections in the *Criminal Code* including sections 77 and 78. These sections are contained within Part 2, Chapter XI of the *Criminal Code* which relates to racist harassment and incitement to racial hatred.

5.48 Section 77 of the *Criminal Code* relates to the offence of possession of material for publication, distribution or display with the intention to incite racial hatred. This offence is a crime and punishable by imprisonment of two years. However, it may be dealt with summarily[274] and the penalty is imprisonment for six months or a fine of $2,000.00.

5.49 Section 78 relates to the publishing, distributing or displaying of material with the intention of inciting racial hatred. The penalty for this offence is the same as that for section 77.

5.50 Both sections are amended by clause 51(2) of the Sentencing Legislation Amendment and Repeal Bill 2002 to remove the reference to a term of imprisonment for a summary conviction penalty and to increase the fine to $6,000.00.

5.51 The Committee notes that although in their joint submission ATSIC's Western Australian State Council and the Aboriginal Legal Service of Western Australia (Inc), opposed the increases in penalties imposed by the Sentencing Legislation Amendment and Repeal Bill 2002, they commended the increase in penalties for the publication of materials to incite racial hatred.[275]

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271 Section 35.

272 Section 34.

273 Section 3.

274 "Summarily" is defined in section 1(1) of the *Criminal Code* as meaning before a court of petty sessions.

275 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), p. 5.

5.52 The Committee understands that a number of community groups[276] including the Jewish Community Council of Western Australia (Inc) oppose the removal of a sentence of imprisonment for these offences. The Jewish Community Council of Western Australia (Inc) suggest that the removal of a term of imprisonment for summary conviction, dilutes and minimises the racial harassment and incitement to racial hatred provisions in the *Criminal Code* and suggest that a sentence of imprisonment of 12 months should be imposed.[277]

5.53 The Committee agrees with this suggestion and has made a recommendation to this effect (see recommendation 19).

Police Act 1892 - disorderly conduct

5.54 Clause 85 of the Sentencing Legislation and Repeal Bill 2002 amends a number of sections in the *Police Act 1892.*

5.55 Dr Morgan's submission referred to the amendment to remove imprisonment as a penalty for the offence against section 54 of the *Police Act 1892*.[278] Currently, an offence of disorderly conduct involves a penalty of $500.00 for every such offence or imprisonment for a term not exceeding six months or both. This will be replaced with a fine of $2,500.00. Dr Morgan submits that disorderly conduct offences (especially in the context of Aboriginal people) frequently form part of a number of other charges such as resisting arrest and assault on a public officer. Consequently, he submits that the removal of imprisonment as a penalty will be minimal, at best.

5.56 The Committee has already addressed the submission of ATSIC's Western Australian State Council and the Aboriginal Legal Service of Western Australia (Inc) in relation to the amendments to the *Police Act 1892*.

Restraining Orders Act 1997

5.57 Clause 90 of the Sentencing Legislation Amendment and Repeal Bill 2002 amends section 61 of the *Restraining Orders Act 1997*.

5.58 Currently, pursuant to section 61, the penalty for breaching a violence restraining order of less than 72 hours duration is $2,000.00 or imprisonment for six months. This is to be amended to a fine of $2,000.00 or imprisonment for nine months.

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276 The community groups also included the Women's Christian Temperance Union of Western Australia, Incorporated; the Eurasian Club WA (Inc); the National Council of Women of WA Inc and the Chung Wah Association Inc.

277 Letter from Jewish Community Council of Western Australia (Inc) to Hon Peter Foss QC MLC dated December 6 2002.

278 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 14.

5.59 The joint submission of ATSIC's Western Australian State Council and the Aboriginal Legal Service of Western Australia (Inc) indicated that although breaches of restraining orders may have a disproportionate effect on Aboriginal people, the Western Australian State Council of ATSIC considers that this is not entirely negative if it reduces the likelihood of, and punishes more harshly, violent crimes against women and children.[279]

Consistency of penalties

5.60 As the Committee has noted, in many Acts the relevant penalty was imprisonment and/or a fine, and pursuant to Part 5 of the Sentencing Legislation Amendment and Repeal Bill 2002, imprisonment has simply been deleted from the penalty provisions. However, the Committee observes that the removal of imprisonment has led in some instances to the remaining penalty appearing inadequate or inconsistent with other penalties.

5.61 By way of example, the Committee notes the disparate monetary penalties in section 9 of the *Nuclear Activities Regulation Act 1978* and section 54A of the *Explosives and Dangerous Goods Act 1961* for a similar offence.

5.62 The Committee also notes that the penalty for offences against sections 56B, 56C and 56D of the *Juries Act 1957* which all relate to jury confidentiality differ markedly from the penalty proposed for section 34 of the *Juries Act 1957* in the Juries Amendment Bill 2003 which is currently before the Parliament. Section 34 is also directed to jury confidentiality.

5.63 Problems of consistency also arise in the "disclosure of interest" provisions in the *Water Corporation Act 1995*, the *Water and River Commission Act 1995* and the *Electricity Corporation Act 1994* and in the "confidentiality" provisions in the *School Education Act 1999*, the *Mental Health Act 1996*, the *Guardianship and Administration Act 1990* and the *Gender Reassignment Act 2000*.

5.64 In relation to these examples, the Committee notes that it is not readily apparent why the monetary penalties vary to such an extent.

OBSERVATIONS

5.65 The Committee considers that the abolition of sentences of six months or less as proposed by the Sentencing Legislation Amendment and Repeal Bill 2002 is a worthwhile measure if it is carefully monitored to establish what the actual effects are. This will enable the Parliament to know which of the two possibilities, that is the general increase in sentences or a transfer to community service orders, occurs.

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279 Submission Number 11, ATSIC and the Aboriginal Legal Service of Western Australia (Inc), pp. 4-5.

5.66 The Committee is of the view that the submissions have raised a number of significant issues.

5.67 The Committee is concerned about the absence of an evaluation of the impact of the abolition of sentences of three months or less and has highlighted the potential for the "sentencing ladder" to be distorted by longer sentences being imposed. Consequently, the Committee is of the view that mechanisms for an evaluation and review of the impact of the abolition of sentences of six months or less should be established at the outset.

5.68 To facilitate a review, the Committee considers that Part 5 of the Sentencing Legislation Amendment and Repeal Bill 2002 should be separately proclaimed from the remainder of the Sentencing Legislation Amendment and Repeal Bill 2002. The Committee notes that clause 2(2) provides that the operation of different provisions may be proclaimed on different days. The Committee has made a recommendation in relation to the separate proclamation of Part 5 (see recommendation 17).

5.69 The Committee is also of the view that there should be a review of the impact of the amendments contained in Part 5 within two years of proclamation. The Committee has made a recommendation in relation to this (see recommendation 18).

5.70 The Committee is aware that the Department of Justice has a sophisticated statistical modelling package called the *Prisons Population Projection Model* which can be utilised for short and long-term predictive modelling. The Committee understands that this model would be integral in any statistical analysis.

5.71 The Committee is concerned about the negative impact of the removal of short custodial options and their replacement with fines in remote and regional areas. Based on the evidence presented to the Committee it appears that the problems associated with fine default in remote and regional communities are such that imprisonment often follows. Therefore, the removal of sentences of six months or less could simply lead to a deferred sentence through fine default. The Committee has sought to address these issues in Chapter 7.

5.72 The submissions have pointed to a need for short custodial options. The Committee has partly dealt with this issue in recommendation 6 relating to Pre-sentence Orders and the need to transport offenders to treatment centres. The Committee acknowledges that for remote communities fines are not necessarily an appropriate substitute for short custodial sentences and suitable alternatives must be sought. The Committee has made recommendations in relation to this issue in Chapter 7.

5.73 The Committee is aware that the *Road Traffic Act 1974* uses the concept of penalty units in an effort to achieve a standardisation of penalties. When amendments are made one is forced to consider whether it is the intention to vary the relative seriousness of an offence or to reflect a general increase in tariffs. If the former, the

change is the number of penalty units, if the latter the change is the value of the penalty unit. Unfortunately under the current system both adjustments are carried out in the same manner, that is to raise the absolute penalty, and the two issues become confused. Without the concept of penalty units it is not easy to reflect across the board tariff change. One of the consequences of this is that penalties "leap frog" each other. The Committee suggests that the Government look at the concept of penalty units.

5.74 The Committee also considers that clause 51(2) of the Sentencing Legislation Amendment and Repeal Bill 2002 should be amended to increase the summary conviction penalty for offences relating to racist harassment and incitement to racial hatred and has made a recommendation accordingly (see recommendation 19).

RECOMMENDATIONS

Recommendation 17: The Committee recommends that Part 5 of the Sentencing Legislation Amendment and Repeal Bill 2002 be proclaimed separately from the remainder of the Bill so as to enable the effects on sentencing to be more clearly distinguished.

Recommendation 18: The Committee recommends a review of Part 5 of the Sentencing Legislation Amendment and Repeal Bill 2002 be undertaken two years after that Part is proclaimed.

Recommendation 19: The Committee recommends that the amendments to the *Criminal Code* summary offence of racial harassment and incitement to racial hatred retain the option of a prison sentence and that clause 51(2) of the Sentencing Legislation Amendment and Repeal Bill 2002 be amended in the following manner:

Page 47, line 16 - To delete "$6 000" and insert instead -

" imprisonment for 12 months. "

CHAPTER 6

AMENDMENT AND REPEAL BILL 2002 - OTHER CHANGES

PAROLE ELIGIBILITY ORDERS - NO PRESUMPTION IN FAVOUR OF PAROLE

Overview

6.1 In relation to sentences of 12 months or more, section 89(1) of the *Sentencing Act 1995* provides that:

> *A court sentencing an offender to one or more fixed terms may, if it considers that it is appropriate to do so, order that the offender be eligible for parole by making a parole eligibility order.*

6.2 Although the current wording of section 89(1) of the *Sentencing Act 1995* provides the court with a discretion in relation to the making of Parole Eligibility Orders, it was observed by the Hammond Committee that:

> [I]*t has become clear that it will be* ***exceptional*** *for a parole eligibility order to be refused.*[280]

6.3 The Hammond Committee recommended that the courts be given greater discretion to determine that an offender is ineligible for parole and that statutory provision be made to this effect.[281]

6.4 The review of remission and parole conducted by the Hammond Committee was in part, prompted by the concerns of the judiciary that centred around the judiciary having the discretion to determine whether to fix a minimum term and discretion to fix the length of that term in light of the head sentence.[282] The Hammond Committee indicated that despite calls for change from the judiciary in relation to parole eligibility, there had been no change to these provisions. The recommendation of the Hammond Committee to give the sentencing court greater discretion to determine that an offender is ineligible for parole was supported at that time, by the Parole Board and the Chief Justice of the Supreme Court.[283]

6.5 Clause 7 of the *Sentencing Legislation Amendment and Repeal Act 1999* repealed and replaced section 89 with a new section that sought to remove the presumption in

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280 *Report of the Review of Remission and Parole,* Western Australia, Ministry of Justice, March 1998, p. 6.

281 Ibid, p. 25.

282 Ibid, p. 1.

283 Ibid, p. 45.

favour of the making of a Parole Eligibility Order. In addition, it did not prevent Parole Eligibility Orders being made for terms of less than 12 months. However, this part of the *Sentencing Legislation Amendment and Repeal Act 1999* was not proclaimed.

6.6 Clause 18 of the Sentencing Legislation Amendment and Repeal Bill 2002 also amends section 89 to remove the presumption in favour of the making of a Parole Eligibility Order. Section 89 is repealed and replaced. Proposed section 89(4) provides that:

> *A court may decide not to make a parole eligibility order in respect of a fixed term imposed on an offender if the court considers that the offender should not be eligible for parole because of at least 2 of the following 4 factors -*
>
> *(a) the offence is serious;*
>
> *(b) the offender has a significant criminal record;*
>
> *(c) the offender, when released from custody under a release order made previously, did not comply with the order;*
>
> *(d) any other reason the court considers relevant.*

6.7 Currently section 89(2) provides that in considering whether to make a Parole Eligibility Order, the court must consider a number of factors. The proposed section 89(4) directs the court to consider a number of listed factors, which may be relevant in *"not making a parole eligibility order"*.

6.8 The Sentencing Legislation Amendment and Repeal Bill 2002 differs from the *Sentencing Legislation Amendment and Repeal Act 1999* in that it does not permit the making of a Parole Eligibility Order for sentences of less than 12 months. However, the Sentencing Legislation Amendment and Repeal Bill 2002 does introduce CEO Parole for those terms.

Issues raised by the Submissions

6.9 The Committee received submissions welcoming the introduction of the amendment to section 89.[284]

6.10 The Committee also received submissions which pointed to problems that will arise as a result of the amendment.

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[284] Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 29; Submission Number 3, Parole Board, p. 1.

Effect on prison population

6.11 In their submission, the Law Society raised the question of whether the net effect of the amendments will be to reduce the prison population. They raised the fact that a greater number of offenders will be sentenced to terms of imprisonment without parole as a result of the amendments that remove the presumption of a Parole Eligibility Order.[285]

Greater numbers in custody

6.12 The Law Society also submitted that the amendment to section 89 has the potential to lead to greater numbers of offenders in custody.[286]

6.13 The Committee asked the Department of Justice for statistical information in relation the effect of the amendments on numbers in custody.

