



Western Australia

Dangerous Sexual Offenders Legislation Amendment Act 2016

As at 11 Jul 2016

No. 17 of 2016

Extract from www.slp.wa.gov.au, see that website for further information

Dangerous Sexual Offenders Legislation Amendment Act 2016

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Dangerous Sexual Offenders Act 2006</i> amended		
3.	Act amended	3
4.	Section 3 amended	3
5.	Section 4A inserted	5
	4A. When a person commits a serious sexual offence	5
6.	Section 4 amended	6
7.	Section 7A inserted	6
	7A. DPP may take proceedings in the name of the State	6
8.	Section 7 amended	6
9.	Section 8 amended	7
10.	Section 10A inserted	9
	10A. Offender's duty to disclose	9
11.	Section 10 replaced	11
	10. Application may proceed even if offender discharged	11
12.	Section 11 amended	11
13.	Section 14 amended	11
14.	Section 15 deleted	12
15.	Section 16 amended	12
16.	Section 17A inserted	13
	17A. Victim submissions	13

Contents

17.	Section 17 amended		15
18.	Section 18 amended		15
19.	Section 23A replaced		17
	23A. Reports	17	
20.	Section 23 amended		17
21.	Section 24A amended		18
22.	Section 24 amended		18
23.	Part 3 heading amended		19
24.	Section 29 amended		19
25.	Section 30 amended		20
26.	Section 31 amended		20
27.	Section 32 replaced		20
	32. Reports	20	
28.	Section 33 amended		21
29.	Section 34 amended		21
30.	Section 35 amended		22
31.	Part 5 heading replaced		22
	Part 5 — Reports		
32.	Sections 37A and 37B inserted		22
	37A. Terms used	22	
	37B. Authority to examine	23	
33.	Section 37 replaced		23
	37. Preparation of report by qualified expert	23	
	38A. Preparation of other report	24	
34.	Section 38 amended		24
35.	Section 39 replaced		26
	39. Copies of report to DPP and subject	26	
36.	Section 40AA inserted		26
	40AA. Mentally unfit offender	26	
37.	Section 40 amended		26
38.	Section 41 amended		27
39.	Section 42 amended		28
40.	Section 43 amended		28
41.	Section 44 amended		29
42.	Section 46A amended		29
43.	Section 46B inserted		30
	46B. Exchange of information	30	
44.	Various uses of term “has to” amended		31

Part 3 — <i>Criminal Procedure Act 2004</i> amended		
45.	Act amended	33
46.	Section 51 amended	33
Part 4 — <i>Evidence Act 1906</i> amended		
47.	Act amended	34
48.	Section 36C amended	34
Part 5 — <i>Prisons Act 1981</i> amended		
49.	Act amended	35
50.	Section 113B amended	35
Part 6 — <i>Sentence Administration Act 2003</i> amended		
51.	Act amended	36
52.	Section 50 amended	36
Part 7 — <i>Sentencing Act 1995</i> amended		
53.	Act amended	37
54.	Section 8 amended	37
55.	Section 98 amended	37
Part 8 — <i>Young Offenders Act 1994</i> amended		
56.	Act amended	38
57.	Section 189 amended	38
58.	Section 190 amended	38



Western Australia

Dangerous Sexual Offenders Legislation Amendment Act 2016

No. 17 of 2016

An Act to amend —

- **the *Dangerous Sexual Offenders Act 2006*; and**
- **the *Criminal Procedure Act 2004*; and**
- **the *Evidence Act 1906*; and**
- **the *Prisons Act 1981*; and**
- **the *Sentence Administration Act 2003*; and**
- **the *Sentencing Act 1995*; and**
- **the *Young Offenders Act 1994*.**

[Assented to 11 July 2016]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Dangerous Sexual Offenders Legislation Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Dangerous Sexual Offenders Act 2006* amended

3. Act amended

This Part amends the *Dangerous Sexual Offenders Act 2006*.

