

# Community Protection Legislation Amendment Act 2018 No 94

[2018-94]



New South Wales

## Status Information

### Currency of version

Repealed version for 28 November 2018 to 28 November 2018 (accessed 25 November 2024 at 10:40)

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—

- **Repeal**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 29.11.2018.

### 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](#).

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# Community Protection Legislation Amendment Act 2018 No 94



New South Wales

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# Community Protection Legislation Amendment Act 2018 No 94



New South Wales

An Act to amend certain legislation to make further provision with respect to the supervision and detention of high risk offenders; to make amendments to the *Crimes Act 1900* concerning the supply of prohibited drugs, concealing offences and bushfire and former offences; to amend the *Crimes (Appeal and Review) Act 2001* to permit the publication and disclosure of information about certain mercy petitions; and to amend the *Liquor Act 2007* to make provision for new types of licences.

## 1 Name of Act

This Act is the *Community Protection Legislation Amendment Act 2018*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act except as provided by subsection (2).
- (2) Schedule 1.7 commences:
  - (a) if the date of assent to the *Surveillance Devices Amendment (Statutory Review) Act 2018* is on or before the date of assent to this Act—on the date of assent to this Act, or
  - (b) if the date of assent to the *Surveillance Devices Amendment (Statutory Review) Act 2018* is after the date of assent to this Act—on the date of assent to that Act.

## 3 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

## Schedule 1 Amendment of legislation concerning high risk offenders

### 1.1 Children (Detention Centres) Act 1987 No 57

#### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

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

#### [2] Section 4A

Insert after section 4:

##### 4A Commonwealth detainees

- (1) This section applies in relation to a person (a **Commonwealth detainee**) who is:
  - (a) the subject of a continuing detention order or interim detention order in force under Division 105A of Part 5.3 of the Commonwealth Criminal Code, and
  - (b) to be detained in a detention centre under this Act under an arrangement with the State under section 105A.21 of the Commonwealth Criminal Code.
- (2) Subject to the regulations, a Commonwealth detainee may be treated as a person subject to control for the purposes of the detention of the detainee under this Act.
- (3) The regulations may make provision for or with respect to the detention of Commonwealth detainees under this Act and may, for that purpose, provide for the modification of provisions of this Act in their application to Commonwealth detainees.
- (4) In this section:

**modification** includes addition, exception, omission or substitution.

#### [3] Section 59 Juvenile offenders to whom Division applies

Omit section 59 (1) (d) and (e). Insert instead:

- (d) who is making or has previously made any statement (or is carrying out or has previously carried out any activity) advocating support for any terrorist act or

violent extremism, or

- (e) who has or previously had any personal or business association or other affiliation with any person, group of persons or organisation that is or was advocating support for any terrorist act or violent extremism.

**[4] Section 59 (1A)**

Insert after section 59 (1):

(1A) Without limiting subsection (1) (d) and (e):

- (a) advocating support for a terrorist act or violent extremism includes (but is not limited to) any of the following:
  - (i) making a pledge of loyalty to a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
  - (ii) using or displaying images or symbols associated with a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
  - (iii) making a threat of violence of a kind that is promoted by a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism, and
- (b) an association or other affiliation with a person, group of persons or organisation includes (but is not limited to) any of the following:
  - (i) networking or communicating with the person, group of persons or organisation,
  - (ii) using social media sites or any other websites to communicate with the person, group of persons or organisation.

**[5] Section 86 Submissions by State**

Omit section 86 (1). Insert instead:

- (1) The State may at any time make submissions to the Children's Court concerning the release on parole of:
  - (a) a serious offender, or
  - (b) a juvenile offender to whom Division 5 applies (whether or not a serious offender).

**Note—**

Section 71A of the *Terrorism (High Risk Offenders) Act 2017* authorises the use by the State of certain information obtained under that Act in proceedings for parole under this Act, but only with the consent of the provider of the information.

**[6] Section 86A**

Insert after section 86:

**86A Withdrawal of offender information provided under *Terrorism (High Risk Offenders) Act 2017***

- (1) This section applies to proceedings for parole before the Children’s Court in which information is used under the authority given by section 71A of the *Terrorism (High Risk Offenders) Act 2017*.

**Note—**

Section 71A of the *Terrorism (High Risk Offenders) Act 2017* authorises the use by the State of certain information obtained under that Act in proceedings for parole under this Act, but only with the consent of the provider of the information.

- (2) The Children’s Court must allow the State or a prescribed terrorism intelligence authority to withdraw the information from the consideration of the Children’s Court at any time before the proceedings are determined.
- (3) Any offender information that is withdrawn from the consideration of the Children’s Court must not be:
- (a) used in making submissions for the State in the proceedings, or
  - (b) taken into consideration by the Children’s Court in determining the proceedings.
- (4) In this section:

**offender information** has the same meaning as in Part 5 of the *Terrorism (High Risk Offenders) Act 2017*.

**prescribed terrorism intelligence authority** has the same meaning as in the *Terrorism (High Risk Offenders) Act 2017*.

**Explanatory note**

Item [2] of the proposed amendments enables certain persons subject to continuing detention orders and interim detention orders under Division 105A of Part 5.3 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth to be detained in detention centres. Item [1] makes a consequential amendment.

Items [3] and [4] make amendments that are consistent with the proposed amendments made by this Schedule to the *Terrorism (High Risk Offenders) Act 2017* concerning the identification of persons advocating terrorist acts or violent extremism or having associations or other affiliations with others who do so.

Item [5] enables the State to make submissions to the Children’s Court in parole proceedings concerning a juvenile offender who is a terrorism related offender.