6.14 In a letter dated May 1 2003, the Director General advised the Committee that in 2001/2002, 1487 persons were sentenced to imprisonment for 12 months or more. Of these prisoners, 89% or 1340 were granted parole eligibility. The Director General advised the Committee that informal discussions with the Chief Judge of the District Court, His Honour Judge K Hammond indicated that approximately 10-20% of persons currently granted parole would be made ineligible following the amendments to section 89. On the basis of the midpoint of His Honour's assessment namely 15% of parole sentences becoming non-parole sentences, the Department of Justice has indicated that the impact on the prison population would be approximately 219 beds with the demand for those beds stretching over a number of years.[287]

Rehabilitation

6.15 The Committee received a submission from the Criminal Lawyers' Association indicating that this amendment does not give sufficient weight to rehabilitation and will result in more offenders being released without any rehabilitation.[288]

6.16 The Committee notes that the amendments proposed by the Committee in relation to Re-entry Release Orders to widen them to non-parole prisoners should, in part, address concerns about offenders being released without any rehabilitation. (See recommendation 6).

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285 Submission Number 9, Law Society, p. 7.

286 Submission Number 9, Law Society, pp. 5-6.

287 Letter from the Director General of the Department of Justice, dated May 1 2003, p. 1.

288 Submission Number 10, Criminal Lawyers' Association, p. 3.

PARTLY CUMULATIVE/PARTLY CONCURRENT SENTENCES

Overview

6.17 Section 88 of the *Sentencing Act 1995* relates to concurrent, cumulative or partly cumulative terms.

6.18 It provides that:

> *(1) An offender sentenced to a fixed term is to serve that term concurrently with any other fixed term that he or she is serving or has yet to serve, unless the sentencing court makes an order under subsection (3).*
>
> *(2) An offender sentenced at the one time to one or more fixed terms is to serve those terms concurrently, unless the court makes an order under subsection (3).*
>
> *(3) If at the time an offender is sentenced to a fixed term-*
>
> *(a) the offender is serving or has yet to serve another fixed term imposed previously; or*
>
> *(b) the offender is then also sentenced to serve another fixed term,*
>
> *the sentencing court may order that -*
>
> *(c) the fixed term is to be served cumulatively on the other fixed term; or*
>
> *(d) the fixed term is to be served partly cumulatively on the other fixed term.*
>
> *(4) If under subsection (3)(d) a court orders that the term is to be served partly cumulatively on another fixed term, the court must specify the period of the other fixed term that is to be served before the partly cumulative term is to begin; but that period must not extend the earliest date on which the offender could be released (whether on parole or not) in relation to the other fixed term.*
>
> *(5) An offender sentenced to a life term is to serve that term concurrently with any other term that he or she is serving or has yet to serve.*

6.19 This section involves some complexities and Dr Morgan outlined for the Committee some of the background to the operation of the section as follows:

> *Basically, in the courts, probably in the majority of cases, the offender is being convicted for more than one offence - we call them multiple-offenders. When imposing terms of imprisonment, the court has two options open to it: basically, to make those sentences concurrent or make them cumulative. Concurrent sentences run together; cumulative sentences run one after the other. However, some difficulties arise with that. Sometimes the courts take the view*

> *that if sentences were made cumulative, the person would end up serving too much time. It can be argued, for instance, that if a person is in court for 15 burglaries, each one deserves a sentence of a year. They are each separate incidents and separate premises. It could be said that a year be given for each burglary, and add them all up. That is a 15-year sentence. The courts feel very uncomfortable with that notion because they think that 15 burglaries cannot be equated with, for example, a couple of extremely serious sexual assaults, which might also attract a 15-year sentence… That is why they have tended in the past to reduce the sentences.*[289]

6.20 The Department of Justice provided evidence to the Committee as to the purpose of section 88. The Director General indicated that:

> *These provisions were enacted so as to enable courts to impose appropriate sentences without having to reduce such, so as to not affect the "totality principle". Prior to the enactment of these provisions, courts were faced with having to heavily discount sentences under the "totality principle". Many groups, especially victims, saw such discounting, as undermining the seriousness of an offence.*
>
> *The current "partly cumulative" provisions sought to overcome these sentencing 'difficulties' by enabling courts to structure their sentences in such a way as to be able to still impose an appropriate sentence and not impact on "totality".*[290]

6.21 The totality principle is a sentencing principle used when the court is sentencing an offender for more than one offence, or when the offender being sentenced is, or has been, serving a sentence for another offence. When this occurs, the court should consider the totality of the criminality for which the offender is being punished and ensure that the aggregate sentence does not exceed what is appropriate.[291]

6.22 The Director General also outlined the technical reasons for the drafting of section 88. He stated:

> *During the course of developing the current provisions, courts expressed a desire to be able to split a sentence into a cumulative and*

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289 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board of Western Australia, March 19 2003, p. 18.

290 Letter from the Director General of the Department of Justice, dated March 4 2003, p. 3.

291 *Halsbury's Laws of Australia*, paragraph 130-17035.

> *a concurrent portion. However, such a provision would have created a number of problems.*
>
> *For example, an offender already serving a 3 year sentence is about to be sentenced to an additional 6 years* [sic] *term. Because of totality the court decides to split the term by ordering that 1 year be served cumulative on the original 3 year term, thus giving the offender a 4 year aggregate term. If such a situation occurred it would raise the question of what happened to the remaining 5 year concurrent portion of the 6 year term. In this example this 5 year portion would override the 4 years* [sic] *term intended by the court and thereby create confusion in everyone's minds as to when the offender would be due for release from custody.*
>
> *As a consequence, partly cumulative sentences were introduced in order to overcome any potential imprisonment problems that might arise if, alternatively courts were able to split a sentence into a concurrent and cumulative element. This was achieved by enabling a court to set a commencement date, for a second or subsequent offence, that was prior to the offenders current release date. By doing so, the effect would be to require the offender to serve an additional period in custody without having to make the whole sentence cumulative [and thereby impinging on the 'totality principle'].*[292]

6.23 Clause 17 of the Sentencing Legislation Amendment and Repeal Bill 2002 amends section 88 to replace references in the section to "partly cumulatively" with "partly concurrently". The Committee asked the Department of Justice for the purpose behind this amendment. In a letter dated March 4 2003, the Director General advised as follows:

> *Subsequent to the enactment of the current provisions of the Sentencing Act 1995 in relation to partly cumulative sentences, a number of court cases created some confusion in the application of the law. As a consequence, when the 1999 Sentencing reforms were being developed it was decided to take the opportunity to recast these provisions to make them more understandable, and hopefully more workable in practice. New "partly concurrent provisions" were therefore, developed.*
>
> *These reforms are still needed, and although the 1999 Sentencing reforms are to be repealed, the new partly concurrent reforms have*

[292] Letter from the Director General of the Department of Justice, dated March 4 2003, pp. 3-4.

> *been carried through to the Sentencing Legislation Amendment and Repeal Bill 2002*.[293]

Issues raised by the Submissions

Complexity

6.24 In a letter to the Committee dated February 10 2003, the Chief Judge of the District Court, His Honour, Chief Judge Hammond commented on the amendments to section 88, stating as follows:

> [I]*t appears to be extraordinarily difficult to draft understandable legislation to cope with this situation. The old section caused endless arguments as to interpretation and became so difficult to interpret that most sentencers tended to avoid it wherever possible.*
>
> *I do not know that the proposed amendments will solve that problem*.[294]

6.25 Dr Morgan also submitted to the Committee that section 88 "hardly operates" as it is currently drafted[295] and the amendments proposed by clause 17 do nothing to make the provisions more workable or address the major problems.[296]

6.26 Based on the evidence of Dr Morgan, it appears that the difficulties with the operation of section 88 arise from section 88(4) and the requirement for the court to specify the period of the other term that is to be served before the partly cumulative term is to begin. As Dr Morgan stated to the Committee:

> *The court will specify the period of the first sentence to be served before the partly cumulative sentence is to commence. In other words, the court must get into the calculations of when the person might be released on the first sentence.*[297]

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293 Ibid, p. 4.

294 Letter from His Honour KJ Hammond, Chief Judge of the District Court, dated February 10 2003.

295 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board, March 19 2003, p. 19.

296 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, p. 19.

297 *Transcript of evidence*, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia and the Parole Board, March 19 2003, p. 18.

Sentence calculation issues

6.27 Dr Morgan submitted to the Committee that recent research has revealed difficulties with sentence calculations in a number of cases where partly cumulative sentences have been imposed. Section 88(4) provides that when a partly cumulative sentence is imposed, the commencement of the second term must not extend beyond the earliest date on which the offender could be released (whether on parole or not) in relation to the other fixed term.

6.28 Dr Morgan submitted that he has received information that the Sentence Information Unit calculates the "earliest date on which the offender could be released" on the basis of when the person would be eligible for parole. However, Dr Morgan submits that in some cases release on a Work Release Order is available six months before release on parole. Consequently he submits that some unlawful sentences may have been generated.[298]

Observations

6.29 It is quite clear to the Committee that the amendments to section 88 of the *Sentencing Act 1995* by clause 17 of the Sentencing Legislation Amendment and Repeal Bill 2002 do not address the problems with the operation of the section.

6.30 However, the Committee does not believe that, based on the material before it, it can canvass the alternatives to address the problems that arise in relation to this section. Accordingly, the Committee recommends that the Government in conjunction with the judiciary, explore the possible solutions to the problems raised (see recommendation 20).

Recommendation

Recommendation 20: The Committee recommends that as a matter of urgency the Government work with the judiciary to resolve the problems with the operation of section 88 of the *Sentencing Act 1995* as amended by clause 17 as discussed in Chapter 6 the Committee's report.

298 Submission Number 1, Dr Neil Morgan, Director of Studies, Crime Research Centre of the University of Western Australia, pp. 18-19.

CHAPTER 7

REMOTE AND REGIONAL AREAS AND SENTENCING ISSUES

7.1 The submissions that the Committee has received from the Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku; and the Western Australian State Council of ATSIC and the Aboriginal Legal Service of Western Australia (Inc) have raised a number of issues that face remote Aboriginal Communities. These submissions have served to highlight the wider issue of problems with the application of sentencing processes in remote areas of the State. Although the Bills do not directly raise this issue, the Committee is of the view that it is of such significance that it should be briefly addressed.

7.2 During the Committee's inquiry it became apparent to the Committee that difficulties arise in relation to the implementation of legislation that is primarily targeted at city or metropolitan dwellers, in remote and regional areas of Western Australia. In particular, such legislation can disproportionately disadvantage people living in remote and regional areas. There are two salient examples that the Committee wishes to note that demonstrate this problem.

7.3 First, the Committee has made observations in Chapter 6 about the increased imprisonment rates for Aboriginal people as a result of fine default and the potential for this problem to be exacerbated by the abolition of sentence of six months or less. The Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku also provided to the Committee the following example that emphasised the problems of the application of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in their Communities:

> *It is a question of the other issues, such as when people are put on a charge for driving a vehicle when they have lost their licence through having left the number plates on a vehicle that is 300 kilometres away in a sandhill somewhere and they have forgotten about it, or it has burnt and they got a lift back and they are not quite sure where they were. As a result they did not return the number plates, so they were in breach, and got fined. The fines then escalated, they lost their licence and then suddenly they find that they are facing imprisonment*.[299]

7.4 Secondly, there is the effect of regulation 4E of the *Road Traffic (Drivers Licences) Regulations 1975* which is enacted pursuant to section 42 of the *Road Traffic Act*

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299 *Transcript of evidence*, Mr Charles Staples, Representative of the Ngaanyatjarra Communities and the Shire of Ngaanyatjarraku, March 12 2003, pp. 6-7.

1974. This section relates to the licensing of drivers. Regulation 4E requires an applicant for a licence to record at least 25 hours of driving in a logbook in an approved form where that driving is supervised by a driving instructor or a person who has held the same class of licence for at least four years. This may be difficult to implement in remote areas.

7.5 The Committee is of the view that where legislation operates to adversely impact on remote and regional communities the unintended consequence is that it becomes ineffective and the law is brought into disrepute. A possible solution to this problem is for separate legislation to be drafted to meet the needs of remote and regional areas.

7.6 Given the terms of reference of this inquiry, it is not appropriate for the Committee to explore these issues. However, the Committee believes that the Government should urgently address this matter.

RECOMMENDATION

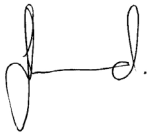
Recommendation 21: The Committee draws the attention of the House to the matters raised in Chapter 7 of the Committee's report and recommends that:

(a) as a matter of urgency the Government consider establishing an inquiry into sentencing, law enforcement and penalties in remote and regional areas of Western Australia with the intention of reducing the rate of imprisonment;
(b) a judicial officer at the level of a magistrate conduct the inquiry; and
(c) the judicial officer be provided with assistance by the relevant agencies, authorities and government departments including the Department of Justice, the Department of Transport and the Western Australian Police Service.

Recommendation 22: The Committee recommends that the Sentence Administration Bill 2002 be passed subject to recommendations 1 through to 7.

Recommendation 23: The Committee recommends that the Sentencing Legislation Amendment and Repeal Bill 2002 be passed subject to recommendations 9 through to 14 and 16 through to 19.

There was dissent from recommendation 23.



