



New South Wales

Crimes (Serious Sex Offenders) Amendment Bill 2013

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to provide for the continued supervision and detention of high risk violent offenders in appropriate cases (in addition to serious sex offenders, as is presently the case), and
- (b) to permit orders to be made for the continued supervision and detention of an adult offender convicted of an offence as a child in appropriate cases.

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

Extension of principal Act to high risk violent offenders

The *Crimes (Serious Sex Offenders) Act 2006* (the *principal Act*) sets out a scheme for the continued detention or supervision of serious sex offenders who pose an unacceptable risk of committing serious sex offences if not kept under supervision. The primary object of the Act is to ensure the safety and protection of the community.

The proposed amendments to the principal Act provide for a similar scheme in respect of high risk violent offenders. A high risk violent offender is a violent offender who poses an unacceptable risk of committing a serious violence offence if he or she is not kept under supervision.

A *violent offender* is a person over the age of 18 years who has at any time been sentenced to imprisonment following his or her conviction for a serious violence offence (see definition in **Schedule 1 [4]**).

Schedule 1 [5] defines *serious violence offence* as a serious indictable offence that is constituted by a person:

- (a) engaging in conduct that causes the death of another person or grievous bodily harm to another person, with the intention of causing, or while being reckless as to causing, the death of another person or grievous or actual bodily harm to another person, or
- (b) attempting to commit, or conspiring with or inciting another person to commit, an offence of a kind referred to in paragraph (a).

An offence is a serious indictable offence if it is an indictable offence punishable by imprisonment for life or for a term of 5 years or more.

Schedule 1 [6] provides for the extension of the principal Act to high risk violent offenders.

Under the proposed amendments, an extended supervision order can be made by the Supreme Court in respect of an offender only if the offender is a high risk violent offender. An offender is a high risk violent offender only if the offender is a violent offender and the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious violence offence if he or she is not kept under supervision. The Supreme Court can make a continuing detention order in respect of the offender if the offender is a high risk violent offender and the Court is satisfied that adequate supervision will not be provided by an extended supervision order.

The proposed amendments also re-enact existing provisions relating to serious sex offenders.

Schedule 1 [7] and [21] permit the State to make an application to the Supreme Court for an extended supervision order or a continuing detention order in respect of a high risk violent offender, similar to serious sex offenders.

Schedule 1 [17] and [33] provide for the making of interim orders.

Schedule 1 [19] and [35] make it clear that an extended supervision order or continuing detention order, or an interim order, can be revoked by the Supreme Court if the Court is satisfied that circumstances have changed to render the order unnecessary.

Schedule 1 [20] and [36] require the Commissioner of Corrective Services to report to the Attorney General on whether the Commissioner considers the continuation of an extended supervision order or continuing detention order to be necessary and appropriate.

Schedule 1 [38] requires a court that sentences a person for a serious violence offence to warn the person about the application of the Act.

Schedule 1 [39] requires the Minister to review the operation of the amendments at the end of 3 years after commencement.

Schedule 1 [40] provides for savings and transitional matters. The provisions ensure that an order can be made in respect of a person who committed a qualifying offence before the commencement of the proposed amendments.

Schedule 1 [2] changes the name of the Act to the *Crimes (High Risk Offenders) Act 2006*, as a consequence of the extension of the Act to high risk violent offenders.

Schedule 1 [4] defines expressions used in the proposed amendments, and makes consequential changes to existing definitions.

Schedule 1 [1], [3], [8]–[16], [18], [22]–[32], [34] and [37] are other consequential amendments.

Extension of principal Act to offences committed as a child

At present, an extended supervision order or continuing detention order can be made in respect of a person if the person has been sentenced to imprisonment following his or her conviction of a serious sex offence. Serious sex offences committed as a child are excluded.

Under the proposed amendments, offences committed as a child are not excluded. However, orders can only be made in respect of adults.

The amendments permit an order to be made in respect of a sex offender or a violent offender. **Schedule 1 [4]** defines a *sex offender* as a person over the age of 18 years who has at any time been sentenced to imprisonment following his or her conviction of a serious sex offence. A *violent offender* is defined as a person over the age of 18 years who has at any time been sentenced to imprisonment following his or her conviction for a serious violence offence.

An offence committed as a child qualifies for the purposes of the principal Act only if the child is convicted and a sentence of imprisonment is imposed in respect of the offence. This limits the operation of the amendment to serious offences. An offence committed as a child does not qualify under the principal Act if a custodial or non-custodial penalty for the offence is imposed by the Children's Court under section 33 of the *Children (Criminal Proceedings) Act 1987*.

Schedule 2 Amendment of other legislation

Schedule 2 makes amendments to other legislation. Most of the amendments are minor changes that are consequential on the extension of the principal Act to high risk violent offenders and the change of name of the Act.

Schedule 2.6 [7] amends the *Crimes (Administration of Sentences) Act 1999* to enable regulations to be made under that Act for the preparation and implementation of plans of management in respect of high risk violent offenders, and the provision of services and programs in respect of high risk violent offenders, by Corrective Services NSW. This will permit plans to be made, and programs to be offered, to high risk violent offenders even though they are not inmates. **Schedule 2.6 [2]** ensures that the existing regulation-making powers in relation to the management of inmates are consistent with the new regulation-making power relating to high risk violent offenders.

Schedule 2.7 [2] and [3] amend the *Crimes (Administration of Sentences) Regulation 2008* to extend to high risk violent offenders the existing scheme relating to case plans and programs for inmates.