

# Crimes (High Risk Offenders) Act 2006 No 7

[2006-7]



New South Wales

## Status Information

### Currency of version

Current version for 21 June 2024 to date (accessed 16 September 2024 at 22:23)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Previously named**  
Crimes (Serious Sex Offenders) Act 2006

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 21 June 2024

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# Crimes (High Risk Offenders) Act 2006 No 7



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

This Act commences on the date of assent.

### 3 Objects of Act

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

### 4 Definitions

- (1) In this Act—

**adult** means a person who is not a child.

**aggregate sentence of imprisonment** has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

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

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

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

**continuing detention order** means an order for the detention of an offender made

under section 5C.

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

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

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

**cumulative sentence of imprisonment** means 2 or more sentences of imprisonment in which each sentence of imprisonment is served concurrently or consecutively, or partly concurrently and partly consecutively, with 1 or more of the other sentences of imprisonment.

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

**extended supervision order** means an order for the supervision of an offender made under section 5B.

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

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

**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*.

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

**offender**—see section 4A.

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

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

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

**serious offence** means—

- (a) a serious sex offence, or

(b) a serious violence offence.

**serious sex offence**—see section 5 (1).

**serious violence offence**—see section 5A.

**supporting documentation**, in relation to proceedings under Part 2 or 3, means the documentation referred to in section 6 (3) or 14 (3), as the case requires.

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

#### 4A Meaning of “offender”

For the purposes of this Act, an **offender** is a person who—

- (a) is of or above 18 years of age, and
- (b) has at any time been sentenced to imprisonment (not including a suspended or quashed sentence) to be served by way of full-time detention or intensive correction in the community (whether or not subject to a home detention condition) following the person’s conviction for a serious offence.

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

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

- (a) an offence under Division 10 of Part 3 of the *Crimes Act 1900*, where—
  - (i) in the case of an offence against an adult or a child, the offence is punishable by imprisonment for 7 years or more, and
  - (ii) in the case of an offence against an adult, the offence is committed in circumstances of aggravation (within the meaning of the provision under which the offence arises),
- (a1) an offence under section 61K or 66EA of the *Crimes Act 1900*,
- (b) an offence under section 37(2), 38, 86 (1) (a1), 111, 112, 113 or 114 (1) (a), (c) or (d) of the *Crimes Act 1900* that has been committed with intent to commit an offence under Division 10 of Part 3 of the *Crimes Act 1900*, where the offence intended to be committed is punishable by imprisonment for 7 years or more,
- (b1) an offence against section 50BA of the *Crimes Act 1914* of the Commonwealth,
- (b2) an offence against section 71.8 of the Commonwealth Criminal Code,



(b3) an offence against section 271.4 or 271.7 of the Commonwealth Criminal Code,

(b4) an offence against the Commonwealth Criminal Code, section 272.8, 272.10, 272.11, 272.12, 272.13, 272.14, 272.15, 272.15A, 272.19 or 273.7,

(b5) an offence against the Commonwealth Criminal Code, section 471.22, 471.24, 471.25, 471.25A, 474.23A, 474.24A, 474.25B, 474.26, 474.27 or 474.27AA,

and includes—

(c) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious sex offence for the purposes of this Act, and

(c1) an offence by a person that, at the time it was committed, was not a serious sex offence for the purposes of this Act but which was committed in circumstances that would make the offence a serious sex offence if it were committed at the time an application for an order against the person is made under this Act, and

(d) any other offence that, at the time it was committed, was a serious sex offence for the purposes of this Act.

(2) For the purposes of this Act, an **offence of a sexual nature** means any of the following offences—

(a) an offence under Division 10 of Part 3 of the *Crimes Act 1900*,

(a1) an offence under the *Crimes Act 1900*, Part 3, Division 10A,

(b) an offence under section 37(2), 38, 111, 112 or 113 of the *Crimes Act 1900* that has been committed with intent to commit an offence referred to in paragraph (a),

(c) an offence under Division 15 or 15A of Part 3 of the *Crimes Act 1900*,

(d) an offence under section 11G of the *Summary Offences Act 1988*,

(e) an offence under section 91J, 91K, 91L or 91M of the *Crimes Act 1900* in relation to the observing or filming of a child,

(f) an offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*,

(g) an offence under section 13 of the *Child Protection (Offenders Prohibition Orders) Act 2004*,

(h) an offence under section 12 of this Act,

(h1) an offence against section 50BB, 50BC, 50BD, 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth,

- (h2) an offence against section 71.12 of the Commonwealth Criminal Code,
  - (h3) an offence against the Commonwealth Criminal Code, section 272.9, 272.18, 272.20, 273.6 or 273A.1,
  - (h4) an offence against the Commonwealth Criminal Code, section 471.19, 471.20, 471.26, 474.22, 474.22A, 474.23, 474.25A or 474.27A,
  - (h5) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or child abuse material,
- and includes—
- (i) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence of a sexual nature for the purposes of this Act, and
  - (j) any other offence that, at the time it was committed, was an offence of a sexual nature for the purposes of this Act.

