

PAROLE AND SENTENCING LEGISLATION AMENDMENT BILL 2006
Explanatory Notes

Part 1 – Preliminary matters

Clause 1 Short title

Short title of the Act.

Clause 2 Commencement

The provisions contained in this Bill will come into operation on a day fixed by proclamation. However, different days may be fixed for different provisions and some sections come into operation when other acts come into operation or on the day this Act receives the Royal Assent.

Part 2 – *Sentence Administration Act 2003* amended

Clause 3 The Act amended in this Part

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

Clause 4 Section 4 amended

Section 4 of the *Sentence Administration Act 2003* defines the meaning of various words and expressions in the Act. This section deletes references to words or expressions that become redundant as a result of the provisions of the Bill, such as transferring authority for CEO parole to the Board, and introduces new definitions where required. In particular, the section introduces definitions of ‘release considerations’, ‘re-socialisation programme’, ‘victim’ and ‘victim’s submissions’.

The definition of ‘victim’ is consistent with the definition as set out in the *Victims of Crime Act 1994*.

Clause 5 Sections 5A and 5B inserted

Section 5A replaces Section 16 of the *Sentence Administration Act 2003* and re-names the ‘parole considerations’ as ‘release considerations’, in recognition of the fact that the Board is required to consider these matters in all of its decision-making which ultimately may result in the release of an offender.

It includes an additional requirement that, when considering the degree of risk a prisoner’s release may pose to community safety, the Board is to consider “the nature and seriousness of” any offence likely to be committed during an early release order. A specific requirement is also included to consider any issues for any victim of an offence, including matters raised in a “victim’s submission” as further defined in section 5B.

Section 5B provides for and establishes the requirements under which victims may make written submissions to the Board. It includes provision for statements about the impact the release of the prisoner would have on the victim, as well as suggestions about the conditions that should be applied to the prisoner if released. The section

allows for another person to make submissions on behalf of a victim where the victim is incapable of doing so. It also requires the Board to establish procedures for the management of such submissions and to have regard to such submissions. The section proposes to ensure confidentiality by prohibiting the Board from allowing the prisoner or his or her representative to either view or have a copy of the victim's submission.

Clause 6 Section 7 amended

Section 7 of the *Sentence Administration Act 2003* deals with the order of service of fixed terms. Subsection 7(4) contains a typographical drafting error that requires correction. The effect of the section is not changed in any way.

Clause 7 Part 2 Division 3 heading amended

The amended title reflects the broadening of this division to refer to reports about prisoners generally. The division includes sections relating to prisoners serving life, indefinite and fixed term sentences of a length prescribed for the purposes of this section.

Clause 8 Section 11 amended

Section 11 of the *Sentence Administration Act 2003* deals with reports to the Minister about the place of custody for persons in custody during the Governor's pleasure. The amendment to subsection 11(2) is proposed in order to clarify the persons to whom this section applies. The proposed subsection 11(3) is to clarify Ministerial jurisdiction in relation to this section.

Clause 9 Section 11A inserted

The Mahoney Inquiry Report recommended that the Board be empowered to play a greater role in the sentence management of prisoners subject to long term and life and indefinite sentences. It recommended that the Board review those prisoners early in their sentence and make recommendations to the Department about program participation, including participation in re-socialisation programs for certain prisoners serving fixed term sentences.

The provisions of section 11A relate to life and indefinite sentenced prisoners and to those prisoner serving fixed terms of a prescribed length, including both parole and non-parole terms. The provisions enable the Board to request a prisoner management report from the CEO in relation to the above groups of prisoners, at certain times during the sentence, specify the required content of such reports, and require the CEO to comply with the request so far as is reasonably practical. The Board may recommend the types of programs that a prisoner be encouraged to participate in, in order to reduce the risk of re-offending, increase the likelihood of a successful reintegration into the community and hence enhance their prospects for release.

The length of the fixed term sentences to which this section applies will be specified in Regulations to the Act.

Clause 10 Section 12 replaced by sections 12 and 12A.

Section 12 of the *Sentence Administration Act 2003* currently deals with the category of prisoners and the circumstances under which the Board is required to provide

reports to the Minister, as well as a requirement to include recommendations about the release of the person and if so any conditions, in certain circumstances.

It is proposed that section 12, in addition to the provisions currently contained therein, include requirements for the Board to report on the release considerations (specified in section 5A) relating to the prisoner. The section also proposes to clarify the Ministerial jurisdiction in relation to those prisoners detained subject to section 282 of the Criminal Code.

Section 12A replaces section 18 of the *Sentence Administration Act 2003* which will be repealed. Section 18 currently specifies the reporting requirements by the Board to the Minister in relation to prisoners serving life and indefinite sentences, and what matters are to be reported on. The inserted table specifies the time periods when a report is required in relation to each category of prisoner.

Section 12A, in addition to the provisions currently contained in section 18, includes a requirement for the Board to report on the release considerations (specified in section 5A) relating to the prisoner.

Clause 11 Part 2 Division 4 replaced

Part 2 Division 4 of the *Sentence Administration Act 2003*, consisting of sections 13 and 14, is repealed. The provisions have been replaced in full in sections 27A and 27B of the Act (see notes to clause 23) in order to better suit the structure of the Act as amended.

The Mahoney Inquiry Report recommended that pre-release programs for life and indefinite sentenced prisoners be re-named re-socialisation programs and the elements that currently constitute such programs be collected together under a formal legislative structure. Consequently, Division 4 contains sections 13 and 14 enabling legislative authority for the assessment and approval of re-socialisation programs for life and indefinite sentenced prisoners, and for those prisoners serving fixed terms of a prescribed length. It also contains section 14A providing for the development of regulations to deal with procedures around the assessment and approval of re-socialisation programs, as well as the nature and content of such programs and their implementation.

Section 13 specifically provides for the mandatory assessment for a re-socialisation program of a prisoner serving a life or indefinite term of imprisonment, at a prescribed time in the sentence. It sets out the process to be followed by the Board and the CEO in assessing the prisoner's suitability for a re-socialisation program and determining whether a program can be facilitated by the CEO, and then developing the detailed re-socialisation program itself. Once the program has been endorsed by the Board, the approval of the Governor is required before it can be implemented by the CEO.

Section 14 specifically provides for a similar process of assessment for a re-socialisation program for those prisoners serving a fixed term of a prescribed length, whether a parole term or a non-parole term. However, for this group of prisoners, assessment for a re-socialisation program is not mandatory but subject to a request

from the Board, and the detailed program does not require the approval of the Governor but can be approved by the Board itself.

Section 14A enables the development of regulations to deal with the procedures set out in sections 13 and 14, and the nature and content of re-socialisation programs and their implementation.

The existing sections 13 and 14 contained in Part 2 Division 4 of the *Sentence Administration Act 2003* have been replaced in full in sections 27A and 27B of the Act (see notes to clause 22) in order to better suit the structure of the Act as amended.

Clause 12 Section 15 replaced

Section 15 of the *Sentence Administration Act 2003* currently defines the term “parole considerations” and establishes that meanings of words in Part 3 are as defined in Part 13 of the *Sentencing Act 1995*. Subsection 15(1) is now redundant as ‘release considerations’ have replaced ‘parole considerations’ and these are now defined and contained in section 5A (see the notes to clause 5).

