

Crimes (High Risk Offenders) Act 2006 No 7

[2006-7]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Crimes (Serious Sex Offenders) Act 2006
- **See also**
[Crimes Legislation Amendment Bill 2013](#)

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Crimes (High Risk Offenders) Act 2006 No 7



New South Wales

An Act to provide for the supervision and detention of high risk sex offenders and high risk violent offenders; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (High Risk Offenders) Act 2006*.

2 Commencement

This Act commences on the date of assent.

3 Objects of Act

- (1) The primary object of this Act is to provide for the extended supervision and continuing detention of high risk sex offenders and high risk violent offenders so as to ensure the safety and protection of the community.
- (2) Another object of this Act is to encourage high risk sex offenders and high risk violent offenders to undertake rehabilitation.

4 Definitions

In this Act:

adult means a person who is not a child.

business day means any day that is not a Saturday, Sunday or public holiday.

child means a person who is under the age of 16 years.

continuing detention order means an order for the detention of an offender made under section 5D or 5G.

correctional centre has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

Corrective Services NSW has the same meaning it has in the *Crimes (Administration of*

[Sentences\) Act 1999.](#)

corrective services officer means a member of staff of the Corrective Services NSW.

extended supervision order means an order for the supervision of an offender made under section 5C or 5F.

high risk sex offender—see section 5B.

high risk sex offender continuing detention order means a continuing detention order made under section 5D.

high risk sex offender extended supervision order means an extended supervision order made under section 5C.

high risk violent offender—see section 5E.

high risk violent offender continuing detention order means a continuing detention order made under section 5G.

high risk violent offender extended supervision order means an extended supervision order made under section 5F.

interim detention order means an interim order for the detention of an offender made under section 18A or 18B.

interim supervision order means an interim order for the supervision of an offender made under section 10A or 10B.

offence of a sexual nature—see section 5 (2).

offender means a sex offender or a violent offender.

qualified psychiatrist means a registered medical practitioner who is a fellow of the Royal Australian and New Zealand College of Psychiatrists.

sentencing court, in relation to an offender serving a sentence of imprisonment, means:

- (a) the court by which the sentence was imposed, and
- (b) any court that heard an appeal in respect of that sentence.

serious sex offence—see section 5 (1).

serious violence offence—see section 5A.

sex offender means a person over the age of 18 years who has at any time been sentenced to imprisonment following his or her conviction of a serious sex offence.

supporting documentation, in relation to proceedings under Part 2 or 3, means the

documentation referred to in section 6 (3) or 14 (3), as the case requires.

violent offender means a person over the age of 18 years who has at any time been sentenced to imprisonment following his or her conviction for a serious violence offence.

5 Definitions of “serious sex offence” and “offence of a sexual nature”

(1) For the purposes of this Act, a **serious sex offence** means any of the following offences:

- (a) an offence under Division 10 of Part 3 of the [Crimes Act 1900](#), where:
 - (i) in the case of an offence against an adult or a child, the offence is punishable by imprisonment for 7 years or more, and
 - (ii) in the case of an offence against an adult, the offence is committed in circumstances of aggravation (within the meaning of the provision under which the offence arises),
- (a1) an offence under section 61K or 66EA of the [Crimes Act 1900](#),
- (b) an offence under section 38, 86 (1) (a1), 111, 112, 113 or 114 (1) (a), (c) or (d) of the [Crimes Act 1900](#) that has been committed with intent to commit an offence under Division 10 of Part 3 of the [Crimes Act 1900](#), where the offence intended to be committed is punishable by imprisonment for 7 years or more,

and includes:

- (c) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious sex offence for the purposes of this Act, and
 - (c1) an offence by a person that, at the time it was committed, was not a serious sex offence for the purposes of this Act but which was committed in circumstances that would make the offence a serious sex offence if it were committed at the time an application for an order against the person is made under this Act, and
 - (d) any other offence that, at the time it was committed, was a serious sex offence for the purposes of this Act.
- (2) For the purposes of this Act, an **offence of a sexual nature** means any of the following offences:
- (a) an offence under Division 10 of Part 3 of the [Crimes Act 1900](#),
 - (b) an offence under section 38, 111, 112 or 113 of the [Crimes Act 1900](#) that has been committed with intent to commit an offence referred to in paragraph (a),
 - (c) an offence under Division 15 or 15A of Part 3 of the [Crimes Act 1900](#),

- (d) an offence under section 11G of the *Summary Offences Act 1988*,
 - (e) an offence under section 91J, 91K, 91L or 91M of the *Crimes Act 1900* in relation to the observing or filming of a child,
 - (f) an offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*,
 - (g) an offence under section 13 of the *Child Protection (Offenders Prohibition Orders) Act 2004*,
 - (h) an offence under section 12 of this Act,
- and includes:
- (i) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence of a sexual nature for the purposes of this Act, and
 - (j) any other offence that, at the time it was committed, was an offence of a sexual nature for the purposes of this Act.