(3) In this section—

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

#### **5A Definition of “serious violence offence”**

- (1) For the purposes of this Act, a **serious violence offence** is a serious indictable offence that is constituted by a person—
    - (a) engaging in conduct that causes the death of another person or grievous bodily harm to another person, with the intention of causing, or while being reckless as to causing, the death of another person or grievous or actual bodily harm to another person, or
      - (a1) an offence under the *Crimes Act 1900*, section 37(1) or (2), or
      - (b) attempting to commit, or conspiring with or inciting another person to commit, an offence of a kind referred to in paragraph (a) or (a1).
  - (2) An offence that includes the elements referred to in subsection (1) (a) is a serious violence offence regardless of how those elements are expressed, and whether or not the offence includes other elements.
- (2A) A reference in subsection (1) (a) to—
- (a) conduct that causes the death of another person with the intention of causing the death of another person includes a reference to murder by an act done (by a person or an accomplice) in an attempt to commit, or during or immediately after

the commission of, a serious crime, and

- (b) conduct that causes the death of another person while being reckless as to causing the death of another person includes a reference to manslaughter caused by an unlawful and dangerous act, and
- (c) conduct that causes grievous bodily harm to another person includes conduct that causes the wounding of another person, but only if the conduct was engaged in with the intention of causing the death of another person or grievous bodily harm to another person.

(3) A **serious indictable offence** is—

- (a) an offence committed in New South Wales that was a serious indictable offence (within the meaning of the [Crimes Act 1900](#)) at the time that it was committed, or
- (b) an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence within the meaning of the [Crimes Act 1900](#) at the time that it was committed, or
- (c) an offence that, at the time that it was committed, was not a serious indictable offence but which was committed in circumstances that would make the offence a serious indictable offence if it were committed at the time an application for an order against the person is made under this Act.

#### **5AA Relationship of Act with [Terrorism \(High Risk Offenders\) Act 2017](#)**

- (1) This Act does not limit the circumstances in which an order can be made in respect of an eligible offender under the [Terrorism \(High Risk Offenders\) Act 2017](#).
- (2) In applying for a supervision or detention order under this Act or determining an application for the order—
  - (a) supervision under an extended supervision order made under the [Terrorism \(High Risk Offenders\) Act 2017](#) may be treated for the purposes of this Act as equivalent to supervision under an extended supervision order made under this Act, and
  - (b) detention or custody under a continuing detention order made under the [Terrorism \(High Risk Offenders\) Act 2017](#) may be treated for the purposes of this Act as equivalent to detention or custody under a continuing detention order made under this Act.

#### **Note—**

For example, a person may be treated for the purposes of this Act as being in custody or under supervision in the community if the person is being supervised or detained under an extended supervision order or continuing detention order made under the [Terrorism \(High Risk Offenders\) Act 2017](#).

- (3) Accordingly, the Supreme Court may make a supervision or detention order under this

Act by reference to supervision, detention or custody under an extended supervision order or continuing detention order made under the *Terrorism (High Risk Offenders) Act 2017* if it could have made the order under this Act had the supervision, detention or custody been instead under an extended supervision order or continuing detention order made under this Act.

(4) Subsections (2) and (3) extend to an extended supervision order or continuing detention order made under the *Terrorism (High Risk Offenders) Act 2017* before the commencement of this section.

(5) In this section—

**supervision or detention order under this Act** means any of the following orders under this Act—

- (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.

## **Part 1A Supervision and detention of high risk offenders**

### **5B Making of extended supervision orders—unacceptable risk**

The Supreme Court may make an order for the supervision in the community of a person (an **extended supervision order**) if—

- (a) the person is an offender who is serving (or who has served) a sentence of imprisonment for a serious offence either in custody or under supervision in the community, and
- (b) the person is a supervised offender (within the meaning of section 5I), and
- (c) an application for the order is made in accordance with section 5I, and
- (d) the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious offence if not kept under supervision under the order.

### **5C Making of continuing detention orders—unacceptable risk**

The Supreme Court may make an order for the continued detention of a person (a **continuing detention order**) if—

- (a) the person is an offender who is serving (or who has served) a sentence of

imprisonment for a serious offence either in custody or under supervision in the community, and

- (b) the person is a detained offender or supervised offender (within the meaning of section 13B), and
- (c) an application for the order is made in accordance with section 13B, and
- (d) the Supreme Court is satisfied to a high degree of probability that the person poses an unacceptable risk of committing another serious offence if not kept in detention under the order.

#### **5D Determination of risk**

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

#### **5E-5G (Repealed)**

### **Part 2 Extended supervision orders**

#### **Division 1 Application for extended supervision order**

##### **5H State may apply for order**

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

##### **5I Application for extended supervision order**

- (1) An application for an extended supervision order may be made only in respect of a supervised offender.
- (2) A **supervised offender** is an offender who, when the application for the order is made, is in custody or under supervision (referred to in this Part as the offender's **current custody or supervision**)—
  - (a) while serving a sentence of imprisonment—
    - (i) for a serious offence, or
    - (ii) for an offence of a sexual nature, or
    - (iii) for an offence under section 12, or
    - (iv) that is an aggregate sentence of imprisonment in relation to which at least 1 of the offences to which the aggregate sentence relates is an offence referred to in subparagraph (i), (ii) or (iii), or

