



New South Wales

Community Protection (Dangerous Offenders) Bill 1999

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the classification of certain persons as dangerous offenders in order to provide protection both to individuals who have reasonable grounds to fear those offenders and to the community as a whole,
- (b) to restrict the grounds on which the Parole Board may make parole orders under the *Sentencing Act 1989* for prisoners who are serious offenders or dangerous offenders,
- (c) to specify certain matters that the Parole Board is required to take into consideration when making a parole order,
- (d) to require the Parole Board to publicly state its reasons when deciding whether or not to make a parole order,

- (e) to enable the Attorney General, and the Director of Public Prosecutions, to apply to the Court of Criminal Appeal for a merits review of a parole order for a prisoner who is a dangerous offender,
- (f) to allow victims to make submissions to the Parole Board as to the terms and conditions of parole orders,
- (g) to provide that any period of supervision that a person may be subject to under a parole order cannot be restricted by the regulations.

Outline of provisions

Part 1 Preliminary

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 that is 3 months after the date of assent (unless it is commenced sooner by proclamation).

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Classification of persons as dangerous offenders

Clause 4 enables the Director of Public Prosecutions to apply to the Supreme Court to have a person, who has been convicted at any time in Australia of a serious violence offence, classified by the Court as a dangerous offender. The term *serious violence offence* means murder, attempted murder, manslaughter, an act of violence that causes serious injury or that involves sexual assault.

Clause 5 enables the Court to classify a person as a dangerous offender, so long as the Court is satisfied that it is appropriate to do so for the protection of a particular person or persons. Only persons 18 or older may be classified as dangerous offenders.

Clause 6 gives the Court the power to prohibit the publication or broadcasting of material that would tend to identify persons connected with proceedings under the proposed Act.

Clause 7 prohibits a person who has been classified as a dangerous offender from contacting or approaching a protected person. The proposed section also enables the Court to order that specified medical, psychiatric or psychological treatment is

to be made available in respect of a person who is convicted of an offence under the proposed section.

Clause 8 provides for the Attorney General to maintain a register of protected persons. The register will include the names of persons who have reasonable grounds to fear being contacted or approached, or harmed, by a dangerous offender. The dangerous offender whom a protected person fears will be informed that the protected person is on the list.

Clause 9 provides that the names in the register will be kept secret, and it will be an offence to divulge or publish information contained in the register.

Clause 10 provides for the temporary revocation of a person's status as a protected person so as to allow the person to visit or contact a classified person without the classified person committing an offence under the proposed Act.

Clause 11 enables the Court to revoke a person's classification as a dangerous offender.

Part 3 Miscellaneous provisions

Clause 12 makes it clear that the proposed Act does not affect the operation of Part 15A of the *Crimes Act 1900* which deals with the making and enforcement of apprehended violence orders.

Clause 13 provides that the jurisdiction of the Supreme Court under the proposed Act is to be exercised by a single Judge, and provides for a right of appeal to the Court of Appeal.

Clause 14 specifies the manner in which proceedings for offences under the proposed Act are to be dealt with.

Clause 15 provides that the *Bail Act 1978* does not apply to defendants in proceedings for offences under the proposed Act.

Clause 16 provides for the making of rules for or with respect to applications and proceedings under the proposed Act.

Clause 17 gives effect to the Schedule of amendments to the *Sentencing Act 1989*.

Schedule 1 contains the amendments to the *Sentencing Act 1989* described in paragraphs (b)–(g) of the overview at the beginning of this explanatory note.



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Community Protection (Dangerous Offenders) Bill 1999

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New South Wales

Community Protection (Dangerous Offenders) Bill 1999

No. , 1999

A Bill for

An Act to protect the community by providing for the classification of certain persons as dangerous offenders; to amend the *Sentencing Act 1989* in relation to parole orders and related matters; and for other purposes.

Clause 1 Community Protection (Dangerous Offenders) Bill 1999

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Community Protection (Dangerous Offenders) Act 1999*. 4
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2 Commencement 6

This Act commences 3 months after the date of assent (unless sooner commenced by proclamation). 7
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3 Definitions 9

In this Act: 10

classified person means a person who is classified for the time being as a dangerous offender under section 5. 11
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Court means the Supreme Court of New South Wales. 13

