



New South Wales

Crimes (Serious Sex Offenders) Amendment Act 2010 No 137

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New South Wales

Crimes (Serious Sex Offenders) Amendment Act 2010 No 137

Act No 137, 2010

An Act to amend the *Crimes (Serious Sex Offenders) Act 2006* to make further provision with respect to supervision orders and detention orders; and for other purposes. [Assented to 7 December 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Serious Sex Offenders) Amendment Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7

[1] Section 4 Definitions

Insert in alphabetical order:

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

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.

[2] Section 4, definition of “corrective services officer”

Omit “the Department of Corrective Services”.

Insert instead “Corrective Services NSW”.

[3] Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”

Insert after section 5 (1) (c):

- (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

[4] Section 7 Pre-trial procedures

Insert after section 7 (2):

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

[5] Sections 9 (2) and 17 (2) and (3)

Omit “is likely to commit a further” wherever occurring.

Insert instead “poses an unacceptable risk of committing a”.

[6] Section 9 (2A)

Insert after section 9 (2):

- (2A) The Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence.

[7] Sections 9 (3) (d1) and 17 (4) (d1)

Insert after sections 9 (3) (d) and 17 (4) (d) respectively:

- (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,

[8] Sections 9 (3) (h1) and 17 (4) (h1)

Insert after sections 9 (3) (h) and 17 (4) (h) respectively:

- (h1) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,

[9] Section 10 Term of extended supervision order

Omit section 10 (1). Insert instead:

- (1) An extended supervision order commences when it is made, or when the offender's current custody or supervision expires, whichever is the later.
- (1A) An extended supervision order expires at the end of:
- (a) such period (not exceeding 5 years from the day on which it commences) as is specified in the order, or
- (b) if the order is suspended for any period, the period specified in paragraph (a) plus each period during which the order is suspended.

[10] Section 10 (2)

Omit “, but that suspension does not affect the expiry date of the order”.

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

Insert after section 11 (a):

- (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

[12] Sections 13 (1A) and 19 (1A)

Insert after sections 13 (1) and 19 (1) respectively:

- (1A) The period of an order must not be varied so that the period is greater than that otherwise permitted under this Part.

[13] Section 14 Application for continuing detention order

Omit section 14 (2). Insert instead:

- (2) The State of New South Wales may apply to the Supreme Court for a continuing detention order against a person who is subject to an extended supervision order or an interim supervision order if:
- (a) the person is found guilty of an offence under section 12, or
 - (b) because of altered circumstances, adequate supervision of the person cannot be provided under an extended supervision order or an interim supervision order.
- (2A) An application under subsection (1) may not be made more than 6 months before:
- (a) the end of the offender's total sentence, or
 - (b) the expiry of the existing continuing detention order, as appropriate.
- (2B) An application under subsection (2) in respect of a person who is serving a sentence of imprisonment by way of full-time detention may not be made more than 6 months before the end of the person's total sentence.

[14] Section 14 (3) (a)

Insert "(and if the application is made under subsection (2), the matters referred to in section 17 (4A) and (4B) to the extent that is relevant to the application)" after "section 17 (4)".

[15] Section 14A Application for continuing detention order on breach of extended supervision order or interim supervision order

Omit the section.

- [16] Section 17 Determination of application for continuing detention order**
Insert after section 17 (3):
- (3A) The Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence.
- [17] Section 17 (4) (f)**
Omit “earlier”. Insert instead “interim supervision order or an”.
- [18] Section 17 (4A)**
Omit “section 14A”. Insert instead “section 14 (2) (a)”.
- [19] Section 17 (4B)**
Insert after section 17 (4A):
- (4B) In determining an application made under section 14 (2) (b), the Supreme Court cannot make a continuing detention order unless it is satisfied that circumstances have altered since the making of the extended supervision order or interim supervision order and those altered circumstances mean that adequate supervision of the person cannot be provided under an extended supervision order or an interim supervision order.
- [20] Section 17A Special provisions relating to parole**
Omit the section.
- [21] Section 18 Term of continuing detention order**
Omit “section 14A” from section 18 (1A). Insert instead “section 14 (2)”.
- [22] Section 18A**
Insert after section 18:
- 18A 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.

[23] Section 19 Detention order may be varied or revoked

Omit “such an application” from section 19 (2).

Insert instead “an application under this section”.

[24] Section 21A

Insert after section 21:

21A Victim statements

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

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

- (8) In this section:
victim of an offender means a victim who is recorded on the Victims Register in respect of the offender and who is a victim of an offence committed by the offender for which the offender is currently serving, or most recently served, a sentence of imprisonment.

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

[25] Sections 25A and 25B

Insert after section 25:

25A Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence under section 12 may also be dealt with summarily before the Supreme Court.

25B Orders may be made at same time

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

[26] Section 31 and Schedule 1

Omit the provisions.

[27] Section 32 Review of Act

Omit “this Act” from section 32 (3).

Insert instead “the *Crimes (Serious Sex Offenders) Amendment Act 2010*”.

[28] Schedule 2 Savings, transitional and other provisions

Omit the source reference “(Section 31 (2))” from the Schedule.

[29] Schedule 2, clause 1 (1)

Omit “the *Law*”. Insert “*Law*”.

[30] Schedule 2, clause 1 (1)

Insert at the end of the subclause:

Crimes (Serious Sex Offenders) Amendment Act 2010

[31] Schedule 2, Part 5

Insert after Part 4:

**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.

Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 126 Eligibility for release on parole

Insert “or an interim detention order” after “continuing detention order” in section 126 (4).

[2] Section 160A Relationship of parole orders to orders under the Crimes (Serious Sex Offenders) Act 2006

Insert “, an interim supervision order or an interim detention order” after “extended supervision order” in section 160A (1).

[3] Section 160A (2)

Insert “or interim supervision order” after “extended supervision order” in section 160A (2).

[4] Section 160A (3)

Insert after section 160A (2):

- (3) Any parole order to which an offender is subject is revoked if a continuing detention order is made against the offender under the *Crimes (Serious Sex Offenders) Act 2006*.

[5] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Serious Sex Offenders) Amendment Act 2010

[Second reading speech made in Legislative Council on 24 November 2010
Agreement in principle speech made in Legislative Assembly on 1 December 2010]

BY AUTHORITY