

Serial 18
Serious Sex Offenders Bill 2013
Mr Elferink

A Bill for an Act to provide for continued detention or supervised release of
certain serious sex offenders, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

SERIOUS SEX OFFENDERS ACT 2013

Act No. [] of 2013

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2013

An Act to provide for continued detention or supervised release of certain serious sex offenders, and for related purposes

[Assented to [] 2013]
[Second reading [] 2013]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Serious Sex Offenders Act 2013*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Objects of Act

- (1) The primary object of this Act is to enhance the protection and safety of victims of serious sex offences and the community generally by allowing for the control, by continued detention or supervised release, of offenders who have committed serious sex offences and pose a serious danger to the community.
- (2) The secondary object of this Act is to provide for the continuing rehabilitation, care and treatment of those offenders.

4 Definitions

In this Act:

alleged contravention, see section 48(1).

approved monitoring device, see section 5 of the *Prisons (Correctional Services) Act*.

approved voice recognition system, see section 5 of the *Prisons (Correctional Services) Act*.

business day means a day other than a Saturday, Sunday or public holiday.

continuing detention order, see section 8(1).

detainee means a person subject to a continuing detention order.

Director of Correctional Services means the Director of Correctional Services appointed under section 6 of the *Prisons (Correctional Services) Act*.

Director of the CVSU means the Director of the CVSU appointed under section 6 of the *Victims of Crime Rights and Services Act*.

final continuing detention order, see section 8(2)(a).

final supervision order, see section 13(2)(a).

health practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in a health profession (other than as a student).

in custody means:

- (a) in custody in a prison or police prison (as defined in section 5 of the *Prisons (Correctional Services) Act*); or
- (b) otherwise in lawful custody within the meaning of section 11 of the *Prisons (Correctional Services) Act* or section 84(1) of the *Mental Health and Related Services Act*.

interim continuing detention order, see section 8(2)(b).

interim supervision order, see section 13(2)(b).

medical assessment order, see section 79(1).

medical expert means a health practitioner registered to practise:

- (a) in the medical profession in the recognised specialty of psychiatry; or
- (b) in a health profession prescribed by regulation.

medical report, see section 79(2)(b)(i).

offence of a sexual nature means:

- (a) a serious sex offence; or
- (b) any of the following:
 - (i) an offence listed in Schedule 2;
 - (ii) an offence that was listed in Schedule 2 at the time the offence was committed;
 - (iii) an offence substantially corresponding to an offence mentioned in subparagraph (i) or (ii) against a law of another jurisdiction (including a jurisdiction outside Australia);
 - (iv) an offence of attempting, or of conspiracy or incitement to commit, an offence mentioned in subparagraph (i), (ii) or (iii).

offender, for Part 8, Division 2, see section 83(1)(a).

original decision, see section 102(1).

parole officer means a parole officer (as defined in section 3(1) of the *Parole of Prisoners Act*) or the Director of Correctional Services.

parole order, see section 3(1) of the *Parole of Prisoners Act*.

qualifying offender, see section 22(1).

registered person, for Part 8, Division 2, see section 83(1)(c).

requirement, for a supervision order, means a requirement included in the order under section 18 or 19.

serious danger to the community, see section 6(1).

serious sex offence means any of the following:

- (a) an offence listed in Schedule 1;

- (b) an offence that was listed in Schedule 1 at the time the offence was committed;
- (c) an offence substantially corresponding to an offence mentioned in paragraph (a) or (b) against:
 - (i) a law that has been repealed; or
 - (ii) a law of another jurisdiction (including a jurisdiction outside Australia);
- (d) an offence of attempting, or of conspiracy or incitement to commit, an offence mentioned in paragraph (a), (b) or (c).

supervisee means a person subject to a supervision order.

supervision order, see section 13(1).

Victims Register means the register as defined in section 4 of the *Victims of Crime Rights and Services Act*.

victim submission, see section 84.

5 Application of Criminal Code

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

Note for section 5

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 2 Continuing detention orders and supervision orders – general matters

Division 1 Serious danger to the community

6 Serious danger to the community

- (1) A person is a ***serious danger to the community*** if there is an unacceptable risk that he or she will commit a serious sex offence unless he or she is in custody or subject to a supervision order.

- (2) In deciding whether a person is a serious danger to the community, a court must have regard to the following:
 - (a) the likelihood of the person committing another serious sex offence;
 - (b) the impact of serious sex offences committed, or likely to be committed, by the person on:
 - (i) victims of those offences and the victims' families; and
 - (ii) members of the community generally;
 - (c) the need to protect people from those impacts.

7 Standard and onus of proof

- (1) A court must not decide that a person is a serious danger to the community unless it is satisfied, to a high degree of probability, that there is acceptable and cogent evidence of sufficient weight to justify the decision.
- (2) The Attorney-General has the onus of satisfying the court that the person is a serious danger to the community.

Division 2 Continuing detention orders

8 Nature of continuing detention order

- (1) A *continuing detention order* is an order that the person subject to the order (the *detainee*) be detained in custody.
- (2) A continuing detention order may be:
 - (a) a *final continuing detention order* – being a continuing detention order, made on the determination of a proceeding, under which the detainee is to be detained indefinitely; or
 - (b) an *interim continuing detention order* – being a continuing detention order, made on an interim basis while a proceeding is before a court, under which the detainee is to be detained pending determination of the proceeding.
- (3) A continuing detention order has effect as a warrant committing the detainee into custody in accordance with the terms of the order.

- (4) If the detainee is not in custody when a continuing detention order comes into force, the order also has effect as a warrant for his or her arrest.

Note for section 8

A final continuing detention order may be made under section 31(1) or 58(1)(b)(ii). An interim continuing detention order may be made under section 30(2), 52(a), 54(3), 58(1)(b)(i), 105(2) or 107(2).

9 Considerations when making, confirming or revoking continuing detention order

- (1) In deciding whether to make, confirm or revoke a continuing detention order in relation to a person, a court must have regard to the following:
- (a) as the paramount consideration – the need to protect:
 - (i) victims of serious sex offences committed, or likely to be committed, by the person; and
 - (ii) the victims' families; and
 - (iii) members of the community generally;
 - (b) as a secondary consideration – the desirability of providing rehabilitation, care and treatment for the person.
- (2) In considering the need for protection mentioned in subsection (1)(a), the court must have regard to the following:
- (a) the likelihood of the person committing another serious sex offence;
 - (b) whether adequate protection could reasonably be provided by making a supervision order in relation to the person.

10 Duration of continuing detention order

- (1) A continuing detention order comes into force:
- (a) if the detainee is a qualifying offender when the order is made – when he or she ceases to be a qualifying offender; or
 - (b) otherwise – at the time the order is made.

Note for subsection (1)(a)

If the detainee is a qualifying offender who is subject to a parole order, the Supreme Court may suspend or revoke the parole order under section 28(2) or 31(2) so that the detainee serves out his or her sentence in prison before the continuing detention order comes into force.

- (2) A final continuing detention order remains in force until it is revoked.
- (3) An interim continuing detention order remains in force until the first of the following occurs:
 - (a) the order is revoked;
 - (b) the proceeding during which it was made is finally determined;
 - (c) the order expires.

11 Expiry date for interim continuing detention order

- (1) A court making an interim continuing detention order must state in the order the date on which it will expire.
- (2) A court may, on application by the Attorney-General, amend an interim continuing detention order to extend the duration of the order.
- (3) However, the total period for which a detainee may be subject to an interim continuing detention order pending determination of a particular proceeding cannot exceed 4 months unless the court is satisfied there are exceptional circumstances.

