



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before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, this Act is repealed on the day after that period ends; or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the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, the provision is repealed on the day after that period ends.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*;

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- (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).

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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;

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- (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

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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.

Part 2 — High Risk Serious Offenders Board

Division 1 — Establishment and functions

14. Board established

A board called the High Risk Serious Offenders Board is established.

15. Functions of Board

- (1) The functions of the Board are the following —
 - (a) to develop and promote the development of knowledge, understanding, skills and expertise in all aspects of the assessment and management of offenders;
 - (b) to facilitate cooperation between and the coordination of relevant agencies in the performance of their serious offender functions;
 - (c) to facilitate information-sharing between relevant agencies in relation to the performance of their serious offender functions;
 - (d) to develop best practice standards and guidelines for the performance by relevant agencies of their serious offender functions;
 - (e) to advise relevant agencies in relation to resourcing, service provision and training relevant to the performance of their serious offender functions.
- (2) The Board may do all things necessary or convenient to be done for, or in connection with, or as incidental to, the performance of its functions.

Division 2 — Membership and meetings

16. Terms used

In this Division —

appointed member means a member who is appointed under section 17(1)(a)(ii) or (b);

chief employee has the meaning given in the *Public Sector Management Act 1994* section 3(1);

chief executive officer has the meaning given in the *Public Sector Management Act 1994* section 3(1);

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

community member means a member appointed under section 18(1);

member means a member of the Board;

official member means a member who is the chief executive officer or chief employee of a relevant agency, or who is the Chief Psychiatrist.

17. Membership of Board

(1) The Board is to consist of —

(a) for each relevant agency —

- (i) the chief executive officer or chief employee; or
- (ii) a member of staff of the relevant agency, appointed by the chief executive officer or chief employee;

and

- (b) the Chief Psychiatrist, or a member of the staff assisting the Chief Psychiatrist, appointed by the Chief Psychiatrist; and
- (c) any number of community members appointed under section 18(1).

- (2) If a public sector body is a relevant agency under more than one paragraph of the definition of that term in section 3 or designation made under paragraph (f) of that definition, the chief executive officer or chief employee may appoint staff members under subsection (1)(a)(ii) in respect of each paragraph or designation under which the public sector body is a relevant agency.
- (3) The chairperson of the Board is —
 - (a) the chief executive officer of the Department; or
 - (b) the staff member appointed under subsection (1)(a)(ii) by the chief executive officer of the Department.

18. Community members of Board

- (1) The Minister may appoint as a community member of the Board a person whom the Minister considers to have 1 or more of the following attributes —
 - (a) a knowledge and understanding of Aboriginal culture local to this State;
 - (b) a knowledge and understanding of risk assessment and management frameworks that are appropriate for Aboriginal people;
 - (c) a knowledge and understanding of the criminal justice system;
 - (d) a knowledge and understanding of issues that are relevant to the Board's functions, including employment, substance abuse, physical or mental illness or disability, housing, education and training.
- (2) The office of a community member may be held on a full-time basis, part-time basis or sessional basis.
- (3) Community members are entitled to the remuneration and allowances set by the Minister from time to time on the recommendation of the Public Sector Commissioner.

- (4) The Minister may grant leave of absence to a community member on such conditions as the Minister determines.
- (5) The chairperson of the Board is responsible for directing the education, training and professional development of community members.
- (6) The Minister must ensure that appropriate provision is made for the education, training and professional development of community members.

19. Term of office

- (1) An official member is a member until —
 - (a) the official member ceases to be the chief executive officer or chief employee of a relevant agency, or to be the Chief Psychiatrist; or
 - (b) the official member appoints an appointed member.
- (2) An appointed member is a member until —
 - (a) the appointed member ceases to be a member of staff of the relevant agency in respect of which they were appointed or of the Chief Psychiatrist; or
 - (b) the appointed member resigns under section 20(1); or
 - (c) the appointed member's appointment is cancelled under section 21(3).
- (3) If the appointed member in respect of a relevant agency or in respect of the Chief Psychiatrist ceases to be a member, the chief executive officer or chief employee of the relevant agency, or the Chief Psychiatrist, immediately becomes a member unless and until a further appointment is made under section 17(1)(a)(ii) or (b).
- (4) A community member is a member until —
 - (a) the expiry of a term of 5 years after the day of appointment (or any shorter term specified in the instrument of appointment); or

- (b) the community member resigns under section 20(2); or
 - (c) the community member's appointment is terminated under section 21(2).
- (5) A community member whose appointment expires under subsection (4)(a) is eligible for reappointment.

20. Resignation

- (1) An appointed member may resign by giving a signed letter of resignation to the chief executive officer, chief employee or Chief Psychiatrist who appointed them.
- (2) A community member may resign by giving a signed letter of resignation to the Minister.
- (3) A resignation has effect when the letter of resignation is received by the relevant person or at a later date specified in the letter of resignation.

21. Terminating and cancelling appointments

- (1) For the purposes of this section, grounds to terminate the appointment of a community member exist if the member —
 - (a) has been convicted of an indictable offence or an offence committed under the law of another place that would, if it had been committed in this State, be an indictable offence; or
 - (b) is incapable of performing the functions of a member; or
 - (c) has neglected without a reasonable cause to perform the functions of a member; or
 - (d) has been negligent or careless in performing the functions of a member; or
 - (e) is unfit to be a member due to misconduct.
- (2) The Minister may terminate the appointment of a community member if grounds to terminate the appointment exist.

- (3) The chief executive officer or chief employee of a relevant agency or the Chief Psychiatrist may cancel the appointment of an appointed member at any time, and without giving reasons.

22. Meetings of Board

- (1) The chairperson may decide when and where the Board meets.
- (2) At a meeting of the Board —
 - (a) the chairperson or a deputy nominated by the chairperson is to preside; and
 - (b) a quorum consists of 3 members including —
 - (i) the chairperson or a deputy of the chairperson; and
 - (ii) at least 1 appointed member or official member; and
 - (iii) if any community member is appointed under section 18(1), at least 1 community member; and
 - (c) questions arising are to be determined by a majority of the members present and voting; and
 - (d) if there is a tie in voting, the presiding member has a second vote.
- (3) The Board may, if it thinks fit, conduct a meeting at which all or some members participate by telephone or other similar means, but any member who speaks on a matter at the meeting must be able to be heard by the other members at the meeting.
- (4) Subject to this section the chairperson is to determine the procedure for convening and conducting meetings of the Board.

23. Protection of information

A member must not, whether directly or indirectly, record, disclose or make use of any information obtained because of being a member, except —

- (a) for the purposes of and in the due exercise of serious offender functions or functions under this Act; or
- (b) when ordered by a court or a judge to do so; or
- (c) in circumstances approved, or of a kind approved, by the Minister.

Penalty: a fine of \$2 500.

Part 3 — Cooperation and sharing of information between supporting agencies

24. Cooperation between supporting agencies

- (1) A supporting agency must cooperate with other supporting agencies in the performance of —
 - (a) its own serious offender functions; and
 - (b) the serious offender functions of other supporting agencies.
- (2) The duty to cooperate includes a duty to provide reasonable assistance and support to other supporting agencies in connection with the exercise of their serious offender functions.
- (3) Cooperation between supporting agencies in the performance of serious offender functions may include —
 - (a) the development of multi-agency management plans for offenders; and
 - (b) providing assistance and support to offenders through joint programs.