Clause 13 Section 16 repealed

Section 16 of the *Sentence Administration Act 2003*, which lists the matters to be considered in relation to release on parole, is repealed. The provisions have been re-named ‘release considerations’ in recognition of the fact that the Board is required to consider these matters in all of its decision-making which ultimately may result in the release of an offender. These are now defined and contained in section 5A (see the notes to clause 5).

In addition, the provisions have been enhanced by including an additional requirement for the Board to consider any issues for any victim of an offence, including matters raised in a ‘victim’s submission’. Also included is an additional requirement that, when considering the degree of risk a prisoner’s release may pose to community safety, the Board is to consider ‘the nature and seriousness of’ any offence likely to be committed during an early release order.

Clause 14 Section 17 amended

Section 17 of the *Sentence Administration Act 2003* currently establishes the CEO’s obligation to submit a written report, addressing the parole considerations, to the Board on persons eligible for parole under a parole term and establishes provision for the timing of such reports.

Proposed amendments will reflect the expansion of the ‘parole’ considerations to the broader ‘release’ considerations, and clarify the timing of the report requirement to coincide with the prisoner’s eligibility date for release on parole under section 93(1) of the *Sentencing Act 1995*. In addition, the insertion of section 17(3) will require the CEO to provide a report to the Board under this section in addition to any requirements for a prisoner management report under section 11A, unless the Board specifically advises the CEO that a report under this section is not required.

Clause 15 Section 18 repealed

Section 18 of the *Sentence Administration Act 2003* currently specifies the reporting requirements by the Board to the Minister in relation to prisoners serving life and

indefinite sentences, and what matters are to be reported on. The inserted table specifies the time periods when a report is required in relation to each category of prisoner.

Section 18 is repealed and its provisions inserted in section 12A (see the notes to clause 10).

Clause 16 Section 20 amended

Section 20 of the *Sentence Administration Act 2003* establishes the Board's powers to release a prisoner under a parole order and, as well as other requirements, the Board's obligations to consider parole considerations. It is proposed to amend subparagraph (a) of subsection 20(2) to refer to release considerations, for consistency.

Clause 17 Section 21 repealed

Section 21 of the *Sentence Administration Act 2003* requires the Board to provide a prisoner with notice of a decision deferring or refusing release on parole.

It is proposed to centralise this provision and various other similar provisions found throughout the Act in a single provision at section 107B (see the notes to clause 57), establishing a requirement for the Board to provide a written notice in respect of any decision made under the Act.

Clause 18 Section 22 amended

Section 22 of the *Sentence Administration Act 2003* describes the length of terms or combinations of terms that are regarded as short terms for the purpose of Division 4.

Proposed amendments to this section reflect the proposed amendment to section 89 of the *Sentencing Act 1995* (see the notes to clause 74) which allows the Court to make a parole eligibility order in respect of aggregated short term sentences that equal or exceed 12 months. Such terms then become parole terms and are subject to the provisions of Part 3 Division 3, rather than the provisions of Division 4.

Clause 19 Section 23 amended

Section 23 of the *Sentence Administration Act 2003* empowers the CEO to make and administer parole orders in relation to sentences of less than 12 months (short term sentences). The Mahoney Inquiry Report recommended that, in order to simplify the decision-making around parole release, all parole decisions should be made by the Prisoners Review Board.

Consequently, to reflect the change in jurisdiction from the CEO to the Board, all relevant references to the 'CEO' in this section have been deleted and the 'Board' inserted instead as the decision-making authority.

Further, for consistency with a similar provision in the consideration of parole terms by the Board, section 23(2a) has been inserted, requiring the Board to have regard to the release considerations, a report from the CEO and any other information which may be brought to its attention.

Further amendments to this section have also been made in order to enable parole release in the case of short term sentences to be deferred for up to 7 days to facilitate

transport arrangements. This will overcome practical difficulties with transport arrangements in regional and remote areas, providing for better preparation for release and thus a greater likelihood of successful re-integration into the community for such prisoners.

Similarly, an amendment is also made allowing deferral of parole release in cases where a prisoner may be remanded in custody on other charges. Section 10 of the Act prevents a prisoner being released on an early release order if they are required to be kept in custody in respect of another matter. Since section 23(3)(b) requires an order to be made, the current amendment resolves this administrative anomaly.

The Board already has the power to defer parole in the case of longer sentences and these amendments will provide consistency in the administration of parole release for short term sentences.

Clause 20 Section 24 repealed

Section 24 of the *Sentence Administration Act 2003* provides for the CEO to give written notice of a decision to defer or deny parole in the case of short term sentences.

This section is repealed to reflect the change in jurisdiction from the CEO to the Board in relation to short term parole (see the notes to clause 19), and the centralisation of all similar provisions relating to notification of decisions of the Board, which are found throughout the Act, in a single provision at section 107B (see the notes to clause 57). Section 107B establishes a requirement for the Board to provide a written notice in respect of any decision made under the Act.

Clause 21 Sections 25, 26 and 27 amended

The changes to 25(1)(b), 26(1)(b) and 27(1), respectively, of the *Sentence Administration Act 2003* reflect the amendment in clause 15 that repeals section 18 and places its provisions in section 12A.

Clause 22 Part 3 Division 5A inserted

Sections 13 and 14 of the *Sentence Administration Act 2003* deal with the powers of the Governor to release a prisoner on parole. The sections have been repealed and replaced in full in Part 3 Division 5A as sections 27A and 27B to better suit the structure of the Act as amended (see notes to clause 11).

Clause 23 Section 28 amended

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

Throughout the Bill, there is a range of amendments to various provisions of the *Sentence Administration Act 2003* to remove references to the supervised period of a parole order. Under the Act, offenders released on parole are required to be supervised for a period of their order. The length of the supervision period is generally equivalent to one-third of the sentence, up to a maximum of 2 years. The 'parole supervision' provisions contained in the Act were originally drafted on the basis of a uniform parole period of 50%, regardless of length of sentence. During the

passage of the Act through Parliament in 2003, amendments were made by the Opposition which have resulted in a two-tiered parole formula. As a consequence, the 'parole supervision' provisions which allow for prisoners to be supervised for only part of their parole order are superfluous as all parole orders are now of fixed lengths and should be supervised throughout the period of the order. Therefore, the existing provisions require amendment to provide that prisoners will be supervised for the whole of the parole period.

It is proposed that the 'parole supervision' provisions of the *Sentence Administration Act 2003* be amended to provide that a prisoner serving a parole term is to be supervised for the whole of their parole period. Section 28 of the Act requires amendment to give effect to this proposal. An exception will remain in the case of those prisoners released on unsupervised parole in relation to short term sentences.

Clause 24 Section 30 amended

Section 30 of the *Sentence Administration Act 2003* sets out the additional requirements that may be included as part of the conditions of a parole order.

To reflect the change in jurisdiction from the CEO to the Board in relation to short term parole (see the notes to clause 19), the reference to 'the CEO' is deleted as the CEO will no longer have authority to determine parole conditions.

Clause 25 Section 31 amended

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

As indicated in the notes to clause 23 of the Bill, it is proposed that the 'parole supervision' provisions of the *Sentence Administration Act 2003* be amended to provide that an offender is to be supervised for the whole of their parole period. Section 31 of the Act requires amendment to give effect to this proposal.