4. Section 3 amended

- (1) In section 3(1) delete the definitions of:

commit a serious sexual offence

continuing detention order

Division 2 continuing detention order

Division 2 order

Division 4 continuing detention order

serious sexual offence

supervision order

under sentence of imprisonment

- (2) In section 3(1) insert in alphabetical order:

Board means the Prisoners Review Board established by the *Sentence Administration Act 2003* section 102;

commit a serious sexual offence has the meaning given in section 4A;

continuing detention order means an order made under section 17(1)(a);

Division 2 order means —

(a) a continuing detention order; or

(b) a supervision order made under section 17(1)(b);

psychologist has the meaning given in the *Mental Health Act 2014* section 4;

qualified expert means —

- (a) a psychiatrist; or
- (b) a qualified psychologist;

qualified psychologist means a psychologist holding a qualification or accreditation prescribed for the purposes of this definition;

serious sexual offence means —

- (a) a serious sexual offence as defined in the *Evidence Act 1906* section 106A; or
- (b) an offence of conspiracy or incitement to commit an offence referred to in paragraph (a); or
- (c) an offence against a law of the Commonwealth, of another State or of a Territory that is prescribed to correspond to an offence described in paragraph (a) or (b);

supervision order means an order under section 17(1)(b) or 33(1)(b)(ii);

under a custodial sentence means —

- (a) under a sentence of imprisonment imposed by a court of Western Australia (including an indefinite sentence imposed under the *Sentencing Act 1995* section 98(1)) or an indeterminate sentence imposed under *The Criminal Code* section 661 or 662; or
- (b) under a sentence of imprisonment imposed under a law of the Commonwealth; or
- (c) under a sentence of imprisonment that under the *Prisoners (Interstate Transfer) Act 1983* section 25(1) is deemed to have been imposed by a court of Western Australia; or
- (d) under a sentence of detention under the *Young Offenders Act 1994* for an offence committed

after the offender had reached 16 years of age,
the term of which has not elapsed;

victim means a person upon whom a serious sexual
offence has been committed by a person who is or has
been an offender;

victim submission means a submission made under
section 17A(3) or (4).

5. Section 4A inserted

After section 3 insert:

4A. When a person commits a serious sexual offence

- (1) For the purposes of this Act, unless the contrary intention appears, a person commits a serious sexual offence if the person —
 - (a) does an act or makes an omission in any State or Territory that constitutes a serious sexual offence; or
 - (b) does an act or makes an omission outside Australia that, if done within this State, would constitute a serious sexual offence.
- (2) For the purposes of subsection (1), it makes no difference —
 - (a) whether the person doing the act or making the omission would be likely to be charged with an offence; or
 - (b) whether the person doing the act or making the omission would, if charged with an offence, be found mentally fit to stand trial; or

- (c) whether the person doing the act or making the omission would, if tried for an offence, be convicted.

6. Section 4 amended

In section 4(a) delete “community; and” and insert:

community and of victims; and

7. Section 7A inserted

After section 6 insert:

7A. DPP may take proceedings in the name of the State

The DPP may make applications, and take other proceedings, for which this Act provides in the name of the State.

8. Section 7 amended

After section 7(3) insert:

- (4) In considering whether it is satisfied as required in subsection (1), the court must disregard the possibility that the person might temporarily be prevented from committing a serious sexual offence by imprisonment, by remand in custody or by the imposition of bail conditions.

9. Section 8 amended

(1) Delete section 8(1) and insert:

- (1) The DPP may file with the Supreme Court an application for orders under section 14 and for a Division 2 order in relation to a person (the *offender*) —
- (a) who is under a custodial sentence for a serious sexual offence; or
 - (b) who has been under a custodial sentence for a serious sexual offence and who, at all times since being discharged from that sentence, has been under a custodial sentence for another offence or other offences.
- (2A) An application under subsection (1) need not specify whether the Division 2 order sought is a continuing detention order or a supervision order under section 17(1)(b).