protected person, in relation to a classified person, means the person whose name is listed for the time being in the register because of the person's fear of that classified person. 14
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register means the register of protected persons maintained by the Attorney General under section 8. 17
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Part 2	Classification of persons as dangerous offenders	1
4	Application to Court to classify persons as dangerous offenders	2
(1)	The Director of Public Prosecutions may make an application to the Court for the classification of a person as a dangerous offender.	3 4
(2)	An application can only be made in respect of a person who has been convicted at any time, whether before or after the commencement of this Act, in Australia of a serious violence offence.	5 6 7
(3)	In this section:	8
	<i>serious violence offence</i> means any of the following:	9
(a)	murder or attempted murder,	10
(b)	manslaughter,	11
(c)	an act of violence that caused serious injury to another person or that involved sexual assault in the nature of an offence referred to in section 61I, 61J, 61K, 61M, 66C, 66F, 78A or 78H of the <i>Crimes Act 1900</i> .	12 13 14 15
5	Classification of persons as dangerous offenders	16
(1)	On an application made in accordance with section 4, the Court may order that the person who is the subject of the application be classified as a dangerous offender.	17 18 19
(2)	The Court is not to make any such order unless the Court is satisfied on reasonable grounds that it is appropriate, for the protection of a particular person or persons, that the person who is the subject of the application be classified as a dangerous offender.	20 21 22 23
(3)	The classification of a person as a dangerous offender takes effect on the date specified by the Court in its order.	24 25
(4)	A person who is under the age of 18 years cannot be classified as a dangerous offender.	26 27
6	Orders prohibiting publication of material that may identify persons	28
(1)	The Court may, in or in connection with any proceedings under this Act, make an order prohibiting persons generally, or any named person or persons, from publishing or broadcasting the name of any person:	29 30 31
(a)	who is a defendant or witness in the proceedings, or	32

(b)	to whom the proceedings relate, or	1
(c)	who is mentioned or otherwise involved in the proceedings.	2
(2)	Such an order has effect both during the proceedings and after the proceedings are disposed of.	3 4
(3)	For the purposes of this section, a reference to the name of a person includes a reference to any information, photograph, drawing or other material that identifies the person or is likely to lead to the identification of the person.	5 6 7 8
7	Offence of contacting or approaching protected person	9
(1)	A classified person who knowingly contacts or approaches a protected person is guilty of an offence and liable to imprisonment for a specified term of 2 years or more.	10 11 12
(2)	If a person is convicted of an offence under this section, the Court may order that specified medical, psychiatric or psychological treatment be made available in respect of the person.	13 14 15
(3)	In this section, contact includes the act of writing to or telephoning, or attempting to write to, telephone or contact in any other way, a protected person.	16 17 18
(4)	It is a defence to a prosecution for an offence under this section to prove that the defendant did not know, or could not reasonably be expected to know, that the other person was a protected person.	19 20 21
8	Register of protected persons	22
(1)	The Attorney General is to maintain a register of protected persons.	23
(2)	The Attorney General may list a person's name in the register only if the person has requested the Attorney General to do so or has given consent to his or her name being listed.	24 25 26
(3)	The Attorney General is not to list a person's name in the register unless the Attorney General is satisfied that the person has reasonable grounds to fear being deliberately contacted or approached, or deliberately harmed in any way, by a particular classified person.	27 28 29 30
(4)	If a person's name is listed in the register as a protected person:	31
(a)	the name of the classified person whom the protected person has grounds to fear is to be included in the entry relating to the protected person, and	32 33 34

(b)	that classified person is to be informed by the Attorney General by notice in writing of the fact that the other person is a protected person for the purposes of section 7.	1 2 3
(5)	A classified person is taken to have been informed by the Attorney General under subsection (4) (b) if the notice is sent by post to the classified person at the last address of the person known to the Attorney General.	4 5 6 7
(6)	The Attorney General may remove a person's name from the register:	8
(a)	if requested to do so by the person, or	9
(b)	if the Attorney General is no longer satisfied as to the matters referred to in subsection (3), or	10 11
(c)	if the classified person ceases to be classified, or	12
(d)	for such other reason as the Attorney General thinks fit.	13
9	Secrecy of register	14
(1)	The register is not to be made available for public inspection.	15
(2)	A person must not divulge or publish any information contained in the register unless the person does so:	16 17
(a)	in connection with the administration or enforcement of this Act, or	18 19
(b)	in accordance with any lawful requirement.	20
	Maximum penalty: 50 penalty units.	21
10	Temporary revocation of person's status as protected person	22
(1)	A protected person may, at any time, apply to the Court to have his or her status as a protected person temporarily revoked for the purposes of enabling the protected person to visit or contact the classified person concerned.	23 24 25 26
(2)	The Court may order:	27
(a)	that the protected person's status as a protected person be revoked for such period as the Court specifies, and	28 29
(b)	that the person be allowed to meet or contact the classified person in accordance with the arrangements that are specified in the order.	30 31 32

- (3) During any such specified period, the protected person is not a protected person for the purposes of section 7, and the classified person concerned does not commit an offence under that section because of the meeting or contact with the other person. 1
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11 Revocation of classification as dangerous offender 5

- (1) An application may be made to the Court by or on behalf of a classified person for the Court to revoke the classification of the person as a dangerous offender. 6
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- (2) Any such application can only be made at the end of each 3 yearly interval following the date on which the classification took effect. 9
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- (3) The Attorney General is to be informed by the Registrar of the Court of the making of any such application. The Attorney General is to notify any protected person whom the Attorney General considers would be affected by the revocation, and advise the person that he or she can make a submission as to whether the classification should be revoked by the Court. 11
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- (4) The Court may make an order revoking the classification of a person, or it may make an order refusing the application. 17
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- (5) The Court must take into consideration any submission made under subsection (3) in deciding to make an order. 19
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- (6) The revocation of a person's classification takes effect on the date specified by the Court in its order. 21
22