25. Disclosure of information between supporting agencies

- (1) For the purpose of cooperating under section 24, a supporting agency (the *first agency*) may disclose to another supporting agency (the *second agency*) information in the possession or control of the first agency if the disclosure is, or could reasonably be expected to be, necessary or conducive to the performance of the serious offender functions of the first agency or the second agency.
- (2) If a supporting agency discloses information in good faith under subsection (1) —
 - (a) no civil or criminal liability is incurred in respect of the disclosure; and

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- (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.
- (3) In relation to any information disclosed under this section, the second agency and its members and staff are bound by any duty of confidentiality that applies to the first agency.
- (4) Subsection (3) does not prevent the disclosure of information to the court, or in the proceedings, in the course of a restriction order application or other proceedings under this Act.

Part 4 — Restriction of offenders

Division 1 — Restriction orders

26. Continuing detention order

- (1) In this Act a *continuing detention order* in relation to an offender is an order that the offender be detained in custody for an indefinite term for control, care, or treatment.
- (2) 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 court.

27. Supervision order

- (1) In this Act a *supervision order* in relation to an offender is an order that the offender, when not in custody, is to be subject to stated conditions that the court considers appropriate, in accordance with section 30.
- (2) A supervision order has effect in accordance with its terms —
 - (a) from a date stated in the order; and
 - (b) for a period stated in the order.
- (3) The date from which a supervision order has effect must not be earlier than 21 days after the date the order is made unless the court is satisfied that the implementation of the order from an earlier date is practically feasible.

28. Court to give reasons for making restriction order

A court making a restriction order must, when making the order, give detailed reasons for the order.

29. Limitation on power to make or amend supervision order

- (1) A court cannot make, affirm or amend a supervision order in relation to an offender unless it is satisfied, on the balance of probabilities, that the offender will substantially comply with

the standard conditions of the order as made, affirmed or amended.

- (2) The onus of proof as to the matter described in subsection (1) is on the offender.
- (3) This section does not apply to the making of an interim supervision order.

30. Conditions of supervision order

- (1) 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.
- (2) A supervision order in relation to an offender must require that the offender —
 - (a) report to a community corrections officer at the place, and within the time, stated in the order and advise the officer of the offender'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 offender'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 and comply with any reasonable direction of the officer (including a direction for the purposes of section 31 or 32); 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 serious offence during the period of the order; and
 - (g) be subject to electronic monitoring under section 31.
- (3) A supervision order in relation to an offender may require the offender not to make public any statement, information or opinion relating directly or indirectly to any victim of a serious offence committed by the offender.
- (4) When considering whether to impose a requirement under subsection (3) the court must have regard to —
 - (a) the gravity and nature of the offender's offences; and
 - (b) the likely impact on the victims of the offender providing or making available any statement, information or opinion; and
 - (c) the public interest generally.
- (5) 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, care or treatment of the offender subject to the order; or
 - (c) to ensure adequate protection of victims of serious offences committed by the offender subject to the order.
- (6) Without limiting subsection (5), a supervision order may provide that —
 - (a) for the period specified in the order the offender is subject to a curfew under section 32; and
 - (b) the photograph and locality of the offender must not be published under the *Community Protection (Offender Reporting) Act 2004* section 85G.

31. Electronic monitoring

- (1) In this section —

approved means approved by the CEO.

- (2) The purpose of electronic monitoring of an offender subject to a supervision order is to enable the location of the offender to be monitored.

- (3) For the purposes of the electronic monitoring of an offender subject to a supervision order, a community corrections officer may do any of the following —

- (a) direct the offender to wear an approved electronic monitoring device;
- (b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender 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 offender necessary for the proper administration of the electronic monitoring of the offender.

- (4) A community corrections officer may suspend the electronic monitoring of an offender subject to a supervision order —

- (a) while satisfied that it is not practicable to subject the offender to electronic monitoring; or
- (b) while satisfied that it is not necessary for the offender to be subject to electronic monitoring.

32. Curfew

- (1) In this section —

specified means specified by a community corrections officer from time to time.

- (2) The purpose of a curfew is to allow for the movements of an offender subject to a supervision order to be restricted during periods when there is a risk of the offender committing a serious offence.
- (3) The curfew is a requirement that the offender must remain at a specified place for specified periods, except as provided in subsection (5).
- (4) The offender cannot be required by the curfew to remain at the specified place for periods that amount to less than 2 or more than 12 hours in any 1 day.
- (5) The offender may leave the specified place during a specified period only —
 - (a) to obtain urgent medical or dental treatment for the offender; or
 - (b) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person; or
 - (c) to obey an order issued under a written law (such as a summons) requiring the offender'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 offender necessary for the proper administration of the curfew requirement.
- (7) Without limiting subsection (6), if the offender is authorised under subsection (5) to leave the specified place, a community corrections officer may give directions as to any of the following —
 - (a) when the offender may leave;
 - (b) the period of the authorised absence;

- (c) when the offender must return;
- (d) the route and method of travel to be used by the offender during the absence;
- (e) the manner in which the offender must report the offender's whereabouts.

33. 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 31(3) to give the device to a community corrections officer within a time specified by the officer; and
 - (b) at any time, enter a place where an electronic monitoring device has been installed under section 31(3) 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 for this subsection: a fine of \$12 000 or imprisonment for 12 months.

- (3) A person must not without reasonable excuse remove, or interfere with, or interfere with the operation of, an electronic monitoring device required to be worn or installed under section 31(3) in such a way as to prevent or impede monitoring of the offender's location.

Penalty for this subsection: imprisonment for 3 years.

- (4) Except as provided in subsection (5), 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 at least 12 months; and
 - (b) must not suspend the term of imprisonment.
- (5) If a term of imprisonment of at least 12 months would be clearly unjust given the circumstances of the offence and the person, the court may decide —
 - (a) to sentence the person to a term of imprisonment of less than 12 months; or
 - (b) not to sentence the person to a term of imprisonment.
- (6) To ascertain whether or not an offender 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 32(3) in relation to the offender; and
 - (b) enter or telephone the offender's place of employment or any other place where the offender is authorised or required to attend; and
 - (c) question any person at any place referred to in paragraph (a) or (b).
- (7) A person must not —
 - (a) hinder a community corrections officer exercising powers under subsection (6); or
 - (b) fail to answer a question put under subsection (6)(c) or give an answer that the person knows is false or misleading in a material particular.

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

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

Division 2 — Applying for a restriction order

34. Terms used

In this Division —

applying agency, in relation to a restriction order application, means —

- (a) if the application is made by the Attorney General, the Department; and
- (b) if the application is made by the Director of Public Prosecutions, the Office of the Director of Public Prosecutions; and
- (c) if the application is made by the State Solicitor, the State Solicitor's Office;

evidentiary material, in relation to a restriction order application, means any of the following —

- (a) a copy of every recorded statement, whether written or oral, by any person who may be able to give evidence that is relevant to the application, irrespective of whether or not it assists the case of the State or of the offender;
- (b) a copy of every recording of evidence given by a person mentioned in paragraph (a), irrespective of whether or not it assists the case of the State or of the offender;
- (c) if there is no statement or recording referred to in paragraph (a) or (b), a written summary of the evidence to be given by a person mentioned in paragraph (a);

- (d) a copy of any document or object to which a statement or recording referred to in paragraph (a) refers;
- (e) a copy of every other document or object that the State intends to tender in evidence at the hearing of the application;
- (f) a copy of every other document or object that may assist the offender's case.