(2) In section 8(2) delete “the person under sentence of imprisonment” and insert:

the offender

(3) In section 8(3):

- (a) delete “the person under sentence of imprisonment” and insert:

the offender

s. 9

- (b) delete “the application cannot” and insert:

an application under subsection (1) cannot
 - (c) delete “person might” and insert:

offender might
 - (d) delete “6 months” and insert:

one year
- (4) Delete section 8(4) and insert:
- (4A) If —
 - (a) an offender is subject to a supervision order (the *current order*); and
 - (b) the current order is to expire within one year,

the DPP may file with the Supreme Court an application for orders under section 14 and for a further supervision order under section 17(1)(b) in relation to the offender, the further order to take effect on the expiry of the current order.
 - (4) An application filed under this section must be accompanied by any affidavits to be relied on by the DPP for the purpose of seeking an order or orders under section 14.
- (5) In section 8(6) delete “subsection (1),” and insert:

this section,

10. Section 10A inserted

After section 9 insert:

10A. Offender's duty to disclose

- (1) In this section —
expert evidence material relevant to an application means —
 - (a) a copy of every statement, recording or report obtained by the offender from any person who the offender intends to call to give expert evidence that is relevant to the application; and
 - (b) written notice of the name and, if known, the address, of any person from whom no statement, recording or report has been obtained by the offender but who the offender intends to call to give expert evidence that is relevant to the application; and
 - (c) a written description of the expert evidence referred to in paragraph (b).
- (2) This section applies to an application for a Division 2 order.
- (3) Subject to subsection (5), at least 14 days before the day fixed under section 14 for the hearing of the application the offender must file with the court and give to the DPP a copy of —
 - (a) any expert evidence material relevant to the application; and
 - (b) written notice of any objection by the offender to —

s. 10

- (i) any document that the DPP intends to adduce at the hearing of the application;
or
 - (ii) any evidence to be given by a witness that the DPP intends to call at the hearing of the application;
 - and
 - (c) written notice of the grounds for any objection mentioned in paragraph (b).
- (4) If, after complying with subsection (3), an offender receives or obtains further expert evidence material relevant to the application, the offender must file it with the court and give it to the DPP as soon as practicable.
- (5) In respect of a requirement arising under subsection (3) or (4), the court may on its own initiative or on the application of either party to the application make an order —
- (a) that dispenses with all or part of the requirement, if it is satisfied —
 - (i) there is a good reason to do so; and
 - (ii) no miscarriage of justice will result;
 - or
 - (b) that shortens or extends the time for obeying the requirement; or
 - (c) that amends or cancels an order made previously under this section; or
 - (d) as to any other matter that the court considers is just.

11. Section 10 replaced

Delete section 10 and insert:

10. Application may proceed even if offender discharged

An application under section 8 may proceed and the offender may be dealt with in accordance with this Act even if, while the application is pending —

- (a) in the case of an application under section 8(1), the offender ceases to be under a custodial sentence; or
- (b) in the case of an application under section 8(4A), the offender ceases to be subject to a supervision order.

12. Section 11 amended

Delete section 11(2).

13. Section 14 amended

- (1) In section 14(1) delete “must” and insert:

must, subject to subsection (2A),

- (2) After section 14(1) insert:

(2A) If —

- (a) the offender has been charged with a further offence; and
- (b) that charge has not been dealt with; and

s. 14

- (c) the court considers that the interests of justice require that the application for a Division 2 order should not be heard until that charge has been dealt with,

the court may defer fixing a day for the hearing of the application, or if it has already fixed a day adjourn the hearing of the application, until after the further charge has been dealt with.

