

2013

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

SERIOUS SEX OFFENDERS BILL 2013

SERIAL NO. 18

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Serious Sex Offenders Bill 2013 provides for the continued detention or supervised release of serious sex offenders who are deemed to be such a serious danger to the community that continued management by detention or supervision of the offender is warranted after they have served their original sentence.

The Bill allows for the Attorney-General to make an application to the Supreme Court in relation to a serious sex offender who is nearing the end of his or her sentence for either –

- (a) a continuing detention order; or
- (b) a supervision order.

For the Court to make either of these orders, it must be satisfied that the offender is a ‘serious danger to the community’, that is, 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.

The Bill amends the *Birth, Deaths and Marriages Registration Act* so as prevent the registration or continued registration of a change of name by a person who is a supervisee or detainee under the Act.

The Bill also makes consequential amendments to the *Child Protection (Offender Reporting and Registration) Act*, *Criminal Code*, *Parole of Prisoners Act*, *Prisons (Correctional Services) Act*, *Victims of Crime Rights and Services Act* and the *Surveillance Devices regulations*,

NOTES ON CLAUSES

Part 1 – Preliminary Matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill when passed may be cited as the *Serious Sex Offenders Act 2013*.

Clause 2. Commencement

Clause 2 provides that the Act commences on the day fixed by the Administrator by *Gazette* notice.

Clause 3. Objects of Act

Clause 3 provides that there are two main objects under the Act.

The primary object is to enhance the protection and safety of victims of serious sex offences and the community generally by allowing for the control of offenders who have committed serious sex offences and pose a serious danger to the community.

The secondary object is to provide for the continuing rehabilitation, care or treatment of those offenders.

These objects are incorporated into the key clauses of the Bill so that it is clear how they must be taken into account by the Court when making orders under the Bill.

Clause 4. Definitions

Clause 4 provides for the various definitions used throughout the Bill or for cross references to clauses in which terms are defined.

The key definitions are as follows:

continuing detention order is an order of the Supreme Court that a detainee be detained in custody (see clause 8).

detainee is a person subject to a **continuing detention order**.

Director of the CVSU is the Director of the Crimes Victims Services Unit under the *Victims of Crime Rights and Services Act*.

in custody means in custody within a prison or police prison (as defined in the *Prisons (Correctional Services) Act*) or in lawful custody within the meaning of section 11 of that Act or section 84(1) of the *Mental Health and Related Services Act*,

medical assessment order is an order of the Supreme Court requiring that a qualifying offender be assessed by 2 medical experts (see clause 79).

medical expert is health practitioner registered to practise in either psychiatry or in another health profession of a class prescribed by regulation under the *Serous Sex Offenders Act*.

offence of a sexual nature is an offence listed in schedule 2 or equivalent offences. These offences are not **serious sex offences** for the purposes of the Act. Rather they are offences that, if committed by a **supervisee**, might lead to that person becoming a **detainee**.

qualifying offender is a person who is, or who remains, in detention following conviction

for a serious sexual offence. However, it also includes serious sex offenders subject to a suspended sentence, a home detention order or a community custody order or on parole (see clause 22(1)).

serious danger to the community means that there is an unacceptable risk that a person will commit a serious sex offence unless the person is **in custody** or subject to a **supervision order** (see clause 6(1)).

serious sex offence is defined to mean an offence listed in Schedule 1 or an equivalent offence. Essentially these offences are offences of a sexual nature punishable by a maximum of seven years or more imprisonment.

supervisee is a person who is subject to a **supervision order**

supervision order is an order by the Supreme Court providing for the supervision of a **qualifying offender** by a parole officer (see clause 12).

Clause 5. Application of Criminal Code.

This clause provides that Part IIAA of the Criminal Code applies to an offence against this Bill. 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

Clause 6. Serious danger to the community.

This clause provides that a person is a **serious danger to the community** if there is an unacceptable risk that the person will commit a **serious sex offence** if the person is not **in custody** or is not subject to a **supervision order**.

Subclause (2) sets out the matters the Court must have regard to in making its assessment as to whether a person is a **serious danger to the community**. These matters include the likelihood of the prisoner committing another serious sexual offence, the impact of the serious sexual offence committed (or likely to be committed) and the need to protect people from those impacts.

Clause 7.

Standard and onus of proof

Subclause (1) provides that the standard of proof is that of the Court being satisfied to a high degree of probability that there is acceptable and cogent evidence to justify the decision. This is the highest civil burden that can be applied.

Subclause (2) provides that the onus is on the Attorney-General to satisfy the Court that the person is a **serious danger to the community**.

Division 2 Continuing Detention Orders

Clause 8. Nature of continuing detention order

A **continuing detention order** is an order of the Supreme Court under which a person is, or is to be, detained in custody. These orders may be either:

- **final continuing detention orders** (meaning that the person is to be detained indefinitely (but subject to the review provisions contained in Part 6); or
- **interim continuing detention orders** (meaning that the person is detained in custody pending the outcome of the proceedings).

A continuing detention order for a person also has effect as a warrant committing the person into custody and, where the person is not in custody, a warrant for the person's arrest.

Clause 9. Considerations when making, confirming or revoking continuing detention order

This clause sets out that the paramount consideration for a court in determining whether to make, confirm or revoke a continuing detention order is the need to protect the victims of the serious sex offences committed, or likely to be committed, by the person; the victims families; and members of the community generally.

A secondary consideration is the desirability of providing rehabilitation, care and treatment for the person.

The Court must also have regard to the likelihood of the person committing another sexual offence and whether adequate protection could be provided by making a **supervision order**.

Clause 10. Duration of continuing detention order

A continuing detention order comes into force at either the time when the person ceases to be a qualifying offender or the time the order was made.

A final **continuing detention order** remains in force until it is revoked.

An interim **continuing detention order** remains in force until is revoked, it expires or the matter is finally determined.