12 Detainee cannot be granted bail or parole

- (1) A detainee cannot be granted bail under the *Bail Act*.
- (2) A parole order cannot be made under the *Parole of Prisoners Act* in relation to a detainee.

Division 3 Supervision orders

Subdivision 1 Nature and consideration when making

13 Nature of supervision order

- (1) A *supervision order* is an order that the person subject to the order (the *supervisee*) must comply with the requirements included in the order under sections 18 and 19.
- (2) A supervision order may be:
 - (a) a *final supervision order* – being a supervision order, made on the determination of a proceeding, under which the supervisee is to be supervised for a stated period of at least 5 years; or

- (b) an *interim supervision order* – being a supervision order, made on an interim basis while a proceeding is before a court, under which the supervisee is to be supervised pending determination of the proceeding.
- (3) If the duration of a final supervision order is extended on an interim basis under section 37, it becomes an interim supervision order, but if the Supreme Court extends the order under section 38 it again becomes a final supervision order.

Note for section 13

A final supervision order may be made under section 31(1) or 71(1)(b). An interim supervision order may be made under section 30(2), 105(2) or 107(2).

14 Considerations when making, amending or revoking supervision order

- (1) This section applies when a court is deciding:
 - (a) whether to make, amend or revoke a supervision order in relation to a person; and
 - (b) if a supervision order is to be made or amended:
 - (i) the requirements to be included in the order; and
 - (ii) the expiry date (if any) for the order.
- (2) The court must have regard to the following:
 - (a) as the paramount consideration – the need to protect:
 - (i) victims of serious sex offences committed, or likely to be committed, by the person; and
 - (ii) the victims' families; and
 - (iii) members of the community generally;
 - (b) as a secondary consideration – the desirability of providing rehabilitation, care and treatment for the person.
- (3) In considering the need for protection mentioned in subsection (2)(a), the court must have regard to the following:
 - (a) the likelihood of the person committing another serious sex offence;

- (b) whether it will be reasonably practicable for the Director of Correctional Services to ensure that the person is appropriately managed and supervised as mentioned in section 63;
- (c) whether adequate protection could only reasonably be provided by making a continuing detention order in relation to the person.

15 Further considerations if person is reportable offender

- (1) This section applies if the person who is or will be the supervisee is a reportable offender under the *Child Protection (Offender Reporting and Registration) Act*.
- (2) The court must ensure, as far as is reasonably practicable, that the requirements in the supervision order are not inconsistent with the person's obligations as a reportable offender.
- (3) The court may amend the person's prohibition order under the *Child Protection (Offender Reporting and Registration) Act* to avoid an inconsistency.
- (4) When making or amending a supervision order, the court must explain to the person the effect of section 62 on his or her obligations under this Act and the *Child Protection (Offender Reporting and Registration) Act*.

16 Duration of supervision order

- (1) A supervision order comes into force:
 - (a) if the supervisee is a qualifying offender when the order is made – when he or she ceases to be a qualifying offender; or
 - (b) otherwise – at the time the order is made.

Note for subsection (1)(a)

If the supervisee is a qualifying offender who is subject to a parole order, the Supreme Court may allow the supervisee to serve out his or her sentence on parole before the supervision order comes into force. Alternatively, the Court may suspend or revoke the parole order under section 28(2) or 31(2) so that the supervisee serves out his or her sentence in prison before the supervision order comes into force.

- (2) An interim supervision order remains in force until the first of the following occurs:
 - (a) the order is revoked;

- (b) the proceeding during which the order was made or extended is finally determined;
 - (c) if an expiry date is stated in the order – the order expires.
- (3) A final supervision order remains in force until the first of the following occurs:
- (a) the order is revoked;
 - (b) the order expires.
- (4) Despite subsection (3)(b), if a supervisee is returned to custody to serve a sentence of imprisonment for an offence, the period for which the order remains in force is extended by the length of time he or she is in custody serving that sentence.

17 Expiry date for final supervision order

- (1) A court making a final supervision order must state in the order the date on which it will expire.
- (2) The expiry date must be at least 5 years after the date on which the order will come into force.
- (3) In deciding the expiry date, the court must disregard the fact that the period for which the order is to remain in force might be extended under section 38.

Subdivision 2 Requirements and directions

18 Compulsory requirements

- (1) A court making a supervision order must include in it requirements that the supervisee:
 - (a) must not commit:
 - (i) a serious sex offence; or
 - (ii) an offence of a sexual nature; and
 - (b) must report to a parole officer as directed by a parole officer; and
 - (c) must receive visits and accept communications from a parole officer as directed by a parole officer; and

- (d) must give to a parole officer information about the supervisee's place of residence and place of employment or education as directed by a parole officer;
 - (e) must not leave, or stay out of, the Territory without the permission of a parole officer; and
 - (f) must comply with any directions given to the supervisee under section 20, other than directions about matters stated in the order under subsection (2).
- (2) The court may state in the order matters about which a parole officer cannot give the supervisee directions.
- (3) A court amending a supervision order cannot amend it to remove a requirement mentioned in subsection (1).

19 Optional requirements

A court making a supervision order may include in it any other requirements the court considers appropriate.

Note for section 19

Sections 14 and 15 set out matters to which the court must have regard when deciding the requirements to be included in the order.

20 Directions by parole officers

- (1) A parole officer may give to a supervisee any direction the officer believes on reasonable grounds is appropriate.

Note for subsection (1)

Section 21 sets out matters to which a parole officer must have regard when deciding whether to give a direction.

- (2) A parole officer may give a direction about a matter even if there is a requirement about the matter in the supervisee's supervision order.
- (3) However, a parole officer cannot give a direction:
- (a) about a matter stated in the order under section 18(2); or
 - (b) that is directly inconsistent with a requirement in the order.
- (4) Without limiting subsection (1), a parole officer may direct a supervisee to do any or all of the following:
- (a) report to a parole officer at specified times and places;
 - (b) wear an approved monitoring device;

- (c) give a sample of the supervisee's voice for use with an approved voice recognition system;
 - (d) allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of an approved monitoring device or voice recognition system;
 - (e) reside at a specified place;
 - (f) remain at a specified place for specified periods;
 - (g) leave a specified place;
 - (h) participate in specified rehabilitation, care or treatment;
 - (i) do anything that is reasonably necessary to enable:
 - (i) the supervisee to be managed and supervised in the way determined by the Director of Correctional Services under section 63; or
 - (ii) the supervisee's compliance with the order to be monitored and enforced.
- (5) Without limiting subsection (1), a parole officer may direct a supervisee not to do any or all of the following:
- (a) reside at a specified place;
 - (b) go to a specified place or class of places either at all or during specified periods;
 - (c) associate or make contact with:
 - (i) victims of serious sex offences committed by the supervisee; or
 - (ii) the victims' families; or
 - (iii) any other specified person or class of persons;
 - (d) engage in specified employment;
 - (e) engage in specified conduct;
 - (f) consume alcohol or a drug (other than as prescribed by a health practitioner).

21 Considerations when giving directions

- (1) In deciding whether to give a direction to a supervisee, a parole officer must have regard to the following:
 - (a) as the paramount consideration – the need to protect:
 - (i) victims of serious sex offences committed, or likely to be committed, by the supervisee; and
 - (ii) the victims' families; and
 - (iii) members of the community generally;
 - (b) as a secondary consideration – the desirability of providing rehabilitation, care and treatment for the supervisee.
- (2) In considering the need for protection mentioned in subsection (1)(a), the parole officer must have regard to the following:
 - (a) the need to ensure that the supervisee is managed and supervised in the way determined by the Director of Correctional Services under section 63;
 - (b) the need to ensure that the supervisee's compliance with his or her supervision order is monitored and enforced.