- (3) Delete section 14(2)(a) and insert:

- (a) the court must order that the offender undergo examinations by 2 qualified experts named by the court, at least one of whom is to be a psychiatrist, for the purposes of preparing reports in accordance with section 37 to be used on the hearing of the application; and
- (ba) the court may, on the application of the DPP or of the offender, order that a person or body named by the court prepare a report in accordance with section 38A to be used on the hearing of the application on questions or topics set out in the order; and

14. Section 15 deleted

Delete section 15.

15. Section 16 amended

Delete section 16(3) and insert:

- (3) When an application is taken to be dismissed under subsection (2), any order under section 14(2)(b) relating to the offender is discharged.

16. Section 17A inserted

At the end of Part 2 Division 1 insert:

17A. Victim submissions

- (1) In this section —
make available means make available to an offender or to a person acting on behalf of, or representing, the offender.
- (2) This section applies to —
 - (a) an application under section 8(1) for a Division 2 order; and
 - (b) an application under section 8(4A) for an order under section 17(1)(b); and
 - (c) an application under section 19 to amend the conditions of a supervision order; and
 - (d) an application under section 22 for an order under section 23; and
 - (e) an application under section 29 or 30 for the review of a person's detention.
- (3) Where an application to which this section applies is made in relation to a person, a victim of that person may make a submission to the court in relation to the need to ensure adequate protection of the victim.
- (4) If because of age, disability or any other reason a victim is personally incapable of making a submission, another person may make it on the victim's behalf if the court is satisfied that it is appropriate for that other person to do so.

s. 17

- (5) A victim submission must be in writing.
- (6) At the hearing of an application to which this section applies, the court must make available any victim submission made if —
 - (a) the court considers that making available the submission is essential in the interests of fairness and justice; and
 - (b) the victim making the submission has consented to its being made available; and
 - (c) the court has afforded the victim making the submission an opportunity —
 - (i) to amend the submission before it is made available; or
 - (ii) to withdraw the submission.
- (7) Subject to subsections (8), (9) and (10), in considering an application to which this section applies, the court can have regard to any victim submission made.
- (8) If a victim submission is not made available at the hearing because the victim making the submission has not consented, the court must not have regard to the submission.
- (9) The court must not have regard to a victim submission that has been withdrawn.
- (10) If the victim making a submission has amended the submission, the court must have regard only to the amended submission.

17. Section 17 amended

- (1) In section 17(1):
 - (a) delete “may —” and insert:

must —
 - (b) delete paragraph (b) and insert:
 - (b) order that, with effect from a stated date not earlier than 21 days after the date the order is made, and continuing for a stated period, the offender, when not in custody, is to be subject to stated conditions that the court, subject to section 18, considers appropriate.
- (2) After section 17(2) insert:
- (3) A court hearing an application under section 8(4A) must not make an order under subsection (1)(a).

18. Section 18 amended

- (1) Before section 18(1) insert:
 - (1A) In this section —

make public means —

 - (a) provide to any representative of the news media for publication or broadcast; or
 - (b) make publicly available by means of the internet.

s. 18

- (2) After section 18(1) insert:
- (2A) If the court makes a supervision order against a person, the order may require that the person not make public any statement, information or opinion relating directly or indirectly to any victim of an offence committed by the person.
- (2B) When considering whether to impose a requirement under subsection (2A) the court must have regard to —
- (a) the gravity and nature of the person’s offences; and
 - (b) the likely impact on the victims of the person providing or making available any statement, information or opinion; and
 - (c) the public interest generally.
- (3) In section 18(2):
- (a) delete “The supervision” and insert:

A supervision
 - (b) in paragraph (b) delete “order.” and insert:

order; or
 - (c) after paragraph (b) insert:

(c) to ensure adequate protection of victims of offences committed by the person subject to the order.

- (4) In section 18(3) delete “the supervision” and insert:

a supervision

19. Section 23A replaced

Delete section 23A and insert:

23A. Reports

After an application is made under section 22 in relation to a person the Supreme Court —

- (a) may order that the person undergo examination by one or more qualified experts named by the court for the purposes of preparing a report in accordance with section 37; and
- (b) on the application of the DPP or of the person, may order that a person or body named by the court prepare a report in accordance with section 38A on questions or topics set out in the order.