Clause 11. Expiry date for interim continuing detention order

In making an interim continuing detention order the Court must state in the order the date on

which the order will expire. The total period of an interim continuing detention order (including any extension) cannot exceed 4 months, unless there are exceptional circumstances.

Clause 12. Detainee cannot be granted bail or parole

Subclause (1) provides that a **detainee** cannot be granted bail.

Subclause (2) provides that a parole order cannot be made in respect of a **detainee**. This clause does not affect parole dealt with under the *Crimes Act 1914* (Cth).

Division 2 Supervision orders

Subdivision 1 Nature and consideration when making

Clause 13. Nature of supervision order

This clause defines the various kinds of supervision orders.

A supervision order is an order made by the Court providing that the person must comply with matters of the kind set out in clauses 18 and 19. A final supervision order is one made when proceedings are complete. An interim supervision order is one requiring supervision before proceedings are complete.

Clause 14. Considerations when making, amending or revoking supervision order

In dealing with applications for or concerning supervision orders in relation to a person, the paramount consideration for the Court is the need to protect the victims of the sex offences that were committed by the person, the community generally and the victims' families.

A secondary consideration is the desirability of providing rehabilitation, care and treatment for the person.

These considerations reflect the objects of the Bill.

The Court must also have regard to the likelihood of the person committing another serious sexual offence, whether the order is reasonably practical to be managed and enforced by the Director of Correctional Services, and whether adequate protection would be better provided by making a detention order.

Clause 15. Further consideration if person is a reportable offender

This clause provides that when the Supreme Court is considering a supervision order for a person who is also a reportable offender under the *Child Protection (Offender Reporting and Registration) Act*, the Court must consider any requirements or prohibition order under that Act and ensure as far as reasonably practicable, that the requirements of the supervision order are not inconsistent.

However, if the Supreme Court does include a requirement that is inconsistent with a prohibition order, the Court may amend the prohibition order under the *Child Protection (Offender Reporting and Registration) Act* to avoid inconsistency.

Subclause (4) requires that, when the Supreme Court makes a supervision order that is inconsistent with any of the prisoners other orders or statutory requirements, the Court must explain to the prisoner the effect of this inconsistency and what obligations of the prisoner prevail under clause 62.

Clause 16. Duration of supervision order

A supervision order comes into force when the proposed supervisee ceases to be a qualifying offender or, otherwise, when the order is made.

An interim supervision order remains in force until it is revoked or it expires or until the matter is finally determined.

A final supervision order remains in place until it is revoked or the order expires. However, if a person is returned to custody to serve a sentence of imprisonment for another offence, the supervision order is extended for the period he or she is in custody.

Clause 17. Expiry date for final supervision order

A final supervision order must state the date on which it expires.

The expiry date of the order must be at least 5 years after the order will take effect.

In making the determination about the length time of the order the Court must disregard the possibility that, under clause 38, it might have the option of extending the period of operation of a supervision order.

Subdivision 2 Requirements and directions

Clause 18. Compulsory requirements

This clause sets out the requirements that must be contained in a **supervision order**. These are:

- § to not commit a **serious sex offence (as listed in Schedule 1)**; and
- § to not commit an **offence of a sexual nature** (as listed in Schedule 2); and
- § to report to a parole officer as directed by the parole officer; and
- § to receive visits and accept communications from, a parole officer as directed by a parole officer; and
- § to give to a parole officer information about the supervisee's address or place of employment or education as directed by a parole officer; and
- § to not leave or stay out of the Territory without the permission of a parole officer; and
- § to comply with any other reasonable direction of a parole officer that is not directly inconsistent with a requirement of the order.

Subclause (2) provides that the court may state in the order matters about which a parole officer cannot give the supervisee directions, for example, the Court may wish to impose specific curfew directions or electronic monitoring requirements.

A Court in reviewing a supervision order cannot amend it so as to remove any requirement imposed by clause 17(1).

Clause 19. Optional requirements

The supervision order may also contain any other requirement the Court considers appropriate. In determining these other requirements, the Court must have regard to the matters in clauses 14 and 15. These include ensuring the adequate protection of the community generally, the prisoner's victims and their families and other persons; providing for the prisoner's rehabilitation, care or treatment; and ensuring consistency with any orders under the *Child Protection (Offender Reporting and Registration) Act* in relation to the offender.

Clause 20. Directions by parole officers

This clause provides that a parole officer may give any direction to a supervisee (not inconsistent with the terms of the order) that the parole officer believes on reasonable ground to be appropriate. This power operates subject to clause 18(2).

Subclauses (4) and (5) provide that a parole officer may also give a supervisee a reasonable direction about the supervisee's:

- reporting at specified times and places;
- wearing approved monitoring devices;
- providing samples of voice;
- accommodation;
- curfew requirements;
- leaving places;
- rehabilitation, care or treatment;
- use of drugs or alcohol; or
- interaction with the prisoner's victims, their families or other persons who the parole officer considers require special protection.

Subclause (2) provides that a direction may relate to a matter even though the prisoner's supervision order imposes a requirement about that matter; however, the direction must not be directly inconsistent with a requirement of the supervision order.

Clause 21. Considerations when giving directions.

This clause provides that a parole officer must have regard to the following matters when giving a direction:

- The paramount consideration is the need to protect the victims of serious sex offences committed, or likely to be committed, by the supervisee; the victim's families; and the community generally.
- As secondary consideration whether the direction is desirable for the supervisee's rehabilitation, care or treatment.
- The need to ensure that compliance is monitored and enforced and managed in a manner determined by the Director of Correctional Services under clause 63.

Part 3 – Making continuing detention orders or supervision orders

Clause 22. Meaning of *qualifying offender*

Subclause (1) defines the term **qualifying offender** as being a person convicted of a serious sex offence (see schedule 1) who is either:

- a person currently **under sentence of imprisonment** (as defined in subclause (2)); or
- a person within the scope of subclause (4) - namely a person who has served a sentence of imprisonment for a **serious sexual offence** and who has been, since the end of that sentence, serving a sentence of imprisonment for another offence or been in custody for any other reason.