Part 3 Making continuing detention orders or supervision orders**22 Meaning of *qualifying offender***

- (1) A person is a *qualifying offender* if:
 - (a) he or she has been convicted of a serious sex offence; and
 - (b) either:
 - (i) he or she is under sentence of imprisonment for that offence; or
 - (ii) subsection (4) applies to him or her.
- (2) A person sentenced to imprisonment for an offence is *under sentence of imprisonment* if he or she:
 - (a) is in custody serving the sentence; or

- (b) is subject to one of the following orders in relation to the offence:
 - (i) an order suspending the sentence under section 40 of the *Sentencing Act*,
 - (ii) a home detention order under section 44 of the *Sentencing Act*,
 - (iii) a community custody order under section 48B of the *Sentencing Act*, or
- (c) has been released from custody on parole but is taken, under section 14(1) of the *Parole of Prisoners Act*, to be still under sentence of imprisonment for the offence.

Note for subsection (2)(c)

Under section 14(1) of the Parole of Prisoners Act, a person released on parole is taken to still be under sentence of imprisonment until the day on which the term of imprisonment to which he or she was sentenced expires.

- (3) For subsection (1)(b)(i), it is immaterial whether the person is, at the same time, under sentence of imprisonment for another offence.
- (4) For subsection (1)(b)(ii), this subsection applies to a person if:
 - (a) he or she has served his or her sentence for the serious sex offence; and
 - (b) he or she is:
 - (i) under sentence of imprisonment for another offence; or
 - (ii) is in custody for any other reason, other than under a continuing detention order; and
 - (c) the person has not, at any time since commencing to serve the sentence mentioned in paragraph (a), ceased to be:
 - (i) under sentence of imprisonment for an offence; or
 - (ii) in custody for any other reason, other than under a continuing detention order.
- (5) It is immaterial when the serious sex offence was committed or when the person was charged with or convicted of the offence.
- (6) In this section, for a person who is under 18 years of age:

imprisonment includes detention within the meaning of the *Youth Justice Act*.

in custody includes in detention in a detention centre as defined in section 5(1) of the *Youth Justice Act*.

Note for subsection (6)

Although a person who is under 18 years of age may be a qualifying offender, a final continuing detention order or final supervision order cannot come into force before the person turns 18 (see sections 10(1) and 23(2)(b)).

23 Application for continuing detention order or supervision order

- (1) The Attorney-General may apply to the Supreme Court for a final continuing detention order or final supervision order in relation to a qualifying offender.
- (2) An application cannot be made unless the offender:
 - (a) is due to cease to be a qualifying offender within 12 months; and
 - (b) will be over 18 years of age when he or she ceases to be a qualifying offender.

24 Setting date for preliminary hearing

- (1) If an application is made under section 23, the Registrar of the Supreme Court must set a date for a preliminary hearing.
- (2) The date set must be not more than 28 business days after the application is made.

25 Preliminary hearing to determine if evidence of serious danger to the community

- (1) At the preliminary hearing the Supreme Court must decide whether the matters alleged in the application would, if proved, satisfy the Court that the qualifying offender is a serious danger to the community.
- (2) If the Court decides that it would be satisfied, it must:
 - (a) set a date for the hearing of the application; and
 - (b) make a medical assessment order in relation to the offender naming 2 medical experts.
- (3) If the Court decides that it would not be satisfied, it must dismiss the application.

26 Victim submissions

If the Supreme Court sets a hearing date under section 25(2)(a):

- (a) the Attorney-General must notify the Director of the CVSU of the date; and
- (b) the Director of the CVSU must then seek victim submissions about the offender under section 83.

27 Supervision report

If the Supreme Court sets a hearing date under section 25(2)(a):

- (a) the Attorney-General must notify the Director of Correctional Services of the date; and
- (b) the Director of Correctional Services must then prepare a supervision report about the offender under section 88.

28 Suspension of parole order

- (1) This section applies if:
 - (a) the Supreme Court has set a hearing date under section 25(2)(a); and
 - (b) the qualifying offender is subject to a parole order.
- (2) The Court may suspend the parole order pending determination of the application made under section 23.
- (3) A suspension remains in force until the application is finally determined or the suspension is revoked.
- (4) While a parole order is suspended it is of no effect.

29 Qualifying offender cannot be granted parole

- (1) This section applies if:
 - (a) the Supreme Court has set a hearing date under section 25(2)(a); and
 - (b) the application made under section 23 has not been finally determined.
- (2) A parole order cannot be made under the *Parole of Prisoners Act* in relation to the qualifying offender.

30 Interim continuing detention order or interim supervision order

- (1) This section applies if:
 - (a) the Supreme Court has set a hearing date under section 25(2)(a); and
 - (b) the application made under section 23 has not been finally determined.
- (2) The Court may make an interim continuing detention order or interim supervision order in relation to the qualifying offender pending determination of the application.

31 Court may make final continuing detention order or final supervision order

- (1) On hearing an application made under section 23, the Supreme Court may make a final continuing detention order or final supervision order in relation to the qualifying offender if satisfied that the qualifying offender is a serious danger to the community.
- (2) If the Court makes a continuing detention order, it may state in the order a review period for section 65.
- (3) If the Court makes an order in relation to a person who is subject to a parole order, the Court may revoke the parole order.

32 Onus of proof

The Attorney-General has the onus of satisfying the Supreme Court that it is appropriate to make the final continuing detention order or final supervision order.

Part 4 Supervision orders – extension and amendment

Division 1 Extension of final supervision orders

33 Application to extend final supervision order

- (1) The Attorney-General may apply to the Supreme Court to amend a final supervision order to extend the duration of the order.
- (2) The application cannot be made unless the order is due to expire in less than 6 months.
- (3) The application may be combined with an application made under section 40 to make other amendments to the order.

34 Victim submissions

If an application is made under section 33:

- (a) the Attorney-General must notify the Director of the CVSU that the application has been made; and
- (b) the Director of the CVSU must then seek victim submissions about the supervisee under section 83.

35 Supervision report

If an application is made under section 33:

- (a) the Attorney-General must notify the Director of Correctional Services that the application has been made; and
- (b) the Director of Correctional Services must then prepare a supervision report about the supervisee under section 88.

36 Court may make medical assessment order

- (1) This section applies if an application has been made under section 33 but has not been finally determined.
- (2) The Supreme Court may make a medical assessment order in relation to the supervisee.
- (3) The Court may do so on application or on its own initiative.

37 Interim extension of supervision order

- (1) This section applies if an application has been made under section 33 but has not been finally determined.
- (2) The Supreme Court may amend the supervision order to extend the duration of the order on an interim basis pending determination of the application.

38 Court may extend supervision order

On hearing an application made under section 33, the Supreme Court may amend the supervision order to extend the duration of the order if satisfied that the supervisee is still a serious danger to the community.

39 Onus of proof

The Attorney-General has the onus of satisfying the Supreme Court that it is appropriate to extend the duration of a supervision order.

Division 2 Other amendments of supervision orders

40 Application to amend supervision order

- (1) The Attorney-General or a supervisee may apply to the Supreme Court to amend a supervision order.
- (2) However, an application cannot be made under this section to extend the duration of a final supervision order.
- (3) An application may be combined with an application made under section 33 to extend the duration of the order.

41 Victim submissions

If an application is made under section 40:

- (a) the Attorney-General must notify the Director of the CVSU that the application has been made; and
- (b) the Director of the CVSU must then seek victim submissions about the supervisee under section 83.

