SENTENCING LEGISLATION AMENDMENT BILL 2016

EXPLANATORY MEMORANDUM

Overview of the Bill

The Sentencing Legislation Amendment Bill 2016 (Bill) seeks to amend the *Sentence Administration Act 2003* (WA) (Sentence Administration Act), the *Sentencing Act 1995* (WA) (Sentencing Act) and *The Criminal Code* (WA) (Criminal Code).

Part 3 of the Bill deals with amendments about parole and post-sentencing supervision. The amendments introduce post-sentence supervision orders (PSSOs) for a range of defined serious violent offences (and arson), including those declared by the court to be domestic violence offences. It provides an authority for the Prisoners Review Board (PRB) to order an offender remain on supervision (including GPS tracking) for a period of two years beyond the expiry of the sentence handed down by the court. The PRB, in making such a decision, will be primarily guided by the need for community safety and protection for the victim.

Amendments contained in Part 4 Divisions 3 to 6 of the Bill implements changes informed by the conclusions in the statutory review of the Sentencing Act, and serve to improve sentencing processes and the range of options available to courts. Victims of crime receive a greater focus through amendments outlined in this Bill. Enhancements to conditional release orders (CROs) and the introduction of a suspended fine are sentencing options that have been developed as an alternative to a fine. The minimum sentence for imprisonment will revert to three months from six months, following amendments made in 2003. This was brought about as a result of 'sentence creep', whereby sentences that attract a term of imprisonment of less than six months were attracting longer sentences.

The amendments in Part 2 and Part 4 Division 2 were required as a result of two Appeal Court decisions which necessitated legislative change.

The first, which is contained in Part 2 of the Bill, is aimed at clarifying the status of long-term prisoners (those sentenced before 4 November 1996) with regard to re-socialisation programmes and release considerations under the Sentence Administration Act. This issue was raised in the case of *Prisoners Review Board v Nathaniel Freeman* [2010] WASCA 166.

The second, contained in Part 4 (Division 2) of the Bill, arises from the Appeal Court decision of *Gillespie v Western Australia* [2013] WASCA 149. These amendments serve to clarify where a superior court, on a plea of guilty by the accused, is required to determine in proceedings under the Sentencing Act whether the offence was committed in circumstances of aggravation, that determination is a determination of a question of fact (that is, it is to be determined by a judge and not by the verdict of a jury).

Part 1 — Preliminary

Clause 1 Short title
This clause provides this Act may be cited as the Sentencing Legislation Amendment Act 2016.

Clause 2 Commencement
This clause provides details in relation to when certain provisions contained within this Act come into operation:

- Subclause (a) provides that Part 1 comes into operation on the day on which this Act receives the Royal Assent;
- Subclause (b) provides that Part 2 and Part 4 Divisions 1 and 2 come into operation on the day after this Act receives the Royal Assent; and
- Subclause (c) provides that the rest of the Act comes into operation on a day fixed by proclamation. This paragraph also allows for proclamation to be on different days for different provisions.

Part 2 — Amendments about some long-term prisoners

Division 1 — *Sentence Administration Act 2003* amended

Clause 3 Act amended
This clause provides this Division amends the Sentence Administration Act.

Clause 4 Section 4 amended
Section 4 contains the terms and abbreviations used in the Act.

Clause 4 amends and inserts definitions in section 4 as follows:

- The phrase 'Schedule 3 prisoner' is inserted and defined. By reference to the description of the prisoner in column 2 of the new Schedule 3, this definition facilitates reference in the Act to all long-term prisoners of any sentence type and is not limited to long-term prisoners sentenced before 4 November 1996.
- The definition of 'Governor's pleasure detainee' is amended so as to include an additional group of prisoners that were sentenced under the repealed sections 661 and 662 of the Criminal Code.
- Subclause 4(3) amends the definition of 'prisoner' in subsection 4(2) to delete "a life" and insert "life", so that the definition will read 'a person sentenced to life imprisonment'.

Clause 5 Section 11 amended
This clause deletes subsection 11(3). The Attorney General administers both the Sentence Administration Act and Chapter XXVIII of the Criminal Code. As such, a separate definition for an alternative Minister is not required.

Clause 6 Section 12 amended
The circumstances in which the PRB may provide the Minister with a written report about individual prisoners of its own accord are provided in section 12(2)(b). The amendment of paragraph 12(2)(b) by subclause 6(1) extends the provision by allowing the PRB to provide a report "whenever it considers it necessary to do so" and removes reference to only being able to do so when "there are special circumstances".

Subclause 6(1) also deletes paragraph 12(2)(c), which is no longer required, as columns 3 and 4 of the new Schedule 3 set out the time periods within which the PRB must provide the Minister with a written report.

Subclause 6(2) effects a consequential amendment to paragraph 12(4)(b) as a result of the deletion of paragraph 12(2)(c).

Subclause 6(3) amends paragraph 12(5)(a) so as to clarify that the report may be in relation to more than one offence.

Subclause 6(4) deletes subsection 12(6). The Attorney General administers both the Sentence Administration Act and Chapter XXVIII of the Criminal Code. As such, a separate definition for an alternative Minister is not required.

Clause 7 Section 12A amended

In order to provide access to re-socialisation programmes for pre-1996 long-term prisoners, these prisoners must also be covered by the reporting provisions of the Sentence Administration Act. The power to make a report under sections 12 and 12A is fundamental as it is a pre-condition to the grant of parole under sections 25, 27 and 27B that a report has been given by the PRB.

Subclause 7(1) deletes subsections 12A(1) and (2) and inserts new subsections 12A(1) and (2). These amendments create an obligation on the PRB to provide a written report to the Minister about a Schedule 3 prisoner at the times provided in the Schedule 3.

The new subsection 12A(1) also makes reference to a combined report under section 12B (this is a new method of combining reports, introduced into the Act by clause 8 as explained below).

While column 4 of Schedule 3 sets out the times when subsequent reports must be given in respect of Schedule 3 prisoners, it is reliant on its operation for a determination on the date of the first report. Subclause 7(2) inserts a new subsection 12A(6) to provide clarity in respect of the due dates for subsequent reports.

Paragraph 12A(6)(a) confirms that a first report given under the *Sentence Administration Act 2003*, the *Sentence Administration Act 1995* or the *Offenders Community Corrections Act 1963* (Offenders Community Corrections Act) that applied (or was taken to have applied) to or in respect of the prisoner, is regarded as a first report for the purposes of determining when a subsequent report is due, as long as the report dealt with release considerations, however described.

The phrase ‘however described’ has been added, because while the phrase ‘release considerations’ is specifically defined in the Sentence Administration Act, earlier legislation dealing with the parole of prisoners may have used different terminology and may not necessarily have dealt with every consideration under section 5A.

