

Terrorism (High Risk Offenders) Act 2017 No 68

[2017-68]



New South Wales

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Notes—

- **See also**
[Community Protection Legislation Amendment Bill 2018](#)

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Terrorism (High Risk Offenders) Act 2017 No 68



New South Wales

An Act to provide for the supervision and detention of certain offenders posing an unacceptable risk of committing serious terrorism offences; and to make consequential and related amendments to certain legislation.

Part 1 Preliminary

Division 1.1 Introduction

1 Name of Act

This Act is the *Terrorism (High Risk Offenders) Act 2017*.

2 Commencement

- (1) This Act commences on the relevant commencement day, except as provided by subsection (3).
- (2) The **relevant commencement day** is:
 - (a) if the date of assent to this Act is before the day on which Schedule 1 to the *Crimes (High Risk Offenders) Amendment Act 2017* commences—the day on which that Schedule commences, or
 - (b) if the date of assent to this Act is on or after the day on which Schedule 1 to the *Crimes (High Risk Offenders) Amendment Act 2017* commences—the date of assent.
- (3) Schedule 2 (other than Schedule 2.10 [2], 2.12 and 2.14) commences on a day or days to be appointed by proclamation.

3 Objects of Act

- (1) The primary object of this Act is to provide for the extended supervision and continuing detention of certain offenders posing an unacceptable risk of committing serious terrorism offences so as to ensure the safety and protection of the community.
- (2) Another object of this Act is to encourage these offenders to undertake rehabilitation.

Division 1.2 Interpretation generally

4 Definitions

(1) In this Act:

Australian jurisdiction means:

- (a) a State, or
- (b) a Territory, or
- (c) the Commonwealth.

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

Commissioner of Corrective Services has the same meaning as **Commissioner** has in the *Crimes (Administration of Sentences) Act 1999*.

Commonwealth Criminal Code means the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

continuing detention order means an order for the detention of an eligible offender made under Division 3.2.

control order means a control order within the meaning of Part 5.3 of the Commonwealth Criminal Code.

convicted NSW terrorism activity offender—see section 10.

convicted NSW terrorist offender—see section 8.

convicted NSW underlying terrorism offender—see section 9.

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

Corrective Services NSW has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

corrective services officer means a correctional officer or community corrections officer within the meaning of the *Crimes (Administration of Sentences) Act 1999*.

eligible offender—see section 7.

eligible offender in lawful custody—see section 5.

emergency detention order means an emergency order for the detention of an eligible offender made under Division 3.6.

enforcement officer means:

- (a) a corrective services officer, or
- (b) a police officer.

extended supervision order means an order for the supervision of an eligible offender made under Division 2.2.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

HRO Assessment Committee means the High Risk Offenders Assessment Committee established by section 24AB of the [Crimes \(High Risk Offenders\) Act 2006](#).

interim detention order means an interim order for the detention of an eligible offender made under Division 3.5.

interim supervision order means an interim order for the supervision of an eligible offender made under Division 2.5.

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](#).

NSW indictable offence means an offence against a law of the State for which proceedings may be taken on indictment (whether or not proceedings for the offence may also be taken otherwise than on indictment).

order under Part 2 or 3 means any of the following orders:

- (a) an extended supervision order,
- (b) an interim supervision order,
- (c) a continuing detention order,
- (d) an interim detention order,
- (e) an emergency detention order.

prescribed terrorism intelligence authority means any authority or other agency (or authority or other agency of a kind) of an Australian jurisdiction that is prescribed by the regulations.

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

relevant expert means a person who has expertise in relation to a body of knowledge of a kind prescribed by the regulations.

sentencing court, in relation to an eligible offender or other person who has served or is serving a sentence of imprisonment for an offence, means:

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

serious terrorism offence means an offence against Part 5.3 of the Commonwealth Criminal Code for which the maximum penalty is 7 or more years of imprisonment.

serving a sentence of imprisonment—see section 6.

supporting documentation, in relation to proceedings under Part 2 or 3, means the documentation referred to in section 23 (3) or 37 (4), as the case requires.

terrorism activity means:

- (a) any statement or other conduct of any person or group of persons involving advocating support for engaging in any terrorist acts or violent extremism, or
- (b) any conduct or other activity of any person or group of persons involving planning or preparing for, or engaging in, any terrorist acts or violent extremism.

terrorism intelligence means information relating to actual or suspected terrorism activity (whether in the State or elsewhere) the disclosure of which could reasonably be expected:

- (a) to adversely affect the capacity of persons or bodies involved in the prevention of terrorist acts from preventing such acts or the capacity of intelligence agencies (for example, the Australian Security Intelligence Organisation) to carry out their functions, or
- (b) to prejudice criminal investigations or investigations by intelligence agencies, or
- (c) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or the functions of intelligence agencies, or
- (d) to endanger a person's life or physical safety.

terrorist act has the same meaning as in Part 5.3 of the Commonwealth Criminal Code.

Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.

5 Offender in lawful custody

In this Act, an **eligible offender in lawful custody** includes, where used in relation to an eligible offender who is subject to an extended supervision order or interim supervision order, the offender being in lawful custody during a period for which the offender is on remand for any offence.

6 Serving sentence of imprisonment

In this Act, a person is **serving a sentence of imprisonment** for an offence if:

- (a) the person is serving a sentence of imprisonment for the offence by way of full-time detention, or
- (b) the person is on parole in respect of the offence.

Division 1.3 Key concepts

7 Eligible offender

In this Act, an **eligible offender** is a person who is:

- (a) 18 years of age or older, and
- (b) serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for a NSW indictable offence.

8 Convicted NSW terrorist offender

In this Act, an eligible offender is a **convicted NSW terrorist offender** if:

- (a) the offender is serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for an offence against section 310J of the [Crimes Act 1900](#), or
- (b) the offender has previously served a sentence of imprisonment for an offence against section 310J of the [Crimes Act 1900](#) and is serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for any other NSW indictable offence.

9 Convicted NSW underlying terrorism offender

(1) In this Act, an eligible offender is a **convicted NSW underlying terrorism offender** if:

- (a) the offender is serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for a NSW indictable offence (the **offender's offence**), and
- (b) the offender's offence is a serious offence, and

- (c) the offender's offence occurred in a terrorism context.
- (2) Each of the following kinds of offences (however described) is a **serious offence**:
- (a) an offence against the *Firearms Act 1996*,
 - (b) an offence against the *Weapons Prohibition Act 1998*,
 - (c) an offence that caused the death of, or grievous bodily harm or other serious physical harm to, a person,
 - (d) an offence that caused serious damage to property,
 - (e) an offence that endangered a person's life (other than the life of the offender),
 - (f) an offence that caused a serious risk to the health or safety of the public or a section of the public,
 - (g) an offence that seriously interfered with, or seriously disrupted, or destroyed, an electronic system including, but not limited to, any of the following:
 - (i) an information system,
 - (ii) a telecommunications system,
 - (iii) a financial system,
 - (iv) a system used for the delivery of essential government services,
 - (v) a system used for, or by, an essential public utility,
 - (vi) a system used for, or by, a transport system,
 - (h) an offence of attempting, assisting, aiding, abetting, counselling, procuring, soliciting, being an accessory to, encouraging, inciting or conspiring to commit any of the kinds of offences mentioned in paragraphs (a)–(g).
- (3) An eligible offender's offence occurred in a **terrorism context** if:
- (a) the offender committed the offender's offence with:
 - (i) the intention of advancing a political, religious or ideological cause, and
 - (ii) the intention of coercing, or influencing by intimidation, the government of an Australian jurisdiction or foreign country (or of part of an Australian jurisdiction or foreign country) or of intimidating the public or a section of the public, or
 - (b) the offender knew, or was reckless as to whether, the offender's offence would materially assist any other person to commit:
 - (i) an offence against section 310J of the *Crimes Act 1900*, or

(ii) a NSW indictable offence that is a serious offence committed by the other person with the intentions referred to in paragraph (a), or

(iii) a terrorism offence within the meaning of the *Crimes Act 1914* of the Commonwealth.