42 Supervision reports

If an application is made under section 40:

- (a) the Attorney-General must notify the Director of Correctional Services that the application has been made; and
- (b) the Director of Correctional Services must then prepare a supervision report about the supervisee under section 88.

43 Court may make medical assessment order

- (1) This section applies if an application has been made under section 40 but has not been finally determined.
- (2) The Supreme Court may make a medical assessment order in relation to the supervisee.
- (3) The Court may do so on application or on its own initiative.

44 Court may amend supervision order

- (1) On hearing an application made under section 40, the Supreme Court may amend the supervision order if satisfied it would be appropriate to do so.

- (2) However, the Court cannot amend the order to reduce the duration of the order to a period of less than 5 years from the date it came into force.

45 Onus of proof

The applicant has the onus of satisfying the Supreme Court that it is appropriate to amend a supervision order.

Part 5 Supervision orders – compliance and enforcement

Division 1 Offence

46 Offence to contravene supervision order

- (1) A supervisee must not engage in conduct that results in a contravention of a requirement of his or her 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 2 Contravention of supervision order

47 Application of Division

This Division applies in relation to an alleged contravention whether or not the supervisee is charged with, or convicted of, an offence under section 46 in relation to the contravention.

48 Officer may apply for warrant or summons

- (1) If a police officer or parole officer suspects on reasonable grounds that a supervisee has contravened, is contravening or is likely to contravene, a requirement of his or her supervision order (the *alleged contravention*), the officer may apply to a magistrate for a warrant or summons under section 49.
- (2) An application for a warrant must be made by information on oath or by telephone under section 50.
- (3) An application for a summons must be made in writing.

49 Warrant or summons to appear before Supreme Court

- (1) If satisfied there are reasonable grounds for suspecting the alleged contravention has occurred, is occurring or is likely to occur, the magistrate must issue:
 - (a) a warrant for the supervisee to be arrested and brought before the Supreme Court for the Court to consider the alleged contravention; or
 - (b) a summons for the supervisee to attend before the Supreme Court for the Court to consider the alleged contravention.
- (2) However, on an application for a warrant the magistrate must not issue a summons unless:
 - (a) the applicant consents; or
 - (b) the magistrate is satisfied there are exceptional circumstances.
- (3) The warrant or summons must state the alleged contravention, but may do so in general terms.
- (4) A copy of the warrant or summons 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 parole officer – the Director of Correctional Services.
- (5) However, a failure to comply with subsection (4) does not affect the validity of the warrant or summons or any order made under this Division.

50 Warrant may be issued by telephone

Section 122 of the *Police Administration Act* applies in relation to a warrant under section 49 as if:

- (a) the warrant were being sought under that Act; and
- (b) a reference in section 122 of that Act 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.

51 Arrested supervisee to be brought before Supreme Court

- (1) This section applies if a supervisee is arrested under a warrant issued under section 49.
- (2) The Attorney-General must ensure that, as soon as practicable after the supervisee is arrested, he or she is brought before the Supreme Court for the Court to consider the alleged contravention.
- (3) The arrested supervisee cannot be granted bail under the *Bail Act*.

52 Interim continuing detention order at initial hearing of arrested supervisee

When a supervisee arrested under a warrant issued under section 49 first appears before the Supreme Court, the Court must do one of the following:

- (a) make an interim continuing detention order in relation to the supervisee pending the Court's consideration of the alleged contravention under section 58;
- (b) make an order under section 53(3).

53 Release of arrested supervisee on continued supervision

- (1) This section applies if:
 - (a) a supervisee arrested under a warrant issued under section 49 has been brought before the Supreme Court (whether or not the Court has made an order under section 52(a)); and
 - (b) the Court has not completed its consideration of the alleged contravention under section 58.
- (2) The supervisee may apply to the Court to be released pending the Court's consideration of the alleged contravention.
- (3) The Court may order the release of the supervisee only if satisfied there are exceptional circumstances.
- (4) The supervisee has the onus of satisfying the Court that there are exceptional circumstances.
- (5) If it orders the release of the supervisee, the Court:
 - (a) must revoke any interim continuing detention order made under section 52(a); and

- (b) may amend the supervisee's supervision order as the Court considers appropriate.

54 Interim continuing detention order if proceeding adjourned

- (1) This section applies if:
 - (a) a supervisee has appeared before the Supreme Court in accordance with a summons issued under section 49; and
 - (b) the Court has not completed its consideration of the alleged contravention under section 58.
- (2) This section also applies if:
 - (a) an arrested supervisee was released under section 53; and
 - (b) the Court has not completed its consideration of the alleged contravention under section 58; and
 - (c) the Court is no longer satisfied that there are exceptional circumstances as mentioned in section 53(3).
- (3) The Court may make an interim continuing detention order in relation to the supervisee pending completion of the Court's consideration of the alleged contravention.

55 Victim submissions

- (1) This section applies if:
 - (a) a supervisee is arrested under a warrant issued under section 49; or
 - (b) a summons is issued under section 49.
- (2) The Attorney-General must notify the Director of the CVSU of the arrest or issuing of the summons.
- (3) The Director of the CVSU must then seek victim submissions about the supervisee under section 83.

56 Supervision report

- (1) This section applies if:
 - (a) a supervisee is arrested under a warrant issued under section 49; or
 - (b) a summons is issued under section 49.

- (2) The Attorney-General must notify the Director of Correctional Services of the arrest or issuing of the summons.
- (3) The Director of Correctional Services must then prepare a supervision report about the supervisee under section 88.

57 Court may make medical assessment order

- (1) This section applies if:
 - (a) either:
 - (i) a supervisee is arrested under a warrant issued under section 49; or
 - (ii) a summons is issued under section 49; and
 - (b) the Supreme Court has not completed its consideration of the alleged contravention under section 58.
- (2) The Court may make a medical assessment order in relation to the supervisee.
- (3) The Court may do so on application or on its own initiative.

58 Orders on consideration of alleged contravention

- (1) On considering an alleged contravention, if the Supreme Court is satisfied the supervisee has contravened, is contravening, or is likely to contravene, his or her supervision order, the Court must:
 - (a) revoke the supervision order; and
 - (b) make:
 - (i) if the revoked order was an interim supervision order – an interim continuing detention order pending determination of the proceeding in which the supervision order was made; or
 - (ii) if the revoked order was a final supervision order – a final continuing detention order.
- (2) However, the Court is not required to make the orders mentioned in subsection (1) if satisfied it would not be appropriate to do so.

59 Court may amend supervision order if continuing detention order not made

- (1) This section applies if, on considering the alleged offence, the Supreme Court:
 - (a) is not satisfied that the supervisee has contravened, is contravening or is likely to contravene, his or her supervision order; or
 - (b) decides under section 58(2) not to make the orders mentioned in section 58(1).
- (2) The Court:
 - (a) must revoke any interim continuing detention order made under section 52 or 54; and
 - (b) may amend the supervision order as it considers appropriate.

Note for section 59

If an interim continuing detention order is revoked under subsection (2)(a), the supervisee will be released from custody but will still be subject to his or her supervision order.

60 Onus of proof

- (1) The Attorney-General has the onus of satisfying the Supreme Court that the supervisee has contravened, is contravening or is likely to contravene, his or her supervision order.
- (2) The supervisee has the onus of satisfying the Court that it would not be appropriate to make the orders mentioned in section 58(1).

Division 3 General matters about compliance and enforcement

61 Effect of detention

- (1) This section applies if:
 - (a) a supervisee is in custody; and
 - (b) because he or she is in custody, it is not reasonably practicable for the supervisee to comply with his or her supervision order.
- (2) The supervisee need not comply with his or her supervision order to the extent that being in custody makes it not reasonably practicable to do so.

