

SENTENCE ADMINISTRATION BILL 2002

Explanatory Notes

PART 1 - PRELIMINARY

Clause 1 Short title

Short title of the Act.

Clause 2 Commencement

The Act will come into operation on a date, or dates, to be specified by way of proclamation made by the Governor in Executive Council.

Clause 3 This Act to be read with Sentencing Act 1995

In order to understand the full effects to the sentencing laws in this State, the *Sentence Administration Act 2002* needs to be read with the *Sentencing Act 1995*.

Clause 4 Interpretation and abbreviations

This clause provides definitions and abbreviations for commonly used terms in the *Sentence Administration Act 2002*.

If not specifically defined in the *Sentence Administration Act 2002*, words and expressions have the same meaning as in the *Sentencing Act 1995*.

PART 2 – GENERAL MATTERS ABOUT PEOPLE IN CUSTODY

Clause 5 Interpretation and calculations

Corresponds to section 6 of the *Sentence Administration Act 1995*.

Words and calculations are to be treated as defined in Part 13 of the *Sentencing Act 1995*.

Clause 6 When a term begins

Corresponds to section 7 of the *Sentence Administration Act 1995*.

This clause deals with when a term of imprisonment, other than an indefinite term, begins.

The commencement date of a term is subject to s.87 of the *Sentencing Act 1995* which deals with taking time on remand into account; and s.88 (3) of the *Sentencing Act 1995* deals with fixed terms being dealt with cumulatively, concurrently or partly concurrently.

Subclause (2) provides that where a term is cumulative on other terms, then the term begins on the earliest date the offender could be released from the last of those terms – regardless of whether release would otherwise occur under other nominated orders.

Clause 7 Order of service of fixed terms

Largely corresponds to section 8 of the *Sentence Administration Act 1995*.

Where 2 or more fixed terms are to be served they must be served in the following order-

- first, all non-parole terms;
- secondly, all non-parole periods of parole terms, subject to whether the terms can be aggregated or not in accordance with s.94 of the *Sentencing Act 1995*.
- thirdly, unless and until released on parole, the outstanding balance of parole terms.

Subclause (3) covers the situation where a prisoner is serving a parole term imposed prior to the commencement of Part 2 Division 4 of the *Sentencing Legislation Amendment and Repeal Act 2002* and is sentenced to another parole term, after such commencement, then-

- the non-parole periods are to be served either concurrent, partly concurrent or cumulative (as determined by the court); and
- the balance of the parole terms are to be served concurrently regardless.

Subclause (3) is necessary as it would not be possible to aggregate such sentences to arrive at a total sentence given the changes in relation to abolition of remission and non-parole period lengths.

If a prisoner serving a fixed term is sentenced to serve another fixed term and the terms are not partly concurrent then the order of the service of the terms may be rearranged so that they can be served in the order required by subsection (2).

“Fixed term” and “non-parole period” are defined for the purpose of this section.

Clause 8 Effect of escaping from custody
Corresponds to section 9 of the *Sentence Administration Act 1995*.

While a prisoner is an escapee the term of imprisonment is frozen.

The clause also provides that a prisoner who is returned to custody after having escaped must serve that part of the term that still had to be served at the time of escaping plus some additional time - and this is in addition to any term imposed for escaping lawful custody.

In January 1999 advice was received from Crown Solicitor's Office in relation to an unlawful release of a prisoner from custody. In part the advice stated that the sentences in question were continuing to run despite the fact that the offender was not in custody. It should not be the case that where an offender is "unlawfully" not in custody, that their sentence should still continue to run.

Subclause (3) clarifies the effect on a sentence if an offender is not in lawful custody.

Clause 9 Effect of time before an appeal
Corresponds to section 10 of the *Sentence Administration Act 1995*.

Time spent on bail during an appeal does not count as time served.

Time spent in custody during an appeal counts as time served in respect of any term that is being served, but not in respect of any term yet to be served.

Clause 10 No release if prisoner in custody for another matter
Corresponds to section 11 of the *Sentence Administration Act 1995*.

A prisoner must not be released from custody for one term if he or she is required by law to be kept in custody for another matter.

Clause 11 Report to Minister about the place of custody for a person in custody during Governor's Pleasure
Corresponds to section 13 of the *Sentence Administration Act 1995*.

The Minister may request the CEO to provide a report as described in subsection (2).

When the CEO gets a request from the Minister or he deems it necessary, the CEO must provide a report on the place or places where a person is in strict custody under s.282 of *The Criminal Code* is currently or should be detained in safe custody. (s.282 of *The Code* deals with punishment for murder and wilful murder).

Clause 12 Report to Minister about a person in custody
Corresponds to section 14 of the *Sentence Administration Act 1995*.

Subclause (1) gives a definition of a “person in custody” for the purposes of this section.

The Minister may request the Parole Board to provide a report about a person in custody.

The Board must give the Minister a written report about a person in custody –

- if it gets a request from the Minister;
- whenever it deems it necessary; and
- at least once a year for those held under section 282 of *The Criminal Code*.

A report may recommend that the Governor be advised to release a person from custody and what conditions should apply to any such release.

If a report recommends that a person be released it must include:

- Details about the offence committed.
- If parole is recommended it must also include:
 - details of the parole considerations relating to the person (as defined in clause 16); and
 - the period and any other conditions of parole.

Clause 13 Operation of this division
Corresponds to section 15 of the *Sentence Administration Act 1995*.

The powers in Part 2 Division 4 are additional to any other powers the Governor may have concerning releasing persons from custody.

Clause 14 Release may be by parole order
Corresponds to section 16 of the *Sentence Administration Act 1995*.

The Governor may release a person in strict or safe custody by means of a parole order. The parole order cannot be made unless a report has been given to the Minister under clause 12.

The release date is the date set by the Governor. Parole period is set by the Governor and can't be less than 6 month or more than 5 years.

The Minister must provide a copy of the parole order and written explanation to each House of Parliament within 15 sitting days of the order being made.

In the absence of matters dealt with by the clause, persons so detained would not have a mechanism for release back into the community under supervision.

PART 3 - PAROLE

Clause 15 Interpretation

Corresponds in part to section 16 of the *Sentence Administration Act 1995*.

