

Sentence Administration Amendment (Monitoring Equipment) Bill 2023

1. Short title

This clause provides that this is the *Sentence Administration Amendment (Monitoring Equipment) Act 2023* (Act).

2. Commencement

Paragraph (a) provides that sections 1 and 2 come into operation when the Act receives the Royal Assent.

Paragraph (b) provides that the rest of the Act comes into operation on the day after the Royal Assent.

3. Act amended

This clause confirms that this Act amends the *Sentence Administration Act 2003* (WA).

4. Section 118 amended

Subclause (1) expands the existing offence in section 118(6) to include damage to monitoring equipment in circumstances where it prevents or impedes location monitoring. The word 'damage' is taken from section 118(7) to effectively consolidate the offences provided for at sections 118(6) and (7).

Subclause (2) increases the penalty for the offence at section 118(6) from a fine of \$12,000 or imprisonment for 12 months, to a fine of \$36,000 and imprisonment for 3 years – trebling the current penalty. This is to reflect the serious nature of the conduct that constitutes the offence, which undermines monitoring of the person's location.

Subclause (3) deletes the existing offence at section 118(7), which deals with wilful and unlawful destruction of or damage to monitoring equipment. As noted, the word 'damage' has been moved to section 118(6). The effect of this change is that damage that prevents or impedes location monitoring may be an offence under section 118(6), while damage that does not affect monitoring will no longer give rise to an offence

under section 118 (but may be dealt with under *The Criminal Code*). This is necessary to prevent the minimum penalty outlined below from applying to low-level damage that does not affect the operation of the equipment.

Subclause (3) also inserts new sections (7) and (8) into section 118.

In respect of the penalty for the offence at section 118(6), new section 118(7) establishes a rebuttable presumption in favour of a minimum term of imprisonment, which cannot be suspended, of at least six months. This will not apply —

- a. if the person was a child at the time the offence was committed; or
- b. if it would be clearly unjust given the circumstances of the offence and the person.

New section 118(7) is broadly modelled on sections 33(4) and (5) of the *High Risk Serious Offenders Act 2020* (WA).

Proposed section 118(8) expressly excludes the operation of section 86 of the *Sentencing Act 1995* (WA). This provision has been included to provide clarity and for the avoidance of any doubt that a term of imprisonment of exactly six months may be imposed for the amended offence at section 118(6), notwithstanding the prohibition of terms of imprisonment of six months or less in section 86.