



New South Wales

Crimes (High Risk Offenders) Amendment Bill 2014

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the scheme for the supervision and detention of high risk sex offenders and high risk violent offenders that is set out in the *Crimes (High Risk Offenders) Act 2006* as follows:

- (a) by providing for the Supreme Court to make, on an ex parte basis, emergency detention orders in relation to a high risk offender the subject of an extended supervision order or an interim supervision order who, because of altered circumstances, cannot be provided with adequate supervision under the extended supervision order or interim supervision order,
- (b) by clarifying that an interim supervision order is suspended during any period that the offender is in lawful custody,
- (c) by supplementing the list of conditions that may be imposed on an extended supervision order (which is not exhaustive) to add conditions requiring the offender to report to police, to provide information about association with children, to comply with requirements relating to internet access and use and to provide employment and financial information to a corrective services officer,
- (d) by increasing the penalty for failing to comply with an extended supervision order or interim supervision order,
- (e) by establishing a High Risk Offenders Assessment Committee, the functions of which include reviewing the risk assessments of sex offenders and violent offenders for the purposes of making recommendations about the taking of action under the Act,
- (f) by requiring agencies involved in the supervision and management of offenders to co-operate with, and provide assistance to, the Assessment Committee and each other.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Term of interim supervision order

Schedule 1 [3] clarifies that an interim supervision order is suspended during any period that the offender is in custody.

Schedule 1 [4] clarifies that, when calculating the maximum 3-month period during which an offender can be supervised under an interim supervision order, any day or part of a day on which the order is suspended is not to be counted.

Additional conditions on supervision orders

Schedule 1 [5] adds to the existing list of specific conditions that may be imposed on an extended supervision order (which extends the period during which a high risk sex offender or a high risk violent offender may be supervised) or an interim supervision order. The additional conditions include conditions requiring the offender to:

- (a) report to police and provide information about the conditions to which the extended supervision order or interim supervision order is subject and the residential address of the offender, or
- (b) provide information about association with children that replicates that required by the *Child Protection (Offenders Registration) Act 2000* (the operation of that Act is suspended while an extended supervision order is in force), or
- (c) comply with restrictions on internet access or use, or
- (d) provide information about employment and financial affairs to a corrective services officer.

Increase in maximum penalty for failure to comply with supervision order

Schedule 1 [6] increases the maximum penalty for failing to comply with an extended supervision order or interim supervision order from 100 penalty units or 2 years' imprisonment (or both) to 500 penalty units or 5 years' imprisonment (or both).

Schedule 1 [16] makes a consequential amendment to a provision about proceedings for offences, so as to provide that the offence of failing to comply with an extended supervision order or interim supervision order will be an indictable offence triable summarily unless the prosecutor elects otherwise.

Making of emergency detention orders

Schedule 1 [9] inserts new provisions establishing emergency detention orders as follows:

- (a) proposed section 18CA enables the State to apply to the Supreme Court for an emergency detention order in relation to a high risk sex offender or high risk violent 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 an extended supervision order or interim supervision order, and provides for the Supreme Court to hear an application in the absence of the offender,
- (b) proposed section 18CB provides that the Supreme Court may make an emergency detention order if it appears to the Court that, because of altered circumstances, the offender cannot be provided with adequate supervision under the extended supervision order or interim

supervision order and, without adequate supervision, the offender poses an imminent risk of committing a serious offence,

- (c) proposed section 18CC identifies the matters that must be dealt with in documentation supporting the making of an application for an emergency detention order,
- (d) proposed section 18CD provides that an emergency detention order is not to be made to have effect for longer than is reasonably necessary to enable action to be taken under the Act to ensure that the offender is provided with adequate supervision, and that the term of an emergency detention order cannot exceed 120 hours.

Schedule 1 [7] and [8] are consequential amendments, to reflect that persons who are the subject of applications for continuing detention orders may be detained under emergency detention orders.

Schedule 1 [10] provides that, on the making of an emergency detention order in respect of an offender, any interim supervision order or extended supervision order in respect of the offender is suspended and ceases to have effect until such time as the emergency detention order expires.

Schedule 1 [11] provides for the Supreme Court to vary or revoke an emergency detention order at any time on the application of the State or the offender, including on the ground that the circumstances have changed sufficiently to render the order unnecessary.

Schedule 1 [12] provides that, as soon as practicable after making an emergency detention order, the Supreme Court must issue a warrant for the committal of the offender to a correctional centre for the period specified in the order.