A further amendment is made to section 31 to reflect the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19). Therefore, the reference to a CEO parole order in section 31(2)(c) is deleted.

Clause 26 Section 33 amended

Section 33 of the *Sentence Administration Act 2003* provides for a prisoner to give written notice that he or she does not want to be released on parole. Subsection 33(2) of the Act relates to short term parole and requires the notice to be given to the CEO.

Amendments are made to section 33 of the Act to reflect the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19), and to require in all cases for the notice by the prisoner to be given to the Board in the first instance.

Clause 27 Section 35 amended

Section 35 of the *Sentence Administration Act 2003* outlines the process for making a parole order where the prisoner has previously provided notice that he or she does not wish to be released on parole but then provides further notice that he or she does want to be released on parole.

Amendments are made to section 35 of the Act to reflect the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19), and removes all reference to the CEO's decision-making authority in relation to this section.

Clause 28 Section 36 amended

Section 36 of the *Sentence Administration Act 2003* provides for the amending of a parole order prior to the prisoner's release under the order.

The proposed amendment reflects the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19), and removes the reference to the CEO's decision-making authority.

Clause 29 Section 37 amended

Section 37 of the *Sentence Administration Act 2003* deals with the procedure for amending parole orders after the prisoner has been released on parole.

The proposed amendments to this section reflect both the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19), and the removal of the 'parole supervision' provisions of the *Sentence Administration Act 2003* to require supervision throughout the whole of the parole period (see the notes to clause 23).

Clause 30 Section 38 amended

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

The proposed amendments to this section reflect both the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19), and the removal of the 'parole supervision' provisions of the *Sentence Administration Act 2003* to require supervision throughout the whole of the parole period (see the notes to clause 23).

Clause 31 Section 39 amended

Section 39 of the *Sentence Administration Act 2003* enables the Board to suspend a parole order during the supervised period of the order.

The proposed amendments to this section reflect both the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19), and the removal of the 'parole supervision' provisions of the *Sentence Administration Act 2003* to require supervision throughout the whole of the parole period (see the notes to clause 23).

Clause 32 Section 40 amended

Section 40 of the *Sentence Administration Act 2003* separately establishes the Board's powers and the CEO's powers with regard to determining the period of suspension of a parole order.

It is proposed to repeal subsection 40(2) to reflect the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19).

Clause 33 Section 42 repealed

Section 42 of the *Sentence Administration Act 2003* requires the Board and the CEO to give written notice to a prisoner of a decision to suspend parole.

This section is repealed to reflect the change in jurisdiction from the CEO to the Board in relation to short term parole (see the notes to clause 19), and the centralisation of all similar provisions relating to notification of decisions of the Board, which are found throughout the Act, in a single provision at section 107B (see the notes to clause 57). Section 107B establishes a requirement for the Board to provide a written notice in respect of any decision made under the Act.

Clause 34 Section 43 amended

Section 43 of the *Sentence Administration Act 2003* deals with the powers by the Board and the CEO to cancel a parole order prior to the release of the prisoner.

Subsection 43(2) is repealed to reflect the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19).

Clause 35 Section 44 amended

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

The proposed amendments to this section reflect both the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19), and the removal of the 'parole supervision' provisions of the *Sentence Administration Act 2003* to require supervision throughout the whole of the parole period (see the notes to clause 23).

Clause 36 Section 45 repealed

Section 45 of the *Sentence Administration Act 2003* requires the Board and the CEO to give written notice to a prisoner of a decision to cancel parole.

This section is repealed to reflect the change in jurisdiction from the CEO to the Board in relation to short term parole (see the notes to clause 19), and the centralisation of all similar provisions relating to notification of decisions of the Board, which are found throughout the Act, in a single provision at section 107B (see the notes to clause 57). Section 107B establishes a requirement for the Board to provide a written notice in respect of any decision made under the Act.

Clause 37 Section 47 repealed

Section 47 of the *Sentence Administration Act 2003* provides for a prisoner to make a written request for a review by the Board of a decision made by either the Board or the CEO. The section outlines the Board's powers in relation to the review and requires it to provide the prisoner with written notification of the outcome of the review.

This section is repealed to reflect the change in jurisdiction from the CEO to the Board in relation to short term parole (see the notes to clause 19), and the centralisation of all similar provisions relating to notification of decisions by the Board, which are found throughout the Act, in a single provision at section 107B (see the notes to clause 57). Section 107B establishes a requirement for the Board to provide a written notice in respect of any decision made under the Act.

Additionally, all provisions relating to the review of a decision by the Board have now been centralised in section 115A (see the notes to clause 63).

Clause 38 Section 48 amended

Section 48 of the *Sentence Administration Act 2003* requires that where a parole order has been made by the Governor, the Board is required to give notice to the Minister of any decision to cancel supervision of a prisoner during the supervised period of the order, or of a decision to suspend the order if such suspension is not cancelled within 30 days afterwards.

Proposed amendments to this section reflect the removal of the ‘parole supervision’ provisions of the *Sentence Administration Act 2003* to require supervision throughout the whole of the parole period (see the notes to clause 23) and the centralisation of all provisions relating to the review of a decision by the Board in section 115A (see the notes to clause 63).

Clause 39 Section 50 amended

Section 50 of the *Sentence Administration Act 2003* establishes those categories of prisoners who may apply to the Board for release under a Re-entry Release Order (RRO). Other than life and indefinite sentenced prisoners, all prisoners who have served a minimum of 12 months in continuous custody and are within 6 months of release, either on parole or to freedom, are eligible to apply for an RRO.

In order to more closely reflect the intent of ‘truth in sentencing’ legislation, and in accordance with a recommendation of the 1998 Hammond Review of Remission and Parole, it is proposed that eligibility for RROs for parole term prisoners be abolished. However, eligibility will still be retained for non-parole prisoners in the last 6 months of their sentence to assist with their community re-integration and reduction in re-offending. Section 50 of the Act requires amendment to give effect to this proposal.

Additionally, the age restriction set out in subsection 50(a) of the Act is no longer relevant and consequently will be deleted.

Clause 40 Section 51 amended

Section 51 of the *Sentence Administration Act 2003* deals with the requirement for the CEO to report to the Board about every prisoner who applies to be released under an RRO. In particular, the CEO must report on the risk that the release of the prisoner may pose to the personal safety of people in the community or any individual in the community.

It is proposed to amend this section of the Act to require the CEO to address in the report all of the release considerations established under section 5A, which include

the degree of risk that the release of the prisoner may pose to community safety (see the notes to clause 5).

Clause 41 Section 52 amended

Section 52 of the *Sentence Administration Act 2003* establishes the circumstances under which the board may make an RRO and also requires the approval of the Governor for an RRO to be made in respect of prisoners serving a fixed term, or aggregate of fixed terms, of more than 15 years.

In order to achieve consistency throughout the Act in the decision-making process by the Board, amendment to this section will require the Board to have regard to the release considerations under section 5A (see the notes to clause 5) in addition to any other requirements under this section in deciding whether or not to make an RRO. However, in view of the fact that RROs will only apply to non-parole terms and therefore the prisoner will be released to freedom within 6 months in any case, the Board is to have particular regard to whether community safety would be better assured by the release of the prisoner under an RRO rather than release to freedom without any supervision or support.