20. Section 23 amended

- (1) Delete section 23(1)(a) and (b) and insert:

- (a) make an order amending the conditions of the supervision order, or extending the period for which the offender is to be subject to the conditions of the supervision order, or both; or
- (b) if the court is also satisfied that there is an unacceptable risk that, if an order under this paragraph were not made, the person would commit a serious sexual offence, make a

s. 21

continuing detention order in relation to the person; or

(c) make no order.

(2) After section 23(1) insert:

(2A) In considering whether it is satisfied as required in subsection (1)(b), the court must disregard the possibility that the person might temporarily be prevented from committing a serious sexual offence by imprisonment, by remand in custody or by the imposition of bail conditions.

(3) In section 23(2) delete “subsection (1)(a) or (b),” and insert:

subsection (1),

21. Section 24A amended

After section 24A(3) insert:

(4A) For the purposes of subsection (3), in considering whether releasing the person is justified by exceptional circumstances the court may, as it thinks fit, receive and take into account information put before it, whether or not that information would normally be admissible in a court of law.

22. Section 24 amended

In section 24(1) delete “other than a sexual offence as defined in the *Evidence Act 1906* section 36A,”.

23. Part 3 heading amended

In the heading to Part 3 delete “**Annual reviews**” and insert:

Reviews

24. Section 29 amended

- (1) In section 29(1) delete “must” and insert:

may

- (2) In section 29(2):

- (a) delete “Reviews have to be” and insert:

The DPP must apply under subsection (1) so as to ensure that reviews are

- (b) in paragraph (a) before “order” insert:

continuing detention

- (c) in paragraph (b) delete “1 year” and insert:

2 years

- (3) After section 29(2) insert:

- (3) The periods mentioned in subsection (2)(a) and (b) are extended by any period during which the person is in custody serving a sentence of imprisonment.

25. Section 30 amended

In section 30(3) delete “after the detention has been reviewed under section 29(2)(a).” and insert:

at least one year after the last occasion on which the person’s detention has been reviewed under section 29(2)(b).

26. Section 31 amended

- (1) In section 31(2) delete “The application” and insert:

Subject to subsection (3), the application

- (2) After section 31(2) insert:

- (3) The court may adjourn the hearing of the application, and the carrying out of the review, where good cause is shown.

27. Section 32 replaced

Delete section 32 and insert:

32. Reports

- (1) Unless the court otherwise orders, the chief executive officer must engage one or more qualified experts to prepare reports in accordance with section 37 to be used on a review under this Part.
- (2) On the application of the DPP or the person whose detention is to be reviewed, the court may order the chief executive officer to engage a person or body

named by the court to prepare a report in accordance with section 38A on questions or topics set out in the order.

28. Section 33 amended

(1) Delete section 33(1) and (2) and insert:

(1) On a review of a person's detention under section 31 —

- (a) if the court does not find that the person remains a serious danger to the community it must rescind the continuing detention order; or
- (b) if the court finds that the person remains a serious danger to the community it must —
 - (i) affirm the continuing detention order; or
 - (ii) with effect from a date specified by the court, but not earlier than 21 days after the day on which the review is concluded, rescind the continuing detention order and make a supervision order in relation to the person.

(2) In section 33(3) delete “subsection (2),” and insert:

subsection (1)(b),

29. Section 34 amended

(1) In section 34 delete “The DPP” and insert:

(1) The DPP

s. 30

(2) At the end of section 34 insert:

(2) Unless the Court of Appeal orders otherwise, an appeal under subsection (1) cannot be commenced later than 21 days after the date of the decision.