Item [6] enables the withdrawal of certain information provided under the *Terrorism (High Risk Offenders) Act 2017* used in proceedings for parole. Section 71A of the *Terrorism (High Risk Offenders) Act 2017* (as proposed to be inserted by this Schedule) authorises the use of the information in parole proceedings.

## **1.2 Children (Detention Centres) Regulation 2015**

### **[1] Clause 7A Designation of national security interest detainees**

Omit clause 7A (1) (a) (iv) and (v). Insert instead:

- (iv) is making or has previously made any statement (or is carrying out or has previously carried out any activity) advocating support for any terrorist act or violent extremism, or
- (v) has or previously had any personal or business association or other affiliation with any person, group of persons or organisation that is or was advocating support for any terrorist act or violent extremism, and

### **[2] Clause 7A (1A)**

Insert after clause 7A (1):

(1A) Without limiting subclause (1) (a) (iv) and (v):

- (a) advocating support for a terrorist act or violent extremism includes (but is not limited to) any of the following:
  - (i) making a pledge of loyalty to a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
  - (ii) using or displaying images or symbols associated with a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
  - (iii) making a threat of violence of a kind that is promoted by a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism, and
- (b) an association or other affiliation with a person, group of persons or organisation includes (but is not limited to) any of the following:
  - (i) networking or communicating with the person, group of persons or organisation,
  - (ii) using social media sites or any other websites to communicate with the person, group of persons or organisation.

#### **Explanatory note**

The proposed amendments make amendments that are consistent with amendments made by this Schedule to the *Terrorism (High Risk Offenders) Act 2017* concerning the identification of persons advocating terrorist acts or violent extremism or having associations or other affiliations with others who do so.

### **1.3 Crimes (Administration of Sentences) Act 1999 No 93**

#### **[1] Section 153 Submissions by State**

Omit section 153 (1). Insert instead:

- (1) The State may at any time make submissions to the Parole Authority concerning the release on parole of:
  - (a) a serious offender, or
  - (b) an offender (whether or not a serious offender) to whom Division 3A applies.

**Note—**

Section 71A of the *Terrorism (High Risk Offenders) Act 2017* authorises the use by the State of certain information obtained under that Act in proceedings for parole under this Act, but only with the consent of the provider of the information.

#### **[2] Section 153A**

Insert after section 153:

#### **153A Withdrawal of offender information provided under *Terrorism (High Risk Offenders) Act 2017***

- (1) This section applies to proceedings for parole before the Parole Authority in which information is used under the authority given by section 71A of the *Terrorism (High Risk Offenders) Act 2017*.

**Note—**

Section 71A of the *Terrorism (High Risk Offenders) Act 2017* authorises the use by the State of certain information obtained under that Act in proceedings for parole under this Act, but only with the consent of the provider of the information.

- (2) The Parole Authority must allow the State or a prescribed terrorism intelligence authority to withdraw the information from the consideration of the Parole Authority at any time before the proceedings are determined.
- (3) Any offender information that is withdrawn from the consideration of the Parole Authority must not be:
  - (a) used in making submissions for the State in the proceedings, or
  - (b) taken into consideration by the Parole Authority in determining the proceedings.



(4) In this section:

**offender information** has the same meaning as in Part 5 of the *Terrorism (High Risk Offenders) Act 2017*.

**prescribed terrorism intelligence authority** has the same meaning as in the *Terrorism (High Risk Offenders) Act 2017*.

**[3] Section 159B Offenders to whom Division applies**

Omit section 159B (d) and (e). Insert instead:

- (d) who is making or has previously made any statement (or is carrying out or has previously carried out any activity) advocating support for any terrorist act or violent extremism, or
- (e) who has or previously had any personal or business association or other affiliation with any person, group of persons or organisation that is or was advocating support for any terrorist act or violent extremism.

**[4] Section 159B (2)**

Insert at the end of section 159B:

- (2) Without limiting subsection (1) (d) and (e):
  - (a) advocating support for a terrorist act or violent extremism includes (but is not limited to) any of the following:
    - (i) making a pledge of loyalty to a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
    - (ii) using or displaying images or symbols associated with a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
    - (iii) making a threat of violence of a kind that is promoted by a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism, and
  - (b) an association or other affiliation with a person, group of persons or organisation includes (but is not limited to) any of the following:
    - (i) networking or communicating with the person, group of persons or organisation,
    - (ii) using social media sites or any other websites to communicate with the person, group of persons or organisation.

### Explanatory note

Item [1] of the proposed amendments enables the State to make submissions to the State Parole Authority concerning an offender who is a terrorism related offender.

Item [2] enables the withdrawal of certain information provided under the *Terrorism (High Risk Offenders) Act 2017* used in proceedings for parole. Section 71A of the *Terrorism (High Risk Offenders) Act 2017* (as proposed to be inserted by this Schedule) authorises the use of the information in parole proceedings.

Items [3] and [4] make amendments that are consistent with amendments made by this Schedule to the *Terrorism (High Risk Offenders) Act 2017* concerning the identification of persons advocating terrorist acts or violent extremism or having associations or other affiliations with others who do so.

## 1.4 Crimes (High Risk Offenders) Act 2006 No 7

### [1] Section 5AA

Insert after section 5A:

#### 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.

**[2] Section 6 Requirements with respect to application**

Insert “(in addition to the condition referred to in section 11 (2))” after “conditions” in section 6 (4).

**[3] Section 9 Determination of application for extended supervision order**

Insert after section 9 (3):

- (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).

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

Insert at the end of the section:

- (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.

**[5] Section 17 Determination of application for continuing detention order**

Insert after section 17 (4):

- (4A) To avoid doubt, section 11 (2) applies to an extended supervision order made under this section.

**[6] Section 22 Right of appeal**

Omit section 22 (4B). Insert instead:

(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.

