

10 December 2021

Dominic Fernandes  
Director Legislative Services  
Department of Justice  
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28 Barrack Street  
PERTH WA 6016

By email: [dominic.fernandes@justice.wa.gov.au](mailto:dominic.fernandes@justice.wa.gov.au)

Dear Mr Fernandes

## **PROPOSED AMENDMENTS TO CRIMINAL LAW AND SENTENCING LEGISLATION**

Thank you for your letter dated 19 November 2021 and table of proposed amendments.

The Law Society notes that Sentencing Act 1995 (WA) (the Act) has been subject to targeted and consequential amendments on several occasions since it came into operation. The Law Society notes that the frequent amendments and additions to the Act could run the risk of greater lack of clarity and confusion as to appropriate sentencing outcomes.

As a general principle, the Law Society has confidence in the judiciary to consider the circumstances of each case and order appropriate sentences. It is the position of the Law Society that the more discretion a judicial officer has, the more appropriate the sentences will be.

Regarding the particular proposals, the Law Society responds as follows:

### **1. Parole Transfer of Interstate Prisoners**

The Law Society has no issue with this proposal.

### **2. Partially Suspended Imprisonment**

The Law Society has no issue with a judge being able to order a 'short, sharp' term of imprisonment of a month if such an order could act as a 'circuit breaker' for an offender.

The Law Society notes the difficulty occasioned by the 6-month minimum term of imprisonment imposed under section 86 of the Act.

The Law Society suggests that there should be a statutory review mechanism for these amendments to be assessed after a period of 12 months after commencement, to evaluate the effectiveness of these amendments.

**3. 2013 Review of the Sentencing Act**

The Law Society does not support the repeal of the unproclaimed amendment as proposed. Judicial officers should have discretion to impose a term of imprisonment (if that has been reached as the appropriate sentence) of less than 6 months, 1 day.

The Law Society supports the proposal for a Supervision requirement for an offence committed during a term of suspended imprisonment and agrees this supervision would likely need 6 months to be effective.

**4. Guidelines by Chairperson of the Review Board**

The Law Society supports this proposal.

**5. Cancellation of a Post Sentence Supervision Order (PSSO)**

There should be clarity as to whether the offender may apply to have the PSSO reviewed / cancelled due to change of circumstances or 'other reasons'.

If the Parole Review Board intends to exercise the power to cancel the PSSO at any time before the end of the PSSO period, the statute should provide for sufficient notice to the offender and procedural fairness afforded to them in the determination of the exercise of that power.

**6. Post Sentence Supervision Order (PSSO) following Partially suspended imprisonment**

The Law Society supports this proposal.

**7. Automatic Cancellation of a PSSO following making of a Restriction Order**

The Law Society has not formed a position on this proposal.

**8. Imprisonment following the making of a PSSO**

Subject to sufficient notice and procedural fairness provisions for the offender as recommended in response to item 5 above, the Law Society supports the proposal in principle.

**9. Electronic Monitoring Home Detention under Conditional Suspended Imprisonment Order (CSIO)**

The Law Society notes that electronic monitoring of offenders is only as good as the monitoring resources made available to support this as a viable sentencing option.

The Law Society considers that the concerns regarding "widening the net" are real, and there is a further issue that Electronic Monitoring of offenders is rarely available in many regional or remote areas. This circumstance gives rise to the very real risk of disparities emerging, where one group of offenders have access to a disposition that is simply not an option to another group of offenders, which may result in higher rates of imprisonment for some racial and remote offenders. This is already the case for other sentencing options (i.e., availability of community work hours).

The Law Society does not support Electronic Monitoring as a primary requirement under CSIO, but as a discretionary condition available to a sentencing court.

The Law Society supports the ability of an offender or Community Corrections Officer to apply for the cancellation of an Electronic Monitoring requirement with applications for cancellation of this requirement available to the offender or CCO.

**10. Amendment to heading**

The Law Society has no issues with this proposal.

**11. New Table after section 94**

The Law Society has no issues with this proposal.

If you have any queries please contact Mary Woodford, General Manager Advocacy and Professional Development on 9324 8646 or [mwoodford@lawsocietywa.asn.au](mailto:mwoodford@lawsocietywa.asn.au)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Boujos', with a stylized, cursive script.

Jocelyne Boujos  
**President**