Hon Jon Ford MLC
Chairman
Date: May 23 2003

APPENDIX 1

STAKEHOLDERS TO WHOM THE COMMITTEE WROTE

APPENDIX 1

STAKEHOLDERS TO WHOM THE COMMITTEE WROTE

NAME	ORGANISATION	DATE
Relevant Officer	Human Rights of Western Australia	January 10 2003
Mr Delphin	Executive Officer, Deaths in Custody Watch Committee Western Australia (Inc)	January 10 2003
Mr Geoff Clark	Chairman, ATSIC Board	January 10 2003
Mr Clarrie Robinson	Chairman, Parnpajinya Aboriginal Association	January 10 2003
Mr Brian Sampson	Chairman, Jigalong Community	January 10 2003
Mr Patrick Green	Chairman, Bunuba Incorporated	January 10 2003
Mr Bill Lawrie	Manager, Native Unit, Ngaanyatjarra Land Council	January 10 2003
Mr Brian Wyatt	Director, Goldfields Land and Sea Council	January 10 2003
Mr David Ritter	Executive Director, Yamatji Land and Sea Council	January 10 2003
Mr Darryl Pearce	Chief Executive Officer, South West Aboriginal Land and Sea Council	January 10 2003
Mr Wayne Bergmann	Chief Executive Officer, Kimberley Land and Sea Council	January 10 2003
Hon Terence Walsh QC	Chairman, Parole Board, Western Australia	January 10 2003
Mr David Kaeding	Registrar, Royal Association of Justices of Western Australia (Inc)	January 10 2003
Mr Ian Viner AO QC	President, Western Australian Bar Association (Inc)	January 10 2003
Mr J D McLean JP	Shire President, Shire of Ngaanyatjarraku	January 10 2003
Mr George Turnbull	Director, Legal Aid Western Australia	January 10 2003
Mr Barry Matthews	Commissioner of the Western Australian Police Service	January 10 2003
Mr Steven Heath	Chief Stipendiary Magistrate	January 10 2003
Mr Dennis Eggington	Chief Executive Officer, Aboriginal Legal Service of Western Australia (Inc)	January 10 2003
Mr Ben Clarke	Secretary, International Commission of Jurists (Western Australian Branch)	January 10 2003
Sr Maura Kelleher RSM	President, Western Australian Council of Religious Institutes	January 10 2003
Mr Peter Stewart	Director, Christian Centre for Social Action	January 10 2003
Mr Tony Aristei	President, Society of Labor Lawyers (Western Australia) Inc	January 10 2003
Mr Brian Steels	Secretary, Prison Reform Group of Western	January 10 2003

NAME	ORGANISATION	DATE
	Australia	
Mr T J McIntyre	Stipendiary Magistrate	January 10 2003
Mr Con Zempilas	Former Chief Stipendiary Magistrate	January 10 2003
Mrs Elizabeth Heenan	President, The Law Society of Western Australia	January 10 2003
Hon Chief Justice David Malcolm AC	Supreme Court of Western Australia	January 10 2003
His Honour Judge Kevin Hammond	Chief Judge, District Court of Western Australia	January 10 2003
Mr Frank Morgan	Director, Crime Research Centre, University of Western Australia	January 10 2003
Mr Simon Stone	Acting Director of Public Prosecutions, Office of the Director of Public Prosecutions	January 10 2003
Mr Hylton Quail	President, Criminal Lawyers Association of Western Australia	January 10 2003
Mr Paul Murray	6PR Radio Perth	February 11 2003
Mr Howard Sattler	6PR Radio Perth	February 11 2003
Mr Liam Bartlett	ABC Radio Perth	February 11 2003

APPENDIX 2

WRITTEN SUBMISSIONS RECEIVED

APPENDIX 2

WRITTEN SUBMISSIONS RECEIVED

	NAME	ORGANISATION	DATE
1.	Dr Neil Morgan	Director of Studies, Crime Research Centre, The University of Western Australia	January 20 2003
2.	Mr Peter Evans	Private Citizen	January 27 2003
3.	Hon Terence Walsh QC	Chairman, Parole Board, Western Australia	January 30 2003
4.	Mr Ian Fletcher	Chief Executive Officer, City of Kalgoorlie-Boulder	January 31 2003
5.	Mr Charles Staples	Consultant for the Shire of Ngaanyatjarraku and Warburton Community Incorporated	February 1 2003
6.	Mr Andrew Robson	Manager of the Duty Lawyer and Prisons Visiting Service and Drug Court Unit, Legal Aid Western Australia	February 3 2003
7.	Mr Barry Matthews	Commissioner of Western Australian Police Service	February 3 2003
8.	Ms Elizabeth Heenan	President, The Law Society of Western Australia	February 11 2003
9.	Ms Elizabeth Heenan	President, The Law Society of Western Australia	February 28 2003
10.	Mr Hylton Quail	President, Criminal Lawyers' Association of Western Australia	March 10 2003
11.	Mr Rewi Lyall	Senior Policy Officer, ATSIC, State Representative Office	March 18 2003

APPENDIX 3

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

APPENDIX 3

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Name	Organisation	Date
Mr Malcolm Penn	Principal Legislation and Policy Officer, Community and Juvenile Justice Division, Department of Justice	February 11 2003
Ms Angela Rabbitt	Manager, Parole Release, Department of Justice	February 11 2003
Ms Jacqueline Tang	General Manager, Community Justice Services, Department of Justice	February 11 2003
Ms Julie Wager	Stipendiary Magistrate, Perth Drug Court	March 5 2003
Mr Charles Staples	Representing the Shire of Ngaanyatjarraku and Warburton Community Incorporated	March 12 2003
Dr Neil Morgan	Director of Studies, Crime Research Centre, The University of Western Australia and as a representative of the Parole Board of Western Australia	March 19 2003

APPENDIX 4

COMPARATIVE TABLE RELATING TO THE SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002

APPENDIX 4

COMPARATIVE TABLE RELATING TO THE

SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002

NOTES TO THE TABLE

1. This annotated table is based upon a comparative table of provisions prepared by the Department of Justice for the Committee.

2. The *Sentencing Act 1995* is referred to as the 1995 Act. The *Sentencing Legislation Amendment and Repeal Act 1999* is referred to as the 1999 Act and the Sentencing Legislation Amendment and Repeal Bill 2002 is referred to as the 2002 Bill.

3. The shaded areas indicate sections of the *Sentencing Legislation Amendment and Repeal Act 1999* that:

   - were proclaimed;
   - were not proclaimed but have been replicated in the 2002 Bill; or
   - were not proclaimed but have been included in the 2002 Bill with some amendment

4. The "Variation" column does not take into account minor drafting variations or other changes that are not substantive.

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
PART 1 - PRELIMINARY			
Section 1 – Short title	• Does not affect 1995 Act.	• Does not affect 1995 Act	• N/A.
Section 2 – Commencement	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 3 – Application	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
Section 4 - Interpretation	• Affects 1995 Act.	• Affects 1995 Act.	• 1999 Act and 2002 Bill - Delete definition of *"parole order"*. • The Explanatory Notes to 2002 Bill indicate that the definition really only applies in Part 13 of the Act and a new definition will be inserted in that Part. • 1999 Act and 2002 Bill - Insert in section 4(1) a definition of *"spent conviction order"*. • 1999 Act and 2002 Bill - Insert a new section 4(3) that provides that examples in the Act do not form part of the Act. • **Amendment only in 2002 Bill.** • In section 4(1) – Inserts definitions of "*pre-sentence order"* and *"speciality court"* • In section 4(2) - Inserts acronym *"PSO"* for pre-sentence order.
Section 5 – Civil liability not affected	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 2 - GENERAL MATTERS			
Division 1 - Sentencing Principles			
Section 6 – Principles of sentencing	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 7 – Aggravating factors	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 8 – Mitigating factors	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 2 – Miscellaneous			
Section 9 – Statutory penalty: effect	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments only in 2002 Bill.**

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
of			• 2002 Bill deletes section 9(4), which provides that if the statutory penalty is mandatory or contains a minimum penalty, then the court must impose such a penalty unless the originating law provides otherwise. The Explanatory Notes state that although the subsection will be repealed, the intent will be carried forward in proposed amendments to sections 41, 42, 43 and 44. • Sub-section (5) is amended accordingly.
Section 10 – Effect of change of statutory penalty	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 11 – Person not to be sentenced twice on the same evidence	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 12 – Common law bonds acknowledged	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 3 – MATTERS PRELIMINARY TO SENTENCING			
Division 1 - Preliminary			
Section 13 – Interpretation	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 2 - General			
Section 14 – Offender to be present for sentencing	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 14A - Court may sentence by video link	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
Section 15 – Court may inform itself as it thinks fit	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 16 – Court may adjourn sentencing	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 17 – Court's powers on adjourning	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 18 – Committal for sentence	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 3 - Information about the offender			
Section 20 - Pre-sentence report: court may order	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments only in 2002 Bill.** • Sub-clause (2) is inserted to provide that a court considering imposing a Pre-sentence Order must order a pre-sentence report about the offender's suitability to be subject to a Pre-sentence Order. • The amendment in the 2002 Bill facilitates the introduction of Pre-sentence Orders which are contained in the new Part 3A.
Section 21 – Pre-sentence report: content	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 22 – Pre-sentence report: preparation	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 23 – Information about an offender's time in custody	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 4 - Information about victims etc.			
Section 24 – Victim impact statement	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 25 – Victim impact	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
statement: content			
Section 26 – Victim impact statement: use in court	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 5 - Mediation			
Section 27 – Mediation report: court may order and receive	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 28 – Mediation report: content	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 29 – Mediation report: preparation	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 30 – Mediation report: use in court	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 6 - Other pending charges			
Section 31 – Interpretation	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 32 – Pending charges: offender may request court to deal with	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 33 – Pending charges: court may deal with	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
2002 BILL INTRODUCES NEW PART 3A - PRE-SENTENCE ORDERS (N/A in 1995 and 1999 Acts)			
Division 1 - General			
N/A.	• N/A.	**Section 33A** – When PSO may be made	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33B** –PSO: nature	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33C** – Making a PSO	• N/A in 1995 and 1999 Acts

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
N/A.	• N/A.	**Section 33D** – PSO: Standard obligations	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33E** – PSO: primary requirements	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33F** – Supervision requirement	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33G** – Programme requirement	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33H** – Curfew requirement	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33I** – Performance reports	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33J** – Sentencing day: how offender to be dealt with	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33K** – Sentencing an offender after a PSO	• N/A in 1995 and 1999 Acts
Division 2 - Amending and enforcing PSOs			
N/A.	• N/A.	**Section 33L** – Interpretation	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33M** – Application to amend or cancel	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33N** – Court may confirm, amend or cancel PSO	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33O** – Re-offending while subject to a PSO	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33P** – Breach etc of PSO, powers of CEO and court	• N/A in 1995 and 1999 Acts
N/A.	• N/A.	**Section 33Q** – Facilitation of proof	• N/A in 1995 and 1999 Acts
PART 4 – THE SENTENCING PROCESS			

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
Section 34 – Explanation of sentence	• Affects 1995 Act.	• Affects 1995 Act	• 1999 Act and 2002 Bill are the same. • Two new subsections/sub-clauses inserted. • The court will be obliged to state in open court the minimum period that the offender will be required to serve in custody as a result of the sentence imposed.
Section 35 – Reasons for imprisonment must be given	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 36 – Issue of warrant for commitment	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 37 – Correction of sentence	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 37A - Offender who reneges on promise to assist authorities may be re-sentenced	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 38 – Imprisonment by justices: magistrate to review	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 5 - SENTENCING OPTIONS			
Section 39 – Sentences for a natural person	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 40 – Sentences for a body corporate	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 41 – If statutory penalty is imprisonment only: sentencing options	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments only in 2002 Bill.** • Section 41(1) is amended. It currently reads *"this section applies if a court is sentencing an*

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
			offender for an offence the statutory penalty for which is imprisonment only" The words imprisonment only are deleted and replaced with *"such that imprisonment but not a fine may be imposed"*. • A new sub-clause 2(a) is introduced. The Explanatory Notes indicate that this outlines how a court should deal with such offences where imprisonment is a mandatory penalty. • In these cases the court must impose such a sentence unless the originating law provides otherwise. • This sub-clause is to carry forward the intent of repealed section 9(4).
Section 42 – If statutory penalty is imprisonment and fine: sentencing options	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments only in 2002 Bill.** • A new sub-clause 2(a) is introduced. The Explanatory Notes indicate that it outlines how a court can deal with an offender who has been convicted of an offence where the penalty is imprisonment and a fine.

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			• The court can impose one or both of the penalties but the court cannot impose a fine that is less than the minimum stated and cannot use a lesser sentencing option, unless the originating law provides otherwise. • This sub-clause is to carry forward the intent of repealed section 9(4). It is intended to clarify the law.
Section 43 – If statutory penalty is imprisonment or fine: sentencing options	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments only in 2002 Bill.** • A new sub-clause 2(a) is introduced. The Explanatory Notes indicate that it outlines how a court can deal with an offender who has been convicted of an offence where the penalty is imprisonment or a fine. • In these cases the court cannot impose a fine that is less than the minimum stated and cannot use a lesser sentencing option, unless the originating law provides otherwise. • This sub-clause is to carry forward the intent of repealed section 9(4). It is intended to clarify the law.

