



Western Australia

Dangerous Sexual Offenders Act 2006

Compare between:

[13 Dec 2017, 02-b0-02] and [29 Mar 2018, 02-c0-03]

Western Australia

Dangerous Sexual Offenders Act 2006

An Act to provide for the detention in custody of persons of a particular class, or for their supervision, and for other purposes.

Part 1 — Preliminary

1. Short title

This is the *Dangerous Sexual Offenders Act 2006*¹.

2. Commencement

This Act comes into operation on a day fixed by proclamation¹.

3. Terms used

(1) In this Act, unless the contrary intention appears —

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

chief executive officer means the chief executive officer of the department of the Public Service principally assisting the Minister to administer the provision in which the term chief executive officer is used;

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

community has a meaning affected by subsection (2);

community corrections officer has the meaning given to that term in the *Sentence Administration Act 2003* section 4(2);

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

criminal record means the criminal record kept by the Commissioner of Police;

Division 2 order means —

(a) a continuing detention order; or

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

DPP means the holder of the office of Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*;

offender has the meaning given to that term in section 8(1);

preliminary hearing means a preliminary hearing referred to in section 11(1);

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

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 danger to the community has the meaning given to that term in section 7;

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);

standard condition, in relation to a supervision order, means a condition which under section 18(1) must be included in the order;

supervision order means an order under section 17(1)(b), [27A\(5\)](#) 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

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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).

- (2) A reference in this Act to the community includes any community and is not limited to the community of Western Australia or Australia.

[Section 3 amended-by: No. 3 of 2011 s. 4; No. 25 of 2014 s. 56; No. 17 of 2016 s. 44; No. 21 of 2017 s. 12.]

4A. ~~When person commits~~ References to commission of a serious sexual offence

- (1) For the purposes of this Act, unless the contrary intention appears, a ~~person commits~~ reference to the commission of a serious sexual offence ~~if the person~~ includes a reference to —
 - (a) ~~does~~ the doing of an act or ~~makes~~ the making of an omission in any State or Territory that constitutes a serious sexual offence; or
 - (b) ~~does~~ the doing of an act or ~~makes~~ the making of 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~~a person doing ~~the~~an act or making ~~the~~an omission referred to in that subsection —

(a) 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.

[Section 4A inserted ~~by~~ No. ~~1721~~ of ~~2016~~2017 s. ~~513~~.]

4. Objects of this Act

The objects of this Act are —

(a) to provide for the detention in custody or the supervision of persons of a particular class to ensure adequate protection of the community and of victims; and

(b) to provide for continuing control, care, or treatment, of persons of a particular class.

[Section 4 amended ~~by~~ No. 17 of 2016 s. 6.]

5. Application of *Bail Act 1982*

The *Bail Act 1982* does not apply to a person detained under this Act other than a person who —

(a) is charged with, and is in custody in relation to, an offence under section 19C or 40A; and

(b) is not detained under this Act for some other reason.

[Section 5 inserted ~~by~~ No. 3 of 2011 s. 5; amended ~~by~~ No. 58 of 2012 s. 4.]

6. Attorney General may perform functions of DPP

- (1) The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.
- (2) In connection with the exercise by the Attorney General of a power of the DPP, a reference in this Act to the DPP includes, as an alternative, a reference to the Attorney General.

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

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

[Section 7A inserted-by: No. 17 of 2016 s. 7.]

7. Serious danger to community

- (1) Before the court dealing with an application under this Act may find that a person is a serious danger to the community, the court must be satisfied that there is an unacceptable risk that, if the person were not subject to a continuing detention order or a supervision order, the person would commit a serious sexual offence.
- (2) The DPP has the onus of satisfying the court as described in subsection (1) and the court must be satisfied —
 - (a) by acceptable and cogent evidence; and
 - (b) to a high degree of probability.
- (3) In deciding whether to find that a person is a serious danger to the community, the court must have regard to —
 - (a) any report that a psychiatrist prepares as required by section 37 for the hearing of the application and the extent to which the person cooperated when the psychiatrist examined the person; and
 - (b) any other medical, psychiatric, psychological, or other assessment relating to the person; and

- (c) information indicating whether or not the person has a propensity to commit serious sexual offences in the future; and
 - (d) whether or not there is any pattern of offending behaviour on the part of the person; and
 - (e) any efforts by the person to address the cause or causes of the person's offending behaviour, including whether the person has participated in any rehabilitation program; and
 - (f) whether or not the person's participation in any rehabilitation program has had a positive effect on the person; and
 - (g) the person's antecedents and criminal record; and
 - (h) the risk that, if the person were not subject to a continuing detention order or a supervision order, the person would commit a serious sexual offence; and
 - (i) the need to protect members of the community from that risk; and
 - (j) any other relevant matter.
- (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.

[Section 7 amended ~~by~~: No. 17 of 2016 s. 8 and 44.]

8A. *Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Part 2 applies*

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Part 2* applies to this Act.

[Section 8A inserted ~~by~~: No. 20 of 2013 s. 56.]

Part 2 — Continuing detention or supervision

Division 1 — Application for orders

8. DPP may apply for orders

- (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) Subsection (1) applies whether the sentence was imposed before or after the commencement of this Act and whether or not the offender is in custody.
- (3) If the offender is in custody, an application under subsection (1) cannot be filed unless there is a possibility that the offender might be released from custody within the period of one year after the application is made.
- (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~~[Division 2](#) order ~~under section 17(1)(b)~~ in relation to the offender, the ~~further~~[Division 2](#) order to take effect on the expiry of the current order.

(4B) An application under subsection (4A) must specify whether the Division 2 order sought is a continuing detention order or a supervision order under section 17(1)(b).

- (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) The DPP must cause the offender to be given, within 2 days after the application is filed, a copy of the application and any affidavit to be relied on by the DPP.
- (6) At the time of, or after, filing an application under this section, the DPP may file a separate application to the Supreme Court for the issue of a summons or warrant if the offender —
 - (a) is not in custody; or
 - (b) may not be in custody at the time of the preliminary hearing referred to in section 14.
- (7) If the DPP applies under subsection (6), the Supreme Court may issue, in the form approved under section 46 —
 - (a) a summons requiring the offender to appear before the Supreme Court for the preliminary hearing; or
 - (b) a warrant directed to all members of the police force for the offender to be arrested and brought before the Supreme Court for the preliminary hearing.