Clause 15 of the Bill provides the definition of “parole considerations” being the matters that the Parole Board or CEO takes into account in determining whether to release somebody on parole.

In addition clause 15 provides that the expression or words that are used, and any calculations that are required to be made in relation to in this part of the Act, are to be read or made in the same way as in Part 13 of the *Sentencing Act 1995*.

Clause 16 Release on parole, matters to be considered

Clause 16 refers to what is commonly to be called throughout the Act as the “parole considerations”. Clause 16 sets out a range of factors or considerations that are required to be taken into account in determining whether the person should be released on parole or not.

In essence, the range or considerations looks at the circumstances of the current offence, the behaviour of the prisoner when in custody, any participation in programmes by the prisoner and previous participation of some form of early release order, whether the prisoner will re-offend, the capacity of the prisoner to comply with the conditions of the parole, and degree of risk that the prisoner may present to the safety of the community. Account must also be taken of the Judge’s sentencing remarks, and in addition any other consideration that may be relevant to whether the person should be release parole.

Clause 17 Parole term, CEO to report to Board about prisoner

Corresponds in part to section 19 of the *Sentence Administration Act 1995*.

Clause 17 provides that in the case of a person serving a parole term, the CEO is required to give the Board a written report on the parole considerations that are detailed in Clause 16 of the Bill. There is also a requirement that the report provided by the CEO must be given to the Board within a reasonable time before the persons eligibility for parole. This is to enable the Parole Board to have adequate consideration of the issues before the person’s eligibility date.

Clause 18 Life term or indefinite imprisonment, Board to report periodically to Minister about prisoner

Generally replicates the existing section 20 of the Sentence Administration Act 1995.

It provides a reporting regime in respect of offenders sentenced to life imprisonment or indefinite imprisonment. A Table is provided concerning when mandatory reports are required to be presented to the Minister by the Board.

In addition, if the Board believes in relation to a report made to the Minister that the person should be released there are a range of issues which the Board is required to report on. The Board is required to report on the parole considerations relating to the prisoner, period for which the prisoner is to be released on parole, and whether the Board believes any additional requirements should be placed on the prisoner when they are on parole.

Clause 19 Interpretation

Prisoner is defined for the purposes of Division 3 Part 3.

Clause 20 Board may parole prisoner

Corresponds in part to sections 21 and 22 of the Sentence Administration Act 1995.

Under clause 20 the Board is required to consider whether the person should be released on parole prior to the person's eligibility date.

After taking into account a number of matters including the parole considerations, the report made by the CEO and any other information that the Board has brought to its attention concerning the offender, the Board can, if it decides it is appropriate, make an order for the release on parole.

Any order for such a release cannot allow the person to be released prior to their eligibility date.

The parole period in the order runs from the date of release until the expiry of the total parole term.

Under subclause (5) of clause 20, if the Board decides not to make a parole order it is not prevented from subsequently making an order in the future.

Clause 21 Prisoner to be notified of postponement or refusal of parole

Corresponds in part to section 27 of the Sentence Administration Act 1995.

Clause 21 provides that in the case where parole is refused or postponed then the written notice of such a decision is to be given to the prisoner as soon as possible and that the prisoner is to be informed of the right to make submissions to the Board about the Board decisions.

While the Board is allowed to provide reasons for its decision it can decide that in the interests of any other person or the public that it can withhold from the prisoner any/or all of its reasons for its decision.

Clause 22 Application

Division 4 of Part 3 of the Bill enables the Director General of the Department of Justice (CEO) to make parole orders in respect of prisoners serving terms of less than 12 months. Clause 22 outlines those prisoners to whom these provisions do or do not apply. Generally all prisoners serving terms of less than 12 months are eligible provided they are not serving a term of escaping from legal custody or in respect of an aggravated prison offence under the *Prisons Act 1981*.

Clause 23 Release on parole CEO

Clause 23 provides the CEO with the power to make parole orders in respect of eligible prisoners serving terms of less than 12 months. The CEO is required to make a parole order in respect of such prisoners unless the prisoner is of a certain class (i.e. serving a sentence for a violent offence). In these cases there is discretion not to make a parole order.

A parole order made by the CEO takes effect after the prisoner has served one-half of the sentence, and can either be a unsupervised or supervised order.

Clause 24 Prisoner to be notified of postponement or refusal of parole

Clause 24 provides that where the CEO exercises discretion to refuse parole then written notice of such a decision is to be given to the prisoner as soon as possible and that the prisoner is to be informed of the right to make submissions to the CEO about the CEO's decision.

While the CEO is allowed to provide reasons for his/her decision, he/she can decide that in the interests of any other person or the public that it can withhold from the prisoner any/or all of its reasons for its decision.

Clause 25 Life imprisonment, Governor may parole prisoner

Corresponds to section 23 of the *Sentence Administration Act 1995*.

Clause 25 replicates the existing section 23 of the current Act, in providing for the paroling of the people serving life imprisonment.

The clause provides that the Governor can only make a parole order in respect of a prisoner serving life imprisonment if the prisoner has served a minimum period that has been set by the Court and only if the Board has provided a report to the Minister as required under sections 12 and 18 of the new Act.

It also provides that the release date on parole is that set by the Governor and the parole period is that set to by the Governor within a range of 6 months and 5 years. This replicates the existing provisions.

Clause 26 *Strict security life imprisonment, Governor may parole prisoner*
Corresponds to section 24 of the *Sentence Administration Act 1995*.

Clause 26 is in identical terms to the existing section 24 of the current Act in providing for the release on parole of prisoners serving strict security of life imprisonment.

For these offenders, the Governor can make a parole order, only when a person has served any minimum period set by the Court and only if the Minister has received a report from the Board under section 12 or 18 of the Act.

In addition, the Governor is precluded from making a parole order if the sentencing court has deemed the person is to be sentenced to natural life imprisonment.

The nature of the order made by the Governor is such that the Governor will set the release date and set the parole period of the order.

There is also a requirement on the Minister to advise Parliament on any parole order made in respect of a person serving strict security life imprisonment - this replicates the existing provisions of section 24 of the current Act.

Clause 27 *Indefinite imprisonment, Governor may parole prisoner*
Corresponds to section 25 of the *Sentence Administration Act 1995*.