Subclause (2) defines the phrase person currently **under sentence of imprisonment** so that a person comes within that definition if he or she is in custody serving a sentence of imprisonment for a serious sex offence or is subject to an order suspending a sentence of imprisonment, a home detention order or a community custody order or has been released on parole (but under section 14(1) of the *Parole of Prisoners Act* is still taken to be under a sentence of imprisonment for that offence).

Subclause (5) provides that it is immaterial when the serious sexual offence was committed or when the person was charged. This means that the Act applies to offences and charges that occurred prior to the commencement of the Act.

Subclause (6) provides that the term **imprisonment** includes detention within the meaning of the *Youth Justice Act* and that **in custody** includes detention in a detention centre as defined in section 5 of that Act. However, only an offender who has reached 18 years of age can be detained or supervised under an order under this Bill.

Clause 23.

Application for continuing detention order or supervision order

This clause provides that the Attorney-General may apply to the Supreme Court for a **final continuing detention order** or **final supervision order** for a **qualifying offender**.

An application may be made only during the last 12 months before the person ceases to be a **qualifying offender** (as defined in clause 21).

The **qualifying offender** must also be over 18 years of age when the order being sought is to come into force.

Clause 24. Setting day for preliminary hearing

On the filing of the application under clause 23, the Registrar must set a date for a preliminary hearing. The date must be within 28 business days after the application is made.

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

This clause provides that the Supreme Court must decide at the preliminary hearing whether, if the matters alleged in the application are proved to the Court at the full hearing, the Court would at that time be satisfied that the **qualifying offender** is a **serious danger to the community**.

If the Court decides it would be satisfied regarding the allegations, it must set a date for the hearing of the application and it must make a **medical assessment order** naming 2 medical experts.

The requirements for medical assessment orders are set out in Part 8, Division 1.

If the Court is not satisfied about the allegations, the Court must dismiss the application.

Clause 26. Victim submissions and supervision report

This clause provides that the Director of Correctional Services must, in accordance with clause 83, seek victim submissions about the offender and also provide a supervision report (as referred to in clause 84) if a court sets a date for a hearing under clause 25(2)(a).

Clause 27. Supervision report

Clause 27 provides that if the Supreme Court sets a hearing date under clause 25(2)(a), the Attorney-General must notify the Director of Correctional Services of the date. The Director must then prepare a supervision report about the offender under section 88.

Clause 28. Suspension of parole order

If a person in respect of whom a hearing has been set down under clause 25(2)(a) is subject to a parole order, the Court may suspend the operation of the parole order pending determination of the application made under clause 23.

Subclause (4) clarifies that, while a parole order is suspended, it is of no effect.

Clause 29. Qualifying offender cannot be granted parole

This clause clarifies that, pending determination of an application as made under clause 23, a parole order cannot be made in respect of the offender.

Clause 30. Interim continuing detention order or interim supervision order

Pending final determination of an application as made under clause 23, the Court may make an **interim continuing detention order** or **interim supervision order** in respect of the offender.

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

This clause provides that if the Supreme Court is satisfied the qualifying offender is a **serious danger to the community**, it may order either a **final continuing detention order** or a **final supervision order**.

Clause 6 sets out the factors the Court must have regard to in deciding if a qualifying offender is a **serious danger to the community**.

Clause 32. Onus of proof

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

This clause must be read with:

- subclauses 7 which sets out that the Attorney-General has the onus of satisfying the Court to a high degree of probability that there is acceptable and cogent evidence for considering that the qualifying offender is a **serious danger to the community**; and
- clause 95 which states that the standard of proof (other than for offences and as to whether a person is a **serious danger to the community**) is the balance of probabilities.

Part 4 – Supervision orders – extension and amendment

Division 1 Extension of final supervision orders

Clause 33. Application to extend final supervision order

This clause allows for the Attorney-General to apply to extend an existing supervision order. This application can only be made during the last 6 months of the existing supervision order.

Subclause (3) clarifies that an application to extend can be combined with an application under clause 40 to amend an order.

Clause 34. Victim submissions

If an application is made under clause 33 to extend a supervision order, the Attorney-General must notify the Director of the CVSU who, in turn, must then seek victim submissions in accordance with clause 83.

Clause 35. Supervision Report

This clause provides that if an application is made under clause 33 to extend a supervision order, the Attorney-General must notify the Director of Correctional Services who must then prepare a supervision report about the supervisee under clause 88.

Clause 36. Court may make medical assessment order

This clause provides the Court with the option of making another medical assessment order on its own initiative if an application is made to extend the period of operation of an existing supervision order under clause 33.

Clause 37. Interim extension of supervision orders

Pending the outcome of an application under clause 33 to extend the period of operation of an existing supervision order, the Court may extend the order on an interim basis.

If this occurs, the order has the status of an interim detention order for the purposes of the Act (see clause 13(3)).

Clause 38. Court may extend supervision order

This clause states that the Court may extend the period of operation of a supervision order if satisfied that the **supervisee remains a serious danger to the community**.

Clause 39. Onus of proof

This clause provides that the Attorney-General has the onus of satisfying the Court that it is appropriate to extend the period of operation of a supervision order.

This clause must be read with:

- clause 7 which sets out that the Attorney-General has the onus of satisfying the Court to a high degree of probability that there is acceptable and cogent evidence for considering that the offender is a **serious danger to the community**; and
- clause 95 which states that the standard of proof (other than for offences and as to whether a person is a **serious danger to the community**) is the balance of probabilities.

Division 2

Other amendments of supervision order

Clause 40. Application to amend supervision order

This clause provides that an application to the Supreme Court to amend a supervision order may be made by the supervisee or the Attorney-General.

Subclause (3) clarifies that an application to amend a supervision order can be combined with an application to extend a supervision order under clause 33.

Clause 41. Victim submissions

If an application is made under clause 40 to amend a supervision order, Attorney-General must notify the Director of the CVSU who, in turn, must then seek victim submissions under

clause 83.

