

Australian Prisons Project

Amendments to Western Australian Parole Legislation: 1964- 2009

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Amendments to the *Offenders Parole and Probation Act 1963*¹

All provisions of the Act are relevant to the parole regime in WA between 1963 and 1995 except for:

- Part II: Ss 6- 20 which concerns solely the probation of offenders.²
- Part IIA: Ss 20A- S which solely concern Community Service Orders.

All amendments to the relevant provisions of the Act are tabled below.

Year	Number	Amending Act	Commentary	Category
1964 ³	34	<i>Offenders Probation and Parole Amendment Act 1964</i>	S 47 - Originally the power under s 47 for the court to set minimum terms did not apply to offenders with less than 12 months remaining to serve. Hence they could not be paroled. The amendment gives the Board power to parole such offenders so long as they have served at least half their full term.	Non- parole period
1965	73	<i>Offenders Probation and Parole Amendment Act 1965</i>	<p>S 34 - Reporting requirement.</p> <p>S 34A- Governor given the power to release persons held pursuant to 653 and 693(4) of the <i>Criminal Code</i>. Board given powers with respect to persons so released.</p> <p>S 35 - Change in terminology.</p> <p>S 37- Sentencing court is not to fix minimum terms for multiple individual sentences but may fix a minimum term on aggregate.</p>	Ministerial release

¹ The name of this act was changed to the *Offenders Community Corrections Act 1963* by the *Community Corrections Legislation Amendment Act 1990*.

² Under s 9 of the *Offenders Parole and Probation Act 1963* a probation order is an order for supervision made in lieu of a custodial sentence; it is not simply a term for the parole of offenders serving short sentences (cf. *Probation and Parole Act 1984(NSW)*).

³ Amendments before 1969 are noted in shorthand only given the scope of the Australian Prisons Project.

			<p>S 41 - Change in procedure.</p> <p>S 42 - Change in terminology.</p> <p>S 44 - Change in procedure.</p>	
1969	3	<i>Offenders Probation and Parole Amendment Act 1969</i>	<p>S 30 - Change in procedure.</p> <p>S 34 - Change in terminology.</p> <p>S 34B - New provision relating to persons released under the Royal Prerogative of Mercy</p> <p>S 35 - Change in procedure related to staff</p> <p>S 37 - Inserts subsections (4) (5) and (6) which all relate to the setting of minim terms where there have been multiple offences.</p> <p>S 38 - New subsection (3) states that terms for offences committed whilst on parole are to be served cumulatively</p> <p>S 39 - Prisoner eligible to be released on parole (but not so released) is to be released by the date they would have been released if remissions regulations applied to them</p> <p>S 40 - Change in terminology.</p> <p>S 41 - (1a) relates to commencement of indeterminate sentences. (3a- f) new provisions relating to power of the Board and others.</p> <p>S 41A - New provision allows offenders to be tried and fines \$100 for a breach of a parole condition.</p> <p>S 42 - New subsection (3)</p> <p>S 43 - consequential</p> <p>S 44 - all subsections</p> <p>S 47 - further provision relating to the release of persons</p>	Non- parole period

			<p>imprisoned at the time the act came into operation</p> <p>Ss 50A- W - New Part IIIA: Orders Relating to Probation and Parole of Offenders Made in Another State or a Territory.</p> <p>S 51A - New provision consequent on Part IIIA</p>	
1970	40	<i>Offenders Probation and Parole Amendment Act 1970</i>	S 5 - Extends the application of the Act to children sentenced by the Supreme Court of Western Australia and the District Court of Western Australia.	
1971	16	<i>Offenders Probation and Parole Amendment Act 1971</i>	<p>S 34 - Minor amendment to reporting requirement. Previously annual report had to be made in respect of persons who were ordered to be held in strict custody AND were held in such custody. Now the reporting requirement applies to those who have been ordered to be held in strict custody OR are held in such custody.</p> <p>S 34AA - New provisions apply to persons under the age of 18, who are convicted under s 19(6a) of the <i>Criminal Code</i> and thereafter released. The provision allows the Governor to specify conditions of release including supervision by a parole officer. The Board has the same power in respect of persons so released as it does in respect of persons released under s 34A.</p> <p>S 34C - Clarifies that the principal Act does not apply to persons while they are admitted as a patient pursuant to the <i>Mental Health Act 1962</i>.</p>	Ministerial release
1976	57	<i>Offenders Probation and Parole Amendment Act 1976</i>	<p>S 4 - Various definitions amended.</p> <p>S 5 - Limits the class of children to which the principal Act applies.</p> <p>Ss 20A- S - 'Part IIA: Community Service Orders' added to the Act.</p> <p>S 21 - Amendment to the composition of the Board. Previously the Board consisted of a judge, the Comptroller - General and three men and two women. Only five persons sat at any hearing. At a</p>	Board composition