[Section 8 amended ~~by~~ No. 3 of 2011 s. 6; No. 17 of 2016 s. 9 and 44; [No. 21 of 2017 s. 14.](#)]

9. Duty to disclose

- (1) This section applies to an application for a Division 2 order.
- (2) The DPP has the same duty to disclose evidence or things in the DPP's possession as if the DPP were prosecuting in a criminal proceeding.
- (3) The DPP must disclose the evidence or things before the application is heard and as early as is practicable.

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 —
 - (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.

[Section 10A inserted-by: No. 17 of 2016 s. 10.]

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.

[Section 10 inserted-by: No. 17 of 2016 s. 11.]

11. Fixing day for preliminary hearing

- (1) After an application is filed under section 8, the proper officer of the court must fix a day for the matter to come before the court for a preliminary hearing.

[(2) deleted]

- (3) The main purpose of the preliminary hearing is to decide whether the court is satisfied that there are reasonable grounds for believing that the court might, under section 7(1), find that the offender is a serious danger to the community.

[Section 11 amended-by: No. 17 of 2016 s. 12.]

12. Offender may file affidavits in response

- (1) The offender may file affidavits to be relied on by the offender for the preliminary hearing.
- (2) The offender must give a copy of the affidavits to the DPP at least 3 days before the day fixed for the preliminary hearing.

13. Contents of affidavit

An affidavit for use in a preliminary hearing must be confined to the evidence the person making it could give orally except that it may contain statements based on information and belief if the person making the affidavit states the source of the information and the grounds for the belief.

14. Preliminary hearing

- (1) At a preliminary hearing, if the court is satisfied that there are reasonable grounds for believing that the court might, under section 7(1), find that the offender is a serious danger to the community, the proper officer of the court must, subject to subsection (2A), fix a day for the hearing of the application for a Division 2 order.
- (2A) If —
- (a) the offender has been charged with a further offence; and
 - (b) that charge has not been dealt with; and

- (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.

- (2) If the court is satisfied as described in subsection (1) —
 - (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
 - (b) the court may —
 - (i) if the offender is in custody and might otherwise be released from custody before the application is finally decided, order that the offender be detained in custody for the period stated in the order;
 - (ii) if the offender is not in custody, order that the offender be detained in custody for the period stated in the order.

[Section 14 amended ~~by~~ No. 17 of 2016 s. 13.]

[15. Deleted ~~by~~ No. 17 of 2016 s. 14.]

16. Discontinuing application for Division 2 order

- (1) The DPP may, at any time, discontinue an application for a Division 2 order by giving to each of the proper officer of the court and the offender a notice of discontinuance.
- (2) The application is to be taken to be dismissed by the court when the notice is given to the proper officer of the court.
- (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.

[Section 16 amended by No. 17 of 2016 s. 15.]

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) [or \(4A\)](#) for a Division 2 order; and
 - ~~(b) an application under section 8(4A) for an order under section 17(1)(b); and~~
 - [\[b\) deleted\]](#)
 - (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.
- (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.

*[Section 17A inserted ~~by~~: No. 17 of 2016 s. 16; amended:
No. 21 of 2017 s. 15.]*

Division 2 — Orders

17. Division 2 orders

- (1) If the court hearing an application for a Division 2 order finds that the offender is a serious danger to the community, the court must —
 - (a) order that the offender be detained in custody for an indefinite term for control, care, or treatment; or
 - (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) ~~In~~ Subject to subsection (3), in deciding whether to make an order under subsection (1)(a) or (b), the paramount consideration is to be the need to ensure adequate protection of the community.
- (3) A court ~~hearing an application under section 8(4A) must not~~ cannot make an order under subsection (1)~~(a)-b~~ unless it is satisfied, on the balance of probabilities, that the offender will substantially comply with the standard conditions of the order.
- (4) The onus of proof as to the matter described in subsection (3) is on the offender.

[Section 17 amended-by: No. 17 of 2016 s. 17; No. 21 of 2017 s. 16.]

18. Conditions of supervision order

- (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.

- (1) If the court makes a supervision order against a person, the order must require that the person —
- (a) report to a community corrections officer at the place, and within the time, stated in the order and advise the officer of the person's current name and address; and
 - (b) report to, and receive visits from, a community corrections officer as directed by the court; and
 - (c) notify a community corrections officer of every change of the person's name, place of residence, or place of employment at least 2 days before the change happens; and
 - (d) be under the supervision of a community corrections officer, which includes, comply with any reasonable direction of the officer (including a direction for the purposes of section 19A or 19B); and
 - (e) not leave, or stay out of, the State of Western Australia without the permission of a community corrections officer; and
 - (f) not commit a sexual offence as defined in the *Evidence Act 1906* section 36A during the period of the order; and
 - (g) be subject to electronic monitoring under section 19A.
- (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.

- (2) A supervision order may contain any other terms that the court thinks appropriate —
- (a) to ensure adequate protection of the community; or
 - (b) for the rehabilitation or care or treatment of the person subject to the order; or
 - (c) to ensure adequate protection of victims of offences committed by the person subject to the order.
- (3) Without limiting subsection (2), a supervision order may provide that —
- (a) the person be subject to a curfew under section 19B, for the period specified in the order; and
 - (b) the photograph and locality of the person are not to be published under the *Community Protection (Offender Reporting) Act 2004* section 85G.

[Section 18 amended by: No. 1 of 2012 s. 10; No. 58 of 2012 s. 5; No. 17 of 2016 s. 18.]

19A. Electronic monitoring

- (1) The purpose of electronic monitoring of a person subject to a supervision order is to enable the location of the person to be monitored.
- (2) For the purposes of the electronic monitoring of a person, a community corrections officer may —
- (a) direct the person to wear an approved electronic monitoring device;
 - (b) direct the person to permit the installation of an approved electronic monitoring device at the place where the person resides or, if the person does not have a place of residence, at any other place specified by the community corrections officer;
 - (c) give any other reasonable direction to the person necessary for the proper administration of the electronic monitoring of the person.

- (3) In subsection (2) —
approved means approved by the chief executive officer.
- (4) A community corrections officer may suspend the electronic monitoring of a person subject to a supervision order —
- (a) while satisfied that it is not practicable to subject the person to electronic monitoring; or
 - (b) while satisfied that it is not necessary for the person to be subject to electronic monitoring.