- (v) for an offence, whether under a law of this State or another Australian jurisdiction, that is part of a cumulative sentence of imprisonment in relation to which at least 1 of the sentences of imprisonment comprising the cumulative sentence of imprisonment is a sentence of imprisonment referred to in subparagraph (i), (ii), (iii) or (iv), or
  - (b) under an existing interim supervision order, extended supervision order, interim detention order or continuing detention order.
- (3) A person is taken to be serving a sentence of imprisonment whether the sentence is being served by way of full-time detention or intensive correction in the community (whether or not subject to a home detention condition) and whether the offender is in custody or on release on parole.
- (4) For the purposes of this section, if a court makes a federal recognizance release order in relation to a person in respect of a federal sentence imposed on the person by the court—
- (a) the order is taken to be part of the person’s federal sentence, and
  - (b) the person is taken to be serving a sentence of imprisonment for the period the order is in force.
- (5) In this section—

**Crimes Act 1914** means the [Crimes Act 1914](#) of the Commonwealth.

**federal recognizance release order** means an order under the [Crimes Act 1914](#), section 20(1)(b).

**federal sentence** has the same meaning as in the [Crimes Act 1914](#).

## 5j (Repealed)

## 6 Requirements with respect to application

- (1) An application for an extended supervision order against an offender may not be made until the last 9 months of the offender’s current custody or supervision.
- (2) (Repealed)
- (3) An application must be supported by documentation—
  - (a) that addresses each of the matters referred to in section 9 (3), and
  - (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner) that assesses the likelihood of the offender committing a serious offence.

- (4) An application may indicate the kinds of conditions (in addition to the condition referred to in section 11 (2)) that are considered to be appropriate for inclusion under section 11 in the event that an extended supervision order is made.

## **7 Pre-trial procedures**

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

### **Note—**

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

- (3) A preliminary hearing into the application is to be conducted by the Supreme Court within 28 days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (4) If, following the preliminary hearing, it is satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order, the Supreme Court must make orders—
  - (a) appointing—
    - (i) 2 qualified psychiatrists, or
    - (ii) 2 registered psychologists, or
    - (iii) 1 qualified psychiatrist and 1 registered psychologist, or
    - (iv) 2 qualified psychiatrists and 2 registered psychologists,to conduct separate psychiatric or psychological examinations (as the case requires) of the offender and to furnish reports to the Supreme Court on the results of those examinations, and
  - (b) directing the offender to attend those examinations.
- (5) If, following the preliminary hearing, it is not satisfied that the matters alleged in the

supporting documentation would, if proved, justify the making of an extended supervision order, the Supreme Court must dismiss the application.

## **8 (Repealed)**

## **Division 2 Determination of application**

### **9 Determination of application for extended supervision order**

- (1) The Supreme Court may determine an application for an extended supervision order—
  - (a) by making an extended supervision order, or
  - (b) by dismissing the application.
- (2) 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.
- (2A) (Repealed)
- (3) In determining whether or not to make an extended supervision order, the Supreme Court must also have regard to the following matters in addition to any other matter it considers relevant—
  - (a) (Repealed)
  - (b) the reports received from the persons appointed under section 7 (4) to conduct examinations of the offender, and the level of the offender's participation in any such examination,
  - (c) the results of any other assessment prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner as to the likelihood of the offender committing a further serious offence, the willingness of the offender to participate in any such assessment, and the level of the offender's participation in any such assessment,
  - (d) the results of any statistical or other assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a further serious offence,
    - (d1) any report prepared by Corrective Services NSW as to the extent to which the offender can reasonably and practicably be managed in the community,
  - (e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs, and the level of the offender's participation in any such programs,
    - (e1) 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,

- (e2) the likelihood that the offender will comply with the obligations of an extended supervision order,
  - (f) without limiting paragraph (e2), the level of the offender's compliance with any obligations to which he or she is or has been subject while on release on parole or while subject to an earlier extended supervision order,
  - (g) the level of the offender's compliance with any obligations to which he or she is or has been subject under the *Child Protection (Offenders Registration) Act 2000* or the *Child Protection (Offenders Prohibition Orders) Act 2004*,
  - (h) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere), and any pattern of offending behaviour disclosed by that history,
  - (h1) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,
  - (i) any other information that is available as to the likelihood that the offender will commit a further serious offence.
- (4) In determining whether or not to make an extended supervision order in respect of an offender, the Supreme Court is not to consider any intention of the offender to leave New South Wales (whether permanently or temporarily).

#### **10 Term of extended supervision order**

- (1) An extended supervision order commences when it is made, or when the offender's current custody or supervision expires, whichever is the later.
- (1AA) 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 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.
- (1AB) On the deferral of the operation of an extended supervision order, the Supreme Court may order that the offender concerned be detained for a specified period (not exceeding the deferral period) after the offender's current custody expires.
- (1AC) As soon as practicable after making an order under subsection (1AB) the Supreme

Court must issue a warrant for the committal of the offender for the specified period after the offender's current custody expires.

- (1AD) A warrant under subsection (1AC) is sufficient authority for the offender to be kept in custody in accordance with the terms of the warrant.
- (1A) An extended supervision order expires at the end of—
- (a) such period (not exceeding 5 years from the day on which it commences) as is specified in the order, or
  - (b) if the order is suspended for any period, the period specified in paragraph (a) plus each period during which the order is suspended.
- (2) An offender's obligations under an extended supervision order are suspended while the offender is in lawful custody, whether under this or any other Act or law.
- (3) Nothing in this section prevents the Supreme Court from making a second or subsequent extended supervision order against the same offender.

