

Serial 168
Dangerous Prisoners (Sexual Offenders) Bill 2011
Mr Elferink

A Bill for an Act to provide for the control, by continued detention or supervised release, of certain prisoners for the protection of the community and the prisoners' rehabilitation, care or treatment, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

DANGEROUS PRISONERS (SEXUAL OFFENDERS) ACT 2011

Act No. [] of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2011

An Act to provide for the control, by continued detention or supervised release, of certain prisoners for the protection of the community and the prisoners' rehabilitation, care or treatment, and for related purposes

[Assented to [] 2011]
[Second reading [] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Dangerous Prisoners (Sexual Offenders) Act 2011*.

Part 2 Interpretation

2 Definitions

In this Act:

arrested prisoner, for Part 3, Division 8, see section 33.

business day means a day other than a Saturday, Sunday or public holiday under the *Public Holidays Act*.

certified transcript means a document that, under section 16 of the *Records of Depositions Act*, is evidence that a witness made a deposition.

continuing detention order, see section 18(1)(a) or 37(2)(a).

corrective services officer means:

- (a) a prison officer appointed under section 8 of the *Prisons (Correctional Services) Act*, or
- (b) a parole officer appointed under section 3P of the *Parole of Prisoners Act*.

criminal history means criminal history prepared by the Commissioner of Police.

curfew direction, see section 27(2).

detention order means a continuing detention order or interim detention order.

Director, see section 5 of the *Prisons (Correctional Services) Act*.

Division 3 order means:

- (a) a continuing detention order made under section 18(1)(a); or
- (b) a Division 3 supervision order.

Division 3 supervision order, see section 18(1)(b).

Division 4 supervision order, see section 22(1).

existing order:

- (a) for Part 3, Division 4 – see section 20(1); or
- (b) for Part 3, Division 8 – see section 34(1).

final supervision order means:

- (a) a Division 3 supervision order; or
- (b) a Division 4 supervision order; or
- (c) a Part 4 supervision order.

interim detention order, see sections 10(2)(b)(ii), 16(2)(b), 35(2)(a) and (4), 37(2)(b) and 49(3)(b).

interim supervision order, see sections 10(2)(b)(i), 16(2)(a), 21(2) and 49(3)(a).

monitoring direction, see section 27(3).

Part 4 supervision order means an order made under section 48(2)(b).

period of imprisonment, see section 5(2).

preliminary hearing, see section 7(4).

prisoner, see section 3.

psychiatrist means a medical practitioner who holds specialist registration under the Health Practitioner Regulation National Law in the recognised specialty of psychiatry.

registered person, for a prisoner, means a person registered in the Victims Register as a registered person in relation to the prisoner.

Registrar, see section 9(1) of the *Supreme Court Act*.

release day, for a prisoner, means the day on which the prisoner is due to be unconditionally released from lawful custody at the end of the prisoner's period of imprisonment.

risk assessment order, see section 10(2)(a).

serious danger to the community, see section 4.

serious sexual offence means an offence of a sexual nature, whether committed in the Territory or elsewhere:

- (a) involving violence, intimidation or threats; or
- (b) against a child.

supervised prisoner means a person who is subject to a supervision order.

supervised release means release from custody under a supervision order.

supervision order means a final supervision order or an interim supervision order.

term of imprisonment, see section 5(1).

victims register means the Victims Register under Part 4 of the *Victims of Crime Rights and Services Act*.

3 **Meaning of *prisoner***

- (1) A *prisoner* is any of the following:
 - (a) a prisoner as defined in section 5 of the *Prisons (Correctional Services) Act*;
 - (b) a person who is subject to a detention order;
 - (c) a person who is taken to be a prisoner under section 14(1) of the *Parole of Prisoners Act*;
 - (d) a person who is taken to be a prisoner under subsection (2), (3), (4) or (5), but only for the purpose mentioned in that subsection.
- (2) A supervised prisoner is taken to be a prisoner for the purposes of any application, appeal or rehearing relating to the person's supervision order.
- (3) A person who is released from custody, without an interim supervision order having being made, after the Supreme Court sets a date under section 10 for the hearing of an application relating to the person is taken to be a prisoner for the purposes of the application.
- (4) A person who is released from custody, without an interim supervision order having being made, after the Court of Appeal remits a decision about the person as mentioned in section 49(2)(a), is taken to be a prisoner for the purposes of the rehearing.
- (5) A person who is released from custody, without an interim supervision order having being made, after the hearing of any application under this Act, is taken to be a prisoner for the purposes of any appeal against the decision made at the hearing and any subsequent appeal.

4 **Meaning of *serious danger to the community***

- (1) A prisoner is a *serious danger to the community* if there is an unacceptable risk that the prisoner will commit a serious sexual offence if the prisoner is not detained in custody or subject to a supervision order.
- (2) A court may decide a prisoner is a serious danger to the community only if it is satisfied:
 - (a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

that the evidence is of sufficient weight to justify the decision.

(3) In deciding whether a prisoner is a serious danger to the community, the court must have regard to the following:

(a) any report produced under section 14 about the prisoner;

(b) the psychiatrists' reports prepared under this Act and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(c) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(d) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(e) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(f) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner has participated in rehabilitation programs;

(g) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(h) the prisoner's antecedents and criminal history;

(i) the risk that the prisoner will commit another serious sexual offence if the prisoner is not detained in custody;

(j) the need to protect members of the community from that risk;

(k) any other relevant matter.

(4) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community.

