

SENTENCE ADMINISTRATION BILL 2002

Returned

Bill returned from the Council with amendments.

Council's Amendments - Consideration in Detail

The amendments made by the Council were as follows -

No. 1

Clause 2, page 2, line 5 - To insert before "This" -

Subject to subsection (3) and to subsection 2(3) of the *Sentencing Legislation Amendment and Repeal Act 2002*.

No. 2

Clause 2, page 2, after line 7 - To insert -

- (3) No part of this Act shall be proclaimed to come into operation within 6 months of Part 5 of the *Sentencing Legislation Amendment and Repeal Act 2002* coming into operation.

No. 3

Clause 4, page 3, after line 22 - To insert -

"serious offence" means an offence of the kind set out in Schedule 2, other than such of those offences as have been prescribed by the regulations as not to be a serious offence.

No. 4

Clause 23, page 15, after line 4 - To insert -

- (1) In this section —

"prescribed prisoner" means a prisoner who —

- (a) is serving a term for a serious offence;
- (b) was released, whether on parole or otherwise, from serving a term for a serious offence on a date in the 5 years preceding the commencement of the term that the prisoner is serving; or
- (c) was subject to an early release order that was made under this Act or the *Sentence Administration Act 1995* and that was cancelled under this Act or that Act on a date in the 2 years preceding the commencement of the term that the prisoner is serving.

No. 5

Clause 23, page 15, line 8 - To insert before "prisoner" -

prescribed

No. 6

Clause 23, page 15, lines 8 and 9 - To delete "of a class prescribed for the purposes of this paragraph".

No. 7

Clause 24, page 16, lines 19 and 20 - To delete "his or her right to make submissions under subsection (3)" and insert instead -

the effect of section 46

No. 8

Clause 24, page 16, lines 21 and 22 - To delete the lines.

No. 9

Clause 42, page 25, lines 10 and 11 - To delete "his or her right to make submissions under subsection (4)" and insert instead -

the effect of section 46

No. 10

Clause 42, page 25, lines 12 to 14 - To delete the lines.

No. 11

Clause 45, page 26, line 15 - To delete “44(2)” and insert instead -
44(3)

No. 12

Clause 45, page 26, lines 21 and 22 - To delete “his or her right to make submissions under subsection (4)” and insert instead -
the effect of section 46

No. 13

Clause 45, page 26, lines 23 to 25 - To delete the lines.

No. 14

Clause 51, page 29, line 30 - To insert after “RRO” -
to come into effect on a date specified by the Board

No. 15

Clause 51, page 30, after line 6 - To insert -

- (3) If in the case of a prisoner who is not serving a parole term the Board is not satisfied under subsection (2), the Board may nevertheless make an RRO in respect of the prisoner if satisfied that the personal safety of people in the community or of any individual in the community would be better assured if the prisoner were released under an RRO instead of at the time when he or she would otherwise have to be released.

No. 16

Clause 54, page 31, after line 23 - To insert -

- (a) must report to a community corrections centre within 72 hours after being released, or as otherwise directed by a CCO;

No. 17

Clause 106, page 60, lines 23 and 24 - To delete “parole term of a prescribed class” and insert instead -
prisoner serving a parole term of at least 2 years for a serious offence

No. 18

Page 27, after line 1 - To insert the following new clause -

46. Decision to refuse etc. parole, Board may review

- (1) A prisoner given notice under section 42(1) or 45(1) of a decision of the Board may request the Board to review its decision and may make submissions to the Board about its decision and reasons (if any are supplied).
- (2) A prisoner given notice under section 24(1), 42(2) or 45(2) of a decision of the CEO may request the Board to review the CEO’s decision and may make submissions to the Board about the CEO’s decision and reasons (if any are supplied).
- (3) Any such request or submissions must be made in writing.
- (4) On a request made under subsection (1), the Board must consider any such submissions and review its decision and may confirm or amend it or cancel it and make another decision.
- (5) On a request made under subsection (2), the Board must consider any such reasons and submissions and review the CEO’s decision and may confirm it or -
- (a) if the CEO’s decision was made under section 23(2)(a), make a parole order in accordance with section 23 as if it were the CEO;

- (b) if the CEO's decision was made under section 38(1), cancel or amend it; or
- (c) if the CEO's decision was made under section 44(3), make a parole order in accordance with section 23 as if it were the CEO.
- (6) Any such parole order made by the Board is to be taken to be a CEO parole order for the purposes of this Act.
- (7) The Board must give the prisoner written notice of its decision on a review conducted under this section.

No. 19

Page 33, after line 10 - To insert the following new clause -

58. CEO to ensure prisoner is supervised during RRO

- (1) The CEO must ensure that during the period of an RRO a CCO is assigned to supervise the prisoner.
- (2) However, if at any time the CEO is satisfied that —
 - (a) the prisoner is complying with his or her undertaking in a satisfactory manner; and
 - (b) the risk of the prisoner re-offending if not subject to supervision by a CCO is minimal,the CEO may recommend to the Board that the prisoner no longer be supervised by a CCO.
- (3) If the CEO makes a recommendation under subsection (2), the Board may direct the CEO that the prisoner need no longer be supervised during the period of the RRO and the CEO may cease the supervision of the prisoner.
- (4) If the CEO ceases the supervision of a prisoner the CEO is to inform the prisoner.
- (5) The fact that a prisoner ceases to be under supervision does not affect the prisoner's duty to obey the requirements of his or her undertaking during the period of the RRO.
- (6) The Board may at any time cancel a direction given to the CEO under subsection (3).