Clause 42. Supervision reports

This clause provides that if an application is made under clause 40 to extend a supervision order, the Attorney-General must notify the Director of Correctional Services who must then prepare a supervision report about the supervisee under clause 88.

Clause 43. Court may make medical supervision order

This clause provides the Court with the option of making another **medical assessment order** on its own initiative if an application is made under clause 40 to amend an existing supervision order.

Clause 44. Court may amend supervision order

This clause provides that the Supreme Court may, on hearing an application under clause 40, amend the requirements of a supervision order if satisfied that it would be appropriate to do so.

However, an amendment cannot be made to reduce the period to less than five years.

Clause 45. Onus of proof

This clause provides that the Attorney-General has the onus of satisfying the Court that it is appropriate to amend the period of operation of a supervision order.

This clause is read with clause 95 which states that the standard of proof for matters (other than for the prosecution of offences and as to whether a person is a **serious danger to the community**) is the balance of probabilities.

Part 5 – Supervision orders – compliance and enforcement

Division 1 Offence

Clause 46. Offence to contravene supervision order

This clause provides that it an offence for a supervisee to contravene their supervision order. There is a reasonable excuse defence.

The maximum penalty for the offence is 200 penalty units (currently \$28,200) or imprisonment for two years.

Division 2 Contravention of supervision order

Clause 47. Application of Division

This clause provides that this Division applies to allegations that there has been a contravention of a supervision order.

The clause also clarifies that that action under the Division may be taken even if the alleged offence has not been the subject of a prosecution under clause 46.

Clause 48. Officer may apply for warrant or summons

This clause provides for a relevant officer (who is a police or parole officer) to apply to a magistrate for a warrant or summons regarding a **supervisee** if the officer reasonably suspects that the person is likely to contravene, is contravening, or has contravened, the person's existing supervision order.

Subclause (2) provides that an application for a warrant must be by information on oath or by telephone. An application for a summons must be in writing.

Clause 49. Warrant or summons to appear before Supreme Court

A Magistrate must issue a warrant (for arrest) or a summons (to appear before the Supreme Court) following an application under clause 48 if satisfied on reasonable grounds that the supervisee is likely to contravene, is contravening, or has contravened, the person's existing supervision order.

A summons can only be issued if the applicant (police officer or parole officer) consents or if the Magistrate is satisfied that arrest (under a warrant) is not justified because of exceptional circumstances.

The warrant or summons must state the suspected contravention which may be in general terms.

Subclause (4) provides that a copy of the warrant or summons must also be given to the Attorney-General within 24 hours of it being issued. Subclause (5) provides that failure to comply with subclause (4) does not affect the validity of the warrant or summons or any order made under this Division.

Clause 50. Warrant may be issued by telephone

This clause provides that section 122 of the *Police Administration Act* applies in relation to a warrant under this Division subject that:

- applications must be made to a Magistrate (rather than a justice); and
- applications can be made by parole officers (as well as police officers).

Section 122 of the *Police Administration Act* provides for telephone warrants where it is impracticable to apply to a justice in person.

Clause 51.

Arrested person to be brought before the Court

This clause provides that, where a supervisee is arrested, the Attorney-General must ensure that the person is brought before the Supreme Court as soon as is practical.

Subclause (3) provides that the arrested person cannot be granted bail.

Clause 52. Interim continuing detention order at initial hearing of arrested supervisee

Clause 52 provides that, where a supervisee is arrested and brought before the Supreme Court under a warrant, the Court must either order the arrested person be detained in custody until a final decision is made (called an **interim detention order**); or release the arrested person in accordance with clause 53(3).

Clause 53. Release of arrested supervisee on continued supervision

Pending the consideration of the alleged contravention, the arrested person may still apply to the Supreme Court to be released pending the final decision. The Court may only order the release of the arrested prisoner if the person 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. In this case, the supervisee has the onus of satisfying the Court that exceptional circumstances exist.

However, subclause (5) provides that if the Supreme Court does order the release of the arrested person, the existing supervision order applies although it can be amended by the Supreme Court to include any requirements the Court considers appropriate.

Clause 54. Interim continuing detention order if proceeding adjourned

Pending the consideration of an alleged contravention of a supervision order, the Court may determine that the person be the subject of an interim continuing detention order.

Clause 55. Victim submissions and supervision report

If a person is arrested under a warrant or if a summons is issued, the Attorney-General must notify the Director of the CVSU who, in turn, must seek victim submissions in accordance with clause 83

Clause 56. Supervision report

This clause provides that if a supervisee is arrested under a warrant issued under clause 49 or if a summons is issued under clause 49, the Attorney-General must notify the Director of Correctional Services who must then prepare a supervision report about the supervisee under clause 88.

Clause 57. Court may make medical assessment order

This clause gives the Court the option of making a further **medical assessment order** if a person is arrested or a summons is issued following an alleged contravention of a supervision order.

Clause 58. Orders on consideration of alleged contravention

Clause 58 provides that, where the Supreme Court is satisfied, on the balance of probabilities, that supervisee is likely to contravene, is contravening, or has contravened, a requirement of his or her supervision order, the Court must revoke it and replace it with a continuing detention order. If the existing order is an interim supervision order, the Court must revoke it and replace it with an interim detention order.

Subclause (2) allows the Court to continue an existing supervision order only if the supervisee satisfies the Supreme Court, on the balance of probabilities, that it is appropriate not to make a continuing detention order (ie and instead maintain the current supervision order- see clause 60(2)).

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

Clause 59 applies where the Supreme Court considers that an alleged breach offence in relation to a supervision order did not occur or decides (under clause 58(2)) not to make an interim or final continuing detention order. In this case, the Supreme Court must revoke any interim continuing detention order and may amend the existing supervision order, as it considers appropriate.

Clause 60. Onus of proof

Subclause 60(1) provides that the Attorney-General has the onus of satisfying the Court that a supervisee has contravened, is contravening or is likely to contravene their supervision order.