5 Meaning of *term of imprisonment* and *period of imprisonment*

(1) A ***term of imprisonment*** is the duration of imprisonment imposed:

(a) for a particular offence; or

(b) under the *Fines and Penalties (Recovery) Act* in relation to a particular fine or penalty; or

- (c) for a particular failure to comply with an order of a court.
- (2) A prisoner's *period of imprisonment* is the unbroken duration of imprisonment that the prisoner is to serve, which may consist of:
 - (a) a term of imprisonment; or
 - (b) 2 or more terms of imprisonment.
- (3) For subsection (2)(b), it is immaterial:
 - (a) whether the terms were imposed at the same time or different times; and
 - (b) whether the terms are to be served concurrently or consecutively.

6 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 3 Continuing detention or supervision

Division 1 Application and preliminary hearing

7 Attorney-General may apply for orders

- (1) The Attorney-General may apply to the Supreme Court in relation to a prisoner who is serving a period of imprisonment that is or includes a term of imprisonment for a serious sexual offence for a Division 3 order and an order or orders under section 10.
- (2) The application may be made only during the last 6 months of the prisoner's period of imprisonment.
- (3) The application must:
 - (a) state the orders sought; and
 - (b) be accompanied by any affidavits to be relied on by the Attorney-General for the purpose of seeking an order or orders under section 10.

- (4) On the filing of the application, the Registrar must record a return date for the matter to come before the Supreme Court for a hearing (a *preliminary hearing*) to decide whether the Supreme Court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community.
- (5) The return date for the preliminary hearing must be within 28 business days after the application is filed.
- (6) A copy of the application and any accompanying affidavits must be given to the prisoner within 2 business days after the application is filed.

8 Prisoner may file material in response

- (1) The prisoner may file affidavits to be relied on by the prisoner for the preliminary hearing.
- (2) The prisoner must give a copy of the affidavits to the Attorney-General at least 3 business days before the day set down for the preliminary hearing.

9 Contents of affidavit

- (1) An affidavit filed with the application or under section 8(1) must be confined to the evidence the person making it could give if giving evidence orally.
- (2) However, an affidavit may contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.

10 Preliminary hearing

- (1) If the Supreme Court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community, it must set a date for the hearing of the application for a Division 3 order.
- (2) If satisfied as mentioned in subsection (1), the Supreme Court may do either or both of the following:
 - (a) order the prisoner to undergo examinations by 2 psychiatrists named in the order who are to prepare independent reports (a *risk assessment order*);
 - (b) if satisfied the application may not be finally decided until after the prisoner's release day:
 - (i) order the prisoner's release from custody be supervised (an *interim supervision order*); or

- (ii) order the prisoner be detained in custody for the period stated in the order (an *interim detention order*).
- (3) If the prisoner is subject to a parole order under the *Parole of Prisoners Act*, when making an order under this section the Supreme Court may revoke the parole order.

Note for subsection (3)

An offender who is released from prison under a parole order is taken to still be a prisoner – see section 14 of the Parole of Prisoners Act and section 3(1)(c) of this Act.

Division 2 Psychiatric examinations

11 Effect of risk assessment order

A risk assessment order authorises the examination of the prisoner by the psychiatrists named in the order, each of whom must examine the prisoner and prepare a report as mentioned in section 12.

12 Preparation of psychiatric report

- (1) A psychiatrist examining the prisoner under the risk assessment order must prepare a report under this section.
- (2) The report must indicate:
 - (a) the psychiatrist's assessment of the level of risk that the prisoner will commit another serious sexual offence:
 - (i) if released from custody; or
 - (ii) if released from custody without a Division 3 supervision order being made; and
 - (b) the reasons for the psychiatrist's assessment.
- (3) For the purposes of preparing the report, the Director must give the psychiatrist any medical, psychiatric, prison or other relevant report or information in relation to the prisoner in the Director's possession or to which the Director has, or may be given, access.
- (4) A person in possession of a report or information mentioned in subsection (3) must give a copy of it to the Director if asked by the Director.
- (5) Subsection (4) applies despite any other law to the contrary or any duty of confidentiality attaching to the report.

- (6) If a person required to give a report or information under subsection (4) refuses to do so, the Director may apply to the Supreme Court for an order requiring the person to give the report or information to the Director.
- (7) A person giving a report or information under subsection (4), or in accordance with an order under subsection (6), is not liable, civilly, criminally or under an administrative process, for giving the report or information.
- (8) The psychiatrist must have regard to all reports and other information given to the psychiatrist under subsection (3).
- (9) The psychiatrist must prepare a report even if the prisoner does not cooperate, or does not cooperate fully, in the examination.

13 Psychiatric reports to be given to Attorney-General and prisoner

- (1) The psychiatrist must give a copy of the psychiatrist's report to the Attorney-General within the time stated in the order.
- (2) The Attorney-General must give a copy of the report to the prisoner on or before the end of the next business day after the Attorney-General receives it.

Division 3 Division 3 orders

14 Attorney-General may produce report

- (1) This section applies if a hearing date is set under section 10(1).
- (2) The Attorney-General may produce to the Supreme Court a report, prepared by the Director for the Attorney-General, about the prisoner that:
 - (a) proposes requirements under section 26(2) for any supervised release of the prisoner; and
 - (b) indicates the extent to which those proposed requirements and the requirements under section 26 can be reasonably and practicably managed by corrective services officers.
- (3) The Attorney-General must give a copy of the report to the prisoner on the next business day after the Attorney-General receives it from the Director.