			<p>hearing of a male prisoner all three men sat. At a hearing of a female prisoner the two women sat but only one of the men sat</p> <p>The Board now has the same composition for the purpose of hearing cases of female prisoners. However now the two female community members also hear all cases of male prisoners.</p> <p>Ss 23, 40, 49, 50K and 51A - Change in terminology.</p>	
1980	96	<i>Acts Amendment (Strict Security Life Imprisonment) Act 1980</i>	<p>S 34 - New reporting requirements pursuant to the introduction of strict security life imprisonment. Annual reports have to be made in respect of such prisoners. Also allows the Board to furnish reports in any circumstances believed to be exceptional.</p> <p>S 42 - The Board had no power to release persons whose had been sentenced to life imprisonment for murder or whose death sentence had been commuted. Allows the Board to parole prisoners sentences to strict security life imprisonment, after they have served at least 20 years except where the Governor is of the opinion that special circumstances exist.</p>	Non- parole Ministerial Release
1981	52	<i>Acts Amendment (Mental Health) Act 1981</i>	S 34C - Reworded.	
1981	116	<i>Acts Amendment (Prisons) Act 1981</i>	<p>Ss 4, 34, 37, 39, 41, 43, 45 - Change in terminology.</p> <p>S 48 - Reworded.</p>	
1982	89	<i>Offenders Probation and Parole Amendment Act 1982</i>	<p>S 3 - repealed</p> <p>S 4 - Definitional changes surrounding "Director".</p> <p>S 5 - allows the Governor to appoint a Director and Deputy Director of the Probation and Parole Service</p> <p>S 6 - Change in terminology.</p>	

			<p>S 21 - Change in terminology.</p> <p>S 22 - Change in procedure.</p> <p>S 23 - Change in procedure.</p> <p>S 25 - Change in procedure.</p> <p>S 28 - Change in procedure.</p> <p>Ss 35, 36, 50W - Change in terminology.</p>	
1982	87	<i>Acts Amendment (Bail) Act 1982</i>	Ss 5, 50G, 50H, 50J, 50K - Various procedural amendments.	
1983	68	<i>Offenders Probation and Parole Amendment Act 1983</i>	<p>S 25 - Change in terminology.</p> <p>S 34A- where a person serving a sentence under ss 653 or 693(4) of the <i>Code</i> is released and later arrested under a warrant issued under s 34A that person is to be returned to strict custody until the Governor orders otherwise.</p> <p>S 37A - Where court is setting a minimum term the court must have regard to when the prisoner would have been released if not for the exclusion of remissions and must set the minimum term so that it does not extend beyond that date.</p> <p>S 39 - Deletion of 39(1). S 39(1) had prevented the operation of remissions regulations in relation to a term for which a minimum term had been set. Under s 39(2) there remains a power to make regulations for reduction of minimum terms as a reward for good conduct.</p> <p>S 51 - Allows the Attorney General to approve of the disclosure of some information which previously could only be disclosed for the purposes of exercising functions under the principal Act or complying with a court order.</p>	Non- parole period

1984	24	<i>Acts Amendment (Abolition of Capital Punishment) Act 1984</i>	<p>S 34 - Previously the annual reporting requirement under s 24(2)(ba) only extended to strict security life sentences that had not been commuted from death sentences. Now a similar reporting requirement applies to strict security life sentences that have been commuted from death sentences.</p> <p>S 34AB - Allows for the Governor to parole children held in safe custody at the Governor's pleasure (the alternative to life imprisonment for young offenders) for a period of up to 5 years.</p> <p>S 37 - 37(2) stated that the requirement to set minimum terms did not apply to life sentences. The amendment states that in addition the requirement does not apply to strict security life sentences.</p> <p>S 42 - power to release those sentenced to strict security life imprisonment amended to account for those persons who are sentenced to strict security life imprisonment and as well as those who have had their death sentences commuted.</p>	<p>Board release</p> <p>Ministerial parole</p>
1985	24	<i>Offenders Probation and Parole Amendment Act 1985</i>	<p>S 34 - separate reporting requirement for prisoners serving life sentences pursuant to s 282 of the Crimes Act, which requires a report after the person has served 10 years of their sentence and every 3 years thereafter (instead of after 5 years and every 3 years thereafter).</p>	
1985	118	<i>Offenders Probation and Parole Amendment Act (No. 2)1985</i>	<p>S 21 - Amendment to the composition of the Board. The Board still consists of 7 members. 3 not 5 of those are community members. Furthermore there is no longer any distinction between male and female community members. The Director of Prisons and a member of the Police Force are now members of the Board.</p> <p>S 22 - Removes the Governor's power to remove Board members and to appoint acting members.</p> <p>S 23A - Allows for the appointment of replacement and deputy</p>	<p>Board composition</p> <p>Non- parole period</p>