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
Section 44 – If statutory penalty is fine only: sentencing options.	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments only in 2002 Bill.** • Subsection (1) is amended. • As part of the amendments about short sentences, section 44(1) is being amended. • This section concerns the options available to the court where the statutory penalty is a fine only. • Currently, where a statutory penalty is a fine only, a court can use one of the first three options on the *"sentencing ladder"* under section 39 of the *Sentencing Act 1995* namely, release without sentence, a conditional release order or impose a fine up to the maximum amount allowed by statute. • The amendments allow the court to impose a Community Based Order for *"prescribed offences"*. The Explanatory Notes indicate that a Community Based Order is usually only available for imprisonable offences. • A new subsection (2) is introduced. • The Explanatory Notes indicate that it outlines how a court can

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			deal with an offender who has been convicted of an offence where the penalty is a fine only. • In these cases, the court cannot impose a fine that is less than the minimum stated, unless the originating law provides otherwise. • This sub-clause is to carry forward the intent of repealed section 9(4). It is intended to clarify the law.
Section 45 – Spent conviction order: making and effect of	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 6 – RELEASE OF OFFENDER WITHOUT SENTENCE			
Section 46 – Release without sentence	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 7 – CONDITIONAL RELEASE ORDER			
Section 47 – When CRO may be imposed	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 48 – CRO: nature of	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 49 – CRO: requirements of	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 50 – Court may direct offender to re-appear	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 51 – Ensuring compliance with CRO	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 52 – Enforcing a CRO	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 8 – FINE			

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
Section 53 – Considerations when imposing a fine	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 54 – One fine for 2 or more offences	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 55 – Apportionment of fine between joint offenders	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 56 – Assault victim may be awarded fine	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 57 – Enforcement of fine	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 57A - Fine enforcement by means of WDO	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 57B – Court may cancel order on application of Fines Enforcement Registrar	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 58 – Imprisonment until fine paid	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 59 – Imprisonment if fine is not paid	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 60 – Application of fine etc	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 9 - COMMUNITY BASED ORDER			
Section 61 - CBO: pre-sentence report optional	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 62 - CBO: nature of	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 63 - CBO: standard obligations	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 64 - CBO: primary obligations	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 65 - Supervision requirement	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
Section 66 - Programme requirement	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments only in 2002 Bill.** • Subsection (5) is amended. • The Explanatory Notes indicate that the subsection currently provides that any programme requirement contained in a community based order (CBO) imposed by the court, is additional to any such requirement in another CBO or ISO. This subsection is to be amended to generally refer to any programme requirement under a community order or Pre-sentence Order. This takes into account the introduction of Pre-sentence Orders.
Section 67 - Community service requirement	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 10 – INTENSIVE SUPERVISION ORDERS			
Section 68 - ISO: pre-sentence report mandatory	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 69 - ISO: nature of	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 70 - standard obligations	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 71 - Supervision requirement	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 72 – ISO: primary requirements	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 73 – Programme requirement	• Does not affect 1995 Act.	• Affects 1995 Act	• **Amendments only in 2002 Bill.**

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
			• In 2002 Bill subsection (5) is amended. • The Explanatory Notes indicate that the subsection currently provides that any programme requirement contained in an intensive supervision order (ISO) imposed by the court, is additional to any such requirement in another CBO or ISO. This subsection is to be amended to generally refer to any programme requirement under a community order or Pre-sentence Order. This takes into account the introduction of Pre-sentence Orders.
Section 74 – Community service requirement	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 75 – Curfew requirement	• Does not affect 1995 Act.	• Affects 1995 Act	• **Amendments only in 2002 Bill.** • The 2002 Bill amends the provisions in relation to the operation of a curfew requirement in an Intensive Supervision Order. • The section is substantially amended. • The Explanatory Notes state that: • *"With the enactment of the new*

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			Pre-Sentence Order through clause 6 of the Bill, the scope and operation of curfew requirements imposed under an Intensive Supervision Order are to be amended to maintain consistency with similar requirements on the Pre-Sentence Order. The new requirements are in identical terms to the powers that community corrections officers utilise in respect of offenders subject to home detention orders."
PART 11 - SUSPENDED IMPRISONMENT			
Section 76 – Imprisonment may be suspended	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments in 2002 Bill only.** • Section 76(3) is amended. The section deals with the imposition of suspended imprisonment on offenders and provides that such imprisonment cannot be imposed if the offence in question was committed while the prisoner was on an *"early release order"*. • The section currently refers to Part 13 of the Act for the definition of *"early release order."* • A definition of *"early release*

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			order" is inserted into the section which outlines the types of orders covered by this phrase in both the 1995 Act and the Sentence Administration Bill 2002.
Section 77 – Effect of suspending imprisonment	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 78 – Re-offender may be dealt with or committed	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 79 – Complaint alleging re-offending	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 80 – How re-offender to be dealt with	• Affects 1995 Act.	• Does not affect 1995 Act.	• This section was amended in the 1999 Act. • The 1999 Act repealed subsections (5) and (6) and replaced them with a new subsection (5). • These amendments are not necessary in the 2002 Bill as these provisions of the 1999 Act were proclaimed.
PART 13 - IMPRISONMENT			
Division 1 - Preliminary			
Section 85(1) - Interpretation and calculations	• Affects 1995 Act	• Affects 1995 Act	• Both Acts amend the 1995 Act. • Unlike the 1999 Act, the 2002 Bill removes from the definitions for this Part, the definition of "*early release order*". • The Explanatory Notes indicate

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			that it has more application in the context of the *Sentence Administration Act 2002* rather than the *Sentence Administration Act 1995*. • The 1999 Act defines "*parole order*" to mean an order, made under Part 3 of the *Sentence Administration Act 1999* that a prisoner be released on parole. • The 2002 Bill has additional words in relation to the definition of "*parole order*". These words are "*includes a parole order made for the purposes of section 69 and 70 of that Act*". These additional words are required because these sections are no longer contained in Part 3 of the Act. • Both Acts delete paragraph (a) of section 85(1). • Both Acts delete subsections 85(2), (3) and (4). • In place of the repealed subsections, both Acts insert the same provisions in relation to calculating terms etc. • The only difference is that

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			subsection (4) of 2002 Bill omits the words *"is or may be"* and simply says, *"has"*.
Division 2 - Imposing imprisonment			
Section 86 – Term of 3 months or less not to be imposed	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendment only in 2002 Bill.** • Section 86 of the 1995 Act provides a prohibition on sentences of 3 months or less. • The 1999 Act did not amend this. • The 2002 Bill amends it to refer to 6 months instead of 3 months. • There are a number of amendments to other Acts set out in clauses 34 to 106 of the 2002 Bill which implement the abolition of sentences of 6 months or less in other Acts. These amendments were not contained in the 1999 Act.
Section 87 – Taking time on remand into account	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 88 – Concurrent, cumulative or partly cumulative terms	• Affects 1995 Act.	• Affects 1995 Act.	• Both Acts affect the 1995 Act and are the same except that subsection (3) of the 1999 Act is not included in the 2002 Bill. • This subsection repealed section 88(3) and is not necessary in the 2002 Bill as this was one of the provisions of the 1999 Act that

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			was proclaimed.
Section 89 – Offender may be eligible for parole	• Affects 1995 Act.	• Affects 1995 Act.	• Both the 1999 Act and the 2002 Bill amend the 1995 Act. • Section 89 relates to the Court making a parole eligibility order. • The 1999 Act and the 2002 Bill are largely the same. • Both the 1999 Act and the 2002 Bill seek to amend the provision such that there is no presumption in favour of a parole eligibility order. • To this end, both introduce criteria which the court may consider justifies a decision not to make a parole eligibility order. • The 1995 Act did not allow a parole eligibility order to be made for terms of less than 12 months. • The 1999 Act permits a parole eligibility order to be made for terms of less than 12 months. • The 2002 Bill does not permit a parole eligibility order to be made in relation to a term of less than 12 months but does introduce CEO Parole. • Consequently, the 2002 Bill has 2

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			additional sub-clauses that exclude the operation of the section in relation to CEO Parole. • In addition, there are words omitted from subsection of the 1999 Act in relation to the meaning of *"release order"*.
N/A.	**Section 89A** - Programme assessment order for short fixed term that is not a parole term	• N/A.	• **Amendment only in 1999 Act– not proclaimed.** • Programme assessment orders are not included in the 2002 Bills.
Section 90 – Imposing life imprisonment	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 91 – Imposing strict security life imprisonment	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 3 - Release from imprisonment			
Section 92 - Release from prescribed term	• Affects 1995 Act.	• Affects 1995 Act.	• Same as both repeal the section. • The Explanatory Notes indicate that, *"(p)resently offenders serving terms that are not parole terms are released after two thirds of the term, and for the prescribed terms after the whole of the term, with the changes to s 95 it is no longer necessary to have a particular statute (sic) provisions for the release from prescribed terms."*

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
Section 93 - Release from Parole Term	• Affects 1995 Act.	• Affects 1995 Act.	• This section currently provides that an offender has to serve one third of the term where the term is 6 years or less and two thirds of the term (less 2 years) when the term is more than 6 years. • This is to be repealed and replaced with a provision requiring an offender to serve half of the term. • If the offender is not paroled, they are to serve the whole of the term. • Between the 1999 Act and 2002 Bill the wording is the same except for a slight change in wording.
Section 94 - Aggregation of parole terms for certain purposes	• Affects 1995 Act.	• Affects 1995 Act.	• Section 94 deals with those circumstances where it is possible to aggregate two or more parole terms. • The 1999 Act and 2002 Bill make the largely the same amendments.
Section 95 - Release from fixed term that is not a parole term	• Affects 1995 Act.	• Affects 1995 Act.	• The Explanatory Notes state that: • *"Currently the one third remission is provided in s.95 of the Sentencing Act 1995 which provides that offenders serving terms that are not parole terms*

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			must be discharged after 2/3 of the term. As a result of the Review of Remission and Parole the 1/3 remission of sentences is to be abolished. The proposed new s.95 provides that such offenders will have to serve the entire term." • The 1999 Act and 2002 Bill are the same.
Division 4 - Miscellaneous			
Section 96 – Release from life term	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 97 – Application of *Sentence Administration Act 1995*	• Affects 1995 Act	• Affects 1995 Act	• The consequential amendments in the 1999 Acts change the reference to *Sentence Administration Act 1995* to *Sentence Administration Act 1999*. • The consequential amendments in the 2002 Bill change the reference to *Sentence Administration Act 1995* to *Sentence Administration Act 2002*.
PART 14 - INDEFINITE IMPRISONMENT			
Section 98 – Indefinite imprisonment: superior court may impose	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 99 – Other terms not	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
precluded by indefinite imprisonment			
Section 100 – Commencement of indefinite imprisonment.	• Does not affect 1995 Act.	• Affects 1995 Act.	• **Amendments only in 2002 Bill.** • The Explanatory Notes indicate that: • *"Section 100 of the Sentencing Act 1995 outlines when a sentence of indefinite imprisonment commences. The section refers in part to the term "early release order" which are currently parole order, re-entry release orders and home detention orders. With the enactment of the new Sentence Administration Act, and the abolition of home detention orders, section 100 of the Sentencing Act is to be amended so as to only refer to parole or re-entry release orders under the new Act".*
Section 101 – Release from indefinite imprisonment	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 15 - OTHER ORDERS FORMING PART OF A SENTENCE			
Division 1 - General matters			
Section 102 – Principles	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 103 – Disqualification orders: calculation of term	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 104 – Disqualification may	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
be for life			
Division 2 - Disqualification orders			
Section 105 – Driver's licence: disqualification	• Affects 1995 Act	• Does not affect 1995 Act.	• 1999 Act amended the definition of *"motor vehicle offence"* to add a situation where a motor vehicle is used in the commission of the offence and where the commission of an offence is aided or facilitated by the use of a motor vehicle. • This was one of the amendments from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Section 106 – Firearms licence etc: disqualification	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 107 – Marine qualification: disqualification	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 108 – Passport: surrender etc	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 16 - REPARATION ORDERS			
Division 1 - General matters			
Section 109 – Interpretation	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 110 – Principles	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 111 – Making a reparation order	• Affects 1995 Act	• Does not affect 1995 Act.	• 1999 Act includes an additional subsection to empower the Court to make any other order that is necessary to give effect to the reparation order.

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			• This was one of the amendments from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Section 112 – Facts relevant to making an order	• Affects 1995 Act	• Does not affect 1995 Act.	• 1999 Act deleted subsections (3) and (4). • This was one of the amendments from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Section 113 – Victim's behaviour and relationship relevant	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 114 – Civil standard of proof	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 115 – Effect of order on civil proceedings etc	• Affects 1995 Act	• Does not affect 1995 Act.	• 1999 Act added an additional subsection (2a). • This was one of the amendments from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Division 2 - Compensation order			
Section 116 – Interpretation	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 117 – Compensation order in favour of victim	• Affects 1995 Act	• Does not affect 1995 Act.	• 1999 Act deleted subsection (2) and added new subsections (2) and (2a). • This was one of the amendments

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Section 118 – Compensation order in favour of third party	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 119 – Enforcement of compensation order	• Affects 1995 Act	• Does not affect 1995 Act.	• 1999 Act repealed subsection (2) • This was one of the amendments from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Section 119A – Sentencing court may order imprisonment until compensation is paid	• Affects 1995 Act	• Does not affect 1995 Act.	• 1999 Act added this section. • It empowers the court to order an offender to be imprisoned until a compensation order is paid. • This was one of the amendments from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Division 3 - Restitution order			
Section 120 – Court may make restitution order	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 120A – Sheriff's powers to enforce restitution order	• Affects 1995 Act	• Does not affect 1995 Act.	• 1999 Act inserted this section which permits the Sheriff to seize property and deliver it to the victim when a person against whom a restitution order has been

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			made does not comply with the order. • This was one of the amendments from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Section 121 – Enforcing restitution order	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 122 – Non-compliance with restitution order is an offence	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 17 - OTHER ORDERS NOT FORMING PART OF A SENTENCE			
Section 123 – Principles	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 124 – Restraining Orders	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 18 - AMENDING AND ENFORCING CONDITIONAL RELEASE ORDERS AND COMMUNITY ORDERS			
Division 1 - Preliminary			
Section 125 – Interpretation	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 2 - Amending or cancelling conditional release orders and community orders			
Section 126 – Application to amend or cancel	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 127 – Court may confirm, amend or cancel	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 3 - Re-offending while subject to a conditional release order or a community order			
Section 128 – Re-offender may be dealt with or committed	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 129 – Complaint alleging re-offending	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 130 – How re-offender may be dealt with	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
Division 4 - Breaching a conditional release order or a community order			
Section 131 – Breach of requirement: offence	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 132 – Breach of requirement: procedure and penalty	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 133 – Breach of requirement: court's power to deal with	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Division 5 - Miscellaneous			
Section 134 – Facilitation of proof	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 135 – Compliance with CRO or community order to be taken into account	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 136 – Re-sentencing: court's powers	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 19 - ROYAL PREROGATIVE OF MERCY			
Section 137 – Royal Prerogative of Mercy	• Affects1995 Act	• Affects 1995 Act	• The 1995 Act reads: • *"This Act does not affect the Royal Prerogative of Mercy or limit any exercise of it".* • The 1999 Act amends this so that it reads: • *"Neither this Act nor the Sentence Administration Act 1999 affects the Royal Prerogative of Mercy or limits any exercise of it"* • This amendment in the 1999 Act was not proclaimed. • The 2002 Bill reads:

SENTENCING ACT 1995	SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999	SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002	VARIATION
			• *"Neither this Act nor the Sentence Administration Act 2002 affects the Royal Prerogative of Mercy or limits any exercise of it".*
Section 138 – Effect on pardon	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 139 – Governor mat remit order to pay money	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 140 – Petition may be referred to CCA	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 141 – Offender may be paroled	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 142 – Exercise of Royal Prerogative in case of strict security life imprisonment	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
PART 20 - MISCELLANEOUS			
Section 143 – Guideline judgments	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 143A – Sentencing guidelines for courts of summary jurisdiction	• Affects 1995 Act	• Does not affect 1995 Act.	• Section 143A was included in the 1999 Act. It provides that courts of summary jurisdiction may publish sentencing guidelines. • This was one of the amendments from the 1999 Act that was proclaimed. • Therefore, it did not need to be included in the 2002 Bill.
Section 144 – Chief Justice may report to Parliament	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 145 – Failure to comply with	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.