5A Definition of “serious violence offence”

- (1) For the purposes of this Act, a **serious violence offence** is a serious indictable offence that is constituted by a person:
 - (a) engaging in conduct that causes the death of another person or grievous bodily harm to another person, with the intention of causing, or while being reckless as to causing, the death of another person or grievous or actual bodily harm to another person, or
 - (b) attempting to commit, or conspiring with or inciting another person to commit, an offence of a kind referred to in paragraph (a).
- (2) An offence that includes the elements referred to in subsection (1) (a) is a serious violence offence regardless of how those elements are expressed, and whether or not the offence includes other elements.
- (3) A **serious indictable offence** is:
 - (a) an offence committed in New South Wales that was a serious indictable offence (within the meaning of the *Crimes Act 1900*) at the time that it was committed, or
 - (b) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence within the meaning of the *Crimes Act 1900* at the time that it was committed, or
 - (c) an offence that, at the time that it was committed, was not a serious indictable

offence but which was committed in circumstances that would make the offence a serious indictable offence if it were committed at the time an application for an order against the person is made under this Act.

Part 1A Supervision and detention of high risk offenders

Division 1 High risk sex offenders

5B High risk sex offender

- (1) An offender can be made the subject of a high risk sex offender extended supervision order or a high risk sex offender continuing detention order as provided for by this Act if and only if the offender is a high risk sex offender.
- (2) An offender is a **high risk sex offender** if the offender is a sex offender and the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious sex offence if he or she is not kept under supervision.
- (3) The Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence.

5C Extended supervision orders for high risk sex offenders

- (1) The Supreme Court may, on application under this Act, make an order for the supervision of an offender if the offender is a high risk sex offender.
- (2) An order made under this section is an **extended supervision order**.
- (3) An extended supervision order made under this section may also be referred to as a **high risk sex offender extended supervision order**.

5D Continuing detention orders for high risk sex offenders

- (1) The Supreme Court may, on application under this Act, make an order for the detention of an offender if the offender is a high risk sex offender and the Supreme Court is satisfied that adequate supervision will not be provided by an extended supervision order.
- (2) An order made under this section is a **continuing detention order**.
- (3) A continuing detention order made under this section may also be referred to as a **high risk sex offender continuing detention order**.

Division 2 High risk violent offenders

5E High risk violent offender

- (1) An offender can be made the subject of a high risk violent offender extended supervision order or a high risk violent offender continuing detention order as provided for by this Act if and only if the offender is a high risk violent offender.
- (2) An offender is a **high risk violent offender** if the offender is a violent offender and the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious violence offence if he or she is not kept under supervision.
- (3) The Supreme Court is not required to determine that the risk of a person committing a serious violence offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious violence offence.

5F Extended supervision orders for high risk violent offenders

- (1) The Supreme Court may, on application under this Act, make an order for the supervision of an offender if the offender is a high risk violent offender.
- (2) An order made under this section is an **extended supervision order**.
- (3) An extended supervision order made under this section may also be referred to as a **high risk violent offender extended supervision order**.

5G Continuing detention orders for high risk violent offenders

- (1) The Supreme Court may, on application under this Act, make an order for the detention of an offender if the offender is a high risk violent offender and the Supreme Court is satisfied that adequate supervision will not be provided by an extended supervision order.
- (2) An order made under this section is a **continuing detention order**.
- (3) A continuing detention order made under this section may also be referred to as a **high risk violent offender continuing detention order**.

Part 2 Extended supervision orders

Division 1 Application for extended supervision order

5H State may apply for order

The State of New South Wales may apply to the Supreme Court for an extended supervision order against an offender.

5I Application for high risk sex offender extended supervision order

- (1) An application for a high risk sex offender extended supervision order may be made

only in respect of a supervised sex offender.

- (2) A **supervised sex offender** is a sex offender who, when the application for the order is made, is in custody or under supervision (referred to in this Part as the offender's **current custody or supervision**):
- (a) while serving a sentence of imprisonment:
- (i) for a serious sex offence, or
 - (ii) for an offence of a sexual nature, or
 - (iii) for another offence which is being served concurrently or consecutively, or partly concurrently and partly consecutively, with one or more sentences of imprisonment referred to in subparagraph (i) or (ii), or
- (b) pursuant to an existing extended supervision order or continuing detention order.
- (3) A person is taken to be serving a sentence of imprisonment whether the sentence is being served by way of full-time detention, intensive correction in the community or home detention and whether the offender is in custody or on release on parole.