In terms of the new paragraph 12A(6)(b), where a first report was not given or was not given when it was due, then the first report is be taken to have been given at the time provided in column 3 of that Division for a prisoner of that description.

Subclause 7(3) deletes the table in section 12A as the information contained in the table is now contained within the new Schedule 3.

This clause also includes a note to change the heading of section 12A to read “Reports by Board to Minister about Schedule 3 prisoners”.

Clause 8 Section 12B inserted
Clause 8 of the Bill inserts a proposed new section 12B 'Combined reports may be given under sections 12 and 12A'. This new section outlines the manner in which various reporting obligations may be rationalised by the PRB.

If a Schedule 3 prisoner is serving more than one Governor's pleasure, indefinite or life sentence, then the PRB may provide one report in satisfaction of both sections 12 and 12A of the Sentence Administration Act.

Paragraph 12B(1)(a) deals with the situation where a report has been given under section 12 and another report is due under section 12A. In this instance, the second report need not be given if the period between the reports is three months or less. The period of three months has been determined as being a reasonable period within which a second report is not required to be given. In the event that a section 12A report is required after three months from the section 12 report then a new report will have to be given.

Paragraph 12B(1)(b) deals with the situation where two reports are required to be given in respect of the same prisoner under section 12A and the times for the reports as stipulated in Schedule 3 are within three years of each other.

Subsections 12B(2) and 12B(3) provide the combined report given on a Schedule 3 prisoner in accordance with subsection 12B(1) fulfils the PRB's obligations in respect of the reporting on that prisoner under sections 12 and 12A, as the case may be.

Clause 9 Section 13 amended
This section deals with re-socialisation programmes for long-term prisoners. For this reason, the definition of prisoner as used in this section has been amended to mean a Schedule 3 prisoner and thus, includes all long-term prisoners of both current and former sentence types.

This clause also includes a note to change the heading of section 13 to read "Re-socialisation programmes for Schedule 3 prisoners".

Clause 10 Section 14 amended
As a consequence of the amendment under clause 9, the definition of prisoner in section 14 is amended so that it does not include a Schedule 3 prisoner.

This clause also includes a note to change the heading of section 14 to read "Re-socialisation programmes for certain other prisoners".

Clause 11 Section 25 amended
Clause 11 deletes subsections 25(1) and (1A) and inserts new subsections 25(1) and 25(1A). This amendment ensures that all prisoners sentenced to life imprisonment may be paroled in accordance with section 25.

There are no provisions relating to minimum periods that must be served by prisoners sentenced before 4 November 1996 as all such prisoners are past their minimum periods.

Clause 12 Section 27A amended
Clause 12 amends section 27A to make references to Governor's pleasure detainees consistent throughout the Act.

Clause 13 Section 27B amended

Clause 13(1) simplifies the Act by referring to a Governor's pleasure detainee. The only prisoners that are "in, or regarded as being in, strict or safe custody by virtue of an order made under Chapter XXVIII of the Criminal Code" are those that are defined as Governor's pleasure detainees in the Sentence Administration Act as amended by clause 4 of the Bill.

Clause 13(2) clarifies that a report on a Governor's pleasure detainee could be made under section 12 or section 12A. A report under either section would satisfy the subsection 27B(2) requirement of a report prior to a parole order being made.

Clause 14 Part 11 inserted

The Freeman case cast doubt on the validity of reports of the PRB, both under sections 12 and 12A as well as under section 34(3) of the Offenders Community Corrections Act in respect of pre-1996 long term prisoners.

This clause thus, inserts a proposed new Part 11 to the Sentence Administration Act in order to retrospectively validate any previous decisions made which took into account re-socialisation programme attendance and/or reports that were incorrectly made by virtue of the Sentence Administration Act not applying to pre-1996 long-term prisoners, as defined in the new section 123.

A new section 123 is inserted which defines certain terms used in the new Part 11.

- A 'pre-1996 prisoner' is defined as a prisoner who was sentenced before 4 November 1996 and to whom the *Sentencing (Consequential Provisions) Act 1995* section 83, 86, 87 or 91(1) applies.

These sections are transitional provisions relating to sentences under the repealed Offenders Community Corrections Act; in particular section 83 relates to imprisonment with minimum term, section 86 relates to life imprisonment, section 87 to strict security life imprisonment and subsection 91(1) to indeterminate sentences under the Criminal Code, sections 661 and 662.

A new section 124 is inserted, which provides if any reports relating to pre-1996 prisoners given between 4 November 1996 and the date of the commencement of clause 14 were not given in accordance with the relevant former transitional provisions, then the provisions of the *Sentence Administration Act 1995* or the *Sentence Administration Act 2003* under which reports could be given, are to be taken to have applied in relation to these prisoners.

A new section 125 is inserted, which provides if there was any participation in re-socialisation programmes by pre-1996 prisoners on or after 28 January 2007, which was the commencement date of the introduction of re-socialisation programmes under the Sentence Administration Act, then the provisions of that Act under which a prisoner was permitted to participate in such a programme is taken to have applied in relation to these prisoners.

New sections 126 and 127 are inserted, which together validate the release on parole of pre-1996 prisoners if the decision was made between 4 November 1996 and the commencement of clause 14 and was not made in accordance with a relevant former transitional provision.

A new section 128 is inserted, which confirms in the event of any inconsistencies, the provision of the *Sentence Administration Act 2003* or the *Sentence Administration Act 1995* will prevail over the inconsistent provision in the former transitional provisions.

Clause 15 Schedule 3 inserted
The Bill ensures that all categories of pre-1996 long-term prisoners are captured by all relevant provisions of the Sentence Administration Act, in particular, the provisions dealing with release considerations, reports and re-socialisation programmes. All categories of prisoners and parolees, as well as the reporting regime that applies to persons in those categories, were identified and included to ensure that no prisoners were inadvertently excluded from the operation of the amendments. Sentencing matters such as the sentence type, duration and minimum periods, are retained in line with the original legislation under which the sentencing took place, while the parole matters will be dealt with under the amended Sentence Administration Act.

The proposed new Schedule 3 to the Sentence Administration Act sets out the current and former sentence types for all long-term prisoners, together with the reporting requirements for those prisoners, which ensures all long-term prisoners of any sentence type are covered by the Act.

Orders made under section 282 and paragraph 19(6)(a) of the Criminal Code are covered by item 15 of the proposed new Schedule 3. By virtue of subsection 88(1) of the transitional provisions of the *Sentencing (Consequential Provisions) Act 1995*, a section 19(6)(a) prisoner is to be treated as if in strict or safe custody by virtue of an order made under section 282 of the Criminal Code. By virtue of the transitional provisions set out in the *Sentencing Legislation Amendment and Repeal Act 2003* Schedule 1 clause 13(7), the Sentence Administration Act applies. There is currently one prisoner who was sentenced under the repealed section 19(6)(a) of the Criminal Code.