62 Inconsistency between supervision order and similar obligations

- (1) This section applies if:
- (a) a supervisee is any of the following:
 - (i) a reportable offender as defined in section 6(1) of the *Child Protection (Offender Reporting and Registration) Act*,
 - (ii) subject to an order under Part 3, 4 or 5 of the *Sentencing Act*,
 - (iii) subject to a domestic violence order under the *Domestic and Family Violence Act*,
 - (iv) under any other Act, subject to an obligation relating to a matter that is the subject of a requirement in his or her supervision order; and
 - (b) it is not reasonably practicable for the supervisee to comply with his or her supervision order and his or her obligations under the Act mentioned in paragraph (a) (the ***other obligations***).
- (2) The supervisee:
- (a) must comply with his or her supervision order; and
 - (b) need not comply with his or her other obligations to the extent that compliance with the supervision order makes it not reasonably practicable to do so.

63 Director of Correctional Services must ensure proper supervision

- (1) The Director of Correctional Services must ensure that a supervisee is managed and supervised by parole officers in a way that is appropriate.
- (2) In deciding what is appropriate the Director must have regard to the following:
- (a) as the paramount consideration – the need to protect:
 - (i) victims of serious sex offences committed, or likely to be committed, by the supervisee; and
 - (ii) the victims' families; and

- (iii) members of the community generally;
- (b) as a secondary consideration – the desirability of providing rehabilitation, care and treatment for the supervisee.
- (3) In considering the need for protection mentioned in subsection (2)(a), the Director must have regard to the need to ensure that the supervisee's compliance with his or her supervision order is monitored and enforced.

64 Powers for supervising supervisees

- (1) A parole officer may exercise the officer's powers under the following provisions of the *Prisons (Correctional Services) Act* as if a supervision order were a monitoring order:
 - (a) section 94C(1)(a) and (b);
 - (b) if the supervisee is subject to a monitoring obligation – section 94C(1)(c) and (d);
 - (c) if the supervisee is subject to an alcohol or drug obligation – section 94C(1)(e) and (2) to (8).
- (2) In this section:

alcohol or drug obligation means a requirement in, or direction given under, a supervision order that the supervisee not consume alcohol or a drug.

monitoring obligation means a requirement in, or direction given under, a supervision order that subjects the supervisee to monitoring using an approved monitoring device or approved voice recognition system.

Part 6 Continuing detention orders – review of final orders

65 Application for review by Attorney-General

- (1) The Attorney-General must apply to the Supreme Court for a review of a final continuing detention order:
 - (a) if the order has not previously been reviewed – before the expiry of the review period from the date the order came into force; or

- (b) if the order has previously been reviewed – before the expiry of the review period from the date the most recent previous review was concluded.

- (2) In this section:

review period means 2 years or any shorter period of between 1 and 2 years stated in the order.

66 Application for review by detainee

- (1) A detainee may apply to the Supreme Court for a review of a continuing detention order if:
 - (a) the order has been in force for at least 2 years; and
 - (b) the Court grants leave for the application to be made.
- (2) The Court may grant leave only if satisfied there are exceptional circumstances.
- (3) The detainee has the onus of satisfying the Court that there are exceptional circumstances.

67 Setting day for review hearing

- (1) If an application is made under section 65 or 66, the Registrar of the Supreme Court must set a date for the hearing.
- (2) The date set must be as soon as practicable after the application is made.

68 Victim submissions

If the Supreme Court sets a hearing date under section 67:

- (a) the Attorney-General must notify the Director of the CVSU of the date; and
- (b) the Director of the CVSU must then seek victim submissions about the detainee under section 83.

69 Supervision report

If the Supreme Court sets a hearing date under section 67:

- (a) the Attorney-General must notify the Director of Correctional Services of the date; and
- (b) the Director of Correctional Services must then prepare a supervision report about the detainee under section 88.

70 Court may make medical assessment order

- (1) This section applies if:
 - (a) an application has been made under section 65 or 66; and
 - (b) the Supreme Court has not made an order under section 71.
- (2) The Court may make a medical assessment order in relation to the detainee.
- (3) The Court may do so on application or on its own initiative.

71 Orders on review

- (1) On hearing an application made under section 65 or 66, the Supreme Court must do one of the following:
 - (a) revoke the continuing detention order;
 - (b) revoke the continuing detention order and make a final supervision order in relation to the detainee;
 - (c) confirm the continuing detention order.
- (2) The Court must not make an order under subsection (1)(b) or (c) unless satisfied that the detainee is still a serious danger to the community.
- (3) If the Court confirms the continuing detention order, it may amend the order to change the review period for section 65.

72 Onus of proof

The Attorney-General has the onus of satisfying the Supreme Court that it is appropriate to confirm the continuing detention order or make a final supervision order.

Part 7 Revocation of orders**73 Application to revoke order by Attorney-General**

The Attorney-General may apply to the Supreme Court to revoke a continuing detention order or supervision order.

74 Application to revoke by detainee or supervisee

- (1) A detainee or supervisee may apply to the Supreme Court to revoke a continuing detention order or supervision order if the Court grants leave for the application to be made.

- (2) The Court may grant leave only if satisfied there are exceptional circumstances.
- (3) The detainee or supervisee has the onus of satisfying the Court that there are exceptional circumstances.

75 Victim submissions

If an application is made under section 73 or 74:

- (a) the Attorney-General must notify the Director of the CVSU that the application has been made; and
- (b) the Director of the CVSU must then seek victim submissions about the detainee or supervisee under section 83.

76 Court may make medical assessment order

- (1) This section applies if an application has been made under section 73 or 74 but has not been finally determined.
- (2) The Supreme Court may make a medical assessment order in relation to the detainee or supervisee.
- (3) The Court may do so on application or on its own initiative.

77 Court may revoke order

On hearing an application made under section 73 or 74, the Supreme Court may revoke the continuing detention order or supervision order if satisfied that the grounds for making the order no longer exist.

78 Onus of proof

The applicant has the onus of satisfying the Supreme Court that it is appropriate to revoke a continuing detention order or supervision order.

Part 8 Medical assessments and victim submissions

Division 1 Medical assessment orders and reports

79 Medical assessment orders

- (1) A *medical assessment order* is an order that the person about whom it is made submit to being examined by each of 1 or 2 medical experts named in the order.

- (2) A medical assessment order also has effect:
 - (a) to authorise each expert to examine the person; and
 - (b) to require each expert to:
 - (i) prepare a report about the person (a *medical report*); and
 - (ii) give the report to the Attorney-General by the date stated in the order.
- (3) The expert must prepare the report even if the person does not cooperate with the expert.
- (4) The expert must have regard to all information given to him or her under section 80.
- (5) A medical report must set out the following:
 - (a) the expert's opinion of the likelihood of the person committing another serious sex offence if he or she is not detained in custody or subject to a supervision order;
 - (b) the expert's reasons for that opinion;
 - (c) the extent to which the person cooperated with the expert.
- (6) A medical expert cannot be named in a medical assessment order if he or she is a public sector employee in the Agency administering the *Prisons (Correctional Services) Act*.

Note for section 79

A medical assessment order may be made under section 25(2)(b), 36(2), 43(2), 57(2), 70(2) or 76.