Additionally, further amendment to this section will remove the requirement for Governor's approval for release under an RRO in respect of prisoners serving fixed terms of more than 15 years. This amendment is in line with recommendations of the Mahoney Inquiry Report relating to the simplification of the parole system; it provides consistency in relation to the approval process for re-socialisation programs for prisoners serving fixed terms; and removes an anomaly in the current Act whereby release on an RRO for such prisoners requires the approval of the Governor but their release on parole can be effected by the Board without reference to the Governor.

Clause 42 Section 53 repealed

Section 53 of the *Sentence Administration Act 2003* requires the Board to give written notification to a prisoner of a refusal by the Board to make an RRO. The Board is also required to advise the prisoner of the right to make a written submission in respect of the decision and for the Board to review its decision.

This section is repealed to reflect the centralisation of all similar provisions relating to notification of decisions by the Board, which are found throughout the Act, in a single provision at section 107B (see the notes to clause 57). Section 107B establishes a requirement for the Board to provide a written notice in respect of any decision made under the Act.

Additionally, all provisions relating to the review of a decision by the Board have now been centralised in section 115A (see the notes to clause 63).

Clause 43 Section 54 amended

Section 54 of the *Sentence Administration Act 2003* sets out the nature of an RRO, including determining the period of an RRO and when it should end.

Section 54(3)(b) is amended to reflect the abolition of eligibility for RROs by prisoners serving parole terms (see the notes to clause 39) by establishing that the

period of an RRO will only end at the completion of the sentence, which is in accordance with section 95 of the *Sentencing Act 1995*.

Clause 44 Section 60 repealed

Section 60 of the *Sentence Administration Act 2003* provides for a prisoner to be released on parole or returned to custody if a parole order is not made at the completion of an RRO.

Section 60 is repealed to reflect the abolition of eligibility for RROs by prisoners serving parole terms (see the notes to clause 39), as release on parole will not be relevant in relation to non-parole terms.

Clause 45 Section 62 repealed

Section 62 of the *Sentence Administration Act 2003* requires written notification to be given to a prisoner following suspension of an RRO, whether it is suspended by the Board or the CEO.

This section is repealed to reflect the centralisation of all similar provisions relating to notification of decisions by the Board (or the CEO), which are found throughout the Act, in a single provision at section 107B (see notes to clause 57). Section 107B establishes a requirement for the Board to provide a written notice in respect of any decision made under the Act.

Clause 46 Section 64 is repealed

Section 64 of the *Sentence Administration Act 2003* requires written notification to be given to a prisoner following cancellation of an RRO by the Board.

This section is repealed to reflect the centralisation of all similar provisions relating to notification of decisions by the Board, which are found throughout the Act, in a single provision at section 107B (see the notes to clause 57). Section 107B establishes a requirement for the Board to provide a written notice in respect of any decision made under the Act.

Clause 47 Section 69 amended

Section 69 of the *Sentence Administration Act 2003* determines the effect on each category of sentences, of the cancellation of an early release order made in respect of that sentence.

Under transitional arrangements following the introduction of the *Sentence Administration Act 2003*, two forms of early release order program currently operate, being Re-entry Release Orders under the 2003 Act and Work Release Orders under the former *Sentence Administration Act 1995*.

The 1995 Act contained a protection against the loss of remission if a work release order was cancelled and the prisoner returned to prison to serve the unexpired portion of the sentence. However, prisoners who are serving a non-parole sentence imposed prior to 31 August 2003, who are released under a re-entry release order and have that order cancelled, are required to serve the unexpired portion of their sentence without the protection against the loss of remission. This anomaly deters eligible prisoners from applying for Re-entry Release Orders, which are superior to Work Release

Orders in assisting the prisoner's transition back into the community. It is proposed to address this anomaly with an amendment to section 69 of the Act.

Clause 48 Section 70 amended

Section 70 of the *Sentence Administration Act 2003* outlines the process for the issuing of an arrest warrant following suspension or cancellation of an early release order.

It is proposed to amend subsection 70(2)(c) to remove the power of the CEO to cancel an early release order and issue an arrest warrant. This subsection is amended to reflect the change in jurisdiction from the CEO to the Board in relation to short term sentences (see the notes to clause 19), thereby removing any requirement for the CEO to cancel an early release order.

Clause 49 Section 71 amended

Section 71 of the *Sentence Administration Act 2003* sets out the provisions for calculating the amount of clean street time to be credited as time served in relation to an early release order.

This section is amended by removing the reference in subsection 71(3)(a) to the CEO cancelling an early release order. The purpose of this amendment is to reflect the change in jurisdiction from the CEO to the Board in relation to short term parole (see the notes to clause 19).

Clause 50 Section 72 amended

Section 72 of the *Sentence Administration Act 2003* provides for the re-release of a prisoner after cancellation of an early release order made by the Board or CEO, and determines the calculation of the parole period in any subsequent parole order.

The proposed amendments to this section reflect both the change in jurisdiction in relation to short term parole from the CEO to the Board (see the notes to clause 19), and the removal of the 'parole supervision' provisions of the *Sentence Administration Act 2003* to require supervision throughout the whole of the parole period (see the notes to clause 23).

Clause 51 Section 73 amended

Section 73 of the *Sentence Administration Act 2003* provides for the re-release of a prisoner after cancellation of a parole order made by the Governor and determines the length of and supervised period in any subsequent parole order made by the Governor.

It is proposed to repeal subsection 73(3) for consistency with other provisions in the Bill that require a prisoner to be supervised for the whole of the parole period (see the notes to clause 23).

Clause 52 Section 74 amended

Section 74 of the *Sentence Administration Act 2003* provides that a prisoner who completes a parole period under a subsequent parole order is deemed to have served the term to which the order relates.

It is proposed to amend subsection 74(b) to remove the reference to the CEO cancelling a parole order. This subsection is amended to reflect the change in jurisdiction from the CEO to the Board in relation to short term sentences (see the notes to clause 19), thereby removing any power for the CEO to cancel a parole order.

Clause 53 Section 97 replaced

Section 97 of the *Sentence Administration Act 2003* requires the CEO to report a breach of a parole or work release order to the Board and provide such other information about the breach as the Board requires.

It is proposed to replace this section with provisions that capture all of the existing requirements and include additional provisions enabling information sharing by the CEO not just in relation to an individual prisoner but, in more general terms, to ‘systems’ information about prisoners in custody. The provision of such information is to be only to the extent necessary to allow the Board to perform its functions under the Act, and is to operate despite any other written law dealing with non-disclosure of information.

The purpose of this amendment is in recognition of the separation of the Department of Justice into two separate departments, and enables the Board to continue to have access to information held by the Department of Corrective Services so that the Board can continue to perform its functions.

Clause 54 Part 9 heading replaced

It is proposed to delete the heading to Part 9 of the *Sentence Administration Act 2003* and replace it with a new heading, Prisoners Review Board, to reflect the replacement of the Parole Board with a new body named the Prisoners Review Board.

Clause 55 Sections 102, 103 and 104 replaced by sections 102, 103, 104 and 104A

Sections 102, 103 and 104, respectively, of the *Sentence Administration Act 2003* deal with the establishment of the Parole Board; its membership; and appointment of the Secretary to the Board. It is proposed to replace those sections with sections 102, 103, 104 and 104A. The new sections seek to provide as follows:

Section 102 will establish the Prisoners Review Board (“the Board”) to replace the Parole Board and ensures continuity by providing that the Board is a continuation of the Parole Board.