Schedule 1 [13] and [14] provide for the making of appeals against emergency detention orders.

Establishment of High Risk Offenders Assessment Committee and provision for inter-agency co-operation

Schedule 1 [15] establishes a High Risk Offenders Assessment Committee and provides for its membership and functions, which include the following:

- (a) to review the risk assessments of sex offenders and violent offenders,
- (b) to recommend to the Commissioner of Corrective Services NSW whether or not action should be taken by the State under the Act in respect of offenders.

Schedule 1 [15] also makes provision for the relevant agencies responsible for offenders (Corrective Services NSW, the Department of Family and Community Services, the Justice Health and Forensic Mental Health Network, the Department of Justice, the NSW Police Force, the Ministry of Health and prescribed bodies) to co-operate with the Assessment Committee and each other, in the assessment and management of offenders, including by sharing information.

Other amendments

Schedule 1 [1] inserts definitions of terms used in the proposed provisions.

Schedule 1 [2] simplifies references to the State.

Schedule 1 [17] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Crimes (Administration of Sentences) Act 1999* as a consequence of the creation of emergency detention orders. The amendments will mean that:

- (a) Part 2 of that Act (which deals with imprisonment by way of full-time detention) will apply to a person subject to an emergency detention order (in the same way as it currently applies to a person subject to a continuing detention order or interim detention order), and
- (b) an offender is not eligible for release on parole if the offender is the subject of an emergency detention order (in the same way as a person subject to a continuing detention order or an interim detention order is currently ineligible), and

- (c) regulations may be made providing for the preparation and implementation of plans of management in respect of persons who are subject to emergency detention orders (in the same way the regulations can currently apply to offenders subject to extended supervision orders, continuing detention orders, interim supervision orders and interim detention orders).

Schedule 2.2 amends the *Criminal Procedure Act 1986* to provide that an offence of failing to comply with an extended supervision order or interim supervision order is an indictable offence triable summarily unless the prosecutor elects otherwise.

Schedule 2.3 amends the *Jury Act 1977* as a consequence of the creation of the category of emergency detention orders. The amendment will mean that a person subject to an emergency detention order will be excluded from jury service (in the same way as a person subject to a continuing detention order or an interim detention order currently is).



New South Wales

Crimes (High Risk Offenders) Amendment Bill 2014

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New South Wales

Crimes (High Risk Offenders) Amendment Bill 2014

No. , 2014

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (High Risk Offenders) Amendment Act 2014</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Crimes (High Risk Offenders) Act 2006 No 7	1
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[1] Section 4 Definitions		3
Insert in alphabetical order:		4
<i>Assessment Committee</i> means the High Risk Offenders Assessment Committee established by section 24AB.		5
<i>emergency detention order</i> means an emergency order for the detention of an offender made under section 18CB.		6
<i>high risk offender</i> means a high risk violent offender or a high risk sex offender.		7
<i>Justice Health and Forensic Mental Health Network</i> means the statutory health corporation of that name specified in Schedule 2 to the <i>Health Services Act 1997</i> .		8
<i>serious offence</i> means:		9
(a) in the context of a high risk sex offender—a serious sex offence, or		10
(b) in the context of a high risk violent offender—a serious violence offence.		11
[2] Sections 5H, 7 (2), 13 (1), 13A, 15 (2), 19 (1), 21A (1) and (6) and 24A		12
Omit “State of New South Wales” wherever occurring. Insert instead “State”.		13
[3] Section 10C Term of interim supervision order		14
Omit section 10C (1). Insert instead:		15
(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:		16
(a) such period (not exceeding 28 days from the day on which it commences) as is specified in the order, or		17
(b) if the order is suspended for any period—the period specified in paragraph (a) plus each period during which the order is suspended.		18
(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.		19
[4] Section 10C (3)		20
Insert after section 10C (2):		21
(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).		22
[5] Section 11 Conditions that may be imposed on supervision order		23
Insert at the end of section 11 (j):		24
, or		25
(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		26