80 Information to be given to medical expert

- (1) The Director of Correctional Services must give to a medical expert named in a medical assessment order all relevant information (including medical or prison reports) that is in the Director's possession or to which the Director has, or may be given, access.
- (2) On the written request of the Director, a person in possession or control of the information must give the information to the Director.
- (3) However, subsections (1) and (2) do not require:
 - (a) the Director to give to an expert information that has previously been given to the expert; or

- (b) a person to give to the Director information he or she has previously given to the Director.
- (4) If a person fails to give the information to the Director when requested, the Supreme Court may, on application by the Director, order the person to do so.
- (5) A person who gives information under this section is not liable, civilly, criminally or under an administrative process, for giving the information.

81 Report to be given to person being assessed

The Attorney-General must give a copy of a medical report to the person to whom it relates before the end of the next business day after the Attorney-General receives the report.

82 Report to be produced to court

If a court makes a medical assessment order:

- (a) a resulting medical report is admissible as evidence in relation to a matter mentioned in section 6(2), 9 or 14; and
- (b) the Attorney-General must tender the report in evidence.

Division 2 Victim submissions

83 Seeking submissions from victims

- (1) This section applies if:
 - (a) the Director of the CVSU is required under section 26, 34, 41, 55, 68 or 75 to seek victim submissions about a person (the *offender*); and
 - (b) the offender is an offender to whom Part 4 of the *Victims of Crime Rights and Services Act* applies; and
 - (c) one or more persons are registered in the Victims Register in relation to the offender (each a *registered person*).

- (2) As soon as practicable after the requirement to seek submissions arises, the Director must give each registered person a written notice:
- (a) informing the person:
 - (i) for section 26, 34, 41, 68 or 75 – that an application has been made in relation to the offender, and of the nature of the application and the hearing date; or
 - (ii) for section 55 – that the offender has been arrested or summonsed and of the date of the hearing under section 58; and
 - (b) inviting the person to make a submission about the offender as mentioned in section 84; and
 - (c) informing the person of the effect of sections 85 and 86; and
 - (d) informing the person that any submission must:
 - (i) be in writing; and
 - (ii) be given to the Director by the date stated in the notice (the *closing date*); and
 - (iii) if the person wishes to consent to the submission being disclosed to the offender – include a statement consenting to the disclosure.
- (3) However, the Director is not required to give notice to a registered person who has previously informed the Director that he or she does not wish to receive notices under this Act about the offender.
- (4) As soon as practicable after the closing date, the Director must give to the Attorney-General:
- (a) a copy of each submission received from a registered person before the closing date; or
 - (b) if no submissions are received – notice of that fact.

84 Content of victim submissions

- (1) In a *victim submission* a registered person may set out his or her views about any of the following:
- (a) the impact the offender's offending has had on the victim or other persons;
 - (b) whether the offender is a serious danger to the community;

- (c) whether the offender should be subject to a continuing detention order or supervision order;
 - (d) if the offender is to be subject to a supervision order, what the terms of the order should be;
 - (e) any other matter prescribed by regulation.
- (2) A person who makes a submission may amend or withdraw it.

85 Victim submissions to be produced to court

If the Director of the CVSU receives a victim submission under section 83:

- (a) the Director must give the submission to the Attorney-General; and
- (b) the submission is admissible as evidence in relation to a matter mentioned in section 6(2), 9 or 14; and
- (c) the Attorney-General must tender the submission in evidence.

86 Victim submissions not to be disclosed without consent

- (1) This section applies if a person makes a victim submission but has not given written consent for it to be disclosed to the offender.
- (2) Neither a court, the Director of the CVSU nor the Attorney-General may disclose the submission to the offender.
- (3) A court:
 - (a) may have regard to the submission; and
 - (b) in deciding the weight to be given to the statement, may have regard to the absence of consent and the non-disclosure to the offender.
- (4) A court may disclose the substance of the statement to the offender, or the offender's legal representative, but only if satisfied that doing so could not reasonably be expected to lead to the identification of the victim or the registered person.

87 No inference to be drawn from no victim submission

- (1) The fact that a victim submission has not been received from a particular victim (or a registered person for the victim) does not, of itself, give rise to an inference:
 - (a) that the offender's offending had little or no impact on the victim or registered person; or
 - (b) that the victim or registered person has no interest in the outcome of the proceeding.
- (2) The fact that no victim submissions have been received does not, of itself, give rise to an inference:
 - (a) that no person has suffered harm as a result of the offender's offending; or
 - (b) that the offender is not a serious danger to the community; or
 - (c) that the offender should not be subject to a continuing detention order or supervision order.

Division 3 Supervision reports

88 Director of Correctional Services to prepare report for Attorney-General

- (1) This section applies if the Director of Correctional Services is required under section 27, 35, 42, 56 or 69 to prepare a supervision report about a person.
- (2) As soon as practicable after the requirement to prepare the report arises, the Director must:
 - (a) prepare a written report setting out the matters mentioned in subsection (3); and
 - (b) give the report to the Attorney-General.
- (3) The report must set out:
 - (a) the Director's opinion as to:
 - (i) whether, if a supervision order were made in relation to the person or the person's supervision order were to continue in force, it would be reasonably practicable for the Director to ensure that the person was appropriately managed and supervised as mentioned in section 63; and

- (ii) the requirements that ought to be included in the order if it were made or to continue in force; and
- (b) the grounds for the Director's opinions.

89 Report to be produced to court

If a report is required to be prepared under section 88:

- (a) the report is admissible as evidence in relation to a matter mentioned in section 9 or 14; and
- (b) the Attorney-General must tender the report in evidence.

Part 9 Procedure

Division 1 Applications

90 Form and content of applications

- (1) An application to a court under this Act must:
 - (a) state the terms of the order being sought; and
 - (b) be accompanied by any affidavits the applicant intends to rely on in relation to the application; and
 - (c) subject to this Act, be made in accordance with the *Supreme Court Act*.
- (2) The applicant must serve the application (including any accompanying documents) on the respondent within 2 business days of the application being filed.

91 Respondent may file affidavits in response

- (1) If the respondent intends to rely on an affidavit in relation to the application, the respondent must:
 - (a) file the affidavit with the court; and
 - (b) serve a copy of it on the applicant.
- (2) The affidavit must be filed and served at least 3 business days before:
 - (a) if the affidavit is to be relied on at a preliminary hearing under section 25 – the date set for that hearing under section 24(1);
or

- (b) otherwise – the date set for the hearing of the application.

92 Content of affidavits

- (1) An affidavit must be confined to 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 states the sources of the information and the grounds for the belief.

93 Discontinuance

- (1) This section applies if:
- (a) a person has made an application to a court under this Act; and
- (b) the application has not been finally determined.
- (2) The applicant may discontinue the application by filing a notice of discontinuance at the court.
- (3) The application is taken to have been finally determined when the notice is filed.

Division 2 General matters

94 Nature of proceedings

- (1) All proceedings under this Act (including a proceeding under Part 5, Division 2) are civil proceedings.
- (2) An application for a warrant or summons made under section 48 is an ex parte proceeding.
- (3) The parties to any other proceeding are:
- (a) in a proceeding under Part 3 – the Attorney-General and the person in relation to whom the continuing detention order or supervision order is sought; and
- (b) in a proceeding relating to a continuing detention order or supervision order – the Attorney-General and the detainee or supervisee.
- (4) The proceedings are to be conducted in accordance with the law (including the law of evidence) applicable to civil proceedings unless this Act provides otherwise.

- (5) This section does not apply in relation to a prosecution for an offence.

95 Standard of proof

- (1) The standard of proof as to whether a person is a serious danger to the community is as mentioned in section 6(3).
- (2) The standard of proof for all other matters under this Act is the balance of probabilities.
- (3) This section does not apply in relation to a prosecution for an offence.

