

Dangerous Sexual Offenders Legislation Amendment Bill 2015

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Western Australia

LEGISLATIVE COUNCIL

(As amended in Committee)

Dangerous Sexual Offenders Legislation Amendment Bill 2015

A Bill for

An Act to amend —

- **the *Dangerous Sexual Offenders Act 2006*; and**
- **the *Criminal Procedure Act 2004*; and**
- **the *Evidence Act 1906*; and**
- **the *Prisons Act 1981*; and**
- **the *Sentence Administration Act 2003*; and**
- **the *Sentencing Act 1995*; and**
- **the *Young Offenders Act 1994*.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Dangerous Sexual Offenders Legislation Amendment Act 2015*.

2. Commencement

This Act comes into operation as follows —

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

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- 1 **qualified expert** means —
- 2 (a) a psychiatrist; or
- 3 (b) a qualified psychologist;
- 4 **qualified psychologist** means a psychologist holding a
- 5 qualification or accreditation prescribed for the
- 6 purposes of this definition;
- 7 **serious sexual offence** means —
- 8 (a) a serious sexual offence as defined in the
- 9 *Evidence Act 1906* section 106A; or
- 10 (b) an offence of conspiracy or incitement to
- 11 commit an offence referred to in paragraph (a);
- 12 or
- 13 (c) an offence against a law of the Commonwealth,
- 14 of another State or of a Territory that is
- 15 prescribed to correspond to an offence
- 16 described in paragraph (a) or (b);
- 17 **supervision order** means an order under
- 18 section 17(1)(b) or 33(1)(b)(ii);
- 19 **under a custodial sentence** means —
- 20 (a) under a sentence of imprisonment imposed by a
- 21 court of Western Australia (including an
- 22 indefinite sentence imposed under the
- 23 *Sentencing Act 1995* section 98(1)) or an
- 24 indeterminate sentence imposed under *The*
- 25 *Criminal Code* section 661 or 662; or
- 26 (b) under a sentence of imprisonment imposed
- 27 under a law of the Commonwealth; or
- 28 (c) under a sentence of imprisonment that under
- 29 the *Prisoners (Interstate Transfer) Act 1983*
- 30 section 25(1) is deemed to have been imposed
- 31 by a court of Western Australia; or
- 32 (d) under a sentence of detention under the *Young*
- 33 *Offenders Act 1994* for an offence committed

1 after the offender had reached 16 years of age,
2 the term of which has not elapsed;

3 *victim* means a person upon whom a serious sexual
4 offence has been committed by a person who is or has
5 been an offender;

6 *victim submission* means a submission made under
7 section 17A(3) or (4).
8

9 **5. Section 4A inserted**

10 After section 3 insert:
11

12 **4A. When a person commits a serious sexual offence**

13 (1) For the purposes of this Act, unless the contrary
14 intention appears, a person commits a serious sexual
15 offence if the person —

16 (a) does an act or makes an omission in any State
17 or Territory that constitutes a serious sexual
18 offence; or

19 (b) does an act or makes an omission outside
20 Australia that, if done within this State, would
21 constitute a serious sexual offence.

22 (2) For the purposes of subsection (1), it makes no
23 difference —

24 (a) whether the person doing the act or making the
25 omission would be likely to be charged with an
26 offence; or

27 (b) whether the person doing the act or making the
28 omission would, if charged with an offence, be
29 found mentally fit to stand trial; or

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1 (c) whether the person doing the act or making the
2 omission would, if tried for an offence, be
3 convicted.
4

5 **6. Section 4 amended**

6 In section 4(a) delete “community; and” and insert:

7

8 community and of victims; and

9

10 **7. Section 7A inserted**

11 After section 6 insert:

12

13 **7A. DPP may take proceedings in the name of the State**

14 The DPP may make applications, and take other
15 proceedings, for which this Act provides in the name of
16 the State.
17

18 **8. Section 7 amended**

19 After section 7(3) insert:

20

21 (4) In considering whether it is satisfied as required in
22 subsection (1), the court must disregard the possibility
23 that the person might temporarily be prevented from
24 committing a serious sexual offence by imprisonment,
25 by remand in custody or by the imposition of bail
26 conditions.
27

1 **9. Section 8 amended**

2 (1) Delete section 8(1) and insert:

3

4 (1) The DPP may file with the Supreme Court an
5 application for orders under section 14 and for a
6 Division 2 order in relation to a person (the
7 *offender*) —

8 (a) who is under a custodial sentence for a serious
9 sexual offence; or

10 (b) who has been under a custodial sentence for a
11 serious sexual offence and who, at all times
12 since being discharged from that sentence, has
13 been under a custodial sentence for another
14 offence or other offences.

