



Western Australia

# **Dangerous Sexual Offenders Legislation Amendment Act 2017**

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As at 13 Dec 2017

No. 21 of 2017

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## **Dangerous Sexual Offenders Legislation Amendment Act 2017**

### **Contents**

#### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2

#### **Part 2 — *Bail Act 1982* amended**

3.	Act amended	3
4.	Section 6 amended	3
5.	Section 7 amended	3
6.	Section 26 amended	3
7.	Schedule 1 Part C clause 1 amended	4
8.	Schedule 1 Part C clause 2 amended	4
9.	Schedule 1 Part C clause 3D inserted	4
	3D. Bail in cases of offence under <i>Dangerous Sexual Offenders Act 2006</i> section 40A	4
10.	Schedule 1 Part C clause 4 amended	6

#### **Part 3 — *Dangerous Sexual Offenders Act 2006* amended**

11.	Act amended	7
12.	Section 3 amended	7
13.	Section 4A replaced	7
	4A. References to commission of a serious sexual offence	7
14.	Section 8 amended	8
15.	Section 17A amended	9
16.	Section 17 amended	9
17.	Section 20 amended	9

Contents

---

18.	Section 21 amended		10
19.	Section 22 replaced		11
	22. DPP may seek orders	11	
20.	Section 23 amended		11
21.	Section 24A amended		13
22.	Section 27A inserted		14
	27A. Interim supervision orders	14	
23.	Section 33 amended		15



Western Australia

## **Dangerous Sexual Offenders Legislation Amendment Act 2017**

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**No. 21 of 2017**

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**An Act to amend the *Bail Act 1982* and the *Dangerous Sexual Offenders Act 2006*.**

*[Assented to 13 December 2017]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Dangerous Sexual Offenders Legislation Amendment Act 2017*.

### **2. Commencement**

This Act comes into operation as follows —

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

## **Part 2 — *Bail Act 1982* amended**

### **3. Act amended**

This Part amends the *Bail Act 1982*.

### **4. Section 6 amended**

In section 6(2)(b) delete “clause 3A of Part C of Schedule 1.” and insert:

Schedule 1 Part C clauses 3A and 3D.

### **5. Section 7 amended**

In section 7(5) delete “clause 3A of Part C of Schedule 1.” and insert:

Schedule 1 Part C clauses 3A and 3D.

### **6. Section 26 amended**

- (1) In section 26(1)(ba) delete “a serious offence to which Schedule 1 Part C clause 3A” and insert:

an offence to which Schedule 1 Part C clause 3A or 3D

- (2) In section 26(2)(aa) delete “a serious offence to which Schedule 1 Part C clause 3A” and insert:

an offence to which Schedule 1 Part C clause 3A or 3D

**s. 7**

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**7. Schedule 1 Part C clause 1 amended**

In Schedule 1 Part C clause 1 delete “clauses 3A and 3C,” and insert:

clauses 3A, 3C and 3D,

**8. Schedule 1 Part C clause 2 amended**

In Schedule 1 Part C clause 2(3) delete paragraph (a) and insert:

(a) clauses 3A, 3C and 3D; and

**9. Schedule 1 Part C clause 3D inserted**

After Schedule 1 Part C clause 3C insert:

**3D. Bail in cases of offence under *Dangerous Sexual Offenders Act 2006* section 40A**

(1) In this clause —

***section 40A offence*** means the offence under the *Dangerous Sexual Offenders Act 2006* section 40A of contravening a requirement of a supervision order;

***victim*** has the meaning given in the *Dangerous Sexual Offenders Act 2006* section 3(1).

(2) This clause applies where an accused is in custody —

(a) awaiting an appearance in court before conviction for a section 40A offence; or

(b) waiting to be sentenced or otherwise dealt with for a section 40A offence of which the accused has been convicted.



- (3) Despite clause 1, 2 or 4 or any other provision of this Act, where this clause applies the judicial officer or (if section 16A does not apply) the authorised officer in whom jurisdiction is vested must refuse to grant bail for the section 40A offence unless the judicial officer or authorised officer —
  - (a) is satisfied that there are exceptional reasons why the accused should not be kept in custody; and
  - (b) is satisfied that bail may properly be granted having regard to the provisions of clauses 1 and 3 or, in the case of a child, clauses 2 and 3.
- (4) The judicial officer or authorised officer must in making any decision for the purposes of subclause (3) —
  - (a) have regard to —
    - (i) any history of proven or alleged contraventions of supervision orders by the accused; and
    - (ii) any adverse effect that a grant of bail to the accused would have on a victim of the accused;
  - and
  - (b) consider whether it would be appropriate to refuse bail and make a hospital order under the *Criminal Law (Mentally Impaired Accused) Act 1996* section 5; and
  - (c) consider whether the conduct alleged to amount to the contravention in itself appears to be minor or trivial.
- (5) Subclause (4) does not limit the matters that the judicial officer or authorised officer may take into account for the purposes of subclause (3).
- (6) Despite section 7(1), where an accused is refused bail under subclause (3) for an appearance for a section 40A offence the accused's case for bail need not be considered again under that subsection for an appearance for that offence

**s. 10**

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unless the accused satisfies the judicial officer who may order detention that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or
  - (b) the accused failed adequately to present the case for bail on the occasion of that refusal.
- (7) A child accused who is refused bail under subclause (3) must be dealt with in accordance with the *Young Offenders Act 1994* section 19(2).

**10. Schedule 1 Part C clause 4 amended**

In Schedule 1 Part C clause 4(1) delete “clauses 3A and 3C,” and insert:

clauses 3A, 3C and 3D,

**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

**s. 14**

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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

**s. 18**

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- (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

**s. 20**

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- (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.

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