96 Duty of Attorney-General to disclose relevant material

- (1) In a civil proceeding under this Act, the Attorney-General has the same duty to disclose relevant material as the prosecution has in a criminal proceeding.
- (2) The Attorney-General must disclose the material as soon as practicable after the proceeding commences.
- (3) In this section:

relevant material means information and things that are relevant to the proceeding and that are in the possession of, or available to, the Attorney-General or Director of Correctional Services, whether or not intended to be tendered in evidence.

97 Evidence

- (1) This section applies in relation to a civil proceeding under this Act.
- (2) If it is relevant, any of the following is admissible as evidence in relation to a matter mentioned in section 6(2), 9 or 14:
- (a) a medical, psychiatric or psychological report about the affected person;
 - (b) evidence of the affected person's criminal history in the Territory or elsewhere;
 - (c) evidence of the extent to which the affected person has complied with any of the following that apply, or have previously applied, to the affected person:
 - (i) a supervision order;
 - (ii) the *Child Protection (Offender Reporting and Registration) Act*,

- (iii) an order under Part 3, 4 or 5 of the *Sentencing Act*,
 - (iv) a domestic violence order under the *Domestic and Family Violence Act*,
 - (v) a parole order;
 - (vi) conditions imposed on a grant of bail under the *Bail Act*,
- (d) evidence of whether the affected person has made efforts to address causes of his or her offending behaviour and, if so, the effectiveness of those efforts;
- (e) a transcript of any proceeding against the affected person for a serious sex offence;
- (f) the reasons for decision or sentencing remarks of the sentencing court when the affected person was sentenced for a serious sex offence;
- (g) statistical information as to the likelihood of persons with histories and characteristics similar to those of the affected person committing serious sex offences.
- (3) This section does not:
- (a) require a party to a proceeding to tender evidence mentioned in subsection (2); or
 - (b) prevent a party to a proceeding from tendering any other evidence.

- (4) In this section:

affected person means:

- (a) in a proceeding under Part 3 – the person in relation to whom the continuing detention order or supervision order is sought; or
- (b) otherwise – the detainee or supervisee.

Notes for section 97

- 1 *Sections 82 and 85 require the Attorney-General to tender in evidence medical reports prepared under medical assessment orders and victim submissions.*
- 2 *In a criminal proceeding for an offence against this Act, the ordinary rules of evidence applicable in criminal proceedings will apply.*

98 Records as evidence of supervisee's conduct

- (1) This section applies in relation to any civil or criminal proceeding in which a supervisee's compliance with a supervision order is relevant.
- (2) If they are relevant, the following are admissible as evidence of the supervisee's conduct:
 - (a) records generated by or through an approved monitoring device or approved voice recognition system;
 - (b) notebooks, diaries or other records kept by a parole officer.

99 Certain matters may be decided on papers

- (1) This section applies in relation to the following proceedings:
 - (a) a preliminary hearing under section 25;
 - (b) an application to extend a final supervision order on an interim basis under section 37;
 - (c) an application to amend a supervision order under Part 4, Division 2.
- (2) The Supreme Court may determine the matter entirely or partly from a consideration of the documents filed in relation to the matter, without the affected person or witnesses appearing.
- (3) The Court may do so without the affected person consenting to, or being heard on, the matter being decided in that way.
- (4) In this section:

affected person means:

- (a) for a preliminary hearing under section 25 – the person in relation to whom the continuing detention order or supervision order is sought; or
- (b) otherwise – the detainee or supervisee.

100 Court may give directions

In any proceeding under this Act a court may give directions in relation to the conduct of the proceeding on application or on its own initiative.

101 Court must give reasons for final order

When making a final continuing detention order or final supervision order a court must give detailed reasons for making the order.

Part 10 Appeals**102 Right of appeal**

- (1) The Attorney-General or a person in relation to whom the Supreme Court makes a decision under this Act (the *original decision*) may appeal to the Court of Appeal against that decision.
- (2) The appeal may be on matter of fact, law or fact and law.

Note for section 102

The Rules of Court under the Supreme Court Act set out the procedure for making an appeal, including the form and content of the notice of appeal and requirements for service.

103 Appeal does not stay decision

An appeal against a decision does not stay the operation of the original decision unless the Court of Appeal orders otherwise.

104 Nature of appeal

- (1) The appeal is to be by way of review of the original decision, not a rehearing.
- (2) However, the Court of Appeal may receive further evidence as it considers appropriate.

105 Interim orders pending hearing of appeal

- (1) This section applies if an appeal has been made under section 102 but has not been finally determined.
- (2) The Court of Appeal may make an interim continuing detention order or interim supervision order in relation to the person the subject of the original decision pending determination of the appeal.

106 Decision on appeal

- (1) After hearing an appeal, the Court of Appeal must do one of the following:
 - (a) confirm the original decision;
 - (b) vary the original decision;

- (c) set aside the original decision;
 - (d) set aside the original decision and replace it with the Court of Appeal's own decision;
 - (e) set aside the original decision and remit the matter back to the Supreme Court for reconsideration.
- (2) If it remits a matter under subsection (1)(e), the Court of Appeal may give directions to the Supreme Court as it considers appropriate.
- (3) The Court of Appeal may make any ancillary orders it considers appropriate.

107 Interim orders pending rehearing after appeal

- (1) This section applies if the Court of Appeal has remitted a matter to the Supreme Court under section 106(1)(e) but the matter has not been heard by the Supreme Court.
- (2) The Court of Appeal may make an interim continuing detention order or interim supervision order in relation to the person the subject of the remitted matter pending the hearing of the matter by the Supreme Court.

Part 11 General matters

108 Name changes

- (1) A person commits an offence if:
- (a) the person applies under a name registration Act to register a change of the name of a detainee or supervisee; and
 - (b) the Director of Correctional Services has not given written permission for the application to be made.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) In deciding whether to give the permission for subsection (1)(b), the Director must have regard to each of the following:
- (a) as the paramount consideration – the need to protect:
 - (i) victims of serious sex offences committed, or likely to be committed, by the person; and

- (ii) the victims' families; and
 - (iii) members of the community generally;
- (b) as a secondary consideration – the rehabilitation, care and treatment of the detainee or supervisee.
- (4) In considering the need for protection mentioned in subsection (3)(a), the Director must have regard to the following:
 - (a) whether the proposed name change could be used to further an unlawful activity or purpose;
 - (b) whether the proposed name change could be considered offensive to victims of serious sex offences committed by the detainee or supervisee or the victims' families.
- (5) In this section:

name registration Act means the *Births, Deaths and Marriages Registration Act* or an Act of another jurisdiction that allows a person to register a change of his or her name.

Note for section 108

If a change of name is registered under the Births, Deaths and Marriages Registration Act without the permission of the Director of Correctional Services, the Director may direct the amendment be reversed (see section 27A of the Births, Deaths and Marriages Registration Act).

109 Director of Correctional Services to provide information to Attorney-General

- (1) On request by the Attorney-General, the Director of Correctional Services must give to the Attorney-General any information in the possession or control of the Director that is reasonably necessary to enable the Attorney-General to perform the Attorney-General's functions under this Act.
- (2) A person who gives the requested information to the Attorney-General is not liable, civilly, criminally or under an administrative process, for giving the information.

110 Attorney-General may obtain information from other persons

- (1) On the written request of the Attorney-General, a person in possession or control of information that relates to the behaviour, or physical or mental condition, of a qualifying offender, supervisee or detainee must give the information to the Attorney-General.

- (2) If a person fails to give the information to the Attorney-General when requested, the Supreme Court may, on application by the Attorney-General, order the person to do so.
- (3) A person who gives information under this section is not liable, civilly, criminally or under an administrative process, for giving the information.