Section 103 determines the membership of the Board, methods of appointment and criteria to be met for the appointment of members.

The Chairperson will continue to be a judge of the Supreme Court or District Court, or a retired judge of one of those courts. However, notable changes include the appointment of at least two Deputy Chairpersons, and removal of the limitation as to the number of members (whether appointed by the Governor, by the CEO, or the Commissioner of Police), that may be appointed. Deputy Chairpersons and other members may be appointed on a full-time, part-time or sessional basis (see the notes to clause 66). These provisions will enable the Board to operate simultaneously in different locations as well as schedule more frequent meetings to cover both the

additional workload that is likely to result from the Mahoney Inquiry Report recommendations and to enable smaller caseloads to be considered at each meeting.

The provisions do not alter the existing criteria for appointment as Chairperson; however they introduce qualifications as to the appointment of deputy chairpersons, as well as community members. A person cannot be appointed as a Deputy Chairperson unless the person has, in the Minister's opinion, extensive or special knowledge of matters involved in the performance of the Board's functions. Further, a person cannot be appointed as a community member unless the Minister is satisfied that the individual is able to make an objective and reasonable assessment of the degree of risk that the release of a prisoner would appear to present to the personal safety of people in the community or of any individual in the community. Additionally, the Minister is to be satisfied that a candidate has one or more of the following attributes:

- A knowledge and understanding of the impact of offences on victims;
- A knowledge and understanding of a range of cultures among Australians, particularly Aboriginal Australians;
- A knowledge and understanding of the criminal justice system; or
- A broad experience in a range of community issues such as employment, substance abuse, physical or mental illness or disability, lack of housing, education or training.

The inclusion of the above criteria is to ensure that members will represent relevant areas of the community in considering matters before the Board. A provision has been included to ensure that all times at least one community member is appointed on the basis that they have a knowledge and understanding of the impact of offences on victims.

Section 104 establishes a requirement that the Chairperson and Deputy Chairpersons are responsible for directing the education, training and professional development of Board members, and that the Minister is to ensure that adequate provision is made for such education, training and professional development.

Section 104A emulates the existing section 104 in the Act, except that the title of the position is changed from Secretary to Registrar, and recognition is given to the appointment of other staff to support the Board. The change of name from Secretary to Registrar brings the name of the position into line with the *Parole Orders (Transfer) Act 1984*, and also recognises the transfer of authority for parole release in relation to short term sentences from the CEO to the Board. It is envisaged that responsibility for such decisions will be delegated to the Registrar by the Chairperson.

Clause 56 Section 106 amended

Section 106 of the *Sentence Administration Act 2003* sets out the functions of the Board.

Amendment to this section includes an additional provision that, when performing its functions, the Board must regard the safety of the community as the paramount consideration. Further amendment requires that a member of the Board, other than the Chairperson, must comply with any relevant public sector standard or code of ethics established under the *Public Sector Management Act 1994*.

Clause 57 Sections 107A, 107B and 107C inserted

In response to comment contained in the Mahoney Inquiry Report, an additional section is proposed to enable the Board to seek independent advice or professional assistance as it may require, to assist the Board in its decision making. Section 107A is inserted to give effect to this proposal.

Currently, in the *Sentence Administration Act 2003*, there are a number of provisions requiring the Board to make relevant notifications regarding its decision making. These provisions are currently stated separately under each type of decision the Board makes and the provision relates specifically to that type of decision alone.

Section 107B titled Notification of Board's Decisions, to be inserted, centralises each of those provisions and contains their requirements under one section. It includes all requirements that currently exist under the Act as well as adding a reference to decisions regarding re-socialisation programs and deletes any reference to decision making by the CEO except in regard to suspension of an early release order. This latter amendment reflects the change in jurisdiction from the CEO to the Board in relation to short term sentences (see the notes to clause 19).

The Mahoney Inquiry Report recommended that the Board be enabled to inform the public of its decisions and be able to communicate with the public in order to improve public understanding of its functions. Consequently, section 107C titled Publication of Board's Decisions, to be inserted, gives effect to that recommendation and enables the Chairperson to make public a decision of the Board or the reasons for that decision if he or she considers it is in the public interest to do so. In making that decision, the Chairperson is to have regard to all the circumstances including the interests of the prisoner concerned and the interests of any victim.

Clause 58 Section 108 amended

Section 108 of the *Sentence Administration Act 2003* defines 'authorised person' and describes the powers of members of the Board and authorised persons in relation to the signing and making of parole orders, and the signing of notices of decisions by the Board.

Section 108 is amended by deleting the word 'secretary' and inserting 'registrar' instead, to reflect the position's change of name in section 104A (see the notes to clause 55).

Clause 59 Section 109 amended

Section 109 of the *Sentence Administration Act 2003* empowers the Board to require a prisoner while subject to an order, to appear before it.

The section is amended by replacing 'CEO parole order' with 'parole order (unsupervised)'. The amendment reflects the transfer of jurisdiction from the CEO to the Board in relation to short term sentences (see the notes to clause 19).

Clause 60 Section 110 amended

Section 110 of the *Sentence Administration Act 2003* empowers the Board to issue a warrant to have a person arrested. This section is amended to reflect consistency of wording throughout the Act and to correct a typographical error.

Clause 61 Section 111 amended

Section 111 of the *Sentence Administration Act 2003* requires judicial notice to be taken of the fact that a person is or was a member of the Board or the secretary of the Board, and the official signature of that person.

This section is amended to reflect the change of name in section 104A of the position of secretary to that of registrar (see the notes to clause 55).

Clause 62 Section 112 replaced

Section 112 of the *Sentence Administration Act 2003* requires the Board to give a written report to the Minister each year on the performance of the Board's functions, the numbers of prisoners released on parole in the previous year and on the operation of this Act and relevant parts of the *Sentencing Act 1995*.

The Mahoney Inquiry Report recommended that there be significant improvement in the accountability of the Board through its ability to report on its functions. Consequently, section 112 to be inserted, lists in detail the requirements for reporting by the Board on an annual basis. In addition to the existing requirements, the Board is required to report on the number of prisoners eligible for parole release and those refused release or approved for release by the Board or the Governor, the numbers who apply for an RRO, the number of early release orders completed, suspended or cancelled, and the number of re-socialisation programs approved by the Board or the Governor and the number completed.

Clause 63 Section 115A inserted

Currently, in the *Sentence Administration Act 2003*, there are a number of provisions enabling prisoners to make written submissions to the Board about the Board's decisions and the reasons for those decisions. The Board is then required to consider the submission and may make a further decision in relation to the matter. These provisions are currently stated separately under each type of decision the Board makes and the provision relates specifically to that type of decision alone.

Section 115A, to be inserted, centralises each of those provisions and contains their requirements under one section. It includes all requirements that currently exist under the Act and, in addition, defines a 'reviewable decision', lists grounds for seeking a review, and sets out the process of review to be followed by the Board. The process of review requires the Chairperson to consider the submission and then confirm, amend or cancel the decision, make another decision, or refer the decision to the Board for further consideration. The Chairperson may delegate this function to a Deputy Chairperson.