			<p>members as appropriate where the appointed member cannot be present.</p> <p>S 37 - Previously a court was required to set a minimum term for any sentence over 12 months unless it considered that it was inappropriate to do so having regard to the nature of the offence and the antecedents of the offender. The court had no power to set minimum terms in relation to sentences of less than 12 months.</p> <p>Court now has power to set minimum terms for sentences that are less than 12 months if there are special circumstances.</p> <p>Furthermore court may now only set minimum terms for sentences longer than 12 months where the nature and circumstances of the offence and the antecedents of the offender make it appropriate to do so. A court is required to consider the same factors when fixing a minimum term for a multiple sentences that are to be served cumulatively.</p> <p>S 40 - Fixing of a minimum term not in accordance with the Act does not invalidate a prison sentence.</p>	
1987	47	<i>Acts Amendment (Corrective Services) Act 1987</i>	<p>S 4, 5A, 6, 21, 23, 35, 36 - Change in terminology.</p> <p>S 23A - Permanent Head has power to appoint deputies.</p>	
1987	113	<i>Acts Amendment (Public Service) Act 1987</i>	<p>S 4 - Definition of Chief Executive Officer.</p>	
1987	129	<i>Acts Amendment (Imprisonment and Parole) Act</i>	<p>S 4 - definition of “non- parole” period added to the Act</p> <p>S 20T - Preliminary definitions added for Part III: Parole.</p> <p>S 34 - Replaced. The reporting requirements were completely reworded. The major changes are (i) the Board must furnish and annual report with respect to a person who is in strict custody</p>	<p>Non- parole period</p> <p>Board release</p> <p>Appeal</p> <p>Ministerial Release</p>