15 (2A) An application under subsection (1) need not specify
16 whether the Division 2 order sought is a continuing
17 detention order or a supervision order under
18 section 17(1)(b).
19

20 (2) In section 8(2) delete “the person under sentence of
21 imprisonment” and insert:

22

23 the offender
24

25 (3) In section 8(3):

26 (a) delete “the person under sentence of imprisonment” and
27 insert:

28

29 the offender
30

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- 1 (b) delete “the application cannot” and insert:
2
3 an application under subsection (1) cannot
4
5 (c) delete “person might” and insert:
6
7 offender might
8
9 (d) delete “6 months” and insert:
10
11 one year
12
13 (4) Delete section 8(4) and insert:
14
15 (4A) If —
16 (a) an offender is subject to a supervision order
17 (the *current order*); and
18 (b) the current order is to expire within one year,
19 the DPP may file with the Supreme Court an
20 application for orders under section 14 and for a further
21 supervision order under section 17(1)(b) in relation to
22 the offender, the further order to take effect on the
23 expiry of the current order.
24 (4) An application filed under this section must be
25 accompanied by any affidavits to be relied on by the
26 DPP for the purpose of seeking an order or orders
27 under section 14.
28
29 (5) In section 8(6) delete “subsection (1),” and insert:
30
31 this section,
32

1 **10. Section 10A inserted**

2 After section 9 insert:

3

4 **10A. Offender's duty to disclose**

5 (1) In this section —

6 *expert evidence material* relevant to an application
7 means —

8 (a) a copy of every statement, recording or report
9 obtained by the offender from any person who
10 the offender intends to call to give expert
11 evidence that is relevant to the application; and

12 (b) written notice of the name and, if known, the
13 address, of any person from whom no
14 statement, recording or report has been
15 obtained by the offender but who the offender
16 intends to call to give expert evidence that is
17 relevant to the application; and

18 (c) a written description of the expert evidence
19 referred to in paragraph (b).

20 (2) This section applies to an application for a Division 2
21 order.

22 (3) Subject to subsection (5), at least 14 days before the
23 day fixed under section 14 for the hearing of the
24 application the offender must file with the court and
25 give to the DPP a copy of —

26 (a) any expert evidence material relevant to the
27 application; and

28 (b) written notice of any objection by the offender
29 to —

30 (i) any document that the DPP intends to
31 adduce at the hearing of the application;
32 or

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- 1 (ii) any evidence to be given by a witness
2 that the DPP intends to call at the
3 hearing of the application;
4 and
5 (c) written notice of the grounds for any objection
6 mentioned in paragraph (b).
- 7 (4) If, after complying with subsection (3), an offender
8 receives or obtains further expert evidence material
9 relevant to the application, the offender must file it
10 with the court and give it to the DPP as soon as
11 practicable.
- 12 (5) In respect of a requirement arising under subsection (3)
13 or (4), the court may on its own initiative or on the
14 application of either party to the application make an
15 order —
- 16 (a) that dispenses with all or part of the
17 requirement, if it is satisfied —
- 18 (i) there is a good reason to do so; and
19 (ii) no miscarriage of justice will result;
- 20 or
- 21 (b) that shortens or extends the time for obeying
22 the requirement; or
- 23 (c) that amends or cancels an order made
24 previously under this section; or
- 25 (d) as to any other matter that the court considers is
26 just.
27

1 **11. Section 10 replaced**

2 Delete section 10 and insert:

3

4 **10. Application may proceed even if offender**
5 **discharged**

6 An application under section 8 may proceed and the
7 offender may be dealt with in accordance with this Act
8 even if, while the application is pending —