(4) In this section:

(a) a reference to any person or property is a reference to any person or property wherever situated, within or outside the State (including within or outside Australia), and

(b) a reference to the public includes a reference to the public of another Australian jurisdiction or of a foreign country.

10 Convicted NSW terrorism activity offender

(1) In this Act, an eligible offender is a **convicted NSW terrorism activity offender** if the offender is serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for a NSW indictable offence (the **offender's offence**) and any of the following apply in respect of the offender:

(a) the offender has at any time been subject to a control order,

(b) the offender has at any time been a member of a terrorist organisation,

(c) the offender:

(i) has made statements or engaged in other conduct involving advocating support for engaging in any terrorist acts, or

(ii) is associated or otherwise affiliated with other persons or with organisations advocating support for engaging in any terrorist acts.

(2) Subsection (1) (b) and (c) apply regardless of whether or not the eligible offender has been convicted of an offence for the conduct concerned (whether in Australia or elsewhere).

(3) In this section:

terrorist organisation has the same meaning as it has in Division 102 of Part 5.3 of the Commonwealth Criminal Code.

11 Determining whether eligible offender is convicted NSW underlying terrorism offender or convicted NSW terrorism activity offender

In determining whether an eligible offender is a convicted NSW underlying terrorism offender or convicted NSW terrorism activity offender, the Supreme Court may take into account:

- (a) the views of the sentencing court at the time the offender was sentenced for the offender's offence, and
- (b) the views of the sentencing court at the time a person other than the offender was sentenced for an offence if the person was a co-accused of the offender or was convicted of assisting, aiding, abetting, counselling, procuring, soliciting, being an accessory to, encouraging, inciting or conspiring to commit the offender's offence, and
- (c) evidence adduced in the proceedings for the offender's offence or in proceedings against another person for an offence referred to in paragraph (b), and
- (d) any relevant terrorism intelligence, and
- (e) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in the State or elsewhere), and any pattern of offending behaviour disclosed by that history, and
- (f) the results of any assessment prepared by a qualified psychiatrist, registered psychologist, registered medical practitioner or other relevant expert as to the offender's history of behaviour (including any patterns in, or the progression of, that behaviour to date), and
- (g) any information concerning the offender that the Court considers relevant (including developmental or social factors and behaviour while in custody), and
- (h) any report prepared by Corrective Services NSW, the NSW Police Force or a prescribed terrorism intelligence authority concerning the offender and the offender's associates and affiliations, and
- (i) information indicating that current or former associates of the offender have been or are involved in terrorism activities, and
- (j) any other information that the Court considers relevant.

12 Preliminary proceedings for declaration that person is relevant offender

- (1) **Application for declaration** The State may apply to the Supreme Court for a declaration that a person is any of the following for the purposes of this Act:
 - (a) a convicted NSW terrorist offender,
 - (b) a convicted NSW underlying terrorism offender,
 - (c) a convicted NSW terrorism activity offender.
- (2) An application for a declaration may be made:
 - (a) before an application for an order under Part 2 or 3 is made in respect of the person (but only during the period in which an application for an extended

supervision order or continuing detention order can be made), or

(b) at any time while an application for an order under Part 2 or 3 in respect of the person is pending.

(3) **When declaration can be made** The Supreme Court may make the declaration if satisfied that the person is:

(a) a convicted NSW terrorist offender, or

(b) a convicted NSW underlying terrorism offender, or

(c) a convicted NSW terrorism activity offender.

(4) **Duration of declaration** A declaration takes effect when it is made and remains in force until it expires or is revoked.

(5) A declaration that a person is a convicted NSW terrorism activity offender expires:

(a) on the expiry of the period of 15 months (the **default period**) after the declaration is made, or

(b) if an application for an order under Part 2 or 3 is made, but not finally determined, within the default period—when the application is finally determined.

(6) For the purposes of subsection (5), an application is not finally determined if:

(a) any period for bringing an appeal under this Act in respect of the application has not expired (ignoring any period that may be available by way of extension of time to appeal), or

(b) any appeal in respect of the application is pending (whether or not it is an appeal brought as of right).

(7) The Supreme Court may revoke a declaration on the application of the State or the person in respect of whom it is made.

(8) **Effect of declaration** While a declaration is in force in respect of a person, the State is not required to establish for the purposes of proceedings for an order under Part 2 or 3 in respect of the person that:

(a) the person is an eligible offender, or

(b) the person is a convicted NSW terrorist offender, convicted NSW underlying terrorism offender or convicted NSW terrorism activity offender (as the case requires).

(9) **Further applications** If the Supreme Court refuses to make a declaration in respect of a person or a declaration expires or is revoked, the refusal, expiry or revocation does

not prevent:

- (a) another application for a declaration being made in respect of the same person, or
- (b) the Supreme Court granting that application if satisfied of any of the matters referred to in subsection (3) at that time.

(10) **Power of Supreme Court to make declarations not limited** This section does not limit any other power of the Supreme Court to make declarations.

12A Persons under suspended orders to be treated as being supervised or detained under this Act

A person in respect of whom an order under Part 2 or 3 has been made is to continue to be treated as being supervised or detained under this Act for the purposes of any definition for this Act set out in a provision of this Division that uses that expression even if the person's obligations under the order have been suspended.

Division 1.4 Application of Act

13 Application of Act to offences before commencement

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 on or after that date.

14 Application of Act to commenced sentences of imprisonment

This Act applies to and in respect of an eligible offender 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 an eligible offender who is serving a sentence of imprisonment that commences on or after that date.

15 Construction of legislation so as not to exceed legislative power

(1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act:

- (a) would, apart from this section, have an invalid application, but
- (b) also has at least one valid application,

it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.

(2) Despite subsection (1), the provision is not to have a particular valid application if:

- (a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid

application, of the provision had also been within the legislative power of the Parliament of New South Wales, or

(b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the legislative power of the Parliament of New South Wales.

(3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).

(4) This section is in addition to, and not in derogation of, section 31 of the [Interpretation Act 1987](#).