### **Division 3 Interim supervision orders**

#### **10A Interim supervision order**

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

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

#### **10B (Repealed)**

#### **10C Term of interim supervision order**

- (1) An interim supervision order commences on the day fixed in the order for its commencement (or if no such day is fixed, as soon as it is made) and expires at the end of—
- (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.
- (1AA) However, the Supreme Court may defer the operation of an interim supervision order in relation to an 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.

(1AB) On the deferral of the operation of an interim supervision order, the Supreme Court may order that the offender concerned be detained for a specified period (not exceeding the deferral period) after the offender's current custody expires.

(1AC) As soon as practicable after making an order under subsection (1AB) the Supreme Court must issue a warrant for the committal of the offender for the specified period after the offender's current custody expires.

(1AD) A warrant under subsection (1AC) is sufficient authority for the offender to be kept in custody in accordance with the terms of the warrant.

(1A) An interim supervision order, and the offender's obligations under that interim supervision order, are suspended during any period the offender is in lawful custody, whether under this or any other Act or law.

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

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

## **Division 4 General**

### **11 Conditions that may be imposed on supervision order**

- (1) An extended supervision order or interim supervision order may direct an offender to comply with such conditions as the Supreme Court considers appropriate, including (but not limited to) directions requiring the offender—
  - (a) to permit any corrective services officer to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address, or
  - (a1) to permit any corrective services officer to access any computer or related equipment that is at the offender's residential address or in the possession of the offender, or
  - (b) to make periodic reports to a corrective services officer, or

- (c) to notify a corrective services officer of any change in his or her address, or
  - (d) to participate in treatment and rehabilitation programs, or
  - (e) to wear electronic monitoring equipment, or
  - (ea) to reside at an address approved by the Commissioner of Corrective Services, or
  - (f) not to reside in or resort to specified locations or classes of locations, or
  - (g) not to associate or make contact with specified persons or classes of persons, or
  - (h) not to engage in specified conduct or classes of conduct, or
  - (i) not to engage in specified employment or classes of employment, or
  - (j) not to change his or her name, or
  - (k) to report to police and provide information to police about the conditions imposed on the extended supervision order or interim supervision order and the offender's residential address, or
  - (l) to comply with any obligation that could be imposed on the offender under Part 3 of the *Child Protection (Offenders Registration) Act 2000* if the offender were a registrable person within the meaning of that Act and were not the subject of an interim supervision order or an extended supervision order, or
  - (m) to comply with specified requirements in connection with the offender's access to and use of the internet, or
  - (n) to provide any corrective services officer with requested information in relation to any employment or any financial affairs of the offender.
- (2) An extended supervision order or interim supervision order must include a condition requiring the offender not to leave New South Wales except with the approval of the Commissioner of Corrective Services.

## **12 Breach of supervision order**

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

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

## **13 Supervision order may be varied or revoked**

(1) The Supreme Court may at any time vary or revoke an extended supervision order or interim supervision order on the application of the State or the offender.

(1A) The period of an order must not be varied so that the period is greater than that

otherwise permitted under this Part.

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

## **Part 3 Continuing detention orders**

### **Division 1 Application for continuing detention order**

#### **13A State may apply for order**

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

#### **13B Application for continuing detention order**

- (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) A **detained offender** is an offender who, when the application for a continuing detention order is made, is in custody (referred to in this Part as the offender's **current custody**)—
  - (a) while serving a sentence of imprisonment—
    - (i) for a serious offence, or
    - (ii) for an offence of a sexual nature, or
    - (iii) for an offence under section 12, or
    - (iv) that is an aggregate sentence of imprisonment in relation to which at least 1 of the offences to which the aggregate sentence relates is an offence referred to in subparagraph (i), (ii) or (iii), or
    - (v) for an offence, whether under a law of this State or another Australian

jurisdiction, that is part of a cumulative sentence of imprisonment in relation to which at least 1 of the sentences of imprisonment comprising the cumulative sentence of imprisonment is a sentence of imprisonment referred to in subparagraph (i), (ii), (iii) or (iv), or

(b) under an existing continuing detention order, emergency detention order or interim detention order.

(3) An application for a continuing detention order in respect of a detained offender may not be made more than 9 months before—

(a) the end of the offender's total sentence, or

(b) the expiry of the existing continuing detention order,

as appropriate.

(4) A **supervised offender** is an offender who, when the application for a continuing detention order is made, is an offender in lawful custody or under supervision—

(a) under an extended supervision order or an interim supervision order who—

(i) has been found guilty of an offence under section 12 in respect of that order, or

(ii) because of altered circumstances, poses an unacceptable risk of committing a serious offence if the continuing detention order is not made, or

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

(c) under an interim detention order.

(5) An application in respect of a supervised offender who is serving a sentence of imprisonment may not be made more than 9 months before the end of the person's total sentence.

(6) The Supreme Court must not make a continuing detention order on an application referred to in subsection (4) (a) (ii) unless it is satisfied that circumstances have altered since the making of the extended supervision order or interim supervision order and those altered circumstances mean that there is an unacceptable risk of the offender committing a serious offence if the continuing detention order is not made.