9 (a) in the case of an application under section 8(1),
10 the offender ceases to be under a custodial
11 sentence; or

12 (b) in the case of an application under
13 section 8(4A), the offender ceases to be subject
14 to a supervision order.
15

16 **12. Section 11 amended**

17 Delete section 11(2).

18 **13. Section 14 amended**

19 (1) In section 14(1) delete “must” and insert:

20

21 must, subject to subsection (2A),
22

23 (2) After section 14(1) insert:

24

25 (2A) If —

26 (a) the offender has been charged with a further
27 offence; and

28 (b) that charge has not been dealt with; and

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- 1 (c) the court considers that the interests of justice
2 require that the application for a Division 2
3 order should not be heard until that charge has
4 been dealt with,
- 5 the court may defer fixing a day for the hearing of the
6 application, or if it has already fixed a day adjourn the
7 hearing of the application, until after the further charge
8 has been dealt with.
9
- 10 (3) Delete section 14(2)(a) and insert:
11
- 12 (a) the court must order that the offender undergo
13 examinations by 2 qualified experts named by
14 the court, at least one of whom is to be a
15 psychiatrist, for the purposes of preparing
16 reports in accordance with section 37 to be used
17 on the hearing of the application; and
- 18 (ba) the court may, on the application of the DPP or
19 of the offender, order that a person or body
20 named by the court prepare a report in
21 accordance with section 38A to be used on the
22 hearing of the application on questions or topics
23 set out in the order; and
24
- 25 **14. Section 15 deleted**
26 Delete section 15.
- 27 **15. Section 16 amended**
28 Delete section 16(3) and insert:
29
- 30 (3) When an application is taken to be dismissed under
31 subsection (2), any order under section 14(2)(b)
32 relating to the offender is discharged.
33

1 **16. Section 17A inserted**

2 At the end of Part 2 Division 1 insert:

3

4 **17A. Victim submissions**

5 (1) In this section —

6 *make available* means make available to an offender or
7 to a person acting on behalf of, or representing, the
8 offender.

9 (2) This section applies to —

10 (a) an application under section 8(1) for a
11 Division 2 order; and

12 (b) an application under section 8(4A) for an order
13 under section 17(1)(b); and

14 (c) an application under section 19 to amend the
15 conditions of a supervision order; and

16 (d) an application under section 22 for an order
17 under section 23; and

18 (e) an application under section 29 or 30 for the
19 review of a person's detention.

20 (3) Where an application to which this section applies is
21 made in relation to a person, a victim of that person
22 may make a submission to the court in relation to the
23 need to ensure adequate protection of the victim.

24 (4) If because of age, disability or any other reason a
25 victim is personally incapable of making a submission,
26 another person may make it on the victim's behalf if
27 the court is satisfied that it is appropriate for that other
28 person to do so.

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- 1 (5) A victim submission must be in writing.
- 2 (6) At the hearing of an application to which this section
3 applies, the court must make available any victim
4 submission made if —
- 5 (a) the court considers that making available the
6 submission is essential in the interests of
7 fairness and justice; and
- 8 (b) the victim making the submission has
9 consented to its being made available; and
- 10 (c) the court has afforded the victim making the
11 submission an opportunity —
- 12 (i) to amend the submission before it is
13 made available; or
- 14 (ii) to withdraw the submission.
- 15 (7) Subject to subsections (8), (9) and (10), in considering
16 an application to which this section applies, the court
17 can have regard to any victim submission made.
- 18 (8) If a victim submission is not made available at the
19 hearing because the victim making the submission has
20 not consented, the court must not have regard to the
21 submission.
- 22 (9) The court must not have regard to a victim submission
23 that has been withdrawn.
- 24 (10) If the victim making a submission has amended the
25 submission, the court must have regard only to the
26 amended submission.
27

1 **17. Section 17 amended**

2 (1) In section 17(1):

3 (a) delete “may —” and insert:

4

5 must —

6

7 (b) delete paragraph (b) and insert:

8

9 (b) order that, with effect from a stated date not
10 earlier than 21 days after the date the order is
11 made, and continuing for a stated period, the
12 offender, when not in custody, is to be subject
13 to stated conditions that the court, subject to
14 section 18, considers appropriate.