[Section 19A inserted ~~by~~: No. 58 of 2012 s. 6.]

19B. Curfew

- (1) The purpose of a curfew is to allow for the movements of a person subject to a supervision order to be restricted during periods when there is a risk of the person committing a serious sexual offence.
- (2) The curfew is a requirement that the person must remain at a specified place, for specified periods, subject to subsection (5).
- (3) In subsection (2) —
specified means specified by a community corrections officer from time to time.
- (4) The person is not to be required by the curfew to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day.
- (5) The person may only leave the specified place during a specified period —
- (a) to obtain urgent medical or dental treatment for the person; or
 - (b) for the purpose of averting or minimising a serious risk of death or injury to the person or to another person; or
 - (c) to obey an order issued under a written law (such as a summons) requiring the person's presence elsewhere; or

- (d) for a purpose approved of by a community corrections officer; or
 - (e) at the direction of a community corrections officer.
- (6) A community corrections officer may give any reasonable direction to the person necessary for the proper administration of the curfew requirement.
- (7) Without limiting subsection (6), if the person is authorised under subsection (5) to leave the specified place, a community corrections officer may give directions as to —
- (a) when the person may leave; and
 - (b) the period of the authorised absence; and
 - (c) when the person must return; and
 - (d) the route and method of travel to be used by the person during the absence; and
 - (e) the manner in which the person must report his or her whereabouts.

[Section 19B inserted ~~by~~ No. 58 of 2012 s. 6.]

19C. Enforcement of electronic monitoring and curfew requirement

- (1) A community corrections officer may —
- (a) direct the occupier of a place where an electronic monitoring device has been installed under section 19A(2) to give the device to a community corrections officer within a specified time; and
 - (b) at any time, enter a place where an electronic monitoring device has been installed under section 19A(2) and retrieve the device.
- (2) A person must not —
- (a) fail to comply with a direction under subsection (1)(a);
or

- (b) hinder a community corrections officer exercising powers under subsection (1)(b).

Penalty: a fine of \$12 000 or imprisonment for 12 months.

- (3) A person must not, without reasonable excuse, unlawfully interfere with the operation of an electronic monitoring device required to be worn or installed under section 19A(2).

Penalty: imprisonment for 12 months.

- (4) If a person is convicted of an offence under subsection (3) committed at a time when the person had reached 18 years of age, then, despite any other written law, the court sentencing the person —

- (a) must sentence the person to a term of imprisonment of 12 months; and
- (b) must not suspend the term of imprisonment.

- (5) To ascertain whether or not a person who is subject to a curfew is complying with the curfew, a community corrections officer may, at any time —

- (a) enter or telephone a place specified under section 19B(2) in relation to the person;
- (b) enter or telephone the person's place of employment or any other place where the person is authorised or required to attend;
- (c) question any person at any place referred to in paragraph (a) or (b).

- (6) A person must not —

- (a) hinder a community corrections officer exercising powers under subsection (5); or
- (b) fail to answer a question put under subsection (5)(c) or give an answer that the person knows is false or misleading in a material particular.

Penalty: a fine of \$12 000 or imprisonment for 12 months.

- (7) An act or omission of a person subject to a supervision order that is a contravention of subsection (2), (3) or (6) —
- (a) does not constitute an offence under this section; but
 - (b) is, for the purposes of this Act, to be taken to be a contravention of a requirement of the order (if it is not otherwise).

[Section 19C inserted ~~by~~ No. 58 of 2012 s. 6.]

Division 3 — Amendment of supervision order

19. Application to amend conditions of supervision order

- (1) An application to the Supreme Court for it to amend the conditions of a supervision order may be made —
- (a) by the person who is subject to the supervision order; or
 - (b) with the DPP's consent, by the chief executive officer.
- (2) If the person who is subject to the order makes the application, the person must give notice of the application to the DPP and to the chief executive officer.
- (3) If the chief executive officer makes the application, the chief executive officer must give notice of the application to the person who is subject to the order.

[Section 19 amended ~~by~~ No. 17 of 2016 s. 44.]

20. Amendment of conditions of supervision order

- (1) The court may, on an application under section 19, amend the conditions of a supervision order if the court is satisfied that —
- (a) the person who is subject to the order is not able to comply with the conditions of the order because of a change in the person's circumstances; or
 - (b) the amendment is necessary or desirable for any other reason.

(2) Before amending the conditions the court must be satisfied ~~that~~ —

(a) that it is reasonable to make the amendment in all the circumstances; and

(b) that the conditions, as amended, ~~would~~will be sufficient to ensure adequate protection of the community; and

~~(b) it is reasonable to make the amendment in all the circumstances.~~

(c) if the application is made by the person who is subject to the supervision order, that the person will substantially comply with the standard conditions of the order as amended.

(3) The onus of proof as to the matter described in subsection (2)(c) is on the person who is subject to the supervision order.

[Section 20 amended ~~by~~: No. 17 of 2016 s. 44; No. 21 of 2017 s. 17.]

Division 4 — Contravention of supervision order

21. ~~Summons or warrant~~ Warrant because of contravention

- (1) A member of the police force or community corrections officer who reasonably suspects that a person who is subject to a supervision order is likely to contravene, is contravening, or has contravened, a condition of the order may apply to a magistrate for the issue of a ~~summons or~~ warrant under subsection (2).
- (2A) A person who makes an application under subsection (1) must advise the DPP as soon as practicable that the application has been made.
- (2) ~~If~~ Subject to subsection (5), if the magistrate is satisfied that there are reasonable grounds for the suspicion described in subsection (1), the magistrate must issue, in the form approved under section 46~~—~~

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~~(a) a summons requiring the person who is subject to the supervision order to appear before the Supreme Court for it to consider the suspected or anticipated contravention; or~~

~~(b) a warrant directed to all members of the police force for the person who is subject to the supervision order to be arrested and brought before the Supreme Court for it to consider the suspected or anticipated contravention.~~

(3) The ~~summons or~~ warrant ~~may~~must state the suspected or anticipated contravention, and may state it in general terms.