SENTENCING ACT 1995	**SENTENCING LEGISLATION AMENDMENT AND REPEAL ACT 1999**	**SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL 2002**	**VARIATION**
procedural requirements			
Section 146 – Questions of fact in superior courts	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 147 – Operation of other Acts not affected	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 148 – Regulations	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
Section 149 – Rules of court	• Does not affect 1995 Act.	• Does not affect 1995 Act.	• N/A.
		• Does not affect 1995 Act.	• N/A.

NOTES TO THE TABLE

1. The 1999 Act did not introduce amendments to the *Road Traffic Act 1974.*

***ROAD TRAFFIC ACT 1974* AMENDED**			
• N/A	• N/A	• Affects *Road Traffic Act 1974*	• 2002 Bill deletes section 106 of the *Road Traffic Act 1974* and replaces it with sections 106 and 106A. • The Explanatory Notes indicate that the amendments are intended to clarify the relationship between the *Road Traffic Act 1974* and the 1995 Act in relation to what sentencing options are available when dealing with offences under the *Road Traffic Act 1974.*

NOTES TO THE TABLE

1. There is no shading in this table as whilst the transitional provisions are largely the same across both the 1999 Act and the 2002 Bill, they necessarily differ as a result of the different amendments contained in the 1999 Act and the 2002 Bill.
2. As this table relates to transitional provisions that do not amend the 1995 Act this table does not indicate how (if at all) the 1999 Act and 2002 Bills affect the 1995 Act. Rather, the table indicates what differences (if any) occur between the 1999 Act and the 2002 Bill.

TRANSITIONAL PROVISIONS **In 2002 Bill the transitional provisions are located in Schedule 1.** **In the 1999 Act they are located within Part 2, Division 3.**			
N/A.	**Section 22** - Transitional provisions	**Part 2, Division 3** – Transitional and consequential provisions.	• In 2002 Bill the transitional provisions are located in Schedule 1. In the 1999 Act they are located within Part 2, Division 3. A consideration of these provisions follows.
N/A.	**Section 14** - Interpretation	**Clause 1** - Interpretation	• The same except for changes in relation to references to the *Sentence Administration Act 2002* etc to replace the references to the *Sentence Administration Act 1995*.
N/A.	**Section 15** - Sentencing courts to take into account this Part's effect	**Clause 2** - Sentencing courts to take into account the effect of the sentencing amendments.	• The 1999 Act (as amended by the *Sentencing Amendment (Adjustment of Sentences) Act 2000*) provided for a reduction of one third of sentences (with or without parole eligibility). • In the 2002 Bill, there is a more general admonition to ensure that the sentences under the new Act do not create more or less time in custody for offenders. Part of this

			sentence adjustment requires the Court to assume (where it decides to make an offender eligible for parole) that under the old provisions the offender would have been released on parole when they were eligible. • In the 1999 Act if the sentence adjustment provisions would have created a sentence of 6 months or less then this section required another sentencing option to be imposed. • In the 2002 Bill if the sentence adjustment provisions create a sentence of 6 months or less then this section allows a sentence of more than 6 months to be imposed.
N/A.	**Section 16** - Application of *Interpretation Act 1984, s 36*	**Clause 3** - Application of *Interpretation Act 1984, s 36*	• Same.
N/A.	**Section 17** - Community orders imposed before commencement.	**Clause 4** - Community orders imposed before commencement.	• Same.
N/A.	**Section 18** - Sentences of imprisonment imposed before commencement	**Clause 5** - Sentences of imprisonment imposed before commencement	• Same except that the 1999 Act includes reference to parole orders (supervised) which are a feature of the 1999 Act.
N/A.	**Section 19** - Early release orders made before commencement	**Clause 6** - Early release orders made before commencement	• Same.
N/A.	**Section 20** - WROs	**Clause 7** - WROs	• Partially the same. • The 1999 Act included a further provision that if a WRO is cancelled by reason of the person

			having been sentenced to a crime on indictment, the Board must not make another WRO unless satisfied that there are exceptional reasons for making another order. This is not included in the 2002 Bill.
N/A.	**Section 21** - HDOs	**Clause 8** - HDOs	• The 1999 Act did not abolish HDOs. The 2002 Bill abolishes HDOs. Therefore, the 1999 Act contains further transitional clauses relating to HDOs.
N/A.	**Section 22** - Warrants in force at commencement	**Clause 9** - Warrants in force at commencement	• Same.
N/A.	NOT APPLICABLE	**Clause 10** - Community corrections centres	• Clause 10 is required in the 2002 Bill because the 2002 Bill amends the current situation whereby a community corrections centre can be declared by the Governor in Executive Council. • Amendments in the Sentence Administration Bill 2002 provide that the Minister may make the declaration. • There is no equivalent amendment in the 1999 Act. The transitional provisions therefore only relate to the 2002 Bill.
N/A.	**Section 23** - CEO's instructions for community corrections centres	**Clause 11** - CEO's instructions for community corrections centres	• Same.
N/A.	**Section 24** - Parole Board's report	**Clause 12** - Parole Board's report	• Same provisions except 2002 Act

			refers to s110 of the Sentence Administration Act 2002 and not s125 of the Sentence Administration Act 1999.
N/A.	**Section 24A** - Offenders serving sentence of imprisonment imposed before 4 November 1996	**Clause 13** - Offenders serving imprisonment imposed before 4 November 1996	• Same except that the 1999 Act includes reference to parole orders (supervised) which is a feature of the 1999 Act.
N/A.	**Section 25** - Transitional regulations	**Clause 14** - Transitional regulations	• Same except that 2002 Bill has additional sub-clauses. • Sub-clause (4) provides that the Governor may make any regulations that are necessary or convenient for preventing any doubt or difficulty arising as to the application of the sentence adjustment provisions. • Sub-clause (5) provides that if regulations made under this clause provide that a specified state or affairs is to be taken to have existed or not to have existed prior to the publication of the Regulations then the Regulations have effect. • However sub-clause (7) states that sub-clause (5) does not operate so as to prejudicially effect the rights of any person or impose liabilities on any person.

APPENDIX 5

COMPARATIVE TABLE RELATING TO THE SENTENCE ADMINISTRATION BILL 2002

APPENDIX 5

COMPARATIVE TABLE RELATING TO THE SENTENCE ADMINISTRATION BILL 2002

NOTES TO THE TABLE

1. This annotated table is based upon a comparative table of provisions prepared by the Department of Justice for the Committee.

2. Part 7 of the *Sentence Administration Act 1999* was not included in the comparative table prepared by the Department of Justice and is not included in this table. Part 7 relates to Release Programme Orders which are not included in the Sentence Administration Bill 2002.

3. The *Sentence Administration Act 1995* is referred to as the 1995 Act. The *Sentence Administration Act 1999* is referred to as the 1999 Act and the Sentence Administration Bill 2002 is referred to as the 2002 Bill.

4. The shaded areas indicate sections of the 1999 Act that correlate closely to the provisions in the 2002 Bill. Unlike the *Sentencing Legislation Amendment and Repeal Act 1999* none of the provisions of the *Sentence Administration Act 1999* were proclaimed.

5. The "Variation" column does not take into account minor drafting variations or other changes that are not substantive.

SENTENCE ADMINISTRATION ACT 1995	**SENTENCE ADMINISTRATION ACT 1999**	**SENTENCE ADMINISTRATION BILL 2002**	**VARIATION**
Section 3 - This Act to be read with *Sentencing Act 1995*	**Section 3** - This Act to be read with *Sentencing Act 1995*	**Clause 3** - This Act to be read with *Sentencing Act 1995*	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 4 (1) - Interpretation and Abbreviations	**Section 4 (1)** - Interpretation and Abbreviations	**Clause 4 (1)** - Interpretation and Abbreviations	• Apart from minor changes the 1995 Act, 1999 Act and 2002 Bill - same.
Section 4(2) - definitions	**Section 4(2)** – definitions	**Clause 4(2)** - definitions	• Amendments in 2002

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			Bill only. • 3 new definitions in relation to CEO Parole. • New definition of *"Re-Entry Release Order"*. • New definition of *"honorary CCO"*. • Amendment to definition of *"Early Release Order"* to replace references to HDO and WRO with RRO. • Definitions of *"Home Detention Order"* and *"Work Release Order"* omitted.
Section 4(3) - abbreviations	**Section 4(3)** – abbreviations	**Clause 4(3)** - abbreviations	• Home Detention Order and Work Release Order abbreviations omitted in 2002 Bill. • 1999 Act inserted abbreviation for Release Programme Order. This is omitted in 2002 Bill. • New abbreviation for Re-entry Release Order.
Section 6 - Interpretation	**Section 5 -** Interpretation and calculations	**Clause 5 -** Interpretation and calculations	• 1995 Act, 1999 Act and 2002 Bill - same except that 1995 Act refers to *"words and phrases"*

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			and 1999 Act and 2002 Bill refer to *"words and expressions"*.
Section 7 - When a Term begins	**Section 6** - When a Term begins	**Clause 6** - When a Term begins	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 8 - Order of service of fixed terms	**Section 7** - Order of service of fixed terms	**Clause 7 –** Order of service of fixed terms	• 1995 Act, 1999 Act and 2002 Bill - substantially the same. • 1999 Act and 2002 Act have clauses directed to transition of the new Act and the 2002 Bill which are necessary given the changes in relation to abolition of remission and non-parole period lengths. • Also change of phrase *"partly cumulatively"* to *"partly concurrently"* to take into account the changes to section 88.
Section 9 - Effect of escaping from custody	**Section 8** - Effect of not being in custody	**Clause 8** – Effect of not being in custody	• 1999 Act and 2002 Bill the same as the 1995 Act but both add a further sub-clause/subsection in relation to a term not elapsing while a prisoner is not in lawful custody.
Section 10 - Effect of time before an	**Section 9** - Effect of time before an	**Clause 9** – Effect of time before an	• 1995 Act, 1999 Act and

SENTENCE ADMINISTRATION ACT 1995	**SENTENCE ADMINISTRATION ACT 1999**	**SENTENCE ADMINISTRATION BILL 2002**	**VARIATION**
appeal	appeal	appeal	2002 Bill - same.
Section 11 - No release if prisoner in custody for another matter	**Section 10** - No release if prisoner in custody for another matter	**Clause 10** – No release if prisoner in custody for another matter	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 13 - Report to Minister about a person in custody during Governor's pleasure	**Section 11** - Report to Minister about the place of custody for a person in custody during Governor's pleasure	**Clause 11** – Report to Minister about the place of custody for a person in custody during Governor's pleasure	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 14 - Report to Minister about a person in custody	**Section 12** - Report to Minister about a person in custody	**Clause 12** – Report to Minister about a person in custody	• 1999 Act and 2002 Bill the same. • They vary from 1995 Act in subsection/subclause (5). • This has been amended to reflect the new clause 16 which contains the parole considerations. These are to be included in the report.
Section 15 - Operation of this Division	**Section 13** - Operation of this Division	**Clause 13** – Operation of this Division	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 16 – Parole from custody during Governor's pleasure	**Section 14** – Release may be by parole order	**Clause 14** – Release may be by parole order	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 17 – Interpretation (Part 3)	**Section 15** – Interpretation (Part 3)	**Clause 15** – Interpretation (Part 3)	• All contain the statement that words and expressions (*"phrases"* in the 1995 Act) and calculations have the meaning and are to be made in the same way as under Part 13 of the

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			Sentencing Act 1995. • 1999 Act also defined further terms: ➢ *parole considerations* ➢ *parole order* ➢ *parole order (supervised)* ➢ *parole order (unsupervised)* • 2002 Bill has only retained definition of *"parole considerations"* and refers to those set out in clause 16.
Section 18 – Paramount consideration and interpretation	**Section 16** – Release on parole, matters to be considered	**Clause 16** – Release on parole, matters to be considered	• 1999 Act and 2002 Bill the same. • These both set out a list containing matters that are to be considered when considering release on parole. • The 1995 Act only referred to giving *"paramount consideration to the protection and interest of the community"*.
Section 19 (1)-(3) – Report to Board about prisoner serving parole term	**Section 17** – Parole term, CEO to report to Board about prisoner.	**Clause 17** – Parole term, CEO to report to Board about prisoner.	• The 1995 Act requires the CEO to report to the Parole Board in relation to a prisoner serving a

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			"special term". In relation to other prisoners the CEO may report <u>if</u> there are circumstances that justify doing so. • The report must be given on or before the date the prisoner is eligible for parole. • The 1999 Act and 2002 are substantially the same. • The 1999 Act requires the CEO to provide a written report in relation to prisoners serving a parole term of at least 12 months. • The report must be given to the Board a reasonable time before the date when the prisoner is eligible to be released. • The 2002 Bill requires the CEO to provide a written report in relation to prisoners serving a parole term (not CEO Parole). • The report must be given

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			to the Board a reasonable time before the date when the prisoner is eligible to be released.
Section 19(4) definition of "special term for the purposes of the section.	NOT APPLICABLE	NOT APPLICABLE	• This is deleted in 1999 Act and 2002 Bill.
Section 20 – Periodic reports to Minister about prisoner serving life term or indefinite imprisonment	**Section 18** – Life term or indefinite imprisonment, Board to report periodically to Minister about prisoner	**Clause 18** – Life term or indefinite imprisonment, Board to report periodically to Minister about prisoner	• 1999 Act and 2002 Bill are the same. • 1999 Act and 2002 Bill differ from the 1995 Act in that there is reference to *"parole considerations"* being addressed in the report (reflecting the new clause 16). • These replace the considerations that are specified in the 1995 Act.
NOT APPLICABLE (As there is no Parole for term less than 12 months)	**Section 19** – Interpretation (for Part 3 Division 3 which relates to Parole where term is less than 12 months)	**Clause 22** - Application (for Part 3, Division 4 which relates to Parole in cases of short term)	• The 1995 Act has no provision for parole where the term is less than 12 months. • The 1999 Act defines *"prisoner"* for the Division as a prisoner serving a term of less than 12 months. • The 2002 Bill indicates

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			that the Division applies to a prisoner serving one term of less than 12 months which is not a prescribed term. • There is also a clause about aggregated terms less than 12 months.
NOT APPLICABLE (No Parole for term less than 12 months)	**Section 20** – Board to parole prisoner	**Clause 23** – CEO may parole prisoner	• The 1995 Act has no provision for parole where the term is less than 12 months. • 1999 Act provides that the Board must make a parole order (unsupervised) in respect of a prisoner serving a term less than 12 months. • The release date is that calculated under section 93(1) of the *Sentencing Act 1995* which was amended by the 1999 Act to be half of the term. However, this Act was not proclaimed. • The *"parole period"* is defined such that the prisoner is on parole for the balance of the term.