		<p>pursuant to an order made under section 652, 653 or 693(4) of <i>The Criminal Code</i>; (ii) when the Board recommends release it must also recommend conditions (if any) on which the person should be released; (iii) when the Board recommends the release of a person serving strict security or normal life imprisonment the Board must, in its report, give express attention to (a) the nature and circumstances of the offence (b) the risk the prisoner would present if released (c) the period and extent to which the prisoner should be supervised (d) other matters thought fit.</p> <p>S 34A - Change in terminology.</p> <p>S 34AA - Repealed. S 34AA applied to persons under the age of 18, who were convicted under s 19(6a) of the <i>Criminal Code</i> and thereafter released. The provision allowed the Governor to release and specify conditions of release. Savings provision preserves the application of s 34AA to prisoners convicted under s 19(6a) before the commencement of the repeal.</p> <p>S 34AB - Change in terminology.</p> <p>Ss 37- 40D - ss 37- 40 are wholly replaced by ss 37- 40B. The new s 37 provides that this amendment does not affect eligibility for release in relation to minimum terms set before the amendment comes into operation.</p> <p>s 37A sets out conditions for granting parole eligibility. The court must be satisfied that granting parole eligibility is appropriate. The court must now additionally consider circumstances which might be relevant to the convicted person at the time they would become eligible for parole and no longer has discretion as to the length of the non- parole period / minimum term. The non- parole period is automatically 1/3 of the full term for prisoners serving less than 6 years and 2/3 of the full term less 2 years for prisoners serving</p>	<p>Parole Eligibility</p>
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			<p>more than 6 years. Previously a court could set minimum terms for prisoners sentenced to less than 12 months where there were special circumstances. Now prisoners sentenced to less than 12 months may only be granted parole eligibility where the aggregate of their sentences is not less than 12 months. s 37A states that parole eligibility orders cannot be with respect to certain convictions (no substantive change).</p> <p>s 38 sets out how to calculate non- parole periods for persons serving multiple sentences at once (no substantive change).</p> <p>s 39 preserves the requirement that a prisoner who is eligible for parole but has not been released is to be released no later than the date they would have been released if remissions regulations had applied to them. Remissions regulations pursuant to s 29 of the <i>Prisons Act</i> continue to not apply to persons who are eligible for parole (see No. 68 of 1983). Governor still retains the power to make regulations for the early release of prisoners.</p> <p>s 40 preserves the power of the Parole Board to release prisoners after they have served their minimum term.</p> <p>s 40A extends to Board power to release prisoners who have served their minimum term to prisoners who served their non-parole period set under the new s 37A. Unlike s 40, there is no discretion under s 40A. A prisoner to whom it applies must be released. Furthermore prisoner to whom s 40A applies may request not to be released on parole. Also, such a prisoner must not be released until they declare that they understand the requirements in the order and undertake to comply with them. The terms which the Board can impose on parolees is limited to “prescribed requirements” and “non- consorting” requirements.</p> <p>s 40B allows the Board to defer and postpone the release of</p>	
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			<p>prisoners serving certain 'special' terms.</p> <p>S 40C sets out provisions for the release of habitual criminals which was previously covered by s 40.</p> <p>The Governor's power to release prisoners serving life sentences is moved from s 42 to s 40D. The terms under which the power may be exercised remains unchanged.</p> <p>S 41 - Preserves the power of the Board to revoke and vary parole. In addition the prisoner is given a qualified right to receive reasons for any cancellation by the Board and to make written representations with respect to such a cancellation. The amendment preserves the power to the Governor to cancel and vary orders granted by the government and grants the prisoner a qualified to reasons and to make representations to the Minister with respect to any cancellation. The amendment also sets out prescribed supervision times. Previously supervision time of parolees was at the discretion of the Board. Also the amendment makes non- consorting a mandatory condition of parole.</p> <p>S 41A - Repeal of s 41(6) allows the prosecution of persons for breach of parole orders even where those breaches have been dealt with in other states.</p> <p>S 42 - Repealed.</p> <p>S 43 - Reworded.</p> <p>S 44 - Multiple amendments concerning the procedure of the Board. Substantive amendments to this section include: (i) giving prisoners a right to reasons and representations in regards to parole order cancelled by the Board (ii) if a parole order is cancelled, half of the time spent on parole is now counted towards time served.</p>	
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			<p>S 45 - Parole period for a prisoner re- released on parole pursuant to s 45(1) should be not longer than 2 years if the prisoner is released from detention at the Governor's pleasure. Where the prisoner is re- released from ordinary custody the new parole period is not to be longer than any previous parole period.</p> <p>S 48 - transitional provisions</p> <p>S 49 - Resolution of doubtful cases.</p> <p>S 49A - Allows Board or Minister (whichever is under the obligation to give reasons) to withhold reasons where they believe that to do so would be in the interests the prisoner any other person or the public.</p> <p>S 50 - Replaced. Previously the section required any minimum term to be determined within a reasonable time but gave the prisoner no cause of action to determine that obligation. Now excludes the rules of natural justice from any decision made, under Part III, by the Governor, member, Secretary, Minister or Permanent Head. The provision applies retrospectively.</p> <p>Ss 50U- 51A - Change in terminology.</p> <p>Sch - Transitional provisions.</p>	
1988	34	<i>Offenders Probation and Parole Amendment Act 1988</i>	<p>S 23A - Allows Minister to appoint deputy members for each member of the Board to serve at any meeting where the relevant member is not present and to cancel the appointment to any deputy at any time.</p> <p>S 50V - Change in terminology.</p>	
1988	38	<i>Acts Amendment (Community Corrections Centre) Act 1988</i>	<p>S 4 - Change in terminology.</p> <p>Ss 50X- 50ZH - "Part IIIB: Work Release Orders" inserted into the Act. Allow for certain prisoners to be released within 6 months of</p>	

			them becoming eligible for parole for the purpose of them engaging in gainful employment, voluntary work or a programme under the <i>Community Corrections Act 1988</i> .	
1988	49	<i>Acts Amendment (Children's Court) Act 1988</i>	S 5 - Application of Act to children. S 20T - Change in terminology.	
1988	56	<i>Acts Amendment (Spent Convictions) Act 1988</i>	No relevant amendments	
1988	70	<i>Criminal Law Amendment Act 1988</i>	S 34 - Consequential amendment. S 40D - Allows a sentencing court, which imposes an order of strict security life imprisonment, to impose in addition an order that a person is not to be eligible for parole where it considers it appropriate. Such a person may never be paroled under s 40D(1).	Non- parole period
1989	33	<i>Justices Act 1989</i>	No relevant amendments	
1990	5	<i>Offenders Probation and Parole Amendment Act 1990</i>	Amendments to probation	
1990	61	<i>Community Corrections Legislation Amendment Act 1990</i>	S1 - Principal Act renamed the <i>Offenders Community Corrections Act 1963</i> . S 4 - various definitions added Ss 51A- K - Inserts Part IA: Officers. The provisions set out various matters regarding the appointment of parole officers and other staff under the ct. Importantly volunteers and contractors are given immunity for anything done in good faith under the Act. Ss 5L- ZE - Inserts Part IB: Community Corrections Centres. Ss 5ZF- ZH - Inserts Part IC: Community Corrections Centre Order.	