No. 20

Page 69, after line 16 - To insert the following New Schedule -

Schedule 2 — Prescribed offences

[s. 4]

A prescribed offence is an offence 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
- (iv) Chapter XXXI — Sexual Offences
- (v) Chapter XXXIII — Offences against liberty
- (vi) Chapter XXXIIIA — Threats
- (vii) Chapter XXXIIIB — Stalking
- (viii) Chapter XXXVIII — Robbery; Extortion by Threats

Mr J.A. McGINTY: I seek leave to consider amendments Nos 1 to 20 made by the Council together.

Leave granted.

Mr J.A. McGINTY: I move -

That amendments Nos 1 to 20 made by the Council be agreed to.

A number of these amendments have come from the report of the Standing Committee on Legislation, a number from the Government's response to that report and further amendments were moved by the Legislative Council today. A significant number of amendments are what I would regard as minor improvements.

Probably the most significant amendments are to be found in amendment No 20, new schedule 2, in which certain offences are prescribed for the purpose of a parole order made by the chief executive officer. In other words, people sentenced to 12 months or less, except for prescribed offences, will be automatically released on parole by the CEO if they have served half their sentence. The prescribed offences are listed by reference to relevant chapters in the Criminal Code. In each of those cases the system will now prescribe that those people will not automatically be eligible for parole, but they may be subject to a discretionary parole order, depending on the circumstances of their offence, their prison behaviour and the like. They must therefore be individually assessed rather than have parole automatically granted to them. The problem we foresaw with this approach was the removal of a measure of flexibility. Some people who are guilty of a relatively minor offence might be caught by this provision because it contains a general reference to any offence arising under a particular chapter of the Criminal Code. Nonetheless, that provision was desired by the Legislative Council and, although it removes some flexibility, I am happy to see it reflected in the code.

Another change made by these amendments, for which I indicated a measure of support when the matter was raised by the member for Kingsley when the Bill was debated in this place, was the availability of an appeal against the decision by the chief executive officer to not grant parole to be reviewed by the Parole Board. The proposal in the original legislation was a Caesar unto Caesar appeal situation whereby somebody who was unhappy with a decision to not grant parole could appeal essentially to the same department that made the decision. Those decisions will now be made to the independent Parole Board. I am sure that most members of the House will be happy with that. By and large, these amendments will improve the operation of the sentencing and parole system. They should achieve positive outcomes by ensuring that people who commit minor offences do not spend enormously long periods in jail, which should also have a beneficial effect on the prison population.

These matters are now being concluded, somewhat hurriedly, on the last day of sitting of this half of the year before the winter recess. I very much appreciate the work that has been done by many people, particularly today, but also over the past several months when these matters received very considered and detailed attention. I am happy that these amendments have been approved in an uncontroversial way in this House. They will represent a significant reform of the sentencing and parole system in Western Australia. It is intended that the Bill be proclaimed in August.

Mrs C.L. EDWARDES: I thank the Attorney General for that explanation. I am pleased that changes have been made to enable the chief executive officer's decisions to be reviewed by the board. That matter has been discussed with regard to resources and the like. Under the new clause, a prisoner who is given notice under clause 42(1) or 45(1) of a decision of the board may request that the board review its decision, and the prisoner may make submissions to the board about its decision and the reasons, if any, that have been supplied for its decision. The board will review its decision as well. It is again a Caesar unto Caesar situation. The board will review its decision in time, but it would not necessarily review its decision immediately upon the request of the prisoner. Does the Attorney General consider that the new State Administrative Tribunal will have a role to play in reviewing parole decisions, rather than the matter being sent back to the Parole Board? Obviously, I refer to those matters that are being considered. I do not have the Bill with me to look at clauses 42 and 45. The Government does not want to undermine the value and role of the State Administrative Tribunal. The decision on whether to grant parole is a very important and serious one. It deals with people's lives, particularly those who have been affected by crimes, including the victims in the community and the prisoner and the prisoner's family. These are new clauses. I bring these matters to the Attorney General's attention for consideration before we proceed through the State Administrative Tribunal Bill.

Mr J.A. MCGINTY: I assure the member that that issue is one that I had not thought of because I do not think the Parole Orders (Transfer) Act will be amended by the State Administrative Tribunal Bill. That would provide for an independent appeal mechanism. I suspect a number of other decisions like that would benefit from the measure of independence that the State Administrative Tribunal will introduce. I thank the member for that suggestion. I will bear that in mind. I am sure that it will repeat itself in a raft of other areas of government endeavours.

Question put and passed; the Council's amendments agreed to.

The Council acquainted accordingly.