Subclause 60(2) provides that the supervisee has the onus of satisfying the Court that it would not be appropriate to make a continuing detention order.

This clause is to be read with clause 95 which states that the standard of proof for matters (other than for the prosecution of offences and as to whether a person is a **serious danger to the community**) is the balance of probabilities.

Division 3 General matters about compliance and enforcement

Clause 61. Effect of detention

This clause states that if a supervision is in custody, he or she is not required to comply with a supervision order to the extent that being in custody makes it not practicable to do so, for example, reporting personally to a police station or residing at a certain place.

Clause 62. Inconsistency between supervision order and similar obligations

If a supervisee is a reportable offender within the meaning of section 6(1) of the *Child Protection (Offender Reporting and Registration) Act* and it is not reasonably practical to comply with both the supervision order and that Act, the supervisee must comply with his or her obligations under the supervision order and not comply with the requirements under that Act to the extent that compliance with the supervision order makes it impractical to do so.

If a supervisee is subject to an order under Part 3, Part 4 or Part 5 of the *Sentencing Act* and it is not reasonably practical to comply with both the supervision order and that Act, the

supervisee must comply with his or her obligations under the supervision order and not comply with the requirements under that Act to the extent that compliance with the supervision order makes it impractical to do so.

If a supervisee is subject to an order under the *Domestic and Family Violence Act* and it is not reasonably practical to comply with both the supervision order and that Act, the supervisee must comply with his or her obligations under the supervision order and not comply with the requirements under that Act to the extent that compliance with the supervision order makes it impractical to do so.

If a supervisee is subject to an order under any other Act and it is not reasonably practical to comply with both the supervision order and that Act, the supervisee must comply with his or her obligations under the supervision order and not comply with the requirements under that Act to the extent that compliance with the supervision order makes it impractical to do so.

Clause 63. Director of Correctional Services must ensure proper supervision

This clause provides that the Director of Correctional Services has the responsibility for ensuring that **supervisees** are appropriately supervised by parole officers.

In deciding what is appropriate the Director must have regard to the objects of the Act as replicated in subclause (2).

Clause 64. Powers for supervising supervisees

This clause provides that a parole officer has, in respect of supervisees, the same powers under sections 94C(1)(a) and (b), 94C (c) and (d) and 94C(1)(e) and(2)-(8) of the *Prisoners (Correctional Services) Act* he or she would have as if the supervision order was a monitoring order under that Act.

This means that parole officers have appropriate powers to enforce directions and conditions under supervision orders, such as to be subject to monitoring or to not consume alcohol or drugs. This clause ensures that parole officers can, for example, conduct breath tests in relation to a supervisee.

Part 6 – Continuing detention orders – review of final orders

Clause 65. Application for review by Attorney-General

This clause provides that the Attorney-General must apply to the Supreme Court for a review of a continuing detention order.

The hearing for the first review must be completed within two years after the day the order first took effect. There must be subsequent reviews at least every two years while the order continues to have effect, unless the order specifies a shorter period of between one and two years.

Clause 66. Application for review by detainee

This clause provides that a **detainee** 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 first regular review is completed.

Subclause (2) provides that the Supreme Court may grant leave to apply only if satisfied there are exceptional circumstances that relate to the detainee. Subclause (3) clarifies that the detainee has the onus of satisfying the Court that these are exceptional circumstances.

Clause 67. Setting day for review hearing

This clause provides that the Registrar of the Supreme Court must set a date for a hearing of an application under clause 65 or clause 66 with the date to be set so that the hearing occurs as soon as practicable after the application is made.

Clause 68. Victim submissions

This clause provides that when a hearing date is set under clause 67, the Attorney-General must notify the Director of the CVSU who, in turn, must seek victim submissions under clause 83.

Clause 69. Supervision report

This clause provides that if the Supreme Court sets a hearing date under clause 67, the Attorney-General must notify the Director of Correctional Services who must then prepare a supervision report about the detainee under clause 88.

Clause 70. Court may make medical assessment order

This clause gives the Court the option of making a **medical assessment order** following an application under clause 65 or clause 66.

Clause 71. Orders on review

On hearing an application under clause 65 or 66, the Supreme Court must confirm the **continuing detention order**; revoke the **continuing detention order**; or revoke the **continuing detention order** and make a **final supervision order**.

Subclause (2) provides that the Court must not confirm the **continuing detention order** or make a final supervision order unless the Court is satisfied that a **detainee** is still a **serious danger to the community**.

Subclause (3) clarifies that the Court may change the review period under clause 65 if it confirms the **continuing detention order**.

Clause 72. Onus of proof

This clause provides that the Attorney-General has the onus of satisfying the Court that it is appropriate to confirm a continuing detention order or a supervision order.

This clause must be read with:

- clause 7 which sets out that the Attorney-General has the onus of satisfying the Court to a high degree of probability that there is acceptable and cogent evidence for considering that the qualifying offender is a **serious danger to the community**; and
- clause 95 which states that the standard of proof for matters (other than for offences and as to whether a person is a **serious danger to the community**) is the balance of probabilities.

Part 7 – Revocation of orders

Clause 73. Application to revoke order by the Attorney-General

This clause provides that the Attorney-General may apply to the Supreme Court to revoke a continuing detention order or a supervision order.

This provision is included in the Bill to deal with situations where the continuing detention order or a supervision order no longer serves a purpose. For example, where the supervised person or detainee is in coma or has dementia.

Clause 74. Application to revoke by detainee or supervisee

This clause provides that a detainee or a supervisee can, with the leave of the Supreme Court, apply for the revocation of a detention or supervision order. Leave can only be granted if there are exceptional circumstances.

Subclause (3) clarifies that the detainee or supervisee has the onus of satisfying the Court that exception circumstances exist.

Clause 75. Victim submissions

This clause provides that when an application is made under clause 73 or 74 to revoke an order, the Attorney-General must notify the Director of the CVSU who, in turn, must seek victim submissions under clause 83.