35. Application for restriction order in relation to serious offender under custodial sentence

- (1) The State may apply to the Supreme Court for a restriction order in relation to a serious offender under custodial sentence who is not a serious offender under restriction.
- (2) Subsection (1) applies whether the custodial sentence was imposed before or after the commencement of this section and whether or not the offender is in custody.
- (3) If the offender is in custody, an application under subsection (1) cannot be made unless there is a possibility that the offender might be released from custody within the period of 1 year after the application is made.
- (4) An application under subsection (1) need not specify whether the restriction order sought is a continuing detention order or a supervision order.

36. Application for restriction order in relation to offender subject to supervision order

- (1) The State may apply to the Supreme Court for a restriction order in relation to an offender who is subject to a supervision order (the *current order*) that is to expire within 1 year.
- (2) An application under subsection (1) must specify whether the restriction order sought is a continuing detention order or a supervision order.

- (3) A restriction order granted on an application under subsection (1) takes effect on the expiry of the current order.

37. Provisions relating to restriction order applications

- (1) A restriction order application must be accompanied by any affidavits to be relied on by the State for the purpose of seeking an order or orders under section 46.
- (2) Within 7 days after making a restriction order application, the State must give the offender a copy of the application and any affidavits accompanying it.
- (3) At the time of, or after, making a restriction order application, the State may apply to the Supreme Court for 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.
- (4) If the State applies under subsection (3), the Supreme Court may issue, in the form approved under section 89 —
 - (a) a summons requiring the offender to appear before the Supreme Court for the preliminary hearing; or
 - (b) a warrant directed to all police officers for the offender to be arrested and brought before the Supreme Court for the preliminary hearing.

38. Application where offender discharged from sentence or supervision order

A restriction order application 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 35(1), the offender ceases to be under a custodial sentence; or
- (b) in the case of an application under section 36(1), the offender ceases to be subject to a supervision order.

39. State's duty of disclosure

- (1) As soon as practicable after the preliminary hearing in relation to a restriction order application, the State must give to the offender —
 - (a) any evidentiary material in the possession of the applying agency that may be relevant to the application; and
 - (b) any other prescribed document that is in the possession of the applying agency.
- (2) Subsection (3) applies if, after complying with subsection (1) and before the application is finally dealt with, the applying agency receives or obtains any of the following material (*new evidentiary material*) —
 - (a) additional evidentiary material that may be relevant to the application;
 - (b) any statement or recording described in subsection (4)(b);
 - (c) the name or address of a person described in subsection (4)(c).
- (3) The State must give new evidentiary material to the offender as soon as practicable after receiving or obtaining it.
- (4) A requirement under this section to give evidentiary material includes a requirement —
 - (a) if it is not practicable to copy a document or object referred to in paragraph (d), (e) or (f) of the definition of *evidentiary material* in section 34 — to give a notice that describes the document or object and states where and when it can be inspected; and
 - (b) if a copy of a statement or recording of a person is given — to give a copy of any statement or recording of the person that contains material that is inconsistent with that statement or recording; and

- (c) to give —
 - (i) notice of the name and, if known, the address of any person who the applying agency thinks may be able to give evidence that may assist the offender's case but from whom no statement or recording of the kind referred to in paragraph (a) or (b) of the definition of *evidentiary material* has been obtained; and
 - (ii) a description of the evidence concerned.
- (5) The operation of this section is subject to —
 - (a) the *Evidence Act 1906* sections 19C and 106HB(3); and
 - (b) any other written law that relates to the disclosure of specific information; and
 - (c) the law on privilege; and
 - (d) the law on public interest immunity.
- (6) This section does not affect the operation of the *Criminal Investigation Act 2006* section 117.

40. Provision of evidentiary material to applying agency

- (1) The applying agency in relation to a restriction order application may request a supporting agency or any other person, body or agency to provide to the applying agency any evidentiary material, or any document prescribed under section 39(1)(b), that is in its possession.
- (2) A supporting agency or other person, body or agency must comply with a request under subsection (1).
- (3) If a supporting agency or other person, body or agency discloses information in good faith under subsection (2) —
 - (a) no civil or criminal liability is incurred in respect of the disclosure; and
 - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

- (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.
- (4) In relation to any information disclosed under this section, the applying agency and its members and staff are bound by any duty of confidentiality that applies to the supporting agency, or other person, body or agency, disclosing the information.
- (5) Subsection (4) does not prevent the disclosure of information —
 - (a) to the court, or in the proceedings, in the course of the restriction order application; or
 - (b) to the offender under section 39.

41. Offender's duty of disclosure

- (1) In this section —
expert evidence material relevant to a restriction order 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) The offender must, at least 28 days before the day fixed under section 46 for the hearing of a restriction order application, lodge with the court and give to the State 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 State intends to adduce at the hearing of the application; or
 - (ii) any evidence to be given by a witness that the State intends to call at the hearing of the application;
 - and
 - (c) written notice of the grounds for any objection mentioned in paragraph (b).
- (3) If, after complying with subsection (2), an offender receives or obtains further expert evidence material relevant to the application, the offender must lodge the further material with the court and give a copy of it to the State as soon as practicable.

42. Orders as to disclosure requirements

- (1) In this section —
disclosure requirement means a requirement under section 39 or 41 to disclose material.
- (2) The powers in this section may be exercised by the court on its own initiative or on an application by a party to a restriction order application.
- (3) The court may make an order in respect of a disclosure requirement —
 - (a) that dispenses with all or part of the requirement, if it is satisfied that —
 - (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, whether by the court or some other court; or
 - (d) as to any other matter that the court considers just.
- (4) An application for an order under this section may be made without notice to the offender and may be dealt with in the absence of the offender.
- (5) An application for an order under this section that is made without notice to the offender must not be dealt with in open court and the only persons who may be present when it is dealt with are the applicant and any other persons permitted by the court.
- (6) If an order is made under this section in the absence of the offender, the order must not be given or disclosed to the offender without the permission of the court.

43. Fixing day for preliminary hearing

- (1) After a restriction order application is made, the court must fix a day for the matter to come before the court for a preliminary hearing.
- (2) Within 7 days after the court has fixed a day for the preliminary hearing or any other period specified by the court, the State must give the offender notice of the day fixed.

44. Offender may file affidavits in response

- (1) The offender may lodge affidavits to be relied on by the offender for the preliminary hearing.
- (2) The offender must give a copy of the affidavits to the State at least 7 days before the day fixed for the preliminary hearing.

45. 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.

46. Preliminary hearing

- (1) 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, in accordance with section 7, find that the offender is a high risk serious offender.
- (2) If the court is satisfied as described in subsection (1) —
 - (a) the court must order that the offender undergo examination by a psychiatrist and a qualified psychologist for the purpose of preparing reports in accordance with section 74 to be used on the hearing of the restriction order application; and
 - (b) the court may, on the application of the State or of the offender, order that a person or body named by the court prepare a report in accordance with section 75 to be used on the hearing of the restriction order application on questions or topics set out in the order; and
 - (c) the court may —
 - (i) if the offender is in custody and might otherwise be released from custody before the restriction order application is finally decided, order that the offender be detained in custody for the period stated in the order; and
 - (ii) if the offender is not in custody, order that the offender be detained in custody for the period stated in the order;

and

- (d) the court must, except as provided in subsection (3), fix a day for the hearing of the restriction order application.

- (3) The court may defer fixing a day for the hearing of the restriction order application or, if it has already fixed a day, adjourn the hearing 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 restriction order application should not be heard until that charge has been dealt with.

47. Discontinuing restriction order application

- (1) The State may discontinue a restriction order application at any time by lodging a notice of discontinuance with the court and giving it to the offender.
- (2) The application is dismissed when the court makes an order in terms of the notice of discontinuance.
- (3) When an application is dismissed under subsection (2), any order under section 46(2)(c) relating to the offender is discharged.