15

16 (2) After section 17(2) insert:

17

18 (3) A court hearing an application under section 8(4A)
19 must not make an order under subsection (1)(a).

20

21 **18. Section 18 amended**

22 (1) Before section 18(1) insert:

23

24 (1A) In this section —

25 *make public* means —

26 (a) provide to any representative of the news media
27 for publication or broadcast; or

28 (b) make publicly available by means of the
29 internet.

30

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- 1 (2) After section 18(1) insert:
2
- 3 (2A) If the court makes a supervision order against a person,
4 the order may require that the person not make public
5 any statement, information or opinion relating directly
6 or indirectly to any victim of an offence committed by
7 the person.
- 8 (2B) When considering whether to impose a requirement
9 under subsection (2A) the court must have regard to —
- 10 (a) the gravity and nature of the person’s offences;
11 and
- 12 (b) the likely impact on the victims of the person
13 providing or making available any statement,
14 information or opinion; and
- 15 (c) the public interest generally.
16
- 17 (3) In section 18(2):
- 18 (a) delete “The supervision” and insert:
19
20 A supervision
21
- 22 (b) in paragraph (b) delete “order.” and insert:
23
24 order; or
25
- 26 (c) after paragraph (b) insert:
27
28 (c) to ensure adequate protection of victims of
29 offences committed by the person subject to the
30 order.
31

1 (4) In section 18(3) delete “the supervision” and insert:

2

3 a supervision

4

5 **19. Section 23A replaced**

6 Delete section 23A and insert:

7

8 **23A. Reports**

9 After an application is made under section 22 in
10 relation to a person the Supreme Court —

- 11 (a) may order that the person undergo examination
12 by one or more qualified experts named by the
13 court for the purposes of preparing a report in
14 accordance with section 37; and
- 15 (b) on the application of the DPP or of the person,
16 may order that a person or body named by the
17 court prepare a report in accordance with
18 section 38A on questions or topics set out in the
19 order.

20

21 **20. Section 23 amended**

22 (1) Delete section 23(1)(a) and (b) and insert:

23

- 24 (a) make an order amending the conditions of the
25 supervision order, or extending the period for
26 which the offender is to be subject to the
27 conditions of the supervision order, or both; or
- 28 (b) if the court is also satisfied that there is an
29 unacceptable risk that, if an order under this
30 paragraph were not made, the person would
31 commit a serious sexual offence, make a

s. 21

1 continuing detention order in relation to the
2 person; or

3 (c) make no order.
4

5 (2) After section 23(1) insert:
6

7 (2A) In considering whether it is satisfied as required in
8 subsection (1)(b), the court must disregard the
9 possibility that the person might temporarily be
10 prevented from committing a serious sexual offence by
11 imprisonment, by remand in custody or by the
12 imposition of bail conditions.
13

14 (3) In section 23(2) delete “subsection (1)(a) or (b),” and insert:
15

16 subsection (1),
17

18 **21. Section 24A amended**

19 After section 24A(3) insert:
20

21 (4A) For the purposes of subsection (3), in considering
22 whether releasing the person is justified by exceptional
23 circumstances the court may, as it thinks fit, receive
24 and take into account information put before it,
25 whether or not that information would normally be
26 admissible in a court of law.
27

28 **22. Section 24 amended**

29 In section 24(1) delete “other than a sexual offence as defined in
30 the *Evidence Act 1906* section 36A,”.

1 **23. Part 3 heading amended**

2 In the heading to Part 3 delete “**Annual reviews**” and
3 insert:

4
5 **Reviews**
6

7 **24. Section 29 amended**

8 (1) In section 29(1) delete “must” and insert:

9

10 may
11

12 (2) In section 29(2):

13 (a) delete “Reviews have to be” and insert:

14

15 The DPP must apply under subsection (1) so as to
16 ensure that reviews are
17

18 (b) in paragraph (a) before “order” insert:

19

20 continuing detention
21

22 (c) in paragraph (b) delete “1 year” and insert:

23

24 2 years
25

26 (3) After section 29(2) insert:
27

28 (3) The periods mentioned in subsection (2)(a) and (b) are
29 extended by any period during which the person is in
30 custody serving a sentence of imprisonment.

