

Passed by both Houses



New South Wales

Crimes (High Risk Offenders) Amendment Bill 2014

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2014



New South Wales

Crimes (High Risk Offenders) Amendment Bill 2014

Act No , 2014

An Act to amend the *Crimes (High Risk Offenders) Act 2006* to make further provision for the supervision and detention of high risk sex offenders and high risk violent offenders; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (High Risk Offenders) Amendment Act 2014*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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

[1] Section 4 Definitions

Insert in alphabetical order:

Assessment Committee means the High Risk Offenders Assessment Committee established by section 24AB.

emergency detention order means an emergency order for the detention of an offender made under section 18CB.

high risk offender means a high risk violent offender or a high risk sex offender.

Justice Health and Forensic Mental Health Network means the statutory health corporation of that name specified in Schedule 2 to the *Health Services Act 1997*.

serious offence means:

- (a) in the context of a high risk sex offender—a serious sex offence, or
- (b) in the context of a high risk violent offender—a serious violence offence.

[2] Sections 5H, 7 (2), 13 (1), 13A, 15 (2), 19 (1), 21A (1) and (6) and 24A

Omit “State of New South Wales” wherever occurring. Insert instead “State”.

[3] Section 10C Term of interim supervision order

Omit section 10C (1). Insert instead:

- (1) An interim supervision order commences on the day fixed in the order for its commencement (or if no such day is fixed, as soon as it is made) and expires at the end of:
 - (a) such period (not exceeding 28 days from the day on which it commences) as is specified in the order, or
 - (b) if the order is suspended for any period—the period specified in paragraph (a) plus each period during which the order is suspended.
- (1A) An interim supervision order, and the offender’s obligations under that interim supervision order, are suspended during any period the offender is in lawful custody, whether under this or any other Act or law.

[4] Section 10C (3)

Insert after section 10C (2):

- (3) Any day or part of a day on which an interim supervision order is suspended does not count towards the 3-month limit referred to in subsection (2).

[5] Section 11 Conditions that may be imposed on supervision order

Insert at the end of section 11 (j):

, or

- (k) to report to police and provide information to police about the conditions imposed on the extended supervision order or interim supervision order and the offender’s residential address, or

- (l) to comply with any obligation that could be imposed on the offender under Part 3 of the *Child Protection (Offenders Registration) Act 2000* if the offender were a registrable person within the meaning of that Act and were not the subject of an interim supervision order or an extended supervision order, or
- (m) to comply with specified requirements in connection with the offender's access to and use of the internet, or
- (n) to provide any corrective services officer with requested information in relation to any employment or any financial affairs of the offender.

[6] Section 12 Breach of supervision order

Omit "100 penalty units or imprisonment for 2 years".

Insert instead "500 penalty units or imprisonment for 5 years".

[7] Section 13B Application for high risk sex offender continuing detention order

Insert "or emergency detention order" after "order" wherever occurring in section 13B (2) (b) and (3) (b).

[8] Section 13C Application for high risk violent offender continuing detention order

Insert "or emergency detention order" after "order" wherever occurring in section 13C (2) (b) and (3) (b).

[9] Part 3, Division 3A

Insert after Division 3:

Division 3A Emergency detention orders

18CA Ex parte application for emergency detention order

- (1) The State may apply to the Supreme Court for an order (an *emergency detention order*) for the detention of an offender who is the subject of an extended supervision order or an interim supervision order and who, because of altered circumstances, cannot be provided with adequate supervision under the extended supervision order or interim supervision order.
- (2) The Supreme Court may hear an application for an emergency detention order in the absence of the offender concerned.

18CB Making of emergency detention orders

- (1) The Supreme Court may make an emergency detention order if it appears to the Court that the matters alleged in support of the application for the order would, if proved, establish that:
 - (a) because of altered circumstances, the offender cannot be provided with adequate supervision under the extended supervision order or interim supervision order to which the offender is currently subject, and
 - (b) without adequate supervision, the offender poses an imminent risk of committing a serious offence.
- (2) The Supreme Court is not to make more than one emergency detention order in respect of the same occasion of altered circumstances.

18CC Requirements with respect to application

An application for an emergency detention order must be supported by an affidavit of the Commissioner of Corrective Services NSW, or of a corrective services officer of or above the rank of Assistant Commissioner, that addresses each of the following matters:

- (a) the altered circumstances that give rise to the application,
- (b) the reasons why the offender cannot be provided with adequate supervision under the extended supervision order or interim supervision order because of the altered circumstances,
- (c) the reasons why there are no other practicable and available means of ensuring that the offender does not pose an imminent risk of committing a serious offence (other than detention).