30. Section 35 amended

In section 35(2) delete “the Court of Appeal might, in finally determining the appeal,” and insert:

the final determination of the appeal might result in an

31. Part 5 heading replaced

Delete the heading to Part 5 and insert:

Part 5 — Reports

32. Sections 37A and 37B inserted

At the beginning of Part 5 insert:

37A. Terms used

In this Part, unless the contrary intention appears —

report means a report prepared under section 14(2)(a) or (ba), 23A(a) or (b) or 32(1) or (2);

reporter means —

- (a) a qualified expert ordered or engaged to provide a report in relation to a person under section 37; or

- (b) a person or body ordered or engaged to provide a report in relation to a person under section 38A;

subject means a person in relation to whom a report is to be prepared in accordance with section 37 or 38A.

37B. Authority to examine

This section authorises a reporter to examine a subject and to report in accordance with section 37 or 38A.

33. Section 37 replaced

Delete section 37 and insert:

37. Preparation of report by qualified expert

- (1) A qualified expert ordered or engaged to provide a report in relation to a person under this section must —
 - (a) examine the subject; and
 - (b) prepare an independent report.
- (2) The report must indicate —
 - (a) the reporter's assessment of the level of risk that, if the subject were not subject to a continuing detention order or a supervision order, the subject would commit a serious sexual offence; and
 - (b) the reasons for the reporter's assessment.
- (3) The reporter must have regard to any report or information given under section 38(1).
- (4) The reporter must prepare the report even if the subject does not cooperate, or does not cooperate fully, in the examination.

38A. Preparation of other report

- (1) A person or body ordered or engaged to provide a report in relation to a person under this section must —
 - (a) examine the subject, if in their opinion examination is necessary or desirable having regard to the questions and topics to be addressed in the report; and
 - (b) prepare an independent report.
- (2) The report must —
 - (a) set out the reporter's opinion on all questions and topics specified in the order or engagement for its preparation; and
 - (b) the basis for that opinion.
- (3) The reporter must have regard to any report or information given under section 38(2A).
- (4) The reporter must prepare the report even if the subject does not cooperate, or does not cooperate fully, in any examination the reporter considers necessary or desirable.

34. Section 38 amended

- (1) Delete section 38(1) and insert:
 - (1) Subject to subsection (2B), the chief executive officer must give to a reporter preparing a report under section 37 any medical, psychiatric, prison or other relevant report or information relating to the subject that is in the chief executive officer's possession or to which the chief executive officer has, or may be given, access.
 - (2A) Subject to subsection (2B), the chief executive officer must give to a reporter preparing a report under

section 38A any medical, psychiatric, prison or other relevant report or information relevant to the questions and topics to be addressed in the report —

- (a) that is in the chief executive officer's possession or to which the chief executive officer has, or may be given, access; and
 - (b) that the reporter considers it necessary or desirable to consider, having regard to the questions and topics to be addressed in the report.
- (2B) Before giving any document to a reporter under subsection (1) or (2A) the chief executive officer may edit the document to remove or erase any material —
- (a) that would identify any person other than the subject; or
 - (b) where a report is to be prepared under section 37, that does not relate to the subject; or
 - (c) where a report is to be prepared under section 38A, that is not relevant to the questions and topics to be addressed in the report.

- (2) In section 38(2) delete “psychiatrist under subsection (1).” and insert:

reporter under subsection (1) or (2A).

- (3) In section 38(3) delete “the person to be examined” and insert:

the subject

Note: The heading to amended section 38 is to read:

Providing information to reporter

35. Section 39 replaced

Delete section 39 and insert:

39. Copies of report to DPP and subject

- (1) A reporter who prepares a report under section 37 or 38A must give a copy of the report to the DPP within 7 days after finalising the report.
- (2) Before the end of the day after the day on which the DPP receives a report under subsection (1), the DPP must give a copy of the report to the subject.

36. Section 40AA inserted

At the beginning of Part 6 insert:

40AA. Mentally unfit offender

- (1) In this section —
found not mentally fit means found not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Accused) Act 1996*.
- (2) A court may make an order under this Act in respect of an offender even if the offender —
 - (a) has been found not mentally fit; or
 - (b) if charged with an offence, would be likely to be found not mentally fit.