			<p>Note: under s 4 “community corrections order” is defined to include a “work release order”. Hence all the provisions under Part IC apply to orders made under Part IIIB.</p> <p>Ss 35- 36 - Provisions relating to staff repealed and moved to Part IA.</p> <p>Ss 50A- ZE - Part IIIA: Orders Relating to Probation and Parole of Offenders Made in Another State or Territory repealed. New “Part IIIA: Home Detention Orders” inserted.</p> <p>S 52 - Reworded.</p>	
1991	15	<i>Children’s Court of Western Australia Amendment Act (No 2) 1991</i>	Change in terminology	
1992	51	<i>Criminal Law Amendment Act (No. 2) 1992</i>	S 38 - Change in terminology.	
1994	32	<i>Acts Amendment (Public Sector Management) Act 1994</i>	Change in terminology	
1994	51	<i>Offenders Community Corrections Amendment Act 1994</i>	S 50X - Concerns home detention.	
1994	82	<i>Criminal Law Amendment Act 1994</i>	<p>S 20T - Change in terminology.</p> <p>S 34 - Amendments consequent on amendments to s 282 of the <i>Criminal Code</i>.</p> <p>S 40D - Imprisonment for life provisions. Previously the Act set standard minimum periods that a person so sentenced had to serve</p>	Non- parole period

			before becoming eligible for parole. Now where a person is sentenced to strict security life imprisonment a “no- release” order is not made the court must set a minimum term between 20 and 30 years. Where a person is sentenced to life imprisonment for wilful murder a minimum term between 15 and 19 years must be set. Where a person is imprisoned for life for murder a minimum term between 7 and 14 years must be set. The Governor is not allowed to make an order for the release of persons under such sentences until the minimum term has been served unless there are “special circumstances”.	
1994	92	<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994</i>	Ss 4, 5B, 5ZF, 5ZG - Consequential amendments.	
1995	78	<i>Sentencing (Consequential Provisions) Act 1995</i>	Wholly Repealed	

Amendments to the Sentence Administration Act 1995

The table sets out all the amendments to the *Sentence Administration Act 1995*:

Year	Number	Amending Act	Commentary	Category
1996	11	<i>Witness Protection (Western Australia) Act 1996</i> section 41	S 98 - Consequential amendment (staff related).	
1996	69	<i>Mental Health (Consequential Provisions) Act 1996</i> Part 19 ²	S 5 - Repealed as a result of the passing of the <i>Mental Health Act 1996</i> . S 12 - Reporting requirement repealed as a result of the removal of ss 653 and 693(4) from the <i>Criminal Code</i> . Ss 13, 14, 16 - Consequential amendment resulting from the removal of ss 653 and 693(4) from the <i>Criminal Code</i> .	
1997	57	<i>Statutes (Repeals and Minor Amendments) Act 1997</i> section 110	S 110 - Change in terminology.	
1998	29	<i>Criminal Law Amendment Act (No. 2) 1998</i> Part 5	S 12 - Clarification of interpretation. S 8(3) - Reworded and clarified. Definition of “fixed term” slightly broadened.	
1999	57	<i>Sentencing Legislation Amendment and Repeal Act 1999</i> section 13	Wholly repealed.	
2003	50	<i>Sentencing Legislation Amendment and Repeal Act 2003</i> section 29	Wholly repealed.	

Amendments to the *Sentence Administration Act 1999*

The *Sentence Administration Act 1999* governed the administration of parole from 1999 to 2003. No amendments were made to the act until it was wholly repealed.

Year	Number	Amending Act	Commentary	
2003	50	<i>Sentencing Legislation Amendment and Repeal Act 2003</i> section 30	Wholly repealed	

Amendments to the *Sentence Administration Act 2003*

The table below sets out amendments to all the provisions of the *Sentence Administration Act 2003* (WA) ('the Act') except for Part 4: ss 50- 64 which deal exclusively with Re- entry Release Orders (RRO):

Year	Number	Amending Act	Comment	Category
2003	49	<i>Sentence Administration Act 2003</i>	Original Act	
2004	4	<i>Criminal Code Amendment Act 2004 s. 5</i>	Sch 2 - Facilitating sexual offences against children outside Western Australia added to the list of prescribed offences.	
2004	27	<i>Sentencing Legislation Amendment Act 2004 Pt. 2 Div. 2</i>	S 4 - New definition inserted. Consequential on new provisions in the <i>Sentencing Act 1995</i> for the making of Conditional Suspended Imprisonment (CSI) orders. Ss 77 - Consequential amendments resulting from new provisions in the <i>Sentencing Act 1995</i> for the making of Conditional Suspended Imprisonment (CSI) orders.	
2004	42	<i>Workers' Compensation Reform Act 2004 s. 174</i>	Ss 81(1) and (2), 100(a) - Change in terminology	
2006	41	<i>Parole and Sentencing Legislation Amendment Act 2006 Pt. 2⁴</i>	s 4 - Definition of "Board" changed from "Parole Board" to "Prisoners Review Board". Definitions of "CEO parole order", "CEO parole order (supervised)", "CEO parole order (unsupervised)" removed. In lieu only parole order (unsupervised) is defined. Also definitions of "prisoner" "re-socialisation programme" and "victim" are inserted.	Victims Board release Ministerial release