Division 3 — Making a restriction order

48. Restriction orders

- (1) If the court hearing a restriction order application finds that the offender is a high risk serious offender, the court must —
 - (a) make a continuing detention order in relation to the offender; or
 - (b) except as provided in section 29, make a supervision order in relation to the offender.
- (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.

Division 4 — Amending a supervision order

49. Application to amend conditions of supervision order

- (1) An application to the Supreme Court to amend the conditions of a supervision order may be made —
 - (a) by the offender who is subject to the supervision order; or
 - (b) with the Attorney General’s consent, by the CEO.
- (2) An offender making an application under subsection (1)(a) must give notice of the application to —
 - (a) the Attorney General; and
 - (b) the CEO.
- (3) The CEO must give notice of an application under subsection (1)(b) to the offender who is subject to the order.

50. Amendment of conditions of supervision order

- (1) On an application under section 49 the court may, except as provided in section 29, amend the conditions of a supervision order if the court is satisfied that —
 - (a) the offender who is subject to the order is unable to comply with the conditions of the order because of a change in the offender’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) it is reasonable to make the amendment in all the circumstances; and
 - (b) the conditions, as amended, will be sufficient to ensure adequate protection of the community.

Division 5 — Contravening a supervision order

51. Warrant because of contravention

- (1) A police officer or community corrections officer who reasonably suspects that an offender 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 —
 - (a) the issue of a warrant under subsection (3); and
 - (b) an order under section 52.
- (2) A person making an application under subsection (1) must advise the State as soon as practicable that the application has been made.
- (3) 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 89, a warrant directed to all police officers for the offender 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.
- (4) A warrant under subsection (3) must state the suspected or anticipated contravention, and may state it in general terms.
- (5) A magistrate cannot issue a warrant under subsection (3) for the arrest of an offender unless the application for the warrant is supported by evidence on oath.
- (6) For the purpose of arresting an offender under a warrant under subsection (3), a police officer may enter and search any premises (including any residence or vehicle) where the police officer reasonably suspects the offender to be present.

52. Order permitting publication of offender's photograph

- (1) A magistrate issuing a warrant under section 51(3) may order that, until the offender is arrested or appears before the Supreme Court, a photograph of the offender may be published under the *Community Protection (Offender Reporting) Act 2004* section 85G.
- (2) Subsection (1) applies despite —
 - (a) any condition of a supervision order referred to in section 30(6)(b); or
 - (b) any other order of a court which would prohibit the publication of a photograph of the offender.
- (3) A magistrate must not make an order under subsection (1) unless the magistrate considers it necessary in the interests of justice and for the adequate protection of the community.

53. State may seek orders

- (1) This section applies to —
 - (a) an offender who is brought before the Supreme Court under a warrant issued under section 51(3) or 56(7)(d); and
 - (b) an offender who is charged with an offence under section 80(1).
- (2) In relation to the offender, the State may apply for —
 - (a) an order under section 55; and
 - (b) an order for the offender to be detained in custody while proceedings on the application for an order under section 55 are pending.
- (3) The application must state what order is sought under section 55.

54. Reports

If an application is made under section 53 in relation to an offender, the court —

- (a) may order that the offender undergo examination by 1 or more qualified experts for the purpose of preparing a report or reports in accordance with section 74; and
- (b) on the application of the State or of the offender, may order that a person or body named by the court prepare a report in accordance with section 75 on questions or topics set out in the order.

55. Court to make orders in certain cases

- (1) If, on the hearing of an application under section 53, the court is satisfied on the balance of probabilities that the offender 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 offender; or
 - (b) except as provided in section 29, make an order amending the conditions of the supervision order, or extending the period for which the offender is to be subject to the supervision order, or both; or
 - (c) except as provided in section 29, make an order affirming the supervision order without amendment or extension.
- (2) If, on the hearing of an application under section 53, the court is satisfied on the balance of probabilities that the offender 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 offender; or

- (b) except as provided in section 29, make an order —
 - (i) amending the conditions of the supervision order; or
 - (ii) amending the conditions of, and extending the period for which the offender is to be subject to, the supervision order.
- (3) In deciding which order to make under subsection (1) or (2), the paramount consideration is to be the need to ensure adequate protection of the community.

56. Orders made during contravention proceedings

- (1) This section applies if an offender who is subject to a supervision order is before the Supreme Court and proceedings on an application made under section 53 in respect of the offender are pending (the *pending proceedings*).
- (2) The court may at any time in the pending proceedings —
 - (a) if the offender is detained in custody, order the offender to be released, subject to subsection (3); or
 - (b) if the offender is not detained in custody, order the offender to be detained in custody.
- (3) The court cannot order the offender to be released unless it is satisfied on the balance of probabilities that —
 - (a) releasing the offender is justified by exceptional circumstances; and
 - (b) the offender will substantially comply with the standard conditions of the supervision order, including any amendments to the standard conditions made under subsection (7)(b).
- (4) The onus of proof as to the matter described in subsection (3)(b) is on the offender.
- (5) For the purposes of subsection (3), in considering whether releasing the offender 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.

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

Division 6 — Supervision order extended due to imprisonment

57. Extension of supervision order

- (1) This section applies if an offender who is subject to a supervision order is sentenced to 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 offender is in custody serving the sentence of imprisonment.

Division 7 — Interim supervision orders

58. Interim supervision order

- (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 a restriction order application or an application made under section 49 or 53 are pending (the *pending proceedings*); and
 - (b) the offender 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 offender is subject to a supervision order that 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 offender has been subject to a supervision order that 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 subsection (6), considers appropriate.

- (6) Section 30 applies to an order under this section as if it were a supervision order.

Division 8 — Victim submissions

59. Terms used

In this Division —

make available means make available to an offender or to a person acting on behalf of, or representing, an offender;

relevant application means —

- (a) a restriction order application; and
- (b) an application under section 49 to amend the conditions of a supervision order; and
- (c) an application under section 53 for an order under section 55; and
- (d) an application under section 64 or 65 for the review of an offender's detention.

60. Making victim submissions

- (1) Where a relevant application is made in relation to an offender, a victim of a serious offence committed by that offender may make a submission to the court in relation to the need to ensure adequate protection of the victim.
- (2) Another person may make a submission on the victim's behalf if —
 - (a) because of age, disability or any other reason the victim is incapable of making a submission personally; and
 - (b) the court is satisfied that it is appropriate for that other person to do so.
- (3) A victim submission must be in writing.

61. Availability of victim submissions

At the hearing of a relevant application, the court must make available any victim submission made if —

- (a) the victim making the submission or on whose behalf the submission is made has consented to the submission being made available; and
- (b) the court has afforded the victim making the submission an opportunity to amend the submission before it is made available.

62. Court may have regard to victim submissions

- (1) Except as provided in subsections (2) and (3), in considering a relevant application the court must have regard to any victim submission made.
- (2) The court must not have regard to a victim submission —
 - (a) that is not made available at the hearing of the relevant application; or
 - (b) that is withdrawn; or
 - (c) to the extent that it contains material not relating to the need to ensure adequate protection of the victim.
- (3) If the victim making a submission has amended the submission, the court must have regard only to the amended submission.