5J Application for high risk violent offender extended supervision order

- (1) An application for a high risk violent offender extended supervision order may be made only in respect of a supervised violent offender.
- (2) A **supervised violent offender** is a violent offender who, when the application for the order is made, is in custody or under supervision (referred to in this Part as the offender's **current custody or supervision**):
- (a) while serving a sentence of imprisonment:
- (i) for a serious violence offence, or
 - (ii) for an offence under section 12, or
 - (iii) for another offence which is being served concurrently or consecutively, or partly concurrently and partly consecutively, with one or more sentences of imprisonment referred to in subparagraph (i) or (ii), or
- (b) pursuant to an existing extended supervision order or continuing detention order.
- (3) A person is taken to be serving a sentence of imprisonment whether the sentence is being served by way of full-time detention, intensive correction in the community or home detention and whether the offender is in custody or on release on parole.

6 Requirements with respect to application

- (1) An application for an extended supervision order must indicate whether the extended

supervision order sought is a high risk sex offender extended supervision order or a high risk violent offender extended supervision order.

- (2) An application may not be made until the last 6 months of the offender's current custody or supervision.
- (3) An application must be supported by documentation:
 - (a) that addresses each of the matters referred to in section 9 (3), and
 - (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner) that assesses the likelihood of the offender committing:
 - (i) a further serious sex offence (in the case of an application for a high risk sex offender extended supervision order), or
 - (ii) a further serious violence offence (in the case of an application for a high risk violent offender extended supervision order).
- (4) An application may indicate the kinds of conditions that are considered to be appropriate for inclusion under section 11 in the event that an extended supervision order is made.

7 Pre-trial procedures

- (1) An application for an extended supervision order must be served on the offender concerned within 2 business days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (2) The State of New South Wales must disclose to the offender such documents, reports and other information as are relevant to the proceedings on the application (whether or not intended to be tendered in evidence):
 - (a) in the case of anything that is available when the application is made, as soon as practicable after the application is made, and
 - (b) in the case of anything that subsequently becomes available, as soon as practicable after it becomes available.

Note—

Section 21A (6) provides that the State of New South Wales must not disclose a victim statement to the offender unless the person who made the statement consents to the disclosure.

- (3) A preliminary hearing into the application is to be conducted by the Supreme Court within 28 days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (4) If, following the preliminary hearing, it is satisfied that the matters alleged in the

supporting documentation would, if proved, justify the making of an extended supervision order, the Supreme Court must make orders:

(a) appointing:

(i) 2 qualified psychiatrists, or

(ii) 2 registered psychologists, or

(iii) 1 qualified psychiatrist and 1 registered psychologist, or

(iv) 2 qualified psychiatrists and 2 registered psychologists,

to conduct separate psychiatric or psychological examinations (as the case requires) of the offender and to furnish reports to the Supreme Court on the results of those examinations, and

(b) directing the offender to attend those examinations.

(5) If, following the preliminary hearing, it is not satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order, the Supreme Court must dismiss the application.

8 (Repealed)

Division 2 Determination of application

9 Determination of application for extended supervision order

(1) The Supreme Court may determine an application for an extended supervision order:

(a) by making an extended supervision order, or

(b) by dismissing the application.

(2), (2A) (Repealed)

(3) In determining whether or not to make an extended supervision order, the Supreme Court must have regard to the following matters in addition to any other matter it considers relevant:

(a) the safety of the community,

(b) the reports received from the persons appointed under section 7 (4) to conduct examinations of the offender, and the level of the offender's participation in any such examination,

(c) the results of any other assessment prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner as to the likelihood of the offender committing a further relevant offence, the willingness of the offender

to participate in any such assessment, and the level of the offender's participation in any such assessment,

- (d) the results of any statistical or other assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a further relevant offence,
- (d1) any report prepared by Corrective Services NSW as to the extent to which the offender can reasonably and practicably be managed in the community,
- (e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs, and the level of the offender's participation in any such programs,
- (f) the level of the offender's compliance with any obligations to which he or she is or has been subject while on release on parole or while subject to an earlier extended supervision order,
- (g) the level of the offender's compliance with any obligations to which he or she is or has been subject under the *Child Protection (Offenders Registration) Act 2000* or the *Child Protection (Offenders Prohibition Orders) Act 2004*,
- (h) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere), and any pattern of offending behaviour disclosed by that history,
- (h1) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,
- (i) any other information that is available as to the likelihood that the offender will in future commit offences of a sexual nature (in the case of an application for a high risk sex offender extended supervision order) or serious violence offences (in the case of an application for a high risk violent offender extended supervision order).

(4) In this section, a **relevant offence** means:

- (a) in the case of an application for a high risk sex offender extended supervision order—a serious sex offence, or
- (b) in the case of an application for a high risk violent offender extended supervision order—a serious violence offence.

10 Term of extended supervision order

(1) An extended supervision order commences when it is made, or when the offender's current custody or supervision expires, whichever is the later.