~~(4) On an application made under subsection (1), a magistrate must not issue a summons to a person under subsection (2) unless~~

~~(a) the magistrate is satisfied, on the balance of probabilities, that exceptional circumstances justify not issuing a warrant for the arrest of the person; or~~

~~(b) the applicant consents to the issue of a summons to the person.~~

~~[(4) deleted]~~

(5) A magistrate cannot issue a warrant under subsection (2) for the arrest of a person unless the application for the warrant is supported by evidence on oath.

[Section 21 amended by: No. 3 of 2011 s. 7; No. 17 of 2016 s. 444; No. 21 of 2017 s. 18.]

22. DPP may seek ~~order~~orders

(1) ~~If~~This section applies to —

~~(a) a person appears who is brought~~ before the Supreme Court under a ~~summons or~~ warrant issued under section 21 or 24A(5)(d); and

~~(b) a person who is charged with an offence under section 40A.~~

(2) In relation to a person to whom this section applies, the DPP may apply ~~to the court~~ for —

(a) an order under section 23; and

~~(2)~~ (b) an order for the person to be detained in custody while proceedings on the application for an order under section 23 are pending.

(3) The application must state ~~the~~ what order is sought under section 23.

[Section 22 ~~amended by~~ inserted: No. 321 of 2011/2017 s. 8 19.]

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.

[Section 23A inserted ~~by~~: No. 17 of 2016 s. 19.]

23. Court may make order

(1) If, on the hearing of an application under section 22, the court is satisfied, on the balance of probabilities, that the person ~~who is subject to the supervision order is likely to contravene,~~ to whom the application relates has contravened or is contravening, ~~or has contravened,~~ a condition of a supervision order, the court must

—

(a) rescind the supervision order, ~~the court may —~~ and make a continuing detention order in relation to the person; or

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- ~~(a)~~ (b) subject to subsection (1B), make an order amending the conditions of the supervision order, or extending the period for which the ~~offender~~person 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 continuing detention order in relation to the person; or
- (c) subject to subsection (1B), make ~~no~~an order affirming the supervision order without amendment or extension.
- ~~(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.
- (1A) If, on the hearing of an application under section 22, the court is satisfied, on the balance of probabilities, that the person to whom the application relates is likely to contravene a condition of a supervision order, the court must —
- (a) rescind the supervision order and make a continuing detention order in relation to the person; or
- (b) subject to subsection (1B), make an order —
- (i) amending the conditions of the supervision order; or
- (ii) both amending the conditions of, and extending the period for which the person is to be subject to, the supervision order.
- (1B) A court cannot make an order under subsection (1)(b) or (c) or (1A)(b) unless it is satisfied, on the balance of probabilities, that the person will substantially comply with the standard conditions or amended standard conditions of the supervision order.

(1C) The onus of proof as to the matter described in subsection (1B) is on the person to whom the application relates.

[(2A) deleted]

- (2) In deciding ~~whether~~which order to make ~~an order~~ under subsection (1) or (1A), the paramount consideration is to be the need to ensure adequate protection of the community.

[Section 23 amended ~~by~~ No. 3 of 2011 s. 10; No. 17 of 2016 s. 20; No. 21 of 2017 s. 20.]

24A. Orders made during contravention proceedings

- (1) This section applies if a person who is subject to a supervision order is before the Supreme Court and proceedings on an application made under section 22 in respect of the person are pending (the *pending proceedings*).
- (2) The court may at any time in the pending proceedings —
- (a) if the person is detained in custody, order the person to be ~~detained in custody~~released, subject to subsection (3); or
 - (b) ~~release~~if the person is not detained in custody, order the person to be detained in custody.
- (3) The court ~~must not release~~cannot order the person to be released unless—

~~(a) the court~~ it is satisfied, on the balance of probabilities, —

(a) that releasing the person is justified by exceptional circumstances; ~~or~~ and

~~(b) the DPP consents to the court releasing the person.~~

(b) that the person will substantially comply with the standard conditions of the supervision order, including any amendments to the standard conditions made under subsection (5)(b).

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(3A) The onus of proof as to the matter described in subsection (3)(b) is on the person.

- (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.
- (4) In making a decision under subsections (2) and (3), the paramount consideration is to be the need to ensure adequate protection of the community.
- (5) If the court releases the person —
- (a) the person remains subject to the supervision order; and
 - (b) the court, before the pending proceedings are determined, may make an interim order amending the supervision order to include any requirements the court considers appropriate to ensure adequate protection of the community; and
 - (c) the court may order the person to reappear before the court at any adjourned hearing of the pending proceedings; and
 - (d) if it is alleged that the person has further breached the supervision order or breached an order made under paragraph (c), the court may issue a warrant to have the person arrested and brought before the court.

[Section 24A inserted ~~by~~: No. 3 of 2011 s. 11; amended ~~by~~: No. 17 of 2016 s. 21; No. 21 of 2017 s. 21.]

Division 5 — Supervision order extended due to imprisonment

24. Extension of supervision order

- (1) This section applies if a person who is subject to a supervision order is sentenced to a term or period of imprisonment for any offence, whether committed before or after the supervision order was made.
- (2) The period for which the supervision order applies is extended by any period after the order is made during which the person is in custody serving the sentence of imprisonment.

[Section 24 amended ~~by~~ No. 17 of 2016 s. 22.]

Division 6 — General provisions for Part 2

25. Effect of continuing detention order

A continuing detention order has effect in accordance with its terms from the time the order is made until rescinded by a further order of the Supreme Court.

26. Effect of supervision order

A supervision order has effect in accordance with its terms.

27. Court to give reasons

- (1) If a court makes a continuing detention order or a supervision order, it must give detailed reasons for making the order.
- (2) The reasons must be given at the time the order is made.

27A. Interim supervision orders

(1) In this section —

specified means specified by the court in an order made under this section.

(2) This section applies if —

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(a) proceedings on an application made under section 8(1) or (4A), 19 or 22 are pending (the *pending proceedings*); and

(b) the person to whom the pending proceedings relate is not in custody; and

(c) the court is satisfied that, to ensure adequate protection of the community, it is desirable to make an order under this section.

(3) If the person is subject to a supervision order which may otherwise expire before the pending proceedings are finally determined, the court may at any time in the pending proceedings order that the supervision order is to continue until the pending proceedings are finally determined or until another specified date.

(4) If the person has been subject to a supervision order which has expired, the court may at any time in the pending proceedings order that the supervision order is to be reinstated with effect from a specified date and is to continue until the pending proceedings are finally determined or until another specified date.