Division 2 — *The Criminal Code* amended

Clause 16 Act amended
This clause provides this Division amends the Criminal Code.

Clause 17 Schedule 1 clause 3 amended
Schedule 1 clause 3(7) of the Criminal Code is deleted. Schedule 1 clause 3 deals with transitional provisions in respect of offenders serving life terms at 1 August 2008. The transitional provisions of clause 3(7) are no longer required as these provisions will be covered by the amendments made by the Bill.

Part 3 — Amendments about parole and post-sentencing supervision

Division 1 — *Sentencing Act 1995* amended

Clause 18 Act amended
This clause provides this Division amends the Sentencing Act.

Clause 19 Section 89 amended
Subclause 19(1) amends subsection 89(2) of the Sentencing Act, which provides a parole eligibility order must not be made if the fixed term, or the aggregate of the fixed terms, imposed by the court is less than 6 months.

Subclause 19(2) amends subsection 89(4). Subsection 89(4) currently provides for the court to not make a parole eligibility order in respect of a fixed term imposed on an offender if the court considers that the offender should not be eligible for parole because of at least two of the following four factors:

(a) the offence is serious;
(b) the offender has a significant criminal record;

(c) the offender, when released from custody under a release order made previously, did not comply with the order;
(d) any other reason the court considers relevant.

This subclause deletes “2” and inserts “one”, providing more discretion to the court to refuse eligibility for parole.

Clause 20 Section 97A inserted

This clause inserts a new section 97A in Division 4 of the Sentencing Act. New section 97A allows for the declaration of a serious violent offence for the purposes of the new Part 5A of the Sentence Administration Act, introduced by clause 25.

The proposed new subsection 97A(1) provides definitions for a number of terms used in proposed new section 97A. The terms and definitions are as follows:

- ‘family and domestic relationship’ has the meaning given in the *Restraining Orders Act 1997* section 4(1). That is, a relationship between two persons —
  (a) who are, or were, married to each other; or
  (b) who are, or were, in a de facto relationship with each other; or
  (c) who are, or were, related to each other; or
  (d) one of whom is a child who —
    i. ordinarily resides, or resided, with the other person; or
    ii. regularly resides or stays, or resided or stayed, with the other person; or
  (e) one of whom is, or was, a child of whom the other person is a guardian; or
  (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.
- ‘offence’ does not include an offence specified in the Sentence Administration Act Schedule 4. Schedule 4 lists a number of offences in the Criminal Code, *Bushfires Act 1954* and *Road Traffic Act 1974*. These offences are already classified as a serious violent offence for the purposes of the new Part 5A of the Sentence Administration Act, introduced by clause 25.
- ‘victim’ has the meaning given in section 13 of the Sentencing Act (that is: a person who, or body that, has suffered injury, loss or damage as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender; or where the offence results in a death, any member of the immediate family of the deceased).

The proposed new subsection 97A(2) states section 97A applies if a court is sentencing an offender to imprisonment for an indictable offence.

The proposed new subsection 97A(3) states for the purposes of the new Part 5A of the Sentence Administration Act, the court may declare the offence to be a serious violent offence if the offence —

(a) involved the use of, or counselling or procuring the use of, or conspiring or attempting to use, serious violence against another person; or
(b) resulted in serious harm to, or the death of, another person.

The proposed new subsection 97A(4) states the court must regard the existence of any of the following circumstances as an aggravating factor when deciding whether to make a declaration of a serious violent offence —

(a) the offender has a history of violent offending;

(b) the offender was in a family and domestic relationship with a victim of the offence when the offence was committed;
(c) a victim of the offence was under 12 years of age when the offence was committed.

The proposed new subsection 97A(5) enables the court to make a declaration of a serious violent offence on its own initiative, or on application by the prosecutor.

Division 2 — *Sentence Administration Act 2003* amended

Clause 21 Act amended
This clause provides this Division amends the Sentence Administration Act.

Clause 22 Section 4 amended
Subclause 22(1) inserts, in alphabetical order, two new terms and definitions in subsection 4(2) of the Sentence Administration Act.

The new terms and definitions are as follows:

- Insert a new term of 'post-sentence supervision order' in section 4(2) which means a post-sentence supervision order made under Part 5A of the Sentence Administration Act.
- Insert a new term of 'supervised offender' which has the meaning given in section 74E(1). That is, a supervised offender is the person specified in the post-sentence supervision order.

Subclause 22(2) inserts a new abbreviation in subsection 4(3) of the Sentence Administration Act to explain PSSO is an abbreviation for post-sentence supervision order.

Clause 23 Section 22 amended
The amendments to subsection 22(1) proposed by clause 23 allow the PRB to make a parole order in respect of prisoners whose term of imprisonment is less than six months.

Clause 24 Section 24 deleted
This clause deletes section 24, which is contained within Division 4 of the Act. Division 4 of the Act applies to prisoners with terms less than 12 months. This section is no longer necessary, as there are no sentences of less than 12 months imposed prior to 2014.

Clause 25 Part 5A inserted
This clause inserts a new Part 5A after section 74.

New section 74A provides definitions for a number of terms used in Part 5A. The terms and definitions are as follows:

- 'breach' means to contravene any obligation or requirement of a PSSO made under new section 74D.
- 'cancelled PSSO' has the meaning given in new section 74K(1), that is, if a supervised offender commits an offence and is sentenced to imprisonment for that offence, the PSSO is cancelled.
- 'prisoner' means a prisoner who is serving a fixed term for a serious violent offence (as defined below).
- 'PSSO considerations' has the meaning given in new section 74B, that is, a reference to the considerations the CEO must take into account when preparing a report on a prisoner eligible for a PSSO.
- 'PSSO period' has the meaning given in new section 74E(2), which is the period of two years beginning when the prisoner has served his or her term.

- ‘serious violent offence’ means an offence specified in new Schedule 4 (refer clause 44); or an offence declared under the Sentencing Act section 97A(3) (refer clause 20) to be a serious violent offence.

New section 74B outlines the considerations the CEO must consider when preparing a report on a prisoner who is eligible for a PSSO. The considerations are:

(a) issues for any victim of a serious violent offence for which the prisoner is in custody, including any matter raised in a victim’s submission;
(b) the behaviour of the prisoner when in custody insofar as it may be relevant to determining how the prisoner is likely to behave if released;
(c) whether the prisoner has participated in programmes available to the prisoner when in custody, and if not the reasons for not doing so;
(d) the prisoner’s performance when participating in a programme available when in custody;
(e) the behaviour of the prisoner when subject to any PSSO made previously;
(f) the likelihood of the prisoner committing a serious violent offence when subject to a PSSO;
(g) the likelihood of the prisoner complying with the standard obligations and any additional requirements of any PSSO; and
(h) any other matter that is or may be relevant to whether the prisoner should be subject to a post-sentence supervision order after the prisoner’s release.