(7) Without limiting the matters that the Supreme Court may take into account for the purposes of subsection (6), it may take into account the failure to comply, or an allegation that the supervised offender has failed to comply, with any requirement of an extended supervision order or interim supervision order.

### **13C (Repealed)**

#### **14 Requirements with respect to application**

- (1)-(2B) (Repealed)
- (3) An application for a continuing detention order must be supported by documentation—
  - (a) that addresses each of the matters referred to in section 17 (4), and
  - (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner) that assesses the likelihood of the offender committing a further serious offence.
- (4) An application may indicate the kinds of conditions that are considered to be appropriate for inclusion under section 11 in the event that an extended supervision order is made.

#### **14A (Repealed)**

#### **15 Pre-trial procedures**

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

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

(iv) 2 qualified psychiatrists and 2 registered psychologists,

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

(b) directing the offender to attend those examinations.

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

## **16 (Repealed)**

## **Division 2 Determination of application**

### **17 Determination of application for continuing detention order**

(1) The Supreme Court may determine an application under this Part for a continuing detention order—

(a) by making an extended supervision order, or

(b) by making a continuing detention order, or

(c) by dismissing the application.

(2) 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), (3A) (Repealed)

(4) In determining whether or not to make a continuing detention order or extended supervision order, the Supreme Court must also have regard to the following matters in addition to any other matter it considers relevant—

(a) (Repealed)

(b) the reports received from the persons appointed under section 15 (4) to conduct examinations of the offender, and the level of the offender's participation in any such examination,

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



- to participate in any such assessment, and the level of the offender's participation in any such assessment,
- (d) the results of any statistical or other assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a further serious offence,
  - (d1) any report prepared by Corrective Services NSW as to the extent to which the offender can reasonably and practicably be managed in the community,
  - (e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs, and the level of the offender's participation in any such programs,
  - (e1) if the offender is kept in custody or is in the community (whether or not under supervision)—any options available that might reduce the likelihood of the offender re-offending over time,
  - (e2) whether it is satisfied that the offender is likely to comply with the obligations of an extended supervision order,
  - (f) without limiting paragraph (e2), the level of the offender's compliance with any obligations to which he or she is or has been subject while on release on parole or while subject to an interim supervision order or an extended supervision order,
  - (g) the level of the offender's compliance with any obligations to which he or she is or has been subject under the *Child Protection (Offenders Registration) Act 2000* or the *Child Protection (Offenders Prohibition Orders) Act 2004*,
  - (h) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere), and any pattern of offending behaviour disclosed by that history,
  - (h1) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,
  - (i) any other information that is available as to the likelihood that the offender will commit a further serious offence,
  - (j) in the case of an application made on the basis that the offender has been found guilty of an offence of failing to comply with the requirements of an extended supervision order or interim supervision order—the nature of the failure to comply with those requirements and the likelihood of further failures to comply,
  - (k) in the case of an application made on the basis that circumstances have altered since the making of an extended supervision order or interim supervision order against the offender—whether circumstances have altered since the making of the

order and whether those altered circumstances mean that the risk of the offender committing a serious offence would be unacceptable unless a continuing detention order were made.

- (4A) To avoid doubt, section 11 (2) applies to an extended supervision order made under this section.
- (4B) (Repealed)
- (5) 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 offender committing further serious offences.

#### **17A (Repealed)**

#### **18 Term of continuing detention order**

- (1) A continuing detention order—
- (a) commences when it is made, or when the offender's current custody expires, whichever is the later, and
  - (b) expires at the end of such period (not exceeding 5 years from the day on which it commences) as is specified in the order.
- (1A) Despite subsection (1), a continuing detention order made on application under this Part in respect of a supervised offender (within the meaning of section 13B (4)) who is not in custody commences when it is made and expires at the end of such period (not exceeding 5 years from the day on which it commences) as is specified in the order.
- (2) An offender's custody under a continuing detention order is suspended while the offender is in lawful custody under any other Act or law, but that suspension does not affect the expiry date of the order.
- (3) Nothing in this section prevents the Supreme Court from making a second or subsequent continuing detention order against the same offender.

### **Division 3 Interim detention orders**

#### **18A Interim detention order**

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

- (a) that the offender's current custody (if any) will expire before the proceedings are determined, and
- (b) that the matters alleged in the supporting documentation would, if proved, justify the

making of an extended supervision order or continuing detention order.

**18B (Repealed)**

**18C Term of interim detention order**

- (1) An interim detention order in respect of an 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.
- (1A) An 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.
- (2) An interim detention order may be renewed from time to time, but not so as to provide for the detention of the offender under such an order for periods totalling more than 3 months.

**Division 3A Emergency detention orders**

**18CA Ex parte application for emergency detention order**

- (1) The State may apply to the Supreme Court for an order (an **emergency detention order**) for the detention of an offender who is the subject of an extended supervision order or an interim supervision order and who, because of altered circumstances, poses an unacceptable and imminent risk of committing a serious 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 offender concerned.

**18CB Making of emergency detention orders**

- (1) The Supreme Court may make an emergency detention order if it appears to the Court that the matters alleged in support of the application for the order would, if proved, establish that because of altered circumstances, the offender poses an unacceptable and imminent risk of committing a serious 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.