Clause 27 of the current Bill replicates the existing section 25 of the current Act in dealing with the parole of offenders serving indefinite imprisonment. The clause provides that the Governor can only make a parole order in respect of these offenders if the Minister has received a report from the Board under section 12 or 18 of the Act.

In respect of any parole order made, the release date is that set by the Governor and the parole period in the order is to be set by the Governor within a range of 6 months and not more than 5 years.

Clause 28 *Parole order, nature of*
Formerly clause 28 of *Sentence Administration Bill 1998* and corresponds to section 30 of the *Sentence Administration Act 1995*.

Clause 28 deals with the nature of a parole order and provides that the prisoner understands the consequences of cancellation and any re-release on parole, and also any effects of automatic cancellation of parole, and that the prisoner gives a written undertaking that during the supervised period of the order that there are additional obligations and requirements under the Act that the offender is required to comply with.

The clause also sets out the formula for calculating the length of the supervised period of the parole order.

Clause 29 Parole order, standard obligations
Corresponds to section 31 of the *Sentence Administration Act 1995*.

Clause 29 deals with the standard obligations of a parole order. These obligations concern reporting to a community corrections centre, notification of change of address or employment and compliance with obligations imposed under section 73 of the Act.

Clause 30 Parole order, additional requirements
Corresponds to section 32 of the *Sentence Administration Act 1995*.

Clause 30 deals with additional requirements may be imposed on a parole order and enables the Board or the Governor or the CEO to impose a number of specific requirements onto a parole order.

Generally these are that the prisoner is to reside in a particular place or may be subject to electronic monitoring, there may also be requirements that the prisoner is not allowed to leave the State, that the prisoner should undertake some type of gainful employment or vocational training or that the movements of the offender be restricted so as to avoid contact with the victim of the offence.

Clause 31 CEO to ensure parolee is supervised during supervised period
Corresponds to section 34 of the *Sentence Administration Act 1995*.

Clause 31 provides that where a prisoner is on a parole order that the CEO is required to assign a community corrections officer to supervise the prisoner.

There is a however, a capacity that if the CEO believes that the offender is satisfactorily complying with the supervision and there is a minimal risk of re-offending if they were not to be supervised, then CEO can recommend to the Board that the supervision of the prisoner no longer be required. If the Board receives such notice from the CEO, then the Board can direct the CEO, that the prisoner need no longer be supervised and if such happens CEO may cease the supervision.

In relation to a parole order made by the CEO, the CEO can actually lift this requirement.

If the supervision is ceased then the CEO is to inform the prisoner. Any lifting of the supervision of the prisoner does not affect the prisoner's obligations to any other requirements that may be imposed during the supervision period.

Clause 32 Parole order may relate to more than one parole term
Corresponds to section 30(3) of the *Sentence Administration Act 1995*.

Clause 32 allows a parole order to relate to more than one term. This obviates the needs for having multiple parole orders in relation to multiple terms the offender may be serving.

Clause 33 Prisoner may refuse to be released on parole

Corresponds in part to section 33 of the *Sentence Administration Act 1995*.

Clause 33 of the Bill enables the prisoner to give a written notice that they do not want to be released on parole and in such circumstances a parole order is not to be made.

However, the prisoner may subsequently give a written notice that they do want to be released on parole. There is also a requirement that if the parole order is to be made by the Governor then the Board has to provide the prisoner's written notice to the Minister.

Clause 34 Prisoner's acknowledgement or undertaking

Corresponds in part to section 33 of the *Sentence Administration Act 1995*.

Clause 34 provides that the prisoner is required to give a written acknowledgement or undertaking before the release date specified in the order otherwise the order is deemed to have been cancelled.

Clause 35 Making parole order after refusal by prisoner

Corresponds in part to section 33 of the *Sentence Administration Act 1995*.

Clause 35 of the Bill provides that if a parole order was not made because the prisoner gave notice that they did not want to be released on parole, or if the parole order was cancelled because the prisoner did not want to sign the undertaking or acknowledgement, and that subsequently the prisoner gives the Board or the Governor or the CEO a written notice that they want to be released on parole (or is prepared to give the written acknowledgment or undertaking) then the Board or the Governor or the CEO can issue a parole order.

Clause 36 Amending before release

Corresponds to section 37 of the *Sentence Administration Act 1995*.

Clause 36 enables a parole order to be amended during the period after being made and before the prisoner is released on parole.

Clause 37 Board may amend parole order during supervised period

Corresponds to section 38 of the *Sentence Administration Act 1995*.

Clause 37 enables the Board to amend any supervised parole order during the supervision period, in which case the amended parole order applies accordingly. The CEO also has a power to amend a CEO parole order (supervised).

The Board or the CEO are required to provide a written notice of the decision to amend to the prisoner.

Clause 38 Suspension by CEO during supervised period
Largely corresponds to section 36 of *Sentence Administration Act 1995*.

Clause 38 enables the CEO to suspend parole order either made by himself or by the Parole Board or by the Governor. Where the CEO suspend an order made by either the Board or the Governor, the CEO is required to notify the Board within 3 working days and is to provide the Board with written reasons for the suspension.

Clause 39 Suspension by Board during supervised period
Corresponds to section 37 of *Sentence Administration Act 1995*.

Clause 39 enables the Board to suspend parole orders either made by the Board or by the Governor.

Clause 40 Period of suspension
Corresponds to section 39(1), (2) and (7) of *Sentence Administration Act 1995*.

Clause 40 outlines, in case the case parole orders that are suspended, as to who determines the length of the suspension and as to how long the suspension last for. Where a parole order made by the Board or the Governor is suspend, the Board is to determine the period of the suspension and can cancel the suspension if need be. Where the CEO suspends a CEO parole order, the CEO sets the suspension period and can cancel the suspension if need be.

Clause 41 Suspension, effect on other parole orders
Corresponds to section 39(3) of *Sentence Administration Act 1995*.

If a parole order is suspended any other parole order that is in force is also suspended.

Clause 42 Prisoner to be notified
Corresponds to section 39(4), (5) and (6) of *Sentence Administration Act 1995*.

Where a parole order is suspended, the prisoner is to be notified as soon as possible after they have been returned to custody. The notification to the prisoner must include the reasons as to why the order was suspended, unless it would be in the interests of the public or the prisoner or any other person to withhold any or all of the reasons. Furthermore the prisoner is to be advised that they can make submissions, to the appropriate authority, in relation to the decision to suspend and any reasons related to that decision (if reason shave been supplied).