New section 74C states the reporting requirements for the CEO to the PRB about prisoners who are eligible for a PSSO. Under the new section:

- The CEO must give the PRB a written report about every prisoner that addresses the PSSO considerations relating to the prisoner.
- The report must be given to the PRB no later than three months before the end of the prisoner’s term.
- This section applies whether or not the prisoner is subject to an early release order.

New section 74D enables the PRB to make a PSSO for a prisoner if the PRB decides it is appropriate to do so. In determining whether to make a PSSO in respect of a prisoner, the PRB must have regard to:

(a) the PSSO considerations relating to the prisoner (refer new section 74B); and
(b) the report made by the CEO under new section 74C; and
(c) any other information about the prisoner brought to its attention.

New section 74E outlines the nature of a PSSO. That is, it is an order that the person specified in the order (the supervised offender) must comply with for the duration of the PSSO period. The order may contain:

- the standard obligations (refer new section 74F below); and
- any of the additional requirements (refer new section 74G below).

Subject to any subsequent PSSOs (refer new section 74K), the PSSO period is the period of two years beginning on:

- if the supervised offender is not released on parole — the day on which the supervised offender is released after serving his or her term; or
- if the supervised offender is released on parole — the day after the day on which his or her term ends.

New section 74F lists the standard obligations of a PSSO. These obligations are that the supervised offender must:

(a) report to a community corrections centre within 72 hours after being released, or as otherwise directed by a community corrections officer; and
(b) notify a community corrections officer of any change of address or place of employment within two clear working days after the change; and
(c) comply with section 76 of the Sentence Administration Act. This section outlines the obligations of offenders on community corrections orders.

New section 74G outlines the additional requirements of a PSSO. Any of these requirements may be included in a PSSO, as deemed appropriate by the PRB. The additional requirements are:

(a) where the supervised offender must reside;
(b) to protect any victim of an offence committed by the supervised offender from coming into contact with the offender;
(c) the supervised offender wears any device for monitoring purposes;
(d) supervised offender permits the installation of any device or equipment at the place where the offender resides for monitoring purposes;
(e) if the CEO so directs, the supervised offender —
    i wear any device for monitoring purposes;
    ii permit the installation of any device or equipment at the place where the offender resides for monitoring purposes;
(f) the supervised offender must not leave Western Australia except with and in accordance with the written permission of the CEO;
(g) to facilitate the supervised offender's rehabilitation;
(h) the supervised offender must, in each period of seven days, do the prescribed number of hours of community corrections activities;
(i) the supervised offender must —
    i seek or engage in gainful employment or in vocational training; or
    ii engage in gratuitous work for an organisation approved by the CEO;
(j) prescribed requirements.

New section 74H states the CEO must ensure a community corrections officer is assigned to supervise a supervised offender for the duration of the PSSO period.

New section 74I provides the PRB may amend a PSSO at any time before the end of the PSSO period. If a PSSO is amended, the amended PSSO then applies.

New section 74J provides for the PRB to cancel a PSSO at any time before the PSSO period has commenced.

This new section also states if, during the PSSO, a supervised offender commits an offence, and is sentenced to imprisonment for that offence, the PSSO is cancelled by operation of this section.

New section 74K provides for situations where a PSSO is cancelled after the supervised offender has committed an offence. New section 74K enables the PRB to make a subsequent PSSO in respect of the prisoner.

Under new subsection 74K(2), the PSSO period in the subsequent PSSO is to be set by the PRB. The PSSO period in the subsequent PSSO must begin on the day when the prisoner is released, and must not be longer than the remaining PSSO period of the cancelled PSSO.

This subsection has the effect of limiting the aggregate of all PSSOs in respect of sentences for non-serious violent offences to no more than 2 years.

New subsection 74K(3) nullifies the provisions contained in subsection (2) in cases where an offender who is subject of a PSSO commits a serious violent offence, by allowing the PRB to make another PSSO in respect of the prisoners for 2 years.

New section 74L sets out the offence for a breach of a PSSO. If a supervised offender breaches a PSSO, without reasonable excuse (the onus of proving which is on the offender), the supervised offender commits a crime.

The penalty for a breach of a PSSO is imprisonment for three years. The summary conviction penalty is imprisonment for 18 months and a fine of $18,000.

Clause 26 Section 75 amended
This clause amends the definition of a community corrections order as a term used in Part 6 of the Sentence Administration Act, by including a PSSO in the definition.

Clause 27 Section 77 amended
Section 77 deals with the consequences of contravening section 76 obligations, which refers to the obligations of an offender who is subject to a community corrections order.

Clause 27 inserts a new subsection 77(ca) to cover offenders on a PSSO. If an offender is subject to a PSSO, and contravenes any requirement of section 76, the manager of a centre may reprimand the offender or report the matter to the CEO and recommend the offender be charged with an offence under new section 74L (see clause 25).

Clause 28 Section 78 amended
Subclause 28(1) amends paragraph 78(1)(b) to include the new PSSO in the definition of a 'minimum hours requirement' for the purposes of that paragraph. That is, in relation to a PSSO, the minimum hours requirement means any requirement in the order to do the prescribed number of hours of community corrections activities in each period of seven days.

Subclause 28(2) amends paragraph 78(2)(c) to include a PSSO. In respect of a PSSO, subsection 78(2) thus provides if the CEO is satisfied an offender is ill or there are other exceptional circumstances, the CEO may permit the offender not to comply with the minimum hours requirement for such period or periods as the CEO thinks fit.

Subclause 28(3) amends subsection 78(3) to include a PSSO so a decision made under subsection 78(2) (to allow an offender not to comply with the minimum hours requirement of the order) does not affect the period of a PSSO.

Clause 29 Section 83 amended
This clause amends section 83 by inserting a PSSO in the definition of a community corrections order.

Clause 30 Section 94 amended
This clause amends section 94 which outlines the functions of the CEO. Specifically, the clause inserts PSSOs in paragraph 94(1)(a) to enable the functions of the CEO to include the proper administration of PSSOs, in addition to the existing pre-sentence orders, community orders, sentences of conditional suspended imprisonment, parole orders, re-entry release orders and work and development orders.

Clause 31 Section 107B amended
Subclause 31(1) amends subsections 107B(1) and 107B(2) by inserting the term supervised offender. These amendments have the effect of requiring the PRB to provide both the supervised offender and the CEO written notice of any decision under the Act in respect of the supervised offender (that is, a person specified in a PSSO), the written notice to be provided as soon as practicable after the decision is made.