The process of review by the Chairperson or a Deputy Chairperson enables a more independent review of the decision than simply by the Board itself, as per the current provision in the Act.

Clause 64 Section 119 amended

Section 119 of the *Sentence Administration Act 2003* sets out the confidentiality requirements in relation to the disclosure of information obtained as a result of being in a position to which this section of the Act applies.

This section is amended to reflect the change of name in section 104A of the position of secretary to that of registrar (see the notes to clause 55), and to include the additional position of a member of staff of the Board to which these provisions apply.

Clause 65 Section 122 inserted

Section 107 of the *Sentencing Legislation Amendment and Repeal Act 2003* requires that the Minister carry out a review of the changes to the *Sentencing Act 1995* and the new parole provisions contained in Part 3 of the *Sentence Administration Act 2003*. This review is to be completed 4 years from when the Act receives the Royal Assent, thus requiring that it be undertaken in 2007.

In view of the significant changes made to the whole of the *Sentence Administration Act 2003* by way of this Bill, it is considered prudent to review the whole of the Act in 2007 and also to review the Act on a regular basis thereafter. Insertion of section 122 gives effect to this proposal and requires the Act to be first reviewed as soon as practicable after 1 July 2007 (consistent with section 107 of the *Sentencing Legislation Amendment and Repeal Act 2003*) and thereafter at regular 5 yearly intervals.

Clause 66 Schedule 1 replaced

Schedule 1 of the *Sentence Administration Act 2003* sets out the provisions applying to the Parole Board, including the terms of office, resignation of members, appointment of deputy members, procedures for meetings, and remuneration and allowances and leave of absence for members.

It is proposed to repeal Schedule 1 and replace it with a schedule setting out the provisions applying to the Prisoners Review Board instead. Notable changes from the existing schedule include the following provisions:

- The term of appointment for a member appointed by the Governor may be extended to 5 years, whereas previously this was limited to 3 years. This is consistent with appointments to the State Administrative Tribunal and will provide greater stability in the membership of the Board.
- The office of a deputy chairperson or a community member may be held on a full-time, part-time or sessional basis.
- The provision for deputies of members has been deleted as there is no longer a requirement for such a provision. Instead, section 103 enables appointment of as many members as are necessary to deal with the workload of the Board (see the notes to clause 55).
- The inclusion of grounds for terminating the appointment of a member by the Governor or the Minister. The grounds include conviction of an indictable offence, incapable of performing or negligent or careless in performing the functions of a member, or unfit to be a member due to misconduct.
- Changes to the meetings procedure include the requirement that the Chairperson or Deputy Chairperson is to preside; a quorum consists of the

Chairperson or Deputy Chairperson, one community member and one departmental representative; provision is made for simultaneous meetings of the Board; and if a question of law arises at a meeting of the Board where the Chairperson is not present, the matter must be referred to the Chairperson to decide.

The above changes are designed to achieve flexibility of meeting arrangements and will enable the Board to operate simultaneously in different locations (as recommended by the Mahoney Report), as well as schedule more frequent meetings to cover both the additional workload that is likely to result from the Mahoney Inquiry Report recommendations and to enable smaller caseloads to be considered at each meeting.

Clause 67 Schedule 2 amended

Schedule 2 of the *Sentence Administration Act 2003* provides a list of prescribed (serious) offences for the purposes of the Act. The prescribed offences are relevant in determining whether release on CEO parole is mandatory or discretionary by the CEO (section 23 of the Act) and, where a sentence of at least 2 years is imposed for a serious offence, whether the Parole Board is required to consider an offender's release on parole rather than the Secretary (section 108 of the Act).

It is proposed to include in Schedule 2 of the Act, child pornography offences under section 60 of the *Censorship Act 1996* and breaches of restraining orders under sections 61(1) and 61(2a) of the *Restraining Orders Act 1997*. This will result in the granting of parole in relation to short term sentences for those offences being discretionary rather than mandatory. In addition, should a term of imprisonment of 2 years or greater be imposed for either of those offences, it will be mandatory for the Parole Board to consider the offender's suitability for release on parole rather than simply the Registrar of the Board.

The inclusion of these offences in Schedule 2 reflects both a recognition of their seriousness and an acknowledgement that they ought to be made subject to some measure of discretion and greater scrutiny regarding release.

Part 3 – *Sentencing Act 1995* amended

Clause 68 The Act amended in this Part

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

Clause 69 Sections 8 and 16 amended

Amendments in this clause relate to subsections that are to be added or amended when the *Criminal Law Amendment (Criminal Property) Act 2004* comes into operation, and updates references to the 'State' rather than the 'Crown'. The reference makes minor amendment to subsections 8(6) and 16(1)(f) of the *Sentencing Act 1995* as they will be inserted or amended by sections 7 and 8 of the 2004 Act.

Clause 70 Section 33A amended

Under Part 3A of the *Sentencing Act 1995*, when a court is considering imposing imprisonment on an offender, it can adjourn the sentencing and release the offender

under conditions contained in a Pre-Sentence Order. Under the *Sentence Administration Act 2003*, where an offender is imprisoned for an offence committed while they were subject to an early release order, the order in question is automatically cancelled. It would therefore not be appropriate for a court to make a Pre-Sentence Order for such offences where the offence in question was committed while the offender was on parole.

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

In addition, a further amendment corrects a typographical drafting error in section 33A(4). The effect of the section is not changed in any way.

Clause 71 Section 33O amended

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

Clause 72 Section 84E replaced and consequential amendment to Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004

The *Sentencing Legislation Amendment Act 2004* was assented to on 14 October 2004 but has not as yet been proclaimed. The Act introduced the new sentence of Conditional Suspended Imprisonment (CSI) for use by the Perth Drug Court in the first instance, and inserted section 84E in the *Sentencing Act 1995*.

Section 59 of the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* subsequently amended section 84E, as inserted by the *Sentencing Legislation Amendment Act 2004*, to bring its terminology in line with the *Criminal Procedure Act 2004*. However, as the *Sentencing Legislation Amendment Act 2004* is yet to be proclaimed, the purpose of this amendment is to correct a timing issue that arises due to the interaction of the two Acts.

As the required amendment to section 84E of the *Sentencing Act 1995* has been reproduced in this Bill, the amendment set out in section 59 of the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* is therefore repealed.

Clause 73 Section 84P amended and consequential amendment to Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004

The *Sentencing Legislation Amendment Act 2004* was assented to on 14 October 2004 but has not as yet been proclaimed. The Act introduced the new sentence of Conditional Suspended Imprisonment (CSI) for use by the Perth Drug Court in the first instance, and inserted section 84P in the *Sentencing Act 1995*.

Section 65 of the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* subsequently amended section 84P(3), as inserted by the *Sentencing Legislation Amendment Act 2004*, to bring its terminology in line with the *Criminal Procedure Act 2004*. However, as the *Sentencing Legislation Amendment Act 2004* is yet to be proclaimed, the purpose of this amendment is to correct a timing issue that arises due to the interaction of the two Acts.

As the required amendment to section 84P(3) of the *Sentencing Act 1995* has been reproduced in this Bill, the amendment to section 84P(3) as set out in section 65 of the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* is therefore repealed.