Clause 43 Cancellation before release
Corresponds in part to section 35 of the *Sentence Administration Act 1995*.

Clause 43 enables the Board or the Governor or the CEO to cancel a parole order during the period after the order is made and before the prisoner is released.

Clause 44 Cancellation by Board or CEO

Corresponds in part to section 40 of the *Sentence Administration Act 1995*.

Clause 44 of the Bill deals with the cancellation by the Board of a parole order – whether made by the Board or the Governor. Also enables the CEO to cancel a CEO parole order.

Clause 45 Cancellation, prisoner to be notified

Corresponds in part to section 35, 39 and 40 of the *Sentence Administration Act 1995*.

The clause provides that where a parole order is cancelled, written notice is to be given to the prisoner, providing reasons (where appropriate) and setting out the prisoners right to respond.

Clause 46 Cancellation, effect on other parole orders

Corresponds in part to section 40 of the *Sentence Administration Act 1995*.

All other parole orders are cancelled as a consequence of a parole order being cancelled.

Clause 47 Parole ordered by Governor, Minister to be advised of amendment or cancellation

Corresponds to section 41 of the *Sentence Administration Act 1995*.

Clause 47 provides that, in respect of parole orders made by the Governor, if decisions are made such as a direction that the offender need no longer be supervised, or the order itself is amended in some form, or if the order is cancelled in some form, then the Board is required to provide written notice to the Minister.

The clause also enables the Governor to cancel any of those decisions that have been made in respect of that order.

Clause 48 Resolution of doubtful cases

Corresponds to section 45 of the *Sentence Administration Act 1995*.

Clause 48 of the Bill deals with the resolution of doubtful cases and provides an avenue for the CEO to apply to the Supreme Court for the resolution of any doubts or difficulties that arise in relation to the application of the *Sentencing Act* or the amendments made as a result of the new package. This also deals with any doubts or difficulties that arise in relation to the *Sentence Administration Bill 2002*. This is an avenue that allows a judge to make determinations as to length of any terms, or the structure of a offender's sentence, or the length of time a person is required to serve in respect of any component of a sentence that the person has had imposed upon them.

PART 4 – WORK RELEASE ORDER

Clause 49 Certain prisoners may apply to Board for WRO

Corresponds to section 46 of *Sentence Administration Act 1995*.

Certain categories of prisoners can apply to the Board to be released on work release. Eligible prisoners must be at least 17 years old, have served a continuous period of 12 months under sentence and be within 6 months of the anticipated release date from custody. Prisoners serving a life sentence or indefinite imprisonment, or who are being held in strict/safe custody under section 282 of *The Criminal Code* cannot apply.

Clause 50 CEO to report to Board about WRO applicants

Corresponds to section 47 of *Sentence Administration Act 1995*.

The CEO is required to provide a report to the Board about every prisoner who applies to be released on work release. The report of the CEO has to include comment about the risk that the prisoner poses to the safety of people in the community, if the prisoner were to be released on work release.

Clause 51 Board may make WRO

Corresponds to section 48 of *Sentence Administration Act 1995*.

Subclause (2) differs slightly from the equivalent provision in s.48(2) of the *Sentence Administration Act 1995* concerning the definition of the level of risk that the offender presents. Presently the offender must present as a minimum risk before the Board can make a WRO. Subclause (2) refers to a "low" risk instead. The Parole Board believes that use of "low" risk would more accurately reflect the considerations currently undertaken by the Board and is more easily understood than "minimum" risk.

Clause 52 Prisoner to be notified of refusal to make WRO

Corresponds to section 49 of *Sentence Administration Act 1995*.

The clause provides that where the Board refuses to make a work release order, written notice is to be given to the prisoner, providing reasons (where appropriate) and setting out the prisoner's right to respond.

Clause 53 WRO, nature of

Corresponds to section 50 of *Sentence Administration Act 1995*.

A work release order requires the prisoner to comply with a range of standard obligations and any additional requirements that may be imposed by the Board. The order expires either when it is cancelled, or when the prisoner is then subject to a parole order or when the sentence expires, as the case may be. Notwithstanding that the prisoner has been released from custody, they are still subject to the sentence(s) referred to in the order.

Clause 54 WRO, standard obligations

Corresponds to section 51 of Sentence Administration Act 1995.

Every work release order contains standard obligations that the prisoner must do a certain number of community corrections activities very week; must be engaged or looking for employment or engaged in gratuitous work approved by the CEO; cannot leave the State, cannot change the residence without prior approval of a community corrections officer; and must comply with certain other requirement outlined in clause 73.

Clause 55 WRO, additional requirements

Corresponds to section 52 of Sentence Administration Act 1995.

The Board has the capacity to impose any necessary additional requirement, including monitoring requirement, on a work release order.

Clause 56 Prisoner's undertaking

Corresponds to section 53 of Sentence Administration Act 1995.

Clause 56 provides that the prisoner is required to give a written acknowledgement or undertaking before the release date specified in the order otherwise the work release order is deemed to have been cancelled. However, if the prisoner subsequently, advises the Board that they would be willing to sign the necessary acknowledgement and undertaking, the Board can make an order.

Clause 57 Prisoner may be paroled or returned to custody after WRO

Corresponds to section 54 of Sentence Administration Act 1995.

If a prisoner is to be placed on a parole order and the end of their work release order, but either the Board refuses to make such a parole order or the prisoner refuses to sign the necessary undertaking, the work release order is cancelled.

Clause 58 Suspension by Board or CEO

Corresponds to sections 55, 56 and 57 of Sentence Administration Act 1995.

Either the Board or the CEO can suspend a work release order and can set the period of the suspension. Where the prisoner has failed to comply with the conditions of the order or has been charged/convicted of an offence, the CEO can either suspend the order and/or refer the case to the Board for consideration.

If the CEO suspends the order because the prisoner is charged with an offence, the CEO must cancel the suspension if the prisoner is not convicted of the offence. If the prisoner is convicted, the CEO can either cancel the suspension, suspend the order for a further period or refer the case to the Board.

Where a CEO suspension extends for more than a month, the CEO has to refer the case to the Board.