18CD Term of emergency detention order

- (1) An emergency detention order can be made to have effect for no longer than is reasonably necessary to enable action to be taken under this Act to ensure that the offender is provided with adequate supervision under an extended supervision order or continuing detention order.
- (2) An emergency detention order commences as soon as it is made and expires at the end of such period (not exceeding 120 hours from when it commences) as is specified in the order or at such earlier time as may be specified by the Supreme Court when making the order.

[10] Section 18D Detention order causes any supervision order to cease to have effect

Insert after section 18D (2):

- (3) On the making of an emergency detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person is suspended and ceases to have effect until such time as the emergency detention order expires.

[11] Section 19 Detention order may be varied or revoked

Omit “or interim detention order” wherever occurring in section 19 (1) and (1B).

Insert instead “, interim detention order or emergency detention order”.

[12] Section 20 Warrant of committal

Omit “or interim detention order” from section 20 (1).

Insert instead “, interim detention order or emergency detention order”.

[13] Section 22 Right of appeal

Omit “or continuing detention order” wherever occurring in section 22 (1), (4) and (4A).

Insert instead “, continuing detention order or emergency detention order”.

[14] Section 22 (4B)

Omit “or a continuing detention order”.

Insert instead “, continuing detention order or emergency detention order”.

[15] Part 4A

Insert after Part 4:

Part 4A High Risk Offenders Assessment Committee and inter-agency co-operation

24AA Meaning of “relevant agency”

For the purposes of this Part, each of the following is a *relevant agency*:

- (a) Corrective Services NSW,
- (b) the Department of Family and Community Services,
- (c) the Justice Health and Forensic Mental Health Network,
- (d) the Department of Justice,
- (e) the NSW Police Force,
- (f) the Ministry of Health,
- (g) any other public sector agency that is prescribed by the regulations as a relevant agency.

24AB Establishment and membership of Assessment Committee

- (1) There is to be a High Risk Offenders Assessment Committee.
- (2) The Assessment Committee is to consist of the following members:
 - (a) the Commissioner of Corrective Services NSW, or a nominee of the Commissioner, who is to be the Chairperson of the Committee,
 - (b) another representative of Corrective Services NSW, nominated by the Commissioner of Corrective Services NSW,
 - (c) a representative of the Department of Family and Community Services, nominated by the Secretary of that Department,
 - (d) a representative of Housing NSW, nominated by the Secretary of the Department of Family and Community Services,
 - (e) a representative of Ageing, Disability and Home Care, nominated by the Secretary of the Department of Family and Community Services,
 - (f) a representative of the Justice Health and Forensic Mental Health Network, nominated by the Chief Executive of that Network,
 - (g) a representative of the Department of Justice, nominated by the Secretary of that Department,
 - (h) a representative of the NSW Police Force, nominated by the Commissioner of Police,
 - (i) a representative of the Ministry of Health, nominated by the Secretary of that Ministry,
 - (j) such other members as the Minister may appoint to represent public sector agencies or other organisations that the Minister considers to have a relevant expertise or involvement in the provision of services in connection with the management of risk and supervision in the community of high risk offenders,
 - (k) such other members as the Minister may appoint on the basis of relevant expertise in connection with the management of risk and supervision in the community of high risk offenders.

- (3) The regulations may make provision for or with respect to the constitution and procedure of the Assessment Committee.

24AC Functions of Assessment Committee

The Assessment Committee has the following functions:

- (a) to review the risk assessments of sex offenders and violent offenders and make recommendations to the Commissioner of Corrective Services NSW for the taking of action by the State under this Act in respect of those offenders,
- (b) to facilitate co-operation between and the co-ordination of relevant agencies in the exercise of their functions in connection with risk assessment and management of high risk offenders (the *high risk offender functions* of relevant agencies),
- (c) to monitor and provide expert oversight of the exercise of the high risk offender functions of relevant agencies for the purpose of identifying opportunities for improved outcomes in individual cases and opportunities for systemic improvement and removal of inter-agency barriers to the effective exercise of high risk offender functions,
- (d) to facilitate information sharing between relevant agencies in connection with the exercise of their high risk offender functions,
- (e) to develop best practice standards and guidelines for the exercise by relevant agencies of their high risk offender functions,
- (f) to identify gaps in resourcing, service provision and training that may impact on the proper and effective exercise of high risk offender functions,
- (g) to conduct research into the effectiveness of this Act in ensuring the safety and protection of the community and to disseminate the results of that research,
- (h) such other functions in connection with the operation of this Act as the Minister may from time to time direct.

