

Western Australia

Dangerous Sexual Offenders Amendment Act 2011

As at 01 Mar 2011

No. 3 of 2011

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Dangerous Sexual Offenders Amendment Act 2011

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Western Australia

Dangerous Sexual Offenders Amendment Act 2011

No. 3 of 2011

An Act to amend the *Dangerous Sexual Offenders Act 2006*.

[Assented to 1 March 2011]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Dangerous Sexual Offenders Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

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

4. Section 3 amended

- (1) In section 3 delete “In this Act,” and insert:

(1) In this Act,

- (2) In section 3 delete the definition of *chief executive officer*.

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

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 includes to do an act or make an omission outside this State or outside Australia that, if it were done or made in this State, would constitute a serious sexual offence;

community has a meaning affected by subsection (2);

(4) At the end of section 3 insert:

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

5. Section 5 replaced

Delete section 5 and insert:

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 40A; and
- (b) is not detained under this Act for some other reason.

6. Section 8 amended

After section 8(5) insert:

- (6) At the time of, or after, filing an application under subsection (1), 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.

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- (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.

7. Section 21 amended

- (1) After section 21(1) insert:
 - (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) In section 21(2) delete “by the chief executive officer —” and insert:

under section 46 —
- (3) Delete section 21(4) and (5) and insert:
- (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.
- (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.

8. Section 22 amended

In section 22(1) delete “section 21,” and insert:

section 21 or 24A(5)(d),

9. Section 23A inserted

After section 22 insert:

23A. Psychiatric reports

- (1) After an application is made under section 22 in relation to a person, the Supreme Court may order that the person undergo examination by one or more psychiatrists named by the court for the purposes of preparing the report required by section 37.
- (2) An order made under subsection (1) authorises the named psychiatrist to examine the person and report in accordance with Part 5.

10. Section 23 amended

- (1) In section 23 delete “If the court” and insert:

- (1) If the court

(2) At the end of section 23 insert:

- (2) 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.

11. Section 24A inserted

At the end of Part 2 Division 4 insert:

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) order the person to be detained in custody; or
 - (b) release the person.
- (3) The court must not release the person unless —
- (a) the court is satisfied, on the balance of probabilities, that releasing the person is justified by exceptional circumstances; or
 - (b) the DPP consents to the court releasing the person.
- (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.

12. Section 37 amended

In section 37(1) after “section 14(2)(a)” insert:

or 23A(1)

13. Sections 40A and 40B inserted

At the beginning of Part 6 insert:

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.

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

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.

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- (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
 - (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.

14. Section 46A inserted

After section 45 insert:

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 psychiatrist.
- (2) In this section, a reference to the doing of anything includes a reference to the omission to do anything.
- (3) An action in tort 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.

- (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.

15. Section 48 inserted

After section 47 insert:

48. Transitional provisions (Sch. 1)

Schedule 1 sets out transitional provisions.

16. Schedule 1 inserted

After Part 6 insert:

Schedule 1 — Transitional provisions

[s. 48]

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 operation.
- (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.

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