15 Victim's submission about Division 3 order

- (1) This section applies if:
 - (a) an application is made for a Division 3 order about a prisoner; and
 - (b) the victim of a serious sexual offence for which the prisoner is serving, or has served, a term or period of imprisonment:
 - (i) is a registered person; or
 - (ii) is an injured person (as defined in section 19 of the *Victims of Crime Rights and Services Act*) for whom another person is registered under section 19(1)(b) or (c) of that Act.
- (2) As soon as practicable after the Supreme Court sets a date for the hearing of the application (the **hearing date**), the Director must give the registered person written notice of the application and hearing date.
- (3) The notice must invite the registered person to give the Director, before the date stated in the notice, a written submission stating:
 - (a) the person's views about any Division 3 order or conditions of release to which the prisoner should be subject; and
 - (b) any other matters prescribed by regulation.
- (4) The Director must, before the hearing date, give the Attorney-General:
 - (a) if the Director received a submission from the registered person in response to a notice given to the person under subsection (3) – the submission; or
 - (b) otherwise – information that the registered person has not given a submission in response to the notice.
- (5) The Attorney-General must produce to the Supreme Court any submission from a registered person received before the hearing date.

16 Court may adjourn hearing for Division 3 order

- (1) The Supreme Court may adjourn the hearing of an application for a Division 3 order on application or on its own initiative.

- (2) If the Supreme Court adjourns the hearing of the application and is satisfied the application may not be finally decided until after the prisoner's release day, the Supreme Court may:
 - (a) order the prisoner's release from custody be supervised (an *interim supervision order*); or
 - (b) order the prisoner be detained in custody for the period stated in the order (an *interim detention order*).

17 Discontinuing application for Division 3 order

- (1) The Attorney-General may discontinue an application for a Division 3 order at any time by giving a notice of discontinuance to the Registrar.
- (2) The Attorney-General must give a copy of the notice of discontinuance to:
 - (a) the prisoner; and
 - (b) any registered person who has given a submission about the application to the Director under section 15.
- (3) The following provisions apply on receipt of the notice of discontinuance by the Registrar:
 - (a) the application is taken to be dismissed by the Supreme Court;
 - (b) if the prisoner is subject to an interim detention order or interim supervision order – that order is revoked;
 - (c) if the prisoner was subject to a parole order that, had it not been revoked by the Supreme Court under section 10(3), would still be in force – the parole order is reinstated.

18 Division 3 orders

- (1) If, on the hearing of an application for a Division 3 order, the Supreme Court is satisfied the prisoner is a serious danger to the community, it may:
 - (a) order the prisoner be detained in custody for an indefinite term for control, rehabilitation, care or treatment (a *continuing detention order*); or
 - (b) order the prisoner be released from custody subject to the requirements the Supreme Court considers appropriate and that are stated in the order (a *Division 3 supervision order*).

- (2) In deciding whether to make a continuing detention order or Division 3 supervision order:
 - (a) the need to ensure adequate protection of the community is the paramount consideration; and
 - (b) the Supreme Court must have regard to:
 - (i) whether adequate protection of the community can be reasonably and practicably managed by a Division 3 supervision order; and
 - (ii) whether requirements under section 26 can be reasonably and practicably managed by corrective services officers.

19 Fixing of period of Division 3 supervision order

- (1) If the Supreme Court makes a Division 3 supervision order, the order must state the period for which it is to have effect.
- (2) In fixing the period, the Supreme Court must not have regard to whether or not the prisoner may become the subject of:
 - (a) an application for a Division 4 supervision order; or
 - (b) a Division 4 supervision order.
- (3) The period must not end before 5 years after the making of the order or the end of the prisoner's period of imprisonment, whichever is the later.

Division 4 Extending supervised release

20 Attorney-General may apply for Division 4 supervision order

- (1) The Attorney-General may apply for a Division 4 supervision order for a supervised prisoner who is subject to a Division 3 supervision order or a Part 4 supervision order (the *existing order*).
- (2) The application may be made only during the last 6 months of effect of the existing order.
- (3) The application must:
 - (a) state the period of supervised release sought; and
 - (b) be accompanied by any affidavits to be relied on by the Attorney-General for the purpose of seeking the order.

21 Application of provisions for Division 3 orders

- (1) Sections 7(4) to (6), 8, 9, 10 (other than section 10(2)(b)), 11 to 15, 16(1) and 17 (other than section 17(3)(b)) apply in relation to an application under section 20:
 - (a) as if a reference in those provisions to a Division 3 order were a reference to a Division 4 supervision order; and
 - (b) as if a reference in those provisions to an application under section 7 were a reference to an application under section 20(2); and
 - (c) as if a reference in those provisions to the prisoner were a reference to the supervised prisoner; and
 - (d) as if the reference in section 7(6) to 2 business days were a reference to 7 business days; and
 - (e) as if the psychiatrist's assessment under section 12(2)(a) were an assessment of the level of risk that the supervised prisoner will, after the expiry of the existing order, commit another serious sexual offence if a Division 4 supervision order is not made; and
 - (f) with any other necessary changes.
- (2) If the Supreme Court is satisfied the application under section 20 may not be finally decided until after the existing order expires, it may order that the supervised prisoner continue to be supervised until the application is finally dealt with (an *interim supervision order*).

22 Division 4 supervision order

- (1) If, on the hearing of an application under section 20(1), the Supreme Court is satisfied the supervised prisoner is a serious danger to the community it may order that the supervised prisoner continue to be subject to the requirements the Supreme Court considers appropriate and that are stated in the order (a *Division 4 supervision order*).
- (2) For subsection (1), section 4 applies as if a reference in it to a prisoner were a reference to the supervised prisoner.
- (3) In deciding whether to make a Division 4 supervision order:
 - (a) the need to ensure adequate protection of the community is the paramount consideration; and

- (b) the Supreme Court must have regard to:
 - (i) whether adequate protection of the community can be reasonably and practicably managed by a Division 4 supervision order; and
 - (ii) whether requirements under section 26 can be reasonably and practicably managed by corrective services officers.
- (4) A Division 4 supervision order must state the period for which it is to have effect.