### **18CC Requirements with respect to application**

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

### **18CD Term of emergency detention order**

- (1) An emergency detention order can be made to have effect for no longer than is reasonably necessary to enable action to be taken under this Act to ensure that the risk of the offender committing a serious 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 4 General**

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

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

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

#### **19 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 offender.
  - (1A) The period of an order must not be varied so that the period is greater than that otherwise permitted under this Part.
  - (1B) Without limiting the grounds for revoking a continuing detention order, 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.
- (2) For the purpose of ascertaining whether to make an application under this section in relation to a continuing detention order, the Commissioner of Corrective Services must provide the Attorney General with a report on the offender at intervals of not more than 12 months.
- (3) The report must indicate whether the Commissioner considers the continuation of the continuing detention order to be necessary and appropriate.

#### **20 Warrant of committal**

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

### **Part 4 Supreme Court proceedings**

#### **21 Nature of proceedings**

Proceedings under this Act (including proceedings on an appeal under this Act) are civil proceedings and, to the extent to which this Act does not provide for their conduct, are to

be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings.

## **21A Victim statements**

- (1) As soon as practicable after an application for an order under this Act is made in respect of an offender, the person acting on behalf of the State 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.
- (3A) A statement in writing must be provided before the date specified in the notice.
- (4) 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.
- (4A) 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.
- (4B) The Supreme Court is to hear an oral statement in the absence of the offender unless the person giving the statement consents to the offender being present.
- (4C) The Supreme Court may arrange for an oral statement to be made by way of closed circuit television.
- (5) A person who makes a statement may amend or withdraw the statement.
- (6) The Supreme Court and the State must not disclose a statement (other than one given in the presence of the offender in accordance with subsection 4B) to the offender to which the application relates unless the person who made the statement consents to the disclosure.

- (7) If consent is not provided the Supreme Court may—
- (a) reduce the weight given to the statement, and
  - (b) take reasonable steps to disclose to the offender, or the offender's legal representative, the substance of the statement but only if the Court is satisfied that those steps could not reasonably be expected to lead to the identification of the victim or the person who made the statement.

- (8) In this section—

**victim** of an offender means a victim who is recorded on the Victims Register in relation to the offender under the *Crimes (Administration of Sentences) Act 1999*, section 279(2)(c).

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

## 22 Right of appeal

- (1) An appeal to the Court of Appeal lies from any determination of the Supreme Court to make, or to refuse to make, an extended supervision order, continuing detention order or emergency detention order.
- (2) An appeal may be on a question of law, a question of fact or a question of mixed law and fact.
- (3) An appeal against the decision of the Supreme Court may be made, as of right, within 28 days after the date on which the decision was made or, by leave, within such further time as the Court of Appeal may allow.
- (4) The making of an appeal does not stay the operation of an extended supervision order, continuing detention order or emergency detention order.
- (4A) If the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the extended supervision order, continuing detention order or emergency detention order the subject of the appeal continues in force, subject to any order made by the Court of Appeal.
- (4B) Without limiting any other jurisdiction it may have, if the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the Court of Appeal may make an interim order (for a period not exceeding 28 days) revoking or varying an extended supervision order, continuing detention order or emergency detention order the subject of the appeal.
- (4C) The Court of Appeal may make more than one interim order under subsection (4B) provided that the combined periods during which the interim orders (whether made under this Act by the Court of Appeal or the Supreme Court at first instance) are in

force do not exceed 3 months in total.

(5) This section does not limit any right of appeal that may exist apart from this Act.

### **23 Costs not to be awarded against offender**

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

### **24 Preservation of Supreme Court jurisdiction**

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

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

### **24AA Meaning of “relevant agency”**

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

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

### **24AB Establishment and membership of Assessment Committee**

- (1) There is to be a High Risk Offenders Assessment Committee.
- (2) The Assessment Committee is to consist of the following members—
  - (a) the Commissioner of Corrective Services NSW, or a nominee of the Commissioner, who is to be the Chairperson of the Committee,
  - (b) another representative of Corrective Services NSW, nominated by the Commissioner of Corrective Services NSW,
  - (c) a representative of the Department of Family and Community Services, nominated by the Secretary of that Department,
  - (d) a representative of Housing NSW, nominated by the Secretary of the Department



of Family and Community Services,

- (e) a representative of Ageing, Disability and Home Care, nominated by the Secretary of the Department of Family and Community Services,
  - (f) a representative of the Justice Health and Forensic Mental Health Network, nominated by the Chief Executive of that Network,
  - (g) a representative of the Department of Justice, nominated by the Secretary of that Department,
  - (h) a representative of the NSW Police Force, nominated by the Commissioner of Police,
  - (i) a representative of the Ministry of Health, nominated by the Secretary of that Ministry,
  - (j) such other members as the Minister may appoint to represent public sector agencies or other organisations that the Minister considers to have a relevant expertise or involvement in the provision of services in connection with the management of risk and supervision in the community of high risk offenders,
  - (k) such other members as the Minister may appoint on the basis of relevant expertise in connection with the management of risk and supervision in the community of high risk offenders.
- (3) The regulations may make provision for or with respect to the constitution and procedure of the Assessment Committee.