Part 3 Miscellaneous provisions	1
12 Part 15A of Crimes Act 1900 not affected	2
Nothing in this Act affects the operation of Part 15A (Apprehended violence) of the <i>Crimes Act 1900</i> .	3 4
13 Exercise of jurisdiction by single Judge and right of appeal	5
(1) The jurisdiction of the Court under this Act is exercisable by a single Judge.	6 7
(2) An appeal to the Court of Appeal lies from any determination of the Court to make, or to refuse to make, an order under this Act.	8 9
14 Proceedings for offences	10
(1) Proceedings for an offence under section 7 are to be dealt with on indictment before the Court.	11 12
(2) Proceedings for an offence under section 9 are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.	13 14 15
15 Bail Act 1978 not to apply	16
(1) The <i>Bail Act 1978</i> does not apply to or in respect of a person who has been charged with committing an offence under section 7 of this Act.	17 18
(2) A person is not to be held in custody for more than one month after being charged with such an offence and before being brought to trial.	19 20
16 Rules of court	21
(1) Rules of court may be made under the <i>Supreme Court Act 1970</i> for or with respect to applications and proceedings under this Act.	22 23
(2) This section does not limit the rule-making powers conferred by the <i>Supreme Court Act 1970</i> .	24 25
17 Amendment of Sentencing Act 1989 No 87	26
The <i>Sentencing Act 1989</i> is amended as set out in Schedule 1.	27

Schedule 1	Amendment of Sentencing Act 1989	1
	(Section 17)	2
[1]	Section 4 Definitions	3
	Insert in section 4 (1) in alphabetical order:	4
	<i>dangerous offender</i> means a person who is classified for the	5
	time being as a dangerous offender under the <i>Community</i>	6
	<i>Protection (Dangerous Offenders) Act 1999</i> .	7
[2]	Section 17	8
	Omit the section. Insert instead:	9
	17 General provisions relating to parole orders under this Division	10
	(1) The Board may not make a parole order for a prisoner unless	11
	it has determined that the release of the prisoner is appropriate,	12
	having regard to the principle that the public interest is of	13
	primary importance.	14
	(2) In the case of a prisoner who is a serious offender or who is	15
	subject to a term of imprisonment of 8 years or more, the	16
	Board may not make a parole order for the prisoner unless it is	17
	of the opinion that the prisoner, if released from custody, would	18
	be able to remain law abiding and would not pose a threat to	19
	public safety either individually or collectively.	20
	(3) In the case of a prisoner who is a dangerous offender, the	21
	Board may not make a parole order for the prisoner unless it is	22
	satisfied on the balance of probabilities that the prisoner, if	23
	released from custody, would be able to remain law abiding	24
	and would not pose a threat to public safety either individually	25
	or collectively.	26
	(4) In deciding whether to make a parole order for a prisoner, the	27
	Board must have regard to the following matters:	28
	(a) any relevant comments made by the court when	29
	sentencing the prisoner,	30
	(b) the antecedents of the prisoner and any special	31
	circumstances of the case,	32

(c)	the consequences that the releasing of the prisoner may have in relation to any victim of the prisoner or the family of any such victim,	1 2 3
(d)	any report required to be made by the regulations for the purposes of this section,	4 5
(e)	any report relating to the prisoner that has been prepared by or on behalf of the Crown,	6 7
(f)	the conduct of the prisoner while in custody,	8
(g)	the attitude of the prisoner,	9
(h)	the prospects for rehabilitation of the prisoner and his or her re-entry into the community as a law abiding citizen,	10 11
(i)	the availability of family, governmental and other forms of support,	12 13
(j)	any other matter that the Board considers relevant.	14
(5)	The Board must, in deciding whether or not to make a parole order for a prisoner who is a dangerous offender, provide a public statement of the reasons for its decision.	15 16 17
(6)	In deciding whether or not to make a parole order, the Board is not to take into account whether the prisoner, if released on parole, may become liable to be deported.	18 19 20
17AA	Application to Court of Criminal Appeal by Attorney General or DPP	21 22
(1)	If the Board makes a parole order for a prisoner who is a dangerous offender, the Attorney General or the Director of Public Prosecutions may, in accordance with rules of court, apply to the Court of Criminal Appeal for a merits review of the Board's decision.	23 24 25 26 27
(2)	In reviewing the Board's decision on its merits, the court may give such directions with respect to the decision as the court thinks fit (including a direction to the Board to revoke the parole order concerned).	28 29 30 31
(3)	Section 23A (2) and (3) apply to an application under this section in the same way as those subsections apply to an application under section 23A (1).	32 33 34

[3] Section 27 Terms and conditions of parole order	1
Insert after section 27 (1):	2
(1A) In the case of a parole order for a prisoner who is a serious offender or a dangerous offender, any person who is a victim (within the meaning of section 22B) of the prisoner may make submissions to the Board as to the terms and conditions of the parole order. The Board must have regard to any such submissions.	3 4 5 6 7 8
[4] Section 27 (4) (a)	9
Omit “or the regulations”.	10
[5] Section 27 (4A)	11
Insert after section 27 (4):	12
(4A) The period of supervision required by a term or condition of a parole order cannot be restricted by the regulations.	13 14