Subclause 31(2) inserts a new paragraph 107B(3)(ca) to confirm the PRB must give written notice to a supervised offender and the CEO of a decision by the PRB to make, amend or cancel a PSSO.

Clause 32 Section 107C amended
This clause amends subsection 107C(2) by inserting the term supervised offender. The amendment confirms the chairperson of the PRB has authority to make public a decision of the PRB relating to a supervised offender, or the reasons for it, if the chairperson considers it is in the public interest to do so, having regard to all the circumstances including the interests of the prisoner or supervised offender concerned and the interests of any victim.

Clause 33 Section 109 amended
Subclause 33(1) amends subsection 109(1) so as to include a person who is subject to a PSSO, thus allowing the PRB, by order, to require that such person appear before it.

Subclause 33(2) amends subsection 109(2), as a consequence of the amendment of subsection 109(1) (refer subclause 1) by deleting the reference to "prisoner" and replacing it with "person". The subsection enables the PRB to issue a warrant to have the person arrested and brought before the PRB.

This subclause also includes a note to change the heading of section 109 to read "Board may require person to appear before it".

Clause 34 Section 111 amended
This clause amends subsection 111(2) by inserting a reference to PSSOs. The amended section states evidence of a parole order, a re-entry release order, a post-sentence supervision order or a decision made by the PRB may be given by producing a copy of the order or decision certified by the registrar of the PRB as a true copy.

Clause 35 Section 112 amended
Subclause 35(a) introduces new requirements for the PRB's annual written report to the Minister.

- New subsection 112(ga) requires the PRB to report on the number of prisoners who were the subject of a report under new section 74C (refer clause 25) during the previous financial year (that is, the number of prisoners who were eligible for a PSSO).
- New subsection 112(gb) requires the PRB to report on the number of persons released subject to a PSSO during the previous financial year.

Subclause 35(b) inserts the term PSSOs into subsection 112(j) so as to require the PRB to also report to the Minister on the operation of this Act and relevant parts of the Sentencing Act so far as they relate to PSSOs, and to the activities of community corrections officers in relation to those orders during the previous financial year.

Clause 36 Section 114 amended
This clause inserts the term "supervised offender" into subsection 114(2). This amendment enables a person, where this section is referred to in the Act, to withhold the reasons for a decision from a supervised offender (that is, a person specified in a PSSO) if the person

decides that it would be in the interest of the prisoner or supervised offender or any other person, or the public.

Clause 37 Section 115A amended
Clause 37 inserts new paragraph 115A(2)(da) to define a decision made by the PRB to make a PSSO as a reviewable decision.

Clause 38 Part 11 heading amended and
Clause 39 Part 11 Division 1 heading inserted

A number of amendments made by clause 14 will, in turn, be amended by clauses 38 to 43 when Part 3 of this Bill comes into operation. This is done in order to accommodate the transitional provisions that will be introduced by Part 3. The transitional provisions relating to Part 2 and Part 3 of the Bill will thus be separated into 2 Divisions.

Clause 38 deletes the heading to Part 11 that was inserted by clause 14, and clause 39 inserts a new Division heading "Division 1 — Provisions for the *Sentencing Legislation Amendment Act 2016* Part 2".

Clause 40 Section 123 amended
As a consequence of Part 3 coming into operation and the insertion of Division 1 into Part 11 (refer clause 39), this clause amends the wording in section 123 (inserted by clause 14) to reflect the new Division.

Clause 41 Section 127 amended
As a consequence of Part 3 coming into operation and the insertion of Division 1 into Part 11 (refer clause 39), this clause amends the wording in section 127 (inserted by clause 14) to reflect the new Division.

Clause 42 Section 128 amended
As a consequence of Part 3 coming into operation and the insertion of Division 1 into Part 11 (refer clause 39), this clause amends the wording in section 128 (inserted by clause 14) to reflect the new Division.

Clause 43 Part 11 Division 2 inserted
This clause inserts a new Division 2 into Part 11 to provide the transitional provisions for Part 3 of the Bill.

The new section 129 contains the transitional provisions in relation to the former Part 3 Division 4, that is, parole in relation to prisoners serving short term sentences.

New subsection 129(1) outlines the definitions for section 129:

- 'commencement day' means the day on which the *Sentencing Legislation Amendment Act 2016* section 23 comes into operation. That is, the day on which the amendments are made to give courts the discretion to make parole eligibility orders for sentences of less than 6 months.
- 'former Division' means Part 3 Division 4 as in force immediately before commencement day.

New section 129(2) states that if Part 3 Division 4 (parole in case of short term) applied to a prisoner immediately before commencement day, then on and after that day, the former provisions apply to, and in relation to, the prisoner as if the *Sentencing Legislation Amendment Act 2016* section 23 had not come into operation.

Clause 44 Schedule 4 inserted
This clause inserts a new Schedule 4 after Schedule 3. Proposed new Schedule 4 defines the list of "Serious violent offences" that, for the purposes of this Bill, determine the automatic eligibility of an offender to be considered for a PSSO.

Part 4 — Other amendments to the *Sentencing Act 1995*

Division 1 — Preliminary

Clause 45 Act amended
This clause provides this Part amends the Sentencing Act.

Division 2 — Amendments about circumstances of aggravation

Clause 46 Section 145A inserted
This clause inserts a new section 145A into the Sentencing Act. This new section confirms where a superior court, on a plea of guilty by the accused, is required to determine in proceedings under this Act whether the offence was committed in circumstances of aggravation, that determination is a determination of a question of fact for the purposes of section 146 (that is, it is to be determined by a judge and not by the verdict of a jury).

The phrase 'circumstances of aggravation' is defined in the new subsection 145A(1) as circumstances in which an offence is committed that are not elements of the offence and increase the statutory penalty for the offence.

Clause 47 Section 150AB inserted
Clause 47 inserts a new section 150AB into the Sentencing Act which confirms the new section 145A applies in respect of a determination under section 146, even if the offence was committed before commencement of Part 4 Division 2; or if a plea of guilty, was entered before such commencement; or, if the determination has arisen as a result of an appeal, on a sentence imposed before such commencement.

Division 3 — Amendments about suspended fines

This division introduces a new sentence of 'suspended fine' into the Sentencing Act.

Clause 48 Section 14 amended
This clause amends subsection 14(2) by inserting a new paragraph 14(2)(c). This amendment makes provision for a court to hand down a sentence of 'suspended fine', whether or not the offender is personally present in court.

Clause 49 Section 39 amended
Clause 49 inserts a new paragraph 39(2)(ca) which provides the sentence of a suspended fine, with or without a spent conviction order, is one that can be imposed on an offender who is a natural person.