Division 5 Effect of orders

23 Effect of detention order

A detention order has effect in accordance with its terms:

- (a) from:
 - (i) if the prisoner is serving a period of imprisonment when the order is made – the time the order is made or the prisoner's release day, whichever is the later; or
 - (ii) otherwise – the time the order is made; and
- (b) until:
 - (i) for a continuing detention order – the order is revoked; or
 - (ii) for an interim detention order – the expiration of the period stated in the order or the order is revoked, whichever is the earlier.

24 Effect of supervision order

A supervision order has effect in accordance with its terms:

- (a) from:
 - (i) if the prisoner is serving a period of imprisonment when the order is made – the time the order is made or the prisoner's release day, whichever is the later; or
 - (ii) otherwise – the time the order is made; and
- (b) until the expiration of the period stated in the order or the order is revoked, whichever is the earlier.

25 Inconsistency between supervision order and other orders

- (1) This section applies if
- (a) a supervised prisoner is subject to an order under any other Act (the *other order*); and
 - (b) a requirement under the other is inconsistent with a requirement under the supervised prisoner's supervision order.
- (2) If the other order is an order for the person to be held in custody or otherwise detained (other than to serve a sentence of imprisonment), the other order prevails over the person's supervision order to the extent of the inconsistency.

Example for subsection (2)

An assessment order under section 79 of the Sentencing Act that a person be detained in an approved treatment facility would prevail over a requirement in a supervision order that the person remain at home at night.

Note for subsection (2)

For the effect of a sentence of imprisonment see Divisions 8 and 9.

- (3) In any other case, the person's supervision order prevails over the other order to the extent of the inconsistency.

Example for subsection (3)

A requirement under a supervision order that a person report to a corrective services officer at a particular time would prevail over a home detention order under section 44 of the Sentencing Act requiring the person to be at home at that time.

Division 6 Supervised release – requirements and directions

Subdivision 1 Requirements for supervised release

26 Order to include requirements

- (1) A supervision order must contain requirements that the supervised prisoner:
- (a) report to a corrective services officer at the place, and within the time, stated in the order and advise the officer of the prisoner's current name and address; and
 - (b) report to, and receive visits from, a corrective services officer as directed by the court; and

- (c) notify a corrective services officer of every change of the prisoner's name, place of residence or employment at least 2 business days before the change happens; and
 - (d) be under the supervision of a corrective services officer; and
 - (e) comply with any curfew direction or monitoring direction given to the prisoner and any related directions given under section 27(4); and
 - (f) comply with any reasonable direction given to the prisoner under section 28; and
 - (g) comply with any other reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order; and
 - (h) not leave or stay out of the Territory without the permission of a corrective services officer; and
 - (i) not commit an offence of a sexual nature.
- (2) The order may contain any other requirement the court considers appropriate:
- (a) to ensure adequate protection of the community; or
 - (b) for the prisoner's rehabilitation, care or treatment.
- (3) For the requirement under subsection (1)(c), if, for reasons beyond the control of the prisoner, it is not reasonably possible for the supervised prisoner to make the notification within the time required, it is sufficient compliance with the requirement if the supervised prisoner makes the notification as soon as practicable, and not more than 24 hours after, the change occurs.

Subdivision 2 Directions to supervised prisoner

27 Curfew and monitoring directions

- (1) A corrective services officer may give a direction under this section for the purpose of restricting the movements of, and monitoring the location of, a supervised prisoner.
- (2) A corrective services officer may direct the supervised prisoner to remain at a stated place for stated periods (a *curfew direction*).

- (3) A corrective services officer may direct the supervised prisoner to do either or both of the following (a *monitoring direction*):
 - (a) wear a stated device;
 - (b) permit the installation of a device or equipment at the place where the supervised prisoner resides.
- (4) A corrective services officer may give the supervised prisoner any reasonable directions that are necessary for the proper administration of a curfew direction or monitoring direction.
- (5) A curfew or monitoring direction must not be directly inconsistent with a requirement of the supervised prisoner's supervision order.

28 Other directions

- (1) A corrective services officer may give a supervised prisoner a reasonable direction about the prisoner's:
 - (a) accommodation; or
 - (b) rehabilitation, care or treatment; or
 - (c) use of drugs or alcohol.
- (2) A direction under subsection (1) may relate to a matter even though the prisoner's supervision order imposes a requirement about the matter, either generally or specifically.
- (3) However, the direction must not be directly inconsistent with a requirement of the supervision order.

29 Criteria for giving directions

- (1) A corrective services officer may give a direction only if the officer reasonably believes the direction is necessary:
 - (a) to ensure adequate protection of the community; or
 - (b) for the supervised prisoner's rehabilitation, care or treatment.
- (2) In this section:

direction means:

 - (a) a curfew direction; or
 - (b) a monitoring direction; or
 - (c) a direction under section 27(4); or

- (d) a direction under section 28; or
- (e) a direction as mentioned in section 26(1)(g).

reasonably believes means believes on grounds that are reasonable in all the circumstances.

Division 7 Amendment of supervision order

30 Application for amendment

An application to the Supreme Court to amend the requirements of a supervision order may be made by:

- (a) the supervised prisoner; or
- (b) the Director with the Attorney-General's consent.

31 Amendment of requirements

- (1) The Supreme Court may, on application, amend the requirements of a supervision order if satisfied:
 - (a) the supervised prisoner is not able to comply with the requirements of the order because of a change in the prisoner's circumstances; or
 - (b) the amendment of the requirements is necessary or desirable:
 - (i) to ensure adequate protection of the community; or
 - (ii) for the prisoner's rehabilitation, care or treatment; or
 - (iii) for any other reason.
- (2) The Supreme Court may amend the requirements if satisfied:
 - (a) the requirements, as amended, are sufficient to ensure adequate protection of the community; and
 - (b) it is reasonable in all the circumstances to make the amendment.
- (3) An amendment cannot be made under this section to remove a requirement mentioned in section 26(1).