The Board has a range of power to deal with suspension cases it considers. It can cancel the suspension, vary the suspension or actually cancel the work release order itself.

Clause 59 Suspension, prisoner to be notified
Corresponds to section 57(2) of *Sentence Administration Act 1995*.

Where a work release order is suspended, the prisoner must be notified as soon as practicable.

Clause 60 Cancellation by Board
Corresponds to section 58 of *Sentence Administration Act 1995*.

At any time during the work release order, the Board can cancel the order. Cancellation can occur for any reason, including if the prisoner is charged/convicted of an offence.

Clause 61 Cancellation, prisoner to be notified
Corresponds to section 58(2) of *Sentence Administration Act 1995*.

Where a work release order is cancelled by the Board, the prisoner must be notified as soon as practicable and the notification must (where appropriate) include the reasons for the cancellation.

PART 5 – PROVISIONS APPLICABLE TO EARLY RELEASE ORDERS

Clause 62 Period of early release order counts as time served
Corresponds to section 68 of the *Sentence Administration Act 1995*.

Clause 62 deals with the period of time that a offender is in the community on an early release order and provides that if the order is not automatically cancelled by imprisonment for re-offending, or the order is not cancelled otherwise, then the period the person has served on the order is taken as time served in respect of the sentence.

Clause 63 Prisoner under sentence until discharged
Corresponds to section 74 of the *Sentence Administration Act 1995*.

Clause 63 clarifies that notwithstanding that a prisoner on an early release order, they are still under sentence until the sentence is discharged, and it provides that generally a person who is released on an early release order is discharged from the sentence at the end of the period of the order. In respect of a WRO this does not apply if the offender is serving a parole term.

Clause 64 Cancellation automatic if prisoner imprisoned for offence committed on early release order
Corresponds to section 70 of the *Sentence Administration Act 1995*.

This clause provides that where an offender is imprisoned for an offence committed during their early release order, the order is automatically cancelled. This automatic cancellation provision can take place notwithstanding that the period of the order or the total sentence may have otherwise expired.

Clause 65 Suspension, effect of

Corresponds to section 70 of the *Sentence Administration Act 1995*.

Where an early release order (work release or parole order) is suspended, the prisoner is liable to resume serving the balance of their sentence and is not entitled to be released until the end of the sentence. This does not prevent another early release order being made in respect of the prisoner.

Clause 66 Cancellation, effect of

Corresponds to section 71 of the *Sentence Administration Act 1995*.

Clause 66 deals with the offender being liable to resume serving the sentence in respect of which the order was made.

Although an offender is liable to resume serving the sentence for which they are released, it does not prevent another early release order being made in respect of the prisoner.

Clause 67 Returning prisoner to custody

Corresponds to section 72 of the *Sentence Administration Act 1995*.

Clause 67 of the Bill provides that when parole has been cancelled, the warrants of commitment that relate to the sentence for which the parole order was made are again in force, and that the prisoner can be arrested and kept in custody under those warrants.

Notwithstanding that the original warrants are again in force, the prisoner can also be arrested and returned to custody on the order of a warrant issued by a Supreme Court or District Court Judge, or a warrant issued by the Board, if it cancelled the parole order, or a warrant issued by the CEO if the CEO cancelled the parole order.

Subclause (3) of Clause 67 provides that the arrest of the prisoner, in relation to suspension of an order, can only take place during the period of the order.

Subclause (4) of Clause 67 provides that the arrest of the prisoner, in relation to cancellation of an order, can take place at any point in time, either during or after the order would be taken to have expired or even after when the sentence would have otherwise expired.

Clause 68 Clean street time counts as time served

Corresponds to section 73 of the *Sentence Administration Act 1995*.

Clause 68 of the Bill provides that any period that the prisoner has successfully completed on an early release order prior to cancellation is to be credited as time served in respect of the sentence to which the order relates.

If cancellation is as a result of the imprisonment for an offence committed while on the order, then clean street time only applies from the date of release until when the offence was committed.

Clause 69 Re-release after cancellation of order made by Board or CEO
Corresponds to section 42 of the *Sentence Administration Act 1995*.

Clause 69 provides that although an early release order has been cancelled after the commission of an offence this does not prevent a further order being made effecting the re-release of the prisoner.

However there is an exception to this rule, in that if the offence that lead to the cancellation of parole was an indictable offence the Board cannot make another parole order in respect of the term that was cancelled.

Clause 69 also deals where the prisoner is re-released on parole, with the length of any subsequent supervised period in the parole order.

Clause 70 Re-release after cancellation of parole order made by Governor
Corresponds to section 43 of the *Sentence Administration Act 1995*.

Clause 70 deals with the Governor's powers to re-release on parole after the parole order has been cancelled.

The effect of clause 70 is to enable a person to be re-released on parole following a cancellation, and provides for the Governor's powers in respect of terms of re-releasing and setting the terms and conditions of any subsequent parole order.

Clause 71 Parole period under new parole order deemed to be time served
Corresponds to section 44 of the *Sentence Administration Act 1995*.

Clause 71 provides that, if a person is released on a subsequent parole order and provided that the order is not subsequently cancelled again, then any time that the person does on the subsequent parole order counts as time served in respect of the sentence for which they were released on parole.

PART 6 –PROVISIONS APPLICABLE TO OFFENDERS ON COMMUNITY CORRECTIONS ORDERS

Clause 72 Interpretation
Corresponds to section 75 of the *Sentence Administration Act 1995*.

Corresponds to section 75 of existing Act, and provides what is meant by the terms “centre”, “community corrections order” and “offender”. Definition of “community corrections order” has been revised and does not incorporate home detention orders anymore as these provisions are not contained in the Bill.

Clause 73 Offender's Obligations

Corresponds to section 76 of the *Sentence Administration Act 1995*.

Offenders on community corrections orders are required to abide by directions given by CCOs. If as part of the order the offender has to complete community work or any other community corrections directed activity then this work or activity should be completed as directed, and to the satisfaction of the supervisor.

Furthermore, while carrying out the obligations of these orders offenders are not allowed to: behave in ways that will impact negatively on their own performance, and that of others, or the smooth running of the centre or program. This includes: using and possessing alcohol/drugs and submitting to testing if required; disturbing or interfering with other offenders; threatening, assaulting or insulting staff and not complying with rules and instructions.