Clause 76. Court may make medical assessment order

This clause gives the Court the option of making a **medical assessment order** following an application under clause 73 or 74. Subclause (3) clarifies that the Supreme Court can do so on its own initiative.

Clause 77. Court may revoke order

This clause gives the Supreme Court the power to revoke a detention or supervision order if satisfied that grounds for the order no longer exist.

Clause 78. Onus of proof

The applicant for an order under this Part has the onus of satisfying the Supreme Court that it is appropriate that the order be revoked.

Part 8 – Medical assessments and victim submissions

Division 1 Medical assessment orders and reports

Clause 79. Medical assessment orders

Subclause (1) defines a **medical assessment order** as being an order that the person about whom it is made submit to being examined by the one or two **medical experts** named in the order.

Subclause (2) provides that a **medical assessment order** operates so as to authorise each

medical expert to examine the person and require each **medical expert** to prepare a report and provide it to the Attorney-General. Each expert is also required to have regard to the information provided to the expert by the Director of Correctional Services in accordance with clause 80.

Subclause (5) provides that the medical report must include the medical expert's assessment of the likelihood of the person committing another serious sex offence if the person is released from custody or released without supervision. The report must also include reasons for the expert's opinions.

The expert must prepare a report even if the prisoner does not cooperate, or does not cooperate fully, in the examination.

Subclause (6) provides that a medical expert named in an order cannot be a public sector employee of the Department responsible under the Administrative Arrangements Order for administering the *Prisons (Correctional Services) Act* (currently the Department of Correctional Services).

Clause 80. Information to be given to medical expert

In order to ensure a clinically sound assessment, subclause (1) requires the Director of Correctional Services to give each **medical expert** all relevant information within the Director's possession or to which the Director has access or is entitled to be given access. This would include medical, psychiatric, psychological, prison or any other relevant report.

Subclause (2) entitles the Director to require others to provide information to the Director. Subclause (4) provides that, if a person required to give a report or information under subclause (2) 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.

Subclause (5) provides protection to a person giving a report or information in accordance with this clause to the effect that they are not liable, civilly, criminally or under an administrative process, for giving the report or information.

Clause 81. Report to be given to person being assessed

Within one (1) business day after receiving a medical report the

Attorney-General must give it to the person to whom it relates.

Clause 82. Report to be produced to court

All medical reports produced as a result of a medical assessment order must be tendered in court by the Attorney-General. The material in the reports is evidence for the purposes of clauses 562), 9 and 14.

Division 2 Victim submissions

Clause 83. Seeking submissions from victims.

Under clauses 26, 34, 41, 55, 64, 68 and 75 the Director of the CVSU is required to seek submissions from victims.

If the offender is an offender to whom Part 4 of the *Victims of Crime Rights and Services Act* and there are persons registered in the Victims Register regarding the offender, the Director of Correctional services must give a notice seeking submissions from these persons.

Subclause (2) provides that the notice must invite the **registered person** to give the Director a written submission. The notice must provide information about the application, invite the submission, provide advice about clause 85 (regarding the use of the submission as evidence) and 86 (restrictions on disclosure if the person does not consent to disclosure) in relation to any proposed order (including conditions of release).

The Director is not required to seek submissions from a **registered person** who had previously informed the Director that he or she does not wish to receive notices under the Act

Subclause (4) provides that the Director must, before the hearing date, give the Attorney-General any submissions provided by the registered person. If no submission is provided, the Director must inform the Attorney-General that the **registered person** has not given a submission in response to the notice.

Clause 84. Contents of victim submissions

This clause sets out what issues may be covered in submissions made by a **registered person**.

Clause 85. Submissions to be produced to court

This clause requires the Director of the CVSU to give any victim's submissions to the Attorney-General. The Attorney-General must then produce to the Supreme Court any submission from a registered person received before the hearing date. Such a submission is admissible as evidence.

Clause 86. Submissions not to be disclosed without consent

This clause deals with the situation where a person makes a victim submission but does not consent to the disclosure of the submission to the offender. Clause 83(2)(d)(iii) provides that a person providing a submission must indicate whether or not the person consents to the disclosure of the submission to the offender.

If consent is not given, neither the Director of the CVSU nor the Attorney-General may disclose the submission to the offender.

If consent is not given the Court must not, as a general rule, disclose the submission to the offender. However, the Court may have regard to the submission (despite its non disclosure) but may also have regard to the absence of consent and the non disclosure in determining the weight to be given to the submission.

Additionally, the Court may only disclose the substance of the submission to the offender or the offender's legal representative if satisfied that doing this will not reasonably be expected to lead to the identification of the victim or to the registered person.

Clause 87. No inference to be drawn from no victim submission

This clause deals with the situation where no submission is made by a victim or a registered

person. This clause provides that the fact that no submission has been received from a particular victim does not, of itself, raise any inference regarding matters such as the impact of the offence, the interest of the victim in the outcomes, the harm suffered, the danger posed by the offender to the community or the issue of whether the person should be subject to a detention order or supervision order.

Division 3 Supervision reports

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

The Director of Correctional Services can be required under clauses 27, 35, 42, 56 or 69 to prepare a supervision report under clause 88. This clause sets out the matters that a supervision report must set out, including the Director's views as to how a person would be supervised and the proposed requirements of any supervision order.

This clause provides that the Director of the CVSU (as appointed under section 6(1) of the *Victims of Crime Rights and Services Act*) must provide the Director of Correctional Services all information recorded in the Victims register that is reasonably necessary for the performance of the duties of the Director of Correctional Services under Division 2 of Part 7 of this Act.

Clause 89. Report to be produced to court

If a report is required under clause 88, it is admissible in events and the Attorney-General is required to tender the report to the Court.

Part 9 - Procedure

Division 1

Applications

Clause 90. Form and content of applications

An application under the Act must state the orders sought and be accompanied by any affidavits to be relied on and, subject to any requirements of the Act, must be made in accordance with the *Supreme Court Act*.