		<p>Ss 5A, 16, 20(2)- Repeals s 16 and inserts s 5A (“Release considerations”) and accordingly, in s 20, replaces “parole considerations” with “release considerations”. s 5A has one new consideration: “issues for any victim of an offence ...” and s 5A places ‘risk to the community’ as consideration (a); previously it was consideration (h).</p> <p>S 5B - Requires the Board or any other person performing functions under the Act to “regard the safety of the community as the paramount consideration”.</p> <p>S 5C - Sets up a system of written victim’s submissions. It mandates that the Board have regard to any submissions received however it allows them to place weight on it as they see fit. Procedures prevent the prisoner or representative seeing a copy of the submissions.</p> <p>S 7 - Change in terminology.</p> <p>S 8 - Change in terminology.</p> <p>S 11 - Not relevant.</p> <p>ss 11A, 12, 12A - Changes to reporting requirements (from the Board to the Minister) concerning persons in custody - special provisions made for those serving life and indefinite sentences. Requirements to report on whether parole is recommended and on what conditions the person should be released are largely preserved.</p> <p>Ss 13, 14, 14A, 27A and 27B - Previously the Governor had a power to release prisoners on parole in addition to the Governor’s prerogative of mercy under ss 13 and 14. The</p>	<p>Administration of order</p> <p>Board composition</p> <p>Appeal</p>
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		<p>power was moved to ss 27A and 27B. ss 13, 14 and 14A now cover the power of the Board to order re- socialisation programs for certain serious offenders.</p> <p>S 15 - Change in terminology.</p> <p>S 17 - s 17 required the CEO to provide the Board with a report on the considerations relating to a person about to be released on parole. This requirement was limited to those released under 93(1) of the Sentencing Act 1995.</p> <p>Ss 21 and 24 - These provisions are repealed. No longer a requirement that prisoner be notified of the refusal or postponement of parole.</p> <p>Ss 23 - Deals with the power to parole prisoners serving serious offences who have had their early release orders cancelled. The amendments move the power from the CEO to the Board. Also in exercising the provision the Board is to have regard not only to the “release considerations” (previously the CEO had to have regard to the “parole considerations”) but also to reports made by the CEO under s 17 and anything brought to the Board’s attention.</p> <p>Ss 25, 26 and 27 - Change in terminology. Amended consequent on changes to reporting requirements.</p> <p>S 28 - Previously only part of the parole period was supervised. Now the whole period is supervised.</p> <p>S 30 - Change in terminology.</p> <p>S 31 - Provision amended consequent on amendments to s 28.</p>	
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			<p>It removes the power of a CEO to stop the supervision of a parolee. That power now rests entirely with the Board.</p> <p>S 33 - Consequential amendment concerning prisoners who refuse to be released on parole.</p> <p>S 35 - Consequential amendment concerning prisoners who refuse to be released on parole.</p> <p>S 36 - Consequential amendment.</p> <p>S 37 - Allows the Board to amend parole orders even if they were made by the Governor.</p> <p>S 38 - Consequential amendment.</p> <p>S 39 - Consequential amendment.</p> <p>S 40 - Consequential amendment.</p> <p>S 42 - Removes the requirement to give a prisoner written notice of the suspension of any parole order.</p> <p>S 43 - Amendment consequent on amendments to s 23.</p> <p>S 44 - Amendments consequent on amendments to s 28.</p> <p>S 45 - Removes the requirement to give a prisoner written notice of the suspension of any parole order.</p> <p>S 47 - Prisoner's right to seek review of Board's decision by the Board removed.</p> <p>S 48 - The provision applies to prisoners who are subject to Parole orders made by the Governor for whom an order is</p>	
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			<p>made either cancelling or reinstating supervision. The amendment preserves the requirement for the prisoner to be provided with reasons for the decision and adds a right of review under s 115A.</p> <p>S 49 - Consequential amendment.</p> <p>S 69 - Not relevant.</p> <p>Ss 70, 71, 72 - Consequential amendments</p> <p>S 75 - repeal of provision concerning re- release after the cancelation of parole orders made by the Governor</p> <p>S 74 - Consequential amendment.</p> <p>S 97 - Change in terminology.</p> <p>Ss 102, 103 - The changes concern the replacement of the Parole Board with the Prisons Review Board. S 102 substitutes the former for the latter. S 103 concerns membership. Previously membership consisted of: a judicial member, 3 community members, the CEO, a departmental officer and a judge.</p> <p>Now the Board consists of: a chairperson who is a judicial officer, 2 deputy chairpersons who have “extensive or special knowledge” of the Board’s functions and as many community, police officer and departmental officer members as are required to deal with the workload of the Board. A community member must be able to make “an objective assessment of the risk the release of a prisoner would present...” and must meet at least one of the criteria in 103(4)(b). At all times at least one</p>	
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			<p>community member must understand victims and at least one must be Aboriginal.</p> <p>Ss 104 and 104A - Under ss 104 and 104A the Chairperson and Deputy Chairpersons are responsible for the training of the other Board members. The position of secretary is replaced with that of registrar.</p> <p>S 106 - Requirement placed on all Board members other than the Chairperson to comply with relevant public service ethics standards.</p> <p>S 107A - allows the Board to call on expert assistance</p> <p>S 107B - Creates a requirement in lieu of ss 21, 24, 42, 45 that the Board notify a prisoner, as soon as practicable, of any decision made respecting them and whether that decision is reviewable.</p> <p>S 107C - Allows the Chairperson to publish decisions if they believe that it is in the public interest to do so.</p> <p>Ss 108, 109, 110 - Consequential amendments.</p> <p>S 112 - Additional criteria imposed on the Board's annual report to the Minister.</p> <p>S 115A - Replaces s 47. Sets out a process for review of Board decisions by the Board at the prisoners request. Grounds of review are limited to: an error of law, that incorrect information was used the decision did not comply with the Act or with regulations.</p>	
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			<p>S 119 - Consequential amendment.</p> <p>S 122 - Requirement on the Minister to carry out a review of the Act every 5 years.</p> <p>Sch 1 - Schedule 1 is completely replaced. Maximum term of appointment of any member extended to 5 years. Grounds for terminating appointments and methods to be followed - previously there were no means to terminate appointments. Quorum for each meeting is one chairperson/deputy chairperson, one community member and one police/departmental officer and for decisions to be determined by the majority of those present. Other minor amendments are also made by virtue of the new Schedule 1.</p> <p>Sch 2 - Offences under section 60 of the Censorship Act 1996 and section 61(1) or (2a) of the Restraining Orders Act 1997 added to the list of prescribed offences.</p>	
2006	65	<i>Prisons and Sentencing Legislation Amendment Act 2006 Pt. 3</i>	<p>S 4 - Change in terminology.</p> <p>S 94(4) - Procedural.</p> <p>S 97A - Allows the CEO to disclose information about an offender to the public if, in the opinion of the CEO, it is necessary to do so for the safety of the community.</p> <p>S 97B - Allows the CEO to disclose relevant information to a public authority, service provider or contractor and to request those bodies to disclose any relevant information that they hold. The provision also enables the CEO to disclose information for use in research.</p>	Appeal