Part 5 — Review of detention

63. Purpose of this Part

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

64. Review — periodic

- (1) While an offender is subject to a continuing detention order, the State may apply to the Supreme Court for the offender's detention under the order to be reviewed.
- (2) The State must apply under subsection (1) so as to ensure that reviews are carried out —
 - (a) as soon as practicable after the end of the period of 1 year commencing when the offender is first in custody on a day on which the offender 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 65.
- (3) The periods mentioned in subsection (2)(a) and (b) are extended by any period during which the offender is in custody serving a sentence of imprisonment.

65. Review — application by offender subject to order

- (1) An offender who is subject to a continuing detention order may, with the leave of the court, apply to the Supreme Court for the offender'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 offender.
- (3) An application cannot be made under this section for an offender's detention to be reviewed until at least 1 year after the

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last occasion on which the offender's detention has been reviewed under section 64(2)(b).

- (4) When an offender applies under this section for the offender's detention to be reviewed, or applies for leave to make an application of that kind, the Principal Registrar must immediately give a copy of the application to the State.

66. Dealing with application

- (1) As soon as practicable after an application is made under section 64 or 65, 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.

67. Reports

- (1) Unless the court otherwise orders, the CEO must engage 1 or more qualified experts to prepare reports in accordance with section 74 to be used on a review under this Part.
- (2) On the application of the State or the offender whose detention is to be reviewed, the court may order the CEO to engage a person or body named by the court to prepare a report in accordance with section 75 on questions or topics set out in the order.

68. Review of detention under continuing detention order

- (1) On a review under section 66 of an offender's detention —
 - (a) if the court does not find that the offender remains a high risk serious offender it must rescind the continuing detention order; or

- (b) if the court finds that the offender remains a high risk serious offender it must —
 - (i) affirm the continuing detention order; or
 - (ii) subject to section 29, rescind the continuing detention order and make a supervision order.
- (2) In deciding whether to make an order under subsection (1)(b)(i) or (ii), the paramount consideration is to be the need to ensure adequate protection of the community.

Part 6 — Appeals

69. Appeals

- (1) Except as provided in subsection (3), the State or a person in relation to whom the court makes a decision under this Act 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.
- (3) An appeal does not lie against the following —
 - (a) a decision on an order in respect of a disclosure requirement under section 42(3);
 - (b) a decision on an order made at a preliminary hearing under section 46(2);
 - (c) a decision on an order permitting publication of an offender's photograph under section 52(1);
 - (d) a decision under the *Evidence Act 1906* section 19C giving or refusing leave to disclose or require disclosure of a protected communication (as defined in section 19A of that Act) in or in connection with a restriction order application;
 - (e) a decision on an appeal under this Part.

70. 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.

71. 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 7 — Reports

72. Terms used

In this Part, unless the contrary intention appears —

report means a report prepared under section 46(2)(a) or (b), 54(a) or (b), or 67(1) or (2);

reporter means —

- (a) a qualified expert providing a report in relation to an offender under section 74; or
- (b) a person or body providing a report in relation to an offender under section 75;

subject means an offender in relation to whom a report is to be prepared in accordance with section 74 or 75.

73. Authority to examine

This section authorises a reporter to examine a subject and to report in accordance with section 74 or 75.

74. Preparation of report by qualified expert

- (1) A qualified expert providing a report in relation to a subject 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 the risk that, without a restriction order, the subject will commit a serious offence; and
 - (b) the reasons for the reporter's assessment.
- (3) The reporter must have regard to any report or information given under section 76(1).

- (4) The reporter must prepare the report even if the subject does not cooperate, or does not cooperate fully, in the examination.

75. Preparation of other report

- (1) A person or body providing a report in relation to a subject under this section must —
- (a) examine the subject, if in the reporter's 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 set out —
- (a) 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 76(2).
- (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.

76. CEO to provide information

- (1) Subject to subsection (3), the CEO must give to a reporter preparing a report under section 74 any medical, psychiatric, prison or other relevant report or information relating to the subject that is in the CEO's possession or to which the CEO has, or may be given, access.
- (2) Subject to subsection (3), the CEO must give to a reporter preparing a report under section 75 any medical, psychiatric,

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prison or other relevant report or information relevant to the questions and topics to be addressed in the report —

- (a) that is in the CEO's possession or to which the CEO 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.
- (3) Before giving any document to a reporter under subsection (1) or (2) the CEO may edit the document to remove or erase any material —
 - (a) that would identify any person other than the subject; or
 - (b) if a report is to be prepared under section 74, that does not relate to the subject; or
 - (c) if a report is to be prepared under section 75, that is not relevant to the questions and topics to be addressed in the report.
- (4) The CEO must give to the State a copy of anything that the CEO gives to a reporter under subsection (1) or (2).

77. CEO may seek information

- (1) 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 CEO if asked by the CEO to do so.
- (2) If a person asked under subsection (1) to give a copy of any report or information to the CEO refuses to do so, the CEO may apply to the court for an order requiring the person to give the report or information to the CEO.
- (3) If a person discloses a report or information to the CEO in good faith under subsection (1) or (2) —
 - (a) no civil or criminal liability is incurred in respect of the disclosure; and

- (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
- (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

78. Copies of report to State and subject

- (1) A reporter who prepares a report under section 74 or 75 must give a copy of the report to the State within 7 days after finalising the report.
- (2) Within 3 days after the day on which the State receives a report under subsection (1), the State must give a copy of the report to the subject.

Part 8 — General

79. 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.

80. Offence of contravening supervision order

- (1) An offender subject to a supervision order must not, without reasonable excuse, contravene a requirement of the order.
Penalty for this subsection: imprisonment for 3 years.
- (2) Except as provided in subsection (3), if an offender is convicted of an offence under subsection (1) for an act or omission that is also a contravention of section 33(3) then, despite any other written law, the court sentencing the offender —
 - (a) must sentence the offender to a term of imprisonment of at least 12 months; and
 - (b) must not suspend the term of imprisonment.
- (3) If a term of imprisonment of at least 12 months would be clearly unjust given the circumstances of the offence and the person, the court may decide —
 - (a) to sentence the person to a term of imprisonment of less than 12 months; or
 - (b) not to sentence the person to a term of imprisonment.

- (4) A police officer who suspects on reasonable grounds that an offender has committed an offence under subsection (1) may, without a warrant, arrest the offender.
- (5) A police officer who charges an offender with an offence under this section must inform the State as soon as practicable.

81. Procedure on some charges of offences under s. 80

- (1) Except as provided in this section, the procedure applicable to and in relation to a charge of an offence under section 80(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 80(1) against an offender in relation to certain conduct may be commenced in the Supreme Court only if proceedings have been commenced under Part 4 Division 5 in respect of the offender in relation to the same conduct, and have not been 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 80(1) in the Supreme Court.
- (4) If proceedings on a charge of an offence under section 80(1) in relation to certain conduct and proceedings commenced under Part 4 Division 5 in relation to the same conduct are in progress against an offender at the same time —
 - (a) a court of summary jurisdiction dealing with the charge must, on an application made by a police officer or the State, transfer the charge to the Supreme Court; and
 - (b) the State 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

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it were a prosecution of a simple offence in a court of summary jurisdiction, but —

- (i) the Supreme Court cannot charge a fee 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 4 Division 5; and
 - (e) if the offender is convicted of the charge, the sentencing of the offender may be adjourned until after the proceedings under Part 4 Division 5 are concluded; and
 - (f) if the Supreme Court fines the offender 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 80(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
 - (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.

82. 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(1).