Clause 50 Section 40 amended
This clause amends subsection 40(2) to allow the court to hand down a suspended fine to an offender which is a body corporate.

Clause 51 Section 44 amended
Clause 51 amends subsection 44(1) so a court may hand down a suspended fine as a sentencing option where an offence attracts a statutory penalty of a fine only, or is prescribed for the purposes of section 44.

Clause 52 Part 8A inserted

Clause 52 inserts a new Part 8A which incorporates new sections 60A to 60E. Part 8A introduces the new sentencing option of a suspended fine and sets out how this sentence is to operate. A suspended fine is a sentence of a fine which is suspended for a period of time set by the court. The offender will be discharged from the sentence at the end of the suspension period unless the offender commits an offence and a court makes an order under new section 60E.

New section 60A

This new section outlines when a fine may be suspended by the court. A court may suspend a fine for a period of up to 24 months. Furthermore, a fine can only be suspended in circumstances where it would be appropriate to impose a fine of equal amount, if the fine was not able to be suspended. This is to ensure the amount of the fine is not increased due to the fact it is being suspended.

New section 60B

This new section outlines the effect of suspending a fine. It provides the circumstances for which an offender is required to pay a suspended fine, namely if he or she commits an offence during the term of the suspension or if a court makes an order under new section 60E. Provisions also stipulate the suspension period commences on the day the sentence was imposed and an offender is considered to be discharged from the suspended fine at the end of the suspension period.

New section 60C

There are two methods by which a re-offender could have the suspended fine reconsidered by a court under the proposed section 60E. The first is under the new section 60C and the second under new section 60D.

The proposed section 60C outlines how an offender must be dealt with if they are convicted of an offence whilst subject to a suspended fine for another offence. In the circumstance contemplated by this section, the matter is already before the court. Dependent upon which court imposed the suspended fine and which court is convicting for the new offence, the provisions set out whether the court must commit the offender to another court or itself deal with the offender under the provisions of new 60E.

New section 60C also makes provision for other matters, including the exercising of powers contained within the section, the interaction between current and former offences in relation to the court's powers and evidentiary matters in relation to certifying convictions.

New section 60D

The second method by which a re-offender could have the suspended fine reconsidered by a court is dealt with under the new section 60D, which covers the situation where a matter is not currently before a court and an offender is brought before a court by summons. This new section provides an offender may be dealt with under these provisions for any subsequent offence in Western Australia or another jurisdiction, provided the offence was committed during the period for which a suspended fine was imposed for another offence.

The relevant re-offending may be alleged at any time up until two years after the last day of the suspension period and must be on a written notice in the prescribed form.

These provisions also set out who may allege the re-offending, which includes: an authorised person in relation to the offence; a police officer; the Attorney General; the Solicitor-General; the State Solicitor; the DPP; a member of the DPP's staff, appointed in writing by the DPP as an authorised officer; or a person appointed by the Governor under section 182 of the *Criminal Procedure Act 2004*.

The relevant person must sign the notice alleging the re-offending in the presence of a Justice of the Peace or prescribed court officer (as defined in section 3 of the *Criminal Procedure Act 2004*) who may issue a summons to the offender. The summons must direct the offender to appear before the court that imposed the suspended fine and that court must deal with the offender under the provisions of new 60E.

New section 60E
This new section outlines how an offender is to be dealt with by the court. Provisions allow the court to exercise four options, as often as is necessary. These options are:

- to order the person pay the fine that was suspended, unless an order to this effect has already been made. A court must utilise this option unless it decides that it would be unjust to do so, and if a court chooses not to utilise this option, it must provide written reasons for not doing so;
- to order the person pay part of the fine that was suspended, unless an order requiring the person to pay the fine that was suspended in full, has already been made;
- to substitute another suspension period in lieu of the suspension period originally set, provided the new suspension period is not more than 24 months;
- to make no order in respect of the suspended fine. If a court utilises this option, unless the suspension period has ended, the suspended fine remains in effect and the suspension period continues.

Proposed section 60E(6) provides, for the purposes of an appeal against a sentence under section 60E(1) by a superior court, where the sentence was imposed for an offence for which the person had not been convicted on indictment, the sentence is to be regarded as having been made following a conviction on indictment.

Division 4 — Amendments about victim impact statements

Clause 53 Section 23A inserted
This clause inserts a new section 23A into the Act and defines a number of terms used in Part 3 Division 4, including:

- 'family victim' which, in the context of an offence, means a person who was, at the time the offence was committed, a member of the primary victim's immediate family, whether or not that person suffered personal harm as a result of the offence.
- 'member of the primary victim's immediate family' which refers to a person who is, in relation to the primary victim, a: spouse; de facto partner; fiancé; parent, grandparent, step-grandparent, guardian or step-parent; child, grandchild, step-grandchild, step-child or any other child for whom the primary victim is the guardian; brother, sister, half-brother, half-sister, step-brother or step-sister; or a person who, in the opinion of the court, is regarded under the customary law or tradition of the primary victim's community as the primary victim's guardian or carer, where the primary victim is of Aboriginal or Torres Strait Islander descent.
- 'primary victim' who in the context of an offence, means a person against whom the offence was committed, or a person who was a witness to the offence, if the offence included any of the following: actual or threatened violence; sexual assault; bodily harm; or death.
- 'personal harm' which means bodily, psychological or psychiatric harm.
- 'primary victim' who in the context of an offence, means a person against whom the offence was committed, or a person who was a witness to the offence, if the offence included any of the following: actual or threatened violence; sexual assault; bodily harm; or death.

- ‘requiring care’ which, in relation to a person, means a person who is under 18 years of age, or in the absence of evidence as to age, a person who is apparently under 18 years of age, or a person who, because of a mental or physical impairment, is unable to give a victim impact statement.
- ‘victim’ who means a primary victim or a family victim.
- ‘victim impact statement’ which means a statement that contains, in the case of a primary victim, any personal harm suffered by the victim as a direct result of the offence, or in the case of a family victim, the impact of the primary victim’s death on the members of the primary victim’s immediate family.

Clause 54 Section 25 amended
As a consequence of the term ‘victim impact statement’ being defined in the newly inserted section 23A (refer to clause 53), this amendment removes reference to the term in section 25.

Clause 55 Section 26 amended
This clause inserts a proposed new subsection 26(3) which requires a court, where an offender is sentenced to imprisonment, to make available to the PRB a copy of any victim impact statement given to the court under section 24 of the Act.

This clause also includes a note to change the heading of section 26 of the Act to read “Court’s functions in relation to victim impact statement”.

Division 5 — Amendments about CROs

Clause 56 Section 49 amended
Clause 56 inserts new provisions in section 49 to provide, in addition to a court’s general discretion contained in the new subsection 49(1A)), a court may impose a requirement the offender participate in certain activities as part of a conditional release order (CRO).