(l)	to comply with any obligation that could be imposed on the offender under Part 3 of the <i>Child Protection (Offenders Registration) Act 2000</i> 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	1 2 3 4 5
(m)	to comply with specified requirements in connection with the offender's access to and use of the internet, or	6 7
(n)	to provide any corrective services officer with requested information in relation to any employment or any financial affairs of the offender.	8 9
[6]	Section 12 Breach of supervision order	10
	Omit "100 penalty units or imprisonment for 2 years".	11
	Insert instead "500 penalty units or imprisonment for 5 years".	12
[7]	Section 13B Application for high risk sex offender continuing detention order	13
	Insert "or emergency detention order" after "order" wherever occurring in section 13B (2) (b) and (3) (b).	14 15
[8]	Section 13C Application for high risk violent offender continuing detention order	16
	Insert "or emergency detention order" after "order" wherever occurring in section 13C (2) (b) and (3) (b).	17 18
[9]	Part 3, Division 3A	19
	Insert after Division 3:	20
	Division 3A Emergency detention orders	21
18CA	Ex parte application for emergency detention order	22
(1)	The State may apply to the Supreme Court for an order (an <i>emergency detention order</i>) 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.	23 24 25 26 27
(2)	The Supreme Court may hear an application for an emergency detention order in the absence of the offender concerned.	28 29
18CB	Making of emergency detention orders	30
(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:	31 32 33
(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	34 35 36
(b)	without adequate supervision, the offender poses an imminent risk of committing a serious offence.	37 38
(2)	The Supreme Court is not to make more than one emergency detention order in respect of the same occasion of altered circumstances.	39 40

18CC	Requirements with respect to application	1
	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:	2
	(a) the altered circumstances that give rise to the application,	3
	(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,	4
	(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).	5
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18CD	Term of emergency detention order	13
	(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.	14
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		16
		17
	(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.	18
		19
		20
		21
[10]	Section 18D Detention order causes any supervision order to cease to have effect	22
	Insert after section 18D (2):	23
	(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.	24
		25
		26
		27
[11]	Section 19 Detention order may be varied or revoked	28
	Omit “or interim detention order” wherever occurring in section 19 (1) and (1B).	29
	Insert instead “, interim detention order or emergency detention order”.	30
[12]	Section 20 Warrant of committal	31
	Omit “or interim detention order” from section 20 (1).	32
	Insert instead “, interim detention order or emergency detention order”.	33
[13]	Section 22 Right of appeal	34
	Omit “or continuing detention order” wherever occurring in section 22 (1), (4) and (4A).	35
	Insert instead “, continuing detention order or emergency detention order”.	36
[14]	Section 22 (4B)	37
	Omit “or a continuing detention order”.	38
	Insert instead “, continuing detention order or emergency detention order”.	39

[15] Part 4A	1
Insert after Part 4:	2
Part 4A High Risk Offenders Assessment Committee and inter-agency co-operation	3
24AA Meaning of “relevant agency”	5
For the purposes of this Part, each of the following is a <i>relevant agency</i> :	6
(a) Corrective Services NSW,	7
(b) the Department of Family and Community Services,	8
(c) the Justice Health and Forensic Mental Health Network,	9
(d) the Department of Justice,	10
(e) the NSW Police Force,	11
(f) the Ministry of Health,	12
(g) any other public sector agency that is prescribed by the regulations as a relevant agency.	13
24AB Establishment and membership of Assessment Committee	15
(1) There is to be a High Risk Offenders Assessment Committee.	16
(2) The Assessment Committee is to consist of the following members:	17
(a) the Commissioner of Corrective Services NSW, or a nominee of the Commissioner, who is to be the Chairperson of the Committee,	18
(b) another representative of Corrective Services NSW, nominated by the Commissioner of Corrective Services NSW,	20
(c) a representative of the Department of Family and Community Services, nominated by the Secretary of that Department,	22
(d) a representative of Housing NSW, nominated by the Secretary of the Department of Family and Community Services,	24
(e) a representative of Ageing, Disability and Home Care, nominated by the Secretary of the Department of Family and Community Services,	26
(f) a representative of the Justice Health and Forensic Mental Health Network, nominated by the Chief Executive of that Network,	28
(g) a representative of the Department of Justice, nominated by the Secretary of that Department,	30
(h) a representative of the NSW Police Force, nominated by the Commissioner of Police,	32
(i) a representative of the Ministry of Health, nominated by the Secretary of that Ministry,	34
(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,	36
(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.	41