(1A) An extended supervision order expires at the end of:

- (a) such period (not exceeding 5 years 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.
- (2) An offender's obligations under an extended supervision order are suspended while the offender is in lawful custody, whether under this or any other Act or law.
- (3) Nothing in this section prevents the Supreme Court from making a second or subsequent extended supervision order against the same offender.

Division 3 Interim supervision orders

10A Interim supervision order—high risk sex offender

The Supreme Court may make an order for the interim supervision of an offender if, in proceedings for an extended supervision order, it appears to the Court:

- (a) that the offender's current custody or supervision will expire before the proceedings are determined, and
- (b) that the matters alleged in the supporting documentation would, if proved, justify the making of a high risk sex offender extended supervision order.

10B Interim supervision order—high risk violent offender

The Supreme Court may make an order for the interim supervision of an offender if, in proceedings for an extended supervision order, it appears to the Court:

- (a) that the offender's current custody or supervision will expire before the proceedings are determined, and
- (b) that the matters alleged in the supporting documentation would, if proved, justify the making of a high risk violent offender extended supervision order.

10C Term of interim supervision order

- (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 such period (not exceeding 28 days from the day on which it commences) as is specified in the order.
- (2) An interim supervision order may be renewed from time to time, but not so as to provide for the supervision of the offender under such an order for periods totalling more than 3 months.

Division 4 General

11 Conditions that may be imposed on supervision order

An extended supervision order or interim supervision order may direct an offender to comply with such conditions as the Supreme Court considers appropriate, including (but not limited to) directions requiring the offender:

- (a) to permit any corrective services officer to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address, or
- (a1) to permit any corrective services officer to access any computer or related equipment that is at the offender's residential address or in the possession of the offender, or
- (b) to make periodic reports to a corrective services officer, or
- (c) to notify a corrective services officer of any change in his or her address, or
- (d) to participate in treatment and rehabilitation programs, or
- (e) to wear electronic monitoring equipment, or
- (ea) to reside at an address approved by the Commissioner of Corrective Services, or
- (f) not to reside in or resort to specified locations or classes of locations, or
- (g) not to associate or make contact with specified persons or classes of persons, or
- (h) not to engage in specified conduct or classes of conduct, or
- (i) not to engage in specified employment or classes of employment, or
- (j) not to change his or her name.

12 Breach of supervision order

A person who fails to comply with the requirements of an extended supervision order or interim supervision order is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

13 Supervision order may be varied or revoked

- (1) The Supreme Court may at any time vary or revoke an extended supervision order or interim supervision order on the application of the State of New South Wales or the offender.
- (1A) The period of an order must not be varied so that the period is greater than that otherwise permitted under this Part.

- (1B) Without limiting the grounds for revoking an extended supervision order or interim supervision order, the Supreme Court may revoke an extended supervision order or interim supervision order if satisfied that circumstances have changed sufficiently to render the order unnecessary.
- (2) For the purpose of ascertaining whether to make such an application in relation to an extended supervision order, the Commissioner of Corrective Services must provide the Attorney General with a report on the offender at intervals of not more than 12 months.
- (3) The report must indicate whether the Commissioner considers the continuation of the extended supervision order to be necessary and appropriate.

Part 3 Continuing detention orders

Division 1 Application for continuing detention order

13A State may apply for order

The State of New South Wales may apply to the Supreme Court for a continuing detention order against an offender.

13B Application for high risk sex offender continuing detention order

- (1) An application for a high risk sex offender continuing detention order may be made only in respect of:
 - (a) a detained sex offender, or
 - (b) a supervised sex offender.
- (2) A **detained sex offender** is a sex offender who, when the application for a continuing detention order is made, is in custody in a correctional centre (referred to in this Part as the offender's **current custody**):
 - (a) while serving a sentence of imprisonment by way of full-time detention:
 - (i) for a serious sex offence, or
 - (ii) for an offence of a sexual nature, or
 - (iii) for another offence which is being served concurrently or consecutively, or partly concurrently and partly consecutively, with one or more sentences of imprisonment referred to in subparagraph (i) or (ii), or
 - (b) pursuant to an existing continuing detention order.
- (3) An application in respect of a detained sex offender may not be made more than 6 months before:

- (a) the end of the offender's total sentence, or
 - (b) the expiry of the existing continuing detention order,
- as appropriate.

(4) A **supervised sex offender** is a sex offender the subject of an extended supervision order or an interim supervision order who:

- (a) has been found guilty of an offence under section 12 in respect of that order, or
- (b) because of altered circumstances, cannot be provided with adequate supervision under an extended supervision order or interim supervision order.

(5) An application in respect of a supervised sex offender who is serving a sentence of imprisonment by way of full-time detention may not be made more than 6 months before the end of the person's total sentence.

(6) In determining an application in respect of a person referred to in subsection (4) (b), the Supreme Court must not make a continuing detention order unless it is satisfied that circumstances have altered since the making of the extended supervision order or interim supervision order and those altered circumstances mean that adequate supervision of the offender cannot be provided under an extended supervision order or an interim supervision order.