37. Section 40 amended

- (1) In section 40 delete “Proceedings” and insert:

- (1) Proceedings

(2) At the end of section 40 insert:

- (2) Subsection (1) does not require anything that is to be evidenced for the purposes of this Act to be evidenced to a higher standard than is required by section 7(2).

38. Section 41 amended

(1) Before section 41(1) insert:

(1A) In this section —

relevant proceeding means judicial proceeding for —

- (a) a serious sexual offence; or
- (b) another offence that the court considers relevant, having regard to the matter for decision before the court.

(2) Delete section 41(3)(b) and insert:

- (b) anything relevant contained in the official transcript of any relevant proceeding against the offender or person subject to the order; or
- (c) any relevant material that was tendered to the court, or that informed the court, in a relevant proceeding against the offender or person subject to the order; or
- (d) any relevant material of the kind mentioned in section 7(3) relating to the offender or person subject to the order.

39. Section 42 amended

(1) Before section 42(1) insert:

(1A) In this section —

relevant proceeding means judicial proceeding for —

- (a) a serious sexual offence; or
- (b) another offence that the court considers relevant, having regard to the matter for decision before the court.

(2) Delete section 42(4)(b) and insert:

- (b) anything relevant contained in the official transcript of any relevant proceeding against a person; or
- (c) any relevant material that was tendered to the court, or that informed the court, in a relevant proceeding against a person; or
- (d) any relevant material of the kind mentioned in section 7(3) relating to a person.

40. Section 43 amended

In section 43 delete “directions in relation to the conduct of a proceeding under this Act.” and insert:

directions —

- (a) with respect to evidence received or to be received under section 42(4); or
- (b) otherwise in relation to the conduct of a proceeding under this Act.

41. Section 44 amended

- (1) Before section 44(1) insert:
 - (1A) In this section —
 - audio link* has the meaning given in the *Criminal Procedure Act 2004* section 3(1);
 - video link* has the meaning given in the *Criminal Procedure Act 2004* section 3(1).
- (2) After section 44(2) insert:
 - (3) The court may direct that a person entitled under this section to appear is to appear by means of a video link or an audio link.

42. Section 46A amended

- (1) In section 46A(1) in the definition of *protected person* delete paragraph (c) and insert:
 - (c) a qualified expert ordered or engaged to provide a report under section 37; or
 - (d) a person or body ordered or engaged to provide a report under section 38A.
- (2) In section 46A(3) delete “An action in tort” and insert:

A civil action

43. Section 46B inserted

After section 46A insert:

46B. Exchange of information

(1) In this section —

agency means —

- (a) the Department that principally assists the Minister administering this Act; and
- (b) the Department that principally assists the Minister administering the *Prisons Act 1981*; and
- (c) the Office of the Director of Public Prosecutions; and
- (d) the Police Force of Western Australia provided for by the *Police Act 1892*; and
- (e) the Department designated as the Police Service; and
- (f) the Board;

head means —

- (a) in relation to the Department that principally assists the Minister administering this Act, the chief executive officer of that Department; and
- (b) in relation to the Department that principally assists the Minister administering the *Prisons Act 1981*, the chief executive officer of that Department; and
- (c) in relation to the Office of the Director of Public Prosecutions, the DPP; and
- (d) in relation to the Police Force of Western Australia and the Department designated as the Police Service, the Commissioner of Police; and

- (e) in relation to the Board, the chairperson of the Board;

officer includes, in relation to the Office of the Director of Public Prosecutions, a member of the staff appointed or made available for the performance of the functions of the DPP.