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1 **25. Section 30 amended**

2 In section 30(3) delete “after the detention has been reviewed
3 under section 29(2)(a).” and insert:

4
5 at least one year after the last occasion on which the person’s
6 detention has been reviewed under section 29(2)(b).

7
8 **26. Section 31 amended**

9 (1) In section 31(2) delete “The application” and insert:

10
11 Subject to subsection (3), the application

12
13 (2) After section 31(2) insert:

14
15 (3) The court may adjourn the hearing of the application,
16 and the carrying out of the review, where good cause is
17 shown.

18
19 **27. Section 32 replaced**

20 Delete section 32 and insert:

21
22 **32. Reports**

23 (1) Unless the court otherwise orders, the chief executive
24 officer must engage one or more qualified experts to
25 prepare reports in accordance with section 37 to be
26 used on a review under this Part.

27 (2) On the application of the DPP or the person whose
28 detention is to be reviewed, the court may order the
29 chief executive officer to engage a person or body

1 named by the court to prepare a report in accordance
2 with section 38A on questions or topics set out in the
3 order.
4

5 **28. Section 33 amended**

6 (1) Delete section 33(1) and (2) and insert:
7

8 (1) On a review of a person’s detention under
9 section 31 —

- 10 (a) if the court does not find that the person
11 remains a serious danger to the community it
12 must rescind the continuing detention order; or
13 (b) if the court finds that the person remains a
14 serious danger to the community it must —
15 (i) affirm the continuing detention order; or
16 (ii) with effect from a date specified by the
17 court, but not earlier than 21 days after
18 the day on which the review is
19 concluded, rescind the continuing
20 detention order and make a supervision
21 order in relation to the person.
22

23 (2) In section 33(3) delete “subsection (2),” and insert:
24

25 subsection (1)(b),
26

27 **29. Section 34 amended**

28 (1) In section 34 delete “The DPP” and insert:
29

30 (1) The DPP
31

s. 30

1 (2) At the end of section 34 insert:

2

3 (2) Unless the Court of Appeal orders otherwise, an appeal
4 under subsection (1) cannot be commenced later than
5 21 days after the date of the decision.
6

7 **30. Section 35 amended**

8 In section 35(2) delete “the Court of Appeal might, in finally
9 determining the appeal,” and insert:

10

11 the final determination of the appeal might result in an
12

13 **31. Part 5 heading replaced**

14 Delete the heading to Part 5 and insert:

15

16 **Part 5 — Reports**
17

18 **32. Sections 37A and 37B inserted**

19 At the beginning of Part 5 insert:
20

21 **37A. Terms used**

22 In this Part, unless the contrary intention appears —

23 **report** means a report prepared under section 14(2)(a)
24 or (ba), 23A(a) or (b) or 32(1) or (2);

25 **reporter** means —

26 (a) a qualified expert ordered or engaged to
27 provide a report in relation to a person under
28 section 37; or

1 (b) a person or body ordered or engaged to provide
2 a report in relation to a person under
3 section 38A;

4 **subject** means a person in relation to whom a report is
5 to be prepared in accordance with section 37 or 38A.

6 **37B. Authority to examine**

7 This section authorises a reporter to examine a subject
8 and to report in accordance with section 37 or 38A.
9

10 **33. Section 37 replaced**

11 Delete section 37 and insert:
12

13 **37. Preparation of report by qualified expert**

14 (1) A qualified expert ordered or engaged to provide a
15 report in relation to a person under this section must —

- 16 (a) examine the subject; and
17 (b) prepare an independent report.

18 (2) The report must indicate —

- 19 (a) the reporter's assessment of the level of risk
20 that, if the subject were not subject to a
21 continuing detention order or a supervision
22 order, the subject would commit a serious
23 sexual offence; and

24 (b) the reasons for the reporter's assessment.