(5) In any other case, the court may at any time in the pending proceedings order that, with effect from a specified date and until the pending proceedings are finally determined or until another specified date, the offender is to be subject to stated conditions that the court, subject to section 18, considers appropriate.

[Section 27A inserted: No. 21 of 2017 s. 22.]

Part 3 — Reviews of detention

[Heading amended-by: No. 17 of 2016 s. 23.]

28. Purpose of this Part

The purpose of this Part is to ensure that a person's detention under a continuing detention order is regularly reviewed.

29. Review — periodic

- (1) While a person is subject to a continuing detention order, the DPP may apply to the Supreme Court for the person's detention under the order to be reviewed as specified in subsection (2).
- (2) The DPP must apply under subsection (1) so as to ensure that reviews are carried out —
 - (a) as soon as practicable after the end of a period of 1 year commencing when the person is first in custody on a day on which the person would not have been in custody had the continuing detention order not been made; and
 - (b) as soon as practicable after the end of the period of 2 years commencing when the detention was most recently reviewed under this section or section 30.
- (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.

[Section 29 amended-by: No. 17 of 2016 s. 24.]

30. Review — application by person subject to order

- (1) A person who is subject to a continuing detention order may, with the leave of the court, apply to the Supreme Court for the person's detention under the order to be reviewed.
- (2) Before granting leave the court must be satisfied that there are exceptional circumstances that relate to the person.

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- (3) An application cannot be made under this section for a person's detention to be reviewed until at least one year after the last occasion on which the person's detention has been reviewed under section 29(2)(b).
- (4) When a person applies under this section for the person's detention to be reviewed or applies for leave to make an application of that kind, the proper officer of the court must immediately give a copy of the application to the DPP.

[Section 30 amended-by: No. 17 of 2016 s. 25.]

31. Dealing with application

- (1) As soon as practicable after an application is made under section 29 or 30, the court must give directions for the hearing of the application.
- (2) Subject to subsection (3), the application must be heard, and the review must be carried out, as soon as it is practicable to do so in accordance with any directions given by the court.
- (3) The court may adjourn the hearing of the application, and the carrying out of the review, where good cause is shown.

[Section 31 amended-by: No. 17 of 2016 s. 26 and 44.]

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.

[Section 32 inserted-by: No. 17 of 2016 s. 27.]

33. Review of detention under continuing detention order

- (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) deleted]

- (3) ~~In~~ [Subject to subsection \(4\), in](#) making a decision under subsection (1)(b), the paramount consideration is to be the need to ensure adequate protection of the community.

(4) A court cannot make an order under subsection (1)(b)(ii) unless it is satisfied, on the balance of probabilities, that the person will substantially comply with the standard conditions of the order.

(5) The onus of proof as to the matter described in subsection (4) is on the person.

[Section 33 amended ~~by~~: No. 17 of 2016 s. 28; [No. 21 of 2017 s. 23.](#)]

Part 4 — Appeals

34. Appeals

- (1) The DPP or a person in relation to whom the court makes a decision under this Act, other than this Part, may appeal to the Court of Appeal against the decision.
- (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.

[Section 34 amended ~~by~~ No. 17 of 2016 s. 29.]

35. Appeal does not stay decision

- (1) An appeal against a decision does not stay the operation of the decision unless the Court of Appeal orders otherwise.
- (2) However, if the final determination of the appeal might result in an order that a party to the appeal be detained in custody, the court may order that the party be detained in custody until the determination of the appeal.

[Section 35 amended ~~by~~ No. 17 of 2016 s. 30.]

36. Dealing with appeal

- (1) An appeal is by way of rehearing.
- (2) The Court of Appeal —
 - (a) has all the powers and duties of the court making the decision against which the appeal is made; and
 - (b) may draw inferences of fact, not inconsistent with the findings of the court making the decision against which the appeal is made; and
 - (c) may, on special grounds, receive further evidence as to questions of fact, either orally in court, by affidavit, or in another way.

Part 5 — Reports

[Heading inserted-by: No. 17 of 2016 s. 31.]

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.

[Section 37A inserted-by: No. 17 of 2016 s. 32.]

37B. Authority to examine

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

[Section 37B inserted-by: No. 17 of 2016 s. 32.]

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

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- (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.

[Section 37 inserted-by: No. 17 of 2016 s. 33.]

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.

[Section 38A inserted-by: No. 17 of 2016 s. 33.]

38. Providing information to reporter

- (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) The chief executive officer must give to the DPP a copy of anything that the chief executive officer gives to a reporter under subsection (1) or (2A).
- (3) A person in possession of any medical, psychiatric, prison, or other relevant report or information relating to the subject must give a copy of the report or the information to the chief executive officer if asked by the chief executive officer to do so.
- (4) Subsection (3) applies despite any other law or any duty of confidentiality.

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- (5) If a person asked under subsection (3) to give a copy of any report or information to the chief executive officer refuses to do so, the chief executive officer may apply to the court for an order requiring the person to give the report or information to the chief executive officer.
- (6) A person asked under subsection (3) or ordered under subsection (5) to give a report or information to the chief executive officer is not liable, civilly, criminally, or under an administrative process, for doing so.

[Section 38 amended by: No. 17 of 2016 s. 34.]

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.

[Section 39 inserted by: No. 17 of 2016 s. 35.]

Part 6 — General

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.

[Section 40AA inserted ~~by~~ No. 17 of 2016 s. 36.]

40A. Offence of contravening supervision order

- (1) A person subject to a supervision order who, without reasonable excuse, contravenes a requirement of the order commits an offence.

Penalty: Imprisonment for 2 years.

- (2A) If a person is convicted of an offence under subsection (1) for an act or omission that is also a contravention of section 19C(3) then, despite any other written law, the court sentencing the person —

- (a) must sentence the person to a term of imprisonment of at least 12 months; and
- (b) must not suspend the term of imprisonment.

- (2) A police officer who suspects on reasonable grounds that a person has committed an offence under subsection (1) may, without a warrant, arrest the person.

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- (3) A police officer who charges a person with an offence under this section must inform the DPP as soon as practicable.

[Section 40A inserted ~~by~~: No. 3 of 2011 s. 13; amended ~~by~~: No. 58 of 2012 s. 7.]