CCO's are also required to take into account offender's cultural and religious beliefs. Instructions and orders given to offenders should also not interfere with times that offenders are normally at work or participating in an educational/vocational activity.

Clause 74 Consequences of contravening the obligation.

Corresponds to section 77 of the *Sentence Administration Act 1995*.

Outlines the actions that can be taken when an offender contravenes any of the requirements described in the prior clause (73).

A supervisor of a centre can simply reprimand the offender or, depending on the type of order, take further and more serious breach action. These options include reporting incidents to the CEO or Parole Board and making recommendations in regards to further charges and cancellation of order.

Section 131 of the *Sentencing Act 1995* concerns the breaching of the requirements of a community order, which is an offence in its own right.

Clause 75 CEO may suspend requirements in case of illness etc.

Corresponds to section 78 of the *Sentence Administration Act 1995*.

In the case where offenders are ill, or other exceptional circumstances arise, under these provisions the CEO can adjust certain requirements of the orders – in a manner that may vary depending upon the type of order:

- for a community order the CEO can allow offender not to comply with particular aspects of the order for any period not exceeding 12 weeks.
- if there is a community service component then the CEO may adjust the minimum number of required hours which is normally 12 hours within a 7 day period, to something less but not less than 6 hours per 7 day period.
- with parole orders the CEO can adjust the number of hours an offender participates in prescribed community corrections activities for whatever period the CEO sees fit.
- in the case of work and development orders the CEO may adjust the minimum hours requirement (as defined in the *Fines, Penalties and Infringement Notice Enforcement Act 1994*) but not for any period exceeding 12 weeks.

While such decisions can be taken by the CEO they do not effect the prescribed length of the order nor do they affect the offender's obligations to complete the prescribed hours under their order.

Clause 76 Community service requirement, offender may be directed to do activities

Corresponds to section 79 of the *Sentence Administration Act 1995*.

Offenders required to complete community service under an order, but who do not participate in any other program, may be directed by the CEO to complete up to one quarter (25%) of the hours in any other community corrections activities. These hours will be credited as community service.

Community corrections activities can include charitable or voluntary work, social and life-skill courses, and educational or personal development courses (see clause 82).

Clause 77 Programme Requirement

Corresponds to section 80 of the *Sentence Administration Act 1995*.

Where an offender is required to participate in a program as part of a community order, and the CCO identifies additional personal factors that have contributed to the offending, and which were not identified at the time the order was made, the offender may be directed to participate in an additional program.

Clause 78 Compensation for injury

Corresponds to section 81 of the *Sentence Administration Act 1995*.

If an offender is injured while undertaking community service, or performing community corrections activities, he/she is regarded as a Crown employee for the purposes of the *Workers' Compensation and Rehabilitation Act 1981*. Offender's earnings in respect to this Act will be determined by the Minister.

Clause 79 Regulations

Corresponds to section 82 of the *Sentence Administration Act 1995*.

This clause provides the regulation making power under this part, and identifies some areas for which regulations may be necessary.

In January 1999 advice was received from the Crown Solicitor's Office concerning the use of skin patches for drug abuse detection. The Crown Solicitor's Office advice notes that there is a potential conflict between the existing sections 76(2)(c)(ii) and 82(d) of the *Sentence Administration Act 1995*. This relates to the discretionary power given to a supervisor under section 76 to submit an offender to testing, which is in conflict with section 82 which limits testing only on the basis of a reasonable suspicion of having breached the requirements of an order.

The advice suggested that section 82(d) of the *Sentence Administration Act 1995* should be deleted. Clause 79 of the *Sentence Administration Bill 2002* effectively replaces the existing s.82 of the *Sentence Administration Act 1995*. Given the potential conflict highlighted by the Crown Solicitor's Office in relation to the existing s.82(d), the provisions of former subsection (d) have been deleted from clause 79 of the new Bill.

PART 7 – COMMUNITY CORRECTIONS CENTRES

Clause 80 Interpretation

Corresponds to section 83 of the *Sentence Administration Act 1995*.

Defines the terms; “centre”, “community corrections order” and “offender.” Definition of “community corrections order” has been revised and does not incorporate home detention orders anymore as these provisions are not contained in the Bill.

Clause 81 Community corrections centres

Largely corresponds to section 84 of the *Sentence Administration Act 1995*.

Provides for the Minister to declare, amend or cancel places as community correction centres. Under the current *Sentence Administration Act 1995*, the Governor in Executive Council is required to declare a place to be a community corrections centre under the Act. In practice, the Governor exercises this power on a fairly frequent basis as new centres are opened or when existing centres re-locate.

The *Sentence Administration Bill 2002* proposes that this power in the future be vested with the relevant Minister, as declaration of such places is not considered a significant enough issue to warrant referral to the Governor in Executive Council.

Clause 82 Community corrections activities

Corresponds to section 85 of the *Sentence Administration Act 1995*.

The clause provides for the CEO to approve a wide range of work, training, educational and treatment programs as community activities.

Clause 83 CEO may issue written instructions

Corresponds to section 86 of the *Sentence Administration Act 1995*.

This clause provides that the CEO may issue written instructions related to the management of community corrections centres and offenders.

The reference to the *Interpretation Act 1984* relates to the fact that such instructions are not deemed to be subsidiary legislation.

The CEO is obliged to ensure that the written instructions are brought to the attention of relevant people, including offenders, in an appropriate manner.

Clause 84 Supervisors of centres

Corresponds to section 87 of the Sentence Administration Act 1995.

Identifies the CCO in control of a centre as the supervisor, and outlines their responsibilities in regard to the running of the centre.

The clause also requires the supervisors to make sure offenders know what their obligations are under their order.

In addition, if any force has been used on anybody at the centre, the supervisor must report this to the CEO as soon as possible.

Clause 85 Functions of CCOs at centres

Corresponds to section 88 of the Sentence Administration Act 1995.

Outlines the responsibilities of the CCOs working at the community corrections centres.

A CCO may use reasonable force, if necessary, but cannot be directed to do so by the supervisor. Any direction by a supervisor to use reasonable force is not a direction that a CCO is required to comply with.

Clause 86 Access to centres

Corresponds to section 89 of the Sentence Administration Act 1995.