**[7] Section 24AA Meaning of “relevant agency”**

Insert “, or agency of the Commonwealth or another State or Territory,” after “public sector agency” in section 24AA (g).

**[8] Section 24AD Sub-committees of Assessment Committee**

Insert after section 24AD (1):

(1A) A sub-committee may be formed by the Assessment Committee as constituted to exercise functions conferred by or under the *Terrorism (High Risk Offenders) Act 2017* to exercise those functions for the Committee.

(1B) A sub-committee may include persons who are not members of the Assessment Committee.

**[9] Section 28A**

Omit the section. Insert instead:

**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.

**Explanatory note**

Item [1] of the proposed amendments to the *Crimes (High Risk Offenders) Act 2006* (the **CHRO Act**) enables the Supreme Court to make supervision or detention orders under that Act in respect of offenders who are being supervised or detained under an

extended supervision order or continuing detention order made under the *Terrorism (High Risk Offenders) Act 2017*.

Items [3] and [5] provide that the Supreme Court, in determining whether or not to make an extended supervision order in respect of an offender, is not to consider any intention of the offender to leave New South Wales (whether permanently or temporarily).

Item [4] provides that an extended supervision order or interim supervision order must include a condition requiring the offender concerned not to leave New South Wales except with the approval of the Commissioner of Corrective Services NSW. Item [2] makes a consequential amendment.

Item [6] enables the Court of Appeal to make more than one interim order if it remits a matter to the Supreme Court on an appeal provided that the combined periods during which the interim orders (whether made under the CHRO Act by the Court of Appeal or the Supreme Court at first instance) are in force do not exceed 3 months in total. The maximum period of each interim order made by the Court of Appeal is 28 days.

Item [7] enables agencies of the Commonwealth and other States and Territories to be prescribed to be relevant agencies by the regulations for the purposes of Part 4A (High Risk Offenders Assessment Committee and inter-agency co-operation) of the CHRO Act.

Item [8] enables sub-committees of the High Risk Offenders Assessment Committee to be formed whose functions are limited to those imposed on the Committee by or under the *Terrorism (High Risk Offenders) Act 2017*. It also enables sub-committees to include persons who are not members of the Committee.

Item [9] expands the provisions in respect of which the Commissioner of Corrective Services NSW may issue evidentiary certificates concerning suspensions of orders.

## 1.5 Criminal Procedure Act 1986 No 209

### Schedule 1 Indictable offences triable summarily

Omit “60 (15) or (16)” from clause 10H of Table 2. Insert instead “59F (2) or (3)”.

#### Explanatory note

The proposed amendment is consequential on the repeal and re-enactment by this Schedule of the provisions of section 60 of the *Terrorism (High Risk Offenders) Act 2017*.

## 1.6 Surveillance Devices Act 2007 No 64

### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

**correctional centre** and **inmate** of a correctional centre have the same meanings as in the *Crimes (Administration of Sentences) Act 1999*.

**supervision or detention order** under the *Terrorism (High Risk Offenders) Act 2017* means any of the following orders under that 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.

**terrorism related offender** means a person who is any of the following within the meaning of the *Terrorism (High Risk Offenders) Act 2017*:

- (a) a convicted NSW terrorist offender,
- (b) a convicted NSW underlying terrorism offender,
- (c) a convicted NSW terrorism activity offender.

**[2] Section 4 (1), definition of “relevant proceeding”**

Insert after paragraph (p):

- (q) a proceeding for the parole of a person to whom Division 5 of Part 4C of the *Children (Detention Centres) Act 1987* or Division 3A of Part 6 of the *Crimes (Administration of Sentences) Act 1999* applies,
- (r) a proceeding under the *Terrorism (High Risk Offenders) Act 2017*.

**[3] Section 17 Application for a surveillance device warrant**

Insert after section 17 (1):

- (1A) A law enforcement officer (or another person on his or her behalf) may also apply for the issue of a surveillance device warrant for the use of a surveillance device in a correctional centre if the law enforcement officer on reasonable grounds suspects or believes that:
  - (a) an eligible offender within the meaning of the *Terrorism (High Risk Offenders) Act 2017* is an inmate of the correctional centre, and
  - (b) an investigation is being, will be or is likely to be conducted into whether an application for a supervision or detention order should be made under the *Terrorism (High Risk Offenders) Act 2017* in respect of the offender on the basis that the offender is a terrorism related offender, and
  - (c) the use of a surveillance device is necessary for the purpose of an investigation into whether an application for a supervision or detention order under the *Terrorism (High Risk Offenders) Act 2017* should be made to enable evidence to be obtained that would be likely to support the application.

**[4] Section 17 (4) (a)**

Insert “or (1A) (c)” after “subsection (1) (c)”.

**[5] Section 19 Determining the application**

Insert “for an application under section 17 (1)—” before “the nature” in section 19 (2) (a).

**[6] Section 19 (2) (f)**

Insert “for an application under section 17 (1)—” before “any previous”.

**[7] Section 19 (2) (g)**

Insert at the end of section 19 (2) (f):

, and

(g) for an application under section 17 (1A)—any previous warrant sought or issued under this Part or a corresponding law in connection with the same inmate.

**[8] Section 20 Contents of surveillance device warrants**

Insert “for a warrant based on an application under section 17 (1)—” before “the alleged” in section 20 (1) (b) (ii).

**[9] Section 20 (1) (b) (iia)**

Insert after section 20 (1) (b) (ii):

(iia) for a warrant based on an application under section 17 (1A)—the ground referred to in section 8 (a) or (b), 9 (1) or 10 (1) (a), (b), (c) (i) or (ii) of the *Terrorism (High Risk Offenders) Act 2017* on which it is alleged that the inmate is a terrorism related offender, and

**[10] Section 24 Discontinuance of use of surveillance device under warrant**

Omit “the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender” wherever occurring in section 24 (2) and (4).