Clause 74 Section 89 amended

Section 89 of the *Sentencing Act 1995* establishes the requirements and criteria that a court sentencing an offender must take into account when considering whether or not to make a parole eligibility order. Currently, a court cannot make a parole eligibility order if the fixed term, or aggregate of the fixed terms, is less than 12 months. In such cases, the prisoner would be eligible for CEO parole instead. However, where the aggregate of short terms (ie each term is less than 12 months) imposed equals or exceeds 12 months, there is no provision for parole consideration. Consequently, there is no opportunity for community re-integration and rehabilitation, irrespective of the circumstances of individual cases.

It is proposed to remedy this situation by amending section 89 to allow the court to consider making a parole eligibility order where the aggregate of short terms imposed equals or exceeds 12 months. In addition, if a parole eligibility order is made in relation to an aggregation of short term sentences only, the court is to make a single parole eligibility order in relation to all of the terms. However, if the new term imposed is a parole term, the court may also make a single parole eligibility order in relation to previously imposed short term sentences.

In each case where a parole eligibility order is made, the sentence will be considered to be a parole term and suitability for release on parole at the eligible release date will remain at the discretion of the Prisoners Review Board and will not be mandated.

Clause 75 Section 94 amended

Section 94 of the *Sentencing Act 1995* deals with the aggregation of parole terms and sets out the calculation of parole periods in relation to various examples.

The examples of calculations of parole periods contained in the Act were originally drafted on the basis of a uniform parole period of 50%, regardless of length of sentence. During the passage of the Act through Parliament in 2003, amendments were made by the Opposition which have resulted in a two-tiered parole formula. As a consequence, the examples of calculations of parole periods in the Act are incorrect and require amendment.

It is proposed that the table in section 94 of the Act be amended to reflect the correct calculation of the parole periods in the examples provided.

Clause 76 Section 150 inserted

Section 107 of the *Sentencing Legislation Amendment and Repeal Act 2003* requires that the Minister carry out a review of the changes to the *Sentencing Act 1995* and the new parole provisions contained in Part 3 of the *Sentence Administration Act 2003*. This review is to be completed 4 years from when the Act receives the Royal Assent, thus requiring that it be undertaken in 2007.

As a number of other changes have been made to the *Sentencing Act 1995*, it is considered prudent to review the whole of the Act in 2007 and also to review the Act on a regular basis thereafter. Insertion of section 150 gives effect to this proposal and requires the Act to be first reviewed as soon as practicable after 1 July 2007 (consistent with section 107 of the *Sentencing Legislation Amendment and Repeal Act 2003*) and thereafter at regular 5 yearly intervals.

Clause 77 References to “Crown” amended

Minor amendments are required to various sections throughout the Act in order to update all references to ‘Crown’ where they occur and replacing them with ‘State’ instead.

Part 4 – Criminal Law (Mentally Impaired Accused) Act 1996 amended

Clause 78 The Act amended in this Part

The amendments contained in Part 4 of the Bill are amendments to various provisions of the *Criminal Law (Mentally Impaired Accused) Act 1996*. This Act established the Mentally Impaired Accused Review Board and, amongst other functions, sets out the procedures to be followed with respect to the custody of mentally impaired accused persons.

Clause 79 Section 33 amended

Section 33 of the *Criminal Law (Mentally Impaired Accused) Act 1996* deals with the requirements for the Mentally Impaired Accused Review Board to report to the Minister responsible for this Act.

Section 33(5) sets out the factors that the Board is required to take into consideration when recommending whether or not a mentally impaired accused should be released from custody. This section is to be amended through the addition of paragraph (f); the effect of the amendment being to ensure the Board gives regard to any statement received from a victim of the alleged offence in respect of which the accused is in custody when deciding whether to recommend the release of a mentally impaired accused.

Clause 79 also defines who is a victim of an alleged offence through the addition of Section 33(6). This definition is drawn from the *Victims of Crime Act 1994* which states that a “ ‘victim’ means – (a) a person who has suffered injury, loss or damage as a direct result of an offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender; or (b) where an offence results in a death, any member of the immediate family of the deceased”. In section 33(6) reference is made to “an alleged offence” rather than “an offence” because, in the case of a mentally impaired accused person, the accused has not been found guilty of an offence.

Clause 80 Section 42 replaced by sections 42 and 42A

Section 42 of the *Criminal Law (Mentally Impaired Accused) Act 1996* deals with the membership of the Mentally Impaired Accused Review Board (MIARB). The membership of the MIARB includes the judicial member and the three community members of the Parole Board.

It is proposed to amend section 42 to reflect the establishment of the Prisoners Review Board and the changes to the membership structure of that Board (see the notes to clause 55). The MIARB will continue to utilise three of the community members of the Prisoners Review Board (PRB). As with the PRB, the community members chosen to also sit on the MIARB will possess the attributes as set out in section 103 of the *Sentence Administration Act 2003*. This includes a knowledge and understanding of the impact of offences on victims. Therefore, the membership of the MIARB will also include a member with additional insight into victim related issues in its decision making.

The addition of section 42A sets out the meeting procedure for the MIARB. The procedure is the same as that set out for the Prisoners Review Board under clause 5 of Schedule 1 of the *Sentence Administration Act 2003*, except that a quorum of the MIARB is constituted differently (it does not include a departmental representative) and the provision enabling simultaneous meetings does not apply to the MIARB.

Clause 81 Section 43 replaced

Section 43 of the *Criminal Law (Mentally Impaired Accused) Act 1996* enables the person appointed as secretary of the Parole Board to also be appointed as secretary of the Mentally Impaired Accused Review Board (MIARB).

Section 43 is replaced by a new section that reflects the change of name of the secretary to registrar of the Prisoners Review Board (PRB), and also inserts a provision for the staff appointed to the PRB to be considered staff of the MIARB (see the notes to clause 55).

Clause 82 Section 46 amended

Section 46 of the *Criminal Law (Mentally Impaired Accused) Act 1996* sets out the powers of various members of the Mentally Impaired Accused Review Board in relation to decisions of the Board, the cancelling of orders and the issuing of warrants.

Amendments to this section replace the term ‘judicial member’ with ‘chairperson’ thus making references in this Act consistent with references in the *Sentence Administration Act 2003* to the chairperson of the Prisoners Review Board.

Part 5 – *Young Offenders Act 1994* amended

Clause 83 The Act amended in this Part

The amendments contained in Part 5 of the Bill are amendments to various provisions of the *Young Offenders Act 1994*. This Act established the Supervised Release Review Board and sets out the provisions with respect to the administration and detention of juvenile offenders.

Clause 84 Section 15A amended

Section 15A of the *Young Offenders Act 1994* deals with the disclosure of personal information relating to young offenders.

The amendment to this section is a consequential amendment arising from changes in the title of the CEO as set out in recent amendments to the *Children and Community Services Act 2004*. A further consequential amendment is made as a result of the change of name from Parole Board to Prisoners Review Board in the *Sentence Administration Act 2003*, as proposed in this Bill.

Clause 85 Section 133 amended

Section 133 of the *Young Offenders Act 1994* sets out the basis on which the Supervised Release Review Board can make a supervised release order with respect to a detainee.

It is proposed to amend section 133 by adding a new subsection 133(1)(ba) which will ensure that a decision to grant a supervised release order can only be made if the Board has considered any statement received from a victim of the offence in respect of which the detainee is in custody, along with all the other requirements contained in s133.