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			• The 2002 Bill introduces CEO parole for prisoners serving less than 12 months. • The CEO has discretion in relation to ordering parole for prescribed prisoners only. • A parole order must be made in relation to all other prisoners. • Eligibility for parole arises after the prisoner has served one half of the term. • The considerations in new clause 16 apply in determining whether a CEO parole order is to be supervised or unsupervised. • The *"parole period"* is defined such that the prisoner is on parole for the balance of the term.
NOT APPLICABLE (No Parole for term less than 12 months)	NOT APPLICABLE (No CEO Parole and no discretion in relation to parole where less than 12 months)	**Clause 24** – Prisoner to be notified of postponement or refusal of parole	• The 2002 Bill requires a prisoner serving a prescribed term to be notified in writing of the reasons for the refusal of

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			parole and the ability to make submissions to the CEO. • CEO can refuse to provide reasons to the prisoner in the interests of any person or the public. • The 1995 Act has no provision for parole where the term is less than 12 months. • The 1999 Act provides that parole (unsupervised) must be ordered. Therefore there is no discretion in relation to parole.
Section 21 – Board to parole prisoner (Part 3, Division 3 – Paroling prisoner serving parole term (term greater than 12 months)	**Section 22** – Board may parole prisoner (Part 3, Division 4 – Parole where term is at least 12 months)	**Clause 20** – Board may parole prisoner (Part 3, Division 3 – Parole in case of parole term (term greater than 12 months)	• 1995 Act provides that the Board must make a parole order (subject to section 26). • The release date is determined by section 93 which is the current two-tier formula. • The parole period is calculated under section 22. • The 1999 Act and the

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			2002 Bill are substantially the same. • Under the 1999 Act and the 2002 Bill, the Parole Board is now required to consider whether to make a parole order after taking into account a number of matters. • The release date was determined by section 93 which in the 1999 Act and 2002 Bill is after half of the term is served. • The parole period ends when the term ends. • The 1999 Act had a clause relating to supervised and unsupervised parole. This is not included in the 2002 Bill.
Section 22 – Parole period	**Section 22(5)** is the equivalent clause.	**Clause 20(4)** is the equivalent clause.	• In summary, the 1995 Act defines this to be one third of the sentence up to a maximum of 2 years. • The 1999 Act and 2002 Bill provide that the prisoner is on parole until the end of the term.

SENTENCE ADMINISTRATION ACT 1995	**SENTENCE ADMINISTRATION ACT 1999**	**SENTENCE ADMINISTRATION BILL 2002**	**VARIATION**
			• The 1999 Act also makes reference to the supervised and unsupervised portion of the parole period. This is not included in the 2002 Bill.
Section 23 – Life imprisonment: Governor may parole prisoner	**Section 24** – Life imprisonment, Governor may parole prisoner	**Clause 25** – Life imprisonment, Governor may parole prisoner	• All the same except 1999 Act has an additional subsection indicating that the parole order must be a parole order (supervised).
Section 24 – Strict security life imprisonment: Governor may parole prisoner	**Section 25** – Strict security life imprisonment, Governor may parole prisoner	**Clause 26** – Strict security life imprisonment, Governor may parole prisoner	• All the same except 1999 Act has an additional subsection indicating that the parole order must be a parole order (supervised).
Section 25 – Indefinite imprisonment: Governor may parole prisoner	**Section 26** – Indefinite imprisonment, Governor may parole prisoner	**Clause 27** – Indefinite imprisonment, Governor may parole prisoner	• Substantially the same. • 1999 Act has an additional subsection requiring the parole order to be a parole order (supervised). • The 1999 Act and 2002 Bill have increased the ....)()()() [illegible]
NOT APPLICABLE	**Section 27** – Parole order	NOT APPLICABLE	• Neither the 1995 Act nor

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
	(unsupervised), nature of		the 2002 Bill use include the concept of *"unsupervised parole"* as used in the 1999 Act.
Section 26 – Board may postpone, defer or refuse parole	NOT APPLICABLE	NOT APPLICABLE	• This section has been omitted in the 1999 Act and 2002 Bill. • This section in the 1995 Act allows the Board to defer, postpone or refuse a parole order if there are *"special circumstances"*. This is to be considered with section 21 of the 1995 Act which provides that the Board must order parole subject to section 26. • Given the amendments (see above) in the 1999 Act and 2002 Bill to the effect that the Board may order parole in certain circumstances, this clause does not appear necessary.
Section 27 – Prisoner to be notified of postponement etc	**Section 23** – Prisoner to be notified of postponement or refusal of parole	**Clause 21** – Prisoner to be notified of postponement or refusal of parole	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 28 – Effect of Board deferring or refusing parole	**Section 22(6)**	**Clause 20(5)**	• 1995 Act, 1999 Act and 2002 Bill - same.

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
Section 29 – Prisoner may refuse to be released on parole	**Section 33** – Prisoner may refuse to be released on parole	**Clause 33** – Prisoner may refuse to be released on parole	• 1995 Act and 1999 Act are the same. • The 2002 Bill varies the earlier provisions to provide that, for a CEO parole matter, notice of the refusal goes to the CEO rather than the Board. • Further, the reference to a prisoner later being able to give notice that they wish to be released is omitted. However, clause 35 refers to a prisoner subsequently giving written notice that they wish to be released on parole.
Section 30 – Parole order: nature of **Section 30 (3)** – relates to a parole order relating to more than one term	**Section 28** – Parole order (supervised), nature of **Section 32** – Parole order may relate to more than one parole term	**Clause 28** – Parole order, nature of **Clause 32** – Parole order may relate to more than one term	• 1999 Act and 2002 Bill are substantially the same. Both Acts provide that a portion of the parole period is *"supervised parole"*. The 1999 Act and 2002 Bill also set out provisions relating to the calculation of one third of the term and the length of the

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			supervised period of the parole order. • The portion that is to be supervised is calculated using the Table to the section/clause. • The Table in the 1999 Act refers to parole terms of greater and less than 72 months. The Table in the 2002 Bill refers to parole terms of greater and less than 48 months. • The requirements of the parole order correlate substantially to the 1995 Act but also require the prisoner to acknowledge in writing that he or she understands general effect of Part 5 Divisions 2 and 3 (in relation to the 2002 Bill) and Divisions 2, 3 and 4 of Part 6 (in relation to the 1999 Act) which relate to the automatic cancellation and the consequences of cancellation and suspension of parole.

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			• The reference to offenders complying with the provisions of section 76 is omitted in the 1999 Act and 2002 Bill but included in clauses 29 & 30 instead. (see below)
Section 31- Parole order: standard obligations	**Section 29** - Parole order (supervised), standard obligations	**Clause 29** - Parole order, standard obligations	• Substantially the same. • 1999 Act refers to supervised parole. • 1999 Act and 2002 Bill include reference to further offender obligations in section 89 and clause 74 respectively. In the 1995 Act these are included as part of section 30.
Section 32 – Parole order: additional requirements	**Section 30** – Parole order (supervised), additional requirements	**Clause 30** – Parole order, additional requirements	• All three substantially the same. • The 1999 Act and the 2002 Bill are the same except that the 1999 Act relates to supervised parole. • They add to the 1995 Act requirements in relation to the protection of victims, prisoners

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			wearing monitoring devices and offenders undertaking community corrections activities, employment vocational training or gratuitous work.
Section 33 – Prisoner's undertaking	**Section 34** – Prisoner's acknowledgment or undertaking **Section 35** – Making a parole order after refusal by prisoner	**Clause 34** – Prisoner's acknowledgment or undertaking **Clause 35** – Making a parole order after refusal by prisoner	• 1995 Act, 1999 Act and 2002 Bill – substantially the same. • The drafting differences in the 2002 Bill are to take account of CEO parole.
Section 34 – CEO to ensure parolee is supervised	**Section 31** – CEO to ensure parolee is supervised	**Clause 31** – CEO to ensure parolee is supervised during supervised period	• 1995 Act, 1999 Act and 2002 Bill - substantially the same. • The differences in the drafting in the 2002 Bill are to take account of CEO parole.
• *Clauses 36 to 47 relate to the amendment, cancellation and suspension of parole orders. These correlate to sections 35 to 44 of the 1995 Act which are contained in Division 7 of Part 3.* • *The provisions of the 1995 Act has been re-arranged in the 2002 Bill*	• *Clauses 36 to 47 relate to the amendment, cancellation and suspension of parole orders. These correlate to sections 35 to 44 of the 1995 Act which are contained in Division 7 of Part 3.* • *The provisions of the 1995 Act has been re-arranged in the 2002 Bill*	• *Clauses 36 to 47 relate to the amendment, cancellation and suspension of parole orders. These correlate to sections 35 to 44 of the 1995 Act which are contained in Division 7 of Part 3.* • *The provisions of the 1995 Act*	

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
and there are separate Divisions that relate to amendment, suspension and cancellation.	*and there are separate Divisions that relate to amendment, suspension and cancellation.*	*has been re-arranged in the 2002 Bill and there are separate Divisions that relate to amendment, suspension and cancellation.*	
Section 35 – Amendment or cancellation before release	**Section 36** – Amending before release **Section 43** – Cancellation before release	**Clause 36 -** Amending before release **Clause 43** – Cancellation before release	• 1995 Act, 1999 Act and 2002 Bill –substantially the same. • The 1995 Act combines amendment and cancellation in the one section. The 1999 Act and the 2002 Bill separate them. • The 2002 Bill has drafting amendments to take account of CEO Parole. • The 1995 Act provides for written notice of the decision to be provided to the prisoner and for the prisoner to be able to make written submissions about a cancellation of parole. • Clause 45 of the 2002 Bill (section 45 of the 1999 Act) sets out similar requirements in

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			relation to the cancellation of a parole order. • The 2002 Bill also contains a provision relating to CEO parole.
Section 36 – CEO may suspend parole during parole period	**Section 38** – Suspension by CEO during supervised period	**Clause 38** – Suspension by CEO during supervised period	• 1995 Act, 1999 Act and 2002 Bill – substantially the same. • The 1999 Act and the 2002 Bill provide that written notice of a CEO decision to suspend must be given to the Board within 3 working days after the decision rather than *as soon as practicable* which is the requirement in the 1995 Act. • The 2002 Bill includes a clause that indicates it does not apply to CEO parole.
Section 37 – Board may amend, suspend or cancel parole during parole period	**Section 37** – Board may amend parole order, during supervised period **Section 39** – Suspension by Board during supervised period.	**Clause 37** – Amendment of parole order during supervised period. **Clause 39** – Suspension by Board during supervised period.	• The section in the 1995 Act is a short empowering clause defining the powers of the Board to amend,

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
	Section 44 – Cancellation by Board	**Clause 44** – Cancellation by Board or CEO	suspend or cancel a parole order. • The power to amend, suspend and cancel are in different clauses/sections in the 1999 Act and 2002 Bill. • In relation to the power to amend a parole order, the relevant clause/section in the 1999 Act and 2002 Bill sets out that written notice of the decision to amend must be given to the prisoner. This reflects section 38 of the 1995 Act. • The 2002 Bill contains an additional clause to make separate provision for CEO Parole. • In relation to the power to cancel a parole order, the 1999 Act contains an additional provision that the Board's power to cancel includes the power to cancel a parole order if during the parole

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			period the prisoner *"is charged with or convicted of an offence."* • In the 2002 Bill this has been amended again to indicate that the Board's power to cancel cannot be exercised after the supervised period *unless* the prisoner is *"charged with or convicted of an offence."* • Further, in relation to CEO Parole, the CEO's power to cancel cannot be exercised *unless* during the parole period the prisoner is *"charged with or convicted of an offence."*
Section 38 – Amendment by Board	**Section 37** - Board may amend parole order during supervised period	**Clause 37** - Amendment of Parole Order during supervised period	• Section 38 of the 1995 Act is now contained in section/clause 37 of the 1999 Act and 2002 Bill. • The 2002 Bill contains a provision related to CEO parole.
Section 39 - Suspension by CEO or Board	**Section 40** - Period of suspension **Section 41** - Suspension, effect on other	**Clause 40** - Period of suspension **Clause 41** - Suspension, effect on	• The clauses contained in section 39 of the 1995 Act have been re-drafted

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
	parole orders **Section 42** - Prisoner to be notified	other parole orders **Clause 42 -** Prisoner to be notified	and set out in three separate clauses/sections in the 2002 Bill and 1999 Act namely clauses/sections 40, 41 and 42. Apart from the re-arrangement of the material they are, in substance, the same. • The 2002 Bill also contains additional clauses that relate to CEO Parole.
Section 40 – Cancellation by Board	**Section 46** – Cancellation, effect on other parole orders **Section 45** - Cancellation, prisoner to be notified	**Clause 46** – Cancellation, effect on other parole orders **Clause 45** - Cancellation, prisoner to be notified	• The provisions of section 40 of the 1995 Act are set out over 2 sections/clauses in the 1995 Act and 2002 Bill namely section/clause 45 and 46. • The 1999 Act and 2002 Bill require notice of cancellation to be given to the prisoner as soon as practicable. • The 1995 Act requires notice to be given as soon as practicable *after the prisoner is returned to custody*.

