

Dangerous Sexual Offenders Bill 2005

EXPLANATORY MEMORANDUM

This Bill provides for the detention in custody or the supervision of persons of a particular class, to ensure adequate protection of the community and to provide continuing control, care or treatment of those persons.

Clause Notes

Part 1—Preliminary

Clause 1. Short title

This clause provides that this Act may be cited as the *Dangerous Sexual Offenders Act 2005*.

Clause 2. Commencement

This clause provides the commencement date for the Act as being a day fixed by proclamation.

Clause 3. Terms used in this Act

This clause sets out the terms used in the Act. Serious sexual offence has the meaning given to that term in section 106A of the *Evidence Act 1906* being sexual offences in the Criminal Code for which the maximum penalty that may be imposed is 7 years or more than 7 years.

Clause 4. Objects of this Act

This clause outlines the objects of the Act being to provide for the detention in custody or supervision of persons of a particular class to ensure adequate protection of the community and to provide for their continuing control, care or treatment.

Clause 5. Relationship with *Bail Act 1982*

This clause provides that the *Bail Act 1982* does not apply to a person detained under this Act.

Clause 6. Attorney General may perform functions of DPP

Subclause (1) provides that the Attorney-General may make an application or give a consent that the DPP may make or give under the Act

Subclause (2) provides that when the Attorney-General exercises any DPP power under the Act a reference to DPP includes a reference to the Attorney-General.

Clause 7. Serious danger to the community

Subclause (1) provides the test to be applied before the court can make a continuing detention order or supervision order.

Pursuant to subclause (1) the court must be satisfied that the person is a serious danger to the community in the absence of a continuing detention order or supervision order. A person is a serious danger to the community if there is an unacceptable risk that the person would commit a serious sexual offence if the person were not subject to a continuing detention order or a supervision order.

Subclause (2) provides that the onus is upon the DPP to satisfy the court as described in subclause (1) by acceptable and cogent evidence and a high degree of probability.

Subclause (3) lists a number of matters that the court must have regard to in deciding whether a person is a serious danger to the community.

Part 2—Continuing Detention or Supervision

Division 1—Application for orders

Clause 8. DPP may apply for orders

Subclause (1) provides that the DPP may apply to the Supreme Court for orders under clause 14 regarding preliminary hearings and clause 17 regarding continuing detention orders or supervision orders against the offender who is defined as a person who is under sentence of imprisonment wholly or in part for a serious sexual offence.

Subclauses (2) to (5) provide for the various procedural matters regarding a subclause (1) application including when it can be applied for, the content and documentation requirements of the application, and notice requirements for providing copies of the application to the offender.

Clause 9. Duty to Disclose

This clause applies to an application for a Division 2 order and provides that the DPP's duty to disclose is the same duty to disclose that the prosecution has in criminal proceedings.

Clause 10. Application may proceed even if offender discharged

This clause provides that an application may proceed if filed prior to the offender being discharged from their sentence of imprisonment.

Clause 11. Fixing day for preliminary hearing

Subclauses (1) and (2) provide for the fixing of a date for a preliminary hearing, being within 14 days after filing of the application.

Subclause (3) sets out the main purpose of the preliminary hearing being that the court hearing the preliminary hearing must decide whether it is satisfied that there are reasonable grounds for believing that the offender is a serious danger to the community

Clause 12. Offender may file affidavits in response

This clause enables the offender to file affidavits in response at least three days prior to the day fixed for the preliminary hearing.

Clause 13. Contents of affidavit

This clause provides for the contents of any affidavits for use in a preliminary hearing including that it must be confined to evidence the person making it could provide orally unless the affidavit contains the source of any statements based on information or the grounds for any belief

Clause 14. Preliminary hearing

Subclause (1) provides the threshold test that must be met at a preliminary hearing to have the matter set down for a hearing of the application for a Division 2 order as being

that there are reasonable grounds for believing that the court might, under clause 7 be satisfied that the offender is a serious danger to the community.

