

Crimes (Serious Sex Offenders) Amendment Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes (Serious Sex Offenders) Act 2006* as follows:

- (a) to require the Supreme Court to be satisfied that an offender poses an unacceptable risk of committing a serious sex offence before it can make an order under the Act,
- (b) to extend the definition of serious sex offence for the purposes of the Act,
- (c) to expand the matters to which the Supreme Court is to have regard when determining whether to make an order,
- (d) to make provision with respect to the term of orders,
- (e) to permit a corrective services officer to have access to an offender's computer equipment when the offender is under a supervision order,
- (f) to permit a continuing detention order to be sought in respect of an offender who is the subject of a supervision order if circumstances change and the supervision order is no longer adequate,
- (g) to provide for supervision orders to be suspended or expire on the making of a detention order,
- (h) to provide for victims to make statements about proposed orders,
- (i) to provide for proceedings for offences under the Act,
- (j) to enable the Supreme Court to make an extended supervision order at the same time as a continuing detention order.

This Bill also amends the Crimes (Administration of Sentences) Act 1999 with respect to the effect that orders under the Crimes (Serious Sex Offenders) Act 2006 have on parole and parole orders.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7

Schedule 1 [1] inserts definitions of **Corrective Services NSW** and **sentencing court** for the purposes of the *Crimes (Serious Sex Offenders) Act 2006* (**the Principal Act**).

Schedule 1 [2] updates the definition of **corrective services officer**.

Schedule 1 [3] extends the definition of **serious sex offence** to include an offence that was not a serious sex offence at the time it was committed but which was committed in such circumstances that it would be such an offence were it committed in those circumstances at the time an order is sought under the Principal Act against the offender.

Schedule 1 [5] updates the test to be applied by the Supreme Court when determining to make an order under the Principal Act. The Court must be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious sex offence before it can make an order (currently the Court must be satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence). **Schedule 1 [6] and [16]** clarify that the Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence.

Schedule 1 [7] and [8] provide 2 additional matters that the Supreme Court must have regard to when determining an application for an order under the Principal Act. These are any report prepared by Corrective Services NSW as to the extent to which the offender can reasonably and practicably be managed in the community and the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender.

Schedule 1 [9] and [10] provide for an extended supervision order to be extended to account for any time that the order is suspended because the offender is in lawful custody.

Schedule 1 [11] provides that a condition of an extended supervision order or an interim supervision order can require an offender to permit a corrective services officer to have access to any computer or related equipment at the offender's residential address or in the possession of the offender.

Schedule 1 [12] provides that the Supreme Court's power to vary an order under the Principal Act does not permit it to extend the period of an order so that period is greater than would otherwise be permitted under the Principal Act. **Schedule 1 [23]** makes a consequential amendment.

Schedule 1 [13] provides that the State of New South Wales can apply for a continuing detention order against a person who is the subject of an interim or extended supervision order if altered circumstances mean the person cannot be adequately supervised under the supervision order. **Schedule 1 [19]** requires the Supreme Court to be satisfied of this before making a continuing detention order.

Schedule 1 [14] requires the application for the continuing detention order to specifically address these matters. **Schedule 1 [13]** also contains an existing power to make such an application where a person has been found guilty of breaching a supervision order. **Schedule 1 [15], [18] and [21]** make consequential amendments.

Schedule 1 [17] requires the Supreme Court to have regard to the level of an offender's compliance with any interim supervision order when determining an application for a continuing detention order.

Schedule 1 [20] omits a provision that deals with the interaction of parole orders and orders under the Principal Act. This matter is proposed to be included in the *Crimes Administration of Sentences) Act 1999* by Schedule 2 to the proposed Act.

Schedule 1 [22] provides that, on the making of a continuing detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person expires and ceases to have effect and, on the making of an interim detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person is suspended and ceases to have effect until such time as the interim detention order expires.

Schedule 1 [24] provides for registered victims to be notified of applications under the Principal Act and to be given an opportunity to make a statement setting out the person's views about the proposed order and any conditions to which the order may be subject. The statement may be placed before the Supreme Court for consideration. The Supreme Court and the State of New South Wales must not disclose a statement to the offender unless the person who made the statement consents to the disclosure.

Schedule 1 [4] inserts a note clarifying that a statement must not be disclosed without consent as part of the pre-trial procedures.

Schedule 1 [25] provides for proceedings under the Principal Act to be dealt with summarily before the Local Court (and in the case of an offence under section 12 of the Principal Act summarily before the Supreme Court). **Schedule 1 [25]** also enables the Supreme Court to make an extended supervision order in respect of a person at the same time that it makes a continuing detention order in respect of the person. The extended supervision order commences at the end of the continuing detention order.

Schedule 1 [26] and [29] repeal redundant provisions and a redundant word.

Schedule 1 [28] makes a consequential amendment.

Schedule 1 [27] provides for a review of the Principal Act to be undertaken by the Attorney General 3 years after the commencement of the proposed Act.

Schedule 1 [30] permits regulations under the Principal Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [31] inserts transitional provisions that apply the amendments made by the proposed Act to existing offences and orders.