

## EXPLANATORY MEMORANDUM AND CLAUSE NOTES

### SENTENCING LEGISLATION AMENDMENT BILL

#### EXPLANATORY MEMORANDUM

In accordance with an election commitment at the 2008 Western Australian State election, amendments to sections 297 and 318 of the *Criminal Code* were made by the *Criminal Code Amendment Act 2009* which prescribed mandatory sentences for persons convicted of assaulting specific categories of public officers where the assaults resulted in either bodily harm or grievous bodily harm. These public officers were police officers, prison officers as defined in the *Prisons Act 1981*, security officers as defined in the *Public Transport Authority Act 2003*, ambulance personnel, contract workers providing court security services or custodial services under the *Court Security and Custodial Services Act 1999*, and contract workers performing functions under the *Prisons Act 1981*. Subsequently, Youth Custodial Officers appointed under the *Young Offenders Act 1994* section 11(1a)(a) have also been included by the *Criminal Code Amendment Act 2013*.

It is considered necessary to implement legislative amendments that will ensure that offenders who are serving mandatory sentences of imprisonment are required to serve the mandatory minimum sentence before being eligible for parole.

In addition to the mandatory sentences outlined above, the *Road Traffic Act 1974* was amended by the *Road Traffic (Miscellaneous Amendments) Act 2012* to include new penalties for attempting to escape police pursuit. Section 59 of the *Road Traffic Act 1974* covers dangerous driving causing death or grievous bodily harm. Section 59(4A) provides that where this offence was committed in the circumstance of aggravation referred to in section 49AB(1)(c) a court must sentence the offender to a term of imprisonment of at least 12 months and not suspend the term of imprisonment. Section 59A of the *Road Traffic Act 1974* covers dangerous driving causing bodily harm. Section 59A(4A) provides that where this offence was committed in the circumstance of aggravation referred to in section 49AB(1)(c) a court must sentence the offender to a term of imprisonment of at least 6 months and not suspend the term of imprisonment.

#### Overview of the Bill

The Sentencing Legislation Amendment Bill 2013 proposes to amend the *Sentencing Act 1995* and the *Sentence Administration Act 2003* to provide that an adult sentenced under sections 297(8) or 318(5) of the *Criminal Code*, or under sections 59 or 59A of the *Road Traffic Act* (where the offence was committed in the circumstance of aggravation referred to in section 49AB(1)(c)) must serve the mandatory minimum penalty before being eligible for parole.

#### Part 1

This Part of the Bill provides that the Bill's title is the *Sentencing Legislation Amendment Act 2013*, and provides that Part 1 of the Act will come into operation on the day the Act receives Royal Assent and Parts 2 and 3 of the Act will come into operation on the day after that day.

#### Part 2

This Part of the Bill amends the *Sentencing Act 1995* by inserting definitions of 'mandatory minimum sentence' and 'prescribed offence'. It also amends section 93 of the *Sentencing Act 1995* to delete the phrase 'section 94' in section 93(1) and insert 'sections 94 and 95A,' and inserts section 95A into the *Sentencing Act 1995*. This new proposed section provides

that prisoners serving a parole term for a prescribed offence will only be eligible to be released on parole when they have served the greater of either the mandatory minimum sentence applicable to that offence or the period that they would be required to serve before being eligible to be released on parole if the offence were not a prescribed offence. It also provides that if a prisoner is serving two or more parole terms, and two or more of these are to be aggregated, the prisoner must serve the greater of the aggregate of the statutory mandatory minimum sentences applicable to each of the prescribed offences or the period that they would be required to serve if the offences were not prescribed offences before being eligible for parole.

This Part also preserves the position of any offenders sentenced prior to the passage of the Act.

### **Part 3**

This Part of the Bill amends the *Sentence Administration Act 2003*. It replaces references to 'section 94' with 'sections 94 and 95A'. It also provides that a prisoner who is serving a term for a *prescribed offence* is eligible to be released on parole when they have served the greater of the *mandatory minimum sentence* applicable to the offence, or one-half of his or her term. This Part also provides that a prisoner who is serving a term for two or more *prescribed offences* is eligible to be released on parole when they have served the greater of the aggregate of the *mandatory minimum sentences* applicable to each of those *prescribed offences*, or one-half of his or her term.

This Part provides that in any other cases, a prisoner is eligible to be released on parole when he or she has served one-half of his or her term.

This Part also preserves the position of any offenders sentenced prior to the passage of the Act.

This part also renames Schedule 2 'Serious Offences' instead of 'Prescribed Offences' to avoid confusion.