83. Deciding certain matters on the papers

- (1) In this section —
relevant proceeding means a judicial proceeding for —
- (a) a serious offence; or
 - (b) another offence that the court considers relevant, having regard to the matter for decision before the court.
- (2) This section applies to how the court may decide —
- (a) whether it is satisfied, as described in section 46(1), that there are reasonable grounds for the belief described in that subsection; or
 - (b) whether it is satisfied as required by section 50.
- (3) The court may decide entirely or partly from a consideration of documents lodged with the court, without the offender or witnesses appearing and without the offender consenting to, or being heard on, the making of the decision.
- (4) In making its decision, the court may receive in evidence —
- (a) any document relevant to the antecedents or criminal record of the offender; or
 - (b) anything relevant contained in the official transcript of any relevant proceeding against the offender; or

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

84. Evidence in certain hearings

- (1) In this section —

relevant proceeding means a judicial proceeding for —

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

- (2) This section applies to —

- (a) a restriction order application; and
- (b) an application under section 64 or 65 for a review; and
- (c) an application for an order under section 55.

- (3) 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 State; and
- (b) if the offender elects to give or call evidence, hear evidence given by or on behalf of the offender.

- (4) Except as modified by subsection (5), ordinary rules of evidence apply to evidence given or called under subsection (3).

- (5) In making its decision, the court may receive in evidence —

- (a) any document relevant to the antecedents or criminal record of the offender; or
- (b) anything relevant contained in the official transcript of any relevant proceeding against the offender; or

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

85. 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 84(5); or
- (b) otherwise in relation to the conduct of a proceeding under this Act.

86. Appearance at hearings

- (1) In this section —

audio link has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

video link has the meaning given in the *Criminal Procedure Act 2004* section 3(1).

- (2) An offender is entitled to appear at the hearing of a restriction order application against the offender.
- (3) An offender is entitled to appear at the hearing of an application under section 64 or 65 for the review of the offender's detention under a continuing detention order.
- (4) The court may direct that an offender entitled under this section to appear is to appear by means of a video link or an audio link.

87. Warrant of commitment upon order for detention

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

88. Protection from personal liability

- (1) In this section —

protected person means —

- (a) a member of the Board; and
 - (b) a person employed in a supporting agency; and
 - (c) 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
 - (d) a qualified expert ordered or engaged to provide a report under section 74; or
 - (e) a person or body ordered or engaged to provide a report under section 75; or
 - (f) a person employed by a body or agency prescribed by regulations for the purposes of this definition.
- (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.
- (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.

89. Approved forms

The CEO may approve forms for use under this Act.

90. 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.

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.

Part 9 — Consequential amendments to other Acts

Division 1 — *Community Protection (Offender Reporting) Act 2004* amended

92. Act amended

This Division amends the *Community Protection (Offender Reporting) Act 2004*.

93. Section 85A amended

- (1) In section 85A delete the definition of *DSO supervision order*.
- (2) In section 85A insert in alphabetical order:

HRO supervision order means a supervision order under the *High Risk Serious Offenders Act 2020*;

serious sexual offence means —

- (a) an offence specified in the *High Risk Serious Offenders Act 2020* Schedule 1, other than an offence under —
 - (i) the *Bush Fires Act 1954* section 32; or
 - (ii) the *Road Traffic Act 1974* section 59; or
 - (iii) *The Criminal Code* section 279, 280, 281, 283, 294, 297, 304(2), 332, 333, 338E, 343 392, 393, 444 or 445A;
- or
- (b) an offence under a written law that has been repealed, if the offender's acts or omissions that constituted the offence under the repealed provision would constitute a serious sexual offence under paragraph (a); or

- (c) an offence of conspiracy, attempt or incitement to commit an offence that is a serious sexual offence under paragraph (a) or (b); or
- (d) an offence against the law of the Commonwealth or of any place outside Western Australia, if the offender's acts or omissions that constituted the offence under that law would constitute a serious sexual offence under paragraph (a) or (c).
- (e) an offence against the law of the Commonwealth if —
 - (i) the offence is of a sexual nature; and
 - (ii) 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 sexual offence.

- (3) In section 85A in the definition of ***publish*** delete “Commissioner.” and insert:

Commissioner;

94. Section 85G amended

Delete section 85G(2)(a) and insert:

- (a) if —
 - (i) the person has been convicted of a serious sexual offence; and
 - (ii) the person is subject to a HRO supervision order; and

- (iii) that order does not provide that the person's photograph and locality are not to be published under this section;

or

95. Section 85H amended

In section 85H(2)(b) delete "DSO supervision order; and" and insert:

HRO supervision order; and

96. Section 85I amended

In section 85I(2)(a)(iii) delete "DSO supervision order" and insert:

HRO supervision order

Division 2 — Criminal Procedure Act 2004 amended

97. Act amended

This Division amends the *Criminal Procedure Act 2004*.

98. Section 51 amended

In section 51(5A) delete "*Dangerous Sexual Offenders Act 2006* section 40A" and insert:

High Risk Serious Offenders Act 2020 section 80(1)

99. Section 80 amended

After section 80(2)(c) insert:

- (ca) a member of the State Solicitor's staff appointed in writing by the State Solicitor as an authorised officer;

Division 3 — *Freedom of Information Act 1992* amended

100. Act amended

This Division amends the *Freedom of Information Act 1992*.

101. Schedule 2 amended

In Schedule 2 —

- (a) after “The Electoral Distribution Commissioners.” insert:

The High Risk Serious Offenders Board.

- (b) after “The Prisoners Review Board.” insert:

The State Solicitor, but only in relation to documents originating with or received by the State Solicitor in connection with functions under the *High Risk Serious Offenders Act 2020*.

102. The Glossary amended

- (1) After the Glossary clause 2(3) insert:

- (3A) In connection with its functions under the *High Risk Serious Offenders Act 2020*, the State Solicitor is to be regarded as a

separate agency and is not to be regarded as a part of the department in which the State Solicitor is employed.

(2) After the Glossary clause 6(2) insert:

- (3) A document originating with or received by the State Solicitor in connection with functions under the *High Risk Serious Offenders Act 2020* is not to be regarded as a document of the department in which the State Solicitor is employed.

Division 4 — Sentence Administration Act 2003 amended

103. Act amended

This Division amends the *Sentence Administration Act 2003*.

104. Section 4 amended

(1) In section 4(2) insert in alphabetical order:

community has a meaning affected by subsection (4);

(2) After section 4(3) insert:

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

105. Section 50 amended

In section 50(ca) delete “*Dangerous Sexual Offenders Act 2006* section 17(1)(a); and” and insert:

High Risk Serious Offenders Act 2020 section 48(1)(a); and

106. Section 74A amended

- (1) In section 74A delete the definitions of ***prisoner*** and ***serious violent offence***.
- (2) In section 74A insert in alphabetical order:

prisoner means a person —

- (a) who is serving a fixed term for a serious offence; or
- (b) who —
 - (i) is serving a fixed term for an offence or offences other than a serious offence; and
 - (ii) has been serving that term at all times since completing a fixed term for a serious offence;

serious offence has the meaning given in the *High Risk Serious Offenders Act 2020* section 5;

serious offender under restriction has the meaning given in the *High Risk Serious Offenders Act 2020* section 3.

107. Section 74B amended

- (1) In section 74B:
 - (a) delete “In this Part” and insert:
 - (1) In this Part
 - (b) in paragraphs (a) and (f) delete “violent”;
 - (c) in paragraph (h) delete “any” and insert:

subject to subsection (2), any
- (2) At the end of section 74B insert:
 - (2) In this Part a reference to the PSSO considerations does not include a reference to considerations relating to the community’s interest in punishment or deterrence of offences.