Insert instead “the warrant purpose”.

**[11] Section 24 (5)**

Insert after section 24 (4):

(5) In this section:

**warrant purpose** means:

(a) in relation to a warrant that is issued based on an application under section 17

- (1)—the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, or
- (b) in relation to a warrant that is issued based on an application under section 17 (1A)—the purpose of enabling evidence to be obtained that would be likely to support an application for a supervision or detention order under the *Terrorism (High Risk Offenders) Act 2017* in respect of the inmate.

**Explanatory note**

Item [3] of the proposed amendments enables a surveillance device warrant for the use of a surveillance device in a correctional centre to be issued in respect of an inmate who is an eligible offender within the meaning of the *Terrorism (High Risk Offenders) Act 2017* for use in an investigation into whether to make an application for a supervision or detention order against the inmate. Items [1], [2] and [4]–[11] make consequential amendments.

## **1.7 Surveillance Devices Amendment (Statutory Review) Act 2018**

### **Schedule 1 [8], proposed section 20 (1) (b)**

Insert “(or for a warrant based on an application under section 17 (1A)—the ground on which it is alleged that the inmate is a terrorism related offender)” after “issued”.

**Explanatory note**

The proposed amendment is consequential on the amendment proposed to be made by Schedule 1.6 [3].

## **1.8 Terrorism (High Risk Offenders) Act 2017 No 68**

### **[1] Section 10 Convicted NSW terrorism activity offender**

Omit section 10 (1) (c). Insert instead:

- (c) the offender:
  - (i) is making or has previously made any statement (or is carrying out or has previously carried out any activity) advocating support for any terrorist act or violent extremism, or
  - (ii) has or previously had any personal or business association or other affiliation with any person, group of persons or organisation that is or was advocating support for any terrorist act or violent extremism.

### **[2] Section 10 (1A)**

Insert after section 10 (1):

- (1A) Without limiting subsection (1) (c):
  - (a) advocating support for a terrorist act or violent extremism includes (but is not



limited to) any of the following:

- (i) making a pledge of loyalty to a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
  - (ii) using or displaying images or symbols associated with a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,
  - (iii) making a threat of violence of a kind that is promoted by a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism, and
- (b) an association or other affiliation with a person, group of persons or organisation includes (but is not limited to) any of the following:
- (i) networking or communicating with the person, group of persons or organisation,
  - (ii) using social media sites or any other websites to communicate with the person, group of persons or organisation.

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

Insert at the end of the section:

- (2) In applying for an order under Part 2 or 3 or determining an application for the order:
- (a) supervision under an extended supervision order made under the [Crimes \(High Risk Offenders\) Act 2006](#) 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 [Crimes \(High Risk Offenders\) Act 2006](#) 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 sections 7, 8, 9 and 10 as continuing to be supervised or detained under this Act after serving an offence if the person is being supervised or detained under an extended supervision order or continuing detention order made under the [Crimes \(High Risk Offenders\) Act 2006](#).

- (3) Accordingly, the Supreme Court may make an order under Part 2 or 3 by reference to supervision, detention or custody under an extended supervision order or

continuing detention order made under the *Crimes (High Risk Offenders) Act 2006* 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 *Crimes (High Risk Offenders) Act 2006* before the commencement of those subsections.

**[4] Section 23 Requirements with respect to application**

Insert “(in addition to or instead of the conditions referred to in section 29 (1A))” after “conditions” in section 23 (4).

**[5] Section 24 Pre-trial procedures**

Omit section 24 (3). Insert instead:

(2A) It is sufficient compliance with subsection (2) (a) if the eligible offender is:

- (a) provided with an index of the documents, reports and other information, and
- (b) given access to a document, report or other information included in the index (or a part of a document, report or other information) as is relevant to the proceedings if the offender (or the offender’s legal representative) requests access.

(2B) The regulations may make provision for or with respect to the provision and content of an index of documents, reports and other information for the purposes of subsection (2A).

(3) However, the State is not required to disclose any document, report or other information, or disclose its existence in an index, to an eligible offender except in accordance with Division 5.3 (or an order under that Division) if:

- (a) the Attorney General or a prescribed terrorism intelligence authority intends to make an application under that Division 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 Division for it to be dealt with as terrorism intelligence, or
- (c) the Supreme Court has granted an application under that Division for the document, report or other information to be dealt with as terrorism intelligence.

**[6] Section 25 Determination of application for extended supervision order**

Insert after section 25 (3):

- (4) In determining whether or not to make an extended supervision order in respect of an eligible offender, the Supreme Court is not to consider any intention of the offender to leave New South Wales (whether permanently or temporarily).

**[7] Section 29 Conditions that may be imposed on extended or interim supervision order**

Insert after section 29 (1):

(1A) Unless the Supreme Court orders differently (and without limiting the conditions that the Court may impose under subsection (1)), an extended supervision order or interim supervision order must include conditions requiring the eligible offender:

- (a) to submit to the supervision and guidance of any enforcement officer responsible for the supervision of the offender for the time being and obey all reasonable directions of an enforcement officer (including in respect of providing a schedule of movements), and
- (b) to wear electronic monitoring equipment as directed and not tamper with, or remove, the equipment, and
- (c) to live at an address approved by an enforcement officer and notify an enforcement officer of any intention to change the offender's address or living arrangements, and
- (d) not to leave New South Wales except with the approval of the Commissioner of Corrective Services, and
- (e) to submit to the search of the offender's person and residence and the search and seizure of the offender's vehicle, computer, electronic and communication device or any storage facility, garage, locker or commercial facility under the offender's control, and
- (f) to comply with rules or by-laws (or both) of any approved accommodation for the offender, and
- (g) not to use prohibited drugs, or obtain drugs unlawfully or abuse drugs lawfully obtained, and
- (h) to submit to drug and alcohol testing, and
- (i) not to possess or use any of the following:
  - (i) a firearm, firearm part or ammunition within the meaning of the *Firearms Act 1996*,
  - (ii) a prohibited weapon within the meaning of the *Weapons Prohibition Act*