(5) In this section:

application means an application in relation to:

(a) one or more particular persons, things, matters, places, circumstances or cases, or

(b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

valid application, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

Division 1.5 Relationship of Act with other laws

16 Relationship of Act with [Crimes \(High Risk Offenders\) Act 2006](#)

This Act does not limit the circumstances in which an order can be made in respect of an eligible offender under the [Crimes \(High Risk Offenders\) Act 2006](#).

17 [Bail Act 2013](#) does not apply

The [Bail Act 2013](#) does not apply to or in respect of a person who is a defendant in proceedings under this Act (except in proceedings for an offence against this Act).

17A Public interest immunity not abrogated

Nothing in this Act operates to abrogate public interest immunity.

18 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*.

Part 2 Extended supervision orders

Division 2.1 Interpretation

19 Definition

In this Part:

current custody or supervision, in relation to an eligible offender in respect of whom an application for an order is made under this Part, means the custody or supervision to which the offender is subject at the time of the application.

Division 2.2 Supervision of certain eligible offenders

20 Supreme Court may make extended supervision orders against eligible offenders if unacceptable risk

The Supreme Court may make an order for the supervision in the community of an eligible offender (called an **extended supervision order**) if:

- (a) the offender is in custody or under supervision (or was in custody or under supervision at the time the original application for the order was filed):
 - (i) while serving a sentence of imprisonment for a NSW indictable offence, or
 - (ii) under an existing interim supervision order, extended supervision order, interim detention order or continuing detention order, and
- (b) an application for the order is made in accordance with this Part, and
- (c) the Supreme Court is satisfied that the offender is any of the following:
 - (i) a convicted NSW terrorist offender,
 - (ii) a convicted NSW underlying terrorism offender,
 - (iii) a convicted NSW terrorism activity offender, and
- (d) the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious terrorism offence if not kept under supervision under the order.

21 Determination of risk

For the purposes of this Part, the Supreme Court is not required to determine that the risk of an eligible offender committing a serious terrorism offence is more likely than not in order to determine that there is an unacceptable risk of the offender committing such an

offence.

Division 2.3 Application for extended supervision order

22 State may apply for extended supervision order

The State may apply to the Supreme Court for an extended supervision order.

23 Requirements with respect to application

- (1) An application for an extended supervision order may be made only in respect of an eligible offender who is in custody or under supervision:
 - (a) while serving a sentence of imprisonment for a NSW indictable offence, or
 - (b) under an existing interim supervision order, extended supervision order, interim detention order or continuing detention order.
- (2) An application for an extended supervision order in respect of an eligible offender may not be made until the last 12 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 25 (3), and
 - (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist, registered medical practitioner or other relevant expert) that assesses the likelihood of the eligible offender committing a serious terrorism offence.
- (4) An application may indicate the kinds of conditions that are considered to be appropriate for inclusion under section 29 in the event that an extended supervision order is made.

24 Pre-trial procedures

- (1) An application for an extended supervision order must be served on the eligible 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 must disclose to the eligible 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 51 (10) provides that the State must not disclose a victim statement to the eligible offender unless the person who made the statement consents to the disclosure.

- (3) However, the State is not required to disclose to the eligible offender any document, report or other information except in accordance with section 60 (or an order under that section) if:
 - (a) the State or a prescribed terrorism intelligence authority intends to make an application under that section for the document, report or other information to be dealt with as terrorism intelligence, or
 - (b) the document, report or other information is the subject of a pending application under that section for it to be dealt with as terrorism intelligence, or
 - (c) the Supreme Court has granted an application under that section for the document, report or other information to be dealt with as terrorism intelligence.
- (4) 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.
- (5) 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 eligible offender and to furnish reports to the Supreme Court on the results of those examinations, and
 - (b) directing the eligible offender to attend those examinations.
- (6) Without limiting subsection (5) (a), the Supreme Court may also make orders appointing any other relevant experts to furnish reports to the Supreme Court in respect of the eligible offender on specified matters.
- (7) 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.

Division 2.4 Determination of application

25 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) In determining whether or not to make an extended supervision order, the safety of the community must be the paramount consideration of the Supreme Court.
- (3) In determining whether or not to make an extended supervision order in respect of an eligible offender, the Supreme Court must also have regard to the following matters in addition to any other matter it considers relevant:
 - (a) the reports received from the persons appointed to conduct examinations of the offender, and the level of the offender's participation in any such examination,
 - (b) the results of any other assessment prepared by a qualified psychiatrist, registered psychologist, registered medical practitioner or other relevant expert as to the likelihood of the offender committing a serious terrorism offence, the willingness of the offender to participate in any such assessment, and the level of the offender's participation in any such assessment,
 - (c) the results of any assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a serious terrorism offence,
 - (d) any report prepared by Corrective Services NSW or the NSW Police Force as to the extent to which the offender can reasonably and practicably be managed in the community,
 - (e) any report prepared by a prescribed terrorism intelligence authority relevant to whether the offender can reasonably and practicably be managed in the community,
 - (f) any treatment or rehabilitation programs and other programs or initiatives in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs or initiatives, and the level of the offender's participation in any such programs or initiatives,
 - (g) options (if any) available if the offender is kept in custody or is in the community (whether or not under supervision) that might reduce the likelihood of the offender

re-offending over time,

- (h) the likelihood that the offender will comply with the obligations of an extended supervision order,
- (i) without limiting paragraph (h), the level of the offender's compliance with any obligations to which the offender is or has been subject while:
 - (i) on release on parole, or
 - (ii) subject to a control order, or
 - (iii) subject to an earlier extended supervision order or interim supervision order,
or
 - (iv) subject to any other order of a court,
- (j) 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,
- (k) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,
- (l) any beliefs or commitments of the offender (whether of an ideological, religious, political, social or other nature) that support engaging or participating in terrorism activities,
- (m) any other information that is available as to the likelihood that the offender will commit a serious terrorism offence.

26 Term of extended supervision order

- (1) An extended supervision order commences when it is made, or when the eligible offender's current custody or supervision expires, whichever is the later.
- (2) However the Supreme Court may, if an extended supervision order is made in proceedings on an application for a continuing detention order, defer the operation of an extended supervision order for a period of up to 7 days (the **deferral period**) if:
 - (a) the Court considers that it is necessary to detain the eligible offender for the deferral period to enable arrangements to be made for supervision of the offender in the community, and
 - (b) it does not appear to the Court that an interim detention order can be made for the interim detention of the eligible offender.
- (3) On the deferral of the operation of an extended supervision order, the Supreme Court may order that the eligible offender concerned be detained for such period (not

exceeding the deferral period) after the offender's current custody expires as is specified in the order.

- (4) As soon as practicable after making an order under subsection (3), the Supreme Court must issue a warrant for the committal of the eligible offender for the specified period after the offender's current custody expires.
- (5) The warrant is sufficient authority for the eligible offender to be kept in custody in accordance with the terms of the warrant.
- (6) An extended supervision order expires at the end of:
 - (a) such period (not exceeding 3 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.
- (7) An eligible 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.
- (8) Nothing in this section prevents the Supreme Court from making a second or subsequent extended supervision order in respect of the same eligible offender.