13C Application for high risk violent offender continuing detention order

(1) An application for a high risk violent offender continuing detention order may be made only in respect of:

- (a) a detained violent offender, or
- (b) a supervised violent offender.

(2) A **detained violent offender** is a violent offender who, when the application for a continuing detention order is made, is in custody in a correctional centre (referred to in this Part as the offender's **current custody**):

(a) while serving a sentence of imprisonment by way of full-time detention:

- (i) for a serious violence offence, or
- (ii) for an offence under section 12, or
- (iii) for another offence which is being served concurrently or consecutively, or partly concurrently and partly consecutively, with one or more sentences of imprisonment referred to in subparagraph (i) or (ii), or

(b) pursuant to an existing continuing detention order.

- (3) An application in respect of a detained violent offender may not be made more than 6 months before:
 - (a) the end of the offender's total sentence, or
 - (b) the expiry of the existing continuing detention order,as appropriate.
- (4) A **supervised violent offender** is a violent offender the subject of an extended supervision order or an interim supervision order who:
 - (a) has been found guilty of an offence under section 12 in respect of that order, or
 - (b) because of altered circumstances, cannot be provided with adequate supervision under an extended supervision order or interim supervision order.
- (5) An application in respect of a supervised violent offender who is serving a sentence of imprisonment by way of full-time detention may not be made more than 6 months before the end of the person's total sentence.
- (6) The Supreme Court must not make a continuing detention order on an application referred to in subsection (4) (b) unless it is satisfied that circumstances have altered since the making of the extended supervision order or interim supervision order and those altered circumstances mean that adequate supervision of the offender cannot be provided under an extended supervision order or an interim supervision order.

14 Requirements with respect to application

- (1) An application for a continuing detention order must indicate whether the continuing detention order sought is a high risk sex offender continuing detention order or a high risk violent offender continuing detention order.
- (2)–(2B) (Repealed)
- (3) An application must be supported by documentation:
 - (a) that addresses each of the matters referred to in section 17 (4) (to the extent relevant to the application), and
 - (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner) that assesses the likelihood of the offender committing:
 - (i) a further serious sex offence (in the case of an application for a high risk sex offender continuing detention order), or
 - (ii) a further serious violence offence (in the case of an application for a high risk violent offender continuing detention order).

- (4) An application may indicate the kinds of conditions that are considered to be appropriate for inclusion under section 11 in the event that an extended supervision order is made.

14A (Repealed)

15 Pre-trial procedures

- (1) An application under this Part for a continuing detention order must be served on the offender concerned within 2 business days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (2) The State of New South Wales must disclose to the offender such documents, reports and other information as are relevant to the proceedings on the application (whether or not intended to be tendered in evidence):
 - (a) in the case of anything that is available when the application is made, as soon as practicable after the application is made, and
 - (b) in the case of anything that subsequently becomes available, as soon as practicable after it becomes available.
- (3) A preliminary hearing into the application is to be conducted by the Supreme Court within 28 days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (4) If, following the preliminary hearing, it is satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of a continuing detention order or extended supervision order, the Supreme Court must make orders:
 - (a) appointing:
 - (i) 2 qualified psychiatrists, or
 - (ii) 2 registered psychologists, or
 - (iii) 1 qualified psychiatrist and 1 registered psychologist, or
 - (iv) 2 qualified psychiatrists and 2 registered psychologists,to conduct separate psychiatric or psychological examinations (as the case requires) of the offender and to furnish reports to the Supreme Court on the results of those examinations, and
 - (b) directing the offender to attend those examinations.
- (5) If, following the preliminary hearing, it is not satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of a continuing detention order or extended supervision order, the Supreme Court must dismiss the

application.

16 (Repealed)

Division 2 Determination of application

17 Determination of application for continuing detention order

- (1) The Supreme Court may determine an application under this Part for a continuing detention order:
 - (a) by making an extended supervision order, or
 - (b) by making a continuing detention order, or
 - (c) by dismissing the application.
- (2)–(3A) (Repealed)
- (4) In determining whether or not to make a continuing detention order or extended supervision order, the Supreme Court must have regard to the following matters in addition to any other matter it considers relevant:
 - (a) the safety of the community,
 - (b) the reports received from the persons appointed under section 15 (4) to conduct examinations of the offender, and the level of the offender's participation in any such examination,
 - (c) the results of any other assessment prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner as to the likelihood of the offender committing a further relevant offence, the willingness of the offender to participate in any such assessment, and the level of the offender's participation in any such assessment,
 - (d) the results of any statistical or other assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a further relevant offence,
 - (d1) any report prepared by Corrective Services NSW as to the extent to which the offender can reasonably and practicably be managed in the community,
 - (e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs, and the level of the offender's participation in any such programs,
 - (f) the level of the offender's compliance with any obligations to which he or she is or has been subject while on release on parole or while subject to an interim supervision order or an extended supervision order,