25 (3) The reporter must have regard to any report or
26 information given under section 38(1).

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

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- 1 **38A. Preparation of other report**
- 2 (1) A person or body ordered or engaged to provide a
3 report in relation to a person under this section must —
- 4 (a) examine the subject, if in their opinion
5 examination is necessary or desirable having
6 regard to the questions and topics to be
7 addressed in the report; and
- 8 (b) prepare an independent report.
- 9 (2) The report must —
- 10 (a) set out the reporter’s opinion on all questions
11 and topics specified in the order or engagement
12 for its preparation; and
- 13 (b) the basis for that opinion.
- 14 (3) The reporter must have regard to any report or
15 information given under section 38(2A).
- 16 (4) The reporter must prepare the report even if the subject
17 does not cooperate, or does not cooperate fully, in any
18 examination the reporter considers necessary or
19 desirable.
- 20

21 **34. Section 38 amended**

- 22 (1) Delete section 38(1) and insert:
- 23
- 24 (1) Subject to subsection (2B), the chief executive officer
25 must give to a reporter preparing a report under
26 section 37 any medical, psychiatric, prison or other
27 relevant report or information relating to the subject
28 that is in the chief executive officer’s possession or to
29 which the chief executive officer has, or may be given,
30 access.
- 31 (2A) Subject to subsection (2B), the chief executive officer
32 must give to a reporter preparing a report under

- 1 section 38A any medical, psychiatric, prison or other
2 relevant report or information relevant to the questions
3 and topics to be addressed in the report —
- 4 (a) that is in the chief executive officer’s
5 possession or to which the chief executive
6 officer has, or may be given, access; and
- 7 (b) that the reporter considers it necessary or
8 desirable to consider, having regard to the
9 questions and topics to be addressed in the
10 report.
- 11 (2B) Before giving any document to a reporter under
12 subsection (1) or (2A) the chief executive officer may
13 edit the document to remove or erase any material —
- 14 (a) that would identify any person other than the
15 subject; or
- 16 (b) where a report is to be prepared under
17 section 37, that does not relate to the subject; or
- 18 (c) where a report is to be prepared under
19 section 38A, that is not relevant to the questions
20 and topics to be addressed in the report.
21
- 22 (2) In section 38(2) delete “psychiatrist under subsection (1).” and
23 insert:
24
- 25 reporter under subsection (1) or (2A).
26
- 27 (3) In section 38(3) delete “the person to be examined” and insert:
28
- 29 the subject
30
- 31 Note: The heading to amended section 38 is to read:
32 **Providing information to reporter**

s. 35

1 **35. Section 39 replaced**

2 Delete section 39 and insert:

3

4 **39. Copies of report to DPP and subject**

5 (1) A reporter who prepares a report under section 37 or
6 38A must give a copy of the report to the DPP within
7 7 days after finalising the report.

8 (2) Before the end of the day after the day on which the
9 DPP receives a report under subsection (1), the DPP
10 must give a copy of the report to the subject.
11

12 **36. Section 40AA inserted**

13 At the beginning of Part 6 insert:

14

15 **40AA. Mentally unfit offender**

16 (1) In this section —

17 *found not mentally fit* means found not mentally fit to
18 stand trial under the *Criminal Law (Mentally Impaired*
19 *Accused) Act 1996*.

20 (2) A court may make an order under this Act in respect of
21 an offender even if the offender —

22 (a) has been found not mentally fit; or

23 (b) if charged with an offence, would be likely to
24 be found not mentally fit.
25

26 **37. Section 40 amended**

27 (1) In section 40 delete “Proceedings” and insert:

28

29 (1) Proceedings

1 (2) At the end of section 40 insert:

2

3 (2) Subsection (1) does not require anything that is to be
4 evidenced for the purposes of this Act to be evidenced
5 to a higher standard than is required by section 7(2).
6

7 **38. Section 41 amended**

8 (1) Before section 41(1) insert:

9

10 (1A) In this section —

11 *relevant proceeding* means judicial proceeding for —

12 (a) a serious sexual offence; or

13 (b) another offence that the court considers
14 relevant, having regard to the matter for
15 decision before the court.
16