Subclause (2) provides that if the court is satisfied as described in subclause (1), the court must order that the offender undergo examinations by two psychiatrists named by the court for the purposes of preparing the reports required by clause 37 that are to be used on the hearing of the application. In addition, the court may order the further detention in custody of the offender if satisfied that the offender may be released from custody before the application is finally decided or order detention in custody of an offender not in custody.

Clause 15. Authority for psychiatrist to examine offender

This clause provides the authority for the 2 psychiatrists to examine the offender and report in accordance with Part 5 pursuant to an order made under subclause 14(2) following a preliminary hearing.

Clause 16. Discontinuing application for Division 2 order

This clause provides the mechanism for discontinuing an application and provision for rescission of any detention orders.

Division 2 – Orders

Clause 17. Division 2 orders

Subclause (1) provides that if the court is satisfied that an offender is a serious danger to the community pursuant to the test in clause 7, the court may make a Division 2 continuing detention order or a supervision order.

Subclause (2) provides that the paramount consideration in deciding whether to make an order is the need to ensure adequate protection of the community.

Clause 18. Conditions of supervision order

Subclause (1) provides for mandatory conditions for a supervision order. The scheme provides that if the court makes a supervision order against a person the order must require that the person be under the supervision of a community corrections officer and must report to and receive visits from the officer as directed by the court. The person must report their current name and address to the officer and notify the officer of every subsequent change of name, residence and place of employment. The person must not leave or stay out of Western Australia without the permission of a community corrections officer and must not commit a sexual offence as defined in section 36A of the *Evidence Act 1906* during the period of the order.

Subclause (2) provides that the supervision order may contain any other terms that the court thinks appropriate to ensure adequate protection of the community or for the person's rehabilitation, care or treatment.

Division 3 – Amendment of supervision orders

Clause 19. Application to amend conditions of supervision order

Subclause (1) provides that either the person subject to a supervision order or the chief executive officer of the department principally administering the Act (with the consent of the DPP) may bring an application for an amendment of a supervision order.

Subclauses (2) and (3) set out notice provisions.

Clause 20. Amendment of conditions of supervision order

Subclauses 20(1) and (2) empower the court to amend the conditions of a supervision order if the court is satisfied that the person the subject of the order is not able to comply with a condition because of a change in circumstances or an amendment is necessary or desirable for any other reason. Any amended conditions must provide adequate protection of the community and be reasonable in all the circumstances.

Division 4 – Contravention of a supervision order

Clause 21. Summons or warrant because of contravention

Subclause (1) provides that a police officer or community corrections officer may apply to a magistrate for a summons or an arrest warrant, to require attendance of or bring a person subject to a supervision order before the Supreme Court, if the officer reasonably suspects the person subject to a supervision order is likely to contravene, is contravening, or has contravened, a condition of the supervision order.

Subclause (2) provides that if the Magistrate is satisfied that there are reasonable grounds for the suspicion in subclause (1) he may issue a summons or an arrest warrant to require attendance of or bring a person subject to a supervision order before the Supreme Court.

Subclause (3) provides that the summons or warrant may state the suspected or anticipated contravention in general terms.

Subclause (4) requires that the magistrate may only issue a warrant if the application is supported by evidence on oath and the magistrate is satisfied the person subject to the supervision order would not appear in answer to a summons and subclause (5) provides that even if a warrant could be issued under subclause (4), a magistrate has a discretion to refuse issue a warrant on the grounds that it would be unjust.

Clause 22. DPP may seek order

This clause provides that if a person is brought before the court under a summons or warrant issued under clause 21, the DPP may apply to the court for orders under clause 23, which application must state the orders sought.

Clause 23. Court may make order

This clause provides that if a court is satisfied on the balance of probabilities that an application under clause 21 is made out and that the person who is subject to the supervision order is likely to contravene, has contravened or is contravening the order, it may make orders amending the supervision order to ensure adequate protection of the community or if there is an unacceptable risk that the

person would commit a serious sexual offence, make an indefinite detention order to facilitate control, care or treatment.