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			• The 2002 Bill contains further clauses in relation to CEO parole.
Section 41 – Amendment etc of parole orders made by the Governor	**Section 47** – Parole ordered by Governor, Minister to be advised of amendment, suspension or cancellation	**Clause 47** – Parole ordered by Governor, Minister to be advised of amendment, suspension or cancellation	• 1995 Act, 1999 Act and 2002 Bill - same except for changes to take account of the re-working of the Division in relation to changes to parole orders.
Section 42 – Board may re-release after parole cancelled	**Section 78** – Re-release after cancellation of order made by Board or CEO	**Clause 70** – Re-release after cancellation of order made by Board or CEO	• The 1999 Act includes a clause to the effect that after the cancellation of an early release order on the basis of re-offending in relation to a crime tried on indictment, another early release order could not be made unless there were exceptional reasons. • This does not appear in the 2002 Bill or the 1995 Act. • There are other differences to take into account the different meaning of *"parole period"* under the different Acts and the

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			Bill. • Otherwise the provisions are similar.
Section 43 – Governor may re-release after parole cancelled.	**Section 79** – Re-release after cancellation of parole order made by Governor	**Clause 71** – Re-release after cancellation of parole order made by Governor	• 1995 Act, 1999 Act and 2002 Bill - substantially the same.
Section 44 – Period on parole under new parole order deemed to be time served	**Section 80** – Parole period under new parole order deemed to be time served	**Clause 72** – Parole period under new parole order deemed to be time served	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 45 – Resolution of doubtful cases	**Section 48** – Resolution of doubtful cases	**Clause 48** – Resolution of doubtful cases	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 46 – Certain prisoners may apply to Board for WRO	**Section 49** – Certain prisoners may apply to Board for WRO	**Clause 49** – Certain prisoners may apply to Board for RRO	• 1995 Act, 1999 Act and 2002 Bill - same except that the 2002 Bill refers to RROs and not WROs.
Section 47 – CEO to report to Board about prisoners who apply for WRO	**Section 50** – CEO to report to Board about WRO applicants	**Clause 50** – CEO to report to Board about RRO applicants	• 1995 Act, 1999 Act and 2002 Bill - same except that the 2002 Bill refers to RROs and not WROs.
Section 48 – Board to decide whether to make a WRO	**Section 51** – Board may make a WRO	**Clause 51** – Board may make a RRO	• 1995 Act, 1999 Act and 2002 Bill - substantially the same. • The 2002 Bill refers to RRO not WRO. • The 1999 Act and the 2002 Bill refer to an order only being made if the Board is satisfied that the prisoner would pose a *"low risk"* rather than

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			"minimum risk". • The 1999 Act refers to the fact that a RPO has been previously made does not prevent a WRO being made. • The 1995 Act indicates that the fact that a WRO has previously been cancelled does not prevent another being made. • There is no equivalent in the 2002 Bill.
Section 49 – Prisoner to be notified of refusal to make WRO	**Section 52** – Prisoner to be notified of refusal to make WRO	**Clause 52** – Prisoner to be notified of refusal to make RRO	• 1995 Act, 1999 Act and 2002 Bill - same except that the 2002 Bill refers to RRO and not WRO.
Section 50 – WRO: nature of	**Section 53** – WRO, nature of	**Clause 53** – RRO, nature of	• The 1999 Act and 2002 Bill are the same except that the 2002 Bill refers to RRO and not WRO. • They are substantially the same as the 1995 Act but omit reference to it being a condition of a WRO that if a prisoner commits an offence and is sentenced to imprisonment then the

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			WRO is cancelled and in every other case may be cancelled. • Clause 65 of the 2002 Bill applies this to all early release orders (which include RROs)
Section 51 – WRO: standard obligations	**Section 54** – WRO, standard obligations	**Clause 54** – RRO, standard obligations **Clause 55** – RRO, primary requirements	• 1995 Act, 1999 Act and 2002 Bill –substantially the same. • The 2002 Bill refers to RROs and not WROs. • The 2002 Bill omits reference in the standard obligations to undertaking gainful employment or vocational training but includes clause 55. • Clause 55 sets out that the prisoner must undertake either of these obligations or activities that will facilitate their re-entry into the community. • In addition, the CCO can direct the prisoner to do other activities that will facilitate re-entry.

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
Section 52 – WRO: additional requirements	**Section 55** – WRO, additional requirements	**Clause 56** – RRO, additional requirements	• 1995 Act, 1999 Act and 2002 Bill - same except that the 2002 Bill refers to RRO and not WRO.
Section 53 – Prisoner's undertaking	**Section 56** – Prisoner's undertaking	**Clause 57** – Prisoner's undertaking	• 1995 Act, 1999 Act and 2002 Bill - same except that the 2002 Bill refers to RRO and not WRO.
Section 54 – Prisoner may be paroled or returned to custody after WRO	**Section 57** – Prisoner may be paroled or returned to custody after WRO	**Clause 58** – Prisoner may be paroled or returned to custody after RRO	• 1995 Act, 1999 Act and 2002 Bill - same except that the 2002 Bill refers to RRO and not WRO.
Section 55 – Board or CEO may suspend WRO **Section 56** – CEO may suspend WRO or refer case to Board or both **Section 57** – Suspension by Board or CEO	**Section 58** - Suspension by Board or CEO	**Clause 59** - Suspension by Board or CEO	• 1999 Act and 2002 Bill are the same except for the reference to WRO being changed to RRO. • The 1999 Act and the 2002 Bill combine sections 55, 56 and 57 of the 1995 Act into one provision.
Section 58 – Board may cancel WRO	**Section 60** – Cancellation by Board **Section 61** – Cancellation, prisoner to be notified	**Clause 61** – Cancellation by Board **Clause 62** – Cancellation, prisoner to be notified	• 1995 Act, 1999 Act and 2002 Bill - same except that 1999 Act and 2002 Bill have an additional section/clause stating that without limiting the power in the section or in a later section relating to the cancellation of early

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			release orders, the Board may cancel a WRO if, during the period of the order, the prisoner is *"charged with or convicted or an offence"*.
Section 59 – Certain prisoners may apply to CEO for HDO and CEO may make HDO	**Section 62** – Certain prisoners may apply to CEO for HDO **Section 63** – CEO may make HDO	NOT APPLICABLE - ABOLISHED	• HDOs are abolished in the 2002 Bills.
Section 60 – HDO: nature of	**Section 64** – HDO, nature of	NOT APPLICABLE – ABOLISHED	• HDOs are abolished in the 2002 Bills.
Section 61 – HDO: standard obligations	**Section 65** – HDO, standard obligations	NOT APPLICABLE – ABOLISHED	• HDOs are abolished in the 2002 Bills.
Section 62 – HDO: additional requirements	**Section 66** – HDO, additional requirements		• HDOs are abolished in the 2002 Bills.
Section 63 – Powers of CCO in relation to HDO	**Section 67** – CCO's powers in relation to home detention	NOT APPLICABLE – ABOLISHED	• HDOs are abolished in the 2002 Bills.
Section 64 – CEO may amend, suspend or cancel HDO	Power in section 64 of the 1995 Act contained in sections below	NOT APPLICABLE – ABOLISHED	• HDOs are abolished in the 2002 Bills.
Section 65 – Amendment by CEO	**Section 68** – Amendment by CEO	NOT APPLICABLE – ABOLISHED	• HDOs are abolished in the 2002 Bills.
Section 66 – Suspension by CEO	**Section 69** – Suspension by CEO	NOT APPLICABLE – ABOLISHED	• HDOs are abolished in the 2002 Bills.
Section 67 – Cancellation by CEO	**Section 70** - Cancellation by CEO	NOT APPLICABLE - ABOLISHED	• HDOs are abolished in the 2002 Bills.
Section 68 – Period of early release order counts as time served	**Section 71** – Period of early release order counts as time served	**Clause 63** – Period of early release order counts as time served	• 1995 Act, 1999 Act and 2002 Bill - same except that 1999 Act contains a

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			clause that relates to unsupervised parole orders
Section 69 – Effect of suspension	**Section 74** – Suspension, effect of	**Clause 66** – Suspension, effect of	• 1995 Act, 1999 Act and 2002 Bill - same except that the 2002 Bill in sub-clause (1) omits the words *"or the early release order is cancelled"*.
Section 70 – Offending while on early release order: automatic cancellation	**Section 73** – Cancellation automatic if prisoner imprisoned for offence committed on early release order	**Clause 65** – Cancellation automatic if prisoner imprisoned for offence committed on early release order	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 71 – Effect of cancellation	**Section 75** – Cancellation, effect of	**Clause 67** – Cancellation, effect of	• 1995 Act, 1999 Act and 2002 Bill - same except that 1995 Act makes separate provision for WRO (abolished in 2002 Bill). • In addition 1999 Act has in subsection (1) the following words *"despite in the case of a parole term, section 93(1) of the Sentencing Act 1995"*.
Section 72 – Returning prisoner to custody	**Section 76** – Returning prisoner to custody	**Clause 68** – Returning prisoner to custody	• 1995 Act, 1999 Act and 2002 Bill - same except that 2002 Bill has an additional clause which provides that the arrest of

SENTENCE ADMINISTRATION ACT 1995	**SENTENCE ADMINISTRATION ACT 1999**	**SENTENCE ADMINISTRATION BILL 2002**	**VARIATION**
			the prisoner, in relation to the suspension of an order can only take place during the period of the order.
Section 73 – Clean street time counts as time served	**Section 77** – Clean street time counts as time served	**Clause 69** – Clean street time counts as time served	• 1995 Act, 1999 Act and 2002 Bill - same except that 1995 Act includes a separate clause in relation to WROs. These are abolished in the 2002 Bill.
Section 74 – Prisoner under sentence until discharged	**Section 72** – Prisoner under sentence until discharged	**Clause 64** – Prisoner under sentence until discharged	• 1995 Act, 1999 Act and 2002 Bill - same except that 1995 and 1999 Acts refer to WROs and HDOs. • There is no such provision in 2002 Bill as HDOs are abolished. • Further, the reference to WRO has been changed to RRO in the 2002 Bill.
NOT APPLICABLE	PART 7 OF *SENTENCE ADMININSTRATION ACT 1999* IS NOT INCLUDED IN THIS TABLE AS IT RELATES TO "RELEASE PROGRAMME ORDERS" (SECTIONS 81-87) WHICH DO NOT APPEAR IN 1999 ACT OR 2002 BILL.	NOT APPLICABLE	NOT APPLICABLE

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
Section 75 – Interpretation	**Section 88** – Interpretation	**Clause 73** – Interpretation	• 1995 Act, 1999 Act and 2002 Bill - same except the definitions of *"community corrections order"* vary across the Acts and the 2002 Bill to take into account the types of orders under those Acts. For example there is reference to a RPO in 1999 Act and a RRO in 2002 Bill. • Further the 2002 Bill removes the definition of *"offender"* and only includes it in the relevant sections.
Section 76 – Offender's obligations	**Section 89** – Offender's obligations	**Clause 74** – Offender's obligations	• 1995 Act, 1999 Act and 2002 Bill - same except that 1999 Act and 2002 Bill refer to offenders complying with *"written instructions"* rather than *"rules"* as appears in 1995 Act. This takes into account an amendment in clause 84.
Section 77 – Consequences of contravening the obligations	**Section 90** – Consequences of contravening the obligations	**Clause 75** – Consequences of contravening the obligations	• 1995 Act, 1999 Act and 2002 Bill - same except

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			each Act and the 2002 Bill refers to different orders available under each Act such as WROs and RROs.
Section 78 – CEO may suspend requirements in case of illness etc	**Section 91** – CEO may suspend requirements in case of illness etc	**Clause 76** – CEO may suspend requirements in case of illness etc	• 1995 Act, 1999 Act and 2002 Bill - same except for the following: ➢ The time frame that an offender may be permitted to not comply with a community order and a WDO has been extended in the 1999 Act and the 2002 Bill to 12 weeks from 8 weeks in the 1995 Act. ➢ The 1999 Act makes provision for a RPO. ➢ The definition of *"minimum hours"* has been varied to take account of the different orders under each of the Acts.
Section 79 – Community service requirement: offender may be directed to do activities	**Section 92** – Community service requirement, offender may be directed to do activities	**Clause 77** – Community service requirement, offender may be directed to do activities	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 80 – Programme requirement: offender may be directed to do other	**Section 93** – Programme requirement	**Clause 78** – Programme requirement	• 1995 Act, 1999 Act and 2002 Bill - same except