This clause allows the supervisor to determine the conditions of access to a community corrections centre.

The clause also sets out the particular matters which may constitute the basis of an order to leave the centre.

A person who is directed to leave a centre can be charged with an offence if they fail to leave.

Clause 87 Searches

Corresponds to section 90 of the Sentence Administration Act 1995.

This clause authorises the supervisor to order searches, by a prescribed person, of the centre, or persons in or wishing to enter the centre, or of anything in the person's possession or control.

The supervisor can order a person to leave the centre if they refuse to be searched and, if the person disobeys the order, they commit an offence.

Clause 88 Seizure

Corresponds to section 91 of the *Sentence Administration Act 1995*.

The clause authorises prescribed persons to seize items found during searches, and outlines that seized items are to be dealt with in accordance with the regulations.

A specific exception is provided in the case of a prescribed drug in a person's possession.

Clause 89 Department to report on centres

Corresponds to section 92 of the *Sentence Administration Act 1995*.

Clause 89 requires the CEO to report on the operations of community corrections centres and community corrections activities in the Department's Annual Report.

Clause 90 Regulations

Corresponds to section 93 of the *Sentence Administration Act 1995*.

This clause provides the regulation making power under this part, and identifies some areas for which regulations may be necessary.

PART 8 – STAFF

Clause 91 Functions

Corresponds to section 94 of the *Sentence Administration Act 1995*.

The chief executive officer (CEO) ensures the proper administration of community orders, parole orders, work release orders and work and development orders, as well as the control and management of community corrections centres, and has the functions of a community corrections officer (CCO).

The CEO is subject to the control of the relevant Minister.

All departmental instructions issued by the CEO pursuant to this Act, the *Sentencing Act 1995*, the *Fines, Penalties and Infringement Notices Enforcement Act 1994* or the *Bail Act 1982* must be done in writing and signed by the CEO, or if this authority has been delegated by the CEO to a subordinate, be done in writing and signed by this Officer.

The CEO has the power to review, confirm, amend or cancel any previous decision or direction given by a departmental officer.

Clause 92 Delegation

Corresponds to section 95 of the *Sentence Administration Act 1995*.

The CEO may delegate any function under this Act, the *Sentencing Act 1995*, *Part 4 of the Fines, Penalties and Infringement Notices Enforcement Act 1994* apart from the CEO's power of delegation.

It is presumed that any document signed by a subordinate in the CEO's name was signed in good faith during the performance of duties delegated to that officer from the CEO.

Clause 93 CEO may confer functions of CCO on person
Corresponds to section 96 of the *Sentence Administration Act 1995*.

The CEO may, at his/her discretion, direct a departmental staff member (who is not an appointed CCO or honorary CCO) to carry out some or all of the duties of a CCO.

Clause 94 CEO to notify Board of certain breaches
Corresponds to section 97 of the *Sentence Administration Act 1995*.

As soon as the CEO is made aware of a breach of a parole order, made by the Board or the Governor, he/she must report the matter to the Parole Board and provide any information concerning the breach that the Board requires. This reporting requirement is subject to any directions issued by the Board to the CEO.

Clause 95 Appointment
Corresponds to section 98 of the *Sentence Administration Act 1995*.

All departmental staff and CCO's are appointed pursuant to the provisions of the *Public Sector Management Act 1994*. In addition, there is also provision under this Act to appoint staff on an honorary basis.

However, a person who is a Police Officer is not to be appointed an honorary CCO, except where this Officer is appointed to a designated position as defined in the *Witness Protection (Western Australia) Act 1996*. This provision is for the purposes of supervising an offender who is a participant in the State Witness Protection Program.

Clause 96 Volunteers
Corresponds to section 99 of the *Sentence Administration Act 1995*.

Volunteers may be appointed by the CEO and under his/her control for the duration of their appointment.

Clause 97 Appointment
Corresponds to section 100 of the *Sentence Administration Act 1995*.

A person employed on an honorary basis or as an unpaid volunteer is regarded as a Crown employee for the purposes of the *Workers' Compensation and Rehabilitation Act 1981*. Their earnings in respect to this Act will be determined by the Minister.

Clause 98 Assistance by police officers

Corresponds to section 101 of the Sentence Administration Act 1995.

Assistance can be requested of a Police Officer, subject to any directions of the Commissioner of Police.

Such a Police Officer has the same duties and the same protection from liability as a CCO.

These duties performed by Police Officers, and this protection, are in addition to those prescribed in any relevant written law.

PART 9 – PAROLE BOARD

Clause 99 Parole Board Established

Corresponds to section 102 of the Sentence Administration Act 1995.

This clause establishes the Parole Board.

Clause 100 Membership

Corresponds to section 103 of the Sentence Administration Act 1995.

Establishes the membership make-up of the Parole Board, and makes specific provisions concerning the nomination of the judicial member.

Clause 101 Secretary

Corresponds to section 104 of the Sentence Administration Act 1995.

This clause provides for the appointment of a secretary to the Board.

Clause 102 Schedule 1 applies

Corresponds to section 105 of the Sentence Administration Act 1995.

Schedule 1 contains detailed provisions applicable to the Parole Board, in areas including the Terms of office (cl 2), Resignation (cl 3), appointment of deputies (cl 4), conduct of meetings (cl 5), remuneration and allowances to members (cl 6) and the granting of leave of absence to members.

Clause 103 Functions

Corresponds to section 106 of the Sentence Administration Act 1995.

The Board has numerous functions under the Act (as detailed throughout the Act) and can do anything necessary or incidental to the performance of its functions.

Clause 104 Board to have powers of Royal Commission
Corresponds to section 107 of the *Sentence Administration Act 1995*.

The Board has the powers of a Royal Commission as defined in the *Royal Commissions Act 1968*, and that Act, with changes as necessary, has effect in relation to the Board.

Clause 105 Orders by the Board
Generally corresponds to section 108 of the *Sentence Administration Act 1995*.

An order by the Board must be signed by 2 members of the Board.

The Parole Board exercises a wide range of powers under the *Sentence Administration Act 1995* in relation to parole and work release. Under the Act a member of the Board, or the Secretary, can exercise some of the powers on behalf of the Board.