24AD Sub-committees of Assessment Committee

- (1) The Assessment Committee may form sub-committees to exercise specific functions of the Assessment Committee.
- (2) The procedure of a sub-committee is to be as determined by the Assessment Committee.

24AE Furnishing of reports and information

- (1) The Assessment Committee must keep the Minister informed of the general conduct of its operations in the exercise of its functions.
- (2) If the Minister requests the Assessment Committee to provide to the Minister information concerning a specific matter relating to the Committee's operations in the exercise of its functions, the Assessment Committee must comply with the request.

24AF Inter-agency co-operation

- (1) Each relevant agency is under a duty to co-operate with other relevant agencies in the exercise of the functions of the agency that are concerned with risk assessment and management of high risk offenders (*high risk offender functions*).

- (2) The duty to co-operate includes the following duties:
 - (a) the duty to disclose information to another relevant agency that is likely to be of assistance to the other agency in the exercise of its high risk offender functions,
 - (b) the duty to provide reasonable assistance and support to another relevant agency in connection with the exercise by the other relevant agency of its high risk offender functions,
 - (c) the duty to co-operate in connection with the exercise of the functions of the Assessment Committee.
- (3) Co-operation between relevant agencies in the exercise of high risk offender functions can include (but is not limited to) any of the following:
 - (a) the development of multi-agency management plans for high risk offenders,
 - (b) providing assistance and support to high risk offenders through joint programs.

24AG Exchange of information and co-operative management of offenders

- (1) Two or more relevant agencies may enter into arrangements (*co-operative protocols*) with each other to enable information held by each of the agencies concerned to be shared or exchanged between those agencies and the co-operative management of offenders.
- (2) The information to which a co-operative protocol may relate is limited to the following:
 - (a) information concerning offenders,
 - (b) any other information that may be prescribed by the regulations.
- (3) Under a co-operative protocol, each relevant agency the subject of the arrangement is authorised:
 - (a) to request and receive information held by any other relevant agency the subject of the arrangement, and
 - (b) to disclose information to any of those relevant agencies, without the consent of any person concerned, but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or the functions of the relevant agencies concerned.
- (4) This section does not limit the operation of any Act under which the relevant agency is authorised or required to disclose information to another person or body.

[16] Section 25A

Omit the section. Insert instead:

25A Proceedings for offences

- (1) Proceedings for an offence under this Act (except section 12) or the regulations are to be dealt with summarily before the Local Court.
- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 12.

[17] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule:

**Part 8 Provisions consequent on enactment of Crimes
(High Risk Offenders) Amendment Act 2014**

13 Definition

In this Part:

amending Act means the *Crimes (High Risk Offenders) Amendment Act 2014*.

14 Extension of scheme

The amendments made to this Act by the amending Act extend:

- (a) to offences committed before the date of commencement of the amendments, and
- (b) to persons serving a sentence of imprisonment that commenced before the date of commencement of the amendments, and
- (c) to persons subject to an extended supervision order, interim supervision order, continuing detention order or interim detention order immediately before the date of commencement of the amendments.

Schedule 2 Amendment of other Acts

2.1 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 4 Application of Part

Omit “or interim detention order” from section 4 (1) (c1).

Insert instead “, interim detention order or emergency detention order”.

[2] Section 126 Eligibility for release on parole

Omit “or an interim detention order” from section 126 (4).

Insert instead “, an interim detention order or an emergency detention order”.

[3] Section 160A Relationship of parole orders to high risk offender orders

Omit “or an interim detention order” from section 160A (1).

Insert instead “, an interim detention order or an emergency detention order”.

[4] Section 271A Regulations relating to high risk violent offenders under the Crimes (High Risk Offenders) Act 2006

Insert at the end of section 271A (3) (d):

, or

- (e) an emergency detention order made under section 18CB of that Act and is a violent offender within the meaning of that Act.

2.2 Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Insert after clause 10F in Part 6 of Table 2:

10G Crimes (High Risk Offenders) Act 2006

An offence under section 12 of the *Crimes (High Risk Offenders) Act 2006*.

2.3 Jury Act 1977 No 18

Schedule 1 Persons excluded from jury service

Omit “or an interim detention order” from clause 4 (1) (c).

Insert instead “, an interim detention order or an emergency detention order”.