111 Costs of damage to equipment recoverable by Territory

If a supervisee damages an approved monitoring device or an associated device, machine or equipment:

- (a) the supervisee is liable to pay the costs of repairing or replacing the device, machine or equipment; and
- (b) the costs may be recovered from the supervisee as a debt due to the Territory.

112 Confidentiality of information

- (1) A person commits an offence if:
 - (a) the person obtains information in the course of carrying out functions connected with the administration of this Act; and
 - (b) the person engages in conduct that results in the disclosure of the information.

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

- (2) Subsection (1) does not apply if:
 - (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
 - (b) the information is otherwise available to the public; or
 - (c) the disclosure is justified or excused by or under a law.

113 Regulations

The Administrator may make regulations under this Act.

Part 12 Consequential amendments

Division 1 Births, Deaths and Marriages Registration Act

114 Act amended

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

115 Section 27A inserted

After section 27

insert

27A Change of name of serious sex offender

- (1) This section applies if:
 - (a) a person makes an application under this Part to register a change of name; and
 - (b) the application is made in contravention of section 108(1) of the *Serious Sex Offenders Act*.
- (2) The Director of Correctional Services (appointed under section 6 of the *Prisons (Correctional Services) Act*) may direct the Registrar:
 - (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.
- (3) The Registrar must comply with a direction under subsection (2).

Division 2 Child Protection (Offender Reporting and Registration) Act

116 Act amended

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

117 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 *Serious Sex Offenders Act*.

118 Section 46 amended

- (1) Section 46(1)(c)

omit

period.

insert

period; or

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

insert

- (d) becomes subject to a supervision order under the *Serious Sex 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

119 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 Criminal Code

120 Act amended

This Division amends the Criminal Code.

121 Section 112 amended

(1) Section 112(1)(a)

omit

being

omit

is

(2) After section 112(1)(a)

insert

(aa) is in custody under a continuing detention order under the *Serious Sex Offenders Act*, or

(3) Section 112(1)(b)

omit

paragraph (a) and who,

insert

paragraph (a);

(4) Section 112(1), before "escapes"

insert

and who

(5) After section 112(2)

insert

(2AA) A person who commits an offence against subsection (1)(aa) is guilty of a crime and is liable to imprisonment for 3 years.

(6) Section 112(3)

omit

sentence

insert

custody, confinement or detention

Division 4 Parole of Prisoners Act

122 Act amended

This Division amends the *Parole of Prisoners Act*.

123 Section 3R amended

After section 3R(e)

insert

(ea) to exercise the functions of a parole officer under the *Serious Sex Offenders Act*, and

124 Section 5 amended

After section 5(2)

insert

(2A) A parole order cannot be made contrary to section 12(2) or 29(2) of the *Serious Sex Offenders Act*.

Division 5 Prisons (Correctional Services) Act

125 Act amended

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

126 Section 5 amended

(1) Section 5, definition *prisoner*, paragraph (b)

omit

imprisonment,

insert

imprisonment; or

(2) Section 5, definition *prisoner*, after paragraph (b)

insert

(c) who is a detainee under the *Serious Sex Offenders Act*,

127 Section 95B amended

Section 95B(1), after "crime"

insert

or who is a detainee under the *Serious Sex Offenders Act*

128 Section 101 amended

Section 101(3)(b) and (d)(ii)

omit

or community work order

insert

, community work order or supervision order under the *Serious Sex Offenders Act*

Division 6 Victims of Crime Rights and Services Act

129 Act amended

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

130 Section 3 amended

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

insert

or serious sex offences

131 Section 4 amended

Section 4

insert (in alphabetical order)

serious sex offence, see section 4 of the *Serious Sex Offenders Act*.

132 Section 18 amended

After section 18(a)

insert

(aa) a serious sex offence; or

133 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 sex offence, the CVSU must also give a registered person notice of the following:

- (a) that the *Serious Sex Offenders Act* may apply in relation to the offender;
- (b) the making of any application or appeal under that Act in relation to the offender, other than an application made under section 23, 33, 40, 65 or 66 of that Act;
- (c) whether the application or appeal is successful or unsuccessful, or is discontinued or otherwise determined;
- (d) if an order is made under that Act in relation to the offender:
 - (i) the fact that the order has been made; and
 - (ii) the terms of the order (including its expiry date, if any).

Note for subsection (1A)

In addition to the notification requirements in this section, under the Serious Sex Offenders Act the Director of the CVSU is required to seek submissions from a registered person when an application made under section 23, 33, 40, 65 or 66 of that Act or if an offender who is subject to a supervision order is arrested or summonsed for an alleged contravention of the order.

(1B) However, the CVSU is not required to give notice under subsection (1A) to a registered person who has previously informed the CVSU that he or she does not wish to be given information of that kind.

(6) Section 22(4)

insert (in alphabetical order)

supervision order, see section 4 of the *Serious Sex Offenders Act*.

134 Section 25 amended

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

insert

or (1A)

Division 7 Surveillance Devices Regulations

135 Regulations amended

This Division amends the *Surveillance Devices Regulations*.

136 Regulation 3 amended

(1) Regulation 3(2), definition monitoring requirement, paragraph (d)

omit

that Act.

insert

that Act;

(2) Regulation 3(2), definition monitoring requirement, after paragraph (d)

insert

(e) a supervision order under the *Serious Sex Offenders Act* if the supervisee is subject to a monitoring obligation as defined in section 64(2) of that Act.

Division 8 Expiry of Part

137 Expiry

This Part expires on the day after it commences.

Schedule 1 Serious sex offences

section 4, definition *serious sex offence*

Criminal Code

- section 125E Using child for production of child abuse material or pornographic or abusive performance
- section 127 Sexual intercourse or gross indecency involving child under 16 years
- section 128 Sexual intercourse or gross indecency involving child over 16 years under special care, if the victim is under 17 years
- section 130 Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person, if the victim is under 16 years
- section 131A Sexual relationship with child
- section 132 Indecent dealing with child under 16 years
- section 134 Incest, if the victim is under 18 years
- section 186B Female genital mutilation
- section 192 Sexual intercourse and gross indecency without consent
- section 192B Coerced sexual self-manipulation
- section 201 Abduction, enticement or detention of child under 16 years for immoral purpose
- section 202B Sexual servitude
- section 202C Conducting business involving sexual servitude
- section 202D Deceptive recruiting for sexual services

Prostitution Regulation Act

- section 14 Allowing infant to take part in prostitution
- section 15 Obtaining payment in respect of prostitution services provided by infant
- section 16 Entering into agreement for provision of prostitution services by infant
-

Schedule 2 Offences of a sexual nature

section 4, definition *offence of a sexual nature*, paragraph (b)

Note for Schedule 2

*Serious sex offences are also offences of a sexual nature (see section 4, definition **offence of a sexual nature**, paragraph (a)).*

Criminal Code

section 125B	Possession of child abuse material
section 128	Sexual intercourse or gross indecency involving child over 16 years under special care, regardless of the age of the victim
section 130	Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person, regardless of the age of the victim
section 131	Attempts to procure child under 16 years
section 134	Incest, regardless of the age of the victim
section 138	Bestiality
section 176	Stupefying in order to commit crime, if the crime is a serious sex offence
section 188(2)(k)	Aggravated indecent assault
section 193	Assaults with intent to commit an offence, if that offence is a serious sex offence
section 213	Unlawful entry of building, if the offence intended to be committed is a serious sex offence

Summary Offences Act

section 47AC	Loitering by sexual offender
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