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
programmes			2002 Bill includes reference to a pre-sentence order.
Section 81 – Compensation for injury	**Section 94** – Compensation for injury	**Clause 79** – Compensation for injury	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 82 – Regulations	**Section 95** – Regulations	**Clause 80** – Regulations	• 1995 Act, 1999 Act and 2002 Bill - same except that 1999 Act and 2002 Bill omit reference to the making of regulations to authorise and regulate the taking of blood and urine samples from an offender. The Explanatory Notes indicate that advice was received from the Crown Solicitor to the effect that there was a potential for conflict between this clause and other provisions in the Act. Therefore it has been omitted.
Section 83 – Interpretation	**Section 96** – Interpretation	**Clause 81** – Interpretation	• 1995 Act, 1999 Act and 2002 Bill - same except the meaning of *"community corrections order"* varies in each Act and the 2002 Bill

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			depending on the orders available under that Act.
Section 84 – Community corrections centres	**Section 97** – Community corrections centres	**Clause 82** – Community corrections centres	• 2002 Bill varies from the 1995 and 1999 Acts. • It provides for the Minister to declare, amend or cancel places as community corrections centres. The 1995 and 1999 Acts vest this power in the Governor in Executive Council. The Explanatory Notes state that in practice the Governor exercises this power on a fairly frequent basis and the change is being made as the declaration of such places is not considered to be significant enough to warrant referral to the Governor in Executive Council.
Section 85 – Community corrections activities	**Section 98** – Community corrections activities	**Clause 83** – Community corrections activities	• 1995 Act, 1999 Act and 2002 Bill - same except that 1999 Act and 2002 Bill extend the activities to programmes for

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			people who abuse other substances (apart from drugs and alcohol) and to those addicted to gambling.
Section 86 – CEO may make rules	**Section 99 -** CEO may issue written instructions	**Clause 84**– CEO may issue written instructions	• 1995 Act, 1999 Act and 2002 Bill - same except that 1999 Act and 2002 Bill refers to written instructions and not rules
Section 87 – Supervisors of centres	**Section 100** – Supervisors of centres	**Clause 85** – Supervisors of centres	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 88 – Functions of CCOs at centres	**Section 101** – Functions of CCOs at centres	**Clause 86** – Functions of CCOs at centres	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 89 – Access to centres	**Section 102** – Access to centres	**Clause 87** – Access to centres	• 1995 Act, 1999 Act and 2002 Bill - same except that 1999 Act and 2002 Bill refer to written instructions rather than rules in sub-clause (subsection) 4(a).
Section 90 – Searches	**Section 103** – Searches	**Clause 88**– Searches	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 91 – Seizure	**Section 104** – Seizure	**Clause 89** – Seizure	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 92 – Department to report on centres	**Section 105** – Department to report on centres	**Clause 90** – Department to report on centres	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 93 – Regulations	**Section 106** – Regulations	**Clause 91**– Regulations	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 94 – Functions	**Section 107**– Functions	**Clause 92**– Functions	• 1995 Act, 1999 Act and

SENTENCE ADMINISTRATION ACT 1995	**SENTENCE ADMINISTRATION ACT 1999**	**SENTENCE ADMINISTRATION BILL 2002**	**VARIATION**
			2002 Bill - same except for variations to take into account the types of orders the CEO is to administer under each Act and the Bill. For example RPOs are referred to in 1999 Act and pre-sentence orders are referred to in 2002 Bill.
Section 95 – Delegation	**Section 108** – Delegation	**Clause 93** – Delegation by CEO	• 2002 Bill differs from 1999 Act and 1995 Act. • In the 2002 Bill, there are additional clauses stating that: ➢ the delegation must be in writing and the power or duty cannot be delegated by the delegate. ➢ A person exercising or performing a power or duty that has been delegated is taken to do so in accordance with the terms of the delegation unless the contrary is shown ➢ Nothing in the section limits the ability of the

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			CEO to perform a function through an officer or agent.
Section 96 – CEO may confer functions of CCO on person	**Section 109** – CEO may confer functions of CCO on person	**Clause 94** – CEO may confer functions of CCO on person	• Same in 1999 and 1995 Acts. • 2002 Bill is drafted slightly differently to state that a CCO includes a reference to a person on whom a function has been so conferred.
Section 97 – CEO to notify Board of certain breaches	**Section 110** – CEO to notify Board of certain breaches	**Clause 95** – CEO to notify Board of certain breaches	• 1995 Act, 1999 Act and 2002 Bill - same except 2002 Bill excludes CEO parole from the operation of this section.
Section 98 – Appointment	**Section 111** – Appointment	**Clause 96** – Appointment	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 99 – Volunteers	**Section 112** – Volunteers	**Clause 97** – Volunteers	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 100– Compensation for injury	**Section 113**– Compensation for injury	**Clause 98**– Compensation for injury	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 101 – Assistance by police officers	**Section 114** – Assistance by police officers	**Clause 99** – Assistance by police officers	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 102 – Parole Board established	**Section 115** – Parole Board established	**Clause 100** – Parole Board established	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 103 – Membership	**Section 116** – Membership	**Clause 101** – Membership	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 104 – Secretary	**Section 117** – Secretary	**Clause 102** – Secretary	• 1995 Act, 1999 Act and

SENTENCE ADMINISTRATION ACT 1995	**SENTENCE ADMINISTRATION ACT 1999**	**SENTENCE ADMINISTRATION BILL 2002**	**VARIATION**
			2002 Bill - same.
Section 105 - Schedule 1 applies	**Section 118** - Schedule 1 applies	**Clause 103** - Schedule 1 applies	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 106 – Functions	**Section 119** – Functions	**Clause 104** – Functions	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 107 – Board to have powers of Royal Commission	**Section 120** – Board to have powers of Royal Commission	**Clause 105** – Board to have powers of Royal Commission	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 108 – Orders by Board	**Section 121** – Orders by Board	**Clause 106** – Orders by Board	• The 2002 Bill varies from the 1995 and 1999 Acts. • These Acts allow the secretary or a member to sign a notice of decision and make parole orders except for parole terms of a *"prescribed class"*. • These powers are now given to an *"authorised person"* which is defined to include a member, the secretary or a departmental officer.
Section 109 – Board may require prisoner to appear before Board	**Section 122** – Board may require prisoner to appear before it	**Clause 107** – Board may require prisoner to appear before it	• 1995 Act, 1999 Act and 2002 Bill - same except the provisions vary across the Acts and the 2002 Bill to take account of the different orders that are available under each Act and the 2003

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			Bill. • It is noted that the 1999 Act omitted the word *"suspended"* in subsection (3) but this is included again in the 2002 Bill.
Section 110 – Issue of warrants by Board	**Section 123** – Issue of warrants by Board	**Clause 108** – Issue of warrants by Board	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 111 – Judicial notice of appointment and signature	**Section 124**– Judicial notice of appointment and signature	**Clause 109** – Judicial notice of appointment and signature	• 1995 Act, 1999 Act and 2002 Bill - same except the provisions vary across the Acts and the 2002 Bill to take account of the different orders that are available under each Act and the 2002 Bill.
Section 112 – Annual Report to Minister	**Section 125** – Annual Report to Minister	**Clause 110** – Annual Report to Minister	• 1995 Act, 1999 Act and 2002 Bill - same except 2002 Bill does not require Parole Board Annual Report to include reference to CEO parole orders.
Section 113 – Special reports to Minister	**Section 126** – Special reports to Minister	**Clause 111** – Special reports to Minister	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 114 – Reasons for decision may be withheld	**Section 127** – Reasons for decision may be withheld	**Clause 112** – Reasons for decision may be withheld	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 115 – Exclusion of rules of	**Section 128** – Exclusion of rules of	**Clause 113** – Exclusion of rules of	• 1995 Act, 1999 Act and

SENTENCE ADMINISTRATION ACT 1995	**SENTENCE ADMINISTRATION ACT 1999**	**SENTENCE ADMINISTRATION BILL 2002**	**VARIATION**
natural justice	natural justice	natural justice	2002 Bill - same except 2002 Bill is expanded to include reference to actions by *"authorised persons"* to take into account amendments in clause 106.
NOT APPLICABLE	**Section 129** – Arrest warrant may be issued if warrant of commitment in force	**Clause 114** – Arrest warrant may be issued if warrant of commitment in force	• Same in 1999 Act and 2002 Bill. • Not in 1995 Act. • Explanatory Notes indicate that it has been included on the basis of advice from Crown Solicitor's Office.
Section 116 – Issue and execution of warrants	**Section 130** – Issue and execution of warrants	**Clause 115** – Issue and execution of warrants	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 117 – Monitoring equipment	**Section 131** – Monitoring equipment	**Clause 116** – Monitoring equipment	• 1995 Act, 1999 Act and 2002 Bill - same except that in 1999 Act and 2002 Bill the penalty has been increased from $6,000.00 or 12 months imprisonment to $12,000.00 or 12 months imprisonment.
Section 118 – Secrecy	**Section 132** – Secrecy	**Clause 117** – Secrecy	• 1995 Act, 1999 Act and 2002 Bill - same.
Section 119 – Protection from liability for wrongdoing	**Section 133** – Protection from liability for wrongdoing	**Clause 118** – Protection from liability for wrongdoing	• 1995 Act, 1999 Act and 2002 Bill - same with

SENTENCE ADMINISTRATION ACT 1995	SENTENCE ADMINISTRATION ACT 1999	SENTENCE ADMINISTRATION BILL 2002	VARIATION
			some drafting changes.
Section 120 – Regulations	**Section 134** – Regulations	**Clause 119** – Regulations	• 1999 Act and 2002 Bill same. • 1995 Act includes reference to the Parts 4 and 5 of the Act being extended to relate to federal offenders under the *Crimes Act 1914 (Cwlth)* and regulations being made accordingly.
Schedule 1 – Provisions Applicable to the Parole Board	**Schedule 1** – Provisions Applicable to the Parole Board	**Schedule 1** – Provisions Applicable to the Parole Board	• 1995 Act, 1999 Act and 2002 Bill - same.

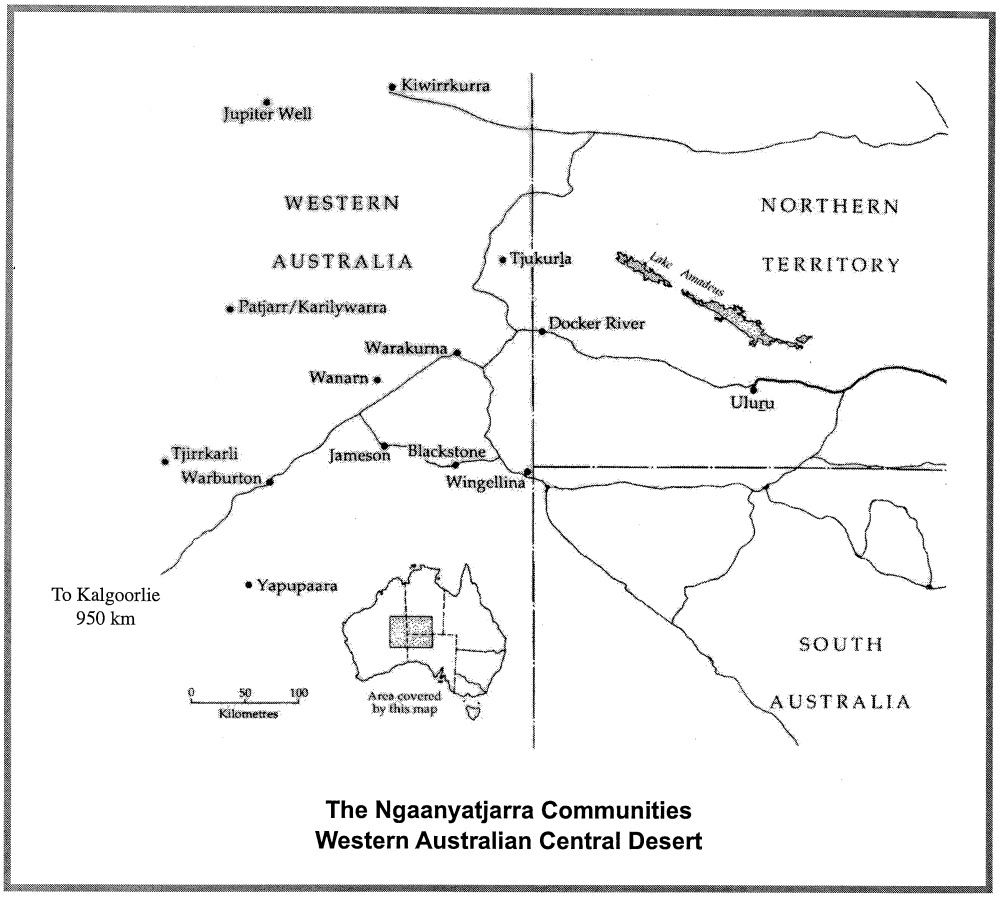
APPENDIX 6

MAP SHOWING THE LOCATION OF THE NGAANYATJARRA COMMUNITIES

APPENDIX 6

MAP SHOWING THE LOCATION OF THE NGAANYATJARRA COMMUNITIES

Ngaanyatjarra Communities



The Ngaanyatjarra Communities
Western Australian Central Desert

Ngaanyatjarra Communities

The eleven Ngaanyatjarra communities are scattered widely across 18.5 million hectares of arid country midway between Kalgoorlie and Alice Springs.

Ngaanyatjarra Communities and Population:

Warburton	550	Jameson (Mantamaru)	100
Tjukurla	110	Cosmo Newberry	85
Wanarn	70	Wingellina (Irrunytju)	160
Warakurna	250	Blackstone (Papulankutja)	170
Tjirrkarli	85	Karilwara (Patjarr)	65
Kiwirrkurra	160		

Ngaanyatjarra population:	1805
Total Population:	2205 (inc. 200 European Australian)