



New South Wales

Crimes (High Risk Offenders) Amendment Bill 2017

Explanatory note

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

This Bill is cognate with the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017*.

Overview of Bill

The *Crimes (High Risk Offenders) Act 2006* (the **Principal Act**) sets out a scheme for the making of extended supervision orders and continuing detention orders in relation to two categories of high risk offenders (high risk sex offenders and high risk violent offenders). The categories are based on whether the offender has been sentenced to imprisonment following conviction for a serious sex offence or a serious violence offence (as defined in the Principal Act). An extended supervision order imposes obligations on a high risk offender on release from custody. A continuing detention order requires a high risk offender who is in custody in a correctional centre to remain in custody at the end of a term of imprisonment or an existing continuing detention order or, if the high risk offender is the subject of a supervision order, to be taken into custody. A continuing detention order may currently be imposed on a high risk sex offender if the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious sex offence if not detained in custody or, in the case of a sex offender the subject of an extended or interim supervision order, of breaching the order, or if altered circumstances mean that adequate supervision cannot be provided under it. A continuing detention order may currently be imposed on a high risk violent offender if the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious violence offence if not detained in custody or, in the case of a violent offender the subject of an extended or interim supervision order, of breaching the order, or if altered circumstances mean that adequate supervision cannot be provided under it.

The object of this Bill is to amend the Principal Act as follows:

- (a) to remove the distinction between the two categories of high risk offender so that orders for the continued supervision and detention of high risk sex offenders and high risk violent offenders may be made if an offender poses a risk of committing either a serious violence offence or serious sex offence and to make consequential amendments throughout the Principal Act (**Schedule 1 [1], [3]–[8], [14], [15], [17], [21], [24], [25], [27], [30], [31], [35], [38], [41], [42], and [58]–[60]**),
- (b) by making it clear that the scheme applies to an offender sentenced to imprisonment for a serious sex offence or serious violence offence to be served by way of full-time detention or intensive correction in the community (whether or not by home detention) but not an offender given a suspended sentence or whose sentence is quashed (**Schedule 1 [10]—proposed section 4A (b)**),
- (c) to make it clear that the scheme applies to an offender serving a sentence of imprisonment for an offence against a law of the Commonwealth or another State or Territory being served concurrently or consecutively (wholly or partly) with an offence against the law of New South Wales (**Schedule 1 [15]—proposed section 5I (2) (a) (iv) and Schedule 1 [29]—proposed section 13B (2) (a) (iv)**),
- (d) to make certain offences against the laws of the Commonwealth “serious sex offences” and “offences of a sexual nature” for the purposes of the Principal Act (**Schedule 1 [11]–[13]**),
- (e) by changing the test to be applied by the Supreme Court in deciding whether or not to make a continuing detention order in respect of a high risk offender so that an order may be made if the Supreme Court is satisfied that the risk of the offender committing another serious offence would be unacceptable unless the order is imposed instead of being satisfied that adequate supervision will not be provided by an extended supervision order (**Schedule 1 [14]—proposed sections 5C and 5D and Schedule 1 [39] and [40]**),
- (f) by changing the test to be applied by the Supreme Court in deciding whether or not to make an emergency detention order in respect of a high risk offender who is the subject of an extended supervision order or interim supervision order so that the order may be made if the Supreme Court is satisfied that, because of altered circumstances, the offender poses an unacceptable and imminent risk of committing a serious offence if the order is not made instead of being satisfied that because of the altered circumstances the offender cannot be provided with adequate supervision under the extended supervision order or interim supervision order and that, without adequate supervision, the offender poses an imminent risk of committing a serious offence (**Schedule 1 [45], [46], [48] and [50]**),
- (g) by supplementing the list of matters (which is not exhaustive) to be considered by the Supreme Court in deciding whether to make an extended supervision order or continuing detention order to include whether the offender is likely to comply with the conditions of an extended supervision order and the options available in the community or in custody to reduce the risk of the offender re-offending (**Schedule 1 [22], [23], [36] and [37]**),
- (h) to emphasise that community safety is the paramount consideration for the Supreme Court in determining whether to make a continuing detention order or an extended supervision order (**Schedule 1 [18]–[20] and [32]–[34]**),
- (i) to require the Legal Aid Commission to be notified in writing if a decision is made to file an application for an emergency detention order (**Schedule 1 [49]**),
- (j) to enable a broader range of victims of serious offences and offences of a sexual nature to be able to provide victim impact statements (**Schedule 1 [57]**),
- (k) to enable victim impact statements to be made directly to the Supreme Court not only in writing (**Schedule 1 [52]–[56]**),
- (l) to the extent possible, to enable registered victims to be advised when a high risk offender is the subject of an application for an order (**Schedule 1 [51]**),