Recently, the Parole Board Secretariat has undergone a restructure that has resulted in the creation of an Assistant Secretary. Under the *Sentence Administration Bill 2002*, a Parole Board member, the Secretary or the Assistant Secretary, will be able to make decision on behalf of the Board. To provide necessary safeguards, the Parole Board will place limitations and will issue directions as to how these powers are to be exercised.

Subclause (3) allows the Secretary or a member or a specified departmental officer to sign a notice of a decision made by the Board.

Subclause (3) allows the Secretary or a member or a specified departmental officer to make parole orders other than for prescribed classes of parole terms. The prescribed classes will initially correspond with those terms identified in section 19(4) of the existing Act. Providing such a “list” by way of regulation enables the scope of such provisions to be amended as required.

Clause 106 Board may require prisoner to appear before it
Corresponds to section 109 of the *Sentence Administration Act 1995*.

This clause enables the Board to call before it any prisoner on parole (other than on a CEO parole order) or work release, whether or not the Board has made any decision in respect of the prisoner’s parole order.

The Board can issue a warrant to have a prisoner brought before it.

Clause 107 Issue of warrant by the Board
Corresponds to section 110 of the *Sentence Administration Act 1995*.

The Board does not have to meet before issuing a warrant to have a person arrested.

A warrant must be signed by 2 members of the Board or by the judicial member of the Board if he or she is currently a judge.

Clause 108 Judicial notice of appointment and signature
Corresponds to section 111 of the *Sentence Administration Act 1995*.

The clause provides for judicial notice to be taken of Board membership and of Board decisions.

Clause 109 Annual report to Minister
Corresponds to section 112 of the *Sentence Administration Act 1995*.

This clause details the reporting requirements for the Parole Board's Annual Report, which must be delivered to the Minister before 1 October each year

Clause 110 Special reports to Minister
Corresponds to section 113 of the *Sentence Administration Act 1995*.

The Minister may request the Board to report on particular matters, and the Board shall reply in writing as soon as practicable

PART 10 – MISCELLANEOUS

Clause 111 Reasons for decision may be withheld
Corresponds to section 114 of the *Sentence Administration Act 1995*.

Where a decision is made regarding a prisoner, the person nominated to communicate the decision to the prisoner may withhold the reasons for the decision if they decide that it is in the best interests of the prisoner, or any other prisoner or person, or the general public.

Clause 112 Exclusion of rules of natural justice
Corresponds to section 115 of the *Sentence Administration Act 1995*.

The clause provides that the rules of natural justice do not apply to any thing done or omitted to be done by nominated persons.

Clause 113 Arrest warrant may be issued if warrant of commitment in force

The advice from the Crown Solicitor's Office in January 1999 in relation to an unlawfully released prisoners also commented that at present there is no mechanism whereby such offenders can be arrested by the police and brought back into custody.

Parliamentary Counsel has drafted a new clause 113 which will give the Director General of the Department of Justice a capacity to issue an arrest warrant where offenders have been unlawfully released. This will then enable police to arrest offenders and take them back to prison to serve out the balance of the sentence that the offender would have otherwise been serving.

Clause 114 Issue and execution of warrants

Corresponds to section 116 of the *Sentence Administration Act 1995*.

Arrest warrants issued under this Act or the Sentencing Act 1995 must be in the prescribed form.

Subject to evidence to the contrary, it is presumed that the person who issued the warrant is authorised to do so and has signed the prescribed form. The execution of the warrant involves arresting the person and holding that person in custody, prior to the transport of the person to the place specified in the warrant.

Clause 115 Monitoring Equipment

Corresponds to section 117 of the *Sentence Administration Act 1995*.

Monitoring equipment may be installed under this Act, the *Sentencing Act 1995* or the *Bail Act 1982* at a place where a person lives during their parole period.

Any person who does not return the monitoring equipment at the said time commits an offence. A CCO can at any time enter a place in order to retrieve monitoring equipment, and a person who hinders a CCO officer executing this power commits an offence.

A person who unlawfully interferes with or wilfully destroys or damages monitoring equipment commits an offence. The maximum penalty is \$12,000 or imprisonment for 12 months.

Clause 116 Secrecy

Corresponds to section 118 of the *Sentence Administration Act 1995*.

The CEO, a departmental staff member or a member of or secretary to the Board, must not either directly or indirectly record, disclose, or make use of any confidential information obtained in the course of carrying out their duties except in the circumstances specified.

Clause 117 Protection from liability for wrongdoing

Corresponds to section 119 of the *Sentence Administration Act 1995*.

This clause provides a basis for protection from wrongdoing – including omissions to do anything.

Despite the level of personal protections provided, the Crown remains liable for the actions (or omissions) of its servants.

Clause 118 Regulations

Corresponds in part to section 120 of the *Sentence Administration Act 1995*.

The Governor has the power to prescribe all necessary regulations to bring into force, and give effect to, the purposes of the Act.

SCHEDULE 1 – PROVISIONS APPLICABLE TO THE PAROLE BOARD

1 Interpretation

Corresponds to item 1 in Schedule 1 of the Sentence Administration Act 1995.

Defines the term ‘member’.

2 Terms of office

Corresponds to item 2 in Schedule 1 of the Sentence Administration Act 1995.

Sets out the basis of appointment as a member, and cessation of membership, of the Parole Board.

3 Resignation

Corresponds to item 3 in Schedule 1 of the Sentence Administration Act 1995.

Sets out the process for dealing with resignation of members of the Parole Board.

4 Deputies of members

Corresponds to item 4 in Schedule 1 of the Sentence Administration Act 1995.

Allows for the appointment of deputies to the various members and defines who can appoint them.

Section 52 of the *Interpretation Act 1984* provides that any statutory reference concerning the powers to appoint persons also includes a power to suspend or dismiss such a person.

5 Meetings

Corresponds to item 5 in Schedule 1 of the Sentence Administration Act 1995.

This clause relates to the chairing of meetings, the definition a quorum, and voting procedures, and it additionally allows the Board to define any other procedures for its meetings subject to this clause.

6 Remuneration and allowances

Corresponds to item 6 in Schedule 1 of the Sentence Administration Act 1995.

The clause sets out the basis of remuneration and allowance entitlements of members.

7 Leave of absence

Corresponds to item 7 in Schedule 1 of the Sentence Administration Act 1995.

The Minister may grant leave of absence to any member.