40B. Procedure on some charges of offences under s. 40A

- (1) Except as provided in this section, the procedure applicable to and in relation to a charge of an offence under section 40A(1) is the procedure applicable to and in relation to a charge of any other simple offence.
- (2) A prosecution of a charge of an offence under section 40A(1) against a person in relation to certain conduct may be commenced in the Supreme Court only if proceedings have been commenced under Part 2 Division 4 in respect of the person in relation to the same conduct and not concluded.
- (3) Only an authorised officer (as defined in the *Criminal Procedure Act 2004* section 80) can commence a prosecution of a charge of an offence under section 40A(1) in the Supreme Court.
- (4) If proceedings on a charge of an offence under section 40A(1) against a person in relation to certain conduct, and proceedings commenced under Part 2 Division 4 in respect of the person in relation to the same conduct, are in progress at the same time —
- (a) if a court of summary jurisdiction is dealing with the charge, it must, on an application made by a police officer or the DPP, transfer the charge to the Supreme Court; and
 - (b) the DPP must prosecute the charge in the Supreme Court; and

- (c) a judge of the Supreme Court must deal with the charge summarily under the *Criminal Procedure Act 2004* as if it were a prosecution of a simple offence in a court of summary jurisdiction, but —
 - (i) no fees shall be charged by the Supreme Court for or in respect of any act or proceeding that relates to the prosecution; and
 - (ii) the Supreme Court cannot order a party to the prosecution to pay another party's costs of or relating to the prosecution, except under the *Criminal Procedure Act 2004* section 166(2);

and
 - (d) any findings of fact by the Supreme Court in the proceedings on the charge may be used in the proceedings under Part 2 Division 4; and
 - (e) if the person is convicted of the charge, the sentencing of the person may be adjourned until after the proceedings under Part 2 Division 4 are concluded; and
 - (f) if the Supreme Court fines the person for the offence, the court may make an order under the *Sentencing Act 1995* section 59 in respect of the fine.
- (5) A person who is dissatisfied with a decision (as defined in the *Criminal Appeals Act 2004* section 6) made by the Supreme Court under subsection (4) in proceedings on a charge of an offence under section 40A(1) may, with the leave of the Court of Appeal, appeal against it.
- (6) For the purposes of subsection (5), the *Criminal Appeals Act 2004* Part 2, with any necessary changes, applies as if —
- (a) the decision referred to in subsection (5) were a decision of a court of summary jurisdiction; and
 - (b) a reference in that Part to a court of summary jurisdiction were a reference to the Supreme Court; and

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(c) a reference in that Part to the Supreme Court were a reference to the Court of Appeal.

(7) Despite the *Criminal Appeals Act 2004* section 13(1), the appeal is to be dealt with by the Court of Appeal.

[Section 40B inserted ~~by~~: No. 3 of 2011 s. 13.]

40. Proceedings to be criminal proceedings

(1) Proceedings under this Act or on an appeal under this Act, are to be taken to be criminal proceedings for all purposes.

(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).

[Section 40 amended ~~by~~: No. 17 of 2016 s. 37.]

41. Deciding certain matters on the papers

(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.

(1) This section applies to how the court may decide —

- (a) whether it is satisfied, as required by section 14(1), that there are reasonable grounds for the belief described in that subsection; or
- (b) whether it is satisfied as required by section 20.

(2) The court may decide entirely or partly from a consideration of the documents filed, without the offender or person subject to the order or witnesses appearing and without the offender or person subject to the order consenting to, or being heard on, the making of the decision.

- (3) In making its decision, the court may receive in evidence —
- (a) any document relevant to the antecedents or criminal record of the offender or person subject to the order; /
 - (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.

[Section 41 amended ~~by~~ No. 17 of 2016 s. 38.]

42. Evidence in certain hearings

- (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.
- (1) This section applies to —
- (a) an application for a Division 2 order; and
 - (b) an application under section 29 or 30 for a review; and
 - (c) an application for an order under section 23.
- (2) Before the court makes a decision or order on the hearing of an application it must, if the evidence is admissible —
- (a) hear evidence called by the DPP; and
 - (b) hear evidence given or called by the offender or person subject to the order, if that person elects to give or call evidence.

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- (3) Except as modified by subsection (4), ordinary rules of evidence apply to evidence given or called under subsection (2).
- (4) In making its decision, the court may receive in evidence —
 - (a) any document relevant to a person’s antecedents or criminal record;
 - (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.

[Section 42 amended ~~by~~ No. 17 of 2016 s. 39.]

43. Court may give directions

The court may, on its own initiative or on the application of a party, give 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.

[Section 43 amended ~~by~~ No. 17 of 2016 s. 40.]

44. Appearance at hearings

(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).

- (1) A person is entitled to appear at the hearing of an application for a Division 2 order against that person.

- (2) A person is entitled to appear at the hearing of an application under section 29 or 30 for the review of the person's detention under a continuing detention order.
- (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.

[Section 44 amended ~~by~~ No. 17 of 2016 s. 41.]

45. Warrant of commitment upon order for detention

If a court orders under this Act that a person be detained in custody, it must issue a warrant for the person's apprehension, if necessary, and detention in a prison under the *Prisons Act 1981*.

46A. Protection from personal liability

- (1) In this section —
protected person means —
 - (a) a person employed in the department of the Public Service that principally assists the Minister administering the *Prisons Act 1981*; or
 - (b) a person appointed under the *Director of Public Prosecutions Act 1991* or a person on the staff referred to in section 30 of that Act; or
 - (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 this section, a reference to the doing of anything includes a reference to the omission to do anything.
- (3) A civil action does not lie against a protected person for anything done, in good faith, in the performance or purported performance of a function under this Act.

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- (4) The protection given by this section applies even though the thing done as described in subsection (3) may have been capable of being done whether or not this Act had been enacted.

[Section 46A inserted ~~by~~: No. 3 of 2011 s. 14; amended ~~by~~: No. 17 of 2016 s. 42.]

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.

[Section 46B inserted-by: No. 17 of 2016 s. 43.]

46. Approved forms

The chief executive officer may approve forms for use under this Act.

47. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

48. Transitional provisions (Sch. 1)

Schedule 1 sets out transitional provisions.

[Section 48 inserted ~~by~~ No. 3 of 2011 s. 15.]