Proposed new subsection 49(1B) provides the CEO of the Public Sector agency principally assisting the Minister in administering this part of the Act (currently the CEO of the Department of the Attorney General) may approve the activities a court may order an offender to participate in.

The types of activities the CEO may approve are set out in the new subsection 49(1C) which includes educational, vocational or personal development programmes, any unpaid work and any other activity that the CEO considers appropriate.

Proposed new subsection 49(1D) allows the court to impose between 10 and 60 hours of participation in an activity approved by the CEO and proposed new subsection 49(1E) allows the court to require the offender to record his or her compliance with the requirement in a log book approved by the court.

Clause 57 Section 51 amended
The amendments contemplated by clause 57 remove the ability of an offender to rely on a surety in order to secure his or her release on a CRO. A court will no longer be able to order the offender be released once a surety has given a written undertaking to pay the State, or deposited money into court to ensure an offender’s compliance with a CRO. The amendments place the onus solely on the offender to demonstrate good behaviour whilst subject to a CRO.

The amendments proposed by subclause 57(2) are required to remove all reference to a surety from the provisions of section 51.

Clause 58 Section 52 amended
Subclause 58(1) amends subsection 52(2) in order to remove reference to a surety (as a consequence of the amendment at clause 57).

In addition, subsection 52(2) is amended by inserting a reference to the proposed new subsection 52(7) inserted by clause 58(3). Through this amendment, a court has the ability to order only part of the agreed amount be paid, or forfeited, by the offender, where the CRO was made subject to a requirement of participating in an activity (refer to clause 56).

The reference to subsection 52(3) is retained, that is, a court has discretion to make no order, or to order payment or forfeiture in part, where the offender demonstrates his or her circumstances have changed since entering into the undertaking to the extent an order for forfeiture will cause excessive hardship to the offender or dependants. The offender will also need to show the hardship cannot be relieved through the exercise of the powers under section 59 of the *Bail Act 1982*.

Subclause 58(2) proposes the deletion of subsection 52(4) as a consequence of the removal of reference to a surety from section 51 (refer to clause 57).

Subclause 58(3) inserts a proposed new subsection 52(7). Subsection 52(7) empowers the court to order payment or forfeiture in part, where a breach of a CRO relates to the offender failing to meet a requirement imposed under new subsection 49(1A) (refer to clause 56), where the offender has made progress towards the completion of that requirement, and where the court believes it would be unjust to order payment or forfeiture.

Subclause 58(3) also inserts a proposed new subsection 52(8), which gives discretion to the court to order a sum to be paid, or forfeited, which it considers appropriate.

Clause 59 Section 131 amended
This clause inserts a proposed new subsection 131(1A), which provides a person who is subject to a CRO does not commit an offence if the breach relates to a failure to complete a requirement imposed under new subsection 49(1A) (refer to clause 56); that is, a requirement that requires the offender to participate in an activity.

Clause 60 Section 133 amended
Clause 60 amends subsection 133(2) in order to refer to new subsection 52(7) inserted by subclause 58(3). This amendment confirms the court's power to determine whether an offender who breaches a CRO through a failure to complete a requirement imposed under new subsection 49(1A) should be ordered to pay an undertaking, or forfeit a deposit, in part or in full.

Division 6 — Miscellaneous amendments

Clause 61 Section 4 amended
Subclause 61(1) inserts new terms and definitions in subsection 4(1) which are used throughout the Sentencing Act. These terms are as follows:

- 'parole eligibility order' which has the meaning given in section 89(1) as an order that may be made by a court sentencing an offender to a fixed term of imprisonment, making an offender eligible to be considered for parole in respect of that term by the PRB.
- 'prescribed' which refers to something prescribed in the regulations of the Act.
- 'Prisoners Review Board' which means the agency established under the Sentence Administration Act for the purpose of granting, deferring or refusing parole, taking into

account factors affecting the offender, victims of crime and, most importantly, the safety of the community.
- 'written reasons' refers to the reasons for which a court made a particular decision given verbally in the court and subsequently transcribed, or given verbally and recorded electronically in a format that can be transcribed at a later time.

Subclause 61(2) is a minor amendment as a consequence of the term 'written reasons' being inserted after 'superior court' in subsection 4(1).

Subclause 61(3) inserts a proposed new subsection 4(4) which provides any reference to the suspension of a term, or terms, of imprisonment is a reference to a suspension of the whole, or part, of the term or terms.

Clause 62 Section 9G amended
Clause 62 amends subsection 9G(1) by removing reference to 'under section 89'. This amendment is a result of the definition for 'parole eligibility order' being inserted in subsection 4(1).

Clause 63 Section 22 amended
This clause amends paragraph 22(1)(b) to provide the CEO (corrections) is to ensure pre-sentence reports are made as soon as practicable, and in any event, within 14 days before the day of sentencing.

Clause 64 Section 33A amended
As the definition for 'written reasons' is inserted in subsection 4(1) by clause 61(1), subsection 33A(7) is not required and is consequently deleted.

Clause 65 Section 35 amended
As the definition for 'written reasons' is inserted in subsection 4(1) by clause 61(1), subsection 35(4) is not required and is consequently deleted.

Clause 66 Section 45 amended
Clause 66 inserts a proposed new subsection 45(1A), which sets out additional factors a court must consider when making a spent conviction in respect of an offender subject to a pre-sentence order (PSO), namely:

- the offence for which the PSO applies was a simple offence; and
- the court is satisfied the offender has complied with any programme requirements imposed as part of the PSO.

Clause 67 Section 75 amended
Subsection 75(8) sets out the circumstances under which an offender may leave a place specified in a curfew requirement of an intensive supervision order (ISO) during a specified period. Clause 68 inserts a proposed new subsection 75(8)(aa) to permit an offender under an ISO to leave a specified place during a specified period for the purposes of the paid employment of the offender.

Clause 68 Section 76 amended
This clause amends subsection 76(1) by deleting the phrase 'the whole of'. The amendment ensures the order for a suspended sentence of imprisonment referred to in subsection 76(1) may apply to the whole, or part, of the term as a consequence of the new proposed subsection 4(4) of the Act inserted by clause 61(3).

Clause 69 Section 80 amended
Subsection 80(5A) is deleted by clause 69(1) as the definition for 'written reasons' is inserted in subsection 4(1) by clause 61(1).

Clause 69(2) amends paragraph 80(5)(b) by removing reference to 'under section 89'. This amendment is a result of the definition for 'parole eligibility order' being inserted in subsection 4(1).