Division 2.5 Interim supervision orders

27 Interim supervision order

The Supreme Court may make an order for the interim supervision of an eligible offender (called an ***interim supervision order***) 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 an extended supervision order.

28 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:
 - (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.

- (2) However, the Supreme Court may defer the operation of an interim supervision order in relation to an eligible offender who is in current custody for a period of up to 7 days (the **deferral period**) if:
 - (a) the Court considers that it is necessary to detain the offender for the deferral period to enable arrangements to be made for supervision of the offender in the community, and
 - (b) it does not appear to the Court that an interim detention order can be made for the interim detention of the offender.
- (3) On the deferral of the operation of an interim supervision order, the Supreme Court may order that the eligible offender concerned be detained for a specified period (not exceeding the deferral period) after the offender's current custody expires.
- (4) As soon as practicable after making an order under subsection (3), the Supreme Court must issue a warrant for the committal of the eligible offender for the specified period after the offender's current custody expires.
- (5) The warrant is sufficient authority for the eligible offender to be kept in custody in accordance with the terms of the warrant.
- (6) An interim supervision order, and the eligible 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.
- (7) An interim supervision order may be renewed from time to time, but not so as to provide for the supervision of the eligible offender under such an order for periods totalling more than 3 months.
- (8) 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 (7).

Division 2.6 General

29 Conditions that may be imposed on extended or interim supervision order

- (1) An extended supervision order or interim supervision order may direct an eligible offender to comply with such conditions as the Supreme Court considers appropriate, including (but not limited to) directions requiring the offender to do any one or more of the following:
 - (a) to permit any enforcement 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,
 - (b) to permit any enforcement officer to access any of the following:
 - (i) a computer or related electronic equipment that is at the offender's residential

- address or in the possession of the offender,
- (ii) data held within, or accessible from, the computer or related electronic equipment (including data accessible by means of an electronic identity),
- (c) to permit any enforcement officer to seize any computer or other object at the offender's residential address or in the possession of the offender for the purpose of enabling it to be forensically examined,
 - (d) to use specified services or facilities,
 - (e) to make periodic reports to an enforcement officer,
 - (f) to notify an enforcement officer of any change in the offender's address,
 - (g) to participate in intervention programs or initiatives,
 - (h) to wear electronic monitoring equipment,
 - (i) to reside at an address approved by an enforcement officer,
 - (j) not to reside in or resort to specified locations or classes of locations,
 - (k) not to associate or make contact with specified persons or classes of persons,
 - (l) not to engage in specified conduct or classes of conduct,
 - (m) not to engage in specified financial, property or business dealings (including not to enter into specified agreements or hold specified interests in connection with such dealings),
 - (n) not to possess or use specified objects or substances,
 - (o) not to engage in specified employment or classes of employment,
 - (p) not to change the offender's name,
 - (q) 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,
 - (r) to comply with specified requirements in connection with the offender's access to and use of the internet,
 - (s) to provide any enforcement officer with information about any one or more of the following:
 - (i) a carriage service used, or intended to be used, by the offender (including any telephone number used, or intended to be used, by the offender),

- (ii) an internet service provider or carriage service provider used, or intended to be used, by the offender,
- (iii) an internet connection used, or intended to be used, by the offender (including whether the connection is a wireless, broadband, Asymmetric Digital Subscriber Line (ADSL) or dial-up connection),
- (iv) an electronic identity used, or intended to be used, by the offender,
- (t) to provide any enforcement officer with requested information in relation to any employment or any financial affairs of the offender.

(2) In this section:

carriage service, **carriage service provider** and **internet service provider** have the same meanings as in the [Telecommunications Act 1997](#) of the Commonwealth.

electronic identity means each of the following:

- (a) an email address,
- (b) a user name or other identity allowing access to an instant messaging service,
- (c) a user name or other identity allowing access to a chat room or social media on the internet,
- (d) any other user name or other identity allowing access to the internet or an electronic communication service.

30 Breach of supervision order

A person to whom an extended supervision order or interim supervision order applies must comply with the requirements of the order.

Maximum penalty: 500 penalty units or imprisonment for 5 years, or both.

31 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 or the eligible offender to whom it applies.
- (2) The period of an order must not be varied so that the period is greater than that otherwise permitted under this Part.
- (3) 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.

- (4) For the purpose of ascertaining whether to make such an application in relation to an extended supervision order, both the Commissioner of Corrective Services and the Commissioner of Police must provide the Attorney General with a report on the eligible offender at intervals of not more than 12 months.
- (5) A report must indicate whether the Commissioner concerned considers the continuation of the extended supervision order to be necessary and appropriate.

32 Expiry of Part

- (1) The regulations may declare a day (the **expiry day**) on or after which applications cannot be made or granted for orders under this Part.
- (2) The regulations may make provision for or with respect to matters of a savings or transitional nature consequent on the declaration of the expiry day, including in respect of the expiry, variation, suspension or revocation of existing orders under this Part.
- (3) Subject to regulations made for the purposes of subsection (2), an application cannot be made or granted for an order under this Part on or after the expiry day.

Part 3 Continuing detention orders

Division 3.1 Interpretation

33 Definitions

In this Part:

current custody, in relation to a detained offender in respect of whom an application for an order is made under this Part, means the custody to which the offender is subject at the time of the application.

detained offender means a person who is in custody:

- (a) while serving a sentence of imprisonment for a NSW indictable offence, or
- (b) under an existing continuing detention order, emergency detention order or interim detention order.

supervised offender means a person in lawful custody or under supervision:

- (a) under an extended supervision order or an interim supervision order, or
- (b) whose obligations under an extended supervision order or an interim supervision order have been suspended.

Division 3.2 Detention of certain eligible offenders

34 Supreme Court may make continuing detention orders against eligible offenders if unacceptable risk

- (1) The Supreme Court may make an order for the continued detention of an eligible offender (called a **continuing detention order**) if:
 - (a) the offender is a detained offender or supervised offender (or was a detained offender or supervised offender at the time the original application for the order was filed), and
 - (b) an application for the order is made in accordance with this Part, and
 - (c) the Supreme Court is satisfied that the offender is any of the following:
 - (i) a convicted NSW terrorist offender,
 - (ii) a convicted NSW underlying terrorism offender,
 - (iii) a convicted NSW terrorism activity offender, and
 - (d) the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious terrorism offence if not kept in detention under the order.
- (2) However, the Supreme Court must not make a continuing detention order in respect of a supervised offender who is under an extended supervision order or an interim supervision order that has not been suspended (the **existing supervision order**) unless:
 - (a) the offender has been found guilty of an offence under section 30 in respect of the existing supervision order, or
 - (b) the Supreme Court is satisfied that the offender poses an unacceptable risk of committing a serious terrorism offence if a continuing detention order is not made because of altered circumstances since the making of the existing supervision order.
- (3) Without limiting the matters that the Supreme Court may take into account for the purposes of subsection (2) (b), the Court may take into account the failure to comply, or an allegation that the supervised offender has failed to comply, with any requirement of an existing supervision order.

35 Determination of risk

For the purposes of this Part, the Supreme Court is not required to determine that the risk of an eligible offender committing a serious terrorism offence is more likely than not in order to determine that there is an unacceptable risk of the offender committing such an

offence.