1998,

- (iii) a spear gun,
- (iv) an explosive substance intended, by the eligible offender, to be used in an explosive device,
- (v) a fuse capable of use with an explosive or a detonator, or a detonator, that is intended, by the eligible offender, to be used as a fuse or detonator for an explosive device (as the case may be), and
- (j) to be available for interview at such times and places as an enforcement officer (or the officer's nominee) may from time to time direct, and
- (k) to undergo ongoing psychological or psychiatric assessment or counselling (or any combination of these) as directed by an enforcement officer, and
- (l) not to start on the offender's own initiative any job, volunteer work or educational course without the approval of an enforcement officer, and
- (m) to obey any reasonable direction by an enforcement officer about communication, internet access and use of electronic devices (including, but not limited to, approval of devices used, method of communication, access to internet and restrictions on deleting information), and
- (n) to permit an 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, and
- (o) to notify an enforcement officer of any intention to change the offender's employment if practicable before the change occurs or otherwise at his or her next interview with an enforcement officer, and
- (p) not to associate (including using third parties) with any person or persons specified by an enforcement officer, whether face to face or by written correspondence or electronic means, and
- (q) not to change the offender's name or use any other name without notifying an enforcement officer, and
- (r) not to frequent or visit any place or district specified by an enforcement officer.

**[8] Section 38 Pre-trial procedures**

Omit section 38 (3). Insert instead:

(2A) It is sufficient compliance with subsection (2) (a) if the eligible offender is:

- (a) provided with an index of the documents, reports and other information, and
  - (b) given access to a document, report or other information included in the index (or a part of a document, report or other information) as is relevant to the proceedings if the offender (or the offender's legal representative) requests access.
- (2B) The regulations may make provision for or with respect to the provision and content of an index of documents, reports and other information for the purposes of subsection (2A).
- (3) However, the State is not required to disclose any document, report or other information, or disclose its existence in an index, to an eligible offender except in accordance with Division 5.3 (or an order under that Division) if:
- (a) the Attorney General or a prescribed terrorism intelligence authority intends to make an application under that Division 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 Division for it to be dealt with as terrorism intelligence, or
  - (c) the Supreme Court has granted an application under that Division for the document, report or other information to be dealt with as terrorism intelligence.

**[9] Section 39 Determination of application for continuing detention order**

Insert after section 39 (3):

- (3A) To avoid doubt, section 25 (4) applies to an extended supervision order made under this section.

**[10] Section 45 Requirements with respect to application**

Omit section 45 (3). Insert instead:

- (3) However, the State is not required to disclose to the eligible offender or the Legal Aid Commission of New South Wales any document, report or other information except in accordance with Division 5.3 (or an order under that Division) if:
  - (a) the Attorney General or a prescribed terrorism intelligence authority intends to make an application under that Division 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 Division for it to be dealt with as terrorism intelligence, or

- (c) the Supreme Court has granted an application under that Division for the document, report or other information to be dealt with as terrorism intelligence.

**[11] Section 53 Right of appeal**

Omit “declaration or order under appeal” from section 53 (5).

Insert instead “declaration under section 12 or order under Part 2 or 3 being appealed”.

**[12] Section 53 (6) and (6A)**

Omit section 53 (6). Insert instead:

- (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 (for a period not exceeding 28 days) revoking or varying the declaration under section 12 or order under Part 2 or 3 being appealed.
- (6A) The Court of Appeal may make more than one interim order under subsection (6) 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.

**[13] Part 5 Information about eligible offenders**

Insert before section 57:

Division 5.1 **Interpretation**

**[14] Section 57 Definitions**

Insert in alphabetical order:

***independent third party*** means a person appointed as an independent third party under section 59B.

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

***substantive proceedings***—see section 59A (1).

***terrorism intelligence application***—see section 59A (1).

**[15] Part 5, Division 5.2, heading**

Insert before section 58:

Division 5.2 **Requirements and requests for offender information**

**[16] Part 5, Divisions 5.3 and 5.4**

Omit section 60. Insert instead:

## **Division 5.3 Use of information involving terrorism intelligence**

### **59A Making terrorism intelligence applications**

- (1) The Attorney General or a prescribed terrorism intelligence authority may:
  - (a) 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, and
  - (b) request that the Supreme Court take steps under section 59C to maintain the confidentiality of the information while the Court is considering whether to grant the application.
- (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 Division 5.2, and
  - (b) the information is terrorism intelligence.

### **59B Appointment and role of independent third parties**

- (1) The Supreme Court must appoint a qualified person to be an independent third party representative for an eligible offender for the purposes of a terrorism intelligence application or the substantive proceedings (or both) if:
  - (a) the eligible offender does not have any legal representatives in the substantive proceedings, or
  - (b) the applicant in the terrorism intelligence application requests that the Court take the steps referred to in section 59C (2) (b), (c) or (d) to maintain the confidentiality of information.
- (2) A person is a **qualified person** for the purposes of subsection (1) 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 Division.
- (3) 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 either being provided with 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 Division.
- (4) 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.