- (g) the level of the offender's compliance with any obligations to which he or she is or has been subject under the [Child Protection \(Offenders Registration\) Act 2000](#) or the [Child Protection \(Offenders Prohibition Orders\) Act 2004](#),
- (h) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere), and any pattern of offending behaviour disclosed by that history,
- (h1) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,
- (i) any other information that is available as to the likelihood that the offender will in future commit offences of a sexual nature (in the case of an application for a high risk sex offender continuing detention order) or serious violence offences (in the case of an application for a high risk violent offender continuing detention order),
- (j) in the case of an application made on the basis that the offender has been found guilty of an offence of failing to comply with the requirements of an extended supervision order or interim supervision order—the nature of the failure to comply with those requirements and the likelihood of further failures to comply,
- (k) in the case of an application made on the basis that circumstances have altered since the making of an extended supervision order or interim supervision order against the offender—whether circumstances have altered since the making of the order and whether those altered circumstances mean that adequate supervision cannot be provided under an extended supervision order or an interim supervision order.

(4A), (4B) (Repealed)

(5) In this section, a **relevant offence** means:

- (a) in the case of an application for a high risk sex offender continuing detention order—a serious sex offence, or
- (b) in the case of an application for a high risk violent offender continuing detention order—a serious violence offence.

17A (Repealed)

18 Term of continuing detention order

(1) A continuing detention order:

- (a) commences when it is made, or when the offender's current custody expires, whichever is the later, and
- (b) expires at the end of such period (not exceeding 5 years from the day on which it

commences) as is specified in the order.

- (1A) Despite subsection (1), a continuing detention order made on application under this Part in respect of a supervised sex offender or supervised violent offender who is not in custody commences when it is made and expires at the end of such period (not exceeding 5 years from the day on which it commences) as is specified in the order.
- (2) An offender's custody under a continuing detention order is suspended while the offender is in lawful custody under any other Act or law, but that suspension does not affect the expiry date of the order.
- (3) Nothing in this section prevents the Supreme Court from making a second or subsequent continuing detention order against the same offender.

Division 3 Interim detention orders

18A Interim detention order—high risk sex offender

The Supreme Court may make an order for the interim detention of an offender if, in proceedings on an application for a continuing detention order, it appears to the Court:

- (a) that the offender's current custody (if any) will expire before the proceedings are determined, and
- (b) that the matters alleged in the supporting documentation would, if proved, justify the making of a high risk sex offender extended supervision order or a high risk sex offender continuing detention order.

18B Interim detention order—high risk violent offender

The Supreme Court may make an order for the interim detention of an offender if, in proceedings on an application for a continuing detention order, it appears to the Court:

- (a) that the offender's current custody (if any) will expire before the proceedings are determined, and
- (b) that the matters alleged in the supporting documentation would, if proved, justify the making of a high risk violent offender extended supervision order or a high risk violent offender continuing detention order.

18C Term of interim detention order

- (1) An interim detention 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 such period (not exceeding 28 days from the day on which it commences) as is specified in the order.
- (2) An interim detention order may be renewed from time to time, but not so as to provide for the detention of the offender under such an order for periods totalling

more than 3 months.

Division 4 General

18D Detention order causes any supervision order to cease to have effect

- (1) On the making of a continuing detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person expires and ceases to have effect.
- (2) On the making of an interim 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 interim detention order expires.

19 Detention order may be varied or revoked

- (1) The Supreme Court may at any time vary or revoke a continuing detention order or interim detention order on the application of the State of New South Wales or the offender.
- (1A) The period of an order must not be varied so that the period is greater than that otherwise permitted under this Part.
- (1B) Without limiting the grounds for revoking a continuing detention order or interim detention order, the Supreme Court may revoke a continuing detention order or interim detention order if satisfied that circumstances have changed sufficiently to render the order unnecessary.
- (2) For the purpose of ascertaining whether to make an application under this section in relation to a continuing detention order, the Commissioner of Corrective Services must provide the Attorney General with a report on the offender at intervals of not more than 12 months.
- (3) The report must indicate whether the Commissioner considers the continuation of the continuing detention order to be necessary and appropriate.

20 Warrant of committal

- (1) As soon as practicable after making a continuing detention order or interim detention order against an offender, the Supreme Court must issue a warrant for the committal of the offender to a correctional centre for the period specified in the order.
- (2) A warrant under this section is sufficient authority:
 - (a) for any police officer to convey, or arrest and convey, the offender to the correctional centre identified in the warrant, and
 - (b) for the governor of the correctional centre to keep the offender in his or her

custody in accordance with the terms of the warrant.

