

**SENTENCE ADMINISTRATION AMENDMENT  
(MULTIPLE MURDERERS) BILL 2018**

**EXPLANATORY MEMORANDUM**

**Overview of the Bill**

The Sentence Administration Amendment (Multiple Murderers) Bill 2018 (WA) makes amendments to the *Sentence Administration Act 2003* (WA) (the Act).

The Bill establishes a scheme of Ministerial directions by which the Minister may direct that a ‘designated prisoner’, being a mass murderer or serial killer, must not be considered for parole or a re-socialisation programme.

For the period that the direction is in effect, it will prevent the Prisoners Review Board of Western Australia (the Board) and Chief Executive Officer (CEO) of the Corrective Services Division of the Department of Justice from undertaking any assessment, consideration or reporting functions in respect of parole or a re-socialisation programme for the designated prisoner.

**Part 1: Preliminary**

**Clause 1 – Short title**

Clause 1 provides that the Bill, once enacted, will be known as the *Sentence Administration Amendment (Multiple Murderers) Act 2018* (WA).

**Clause 2 – Commencement**

Clause 2 provides for the commencement of the Act.

Sections 1 and 2 come into operation on the day on which the Act receives Royal Assent.

The rest of the Act will come into operation the day after Royal Assent.

**Clause 3 – Act amended**

Clause 3 provides that this Act will amend the *Sentence Administration Act 2003* (WA).

**Clause 4 – Section 12A amended**

Clause 4 amends section 12A by inserting new provisions that operate by reference to a direction made under new Division 5 of Part 2.

Section 12A currently provides that the Board must give the Minister, being the Attorney General, a written report in relation to release considerations relating to prisoners sentenced to life imprisonment, indefinite imprisonment and Governor’s pleasure detainees. These reports are required to be given in accordance with the

prescribed periods contained in Schedule 3 to the Act. The amendments introduced by this Bill do not affect the first statutory report.

The Board's obligation to give subsequent reports under section 12A(2) will be expressly limited by new section 12A(2A), which is inserted and given effect by clauses 4(1) and (2) of the Bill.

Proposed section 12A(2A) provides that the Board is not to give a report to the Minister about a prisoner in accordance with section 12A(2) at any time when a direction under section 14C is in effect in relation to the prisoner.

Proposed new sections 12A(2B) and (2C) deal with the Board's obligation to give reports in relation to a prisoner when a direction under section 14C ceases to be in effect and when no other directions under section 14C are in effect in relation to that prisoner.

Section 12A(2B) provides that the statutory reporting functions under section 12A(2) resume and due dates for future reports are calculated as if all previous reports had been completed at the times prescribed by Schedule 3.

Section 12A(2C) provides an exception to this rule so that a report may be deferred past the due date, provided it is given to the Minister as soon as practicable, and in any event within seven months. This ensures that the Board has sufficient time to prepare for and comply with the statutory reporting requirements.

#### **Clause 5 – Section 13 amended**

Clause 5 amends section 13 by inserting new provisions that operate by reference to a direction made under new Division 5 of Part 2.

Section 13 of the Act currently sets out the process for the assessment, development, endorsement, and recommendation of a re-socialisation programme for a prisoner serving a life or indefinite term of imprisonment and Governor's pleasure detainees as listed under Schedule 3 of the Act.

Sections 13(2) and (3) currently provide for the CEO to undertake a mandatory assessment and report to the Board about a prisoner's suitability for participation in a re-socialisation programme, and whether it can be facilitated by the CEO. This assessment is undertaken at a prescribed time, which is completed prior to the first section 12A statutory report. The amendments introduced by this Bill do not impact this initial assessment.

Clauses 5(1) and (2) amend sections 13(4) and 13(5) by inserting references to the proposed new subsection 13(5A).

Clause 5(3) inserts new section 13(5A) and provides the mechanism for preventing the Board and CEO from developing, endorsing and recommending a re-socialisation programme for a prisoner, as these functions may be undertaken at any time following the initial process.