Schedule 1 — Transitional provisions

[s. 48]

[Heading inserted ~~by~~: No. 3 of 2011 s. 16.]

1. Provisions for *Dangerous Sexual Offenders Amendment Act 2011*

- (1) In this clause —
commencement day means the day on which the *Dangerous Sexual Offenders Amendment Act 2011*, other than sections 1 and 2, comes into operation¹.
- (2) This Act, as amended by the *Dangerous Sexual Offenders Amendment Act 2011*, applies to applications made under this Act, and not concluded, before commencement day.

[Clause 1 inserted ~~by~~: No. 3 of 2011 s. 16.]

2. Provisions for *Dangerous Sexual Offenders Amendment Act 2012*

- (1) In this clause —
commencement day means the day on which the *Dangerous Sexual Offenders Amendment Act 2012*, other than sections 1 and 2, comes into operation¹.
- (2) The validity of any requirement, under a supervision order, in the nature of a curfew or electronic monitoring that was in effect before commencement day is not affected by the commencement of the *Dangerous Sexual Offenders Amendment Act 2012*.
- (3) If a person is subject to a supervision order that was in effect immediately before commencement day then, on and from commencement day, the person is subject to electronic monitoring under section 19A during the remainder of the term of the order, as if the person were required to be subject to electronic monitoring by the order.
- (4) Subclause (3) does not prevent a community corrections officer from exercising his or her discretion under section 19A(4) in relation to a person referred to in subclause (3).

[Clause 2 inserted ~~by~~: No. 58 of 2012 s. 8.]

Notes

- ¹ This is a compilation of the *Dangerous Sexual Offenders Act 2006* and includes the amendments made by the other written laws referred to in the following table -¹⁴. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Dangerous Sexual Offenders Act 2006</i>	1 of 2006	30 Mar 2006	s. 1 and 2: 30 Mar 2006; Act other than s. 1 and 2: 13 May 2006 (see s. 2 and <i>Gazette</i> 12 May 2006 p. 1781)
<i>Dangerous Sexual Offenders Amendment Act 2011</i>	3 of 2011	1 Mar 2011	s. 1 and 2: 1 Mar 2011 (see s. 2(a)); Act other than s. 1 and 2: 2 Mar 2011 (see s. 2(b))
<i>Community Protection (Offender Reporting) Amendment Act 2012</i> Pt. 3 Div. 2	1 of 2012	15 Mar 2012	1 Jul 2012 (see s. 2(b) and <i>Gazette</i> 22 Jun 2012 p. 2777)
<i>Dangerous Sexual Offenders Amendment Act 2012</i>	58 of 2012	11 Dec 2012	s. 1 and 2: 11 Dec 2012 (see s. 2(a)); Act other than s. 1 and 2: 1 Feb 2013 (see s. 2(b) and <i>Gazette</i> 4 Jan 2013 p. 3)
Reprint 1: The <i>Dangerous Sexual Offenders Act 2006</i> as at 18 Oct 2013 (includes amendments listed above)			
<i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013</i> Pt. 3 Div. 9	20 of 2013	4 Nov 2013	25 Nov 2013 (see s. 2(b) and <i>Gazette</i> 22 Nov 2013 p. 5391)
<i>Mental Health Legislation Amendment Act 2014</i> Pt. 4 Div. 4 Subdiv. 10	25 of 2014	3 Nov 2014	30 Nov 2015 (see s. 2(b) and <i>Gazette</i> 13 Nov 2015 p. 4632)
<i>Dangerous Sexual Offenders Legislation Amendment Act 2016</i> Pt. 2	17 of 2016	11 Jul 2016	10 Sep 2016 (see s. 2(b) and <i>Gazette</i> 9 Sep 2016 p. 3871)
Reprint 2: The <i>Dangerous Sexual Offenders Act 2006</i> as at 20 Jan 2017 (includes amendments listed above)			

~~^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Dangerous Sexual Offenders Legislation Amendment Act 2017</i> Pt. 3 ²	21 of 2017	13 Dec 2017	29 Mar 2018 (see s. 2(b) and <i>Gazette</i> 16 Mar 2018 p. 916-17)

~~² On the date as at which this compilation was prepared, the *Dangerous Sexual Offenders Legislation Amendment Act 2017* Pt. 3 had not come into operation. It reads as follows:~~

Part 3 — *Dangerous Sexual Offenders Act 2006* amended

~~**11. Act amended**~~

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

~~**12. Section 3 amended**~~

~~(1) In section 3(1) insert in alphabetical order:~~

~~— *standard condition*, in relation to a supervision order, means a condition which under section 18(1) must be included in the order;~~

~~(2) In section 3(1) in the definition of *supervision order* delete “section 17(1)(b)” and insert:~~

~~— section 17(1)(b), 27A(5)~~

~~**13. Section 4A replaced**~~

~~— Delete section 4A and insert:~~

~~**4A. References to commission of a serious sexual offence**~~

~~(1) For the purposes of this Act, unless the contrary intention appears, a reference to the commission of a serious sexual offence includes a reference to —~~

- ~~— (a) — the doing of an act or the making of an omission in any State or Territory that constitutes a serious sexual offence; or~~
- ~~— (b) — the doing of an act or the making of 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 whether a person doing an act or making an omission referred to in that subsection —~~
 - ~~— (a) — would be likely to be charged with an offence; or~~
 - ~~— (b) — would, if charged with an offence, be found mentally fit to stand trial; or~~
 - ~~— (c) — would, if tried for an offence, be convicted.~~

14. — Section 8 amended

- ~~— (1) — In section 8(4A) delete “a further supervision order under section 17(1)(b) in relation to the offender, the further order” and insert:

~~— a Division 2 order in relation to the offender, the Division 2 order~~~~
- ~~— (2) — After section 8(4A) insert:~~
- ~~— (4B) — An application under subsection (4A) must specify whether the Division 2 order sought is a continuing detention order or a supervision order under section 17(1)(b).~~

15. — Section 17A amended

- ~~— In section 17A(2):~~
- ~~— (a) — in paragraph (a) after “section 8(1)” insert:

~~— or (4A)~~~~
- ~~— (b) — delete paragraph (b).~~

16. — Section 17 amended

- ~~— (1) — In section 17(2) delete “In deciding” and insert:

~~— Subject to subsection (3), in deciding~~~~

~~(2) Delete section 17(3) and insert:~~

~~(3) A court cannot make an order under subsection (1)(b) unless it is satisfied, on the balance of probabilities, that the offender will substantially comply with the standard conditions of the order.~~

~~(4) The onus of proof as to the matter described in subsection (3) is on the offender.~~

17. Section 20 amended

~~Delete section 20(2) and insert:~~

~~(2) Before amending the conditions the court must be satisfied—~~

~~(a) that it is reasonable to make the amendment in all the circumstances; and~~

~~(b) that the conditions, as amended, will be sufficient to ensure adequate protection of the community; and~~

~~(c) if the application is made by the person who is subject to the supervision order, that the person will substantially comply with the standard conditions of the order as amended.~~

~~(3) The onus of proof as to the matter described in subsection (2)(c) is on the person who is subject to the supervision order.~~

18. Section 21 amended

~~(1) In section 21(1) delete “summons or”.~~

~~(2) Delete section 21(2) and (3) and insert:~~

~~(2) Subject to subsection (5), if the magistrate is satisfied that there are reasonable grounds for the suspicion described in subsection (1), the magistrate must issue, in the form approved under section 46, a warrant directed to all members of the police force for the person who is subject to the supervision order to be arrested and brought before the Supreme Court for it to consider the suspected or anticipated contravention.~~

~~(3) The warrant must state the suspected or anticipated contravention, and may state it in general terms.~~

~~(3) Delete section 21(4).~~

~~Note: The heading to amended section 21 is to read:~~

~~Warrant because of contravention~~

19. Section 22 replaced

~~Delete section 22 and insert:~~

22. DPP may seek orders

~~(1) This section applies to —~~

~~(a) a person who is brought before the Supreme Court under a warrant issued under section 21 or 24A(5)(d); and~~

~~(b) a person who is charged with an offence under section 40A.~~

~~(2) In relation to a person to whom this section applies, the DPP may apply for —~~

~~(a) an order under section 23; and~~

~~(b) an order for the person to be detained in custody while proceedings on the application for an order under section 23 are pending.~~

~~(3) The application must state what order is sought under section 23.~~

20. Section 23 amended

~~(1) Delete section 23(1) and (2A) and insert:~~

~~(1) If, on the hearing of an application under section 22, the court is satisfied, on the balance of probabilities, that the person to whom the application relates has contravened or is contravening a condition of a supervision order, the court must —~~

~~(a) rescind the supervision order and make a continuing detention order in relation to the person; or~~

~~(b) subject to subsection (1B), make an order amending the conditions of the supervision order, or extending the period for which the person is to be subject to the supervision order, or both; or~~

~~(c) subject to subsection (1B), make an order affirming the supervision order without amendment or extension.~~

~~(1A) If, on the hearing of an application under section 22, the court is satisfied, on the balance of probabilities, that the person to whom the application relates is likely to contravene a condition of a supervision order, the court must —~~

- ~~— (a) — rescind the supervision order and make a continuing detention order in relation to the person; or~~
- ~~— (b) — subject to subsection (1B), make an order —~~
 - ~~— (i) — amending the conditions of the supervision order; or~~
 - ~~— (ii) — both amending the conditions of, and extending the period for which the person is to be subject to, the supervision order.~~
- ~~— (1B) — A court cannot make an order under subsection (1)(b) or (c) or (1A)(b) unless it is satisfied, on the balance of probabilities, that the person will substantially comply with the standard conditions or amended standard conditions of the supervision order.~~
- ~~— (1C) — The onus of proof as to the matter described in subsection (1B) is on the person to whom the application relates.~~
- ~~— (2) — In section 23(2) delete “whether to make an order under subsection (1),” and insert:~~
 - ~~— which order to make under subsection (1) or (1A);~~

21. Section 24A amended

- ~~— (1) — Delete section 24A(2)(a) and (b) and insert:~~
 - ~~— (a) — if the person is detained in custody, order the person to be released, subject to subsection (3); or~~
 - ~~— (b) — if the person is not detained in custody, order the person to be detained in custody.~~
- ~~— (2) — Delete section 24A(3) and insert:~~
- ~~— (3) — The court cannot order the person to be released unless it is satisfied, on the balance of probabilities —~~
 - ~~— (a) — that releasing the person is justified by exceptional circumstances; and~~
 - ~~— (b) — that the person will substantially comply with the standard conditions of the supervision order, including any amendments to the standard conditions made under subsection (5)(b).~~

~~—(3A)— The onus of proof as to the matter described in subsection (3)(b) is on the person.~~

~~22.— Section 27A inserted~~

~~— At the end of Part 2 Division 6 insert:~~

~~27A.— Interim supervision orders~~

~~—(1)— In this section—~~

~~— *specified* means specified by the court in an order made under this section.~~

~~—(2)— This section applies if—~~

~~—(a)— proceedings on an application made under section 8(1) or (4A), 19 or 22 are pending (the *pending proceedings*); and~~

~~—(b)— the person to whom the pending proceedings relate is not in custody; and~~

~~—(c)— the court is satisfied that, to ensure adequate protection of the community, it is desirable to make an order under this section.~~

~~—(3)— If the person is subject to a supervision order which may otherwise expire before the pending proceedings are finally determined, the court may at any time in the pending proceedings order that the supervision order is to continue until the pending proceedings are finally determined or until another specified date.~~

~~—(4)— If the person has been subject to a supervision order which has expired, the court may at any time in the pending proceedings order that the supervision order is to be reinstated with effect from a specified date and is to continue until the pending proceedings are finally determined or until another specified date.~~

~~—(5)— In any other case, the court may at any time in the pending proceedings order that, with effect from a specified date and until the pending proceedings are finally determined or until another specified date, the offender is to be subject to stated conditions that the court, subject to section 18, considers appropriate.~~

~~23.— Section 33 amended~~

~~—(1)— In section 33(3) delete “In making” and insert:~~

~~— Subject to subsection (4), in making~~

- ~~(2) After section 33(3) insert:~~
- ~~(4) A court cannot make an order under subsection (1)(b)(ii) unless it is satisfied, on the balance of probabilities, that the person will substantially comply with the standard conditions of the order.~~
- ~~(5) The onus of proof as to the matter described in subsection (4) is on the person.~~