17 (2) Delete section 41(3)(b) and insert:

18

19 (b) anything relevant contained in the official
20 transcript of any relevant proceeding against
21 the offender or person subject to the order; or

22 (c) any relevant material that was tendered to the
23 court, or that informed the court, in a relevant
24 proceeding against the offender or person
25 subject to the order; or

26 (d) any relevant material of the kind mentioned in
27 section 7(3) relating to the offender or person
28 subject to the order.
29

s. 39

1 **39. Section 42 amended**

2 (1) Before section 42(1) insert:

3

4 (1A) In this section —

5 *relevant proceeding* means judicial proceeding for —

6 (a) a serious sexual offence; or

7 (b) another offence that the court considers
8 relevant, having regard to the matter for
9 decision before the court.

10

11 (2) Delete section 42(4)(b) and insert:

12

13 (b) anything relevant contained in the official
14 transcript of any relevant proceeding against a
15 person; or

16 (c) any relevant material that was tendered to the
17 court, or that informed the court, in a relevant
18 proceeding against a person; or

19 (d) any relevant material of the kind mentioned in
20 section 7(3) relating to a person.

21

22 **40. Section 43 amended**

23 In section 43 delete “directions in relation to the conduct of a
24 proceeding under this Act.” and insert:

25

26 directions —

27 (a) with respect to evidence received or to be
28 received under section 42(4); or

29 (b) otherwise in relation to the conduct of a
30 proceeding under this Act.

31

1 **41. Section 44 amended**

2 (1) Before section 44(1) insert:

3

4 (1A) In this section —

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

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

9

10 (2) After section 44(2) insert:

11

12 (3) The court may direct that a person entitled under this
13 section to appear is to appear by means of a video link
14 or an audio link.

15

16 **42. Section 46A amended**

17 (1) In section 46A(1) in the definition of *protected person* delete
18 paragraph (c) and insert:

19

20 (c) a qualified expert ordered or engaged to
21 provide a report under section 37; or

22 (d) a person or body ordered or engaged to provide
23 a report under section 38A.

24

25 (2) In section 46A(3) delete “An action in tort” and insert:

26

27 A civil action

28

s. 43

1 **43. Section 46B inserted**

2 After section 46A insert:

3

4 **46B. Exchange of information**

5 (1) In this section —

6 **agency** means —

- 7 (a) the Department that principally assists the
8 Minister administering this Act; and
- 9 (b) the Department that principally assists the
10 Minister administering the *Prisons Act 1981*;
11 and
- 12 (c) the Office of the Director of Public
13 Prosecutions; and
- 14 (d) the Police Force of Western Australia provided
15 for by the *Police Act 1892*; and
- 16 (e) the Department designated as the Police
17 Service; and
- 18 (f) the Board;

19 **head** means —

- 20 (a) in relation to the Department that principally
21 assists the Minister administering this Act, the
22 chief executive officer of that Department; and
- 23 (b) in relation to the Department that principally
24 assists the Minister administering the *Prisons*
25 *Act 1981*, the chief executive officer of that
26 Department; and
- 27 (c) in relation to the Office of the Director of
28 Public Prosecutions, the DPP; and
- 29 (d) in relation to the Police Force of Western
30 Australia and the Department designated as the
31 Police Service, the Commissioner of Police;
32 and

- 1 (e) in relation to the Board, the chairperson of the
2 Board;
- 3 *officer* includes, in relation to the Office of the
4 Director of Public Prosecutions, a member of the staff
5 appointed or made available for the performance of the
6 functions of the DPP.
- 7 (2) For the purpose of implementing the provisions of this
8 Act the head of an agency or an officer of an agency
9 authorised to do so by the head may disclose to an
10 officer of another agency information that is, or could
11 reasonably be expected to be, relevant to the
12 performance of a function under this Act.
- 13 (3) A person may disclose information under this section
14 even though the disclosure may be contrary to any duty
15 of confidentiality imposed by law or otherwise arising
16 and whether or not the duty of confidentiality arose
17 before this Act commenced but, without limiting the
18 authority given by this section to disclose information,
19 a person to whom confidential information is disclosed
20 under this section is bound by the same duty of
21 confidentiality as applied to the person making the
22 disclosure.
- 23 (4) A person disclosing information under this section
24 incurs no civil or criminal liability as a result of the
25 disclosure, and is not to be regarded for any purpose as
26 being in breach of any duty of confidentiality.
27