Proposed section 13(5A) provides that, at any time when a direction made under section 14C is in effect in relation to a prisoner, this:

- suspends the operation of section 13(4), under which the Board may request the CEO to produce a description of a re-socialisation programme for the prisoner, as well as preventing the CEO from complying with a request of the Board if made prior to the direction coming into effect; and
- suspends the operation of section 13(5), under which the Board may consider the release considerations relating to the prisoner (for the purpose of participation in a re-socialisation programme), endorse a re-socialisation programme or recommend to the Minister that the Governor should be advised to approve the programme as so endorsed and the prisoner's participation in it.

When a direction made under section 14C ceases to be in effect, then the suspensions under section 13(5A) are automatically lifted.

### **Clause 6 – Part 2 Division 5 inserted**

Clause 6 introduces the substantive provisions giving effect to the new scheme of Ministerial directions, which is contained in new Division 5 of Part 2, "Directions to suspend reporting".

#### ***New section 14B. Term used: designated prisoner***

Proposed new section 14B introduces the concepts of '*relevant offence*', '*designated prisoner*', and '*relevant report*' for the purposes of supporting the operation of new section 14C and prescribing the class of prisoners for whom a Ministerial direction may be made.

'*Relevant offence*' is defined as:

- murder, which means the offence as defined within section 279 of *The Criminal Code* (WA) (the Code), and by virtue of section 3(2) of Appendix B to the Code, includes the former Western Australian offence of wilful murder as it was before the commencement of the *Criminal Law Amendment (Homicide) Act 2008* (WA); or
- an offence under the law of the Commonwealth, of another State, of a Territory, or of any place outside Australia, which is constituted by conduct that is substantially the same as the conduct constituting murder.

This definition clarifies that section 14C directions may apply to prisoners convicted of murder or wilful murder, and regardless of the jurisdiction and statute under which the prisoner was sentenced.

*'Designated prisoner'* means a Schedule 3 prisoner who is serving a sentence for a relevant offence (the *first relevant offence*) and who -

- has been convicted of two or more other relevant offences which were committed at any time; or
- has been convicted of another relevant offence which was committed on a different day than the first relevant offence.

The first part of the definition of 'designated prisoner' clarifies that section 14C directions will only apply to prisoners who are serving life or indefinite imprisonment or are Governor's pleasure detainees as listed under Schedule 3 of the Act. The issue of periodic parole review under section 12A and consideration for re-socialisation programmes under section 13 only arises in relation to Schedule 3 prisoners. It is thus not necessary to extend the scheme to other classes of prisoners.

Ministerial directions can only be made regarding mass murderers, being someone who has killed three or more people; and serial killers, being someone who has killed two or more people on different days.

When a prisoner has two or more convictions for other relevant offences, which are in addition to the first relevant offence, the prisoner will meet the conditions for mass murderer if the offences were committed on the same day, or serial killer if committed on different days.

When a prisoner has only one other conviction for a relevant offence, then this will require enquiry to confirm that the offence was committed on a different day to the first relevant offence to meet the conditions for serial killer.

Another important aspect of the definition is that it does not matter whether the other relevant offences formed part of the same prosecution as the first relevant offence, or the sentence outcome of those other relevant offences. This ensures that Ministerial directions may be made, for example, in respect of a person who has completed one sentence for a relevant offence, whether that sentence was imprisonment or any other sentence type, and who subsequently commits and is convicted of a further relevant offence for which the person is currently in custody as a Schedule 3 prisoner.

*'Relevant report'* is defined to identify the statutory reporting provisions of the current and former sentence administration regimes that applied, or will apply, to the designated prisoners. This definition is central to the operation of section 14C, which requires that a direction may only be made when the Minister has received the first statutory report in respect of a designated prisoner.