### **59C Steps to maintain confidentiality**

- (1) The Supreme Court must take steps:
- (a) to maintain the confidentiality of information to which a terrorism intelligence application relates (including steps to receive evidence and hear argument about the information) until the application is determined, and
  - (b) if the terrorism intelligence application is granted—to maintain the confidentiality of the terrorism intelligence in the substantive proceedings (including steps to receive evidence and hear argument about the intelligence in private).
- (2) The Supreme Court may allow any of the following forms of access to information or terrorism intelligence referred to in subsection (1) (having regard to what the Court considers appropriate because of the nature of the information or intelligence and the degree of risk of disclosure to non-parties by parties and their legal representatives and any other matter the Court considers relevant):
- (a) viewing, or providing a copy of, a document containing the information or intelligence,
  - (b) viewing, or providing a copy of, a document containing the information or intelligence that has been redacted to the extent necessary to prevent the disclosure of the information or intelligence,
  - (c) viewing, or providing a copy of, a document containing the information or intelligence that has been redacted to the extent necessary to prevent the disclosure of the information or intelligence together with a written summary of the nature of the redacted information or intelligence,



- (d) viewing, or providing a copy of, a document containing the information or intelligence that has been redacted to the extent necessary to prevent the disclosure of the information or intelligence together with a written statement of the facts that the information or intelligence would (or would be likely to) establish.
- (3) In allowing access to a document referred to in subsection (2), the Supreme Court may:
- (a) allow a party and the party's legal representatives, if any, to be provided with a copy of the document, or
  - (b) allow a party's legal representatives, if any, to be provided with a copy of the document and the party to view (but not have a copy of) the document, or
  - (c) allow a party's legal representatives to be provided with a copy of the document, but deny the party any form of access to the document, or
  - (d) allow a party and the party's legal representatives, if any, to view (but not have a copy of) the document, or
  - (e) allow a party's legal representatives, if any, to view (but not have a copy of) the document, but deny the party any form of access to the document.
- (4) Subsections (2) and (3):
- (a) are subject to any agreement under section 59E and the regulations, and
  - (b) do not limit access that an independent third party for an eligible offender is required to be provided with under section 59B.

**59D Withdrawal of information to which a terrorism intelligence application relates**

- (1) The Supreme Court must give an affected person or body an opportunity to withdraw the information to which a terrorism intelligence application relates from consideration by the Court if:
- (a) the Court is not satisfied that the information is terrorism intelligence, or
  - (b) the Court decides not to grant the level of access requested under section 59A (1) (b) in relation to the information.
- (2) Each of the following is an ***affected person or body***:
- (a) the applicant in the terrorism intelligence application,
  - (b) any prescribed terrorism intelligence authority that provided the information.

- (3) However, the Supreme Court is not required to allow the information to be withdrawn from consideration by the Court if the Court considers that its withdrawal would be manifestly unfair to a party to the substantive proceedings who is an eligible offender.
- (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.

### **59E Agreements concerning dealing with terrorism intelligence**

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).

### **59F Orders by Supreme Court**

- (1) The Supreme Court may make any orders the Court considers appropriate:
  - (a) to prohibit or restrict access to, or the disclosure or publication of, terrorism intelligence for the purposes of this Division, or
  - (b) to give effect to an agreement under section 59E.
- (2) 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).
- (3) A person is guilty of an offence against this subsection if the person commits an offence against subsection (2) 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.

## **60 Regulations concerning dealing with terrorism intelligence**

The regulations may make provision for or with respect to:

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

## **Division 5.4 General**

### **[17] Section 68 Proceedings for offences**

Omit “60 (15) or (16)” wherever occurring. Insert instead “59F (2) or (3)”.

### **[18] Section 71 Disclosure and use of application documentation**

Omit “Supreme Court” from section 71 (2) where firstly occurring.

Insert instead “court in which the proceedings are brought”.

### **[19] Section 71 (2) (c)**

Omit “Supreme Court”. Insert instead “court”.

### **[20] Section 71A**

Insert after section 71:

#### **71A Use of certain information provided under Act in parole proceedings**

- (1) This section applies to the following information (**relevant information**):
  - (a) offender information provided under Part 5,
  - (b) information provided to a relevant agency of the State under a co-operative

- protocol under section 65,
- (c) information provided under a terrorism information exchange agreement under section 67,
  - (d) an expert report (within the meaning of section 71) about an eligible offender.
- (2) The State is authorised to use relevant information in the following proceedings, but only with the consent of the provider of the information:
- (a) proceedings before the State Parole Authority under the *Crimes (Administration of Sentences) Act 1999* concerning the parole of an offender,
  - (b) proceedings before the Children’s Court under the *Children (Detention Centres) Act 1987* concerning the parole of an offender.
- (3) This section applies despite anything to the contrary in this or any other Act.

**[21] Section 73**

Omit the section. Insert instead:

**73 Evidentiary certificates**

A certificate issued by the Commissioner of Corrective Services that states that an order under Part 2 or 3 imposed on a specified offender was suspended under section 26, 28, 42 or 47 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.

**[22] Schedule 1 Savings, transitional and other provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Community Protection Legislation Amendment Act 2018**

**Application of amendments**

- (1) The following provisions apply in respect of the repeal of section 60, and the enactment of Division 5.3 of this Act, by the amending Act:
- (a) if access to terrorism intelligence had not yet been provided under section 60 before its repeal, it may be provided by reference to that Division,
  - (b) any order made by the Supreme Court under section 60 in force immediately

before its repeal continues in force as an order under section 59F (as inserted by the amending Act),

(c) any agreement in force under section 60 immediately before its repeal continues in force as an agreement under section 59E (as inserted by the amending Act).

(2) Section 71A (as inserted by the amending Act) extends to information that was provided, and expert reports created, before its commencement.

(3) Subject to clause 2 (3) of this Schedule, 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 the former section 60 committed before the commencement of the amendment.