32 Amendment of requirement to comply with curfew or monitoring direction

- (1) This section applies to a requirement of a supervision order mentioned in section 26(1)(e) that the supervised prisoner comply with any curfew direction or monitoring direction.
- (2) The Supreme Court may, on application by the supervised prisoner, remove the requirement if the prisoner satisfies the Supreme Court on the balance of probabilities that adequate protection of the community can be ensured without the requirement.
- (3) The application cannot be made:
 - (a) within 2 years from the date the order took effect; or
 - (b) within 1 year from the date a previous application under subsection (2) was last decided.
- (4) At the hearing of the application, the Director may produce evidence of the supervised prisoner's compliance, or non-compliance, with the order.
- (5) In considering whether adequate protection of the community can be ensured without the requirement the Supreme Court must have regard to evidence placed before it under subsection (4).
- (6) The Supreme Court may, on application under section 31 made at any time by the Director with the Attorney-General's consent, reinstate a requirement removed under this section.

Division 8 Contravention of supervision order

33 Definitions

In this Division:

arrested prisoner means a supervised prisoner arrested under a warrant issued under section 34.

existing order, see section 34(1).

34 Warrant for arrest

- (1) A relevant officer may apply to a magistrate for a warrant for the arrest of a supervised prisoner if the officer reasonably suspects the prisoner is likely to contravene, is contravening, or has contravened, the prisoner's supervision order (the *existing order*).
- (2) The application must be made by information on oath.

- (3) If satisfied there are reasonable grounds for the suspicion mentioned in subsection (1), the magistrate must issue a warrant, directed to any or all relevant officers as the magistrate thinks fit, for the supervised prisoner to be arrested and brought before the Supreme Court.
- (4) The warrant:
 - (a) must be in a form approved by the Director; and
 - (b) may state the suspected contravention in general terms.
- (5) A copy of the warrant must be given to the Attorney-General within 24 hours after it is issued by:
 - (a) if the applicant is a police officer – the Commissioner of Police; or
 - (b) if the applicant is a corrective services officer – the Director; or
 - (c) otherwise – by the applicant.
- (6) However, a failure to comply with subsection (5) does not affect the Supreme Court's ability to make an order under section 35 or 37.
- (7) Section 122 of the *Police Administration Act* applies in relation to a warrant under this section as if:
 - (a) the warrant were being sought under that Act; and
 - (b) a reference in that section to a justice were a reference to a magistrate; and
 - (c) if the applicant is not a police officer – the applicant were a police officer.
- (8) For the purpose of executing a warrant issued under this section, a relevant officer (other than a police officer) to whom the warrant is directed, has such of the powers of a police officer as are necessary to enable the warrant to be executed.
- (9) In this section:

relevant officer means:

 - (a) a police officer; or
 - (b) a corrective services officer; or
 - (c) a person who is in a class of persons prescribed by regulation for this definition.

reasonably suspects means suspects on grounds that are reasonable in all the circumstances.

35 Order concerning custody of arrested prisoner

- (1) This section applies if a supervised prisoner is arrested and brought before the Supreme Court under a warrant issued under section 34.
- (2) The Supreme Court must:
 - (a) order the arrested prisoner be detained in custody until the final decision of the Supreme Court under section 37 (an *interim detention order*); or
 - (b) release the arrested prisoner under subsection (5).
- (3) The arrested prisoner may apply to the Supreme Court to be released pending the final decision:
 - (a) when the issue of his or her custody is raised under subsection (2); or
 - (b) at any time after an order has been made under subsection (2)(a).
- (4) If an application under subsection (3) is adjourned, the Supreme Court must order the arrested prisoner be detained in custody pending the decision on the application (an *interim detention order*).
- (5) The Supreme Court may order the release of the arrested prisoner only if the prisoner satisfies the Supreme Court, on the balance of probabilities, that his or her detention in custody pending the final decision is not justified because exceptional circumstances exist.
- (6) If the Supreme Court orders the release of the arrested prisoner, the Supreme Court must order the prisoner be released subject to the existing order as amended under subsection (7).
- (7) The Supreme Court may amend the existing order to include any requirements it considers appropriate:
 - (a) to ensure adequate protection of the community; or
 - (b) for the prisoner's rehabilitation, care or treatment.
- (8) An amendment cannot be made under subsection (7) to remove a requirement mentioned in section 26(1).

36 Victim's submission about further order

- (1) This section applies if the victim of a serious sexual offence for which an arrested prisoner has served a term or period of imprisonment:
 - (a) is a registered person; or
 - (b) is an injured person (as defined in section 19 of the *Victims of Crime Rights and Services Act*) for whom another person is registered under section 19(1)(b) or (c) of that Act.
- (2) As soon as practicable after the Supreme Court sets a date for the hearing for making its final decision under section 37 (the **hearing date**), the Director must give the registered person written notice of the arrest and hearing date (a **hearing notice**).
- (3) However, subsection (2) does not apply if:
 - (a) the Director has previously given the registered person a hearing notice about the arrested prisoner; and
 - (b) the registered person has informed the Director that the person no longer wishes to receive hearing notices about the arrested prisoner.
- (4) The notice must invite the registered person to give the Director, before the date stated in the notice, a written submission stating:
 - (a) the registered person's views about any further order or conditions of release to which the arrested prisoner should be subject; and
 - (b) any other matters prescribed by regulation.
- (5) The Director must, before the hearing date, give the Attorney-General:
 - (a) if the Director received a submission from the registered person in response to a hearing notice – the submission; or
 - (b) otherwise – information that the registered person:
 - (i) has not given a submission in response to a hearing notice; or
 - (ii) has informed the Director that the registered person no longer wishes to receive hearing notices for the arrested prisoner.