- (2) For the purpose of implementing the provisions of this Act the head of an agency or an officer of an agency authorised to do so by the head may disclose to an officer of another agency information that is, or could reasonably be expected to be, relevant to the performance of a function under this Act.
- (3) A person may disclose information under this section even though the disclosure may be contrary to any duty of confidentiality imposed by law or otherwise arising and whether or not the duty of confidentiality arose before this Act commenced but, without limiting the authority given by this section to disclose information, a person to whom confidential information is disclosed under this section is bound by the same duty of confidentiality as applied to the person making the disclosure.
- (4) A person disclosing information under this section incurs no civil or criminal liability as a result of the disclosure, and is not to be regarded for any purpose as being in breach of any duty of confidentiality.

44. Various uses of term “has to” amended

In the provisions listed in the Table delete “has to” (each occurrence) and insert:

must

s. 44

Table

s. 7(1) and (2)	s. 8(5)
s. 19(2) and (3)	s. 20(2)
s. 21(2)	s. 31(1)

Part 3 — *Criminal Procedure Act 2004* amended

45. Act amended

This Part amends the *Criminal Procedure Act 2004*.

46. Section 51 amended

- (1) In section 51(4) delete “The hearing” and insert:

Except as provided in subsection (5A), the hearing

- (2) After subsection (4) insert:

(5A) On the hearing under subsection (3) of a charge under the *Dangerous Sexual Offenders Act 2006* section 40A the accused is required to appear before the court —

- (a) in person; or
- (b) by means of a video link or audio link in accordance with section 77 or 141.

Part 4 — *Evidence Act 1906* amended

47. Act amended

This Part amends the *Evidence Act 1906*.

48. Section 36C amended

Delete section 36C(5) and insert:

- (5) Nothing in this section prohibits the publication or broadcasting, in consequence of an accusation alleging a sexual offence, of matter consisting only of a report of legal proceedings other than —
 - (a) proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence; or
 - (b) proceedings under the *Dangerous Sexual Offenders Act 2006* relating to the accused.
- (6A) The giving of leave under this section does not affect the operation of subsection (1) at any time before the leave is given.

Part 5 — *Prisons Act 1981* amended

49. Act amended

This Part amends the *Prisons Act 1981*.

50. Section 113B amended

After section 113B(1)(a) insert:

- (ba) a person who has suffered injury, loss or damage as a direct result of a serious sexual offence (as defined in the *Dangerous Sexual Offenders Act 2006* section 3(1)) committed by the prisoner, whether or not that injury, loss or damage was reasonably foreseeable by the prisoner; or

Part 6 — *Sentence Administration Act 2003* amended

51. Act amended

This Part amends the *Sentence Administration Act 2003*.

52. Section 50 amended

After section 50(b) insert:

- (ca) he or she is not subject to an order made under the *Dangerous Sexual Offenders Act 2006* section 17(1)(a); and

Part 7 — *Sentencing Act 1995* amended

53. Act amended

This Part amends the *Sentencing Act 1995*.

54. Section 8 amended

After section 8(1) insert:

- (2) The possibility that an order might be made in respect of the offender under the *Dangerous Sexual Offenders Act 2006* is not a mitigating factor.

55. Section 98 amended

In section 98(3):

- (a) delete “is a danger” and insert:

would be a danger

- (b) before paragraph (a) insert:

- (aa) is not to decide that the offender would not be a danger merely because of the possibility that an order might be made in respect of the offender under the *Dangerous Sexual Offenders Act 2006*; and

Part 8 — *Young Offenders Act 1994* amended

56. Act amended

This Part amends the *Young Offenders Act 1994*.

57. Section 189 amended

Delete section 189(7)(c) and insert:

- (c) a court having regard to a conviction for the purposes of the *Dangerous Sexual Offenders Act 2006* section 7(3); or
- (d) the making of a record of anything that paragraph (a), (b) or (c) allows.

58. Section 190 amended

After section 190(1) insert:

- (2A) This section does not prevent evidence of a conviction being received in proceedings under the *Dangerous Sexual Offenders Act 2006*.