Division 3.3 Application for continuing detention order

36 State may make application for continuing detention order

The State may apply to the Supreme Court for a continuing detention order.

37 Requirements for application

- (1) An application for a continuing detention order may be made only in respect of:
 - (a) a detained offender, or
 - (b) a supervised offender.
- (2) An application for a continuing detention order in respect of a detained offender may not be made more than 12 months before:
 - (a) the end of the offender's total sentence, or
 - (b) the expiry of the existing continuing detention order,as appropriate.
- (3) An application in respect of a supervised offender who is serving a sentence of imprisonment may not be made more than 12 months before the end of the person's total sentence.
- (4) An application must be supported by documentation:
 - (a) that addresses each of the matters referred to in section 39 (3), and
 - (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist, registered medical practitioner or other relevant expert) that assesses the likelihood of the eligible offender committing a serious terrorism offence.
- (5) An application may indicate the kinds of conditions that are considered to be appropriate for inclusion under section 29 in the event that an extended supervision order is made.

38 Pre-trial procedures

- (1) An application for a continuing detention order must be served on the eligible 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 must disclose to the eligible 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 51 (10) provides that the State must not disclose a victim statement to the eligible offender unless the person who made the statement consents to the disclosure.

- (3) However, the State is not required to disclose to the eligible offender any document, report or other information except in accordance with section 60 (or an order under that section) if:
 - (a) the State or a prescribed terrorism intelligence authority intends to make an application under that section for the document, report or other information to be dealt with as terrorism intelligence, or
 - (b) the document, report or other information is the subject of a pending application under that section for it to be dealt with as terrorism intelligence, or
 - (c) the Supreme Court has granted an application under that section for the document, report or other information to be dealt with as terrorism intelligence.
- (4) 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.
- (5) 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 eligible offender and to furnish reports to the Supreme Court on the results of those examinations, and
 - (b) directing the eligible offender to attend those examinations.

- (6) Without limiting subsection (5) (a), the Supreme Court may also make orders appointing any other relevant experts to furnish reports to the Supreme Court in respect of the eligible offender on specified matters.
- (7) 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.

Division 3.4 Determination of application

39 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) In determining whether or not to make a continuing detention order or extended supervision order, the safety of the community must be the paramount consideration of the Supreme Court.
- (3) In determining whether or not to make a continuing detention order or extended supervision order in respect of an eligible offender, the Supreme Court must also have regard to the following matters in addition to any other matter it considers relevant:
 - (a) the reports received from the persons appointed to conduct examinations of the offender, and the level of the offender's participation in any such examination,
 - (b) the results of any other assessment prepared by a qualified psychiatrist, registered psychologist, registered medical practitioner or other relevant expert as to the likelihood of the offender committing a serious terrorism offence, the willingness of the offender to participate in any such assessment, and the level of the offender's participation in any such assessment,
 - (c) the results of any assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a serious terrorism offence,
 - (d) any report prepared by Corrective Services NSW or the NSW Police Force as to the extent to which the offender can reasonably and practicably be managed in the community,
 - (e) any report prepared by a prescribed terrorism intelligence authority relevant to

whether the offender can reasonably and practicably be managed in the community,

- (f) any treatment or rehabilitation programs and other programs or initiatives in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs or initiatives, and the level of the offender's participation in any such programs or initiatives,
- (g) options (if any) available if the offender is kept in custody or is in the community (whether or not under supervision) that might reduce the likelihood of the offender re-offending over time,
- (h) for an extended supervision order—the likelihood that the offender will comply with the obligations of the extended supervision order,
- (i) without limiting paragraph (h), the level of the offender's compliance with any obligations to which the offender is or has been subject while:
 - (i) on release on parole, or
 - (ii) subject to a control order, or
 - (iii) subject to an extended supervision order or interim supervision order, or
 - (iv) subject to any other order of a court,
- (j) 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,
- (k) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,
- (l) any beliefs or commitments of the offender (whether of an ideological, religious, political, social or other nature) that support engaging or participating in terrorism activities,
- (m) any other information that is available as to the likelihood that the offender will commit a serious terrorism offence.

- (4) In determining whether or not to make a continuing detention order, the Supreme Court is not to consider the ability to take action for a breach of the order in relation to whether there is an unacceptable risk of the eligible offender committing serious terrorism offences.

40 Term of continuing detention order

- (1) A continuing detention order:

- (a) commences when it is made, or when the eligible offender's current custody expires, whichever is the later, and
 - (b) expires at the end of such period (not exceeding 3 years from the day on which it commences) as is specified in the order.
- (2) Despite subsection (1), a continuing detention order made on application under this Part in respect of a supervised offender who is not in custody commences when it is made and expires at the end of such period (not exceeding 3 years from the day on which it commences) as is specified in the order.
- (3) An eligible 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.
- (4) Nothing in this section prevents the Supreme Court from making a second or subsequent continuing detention order in respect of the same eligible offender.

Division 3.5 Interim detention orders

41 Interim detention order

The Supreme Court may make an order for the interim detention of an eligible offender (called an ***interim detention order***) 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 an extended supervision order or continuing detention order.

42 Term of interim detention order

- (1) An interim detention order in respect of an eligible offender 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:
- (a) at the end of 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, or
 - (c) on the commencement of an extended supervision order made in respect of the offender.
- (2) An eligible offender's custody under an interim detention order is suspended during

any period the offender is in lawful custody, whether under this or any other Act or law.

- (3) An interim detention order may be renewed from time to time, but not so as to provide for the detention of the eligible offender under such an order for periods totalling more than 3 months.

Division 3.6 Emergency detention orders

43 Ex parte application for emergency detention order

- (1) The State may apply to the Supreme Court for an order for the detention of an eligible offender (called an **emergency detention order**) who is the subject of an extended supervision order or an interim supervision order and who, because of altered circumstances, poses an unacceptable and imminent risk of committing a serious terrorism offence if the emergency detention order is not made.
- (2) The Supreme Court may hear an application for an emergency detention order in the absence of the eligible offender concerned.

44 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 because of altered circumstances, the eligible offender poses an unacceptable and imminent risk of committing a serious terrorism offence if the emergency detention order is not made.
- (2) The Supreme Court is not to make more than one emergency detention order in respect of the same occasion of altered circumstances.