108. Section 74D amended

Delete section 74D(3) and insert:

- (3) Subject to subsection (5), the Board must make a PSSO in respect of the prisoner if it considers that the order is necessary for the prevention of harm to the community from further offending by the prisoner.
- (4) In considering under subsection (3) whether a PSSO is necessary, the Board must have regard to —
 - (a) the PSSO considerations relating to the prisoner; and

- (b) the report made by the CEO under section 74C;
and
 - (c) any other information about the prisoner
brought to its attention.
- (5) The Board must not make a PSSO in respect of a
serious offender under restriction.

109. Section 74E amended

In section 74E(2) delete “the period of 2 years” and insert:

a period of not less than 6 months and not more than 2 years, as
the Board specifies in the order,

110. Section 74G amended

Delete section 74G(h) and (i).

111. Section 74J amended

- (1) In section 74J(2) delete “section.” and insert:
- subsection.
- (2) After section 74J(2) insert:
- (3) If a supervised offender, during the PSSO period,
becomes a serious offender under restriction, the PSSO
applicable to the supervised offender is cancelled by
operation of this subsection.

112. Section 74K replaced

Delete section 74K and insert:

74K. Subsequent PSSO after cancellation for committing offence

- (1) In this section —

cancelled PSSO means a PSSO that is cancelled by operation of section 74J(2);

further offence means an offence committed by a supervised offender during a PSSO period leading to the cancellation of the PSSO by operation of section 74J(2);

further term means a term of imprisonment imposed upon a supervised offender in respect of a further offence.

- (2) If a PSSO is cancelled by operation of section 74J(2), the Board may subsequently make another PSSO in respect of the supervised offender.
- (3) The PSSO period specified in the subsequent PSSO —
- (a) must begin on —
 - (i) if the supervised offender is not released on parole — the day on which the supervised offender is released after serving the further term; or
 - (ii) if the supervised offender is released on parole — the day after the day on which the further term ends;
 - and
 - (b) must not be longer than the remaining PSSO period of the cancelled PSSO.

- (4) Subsection (3)(b) does not apply if the further offence is a serious offence.

113. Section 74L replaced

Delete section 74L and insert:

74L. Offence for breach of PSSO

A supervised offender must not breach a PSSO without reasonable excuse (proof of which is on the offender).

Penalty: imprisonment for 3 years.

114. Section 103 amended

Delete section 103(2) and insert:

- (2) The Minister must not nominate a person as the chairperson unless —
- (a) the person has served as, or is qualified for appointment as, a judge of the District Court of Western Australia, the Supreme Court of Western Australia or another State or Territory, the High Court of Australia or the Federal Court of Australia; and
 - (b) if the person holds judicial office, the person has consented in writing to be nominated.
- (2A) A person holding a judicial office must retire upon being nominated as the chairperson.

115. Section 119 amended

After section 119(1)(b) insert:

- (ba) under the *High Risk Serious Offenders Act 2020* section 25(1) or 40(2); or

116. Schedule 4 deleted

Delete Schedule 4.

Division 5 — Other Acts amended

117. *Bail Act 1982* amended

- (1) This section amends the *Bail Act 1982*.
- (2) In Schedule 1 Part C clause 3D(1) delete the definition of ***section 40A offence*** and insert:

section 80 offence means the offence under the *High Risk Serious Offenders Act 2020* section 80(1) of contravening a requirement of a supervision order;

- (3) In Schedule 1 Part C clause 3D(1) in the definition of ***victim*** delete “*Dangerous Sexual Offenders Act 2006* section 3(1).” and insert:

High Risk Serious Offenders Act 2020 section 3.

- (4) In Schedule 1 Part C clause 3D(2):
 - (a) in paragraph (a) delete “section 40A offence; or” and insert:

section 80 offence; or

(b) in paragraph (b) delete “section 40A offence” and insert:

section 80 offence

(5) In Schedule 1 Part C clause 3D(3) delete “section 40A offence” and insert:

section 80 offence

(6) In Schedule 1 Part C clause 3D(6) delete “section 40A offence” and insert:

section 80 offence

Note: The heading to amended Schedule 1 Part C clause 3D is to read:

**Bail in cases under *High Risk Serious Offenders Act 2020*
section 80(1)**

118. *Director of Public Prosecutions Act 1991* amended

(1) This section amends the *Director of Public Prosecutions Act 1991*.

(2) After section 15 insert:

15A. *Proceedings under High Risk Serious Offenders Act 2020*

(1) It is a function of the Director to make applications and take other proceedings as authorised under the *High Risk Serious Offenders Act 2020* section 11(2).

(2) Despite section 10(1)(a), the Director must make applications and take other proceedings as authorised under the *High Risk Serious Offenders Act 2020* section 11(2) in the name of the State.

119. Prisons Act 1981 amended

- (1) This section amends the *Prisons Act 1981*.
- (2) In section 113B(1) in the definition of **victim** paragraph (ba) delete “serious sexual offence (as defined in the *Dangerous Sexual Offenders Act 2006* section 3(1))” and insert:

serious offence (as defined in the *High Risk Serious Offenders Act 2020* section 5)

120. Sentencing Act 1995 amended

- (1) This section amends the *Sentencing Act 1995*.
- (2) In section 97A(1) in the definition of **offence** delete “*Sentence Administration Act 2003* Schedule 4;” and insert:

High Risk Serious Offenders Act 2020 Schedule 1;

- (3) Delete section 97A(2) and (3) and insert:

(2) This section applies if —

- (a) a court is sentencing an offender to imprisonment for an indictable offence; and
- (b) the offence —
 - (i) involved the use of, or counselling or procuring the use of, or conspiring or attempting to use, a firearm against another person; or
 - (ii) involved the use of, or counselling or procuring the use of, or conspiring or attempting to use, serious violence against another person; or

- (iii) resulted in serious harm to, or the death of, another person.
- (3) The sentencing court may declare the offence committed by the offender to be a serious offence for the purposes of —
- (a) the *High Risk Serious Offenders Act 2020*; and
- (b) the *Sentence Administration Act 2003* Part 5A.

121. Various references to *Dangerous Sexual Offenders Act 2006* replaced

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “*Dangerous Sexual Offenders Act 2006*” and insert:

High Risk Serious Offenders Act 2020

Table

<i>Children and Community Services Act 2004</i>	s. 24A(1)(d)(i)
<i>Community Protection (Offender Reporting) Act 2004</i>	s. 80(2)(d)
<i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013</i>	s. 6(1)(h)
<i>Evidence Act 1906</i>	s. 36C(5)(b)
<i>Sentencing Act 1995</i>	s. 8(2)

High Risk Serious Offenders Act 2020

Part 9 Consequential amendments to other Acts

Division 5 Other Acts amended

s. 121

	s. 98(3)(aa)
<i>Young Offenders Act 1994</i>	s. 189(7)(c) s. 190(2A)

Part 10 — Repeal and transitional provisions

122. Terms used

In this Part —

commencement day means the day on which this section comes into operation;

repealed Act means the *Dangerous Sexual Offenders Act 2006*.

123. Act repealed

The *Dangerous Sexual Offenders Act 2006* is repealed.