- (m) to make it clear that the Attorney General may order a person to provide financial information relating to a high risk offender and may request persons in other jurisdictions to provide certain information about an offender (**Schedule 1 [61]–[64]**),
- (n) to permit the disclosure of expert reports prepared for supporting documentation relating to applications for orders to corrective services officers and other persons responsible for the supervision (whether in custody or in the community), treatment or risk assessment of offenders and to any person in connection with the person’s functions under the Principal Act and to provide for the disclosure and use of such expert reports in certain proceedings in relation to an offender if a court determines it is in the public interest and would be informative of the offender’s mental state with respect to his or her offending (**Schedule 1 [66]—proposed section 25D**),
- (o) to enable applications for orders to be made up to 9 months (instead of 6 months) before the end of a period when an offender is in custody or under supervision (**Schedule 1 [16] and Schedule 1 [29]—proposed section 13B (3) and (5)**),
- (p) to enable the Supreme Court to defer the operation of an extended supervision order made in proceedings on an application for a continuing detention order or interim supervision order in relation to an offender in current custody for up to 7 days in certain circumstances (**Schedule 1 [26] and [28]**),
- (q) to make it clear that a failure to comply, or an alleged failure to comply, with the requirements of an extended or interim supervision order may be taken into account in determining an application for a continuing detention order (**Schedule 1 [29]—proposed section 13B (7)**),
- (r) to require sentencing courts to warn all offenders of the potential application of the Principal Act to them unless they are not present at sentencing (**Schedule 1 [65]**),
- (s) to make various minor and machinery changes to the scheme to ensure it operates effectively (for example, clarification that the term “offender in lawful custody” when used in the Principal Act includes a period when an offender who is subject to a supervision order is on remand for an offence (**Schedule 1 [9]**), clarification of the effect of suspension of an order (**Schedule 1 [43] and [44]**) and provision for the issue of evidentiary certificates—**Schedule 1 [67]**),
- (t) to make necessary savings and transitional provisions (**Schedule 1 [68]**).

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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes (High Risk Offenders) Act 2006 No 7

Schedule 1 makes the amendments specifically noted in the Overview and other amendments of a consequential nature or by way of statute law revision (**Schedule 1 [2] and [47]**).

Schedule 2 Amendment of other Acts

Schedule 2.1 [1] and [2] amend section 135 of the *Crimes (Administration of Sentences) Act 1999* (as inserted by the proposed *Parole Legislation Amendment Act 2017*) to require the Parole Authority to have regard to applications for extended supervision orders or continuing detention orders that have not been determined in deciding whether or not the release of an offender is in the public interest. **Schedule 2.1 [3]** amends that section to provide that the Parole Authority must not have regard to the fact that such an application may be made.

Schedule 2.1 [4]–[7] amend the *Crimes (Administration of Sentences) Act 1999* to provide for inclusion of high risk offenders on the Victims Register kept under that Act for the purpose described in paragraph (j) of the Overview. The amendment has the effect of including within the list of victims who may be recorded in the Victims Register victims of offenders within the meaning of the Principal Act whether or not those offenders are currently serving a sentence of imprisonment for a serious offence and victims of such offenders who are currently serving a sentence of imprisonment for offences of a sexual nature, and certain persons who are family representatives of such victims.

Schedule 2.2 makes an amendment to the *Crimes (Sentencing Procedure) Act 1999* that is consequential on the amendments described in paragraph (a) of the Overview.