(4) In this clause:

**amending Act** means the *Community Protection Legislation Amendment Act 2018*.

#### Explanatory note

Items [1] and [2] of the proposed amendments to the *Terrorism (High Risk Offenders) Act 2017* (the **THRO Act**) clarify when persons are to be treated as advocating terrorist acts or violent extremism or having associations or other affiliations with others who do so for the purposes of the definition of **convicted NSW terrorism activity offender**.

Item [3] enables the Supreme Court to make supervision or detention orders under that Act in respect of offenders who are being supervised or detained under an extended supervision order or continuing detention order made under the *Crimes (High Risk Offenders) Act 2006*.

Items [5] and [8] enable the State to give an index of relevant documents, reports and other information to an eligible offender in respect of whom an application for an extended supervision order or continuing detention order is made. The eligible offender will be able to request access to the indexed documents, reports and other information.

Items [6] and [9] provide that the Supreme Court, in determining whether or not to make an extended supervision order or continuing detention order in respect of an eligible offender, is not to consider any intention of the offender to leave New South Wales (whether permanently or temporarily).

Item [7] introduces standard conditions for extended supervision orders, which the Supreme Court can vary. Item [4] makes a consequential amendment.

Item [10] sets out the circumstances in which the State is not required to disclose information to an eligible offender or the Legal Aid Commission in relation to an application for an emergency detention order except in accordance with proposed Division 5.3 of the THRO Act (which is proposed to be inserted by item [16]).

Item [11] clarifies which declarations and orders under the THRO Act can be appealed to the Court of Appeal.

Item [12] enables the Court of Appeal to make more than one interim order if it remits a matter to the Supreme Court on an appeal provided that the combined periods during which the interim orders (whether made under the THRO Act by the Court of Appeal or the Supreme Court at first instance) are in force do not exceed 3 months in total. The maximum period of each interim order made by the Court of Appeal is 28 days.

Item [16] makes further provision with respect to maintaining the confidentiality of information that is, or is claimed to be, terrorism intelligence. Items [13]–[15] and [17] make consequential amendments.

Items [18] and [19] authorise courts in addition to the Supreme Court to allow expert reports provided under the THRO Act to be disclosed and used in proceedings before them.

Item [20] authorises the use in parole proceedings of certain information about eligible offenders provided under the THRO Act.

Item [21] expands the provisions in respect of which the Commissioner of Corrective Services NSW may issue evidentiary certificates concerning suspensions of orders.

Item [22] provides for transitional matters for the amendments made to the THRO Act.

## **1.9 Terrorism (High Risk Offenders) Regulation 2018**

### **Clause 10 Independent third party representatives**

Omit “section 60”. Insert instead “Division 5.3”.

#### **Explanatory note**

The proposed amendment is consequential on the repeal and re-enactment by this Schedule of the provisions of section 60 of the *Terrorism (High Risk Offenders) Act 2017*.

## **Schedule 2 Amendment of Crimes Act 1900 No 40**

### **2.1 Amendment concerning supply of drugs causing death**

#### **Section 25C**

Insert after section 25B:

#### **25C Supply of drugs causing death**

- (1) A person is guilty of an offence under this section if:
  - (a) the person supplies a prohibited drug to another person for financial or material gain, and
  - (b) the drug is self-administered by another person (whether or not the person to whom the drug was supplied), and
  - (c) the self-administration of the drug causes or substantially causes the death of that other person.

Maximum penalty: Imprisonment for 20 years.

- (2) In proceedings for an offence under this section, it is necessary to prove that the accused knew, or ought reasonably to have known, that supplying the prohibited drug would expose another person (whether or not the person to whom the drug was supplied) to a significant risk of death as a result of the self-administration of the drug.
- (3) A person does not commit an offence under this section for supplying a

prohibited drug if the person is authorised to supply the drug under the *Poisons and Therapeutic Goods Act 1966*.

- (4) Proceedings for an offence under this section may only be instituted by or with the approval of the Director of Public Prosecutions.
- (5) Section 18 does not apply to an offence under this section.
- (6) In this section:

**prohibited drug** means any substance specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985*, but does not include a prohibited plant within the meaning of that Act.

#### **Explanatory note**

The proposed amendment makes it an offence, punishable by imprisonment for 20 years, to supply a prohibited drug for financial or material gain if the self-administration of the drug by another person causes or substantially causes that other person's death. It will be necessary to prove that the person supplying the prohibited drug knew, or ought reasonably to have known, that the supply would expose a person to a significant risk of death.

## **2.2 Amendments concerning offences of concealing offences**

### **[1] Section 316 Concealing serious indictable offence**

Omit section 316 (1) and (2). Insert instead:

- (1) An adult:
  - (a) who knows or believes that a serious indictable offence has been committed by another person, and
  - (b) who knows or believes that he or she has information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence, and
  - (c) who fails without reasonable excuse to bring that information to the attention of a member of the NSW Police Force or other appropriate authority,

is guilty of an offence.

Maximum penalty: Imprisonment for:

- (a) 2 years—if the maximum penalty for the serious indictable offence is not more than 10 years imprisonment, or
- (b) 3 years—if the maximum penalty for the serious indictable offence is more than 10 years imprisonment but not more than 20 years imprisonment, or
- (c) 5 years—if the maximum penalty for the serious indictable offence is more than

20 years imprisonment.

- (2) A person who solicits, accepts or agrees to accept any benefit for the person or any other person in consideration for doing anything that would be an offence under subsection (1) is guilty of an offence.

Maximum penalty: Imprisonment for:

- (a) 5 years—if the maximum penalty for the serious indictable offence is not more than 10 years imprisonment, or
- (b) 6 years—if the maximum penalty for the serious indictable offence is more than 10 years imprisonment but not more than 20 years imprisonment, or
- (c) 7 years—if the maximum penalty for the serious indictable offence is more than 20 years imprisonment.