Subclause (2) requires the applicant to give a copy of the application, and any accompanying affidavits to the respondent within 2 business days after the application is filed.

Clause 91. Respondent may file affidavits in response

This clause provides that the respondent may file affidavits to be relied on in a hearing and must provide all filed affidavits to the applicant at least 3 business days before the date set for the relevant hearing.

Clause 92. Contents of affidavits

This clause provides that the contents of an affidavit must be confined to the evidence the person making it could give if giving evidence orally. 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.

Clause 93. Discontinuance

This clause provides that the applicant can discontinue the application by filing a notice. If a discontinuance notice is filed the matter is taken to have been finally determined.

Division 2

General matter

Clause 94. Nature of proceedings

This clause provides that all proceedings under the Act are civil proceedings other than proceedings relating to the prosecution of an offence.

Subclause (2) clarifies that an application for a warrant or summons in relation to an alleged offence is an ex parte proceeding.

Subclause (3) clarifies that the parties to proceedings are the Attorney-General and the offender.

Clause 95. Standard of proof

Under the Act, the standard of proof:

- for determining whether a person is a serious danger to the community, is that of high degree of probability (as set in clause 6(3));
- for criminal matters, is that of beyond reasonable doubt; and
- for all other matters, is the balance of probabilities.

Clause 96. Duty of Attorney-General to disclose relevant material

This clause provides that in any civil proceeding under this Act, 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.

Subclause (2) provides that the Attorney-General must disclose **relevant materials** as soon as practical after the proceeding commences.

Subclause (3) contains a definition of **relevant materials**. They are materials relevant to the proceedings that are in the possession of, or available to, the Attorney-General or the Director of Correctional Services.

Clause 97. Evidence

This sets out the materials that can be admissible as evidence in civil proceedings as mentioned in clauses 6(2), 9 and 14. These materials include:

- Various reports about the offender;
- Criminal histories relating to offender for the NT and elsewhere
- The extent of the offender's compliance with supervision orders;
- Compliance with orders or other requirements under the *Child Protection (Offender Reporting and Registration) Act*, Part 3, 4 and 5 of the *Sentencing Act*, orders under the *Domestic and Family Violence Act*, parole orders , grants of bail, redemption efforts;
- transcripts of court proceedings relating serious sex offences committed by the offender;
- sentencing remarks; and
- statistical information regarding similar offenders.

Subclause (3) clarifies that this list is not exhaustive and it doesn't prevent a party from tendering other relevant evidence.

Clause 98. Records as evidence of supervisee's conduct

This clause provides that in any proceeding under the Act (civil or criminal) records generated through approved monitoring devices or through voice recognition systems or a notebooks diaries and other records kept by a parole officer are admissible as evidence of the conduct of a supervisee.

Clause 99. Certain matters may be decided on papers

This clause provides for the proceedings under the Act that can determined on the basis only of papers that have been filed – regardless of whether the person affected by the proceedings consents to, or is heard in, the proceedings.

The proceedings are:

- determining at a preliminary hearing whether a person could, on the basis of allegations, be serious danger to the community (clause 25);
- extending a final supervision order (clause 38);]
- amending a supervision order (Division 2 of Part 4).

Clause 100. Court may give directions

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

Clause 101. Court must give reasons for final order

This clause provides that the Supreme Court must give detailed reasons for making a detention order or supervision order when the order is made.

Part 10 – Appeals

Clause 102. Right of appeal

This clause provides that the Attorney-General or person about whom the Court makes a decision under the Act can appeal to the Court of Appeal. Appeals can be made regarding matters of fact or law or both.

Clause 103. Appeal does not stay decision

In the absence of an order of the Court of Appeal providing for the stay of operation of an original decision the operation of that original decision is not affected by an appeal.

Clause 104. Nature of appeal

An appeal is to occur by way of review of the original decision rather than by way of rehearing. However, the Court of Appeal may receive further evidence.

Clause 105. Interim orders pending hearing or appeal

This clause allows for the Court of Appeal to make interim supervision or interim detention orders where an appeal, or application for leave to appeal, is lodged against a decision made

under this Act.

Clause 106. Decision on appeal

After hearing an appeal the Court of Appeal must do one of the following:

- confirm the original decision
- vary the original decision
- set aside the original decision and either replace with its own decision or remit the matter back to the Supreme Court (along with such directions as it considers appropriate).

The Court of Appeal may also make such other ancillary orders as it considers to be appropriate.

Clause 107. Interim orders pending rehearing after appeal

This clause provides the Court of Appeal can make interim orders where, on an appeal against a decision made under this Act, the Court of Appeal remits the matter to the Supreme Court.

Part 11 – General matters

Clause 108. Name changes

This clause provides that it is an offence if a supervisee or a prisoner subject to a detention order applies under the *Births, Deaths and Marriages Registration Act*, or equivalent Act of another Australian jurisdiction, for registration of a change of the person's name, without the written permission of the Director of Correctional Services to make the application.

The offence is punishable by a maximum penalty of 50 penalty units (currently \$7050) or imprisonment for 6 months and is an offence of strict liability.

Subclause (5) provides that, in deciding whether to give the permission for a prisoner's change of name, the Director of Correctional Services must have regard to each of the following:

- As the paramount consideration – the need to protect the victims of the sex offence, their families and members of the community generally;
- as a secondary consideration - the supervisee's rehabilitation, care or treatment;
- whether the proposed name change could be used to further an unlawful activity or purpose;
- whether the proposed name change could be considered offensive to a victim of a crime or their family.

Clause 109. Director of Correctional Services to provide information to the Attorney-General

This clause provides that the Attorney-General may request the Director of Correctional Services to give information necessary for the performance of the Attorney-General's functions under the Act. The Director must provide the information.

A person who provides the requested information is not liable civilly or criminally for the giving of the information.