#### **24AC Functions of Assessment Committee**

The Assessment Committee has the following functions—

- (a) to review the risk assessments of offenders and make recommendations to the Commissioner of Corrective Services NSW for the taking of action by the State under this Act in respect of those offenders,
- (b) to facilitate co-operation between and the co-ordination of relevant agencies in the exercise of their functions in connection with risk assessment and management of offenders who are subject to this Act (the **high risk offender functions** of relevant agencies),
- (c) to monitor and provide expert oversight of the exercise of the high risk offender functions of relevant agencies for the purpose of identifying opportunities for improved outcomes in individual cases and opportunities for systemic improvement and removal of inter-agency barriers to the effective exercise of high risk offender functions,

- (d) to facilitate information sharing between relevant agencies in connection with the exercise of their high risk offender functions,
- (e) to develop best practice standards and guidelines for the exercise by relevant agencies of their high risk offender functions,
- (f) to identify gaps in resourcing, service provision and training that may impact on the proper and effective exercise of high risk offender functions,
- (g) to conduct research into the effectiveness of this Act in ensuring the safety and protection of the community and to disseminate the results of that research,
- (g1) to exercise the functions that are conferred or imposed on the Assessment Committee by or under the *Terrorism (High Risk Offenders) Act 2017*,
- (h) such other functions in connection with the operation of this Act as the Minister may from time to time direct.

#### **24AD Sub-committees of Assessment Committee**

- (1) The Assessment Committee may form sub-committees to exercise specific functions of the Assessment Committee.
  - (1A) (Repealed)
- (2) Subject to the regulations, the procedure of a sub-committee is to be as determined by the Assessment Committee.
- (3) A sub-committee may include persons who are not members of the Assessment Committee.
- (4) A sub-committee of the Assessment Committee is constituted to exercise functions conferred or imposed on the Assessment Committee by or under the *Terrorism (High Risk Offenders) Act 2017* (the **terrorism sub-committee**).
- (5) The membership of the terrorism sub-committee is to be in accordance with the regulations.
- (6) The functions conferred or imposed on the Assessment Committee by or under the *Terrorism (High Risk Offenders) Act 2017* may only be exercised by the terrorism sub-committee.
- (7) A reference to the Assessment Committee in this Act, other than this section and section 24AB, or another Act includes a reference to the terrorism sub-committee.

#### **24AE Furnishing of reports and information**

- (1) The Assessment Committee must keep the Minister informed of the general conduct of its operations in the exercise of its functions.

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

#### **24AF Inter-agency co-operation**

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

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

- (1) Two or more relevant agencies may enter into arrangements (**co-operative protocols**) with each other to enable information held by each of the agencies concerned to be shared or exchanged between those agencies and the co-operative management of offenders.
- (2) The information to which a co-operative protocol may relate is limited to the following—
  - (a) information concerning offenders,
  - (b) any other information that may be prescribed by the regulations.
- (3) Under a co-operative protocol, each relevant agency the subject of the arrangement is authorised—
  - (a) to request and receive information held by any other relevant agency the subject of the arrangement, and

(b) to disclose information to any of those relevant agencies,

without the consent of any person concerned, but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or the functions of the relevant agencies concerned.

(4) This section does not limit the operation of any Act under which the relevant agency is authorised or required to disclose information to another person or body.

## **Part 5 Miscellaneous**

### **24A Attorney General etc to act on behalf of State**

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

### **25 Provision of certain information to Attorney General**

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

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

Maximum penalty—100 penalty units in the case of a corporation and 100 penalty units, or imprisonment for 2 years, or both, in any other case.

(2A) The Attorney General may request a court to provide to the Attorney General any document, report or other information held by the court that relates to the behaviour, financial circumstances, or physical or mental condition, of any offender.

(2B) The Attorney General may request a person in another jurisdiction to provide to the Attorney General any document, report or other information in that person's possession, or under that person's control, that relates to the behaviour, financial circumstances or physical or mental condition of any offender.

(3) Despite any Act or law to the contrary, any document or report of a kind referred to in subsection (1), (2A) or (2B), or any copy of any such document or report, is admissible in proceedings under this Act.

(4) The State and the Commissioner of Corrective Services are authorised to use information provided to the Attorney General under this section in proceedings before the State Parole Authority under the *Crimes (Administration of Sentences) Act 1999* concerning the parole of an offender, but only with the consent of the provider of the information.

- (5) Subsection (4) applies despite anything to the contrary in this or another Act.

### **25A Proceedings for offences**

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

### **25B Orders may be made at same time**

- (1) Nothing in this Act prevents the Supreme Court from making an extended supervision order in respect of a person at the same time that it makes a continuing detention order in respect of the person.
- (2) In such a case, despite section 10 (1), the extended supervision order commences on the expiry of the continuing detention order and expires—
- (a) at the end of such period (not exceeding 5 years from the day on which it commences) as is specified in the order, or
- (b) if the order is suspended for any period, the period specified in paragraph (a) plus each period during which the order is suspended.

### **25C Offenders to be warned about application of Act**

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

### **25D Disclosure and use of application documentation**

- (1) 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 offender means a report prepared as referred to in section 6 (3) or 14 (3), or received from persons appointed under section 7 (4) or 15 (4), concerning an 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.

- (2) The State may disclose an expert report concerning an 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.
- (3) An expert report concerning an offender may be disclosed and used in any proceedings in respect of the offender if the court determines that—
  - (a) the proceedings are closely related to the proceedings under section 7 or 15 in which the expert report was used, and
  - (b) it is in the public interest, and
  - (c) the information would inform the court about the history of the offender's mental state with respect to his or her offending.
- (4) The disclosure and use of an expert report for a purpose referred to in subsection (2) or (3) is permitted despite this Act or any other law to the contrary or any duty of confidentiality concerning the expert report.
- (5) 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.