**[2] Section 316A Concealing child abuse offence**

Omit the penalty from section 316A (1). Insert instead:

Maximum penalty: Imprisonment for:

- (a) 2 years—if the maximum penalty for the child abuse offence is less than 5 years imprisonment, or
- (b) 5 years—if the maximum penalty for the child abuse offence is 5 years imprisonment or more.

**[3] Section 316A (2) (g)**

Insert at the end of section 316A (2) (f):

, or

- (g) the information is about an offence under section 60E that did not result in any injury other than a minor injury (for example, minor bruising, cuts or grazing of the skin) and the alleged offender and the alleged victim are both school students who are under the age of 18 years, but only if the person is a member of staff of:
- (i) a government school and the person has taken reasonable steps to ensure that the incident reporting unit (however described) of the Department of Education is made aware of the alleged offence, or
- (ii) a non-government school and the person has taken reasonable steps to ensure that the principal or governing body of the school is made aware of the alleged offence.



**[4] Section 316A (4)**

Omit the penalty from section 316A (4). Insert instead:

Maximum penalty: Imprisonment for:

- (a) 5 years—if the maximum penalty for the child abuse offence is less than 5 years imprisonment, or
- (b) 7 years—if the maximum penalty for the child abuse offence is 5 years imprisonment or more.

**[5] Section 316A (9)**

Insert in alphabetical order:

**government school** and **non-government school** have the same meanings as in the [Education Act 1990](#).

**member of staff, school** and **school student** have the same meanings as in Division 8B of Part 3.

**Explanatory note**

Item [1] of the proposed amendments updates provisions relating to concealing a serious indictable offence:

- (a) to make the layout of those provisions consistent with the equivalent provisions in section 316A of the [Crimes Act 1900](#) which deals with concealing a child abuse offence, and
- (b) to provide that the offence of concealing a serious indictable offence can be committed only by a person who is of or above the age of 18 years, and
- (c) to introduce staggered penalties for the offences of concealing a serious indictable offence and concealing a serious indictable offence for a benefit. The penalties are based on the seriousness of the concealed offence.

Item [2] introduces staggered penalties for the offence of concealing a child abuse offence. The penalty is based on the seriousness of the concealed offence.

Item [3] provides a member of staff of a school with an alternative means of reporting a child abuse offence in the case of an offence under section 60E of the [Crimes Act 1900](#) (Assaults etc at schools) that did not result in any injury other than a minor injury (for example, minor bruising, cuts or grazing of the skin) if the alleged offender and the alleged victim are both school students who are under the age of 18 years. Instead of reporting the offence to a member of the NSW Police Force, the member of staff may instead take reasonable steps to ensure that the offence is brought to the attention of the incident reporting unit of the Department of Education in the case of a government school or the principal or governing body of the school in the case of a non-government school. Item [5] defines terms used in the proposed provision.

Item [4] introduces staggered penalties for the offence of concealing a child abuse offence for a benefit. The penalty is based on the seriousness of the concealed offence.

## 2.3 Amendments concerning bushfires and former sexual offences

### [1] Section 203E Offence

Omit “14 years” from the penalty to section 203E (1). Insert instead “21 years”.

### [2] Schedule 1A Former sexual offences

Insert in appropriate order:

Section 79 (but only in relation to an offence of buggery)	Buggery and bestiality
Section 80	Attempt etc to commit buggery

#### Explanatory note

Item [1] of the proposed amendments increases the maximum penalty for an offence of intentionally causing a fire and being reckless as to its spread to vegetation on public land or land belonging to another person. The maximum penalty is to increase from imprisonment for 14 years to imprisonment for 21 years.

Item [2] adds the former offences of buggery and attempting, or assaulting a person, to commit buggery to the list of offences in Schedule 1A to the *Crimes Act 1900*. That Schedule sets out former sexual offences for the purposes of a number of provisions of that Act.

## Schedule 3 Amendment of *Crimes (Appeal and Review) Act 2001* No 120

### Section 114A

Insert after section 114:

#### 114A Information about mercy petitions

- (1) The publication or disclosure by or on behalf of the Minister of information relating to a mercy petition is not a contravention of the following:
  - (a) the *Criminal Records Act 1991*,
  - (b) the *Health Records and Information Privacy Act 2002*,
  - (c) the *Privacy and Personal Information Protection Act 1998*,
  - (d) any other Act.
- (2) In this section, **mercy petition** includes:
  - (a) a petition for a review of a conviction or sentence, or for the exercise of the

Governor's pardoning power, referred to in Division 2 of Part 7,

(b) any other petition for the exercise of the prerogative of mercy.

(3) Subsection (1) does not apply to the *Court Suppression and Non-publication Orders Act 2010*.

**Explanatory note**

The proposed amendment prevents the publication or disclosure by or on behalf of the Attorney General of information relating to a petition for a review or conviction of a sentence or for a pardon, or other mercy petition, from being a contravention of a provision of an Act that would otherwise prohibit the publication or disclosure. Provisions of the Acts concerned prevent information about past convictions of a person or personal or health information about a person from being published or disclosed. The protection from contravention does not extend to contraventions of suppression orders or non-publication orders under the *Court Suppression and Non-publication Orders Act 2010*.

**Schedule 4 Amendment of *Liquor Act 2007 No 90***

**[1] Section 10 Types of licences and authorisation conferred by licence**

Insert after section 10 (1) (f):

(g) any other type of licence that is prescribed by the regulations.

**[2] Section 159 Regulations**

Insert after section 159 (2):

(2A) The regulations may provide that a particular type of licence is not to be granted if the Authority is of the opinion that the sale or supply of liquor under the licence would more appropriately be provided under another type of licence.