Clause 69(3) inserts a proposed new subsection 80(7A) in relation to how offenders who re-offend during a period of suspended imprisonment ought to be dealt with. This new subsection provides where a court substitutes another suspension period in accordance with paragraph 80(1)(c), or a fine under paragraph 80(1)(d), where the suspended imprisonment period continues to elapse, the court must make the order subject to a supervision requirement as if the sentence where an ISO with the provisions of section 71 being applied.

Clause 70 Section 84F amended
Subsection 84F(5A) is deleted by clause 70(1) as the definition for 'written reasons' is inserted in subsection 4(1) by clause 61(1).

Clause 70(2) amends paragraph 84F(5)(b) by removing reference to 'under section 89'. This amendment is a result of the definition for 'parole eligibility order' being inserted in subsection 4(1).

Clause 71 Section 84L amended
Clause 71 amends paragraph 84L(3)(b) by removing reference to 'under section 89'. This amendment is a result of the definition for 'parole eligibility order' being inserted in subsection 4(1).

Clause 72 Section 85 amended
Clause 72 deletes the definition of 'parole eligibility order' from subsection 85(1) as it is inserted in subsection 4(1) by clause 61(1).

Clause 73 Section 86 amended
Clause 73 amends section 86 by reducing the minimum term of imprisonment that may be imposed from six months or less to three months or less.

This clause also includes a note to change the heading of section 86 of the Act to read "Term of 3 months or less not to be imposed".

Clause 74 Section 87 amended
Section 87 of the Act sets out the circumstances where time spent in custody by an offender may be taken into account by the sentencing court when imposing a sentence of imprisonment.

Subclause 74(1) replaces the current subsection 87(a) with a new paragraph 87(1)(a). The new subsection 87(1) empowers a court to take into account time spent in custody in the following circumstances:

- if the offender was in custody for the offence for which he or she is being sentenced; or
- if the offender was on bail for the offence for which the offender is being sentenced whilst in custody for another offence. In this case 'on bail for the offence' means that the offender was granted bail (but was on remand for another offence).

By way of example, this amendment allows for time served on remand to be taken into account when sentencing on an offence for which the offender was granted bail, where a not guilty verdict is delivered on the offence for which the offender was in custody.

Subclause 74(2) inserts a proposed new subsection 87(2) to avoid double-counting time on remand. This new subsection precludes the court from taking into account time spent in custody for the offence for which the offender is being sentenced if the offender has already had that same time spent in custody taken into account for another offence.

Clause 75 Section 89 amended
Section 89 empowers a court to make a parole eligibility order in respect of an offender who is sentenced to a fixed term of imprisonment. Clause 75 amends subsection 89(1) to provide clarity as to the meaning of the phrase 'parole eligibility order'.

Clause 76 Section 98 amended
Clause 76 amends paragraph 98(1)(c) by removing the words "under Part 13" by virtue of the term 'parole eligibility order' being defined in subsection 4(1).

Clause 77 Part 18 Division 6 inserted
Clause 77 inserts a new Division 6 to Part 18, which incorporates new sections 136A to 136F. Division 6 relates to the functions of speciality courts which is defined under subsection 4(1) as a court that is prescribed, sitting at a place prescribed and is dealing with offenders of a class prescribed by the regulations and is constituted by a judicial officer who is approved by the judicial officer who heads the court so prescribed.

New section 136A
This new section outlines the circumstances in which this Division applies. The provisions of this Division apply if:

- the court imposing a community order on an offender is a speciality court; or
- an offender is committed for trial or sentence for an offence to a superior court by a speciality court and a community order is imposed on the offender by the superior court and the superior court orders this Division apply.

New section 136B
This new section defines the term 'court', when used in this Division, as a speciality court and includes a superior court referred to in new subsection 136A(b).

New section 136C
New subsection 136C(1) provides the court may order the offender appear before the court after the imposition of the community order to ascertain if the offender is complying with the community order. The order to appear can be a time and place fixed by the court or the court may choose to summons the offender to appear.

Subsection 136C(2) allows the court to make orders under subsection 136C(1) on any reappearance of the offender.

Subsection 136C(3) empowers the court to issue a warrant to have the offender arrested and brought before court in the event that the offender fails to appear as required.

Under the new subsection 136C(4) the court has the power to amend the community order at the offender's reappearance.

New section 136D

Proposed new section 136D sets out the manner in which a court must deal with an offender who is convicted for an offence as referred to in section 128 whilst subject to a community order that was imposed by a speciality court or a superior court as defined in new section 136B.

Subsection 136D(1) provides where Division 6 applies, the re-offender must be committed to the specialty court or superior court as defined in new section 136B, to be dealt with under section 130 of the Act. This provision ensures under these circumstances, the re-offender is committed to the same court that imposed the community order.

Subsection 136D(2) provides, for the purposes of subsection 136D(1), the provisions of subsections 128(2) to (4) apply.

Subsection 136D(3) provides, where Division 6 applies, a section 129 notice alleging re-offending must be lodged with the speciality court or relevant superior court and any summons or warrant issued under section 129 must direct the offender to appear before that court.

New section 136E
This new section provides, where Division 6 applies, if a court is to amend or cancel a community order, an application must be made under the provisions of section 126 of the Act. This means either the offender or a Community Corrections Officer must make the application to the speciality court or superior court that imposed the community order.

New section 136F
This new section outlines the manner in which the court must deal with the offender for a breach of a community order. Where this Division applies, a prosecution must be commenced in the speciality court or relevant superior court, and that court must also hear and determine the matter. If convicted, that court must deal with the offender under sections 132 and 133 of the Act.

Clause 78 Part 18A inserted
Clause 78 inserts a new Part 18A, introducing new sections 136G to 136I which relate to the review of conditional orders.

New section 136G
This new section defines terms used in Part 18A:

- ‘CEO’ which, in relation to a CRO, means the CEO (DOTAG), or in relation to a CSI, ISO or PSO, means the CEO (corrections).
- ‘conditional order’ means any of the following: CRO, CSI, ISO or PSO.

New section 136H
Subsection 136H(1) empowers the CEO to apply to court to review a conditional order if the CEO is of the opinion that the offender may not be able to comply with its requirements.

Subsection 136H(2) provides the review application must be made to the court that imposed the conditional order.

Subsection 136H(3) provides the application must be made in accordance with the regulations.

New section 136I

The proposed new section 136I provides a court considering the review of the conditional order under new section 136H, may confirm, cancel or amend the conditional order in accordance with this section.

New subsection 136I(1) provides the court must confirm the order unless it is satisfied the offender might not be able to comply with its requirements.

New subsection 136I(2) provides if a court is satisfied the offender might not be able to comply with its requirements then the court may either:

- Amend the order so as to change the requirement; or
- If the court thinks the circumstances of the offender have so altered since the court passed sentence that it is necessary and just to do so, the court must sentence the offender for the offence in any manner the court could if it had just convicted the person of that offence.