- (6) The Attorney-General must produce to the Supreme Court any submission received from the registered person before the hearing date.

37 Orders following arrest for contravention

- (1) This section applies if the Supreme Court is satisfied, on the balance of probabilities, that an arrested prisoner is likely to contravene, is contravening, or has contravened, a requirement of the existing order.
- (2) Subject to subsection (3), the Supreme Court must:
- (a) if the existing order is a final supervision order – revoke it and order the arrested prisoner be detained in custody for an indefinite term for control, rehabilitation, care or treatment (a *continuing detention order*); or
 - (b) if the existing order is an interim supervision order – revoke it and order the arrested prisoner be detained in custody for the period stated in the order (an *interim detention order*).
- (3) The Supreme Court is not required to make an order under subsection (2) if the arrested prisoner satisfies the Supreme Court, on the balance of probabilities, that despite the contravention or likely contravention of the existing order, adequate protection of the community can be ensured by the existing order as amended under subsection (8).
- (4) For subsections (2) and (3), the Supreme Court may do one or more of the following:
- (a) act on any evidence before it or that was before it when the existing order was made;
 - (b) make any order necessary to enable evidence of a matter mentioned in section 4(3) to be brought before it, including an order:
 - (i) in the nature of a risk assessment order, subject to the restriction under section 10(2); or
 - (ii) for the revision of a report about the prisoner produced under section 14;
 - (c) consider any further report or revised report in the nature of a report of a type mentioned in section 14.

- (5) To avoid doubt, the Supreme Court need not make an order in the nature of a risk assessment order if satisfied the evidence otherwise available under subsection (4) is sufficient to make a decision under subsections (2) and (3).
- (6) If the Supreme Court makes an order in the nature of a risk assessment order, the psychiatrist or each psychiatrist examining the arrested prisoner must prepare a report about the prisoner and, for that purpose, section 12 applies.
- (7) For applying section 12 to the preparation of the report:
 - (a) section 12(2) applies with the necessary changes; and
 - (b) section 12(3) only applies to the extent that a report or information has not previously been given to the psychiatrist.
- (8) If satisfied as mentioned in subsection (3), the Supreme Court may amend the existing order to include any requirements it considers appropriate:
 - (a) to ensure adequate protection of the community; or
 - (b) for the prisoner's rehabilitation, care or treatment.
- (9) An amendment cannot be made under subsection (8) to remove a requirement mentioned in section 26(1).

38 Appearance by Attorney-General

- (1) The Attorney-General has a right to appear before the Supreme Court at a hearing of a matter under section 35 or 37.
- (2) At the hearing the Attorney-General may do one or more of the following:
 - (a) make submissions;
 - (b) call evidence;
 - (c) test the evidence before the Supreme Court.

39 Contravention of supervision order

- (1) A supervised prisoner must not engage in conduct that results in a contravention of the prisoner's supervision order.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

Division 9 Effect of return to custody of supervised prisoner

40 Application of Division

This Division applies if:

- (a) a supervised prisoner is sentenced to a term of imprisonment for an offence; and
- (b) the commission of the offence is not a contravention of the requirement mentioned in section 26(1)(i).

Note for section 40

Commission of the offence would be a contravention of the requirement mentioned in section 26(1)(i) if the offence was of a sexual nature and was committed while the supervision order was in force. In that case, the commission of the offence would be a contravention of the supervision order for which action could be taken under Division 8.

41 Period in custody not counted

- (1) The supervised prisoner's supervision order is suspended for any period the prisoner is detained in custody on remand or serving a term of imprisonment.
- (2) The period for which the supervision order has effect as stated in the order is extended by any period the supervised prisoner is detained in custody.

Division 10 Disclosure provisions

42 Duty to disclose

- (1) This section applies in relation to the following:
 - (a) an application for a Division 3 order or Division 4 supervision order;
 - (b) the hearing of a matter under Division 8;
 - (c) a review under Part 4.
- (2) The Attorney-General has the same duty to disclose evidence or things in the Attorney-General's possession as the prosecution has in a criminal proceeding.

- (3) The Attorney-General must disclose the evidence or things:
 - (a) for an application mentioned in subsection (1)(a) – at least 7 days before the application is heard; or
 - (b) for the hearing of a matter under Division 8 – as soon as practicable after both the following occur:
 - (i) the Attorney-General is given a copy of the warrant issued under section 34;
 - (ii) the warrant is executed; or
 - (c) for a review under Part 4 – at least 7 days before the review hearing commences.
- (4) If the Attorney-General cannot comply with the time requirement because the evidence or thing was not in the Attorney-General's possession in sufficient time (including, for example, because it did not exist at the time), the Attorney-General must disclose it as soon as practicable after it comes into the Attorney-General's possession.

43 Release of victim details to Attorney-General

The Director of the CVSU (as defined in section 4 the *Victims of Crime Rights and Services Act*) is authorised to give the Director details of a registered person's identity and contact details recorded in the victims register if requested by the Director for section 15 or 36.

Part 4 Review of continuing detention

44 Annual review

- (1) The Supreme Court must review a continuing detention order at the intervals provided for under this section.
- (2) The hearing for the first review and all submissions for the hearing must be completed within 2 years after the day the order first had effect.
- (3) There must be subsequent annual reviews while the order continues to have effect.
- (4) Each annual review must start within 12 months after the completion of the hearing for the last review under this section.

- (5) The Attorney-General must make any necessary applications to ensure the reviews required by this section are carried out.