45 Requirements with respect to application

- (1) An application for an emergency detention order must be supported by an affidavit of a relevant officer that addresses each of the following matters:
 - (a) the altered circumstances that give rise to the application,
 - (b) the reasons why because of the altered circumstances the extended supervision order or interim supervision order to which the eligible offender is currently subject will not prevent the offender from posing an unacceptable and imminent risk of committing a serious terrorism offence,
 - (c) the reasons why there are no other practicable and available means of ensuring that the eligible offender does not pose an imminent risk of committing a serious terrorism offence (other than detention).
- (2) The State:

- (a) must notify the Legal Aid Commission of New South Wales in writing when a decision is made to file an application in the Supreme Court for an emergency detention order in respect of an eligible offender, and
 - (b) if requested to do so by the Commission—is to supply the Commission with a copy of the application and supporting affidavit.
- (3) However, the State may supply copies of an application and supporting affidavit requested by the Commission that have been redacted to the extent required to prevent the disclosure of any document, report or other information if:
- (a) the State or a prescribed terrorism intelligence authority intends to make an application under section 60 for the document, report or other information to be dealt with as terrorism intelligence, or
 - (b) the document, report or other information is the subject of a pending application under section 60 for it to be dealt with as terrorism intelligence, or
 - (c) the Supreme Court has granted an application under section 60 for the document, report or other information to be dealt with as terrorism intelligence.
- (4) In this section:
- relevant officer** means:
- (a) the Commissioner of Police, or
 - (b) the Commissioner of Corrective Services, or
 - (c) a corrective services officer of the rank of Assistant Commissioner.

46 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 risk of the eligible offender committing a serious terrorism offence is not unacceptable.
- (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.

Division 3.7 General

47 Detention order causes any supervision order to cease to have effect

- (1) On the making of a continuing detention order in respect of an eligible offender, any interim supervision order or extended supervision order in respect of the eligible

offender expires and ceases to have effect.

- (2) On the making of an interim detention order in respect of an eligible 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 interim detention order expires.
- (3) On the making of an emergency detention order in respect of an eligible 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.

48 Detention order may be varied or revoked

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

49 Warrant of committal

- (1) As soon as practicable after making a continuing detention order, interim detention order or emergency detention order in respect of an eligible 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) The warrant is sufficient authority:
 - (a) for any police officer to convey, or arrest and convey, the eligible offender to the correctional centre identified in the warrant, and
 - (b) for the governor of the correctional centre to keep the eligible offender in his or

her custody in accordance with the terms of the warrant.

Part 4 Supreme Court proceedings

50 Nature and conduct of proceedings

- (1) 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.
- (2) To avoid doubt, a provision of this Act that provides for a document, report or other information to be admissible in proceedings under this Act despite any Act or law to the contrary does not affect any rule of evidence with respect to the relevance or probative value of the document, report or other information once it is admitted into evidence.

51 Victim statements

- (1) As soon as practicable after an application for an order under Part 2 or 3 is made in respect of an eligible offender who is a convicted NSW terrorist offender or convicted NSW underlying terrorism offender, the person acting on behalf of the State for the purposes of the application must take such steps as are reasonable (or, if the application concerned is for an emergency detention order, as are practicable in the circumstances) 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 make a statement orally before the Supreme Court, or provide a statement in writing, about:
 - (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) A statement in writing must be provided before the date specified in the notice.
- (5) Any statement in writing 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.

- (6) An oral statement may be made at such time during the proceedings on the application before the Supreme Court makes its decision on the application as the Supreme Court determines.
- (7) The Supreme Court is to hear an oral statement in the absence of the eligible offender unless the person giving the statement consents to the offender being present.
- (8) The Supreme Court may arrange for an oral statement to be made by way of closed circuit television.
- (9) A person who makes a statement may amend or withdraw the statement.
- (10) The Supreme Court and the State must not disclose a statement (other than one given in the presence of the eligible offender in accordance with subsection (7)) to the offender to which the application relates unless the person who made the statement consents to the disclosure.
- (11) 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 eligible 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.
- (12) In this section:

victim of an eligible offender means a victim who is recorded on the Victims Register in respect of the offender for the purposes of section 256 (2) (c) of the [Crimes \(Administration of Sentences\) Act 1999](#).

Victims Register has the same meaning it has in the [Crimes \(Administration of Sentences\) Act 1999](#).

52 Submissions by prescribed terrorism intelligence authorities

- (1) The Supreme Court may allow a prescribed terrorism intelligence authority to make submissions to the Court in respect of any of the following if the Court considers that it would assist the Court to determine the proceedings:
 - (a) an application for a declaration under section 12,
 - (b) a preliminary hearing under section 24 or 38,
 - (c) an application for an order under Part 2 or 3.
- (2) The Supreme Court may allow the submissions to be made either orally or in writing (or both).

- (3) The Supreme Court may take the submissions into account in determining the proceedings.

53 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, any of the following:
 - (a) a declaration under section 12,
 - (b) an order under Part 2 or 3.
- (2) The appeal is to be by way of a rehearing under section 75A of the *Supreme Court Act 1970*.
- (3) The appeal must be made within the period of 28 days after the determination was made unless the Court of Appeal grants leave for it to be made after that time.
- (4) The making of an appeal does not stay the operation of the declaration or order under appeal.
- (5) If the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the declaration or order under appeal continues in force, subject to any order made by the Court of Appeal.
- (6) 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 the declaration or order under appeal.
- (7) Section 101 of the *Supreme Court Act 1970* does not apply in respect of an appeal against a determination referred to in subsection (1).
- (8) Except as provided by subsection (7), this section does not limit any right of appeal that may exist apart from this Act.

54 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 Supreme Court on any matter connected with the proceedings.

55 Costs not to be awarded against offender

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

56 Preservation of Supreme Court jurisdiction

Except as provided by section 53 (7), nothing in this Act limits the jurisdiction of the Supreme Court apart from this Act.

Part 5 Information about eligible offenders

57 Definition

In this Part:

offender information means any document, report or other information that relates to the behaviour, beliefs, financial circumstances, or physical or mental condition, of an eligible offender, and includes terrorism intelligence about the offender.

58 Requirement to provide offender information to Attorney General

(1) The Attorney General may in the circumstances prescribed by the regulations, by order in writing served on a person, require that person to provide the Attorney General with offender information of a kind prescribed by the regulations that is in the person's possession or under the person's control.

(2) A person on whom an order has been duly served must comply with the order.

Maximum penalty (subsection (2)):

(a) in the case of a corporation—100 penalty units, or

(b) in the case of an individual—100 penalty units or imprisonment for 2 years (or both).

59 Request to provide offender information to Attorney General

The Attorney General may request:

(a) a court to provide any offender information to the Attorney General that is held by the court, or

(b) a person in another Australian jurisdiction to provide offender information that is in the person's possession or under the person's control.

60 Use of information involving terrorism intelligence

(1) **Making of terrorism intelligence applications** The Attorney General or a prescribed terrorism intelligence authority may make an application (a **terrorism intelligence**

application) to the Supreme Court in any proceedings before the Court under this Act (the **substantive proceedings**) for particular information to be dealt with as terrorism intelligence in those proceedings.