Clause 110. Attorney-General may obtain information from other persons

This clause provides that the Attorney-General may request other persons to provide information necessary for the performance of the Attorney-General's functions under the Act. The information that may be sought is information relating to the behaviour or physical or mental condition of a qualifying offender, supervisee or detainee.

Such a person must provide the information. If the person fails to provide the information as requested, the Attorney-General may apply to the Supreme Court for an order for the person to provide the information. Failure of the person to provide the information as required by such an order would be amount to contempt.

A person who provides the requested information is not liable civilly or criminally for the giving of the information.

Clause 111. Costs of damage to equipment recoverable by Territory

This clause provides that the Territory may recover from a supervisee costs resulting from the supervisee damaging an approved monitoring device or associated device, machine or equipment.

Clause 112. Confidentiality of information

This clause provides that it is an offence for a person to illegally disclose information obtained in the course of the administration of the Act,

The maximum penalty for breach is 200 penalty units or imprisonment for 2 years.

Clause 113. Regulations

This clause provides that the Administrator may make regulations under the Act. This clause is to be read with the provisions of the *Interpretation Act* that set out the kinds of matters that can be covered by regulations.

Part 12 – Consequential amendments

Division 1 - Births, Deaths and Marriages Registration Act

Clause 114. Act amended.

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

Clause 115. Section 27A inserted.

This clause inserts a new section 27A into the *Births, Deaths and Marriages Registration Act*.

27A Change of name of serious sex offender

This new section will require the Registrar of Births, Deaths and Marriages to comply with a direction from the Director of Correctional Services that the Registrar refuse to register a

change of name or register a reversal of that change of name.

Division 2 - Child Protection (Offender Reporting and Registration) Act

Clause 116. Act amended

This clause provides that this Division amends the *Child Protection (Offender Reporting and Registration) Act*.

Clause 117. Section 42 amended

This clause inserts new section 42(2A) which provides that the Court must not make a prohibition order if the reportable offender is already subject to a supervision order under the *Serious Sex Offenders Act*.

Clause 118. Section 46 amended.

This clause provides for various minor amendments and new

cross-references to the *Serious Sex Offenders Act* in section 46.

Clause 119. Section 47 amended.

This clause inserts a note into section 47(1) clarifying that if a prohibition order ceases to have effect, the Court can not make a new order if the reportable offender is subject to a supervision order under the *Serious Sex Offenders Act*.

Division 3 – Criminal Code

Clause 120. Act amended

This clause provides that this Division amends the Criminal Code.

Clause 121. Section 112 amended

This clause amends section 112 (escape from lawful custody) so that section 112 applies to persons under a continuing detention order made under the *Serious Sex Offenders Act*.

Subclause (5) provides that the maximum penalty for an escape by a person in custody because of the *Serious Sex Offenders Act* is imprisonment for 3 years.

Division 4 - Parole of Prisoners Act

Clause 122. Act amended.

This clause provides that this Division amends the *Parole of Prisoners Act*.

Clause 123. Section 3R amended

This clause inserts new paragraph 3R(ea) to clarify that parole officers appointed under the *Parole of Prisoners Act* also have functions under the *Serious Sex Offenders Act*.

Clause 124. Section 5 amended

This clause inserts new section 5(2A) to clarify that a parole order cannot be made contrary

to clause 12(2) or clause 29(2) of the *Serious Sex Offenders Act*.

Division 5 - Prisons (Correctional Services) Act

Clause 125. Act amended

This clause provides that this Division amends the *Prisoners (Correctional Services) Act*.

Clause 126. Section 5 amended

This clause amends section 5 so that it is a clear that persons detailed under the *Serious Sex Offenders Act* are prisoners for the purposes of the *Prisons (Correctional Services) Act*.

Clause 127. Section 95B amended

This clause amends section 95B to allow for the obtaining of buccal swabs from a detainee under a continuing detention order in the same manner as from other prisoners.

Clause 128. Section 101 amended

This clause amends section 101 (regulation making power) so that it contains a reference to supervision orders under the *Serious Sex Offenders Act*

Division 6 - Victims of Crime Rights and Services Act

Clause 129. Act amended

This clause provides that this Division amends the *Victims of Crime Rights and Services Act*.

Clause 130. Section 3 amended

This clause amends the objects of the Act to clarify that it also allows for registered victims to receive information as required under the *Serious Sex Offenders Act*

Clause 131. Section 4 amended

This clause amends section 4 to insert a definition of **serious sex offence**, by reference to the definition in section 4 of the *Serious Sex Offenders Act*.

Clause 132. Section 18 amended

This clause makes a minor amendment to section 18 to insert a cross-reference.

Clause 133. Section 22 amended

This clause makes amendments to section 22, including to insert new section 22(1A) relating to the provision of information to a registered victim where the relevant offender is, or may be, the subject of a supervision or continuing detention order under the *Serious Sex Offender Act*.

Clause 134. Section 25 amended

This clause makes a minor amendment to section 25.

Division 6 - Surveillance Devices Regulations

Clause 135. Regulations amended

This clause provides that this Division amends the Surveillance Devices Regulations.

Clause 136. Regulation 3 amended

This clause inserts a cross-reference to surveillance activities under the *Serious Sex Offender Act*.

Division 8 Expiry of Part

Clause 137. Expiry of Part

This provides that this Part (relating to the transitional and consequential matters) expires on the day after it commences.

Schedule 1 - Serious sex offences

The Schedule lists the specific offences for the purposes of the definition of **serious sex offence** in clause 4.

Each offence has a maximum penalty of seven (7) or more years imprisonment. If a person has been sentenced (before or after the commencement of the legislation) for one of these offences the person is a qualifying offender for the purposes of the legislation if he or she is, at the time of commencement either in prison or out of prison under parole or some other supervised arrangement.

Schedule 2 – Offences constituting breach of supervision order

The Schedule lists the specific offences for the purposes of the definition of **offence of a sexual nature** in clause 4.

These are offences that if committed by a supervised person led to the person's supervision order being reviewed. This also applies for breaches by a supervised offender of the offences set out in Schedule 1.