Further amendment to this section will provide a definition of who is a victim of an offence. This definition is drawn from the *Victims of Crime Act 1994* which states that a “ ‘victim’ means – (a) a person who has suffered injury, loss or damage as a direct result of an offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender; or (b) where an offence results in a death, any member of the immediate family of the deceased”.

Clause 86 Section 152 amended

Section 152 of the *Young Offenders Act 1994* sets out the provisions regarding the members of the Supervised Release Review Board (SRRB).

The proposed amendment to section 152(1) of the Act will increase the number of SRRB members from 5 to 6. Under the new subsection 152(1)(e), this additional member is to be a person with an understanding of victims’ interests and concerns. This person is to be nominated by the Minister and appointed by the Governor.

Clause 86(2) adds section 152(7) to this Act. This section will set out the procedures for appointing a person to the SRRB who meets the criterion of having an understanding of the interests and concerns of victims’ of crime. The procedures allow for two methods by which a person can be nominated. A victim representative body may submit names following an advertising process or the Minister may nominate any person he or she thinks fit for this role.

Part 6 – Other Acts amended

Clause 87 Constitution Acts Amendment Act 1899 amended

The effect of clause 54 is to replace the Parole Board with the Prisoners Review Board. As a result, a consequential amendment is required to the *Constitution Acts Amendment Act 1899* to make reference to the correct name of the Board.

Clause 88 *Freedom of Information Act 1992 amended*

The effect of clause 54 is to replace the Parole Board with the Prisoners Review Board. As a result, a consequential amendment is required to the *Freedom of Information Act 1992* to make reference to the correct name of the Board.

Clause 89 *Juries Act 1957 amended*

The Second Schedule Part I of the *Juries Act 1957* lists those persons not eligible to serve as jurors.

The proposed amendments remove separate references to employees or officers in various departments of the Public Service and insert instead a general provision referring to all officers or employees of a department of the Public Service as prescribed by Regulations. In addition, it provides for a consequential amendment to give effect to clause 54 which replaces the Parole Board with the Prisoners Review Board and ensures the correct reference to the name of the Board. Furthermore, it inserts an exclusion from eligibility by members of the Mentally Impaired Accused Review Board, to correct a previous oversight of a required consequential amendment when that Board was formed.

Clause 90 *Parole Orders (Transfer) Act 1984 amended*

The effect of clause 54 is to replace the Parole Board with the Prisoners Review Board. As a result, a consequential amendment is required to the *Parole Orders (Transfer) Act 1984* to make reference to the correct name of the Board.

Clause 91 *Prisoners (Release for Deportation) Act 1989 amended*

The effect of clause 54 is to replace the Parole Board with the Prisoners Review Board. As a result, a consequential amendment is required to the *Prisoners (Release for Deportation) Act 1989* to make reference to the correct name of the Board.

Clause 92 *Sentencing Legislation Amendment and Repeal Act 2003 amended*

Part 6 (section 107) of the *Sentencing Legislation Amendment and Repeal Act 2003* sets out a requirement for a review of the relevant parts of the *Sentencing Act 1995* and Part 3 of the *Sentence Administration Act 2003* as soon as practicable after the expiration of 4 years from the date the Act receives Royal Assent. The proposed amendment repeals this section as provision has been included in this Bill to review the whole of those Acts instead (see the notes to clause 65 and clause 76).

Clause 93 *Sentencing Legislation Amendment Act 2004 amended*

The *Sentencing Legislation Amendment Act 2004* was assented to on 14 October 2004 but has not as yet been proclaimed. The Act introduced the new sentence of Conditional Suspended Imprisonment (CSI) for use by the Perth Drug Court in the first instance.

Section 14(2) of the Act proposed to amend section 19(1) of the *Children's Court of Western Australia Act 1988*, dealing with the criminal jurisdiction of the Court relating to children.

Section 15 of the Act proposed to amend clause 4(1)(d) of Schedule 1 of the *Criminal Investigation (Identifying People) Act 2002*, listing types of serious offenders to whom a request to undergo identifying procedures applies.

Clause 93 proposes to repeal both of these amendments as they are now out of date as the relevant sections have since been further amended or have expired. Therefore, the amendments are no longer required.

Clause 94 *Spent Convictions Act 1988 amended*

Schedule 3 of the *Spent Convictions Act 1988* lists those persons who are excepted from the provisions of Part 3 of the Act, which states that disclosure of a spent conviction is not required. It is proposed to amend the Schedule to:

- a) make a consequential amendment resulting from the change of name of the Parole Board to the Prisoners Review Board (see the notes to clause 54);
- b) insert a reference to the Mentally Impaired Accused Review Board, to correct a previous oversight of a required consequential amendment when the Board was formed; and
- c) update the reference to the ‘Community and Juvenile Justice Division or the Prisons Division of the Department of Justice’ to reflect the recent separation of the Department of Justice and the consequent formation of the Departments of Corrective Services and the Attorney General.

Clause 95 *Victims of Crime Act 1994 amended*

Section 2 of the *Victims of Crime Act 1994* provides definitions of various terms and includes a list of public officers and bodies.

It is proposed to amend section 2 of the Act to make a consequential amendment replacing the name of the Parole Board with the Prisoners Review Board (see the notes to clause 54), and inserting a reference to the Mentally Impaired Accused Review Board. This latter amendment is required to correct a previous oversight of a required consequential amendment when the Board was formed.

Part 7 – Transitional Provisions

Clause 96 *Arrangements for CEO parole orders*

As a result of the transfer of jurisdiction from the CEO to the Prisoners Review Board in relation to short term sentences, transitional provisions are required for those prisoners either serving short term sentences or subject to a CEO parole order at the time the amended Act comes into operation.

The transitional provisions allow for those prisoners subject to a CEO parole order at the time of commencement to continue with the existing parole order but the order is then considered to be an order made by the Prisoners Review Board.

For those prisoners in custody and eligible for consideration for parole in relation to short term sentences at the time of commencement, a transitional period of 2 months will operate when the CEO may exercise the same powers as the Board and it will be regarded as having been exercised for the Board. This provision will allow for the gradual transition of the assessment and decision making process in relation to eligible prisoners to be relocated to the Board.

Clause 97 Arrangements for RROs

As a result of the removal of eligibility for consideration for a Re-entry Release Order (RRO) for those prisoners serving parole terms, transitional provisions are required for those prisoners serving parole terms or subject to an RRO at the time the amended Act comes into operation.

The transitional provisions allow for those prisoners subject to an RRO at the time of commencement to continue with the existing order but the former provisions (prior to commencement) will continue to apply to that order.

Those prisoners serving a parole term and eligible for consideration for an RRO at the time of commencement, despite the amended provisions, will continue to be eligible for an RRO and may apply to be released under an RRO. However, such an application is to be dealt with in accordance with the amended provisions.

Clause 98 Arrangements for members of existing Parole Board

As a result of the establishment of the Prisoners Review Board, transitional provisions are required for the members of the existing Parole Board at the time the amended Act comes into operation.

The transitional provisions allow for the Chairperson of the existing Parole Board to continue as the Chairperson of the Prisoners Review Board. However, the office of any other member of the Parole Board becomes vacant at the time of commencement although nothing prevents such persons from being nominated or appointed or holding office as a member of the Prisoners Review Board.