- (2) The Supreme Court must grant a terrorism intelligence application if the Court is satisfied that:
 - (a) the information to which the application relates was provided to the Attorney General under this Part, and
 - (b) the information is terrorism intelligence.
- (3) If the Supreme Court is not satisfied that information to which a terrorism intelligence application relates is terrorism intelligence, the Court must, before determining the application, give each of the following an opportunity to withdraw the information from consideration by the Court:
 - (a) the applicant for the terrorism intelligence application,
 - (b) any prescribed terrorism intelligence authority that provided the information.
- (4) Any information that is withdrawn from consideration by the Supreme Court must not be:
 - (a) disclosed to a party to the substantive proceedings who is an eligible offender or the offender's legal representatives, or
 - (b) taken into consideration by the Supreme Court in determining the substantive proceedings.
- (5) **Unrepresented eligible offenders** If a party to the substantive proceedings is an eligible offender who does not have any legal representatives in those proceedings, the Supreme Court is to appoint a qualified person (an **independent third party representative**) to represent the party for the purposes of a terrorism intelligence application made in the proceedings or the granting of access to terrorism intelligence under this section.
- (6) A person is a qualified person for the purposes of subsection (5) if the person is a person of a kind prescribed by the regulations as being qualified to provide independent and impartial representation for eligible offenders for the purposes of this section.
- (7) An independent third party representative for an eligible offender:
 - (a) is to be allowed access to information or terrorism intelligence in respect of which the representative has been appointed by being provided with either a copy of the information or intelligence or being allowed to view it, and

- (b) may make such submissions to the Court on behalf of the eligible offender as the representative considers to be in the best interests of the offender concerning:
 - (i) whether or not information is terrorism intelligence, or
 - (ii) the level of access to terrorism intelligence that should be given to the offender under this section.
- (8) The applicant in the terrorism intelligence application concerning the information or terrorism intelligence in respect of which an independent third party representative has been appointed is responsible for the payment of the costs of the services provided by the representative.
- (9) **Steps to maintain confidentiality** If the Supreme Court grants a terrorism intelligence application, the Supreme Court is to take steps to maintain the confidentiality of the terrorism intelligence concerned in the substantive proceedings, including steps to receive evidence and hear argument about the intelligence in private.
- (10) The Supreme Court is to allow one of the following forms of access to the terrorism intelligence to be given to a party to the substantive proceedings and the party's legal representatives in those proceedings (having regard to what the Court considers appropriate because of the nature of the intelligence and the degree of risk of disclosure to non-parties by the party or the legal representatives and any other matter the Court considers relevant):
 - (a) providing both the party and the party's legal representatives with a copy of the intelligence,
 - (b) providing the party's legal representatives with a copy of the intelligence and allowing the party to view (but not have a copy of) that intelligence,
 - (c) providing the party's legal representatives with a copy of the intelligence, but denying the party any form of access to that intelligence,
 - (d) allowing both the party and the party's legal representatives to view (but not have a copy of) the intelligence,
 - (e) allowing the party's legal representatives to view (but not have a copy of) the intelligence, but denying the party any form of access to that intelligence.
- (11) Without limiting subsection (10), the Supreme Court may allow one of the following forms of access to be given to a party to the substantive proceedings who is an eligible offender without any legal representatives in those proceedings instead of a form of access specified by subsection (10) (having regard to what the Court considers appropriate because of the nature of the intelligence and the degree of risk of disclosure to non-parties by the party and any other matter the Court considers relevant):

- (a) providing the party with access to or a copy of the document containing the intelligence that has been redacted to the extent necessary to prevent the disclosure of the intelligence,
 - (b) providing the party with both access to or a copy of the document containing the intelligence that has been redacted to the extent necessary to prevent the disclosure of the intelligence and a written summary of the nature of the redacted intelligence,
 - (c) providing the party with both access to or a copy of the document containing the intelligence that has been redacted to the extent necessary to prevent the disclosure of the intelligence and a written statement of the facts that the intelligence would (or would be likely) to establish.
- (12) Subsections (10) and (11) are subject to any agreement under subsection (13) and the regulations.
- (13) **Agreements concerning dealing with terrorism intelligence under section** An agreement may be entered at any time in the substantive proceedings by the following persons as to arrangements about the disclosure, protection, storage, handling or destruction of the terrorism intelligence in the proceedings:
- (a) the Attorney General on behalf of the State,
 - (b) if the terrorism intelligence is provided by a prescribed terrorism intelligence authority—the authority,
 - (c) one or more other parties to the proceedings (or their legal representatives on their behalf).
- (14) **Orders by Supreme Court for purposes of section** The Supreme Court may make such orders that it considers appropriate:
- (a) to prohibit or restrict access to, or the disclosure or publication of, the terrorism intelligence for the purposes of this section, or
 - (b) to give effect to an agreement under subsection (13).
- (15) A person is guilty of an offence if the person contravenes an order under this section.
- Maximum penalty:
- (a) in the case of a corporation—100 penalty units, or
 - (b) in the case of an individual—100 penalty units or imprisonment for 2 years (or both).
- (16) A person is guilty of an offence against this subsection if the person commits an offence against subsection (15) in circumstances in which the person:

- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation into a relevant indictable offence, or
- (b) knows that, or is reckless as to whether, the disclosure of the information:
 - (i) endangers or will endanger the health or safety of any person, or
 - (ii) prejudices or will prejudice the effective conduct of an investigation into a relevant indictable offence.

Maximum penalty: imprisonment for 7 years.

(17) **Regulations concerning dealing with terrorism intelligence under section** The regulations may make provision for or with respect to:

- (a) the ways in which terrorism intelligence to which this section applies is to be stored, handled or destroyed, and
- (b) the ways in which, and places at which, terrorism intelligence to which this section applies may be accessed and documents or records relating to such intelligence may be prepared.

(18) **Definition** In this section:

relevant indictable offence means an offence against a law of this State or any other Australian jurisdiction that may be prosecuted on indictment.

60A Withdrawal from consideration of documents or reports for which public interest immunity claimed

- (1) This section applies in respect of a document or report provided to the Attorney General under this Part if the State, or a prescribed terrorism intelligence authority that provided it, makes a claim in proceedings before the Supreme Court under this Act that the document or report is subject to public interest immunity.
- (2) If the Supreme Court is not satisfied that the document or report is subject to public interest immunity, the Court must, before determining the claim for immunity, give the claimant an opportunity to withdraw the document or report from consideration by the Court in the proceedings.
- (3) However, the Supreme Court is not required to allow the document or report to be withdrawn from consideration in the proceedings if the Court considers that its withdrawal would be manifestly unfair to a party to the proceedings who is an eligible offender.
- (4) A document that is withdrawn from consideration by the Supreme Court must not be:
 - (a) disclosed to a party to the proceedings who is an eligible offender or the offender's legal representatives, or

- (b) taken into consideration by the Supreme Court in determining any proceedings under this Act.

61 Admissibility of documents or reports provided under Part

Any document or report (or a copy of a document or report) provided to the Attorney General under this Part is admissible in proceedings under this Act despite any Act or law to the contrary.

Part 6 Role of HRO Assessment Committee and inter-agency co-operation

62 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 agency of any Australian jurisdiction that is prescribed by the regulations as a relevant agency.

63 Functions of HRO Assessment Committee

Without limiting its functions under Part 4A of the *Crimes (High Risk Offenders) Act 2006*, the HRO Assessment Committee has the following functions:

- (a) to review the risk assessments of eligible offenders and make recommendations to the Commissioner of Corrective Services 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 eligible offenders who could be subject to this Act (the **high risk terrorism offender functions** of relevant agencies),
- (c) to monitor and provide expert oversight of the exercise of the high risk terrorism 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 terrorism

offender functions,

- (d) to facilitate information sharing between relevant agencies in connection with the exercise of their high risk terrorism offender functions,
- (e) to develop best practice standards and guidelines for the exercise by relevant agencies of their high risk terrorism offender functions,
- (f) to identify gaps in resourcing, service provision and training that may impact on the proper and effective exercise of high risk terrorism 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.

