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HIGH RISK OFFENDERS LEGISLATION AMENDMENT BILL 2023
STATEMENT OF PUBLIC INTEREST

Parliaments
29/11/2023

Need: Why is the policy needed based on factual evidence and stakeholder input?

The High Risk Offenders Legislation Amendment Bill 2023 will amend the *Crimes (High Risk) Offenders Act 2006 (CHRO Act)* to make offenders imprisoned for serious strangulation offences eligible for post-sentence detention and supervision. The Bill will also amend the CHRO Act and the *Terrorism (High Risk) Offenders Act 2017 (THRO Act)* to improve the operation of those Acts.

Serious strangulation offences

The CHRO Act provides for post-sentence detention and supervision of high risk violent and sex offenders who pose an unacceptable risk of committing serious offences, but it does not apply to offenders serving sentences of imprisonment for serious strangulation offences under sections 37(1) and (2) of the *Crimes Act 1900 (Crimes Act)* that involve choking, suffocating or strangling a person so as to render them unconscious, insensible or incapable of resistance. The maximum penalties for these offences are 10 years and 25 years imprisonment respectively.

The Domestic Violence Death Review Team's 2015-2017 report said that the academic literature demonstrates that non-lethal strangulation is a significant indicator of increasingly severe domestic and family violence, and a significant risk factor for future homicides. Making offenders who serve prison sentences for these offences eligible for orders under the CHRO Act will help to address concerns relating to the prevalence of strangulation as an indicator of serious domestic and family violence and the potential risk posed by persons who commit these offences.

The omission of section 37(2) of the Crimes Act from the definitions of 'serious sex offence' and 'an offence of a sexual nature' in the CHRO Act where committed with intent to commit such offences under Part 3 Division 10 of the Crimes Act is an anomaly. Other offences in the Crimes Act that prohibit conduct that enables the commission of an indictable offence, such as using an intoxicating substance to enable the commission of an indictable offence, are included in those definitions, where committed with intent to commit sexual offences. The Bill will close this gap in the CHRO Act.

Status of Federal recognizance release orders

There is uncertainty about whether a recognizance release order (**RRO**) imposed under the *Crimes Act 1914 (Cth)* with a federal prison sentence is part of that prison sentence for the purposes of the CHRO Act. As these federal orders can remain in force after prison sentence has expired, there is uncertainty about whether applications under the CHRO Act can be made against federal offenders who remain on such orders after the expiry of their sentences. The Bill clarifies that a recognizance release order will be taken to be part of the offender's prison sentence for the purposes of the CHRO Act.

Offenders serving sentences for multiple eligible and non-eligible offences

The Bill ensures that the CHRO Act captures all offenders serving a sentence for an eligible offence within their overall term of imprisonment. The Bill makes similar amendments to the THRO Act to ensure that applications for continuing detention orders and extended supervision orders may be made under that Act against offenders serving an overall prison term that contains at least one sentence for an eligible NSW indictable offence.

Objectives: What is the policy's objective couched in terms of the public interest?

It is in the public interest that high risk offenders serving prison sentences for serious strangulation offences be made eligible for post-sentence detention and supervision.

It is also in the public interest that there be clarity about when an application may be made for offenders subject to a combined federal prison term and recognizance release order.

Finally, it is in the public interest that where an offender is subject to a continuous period of imprisonment and there are concerns about the offender's risk of committing a further serious offence, an application should be able to be made irrespective of where the sentence for the eligible offence falls in the continuum of the overall prison term.

Options: What alternative policies and mechanisms were considered in advance of the Bill?

Only legislative amendments can address these issues.

Analysis: What were the pros/cons and benefits/costs of each option considered?

These options close gaps and increase clarity in the high risk offender laws. Other options were not considered, as legislative amendments to resolve the identified issues were required.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill will commence by proclamation on a designated date once operational arrangements to enable implementation are settled. It is the NSW Government's intention for the Bill to commence as quickly as possible.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Yes. The Supreme Court, NSW Bar Association, Law Society of NSW, Legal Aid NSW, the NSW Public Defenders, Aboriginal Legal Service (NSW/ACT), NSW Police Force, and Corrective Services NSW were consulted.