Part 4 Supreme Court proceedings

21 Nature of proceedings

Proceedings under this Act (including proceedings on an appeal under this Act) are civil proceedings and, to the extent to which this Act does not provide for their conduct, are to be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings.

21A Victim statements

- (1) As soon as practicable after an application for an order under this Act is made in respect of an offender, the person acting on behalf of the State of New South Wales for the purposes of the application must take such steps as are reasonable to ensure that written notice of the application is given to:
 - (a) each victim of the offender, or
 - (b) if any such victim is under 18 years of age or lacks legal capacity—that victim's parent or guardian.
- (2) The notice must inform the person that the person may provide, before the date stated in the notice, a written statement setting out:
 - (a) the person's views about the order and any conditions to which the order may be subject, and
 - (b) any other matters prescribed by the regulations.
- (3) It is sufficient for the notice to be sent to the person at the person's last known address as recorded in the Victims Register.
- (4) Any statement received before the final hearing date in respect of the application may be placed before the Supreme Court for consideration in respect of the application.
- (5) A person who makes a statement may amend or withdraw the statement.
- (6) The Supreme Court and the State of New South Wales must not disclose a statement to the offender to which the application relates unless the person who made the statement consents to the disclosure.
- (7) If consent is not provided the Supreme Court may:
 - (a) reduce the weight given to the statement, and
 - (b) take reasonable steps to disclose to the offender, or the offender's legal representative, the substance of the statement but only if the Court is satisfied

that those steps could not reasonably be expected to lead to the identification of the victim or the person who made the statement.

(8) In this section:

victim of an offender means a victim who is recorded on the Victims Register in respect of the offender and who is a victim of an offence committed by the offender for which the offender is currently serving, or most recently served, a sentence of imprisonment.

Victims Register has the same meaning it has in the *Crimes (Administration of Sentences) Act 1999*.

22 Right of appeal

- (1) An appeal to the Court of Appeal lies from any determination of the Supreme Court to make, or to refuse to make, an extended supervision order or continuing detention order.
- (2) An appeal may be on a question of law, a question of fact or a question of mixed law and fact.
- (3) An appeal against the decision of the Supreme Court may be made, as of right, within 28 days after the date on which the decision was made or, by leave, within such further time as the Court of Appeal may allow.
- (4) The making of an appeal does not stay the operation of an extended supervision order or continuing detention order.
- (4A) If the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the extended supervision order or continuing detention order the subject of the appeal continues in force, subject to any order made by the Court of Appeal.
- (4B) Without limiting any other jurisdiction it may have, if the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the Court of Appeal may make an interim order revoking or varying an extended supervision order or a continuing detention order the subject of the appeal.
- (5) This section does not limit any right of appeal that may exist apart from this Act.

23 Costs not to be awarded against offender

An order for costs may not be made against an offender in relation to any proceedings under this Act (including proceedings on an appeal under this Act).

24 Preservation of Supreme Court jurisdiction

Nothing in this Act limits the jurisdiction of the Supreme Court apart from this Act.

Part 5 Miscellaneous

24A Attorney General etc to act on behalf of State

The Attorney General (or any other person prescribed by the regulations) is entitled to act on behalf of the State of New South Wales for the purposes of applications made under this Act.

25 Attorney General may require provision of certain information

(1) The Attorney General may, by order in writing served on any person, require that person to provide to the Attorney General any document, report or other information in that person's possession, or under that person's control, that relates to the behaviour, or physical or mental condition, of any offender.

(2) A person who fails to comply with the requirements of an order under this section is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(3) Despite any Act or law to the contrary, any document or report of a kind referred to in subsection (1), or any copy of any such document or report, is admissible in proceedings under this Act.

25A Proceedings for offences

(1) Proceedings for an offence under this Act or the regulations are to be dealt with summarily before the Local Court.

(2) Proceedings for an offence under section 12 may also be dealt with summarily before the Supreme Court.

25B Orders may be made at same time

(1) Nothing in this Act prevents the Supreme Court from making an extended supervision order in respect of a person at the same time that it makes a continuing detention order in respect of the person.

(2) In such a case, despite section 10 (1), the extended supervision order commences on the expiry of the continuing detention order and expires:

(a) at the end of such period (not exceeding 5 years 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.

25C Violent offenders to be warned about application of Act

- (1) A court that sentences a person for a serious violence offence is to cause the person to be advised of the existence of this Act and of its application to the offence.
- (2) A failure by a court to comply with this section does not affect the validity of a sentence or prevent the making of an order against a person under this Act.

26 Protection of certain persons from liability

No action lies against any person (including the State) for or in respect of any act or omission done or omitted by the person if it was done or omitted in good faith for the purposes of, or in connection with the administration or execution of, this Act.