			<p>S 97C - Allows Minister to approve the CEO disclosing information to any person or class of persons.</p> <p>S 97D - Allows the CEO to disclose certain information to victims.</p> <p>S 97E - Provides that there are no adverse consequences from disclosure under ss 97A- D where the disclosure is made in good faith.</p> <p>S 89, 90, 199 - Change in terminology.</p> <p>S 98A - Not relevant.</p>	
2006	77	<i>Financial Legislation Amendment and Repeal Act 2006 s. 6 and 17</i>	S 92 - Change in terminology	
2008	3	<i>Fines Legislation Amendment Act 2008 Pt. 4</i>	S 7 - Consequential amendment to definition of “fixed term”.	
2008	29	<i>Criminal Law Amendment (Homicide) Act 2008 s. 39</i>	<p>Ss 4, 11, 12, 12A, 27B- Various consequential amendments</p> <p>S 25 - Additional requirements which must be satisfied before the Governor grants a prisoner parole: that a minimum period of detention was set for the prisoner (that term has been served - an existing requirement) and that a report has been given by the Board to the Minister under ss 12 or 12A.</p> <p>S 26 - Repealed. The section dealt with the parole of prisoners serving strict security life imprisonment</p> <p>Ss 68(2), 69(2) - Reworded</p>	Ministerial release

Amendments to the *Sentencing Act 1995*

The following provisions of the *Sentencing Act 1995* (WA) are relevant to the parole regime in Western Australia:

- Definition provisions
- Part 13: ss 85- 97
- Part 14: ss 98- 101
- S 141

Year	Number	Amending Act	Commentary	Categories
1995	76	<i>Sentencing Act 1995</i>	Original Act	
1998	29	<i>Criminal Law Amendment Act (No. 2) 1998 Pt. 6</i>	<p>S 85 - Definition of “prisoner” reworded.</p> <p>S 96 - Typographical error corrected.</p>	
1999	57	<i>Sentencing Legislation Amendment and Repeal Act 1999 s. 6(3), 27- 33, 36, 37 and 39 [(amended by No. 62 of 2000 s. 4- 6 13)]</i>	<p>S 4 - definition of parole order moved to s 85</p> <p>S 85 - Terms of less than three days removed from the definition of prescribed term. Sub- sections 85(2),(3) and (4) are amended as a result of the <i>Sentence Administration Act 1999</i>.</p> <p>S 88 - Change in terminology. Amended in subs 88(3) and (4). Subsection 88(6) repealed with the effect that the power to order sentences to be served concurrently or cumulatively applies to suspended sentences.</p> <p>S 89 - Replaced. Previously a court had to consider 4 factors in order to determine whether or not to make an offender</p>	Non- parole period

			<p>eligible for parole. Now a court has to consider 4 criteria (seriousness of the offence, past criminal record, past compliance with release orders and other relevant factors). IF the court believes that at least two criteria speak against the offender being eligible for parole, the court cannot grant a parole eligibility order. Also courts are now allowed to make parole eligibility orders for offenders serving terms of less than 12 months.</p> <p>S 89A - Court may order a programme assessment order in lieu of a parole eligibility order for offenders sentenced to less than 24 months in prison. A programme assessment order results in the CEO releasing the offender under a release programme order unless the CEO considers such release to be unwarranted for the prisoner in question.</p> <p>S 92 - Repealed</p> <p>S 93 - Replaced. Previously a prisoner was eligible for parole when (i) they had served one third of the term (if the sentence was less than 6 years) (ii) when they had served two years less than two thirds of the term (if the sentence was more than 6 years). Now prisoners are eligible for release when they have served half their term.</p> <p>S 94 - Replaced. For the purpose of calculating parole eligibility time, sentences can be aggregated, unless those sentences are to be served partly cumulatively.</p> <p>S 95 - Reworded.</p>	
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2003	50	<p><i>Sentencing Legislation Amendment and Repeal Act 2003</i> Pt. 2, s. 29(3) and 33^{8a,8} [(amended by No. 41 of 2006 s. 94 14, No. 5 of 2008 s. 109 16 and No. 49 of 2008 s. 3, 4 and 5 17)]</p>	<p>S 85 - Minor amendments resulting from the <i>Sentence Administration Act 2003</i>.</p> <p>S 88 - Reworded.</p> <p>S 89 - Replaced. Practical effect appears to be that the court no longer has power to make parole eligibility orders regarding sentences of less than 12 months.</p> <p>S 92 - Repealed</p> <p>S 93 - Replaced. Prisoners serving less than 4 years of a parole term are still eligible for parole after serving half their term. Prisoners serving more than 4 years of a parole term are only eligible after serving their full term less 2 years.</p> <p>S 94 - Reworded</p> <p>S 95 - Reworded.</p> <p>S 100 - Change in terminology.</p> <p>S 141 - Change in terminology.</p>	Non- parole period
2004	27	<p><i>Sentencing Legislation Amendment Act 2004</i> Pt. 2 Div. 1</p>	<p>S 85 - Definition of prisoner expanded to include a person subject to CSI.</p>	

2006	41	<i>Parole and Sentencing Legislation Amendment Act 2006 Pt. 3</i>	<p>S 89 - Allows court to make a parole eligibility order for offenders sentenced to 12 months or less in a limited set of circumstances: when the court is already serving a sentence and the imposition of a new sentence takes the aggregate of time to be served to over 12 months. The new 89(5a) and 89(5b) allow the court to make a single parole eligibility order if the term which the offender is already serving is less than 12 months.</p> <p>S 94 - Example table updated pursuant to 2003 amendments. No effect in law.</p>	Non- parole period
2008	2	<i>Fines Legislation Amendment Act 2008 Pt. 3</i>	S 87 - Consequential.	
2008	29	<i>Criminal Law Amendment (Homicide) Act 2008 Pt. 3</i>	<p>Ss 90, 91 - Replaced by a single s 90. Previously a court would set a minimum a period between 7 and 14, 15 and 19, and 20 and 30 years for life imprisonment for murder, life imprisonment for willful murder and strict security life imprisonment respectively. However a sentence for a strict security life imprisonment could include an order that a person never become eligible for parole.</p> <p>Under the new s 90 no distinction is made between murder, willful murder and strict security life imprisonment. Rather a court sentencing a person to murder has two options. It can set a minimum period of at least 10 years or it can order that the offender never be released. The latter order has to be made if it is necessary to “meet the community’s interest in punishment and deterrence”. This question is to be answered purely by reference to “the circumstances of the commission</p>	Non- parole period

			of the offence” and “any aggravating factors” . S 96 - Prisoners sentenced to life imprisonment for an offence other than murder must serve a minimum period of 7 years.	
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