124. Completion of things commenced

- (1) If an application to court made, appeal lodged, or other proceedings taken, under a provision of the repealed Act has not been finally determined by commencement day, the application, appeal or proceedings —
 - (a) continues; and
 - (b) may be determined under this Act; and
 - (c) for the purposes of determining it under this Act is taken to have been made, lodged or taken under the corresponding provision of this Act.
- (2) An application made, appeal lodged, or other proceedings taken, by the Director of Public Prosecutions under a provision of the repealed Act which continues under subsection (1) may be continued —
 - (a) by or under the authority of the Attorney General as provided in section 11; or
 - (b) by the Director of Public Prosecutions as provided in section 7A of the repealed Act.

s. 125

125. Continuing effect of things done

If an order made, direction given or summons or warrant issued under a provision of the repealed Act is in effect on commencement day, the order, direction, summons or warrant —

- (a) continues in effect; and
- (b) is taken to have been made, given or issued under the corresponding provision of this Act.

Schedule 1 — Serious offences

[s. 5(1)]

Division 1 — Offences that are serious offences in all circumstances

Subdivision 1 — Offence under the *Bush Fires Act 1954*

Item	Provision	Description of offence
1.	s. 32	Lighting or attempting to light fire likely to injure

Subdivision 2 — Offence under the *Children and Community Services Act 2004*

Item	Provision	Description of offence
1.	s. 192	Employing child to perform in indecent, obscene or pornographic manner

Subdivision 3 — Offences under *The Criminal Code*

Item	Provision	Description of offence
1.	s. 186	Occupier or owner allowing young person to be on premises for unlawful carnal knowledge
2.	s. 187	Facilitating sexual offence against child outside WA
3.	s. 204A	Showing offensive material to child under 16
4.	s. 204B	Using electronic communication to procure, or expose to indecent matter, child under 16
5.	s. 217	Involving child in child exploitation
6.	s. 218	Producing child exploitation material

High Risk Serious Offenders Act 2020**Schedule 1** Serious offences**Division 1** Offences that are serious offences in all circumstances

Item	Provision	Description of offence
7.	s. 219	Distributing child exploitation material
8.	s. 220	Possession of child exploitation material
9.	s. 279	Murder
10.	s. 280	Manslaughter
11.	s. 281	Unlawful assault causing death
12.	s. 283	Attempt to unlawfully kill
13.	s. 294	Act intended to cause grievous bodily harm or prevent arrest
14.	s. 297	Grievous bodily harm
15.	s. 304(2)	Act or omission causing bodily harm or danger, done with intent to harm
16.	s. 320	Sexual offence against child under 13
17.	s. 321	Sexual offence against child of or over 13 and under 16
18.	s. 321A	Persistent sexual conduct with child under 16
19.	s. 322	Sexual offence against child of or over 16 by person in authority
20.	s. 324	Aggravated indecent assault
21.	s. 325	Sexual penetration without consent
22.	s. 326	Aggravated sexual penetration without consent
23.	s. 327	Sexual coercion

Item	Provision	Description of offence
24.	s. 328	Aggravated sexual coercion
25.	s. 329	Sexual offence by relative or the like
26.	s. 330	Sexual offence against incapable person
27.	s. 331B	Sexual servitude
28.	s. 331C	Conducting business involving sexual servitude
29.	s. 331D	Deceptive recruiting for commercial sexual service
30.	s. 332	Kidnapping
31.	s. 333	Deprivation of liberty
32.	s. 338E	Stalking
33.	s. 343	Child stealing
34.	s. 392	Robbery
35.	s. 393	Assault with intent to rob
36.	s. 445A	Breach of duty of person in control of ignition source or fire

Subdivision 4 — Offences under the *Prostitution Act 2000*

Item	Provision	Description of offence
1.	s. 7	Seeking to induce person to act as prostitute
2.	s. 16	Causing, permitting, or seeking to induce child to act as prostitute
3.	s. 17	Obtaining payment for prostitution by child

High Risk Serious Offenders Act 2020**Schedule 1** Serious offences**Division 2** Offences that are serious offences if committed in specified circumstances

Item	Provision	Description of offence
4.	s. 18	Agreement for prostitution by child

Subdivision 5 — Offence under the *Road Traffic Act 1974*

Item	Provision	Description of offence
1.	s. 59	Dangerous driving causing death or grievous bodily harm

Subdivision 6 — Offences under *Western Australian Marine Act 1982*

[Heading inserted: No. 31 of 2023 s. 35(2).]

Item	Provision	Description of offence
1.	s. 75B(1)	Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug
2.	s. 75B(2)	Dangerous navigation of vessel occasioning death
3.	s. 75BA(1)	Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug
4.	s. 75BA(2)	Dangerous navigation of vessel occasioning grievous bodily harm

[Division 1 amended: No. 31 of 2023 s. 35(2).]

Division 2 — Offences that are serious offences if committed in specified circumstances**Subdivision 1 — Offence under *The Criminal Code***

Item	Provision	Description	Circumstances in which a serious offence
<i>[1. Has not come into operation.]</i>			

High Risk Serious Offenders Act 2020

Serious offences

Schedule 1

Offences that are serious offences if committed in specified
circumstances

Division 2

Item	Provision	Description	Circumstances in which a serious offence
2.	s. 444	Criminal damage	If within s. 444(1)(a) (criminal damage by fire)

Subdivision 2 — Offence under the *Prostitution Act 2000*

Item	Provision	Description	Circumstances in which a serious offence
1.	s. 5	Seeking prostitute in or near public place	If within s. 5(2) (seeking a child)

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Notes

This is a compilation of the *High Risk Serious Offenders Act 2020* and includes amendments made by other written laws. 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> (other than Sch. 1 Div. 2 Subdiv. 1 it. 1)	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)); Pt. 2-7, Pt. 8 (other than s. 91), Pt. 9 and 10 and Sch. 1 (other than Sch. 1 Div. 2 Subdiv. 1 it. 1): 26 Aug 2020 (see s. 2(1)(c) and SL 2020/131 cl. 2)
<i>Western Australian Marine Amendment Act 2023</i> s. 35	31 of 2023	11 Dec 2023	21 Dec 2023 (see s. 2(c) and SL 2023/202 cl. 2(a))

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> Sch. 1 Div. 2 Subdiv. 1 it. 1	29 of 2020	9 Jul 2020	To be proclaimed (see s. 2(1)(c))
<i>Criminal Law (Mental Impairment) Act 2023</i> Pt. 15 Div. 17	10 of 2023	13 Apr 2023	To be proclaimed (see s. 2(b))

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)
applying agency	34
appointed member.....	16
approved	31(1)
audio link	86(1)
Board.....	3
CEO	3
chief employee	16
chief executive officer.....	16
Chief Psychiatrist	16
commencement day	122
committing	3, 6
community	3, 4
community corrections officer	3
community member	16
continuing detention order	3, 26(1)
criminal record	3
current order.....	36(1)
Department.....	3
disclosure requirement	42(1)
evidentiary material	34, 39(4)
expert evidence material	41(1)
first agency	25(1)
found not mentally fit.....	79(1)
high risk serious offender.....	3, 7(1)
interim supervision order	3
make available	59
make public.....	30(1)
member	16
new evidentiary material	39(2)
offender	3
official member.....	16
pending proceedings	56(1), 58(2)
preliminary hearing.....	3
protected person	88(1)
psychiatrist	3
public sector body.....	3
qualified expert	3
qualified psychologist	3
relevant agency	3

Defined terms

relevant application	59
relevant proceeding	83(1), 84(1)
repealed Act	122
report	72
reporter	72
restriction order	3
restriction order application	3
second agency	25(1)
serious offence	3, 5(1), (2), (3), (4), (5) and (6)
serious offender functions	3
serious offender under custodial sentence	3
serious offender under restriction	3
specified	32(1), 58(1)
standard condition	3
subject	72
supervision order	3, 27(1)
supporting agency	3
under a custodial sentence	3
victim	3
victim submission	3
video link	86(1)

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