*'Relevant report'* means a report given by the Board to the Minister under:

- Section 12A(2) of the Act; or
- *Offenders Community Corrections Act 1963* (WA) section 34(2)(c) or (d) as continued in operation by Part 56 Division 2 of the *Sentencing (Consequential Provisions) Act 1995* (WA).

This definition, which specifies the precise statutory reporting provisions of the former *Offenders Community Corrections Act 1963* (WA), ensures that Ministerial directions may apply to designated prisoners sentenced before 4 November 1996 ('pre-1996 long-term prisoners'). It has been necessary to identify those former statutory reporting arrangements because pre-1996 long-term prisoners have not fully transitioned to current mandatory reporting under section 12A(2) of the Act. This is due to transitional provisions under the *Sentencing (Consequential Provisions) Act 1995* (WA) that have continued the operation of the former reporting arrangements.

Section 12A(2) of the Act effectively captures all other statutory reporting arrangements for other designated prisoners serving life or indefinite imprisonment and Governor's pleasure detainees.

### ***New section 14C. Minister may direct suspension of reporting***

Section 14C(1) provides that at any time after the Minister has received a relevant report about a designated prisoner, the Minister may direct that the operation of sections 12A(2), 13(4) and (5) in relation to that designated prisoner be suspended. This has the effect that the Board and CEO are prevented from undertaking any assessment, consideration or reporting function in respect of parole or a re-socialisation programme for the designated prisoner.

The Minister may only issue a direction after the Prisoners Review Board has given the Minister (being the current or a former Attorney General) the first statutory report for a designated prisoner's parole consideration. This has been necessary to avoid any potential interference with the minimum non-parole period set by the sentencing court.

It is noted that, in relation to the pre-1996 long-term prisoners, the effect of the *Sentence Legislation Amendment Act 2016* (WA) has been that all future statutory reports are required to be given in accordance with section 12A of the Act. The former statutory regime will no longer apply, and for this reason there is no requirement to include special provisions to the effect that a direction is to displace the provisions of the *Offenders Community Corrections Act 1963* (WA) as continued in operation by the *Sentencing (Consequential Provisions) Act 1995* (WA).

Section 14C(2) provides that a direction given by the Minister under section 14C(1) must be in writing, and must specify start and end dates, which must not be more than six years apart. This clarifies when a direction is in effect and supports the new provisions inserted into sections 12A and 13.

Section 14C(3) provides that the Minister must give copies of a direction under section 14C(1) to the Board, the CEO and the designated prisoner.

Section 14C(4) allows the Minister to issue a further direction in respect of a designated prisoner only within three months of the expiry of a previous direction for the same designated prisoner.

Section 14C(5) provides that there is no limit to the number of subsequent directions that can be made in relation to a designated prisoner.

Section 14C(6) clarifies that a direction does not prevent the Board from giving reports under section 12 in relation to the designated prisoner. Section 12 deals with the circumstances in which the Board is required to give a report when requested by the Minister, or when the Board considers it necessary to do so. Reports provided under section 12 must deal with the release considerations relating to the prisoner and may make a recommendation for early release.

Retaining section 12 negates the need to include special provisions for revocation of a direction. It allows the Board to effectively report to the Minister on any exceptional cases where parole may need to be considered, and allows the Minister to request the Board to prepare a report at any time.

#### ***14D. No review of direction to suspend reporting***

Section 14D(1) provides that the Minister's direction made under section 14C(1):

- must not be challenged, appealed against, reviewed, quashed or called into question in any court; and
- is not subject to review or remedy by way of prohibition, mandamus, injunction, declaration or certiorari, or a remedy having the same effect as a remedy that could be provided by means of such a writ, in any court on any account.

Section 14D(2) clarifies that judicial review of a direction can be sought on the basis of jurisdictional error, which, constitutionally, cannot be excluded by legislation.

By virtue of existing section 115 of the Act, the rules of natural justice (and any requirements for procedural fairness) will not apply to the making of a section 14C direction.