(3)	The regulations may make provision for or with respect to the constitution and procedure of the Assessment Committee.	1 2
24AC	Functions of Assessment Committee	3
	The Assessment Committee has the following functions:	4
(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,	5 6 7 8
(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 <i>high risk offender functions</i> of relevant agencies),	9 10 11 12
(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,	13 14 15 16 17
(d)	to facilitate information sharing between relevant agencies in connection with the exercise of their high risk offender functions,	18 19
(e)	to develop best practice standards and guidelines for the exercise by relevant agencies of their high risk offender functions,	20 21
(f)	to identify gaps in resourcing, service provision and training that may impact on the proper and effective exercise of high risk offender functions,	22 23 24
(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,	25 26 27
(h)	such other functions in connection with the operation of this Act as the Minister may from time to time direct.	28 29
24AD	Sub-committees of Assessment Committee	30
(1)	The Assessment Committee may form sub-committees to exercise specific functions of the Assessment Committee.	31 32
(2)	The procedure of a sub-committee is to be as determined by the Assessment Committee.	33 34
24AE	Furnishing of reports and information	35
(1)	The Assessment Committee must keep the Minister informed of the general conduct of its operations in the exercise of its functions.	36 37
(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.	38 39 40 41
24AF	Inter-agency co-operation	42
(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 (<i>high risk offender functions</i>).	43 44 45 46

(2)	The duty to co-operate includes the following duties:	1
(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,	2 3 4
(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,	5 6 7
(c)	the duty to co-operate in connection with the exercise of the functions of the Assessment Committee.	8 9
(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:	10 11
(a)	the development of multi-agency management plans for high risk offenders,	12 13
(b)	providing assistance and support to high risk offenders through joint programs.	14 15
24AG	Exchange of information and co-operative management of offenders	16
(1)	Two or more relevant agencies may enter into arrangements (<i>co-operative protocols</i>) 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.	17 18 19 20
(2)	The information to which a co-operative protocol may relate is limited to the following:	21 22
(a)	information concerning offenders,	23
(b)	any other information that may be prescribed by the regulations.	24
(3)	Under a co-operative protocol, each relevant agency the subject of the arrangement is authorised:	25 26
(a)	to request and receive information held by any other relevant agency the subject of the arrangement, and	27 28
(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.	29 30 31 32
(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.	33 34 35
[16]	Section 25A	36
	Omit the section. Insert instead:	37
25A	Proceedings for offences	38
(1)	Proceedings for an offence under this Act (except section 12) or the regulations are to be dealt with summarily before the Local Court.	39 40
(2)	Chapter 5 of the <i>Criminal Procedure Act 1986</i> (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.	41 42 43

[17] Schedule 2 Savings, transitional and other provisions	1
Insert at the end of the Schedule:	2
Part 8 Provisions consequent on enactment of Crimes (High Risk Offenders) Amendment Act 2014	3 4
13 Definition	5
In this Part:	6
<i>amending Act</i> means the <i>Crimes (High Risk Offenders) Amendment Act 2014</i> .	7
14 Extension of scheme	8
The amendments made to this Act by the amending Act extend:	9
(a) to offences committed before the date of commencement of the amendments, and	10 11
(b) to persons serving a sentence of imprisonment that commenced before the date of commencement of the amendments, and	12 13
(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.	14 15 16

Schedule 2	Amendment of other Acts	1
2.1	Crimes (Administration of Sentences) Act 1999 No 93	2
[1]	Section 4 Application of Part	3
	Omit “or interim detention order” from section 4 (1) (c1).	4
	Insert instead “, interim detention order or emergency detention order”.	5
[2]	Section 126 Eligibility for release on parole	6
	Omit “or an interim detention order” from section 126 (4).	7
	Insert instead “, an interim detention order or an emergency detention order”.	8
[3]	Section 160A Relationship of parole orders to high risk offender orders	9
	Omit “or an interim detention order” from section 160A (1).	10
	Insert instead “, an interim detention order or an emergency detention order”.	11
[4]	Section 271A Regulations relating to high risk violent offenders under the Crimes (High Risk Offenders) Act 2006	12
	Insert at the end of section 271A (3) (d):	14
	, or	15
	(e) an emergency detention order made under section 18CB of that Act and is a violent offender within the meaning of that Act.	16
		17
2.2	Criminal Procedure Act 1986 No 209	18
	Schedule 1 Indictable offences triable summarily	19
	Insert after clause 10F in Part 6 of Table 2:	20
10G	Crimes (High Risk Offenders) Act 2006	21
	An offence under section 12 of the <i>Crimes (High Risk Offenders) Act 2006</i> .	22
2.3	Jury Act 1977 No 18	23
	Schedule 1 Persons excluded from jury service	24
	Omit “or an interim detention order” from clause 4 (1) (c).	25
	Insert instead “, an interim detention order or an emergency detention order”.	26