27 Hearings

This Act does not affect the right of any party to proceedings under this Act:

- (a) to appear, either personally or by the party's legal representative, or
- (b) to call witnesses and give evidence, or
- (c) to cross-examine witnesses, or
- (d) to make submissions to the Court on any matter connected with the proceedings.

28 [Bail Act 1978](#) not to apply

The [Bail Act 1978](#) does not apply to or in respect of a person who is a defendant in proceedings under this Act, other than proceedings for an offence under section 12 or 25 (2).

29 Rules of court

- (1) Rules of court may be made under the [Supreme Court Act 1970](#) for regulating the practice and procedure of the Supreme Court in respect of proceedings under this Act.
- (2) This section does not limit the rule-making powers conferred by the [Supreme Court Act 1970](#).

30 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

31 (Repealed)

32 Review of extension of Act

- (1) The Minister is to review the amendments made to this Act by the [Crimes \(Serious](#)

Sex Offenders) Amendment Act 2013 to determine whether the policy objectives of those amendments remain valid and whether the terms of this Act, as amended, remain appropriate for securing those objectives.

- (2) For the purposes of the review, the Minister may require the Commissioner of Corrective Services to provide information as to how the Commissioner's functions in relation to the administration of this Act are being, and have been, exercised.
- (3) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the *Crimes (Serious Sex Offenders) Amendment Act 2013*.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Schedule 1 (Repealed)

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Application of Act to past offences

This Act applies to and in respect of offences committed before the date of assent to this Act in the same way as it applies to and in respect of offences committed after that date.

3 Application of Act to persons serving existing sentences of imprisonment

This Act applies to and in respect of a person who is serving a sentence of imprisonment

that commenced before the date of assent to this Act in the same way as it applies to and in respect of a person who is serving a sentence of imprisonment that commences after that date.

Part 3 Provisions consequent on enactment of [Law Enforcement and Other Legislation Amendment Act 2007](#)

4 Definition

In this Part:

2007 amending Act means the [Law Enforcement and Other Legislation Amendment Act 2007](#).

5 Application of 2007 amending Act

- (1) The amendments made to this Act by the 2007 amending Act apply to and in respect of offences committed before the commencement of this clause in the same way as they apply to and in respect of offences committed on or after that commencement.
- (2) This Act, as amended by the 2007 amending Act, applies to and in respect of a person who is subject to an order under this Act, that commenced before the commencement of this clause in the same way as it applies to and in respect of a person who is made subject to an order under this Act after that commencement.

Part 4 Provision consequent on enactment of [Courts and Crimes Legislation Amendment Act 2008](#)

6 Application of amendment

Section 5 (1) (a1), as inserted by Schedule 9 [1] to the [Courts and Crimes Legislation Amendment Act 2008](#), applies to and in respect of offences committed before the commencement of that amendment in the same way as it applies to and in respect of offences committed after that commencement.

Part 5 Provisions consequent on enactment of [Crimes \(Serious Sex Offenders\) Amendment Act 2010](#)

7 Definition

In this Part:

2010 amending Act means the [Crimes \(Serious Sex Offenders\) Amendment Act 2010](#).

8 Application of 2010 amending Act

- (1) The amendments made to this Act by the 2010 amending Act apply to and in respect of offences committed before the commencement of this clause in the same way as

they apply to and in respect of offences committed on or after that commencement.

- (2) This Act, as amended by the 2010 amending Act, applies to and in respect of a person who is subject to an order under this Act that commenced before the commencement of this clause in the same way as it applies to and in respect of a person who is made subject to an order under this Act after that commencement.

Part 6 Provision consequent on enactment of [Crimes Legislation Amendment Act 2012](#)

9 Application of amendment

The amendment made to section 5 by the [Crimes Legislation Amendment Act 2012](#) applies only to and in respect of an offence committed on or after the commencement of Schedule 3.4 to that Act.

Part 7 Provisions consequent on enactment of [Crimes \(Serious Sex Offenders\) Amendment Act 2013](#)

10 Definition

In this Part:

amending Act means the [Crimes \(Serious Sex Offenders\) Amendment Act 2013](#).

11 Extension of scheme

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

- (a) to offences committed before the date of assent to that Act, and
- (b) to persons serving a sentence of imprisonment that commenced before the date of assent to that Act.

12 Saving of existing orders

- (1) An extended supervision order made under section 9 or 17 before the amendments made by the amending Act, and in force immediately before the commencement of those amendments, is taken to be an extended supervision order under section 5C.
- (2) An interim supervision order made under section 8 before the repeal of that section by the amending Act, and in force immediately before that repeal, is taken to be an interim supervision order under section 10A.
- (3) A continuing detention order made under section 17 before the amendments made by the amending Act, and in force immediately before the commencement of those amendments, is taken to be a continuing detention order under section 5D.
- (4) An interim detention order made under section 16 before the repeal of that section by

the amending Act, and in force immediately before that repeal, is taken to be an interim detention order under section 18A.