28 **44. Various uses of term “has to” amended**

29 In the provisions listed in the Table delete “has to” (each
30 occurrence) and insert:

31
32 must
33

s. 44

1

Table

s. 7(1) and (2)	s. 8(5)
s. 19(2) and (3)	s. 20(2)
s. 21(2)	s. 31(1)

1 **Part 3 — *Criminal Procedure Act 2004* amended**

2 **45. Act amended**

3 This Part amends the *Criminal Procedure Act 2004*.

4 **46. Section 51 amended**

5 (1) In section 51(4) delete “The hearing” and insert:

6

7 Except as provided in subsection (5A), the hearing

8

9 (2) After subsection (4) insert:

10

11 (5A) On the hearing under subsection (3) of a charge under
12 the *Dangerous Sexual Offenders Act 2006* section 40A
13 the accused is required to appear before the court —

14 (a) in person; or

15 (b) by means of a video link or audio link in
16 accordance with section 77 or 141.
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Part 4 — Evidence Act 1906 amended

47. Act amended

This Part amends the *Evidence Act 1906*.

48. Section 36C amended

Delete section 36C(5) and insert:

- (5) Nothing in this section prohibits the publication or broadcasting, in consequence of an accusation alleging a sexual offence, of matter consisting only of a report of legal proceedings other than —
 - (a) proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence; or
 - (b) proceedings under the *Dangerous Sexual Offenders Act 2006* relating to the accused.
- (6A) The giving of leave under this section does not affect the operation of subsection (1) at any time before the leave is given.

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Part 5 — *Prisons Act 1981* amended

49. Act amended

This Part amends the *Prisons Act 1981*.

50. Section 113B amended

After section 113B(1)(a) insert:

- (ba) a person who has suffered injury, loss or damage as a direct result of a serious sexual offence (as defined in the *Dangerous Sexual Offenders Act 2006* section 3(1)) committed by the prisoner, whether or not that injury, loss or damage was reasonably foreseeable by the prisoner; or

s. 51

1 **Part 6 — *Sentence Administration Act 2003* amended**

2 **51. Act amended**

3 This Part amends the *Sentence Administration Act 2003*.

4 **52. Section 50 amended**

5 After section 50(b) insert:

6

7 (ca) he or she is not subject to an order made under
8 the *Dangerous Sexual Offenders Act 2006*
9 section 17(1)(a); and

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Part 7 — *Sentencing Act 1995* amended

53. Act amended

This Part amends the *Sentencing Act 1995*.

54. Section 8 amended

After section 8(1) insert:

- (2) The possibility that an order might be made in respect of the offender under the *Dangerous Sexual Offenders Act 2006* is not a mitigating factor.

55. Section 98 amended

In section 98(3):

- (a) delete “is a danger” and insert:

would be a danger

- (b) before paragraph (a) insert:

- (aa) is not to decide that the offender would not be a danger merely because of the possibility that an order might be made in respect of the offender under the *Dangerous Sexual Offenders Act 2006*; and

1 **Part 8 — *Young Offenders Act 1994* amended**

2 **56. Act amended**

3 This Part amends the *Young Offenders Act 1994*.

4 **57. Section 189 amended**

5 Delete section 189(7)(c) and insert:

6

7 (c) a court having regard to a conviction for the
8 purposes of the *Dangerous Sexual Offenders*
9 *Act 2006* section 7(3); or

10 (d) the making of a record of anything that
11 paragraph (a), (b) or (c) allows.
12

13 **58. Section 190 amended**

14 After section 190(1) insert:

15

16 (2A) This section does not prevent evidence of a conviction
17 being received in proceedings under the *Dangerous*
18 *Sexual Offenders Act 2006*.
19

20