45 Review on application by prisoner

- (1) A prisoner subject to a continuing detention order may, with leave of the Supreme Court, apply to the Supreme Court for the order to be reviewed at any time after the review mentioned in section 44(2) is completed.
- (2) The Supreme Court may grant leave to apply only if satisfied there are exceptional circumstances that relate to the prisoner.
- (3) The Supreme Court must hear an application under this section as soon as practicable after it is made.

46 Attorney-General may produce report

Section 14 applies for any application under section 44 or 45 as if the application were an application for a Division 3 order.

47 Psychiatric reports to be prepared for review

- (1) Unless the Supreme Court orders otherwise, for the purposes of a review under section 44 or 45, the Director must arrange for the prisoner to be examined by 2 psychiatrists.
- (2) Subsection (1) authorises the examination of the prisoner by the psychiatrists, each of whom must examine the prisoner and prepare a report as mentioned in section 12.
- (3) For subsection (2), section 12 applies with necessary changes.
- (4) Section 13 applies in relation to a report under this section.

48 Review hearing

- (1) At the hearing of a review under section 44 or 45, the Supreme Court must review the decision that the prisoner is a serious danger to the community having regard to section 4.
- (2) If the Supreme Court affirms the decision, it may:
 - (a) order the prisoner continue to be subject to the continuing detention order; or
 - (b) order the prisoner be released from custody subject to the requirements the Supreme Court considers appropriate and that are stated in the order (a *Part 4 supervision order*).

- (3) In deciding whether to make an order under subsection (2)(a) or (b):
 - (a) the need to ensure adequate protection of the community is the paramount consideration; and
 - (b) the Supreme Court must have regard to:
 - (i) whether adequate protection of the community can be reasonably and practicably managed by a Part 4 supervision order; and
 - (ii) whether requirements under section 26 can be reasonably and practicably managed by corrective services officers.
- (4) If it does not make an order under subsection (2)(a), the Supreme Court must revoke the prisoner's continuing detention order.

Part 5 Appeals

49 Court of Appeal may make interim orders

- (1) This section applies if:
 - (a) an appeal, or application for leave to appeal, is lodged under the *Supreme Court Act* against a decision made under this Act; and
 - (b) the Court of Appeal is satisfied the appeal or application may not be finally decided until after the prisoner's release day.
- (2) This section also applies if:
 - (a) on an appeal under the *Supreme Court Act* against a decision made under this Act, the Court of Appeal remits the matter under section 55(2)(c) of the *Supreme Court Act*, and
 - (b) the Court of Appeal is satisfied the remitted matter may not be heard until after the prisoner's release day.
- (3) The Court of Appeal may:
 - (a) order the prisoner's release from custody be supervised (an *interim supervision order*); or

- (b) order the prisoner be detained in custody for the period stated in the order (an *interim detention order*).

Note for section 49

Section 51 of the Supreme Court Act confers a right of appeal on a party to proceedings before the Supreme Court.

Part 6 General matters

Division 1 Procedural matters

50 Certain matters may be decided on papers

- (1) This section applies in relation to how the Supreme Court may decide whether it is satisfied as mentioned in section 10(1), 21(2), 31(2) or 32(2).
- (2) The Supreme Court may decide whether it is satisfied entirely or partly from a consideration of the documents filed in relation to the matter, without the prisoner or witnesses appearing.
- (3) The Supreme Court may do so without the prisoner consenting to, or being heard on, the matter being decided in that way.
- (4) In making its decision, the Supreme Court may receive into evidence any of the following documents if they are relevant to a matter in issue:
- (a) the prisoner's criminal history;
 - (b) the certified transcript of any proceeding against the prisoner for a serious sexual offence;
 - (c) a medical, psychiatric, psychological or other report tendered in any proceeding against the prisoner for a serious sexual offence.

51 Evidence at certain other hearings

- (1) This section applies in relation to the hearing of any of the following:
- (a) an application for a Division 3 order;
 - (b) an application for a Division 4 supervision order;
 - (c) a proceeding under section 37;
 - (d) a review under Part 4.

- (2) Subject to the admissibility of the evidence, at the hearing the Supreme Court must:
 - (a) hear evidence called by the Attorney-General; and
 - (b) hear any evidence the prisoner elects to give or call.
- (3) The ordinary rules of evidence apply to evidence given or called under subsection (2).
- (4) In making its decision the Supreme Court may receive into evidence any of the following documents if they are relevant to a matter in issue:
 - (a) the prisoner's criminal history;
 - (b) the certified transcript of any proceeding against the prisoner for a serious sexual offence;
 - (c) a medical, psychiatric, psychological or other report tendered in any proceeding against the prisoner for a serious sexual offence.

52 Court may give directions

The Supreme Court may give directions in relation to the conduct of a proceeding under this Act on its own initiative or on application.

53 Provisions about victim's submissions and hearings

- (1) This section applies in relation to a hearing at which a submission mentioned in section 15 or 36 may be produced to the Supreme Court.
- (2) To avoid doubt, it is declared that regard may be had to the submission even though it gives no details of the harm caused to the relevant victim by the serious sexual offence in relation to which it was given.
- (3) The mere fact that a submission has not been produced to the Supreme Court does not, of itself, give rise to an inference:
 - (a) that the serious sexual offence caused the relevant victim little or no harm; or
 - (b) that the relevant victim has no interest in the outcome of the hearing.

- (4) If the Director becomes aware that a person has contravened subsection (1), the Director may request the Registrar of Births, Deaths and Marriages:
- (a) to refuse to register the change of name; or
 - (b) if the change of name has been registered – to register a further change of name to reverse the change made in contravention of subsection (1).

57 Relationship with *Bail Act*

The *Bail Act* does not apply to a person who is in custody under an order made under this Act or who has been arrested under a warrant issued under section 34.

