



Western Australia

High Risk Serious Offenders Act 2020

High Risk Serious Offenders Act 2020

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Defined terms



Western Australia

High Risk Serious Offenders Act 2020

An Act to provide for the detention in custody or the supervision of high risk serious offenders, to repeal the *Dangerous Sexual Offenders Act 2006* and to make consequential and other amendments to various Acts.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *High Risk Serious Offenders Act 2020*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) section 91 — on the day after that day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

(2) However —

- (a) if no day is fixed under subsection (1)(c) before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, this Act is repealed on the day after that period ends; or
- (b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, the provision is repealed on the day after that period ends.

3. Terms used

In this Act, unless the contrary intention appears —

Board means the High Risk Serious Offenders Board established by section 14;

CEO means the chief executive officer of the Department;

committing, in relation to a serious offence, has a meaning affected by section 6;

community has a meaning affected by section 4;

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

continuing detention order has the meaning given in section 26(1);

criminal record, in relation to a person, means the criminal record of that person kept by the Commissioner of Police;

Department means the department of the Public Service principally assisting in the administration of this Act;

high risk serious offender has the meaning given in section 7;

interim supervision order means an order under section 58;

offender means —

- (a) a serious offender under custodial sentence; or
- (b) a serious offender under restriction;

preliminary hearing means a preliminary hearing referred to in section 46;

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

public sector body has the meaning given in the *Public Sector Management Act 1994* section 3(1);

qualified expert means —

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

qualified psychologist means a psychologist (as defined in the *Mental Health Act 2014* section 4) who holds a master's degree or higher in psychology;

relevant agency means any of the following —

- (a) the Department;
- (b) the department of the Public Service principally assisting in the administration of the *Health Services Act 2016*;

s. 3

- (c) the department of the Public Service principally assisting in the administration of the *Housing Act 1980*;
- (d) the department designated as the Police Service;
- (e) the Police Force of Western Australia provided for by the *Police Act 1892*;
- (f) any other public sector body designated by the regulations as a relevant agency;

restriction order means —

- (a) a continuing detention order; or
- (b) a supervision order;

restriction order application means an application under section 35(1) or 36(1);

serious offence has the meaning given in section 5;

serious offender functions means functions that are concerned with the assessment or management of serious offenders under custodial sentence or serious offenders under restriction;

serious offender under custodial sentence means a person —

- (a) who is under a custodial sentence for a serious offence; or
- (b) who —
 - (i) is under a custodial sentence for an offence or offences other than a serious offence; and
 - (ii) has been under that sentence at all times since being discharged from a custodial sentence for a serious offence;

serious offender under restriction means a person who is subject to a restriction order or an interim supervision order;

standard condition, in relation to a supervision order, means a condition that under section 30(2) must be included in the order;

supervision order has the meaning given in section 27(1);

supporting agency means any of the following —

- (a) a relevant agency;
- (b) the department of the public service principally assisting in the administration of the *Prisons Act 1981*;
- (c) the Office of the Director of Public Prosecutions;
- (d) the Prisoners Review Board established by the *Sentence Administration Act 2003* section 102;
- (e) the Supervised Release Review Board established by the *Young Offenders Act 1994* section 151;
- (f) any other public sector body designated by the regulations as a supporting agency;

under a custodial sentence means subject to any of the following sentences, the term of which has not lapsed —

- (a) a sentence of imprisonment imposed by a court of Western Australia (including an indefinite sentence imposed under the *Sentencing Act 1995* section 98(1)) or an indeterminate sentence imposed under *The Criminal Code* section 661 or 662;
- (b) a sentence of imprisonment imposed under a law of the Commonwealth;
- (c) 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;
- (d) a sentence of detention under the *Young Offenders Act 1994* for an offence committed after the young offender had reached 16 years of age;

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

victim submission means a submission made under section 60(1) or (2).

4. Term used: community

A reference in this Act to the *community* includes any community and is not limited to the community of Western Australia or Australia.

5. Term used: serious offence

- (1) An offence is a *serious offence* if —
 - (a) it is specified in Schedule 1 Division 1; or
 - (b) it is specified in Schedule 1 Division 2, and is committed in the circumstances indicated in relation to that offence in that Division.
- (2) An offence is a *serious offence* if —
 - (a) it was an offence under a written law that has been repealed; and
 - (b) the offender's acts or omissions that constituted the offence under the repealed provision would constitute a serious offence under subsection (1).
- (3) An offence is a *serious offence* if it is an offence of conspiracy, attempt or incitement to commit an offence that is a serious offence under subsection (1) or (2).
- (4) An offence against the law of the Commonwealth or of any place outside Western Australia is a *serious offence* if the offender's acts or omissions that constituted the offence under that law would have constituted a serious offence under subsection (1), (2) or (3) if they had occurred in Western Australia.
- (5) An offence against the law of the Commonwealth is a *serious offence* if —
 - (a) the offence is of a sexual or violent nature; and
 - (b) the penalty for the offence specified by the law of the Commonwealth is or includes imprisonment for 7 years or more; and

(c) the offence is prescribed to be a serious offence.

- (6) An offence is a *serious offence* if the court sentencing the offender has declared it to be a serious offence under the *Sentencing Act 1995* section 97A.

6. Term used: committing a serious offence

A reference in this Act to a person *committing* a serious offence includes a reference to the person doing acts or making omissions that constitute a serious offence, regardless of whether the person —

- (a) would be likely to be charged with an offence; or
- (b) would, if charged with an offence, be found not mentally fit to stand trial; or
- (c) would, if tried for an offence, be convicted.