## **26 Protection of certain persons from liability**

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

## **27 Hearings**

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

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

## 28 Bail Act 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, other than proceedings for an offence under section 12 or 25 (2).

### 28A Evidentiary certificates

A certificate issued by the Commissioner of Corrective Services NSW that states that an order under Part 2 or 3 imposed on a specified offender was suspended under section 10, 10C, 18C or 18D and the date of the expiry of the order in accordance with the section concerned is admissible in any legal proceedings despite any Act or law to the contrary and is evidence of the facts so stated.

### 28B Protected records inadmissible

- (1) A protected record, or evidence of the contents of a protected record, is not admissible in proceedings before a court, tribunal, authority or other body or person.
- (2) A person cannot be compelled in the proceedings to—
  - (a) produce a protected record, or a copy of or extract from a protected record, or
  - (b) disclose or give evidence of the contents of a protected record.

- (3) In this section—

***protected record*** means any of the following—

- (a) the minutes of a meeting of the Assessment Committee or a sub-committee, or a copy of or extract from the minutes,
- (b) another record of the deliberations of the Assessment Committee or a sub-committee, or a copy of or extract from the record.

***sub-committee*** means a sub-committee formed by the Assessment Committee under section 24AD.

## 29 Rules of court

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

## 30 Regulations

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

or convenient to be prescribed for carrying out or giving effect to this Act.

### **31 (Repealed)**

### **32 Review of extension of Act**

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

## **Schedule 1 (Repealed)**

## **Schedule 2 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

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



## **Part 2 Provisions consequent on enactment of this Act**

### **2 Application of Act to past offences**

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

### **3 Application of Act to persons serving existing sentences of imprisonment**

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

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

### **4 Definition**

In this Part—

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

### **5 Application of 2007 amending Act**

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

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

### **6 Application of amendment**

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

## **Part 5 Provisions consequent on enactment of [Crimes \(Serious Sex](#)**

## Offenders) Amendment Act 2010

### 7 Definition

In this Part—

**2010 amending Act** means the *Crimes (Serious Sex Offenders) Amendment Act 2010*.

### 8 Application of 2010 amending Act

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

## Part 6 Provision consequent on enactment of Crimes Legislation Amendment Act 2012

### 9 Application of amendment

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

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

### 10 Definition

In this Part—

**amending Act** means the *Crimes (Serious Sex Offenders) Amendment Act 2013*.

### 11 Extension of scheme

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

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

### 12 Saving of existing orders

- (1) An extended supervision order made under section 9 or 17 before the amendments made by the amending Act, and in force immediately before the commencement of

those amendments, is taken to be an extended supervision order under section 5C.

- (2) An interim supervision order made under section 8 before the repeal of that section by the amending Act, and in force immediately before that repeal, is taken to be an interim supervision order under section 10A.
- (3) A continuing detention order made under section 17 before the amendments made by the amending Act, and in force immediately before the commencement of those amendments, is taken to be a continuing detention order under section 5D.
- (4) An interim detention order made under section 16 before the repeal of that section by the amending Act, and in force immediately before that repeal, is taken to be an interim detention order under section 18A.

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

### **13 Definition**

In this Part—

**amending Act** means the [Crimes \(High Risk Offenders\) Amendment Act 2014](#).

### **14 Extension of scheme**

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

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

## **Part 9 Provision consequent on enactment of [Crimes \(High Risk Offenders\) Amendment Act 2016](#)**

### **15 Application of amendment to definition of “serious violence offence”**

Section 5A (2A), as inserted by the [Crimes \(High Risk Offenders\) Amendment Act 2016](#), extends—

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

## **Part 10 Provisions consequent on enactment of Crimes (High Risk Offenders) Amendment Act 2017**

### **16 Definition**

In this Part—

**amending Act** means the *Crimes (High Risk Offenders) Amendment Act 2017*.

### **17 Extension of scheme**

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

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

### **18 Victim statements**

Section 21A, as in force immediately before its amendment by the amending Act, continues to apply in respect of any notice given or required to be given under that section and any victim statement received by the Supreme Court before the commencement of the amendments.

### **19 Applications**

- (1) An application duly made under Part 2 or 3 of this Act as in force immediately before the amendments made to provisions of those Parts by the amending Act is taken to have been duly made under those Parts as amended.
- (2) The amendments made by the amending Act apply to and in respect of proceedings in relation to an application made under Part 2 or 3 of this Act but not determined before the commencement of the amendments.

## **Part 11 Provisions consequent on enactment of Crimes Legislation Amendment Act 2021**

### **20 Definition**

In this Part—

**amending Act** means the *Crimes Legislation Amendment Act 2021*.

## **21 Extension of scheme**

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

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

## **Part 12 Provision consequent on enactment of [Crimes \(Administration of Sentences\) Amendment Act 2022](#)**

### **22 Application of amendments**

Section 25(4), as inserted by the [Crimes \(Administration of Sentences\) Amendment Act 2022](#), extends to information that was provided to the Attorney General before the commencement of the subsection.