58 Relationship with *Parole of Prisoners Act*

A parole order cannot be made under the *Parole of Prisoners Act* in relation to a prisoner if:

- (a) the prisoner is subject to a detention order, whether or not the order has taken effect; or
- (b) under section 10(1), the Supreme Court has set a date for the hearing of an application for a Division 3 order for the prisoner and the application has not been discontinued or finally decided.

59 Approved forms

The Director may approve forms for this Act.

60 Regulations

The Administrator may make regulations under this Act.

Part 7 Transitional matters for Dangerous Prisoners (Sexual Offenders) Act 2011

61 Existing prisoners

To avoid doubt, this Act applies in relation to a person who is a prisoner on or after the commencement of this Act regardless of whether the person became a prisoner before that commencement.

Part 8 Consequential amendments of other laws

Division 1 Births, Deaths and Marriages Registration Act

62 Act amended

This Division amends the *Births, Deaths and Marriages Registration Act*.

63 Section 27A inserted

After section 27

insert

27A Request under *Dangerous Prisoners (Sexual Offenders) Act*

On receipt of a request under section 56(4) of the *Dangerous Prisoners (Sexual Offenders) Act*, the Registrar may:

- (a) refuse to register the change of name; or
- (b) if the change of name has been registered – register a further change of name to reverse the change made in contravention of section 56(1) of that Act.

Division 2 Child Protection (Offender Reporting and Registration) Act

64 Act amended

This Division amends the *Child Protection (Offender Reporting and Registration) Act*.

65 Section 42 amended

After section 42(2)

insert

- (2A) The Court must not make the order if the reportable offender is subject to a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act*.

66 Section 46 amended

(1) Section 46(1)(c)

omit

period.

insert

period; or

(2) After section 46(1)(c)

insert

(d) is made the subject of a supervision order under the
Dangerous Prisoners (Sexual Offenders) Act.

(3) Section 46(2)

omit

subsection (1) is

insert

subsection (1)(a), (b) or (c) is

(4) Section 46(3)

omit

or prohibition order

insert

, prohibition order or supervision order

67 Section 47 amended

Section 47(1), at the end

insert

Note for subsection (1)

If the order ceases to have effect under section 46(1)(d), section 42(2A) prevents the Court making a new order while the reportable offender remains subject to the supervision order.

Division 3 Parole of Prisoners Act

68 Act amended

This Division amends the *Parole of Prisoners Act*.

69 Section 3R amended

After section 3R(e)

insert

(ea) to exercise the functions of a corrective services officer under the *Dangerous Prisoners (Sexual Offenders) Act*; and

70 Section 5 amended

After section 5(2)

insert

(2A) A parole order cannot be made contrary to section 58 of the *Dangerous Prisoners (Sexual Offenders) Act*.

Division 4 Prisons (Correctional Services) Act

71 Act amended

This Division amends the *Prisons (Correctional Services) Act*.

72 Section 9A inserted

After section 9, in Part 2

insert

9A Functions of officers under *Dangerous Prisoners (Sexual Offenders) Act*

The functions of a prison officer include exercising the functions of a corrective services officer under the *Dangerous Prisoners (Sexual Offenders) Act*.

Division 5 Victims of Crime Rights and Services Act

73 Act amended

This Division amends the *Victims of Crime Rights and Services Act*.

74 Section 3 amended

Section 3(c), after "violent criminal offences"

insert

or serious sexual offences

75 Section 4 amended

Section 4

insert (in alphabetical order)

serious sexual offence, see section 2 of the *Dangerous Prisoners (Sexual Offenders) Act*.

76 Section 18 amended

After section 18(a)

insert

(aa) a serious sexual offence; or

77 Section 22 amended

(1) Section 22(1)(k)

omit

or suspended sentence order

insert

, suspended sentence order or supervision order

(2) Section 22(1)(l), after "other sentence"

insert

or order

(3) Section 22(1)(l)

omit

order;

insert

order or supervision order;

(4) Section 22(1)(m)

omit

or parole order

insert

, parole order or supervision order

(5) After section 22(1)

insert

(1A) If the relevant offence was a serious sexual offence, the CVSU must also give a registered person notice of the following:

- (a) that the *Dangerous Prisoners (Sexual Offenders) Act* applies in relation to the offender;
- (b) any application made under section 7 of the *Dangerous Prisoners (Sexual Offenders) Act* about the offender;
- (c) the making of a detention order against the offender;
- (d) if a supervision order is made against the offender:
 - (i) the making of the order; and
 - (ii) the date of release of the offender under the order; and
 - (iii) the requirements contained in the order and any change to them; and
 - (iv) the period of the order and any change of that period; and
 - (v) any directions (as defined in section 29(2) of the *Dangerous Prisoners (Sexual Offenders) Act*) given to the offender;
- (e) the revocation of a detention order or supervision order made against the offender.

Note for subsection (1A)

Under the Dangerous Prisoners (Sexual Offenders) Act, the Director of Correctional Services is required to invite the registered person to make submissions at any hearing about the offender under Part 3, Division 3 or 8 of that Act.

(6) Section 22(4)

insert (in alphabetical order)

detention order, see section 2 of the *Dangerous Prisoners (Sexual Offenders) Act*.

supervision order, see section 2 of the *Dangerous Prisoners (Sexual Offenders) Act*.

78 Section 25 amended

Section 25(1), after "section 22(1)"

insert

or (1A)

Division 6 Surveillance Devices Regulations

79 Regulations amended

This Division amends the *Surveillance Devices Regulations*.

80 Regulation 3 amended

After regulation 3(d)

insert

(da) in accordance with a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act*, to monitor the activities and location of the supervised prisoner;

Division 7 Expiry of Part

81 Expiry

This Part expires on the day after it commences.