Note—

Part 4A of the [Crimes \(High Risk Offenders\) Act 2006](#) provides for the establishment of the HRO Assessment Committee and its functions. It also makes provision for the establishment of sub-committees and the furnishing of reports and information by it.

64 Inter-agency co-operation

- (1) Each relevant agency of the State 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 eligible offenders who could be subject to this Act (**high risk terrorism 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 terrorism 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 terrorism offender functions,
 - (c) the duty to co-operate in connection with the exercise of the functions of the HRO Assessment Committee.
- (3) Co-operation between relevant agencies in the exercise of high risk terrorism 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.

- (4) Any duty to disclose information under this section is subject to the requirements of any applicable co-operative protocols under section 65 concerning disclosure or non-disclosure of information that is terrorism intelligence.

65 Exchange of information and co-operative management of offenders

- (1) A relevant agency of the State may enter into arrangements (**co-operative protocols**) with other relevant agencies to enable information held by each of the agencies concerned to be shared or exchanged between those agencies and the co-operative management of eligible offenders who could be subject to this Act.
- (2) The information to which a co-operative protocol may relate is limited to the following:
 - (a) information concerning eligible offenders,
 - (b) any other information that may be prescribed by the regulations.
- (3) Under a co-operative protocol, each relevant agency of the State 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.

Part 7 Miscellaneous

66 Attorney General or prescribed person 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 for the purposes of applications made under this Act.

67 Exchange of information about terrorism activities with other Australian jurisdictions and their agencies

- (1) The Attorney General may, on behalf of the State (or any of its agencies), enter into an agreement (a **terrorism information exchange agreement**) with one or more other Australian jurisdictions (or one or more of their agencies) for the exchange or sharing of information that the parties hold about terrorism activities or suspected terrorism activities.
- (2) The Attorney General may agree to such terms as the Attorney General considers

appropriate for inclusion in a terrorism information exchange agreement.

(3) If information to which a terrorism information exchange agreement applies is held by an agency of the State, the agency is authorised:

(a) to request and receive information held by any other agency to which the agreement applies in accordance with the terms of the agreement, and

(b) to disclose information it holds to any of those agencies in accordance with the terms of the agreement,

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.

(4) The Attorney General is also authorised to use information about terrorism activities or suspected terrorism activities obtained under a terrorism information exchange agreement (without the consent of any person concerned) for the purposes of any of the following, but only in accordance with the terms of the agreement:

(a) an application for a declaration under section 12,

(b) a preliminary hearing under section 24 or 38,

(c) an application for an order under Part 2 or 3.

(5) This section does not limit the operation of any Act under which the State (or its agencies) are authorised or required to disclose information to another person or body.

(6) In this section:

agency includes a prescribed terrorism intelligence authority.

68 Proceedings for offences

Proceedings for an offence under this Act (except against section 30 or 60 (15) or (16)) or the regulations are to be dealt with summarily before the Local Court.

Note—

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 30 or 60 (15) or (16). See Table 2 of Schedule 1 to that Act.

69 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 (and despite section 28 (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 3 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.

70 Eligible offenders may be warned about application of Act

A court that sentences a person for a NSW indictable offence may cause the person to be advised of the existence of this Act and of its application to the offence if the court considers that it is appropriate in the circumstances to do so unless the person is not present at the time of sentencing.

71 Disclosure and use of application documentation

- (1) The State may disclose an expert report concerning an eligible offender:
 - (a) to a corrective services officer or any other person responsible for the supervision (whether in custody or in the community), treatment or risk assessment of the offender for use solely in providing rehabilitation, care or treatment of the offender, and
 - (b) to any person in connection with the exercise of the person's functions under this Act.
- (2) An expert report concerning an eligible offender may be disclosed and used in any proceedings in respect of the offender if the Supreme Court determines that:
 - (a) the proceedings are closely related to the proceedings under section 24 or 38 in which the expert report was used, and
 - (b) it is in the public interest, and
 - (c) the information would inform the Supreme Court about the history of the defendant's mental state with respect to his or her offending.
- (3) The disclosure and use of an expert report for a purpose referred to in subsection (1) or (2) is permitted despite this Act or any other law to the contrary or any duty of confidentiality concerning the expert report.
- (4) This section does not authorise the further disclosure of an expert report by the person to whom it was disclosed in accordance with this section.
- (5) In this section:
 - disclose** an expert report includes the following:
 - (a) to make available,

(b) to disclose copies, contents or descriptions of the report.

expert report concerning an eligible offender means a report prepared as referred to in section 23 (3) or 37 (4), or received from persons appointed under section 24 (5) or (6) or 38 (5) or (6), concerning an eligible offender who is the subject of an application for an extended supervision order or continuing detention order.

use of an expert report includes use of copies, contents or descriptions of that report.

72 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.

73 Evidentiary certificates

A certificate issued by the Commissioner of Corrective Services that states that an extended supervision order imposed on a specified offender was suspended under section 26 and the date of the expiry of the order in accordance with that section is admissible in any legal proceedings despite any Act or law to the contrary and is evidence of the facts so stated.

74 Regulations

- (1) 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.
- (2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.
- (3) Section 5 of the [Subordinate Legislation Act 1989](#) does not apply to the first principal statutory rule that is made under this Act.

Schedule 1 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 on the NSW legislation website, 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.
- (4) To avoid doubt, a regulation made for the purposes of this clause may exclude or otherwise modify the operation of any provision of this Schedule as well as any other provision of this Act.
- (5) Without limiting subclause (4), a regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

Part 2 Provisions consequent on enactment of [Justice Legislation Amendment Act \(No 2\) 2018](#)

2 Application of amendments

- (1) An amendment to this Act made by the amending Act extends to proceedings that were begun (but had not yet been determined) before the amendment commenced.
- (2) Without limiting subclause (1):
- (a) an application that was made under section 60 (but had not yet been determined) before the substitution of that section by the amending Act may be determined by reference to the section as substituted and the definition of **terrorism intelligence** in section 4 (1) (as amended by the amending Act), and
 - (b) if access to terrorism intelligence had not yet been provided under section 60 before its substitution, it may be provided by reference to section 60 as substituted, and
 - (c) any order made by the Supreme Court under section 60 in force immediately before the substitution of the section continues in force as an order under that section as substituted, and
 - (d) any agreement in force under section 60 immediately before the substitution of the section continues in force as an agreement under that section as substituted.
- (3) However, section 68 and clause 10H in Part 6 of Table 2 of Schedule 1 to the [Criminal Procedure Act 1986](#), as in force immediately before the amendment of section 68 by the amending Act, continue to apply in respect of offences against section 60 committed before the commencement of the amendment.

(4) In this clause:

amending Act means the [Justice Legislation Amendment Act \(No 2\) 2018](#).

Schedule 2 (Repealed)