7. Term used: high risk serious offender

- (1) An offender is a *high risk serious offender* if the court dealing with an application under this Act finds that it is satisfied, by acceptable and cogent evidence and to a high degree of probability, that it is necessary to make a restriction order in relation to the offender to ensure adequate protection of the community against an unacceptable risk that the offender will commit a serious offence.
- (2) The State has the onus of satisfying the court as required by subsection (1).
- (3) In considering whether it is satisfied as required by subsection (1), the court must have regard to the following —
 - (a) any report prepared under section 74 for the hearing of the application and the extent to which the offender cooperated in the examination required by that section;
 - (b) any other medical, psychiatric, psychological, or other assessment relating to the offender;

- (c) information indicating whether or not the offender has a propensity to commit serious offences in the future;
 - (d) whether or not there is any pattern of offending behaviour by the offender;
 - (e) any efforts by the offender to address the cause or causes of the offender's offending behaviour, including whether the offender has participated in any rehabilitation programme;
 - (f) whether or not the offender's participation in any rehabilitation programme has had a positive effect on the offender;
 - (g) the offender's antecedents and criminal record;
 - (h) the risk that, if the offender were not subject to a restriction order, the offender would commit a serious offence;
 - (i) the need to protect members of the community from that risk;
 - (j) any other relevant matter.
- (4) In considering whether it is satisfied as required by subsection (1), the court must disregard the possibility that the offender might temporarily be prevented from committing a serious offence by —
- (a) imprisonment; or
 - (b) remand in custody; or
 - (c) the imposition of bail conditions.

8. Objects of this Act

The objects of this Act are —

- (a) to provide for the detention in custody or the supervision of high risk serious offenders to ensure adequate protection of the community and of victims of serious offences; and

- (b) to provide for continuing control, care or treatment of high risk serious offenders.

9. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

10. 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 33 or 80; and
- (b) is not detained under this Act for some other reason.

11. Proceedings under this Act

- (1) The Attorney General may make applications under this Act, and take other proceedings for which this Act provides, in the name of the State.
- (2) The Attorney General may authorise the Director of Public Prosecutions to make applications under this Act, and take other proceedings for which this Act provides, in the name of the State.
- (3) The Attorney General may authorise the State Solicitor to make applications under this Act, and take other proceedings for which this Act provides, in the name of the State.
- (4) If the State Solicitor is authorised under subsection (3) to make an application or take other proceedings —
 - (a) the State Solicitor may appear in person or be represented by a legal practitioner in the application or proceedings; and
 - (b) the *Director of Public Prosecutions Act 1991* Part 4 applies to the State Solicitor in relation to the

application or proceedings as though references in that Part —

- (i) to the Director of Public Prosecutions were references to the State Solicitor; and
 - (ii) to the annual report of the Director of Public Prosecutions were references to the annual report of a public sector body of which the State Solicitor is an officer or employee.
- (5) A defect or error in an authorisation by the Attorney General under subsection (2) or (3) does not affect the validity of —
- (a) an application made or other proceedings taken in reliance on the authorisation; or
 - (b) an order, finding or other decision made in the application or proceedings.
- (6) The CEO may make applications under section 49(1)(b) and 77(2).
- (7) A police officer may make applications under section 51(1) and 81(4)(a).
- (8) A community corrections officer may make applications under section 51(1).

12. *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.

13. *Application of Freedom of Information Act 1992 limited*

Access is not to be given under the *Freedom of Information Act 1992* Parts 2 and 4 to documents brought into existence, prepared, developed, made, received or obtained under or for the purposes of —

- (a) this Act; or

(b) any application or other proceedings under this Act.

[Parts 2-7 have not come into operation.]

Part 8 — General

[79-90. Have not come into operation.]

91. Review of this Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
 - (a) as soon as practicable after the 5th anniversary of the day on which this section comes into operation; and
 - (b) after that, at intervals of not more than 5 years.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.
- (3) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —
 - (a) the report has been prepared; and
 - (b) the Minister is of the opinion that the House will not sit during the period of 21 days after the finalisation of the report.
- (4) A copy of the report transmitted to the Clerk of a House is taken to have been laid before that House.
- (5) The laying of a copy of a report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

[Parts 9 and 10 have not come into operation.]

[Schedule 1 has not come into operation.]



Notes

This is a compilation of the *High Risk Serious Offenders Act 2020*. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>High Risk Serious Offenders Act 2020</i> Pt. 1 and s. 91	29 of 2020	9 Jul 2020	Pt. 1: 9 Jul 2020 (see s. 2(1)(a)); s. 91: 10 Jul 2020 (see s. 2(1)(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>High Risk Serious Offenders Act 2020</i> Pt. 2-7, Pt. 8 (other than s. 91), Pt. 9 and 10 and Sch. 1	29 of 2020	9 Jul 2020	Act other than Pt. 1, s. 91 and Sch. 1 Div. 1 Subdiv. 1 it. 1: 26 Aug 2020 (see s. 2(1)(c) and SL 2020/131 cl. 2); Sch. 1 Div. 1 Subdiv. 1 it. 1: To be proclaimed (see s. 2(1)(c))

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Board.....	3
CEO	3
committing	3, 6
community	3, 4
community corrections officer	3
continuing detention order	3
criminal record.....	3
Department.....	3
high risk serious offender.....	3, 7(1)
interim supervision order	3
offender	3
preliminary hearing.....	3
psychiatrist.....	3
public sector body.....	3
qualified expert	3
qualified psychologist	3
relevant agency	3
restriction order.....	3
restriction order application	3
serious offence	3, 5(1), 5(2), 5(3), 5(4), 5(5), 5(6)
serious offender functions.....	3
serious offender under custodial sentence.....	3
serious offender under restriction	3
standard condition.....	3
supervision order.....	3
supporting agency	3
under a custodial sentence	3
victim	3
victim submission	3