Division 5 – Supervision Order extended due to imprisonment

Clause 24. Extension of supervision order

This clause provides that if a person subject to a supervision order is sentenced to a term of imprisonment for any offence, other than for a sexual offence defined in section 36A of the *Evidence Act 1906*, the supervision order is extended for the period that that person is in custody serving the sentence of imprisonment.

As it would be a condition of a supervision order that the person not commit an offence of a sexual nature whilst subject to the order, clause 24 will have application where the subsequent offence for which the released person is imprisoned is other than an offence of a sexual nature as defined. If the supervised person were convicted and sentenced for an offence defined in section 36A of the *Evidence Act 1906*, the DPP could apply for further orders pursuant to clause 23.

Division 6 – General provisions for part 2

Clause 25. Effect of continuing detention order

This clause provides that 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 Supreme Court.

Clause 26. Effect of supervision order

This clause provides that a supervision order has effect in accordance with its terms.

Clause 27. Court to give reasons

This clause provides that the court must give detailed reasons simultaneous with making a continuing detention order or supervision order.

Part 3—Annual Reviews

Clause 28. Purpose of this part

This clause states that the purpose of Part 3 is to ensure that a person's continued detention is subject to regular review.

Clause 29. Review – periodic

This clause requires that the DPP must apply to the Supreme Court for annual review of continuing detention orders, setting out requirements as to when the applications must be made being as soon as practicable after a period of one year commencing from when the person is first in custody had the order not been made and any subsequent reviews to be as soon as practicable after the expiration of a 1 year period since the last review.

Clause 30. Review – application by person subject to order

This clause enables a person subject to a continuing detention order to apply to the Supreme Court at any time after the Court makes its first review under clause 29, on grounds of exceptional circumstances relating to that person for leave to review the order. A proper officer of the court must provide a copy of any such application to the DPP.

Clause 31. Dealing with the application

This clause provides the procedural conditions for giving directions for and the hearing of any application under clause 29 or 30.

Clause 32. Psychiatrist's reports to be prepared for review

This clause provides for Part 5 authorisation and that an examination by two psychiatrists of the person to be examined for the purposes of the review must be arranged to prepare reports required by clause 37

Clause 33. The review

Subclause (1) provides that a court reviewing a person's detention under clause 29 or 30 must rescind the order if it does not find that the person subject to the order remains a serious danger to the community

Subclause (2) provides that if the court finds that the person subject to the order remains a serious danger to the community it can expressly decline to rescind the continuing detention order or rescind that order and make an order in terms to cover the period that the person is not in custody.

Subclause (3) provides that the paramount consideration in any decision under clause (2) is the adequate protection of the community.

Part 4 - Appeals

Clause 34. Appeals

This clause provides that either the DPP or person in relation to whom the court makes a decision under the Act may appeal.

Clause 35. Appeal does not stay decision

This clause provides that an appeal does not stay the operation of the decision unless the Court of Appeal otherwise orders, however the court may order detention in custody pending the hearing of the appeal if it might so order in its final determination.

Clause 36. Dealing with appeal

This clause provides that an appeal is by way of a rehearing, and sets out the powers of the Court of Appeal in deciding the appeal.

Part 5 - Examination by psychiatrist

Clause 37. Preparation of psychiatric report

This clause provides for the examination and preparation of two psychiatric reports as ordered including the requirements to have regard to any report or information provided by the chief executive officer of the administering department and complete the report regardless of the level of cooperation by the person to be examined.

Subclause (2) sets out that the reports are required to indicate an assessment of the level of risk associated with a person not being subject to a continuing detention order or a supervision order and the reasons for the assessment.

Clause 38. Providing information for psychiatrist

Subclauses (1) to (3) set out requirements of the chief executive officer and anyone else in possession of any relevant report or information relating to the person to be examined and required by the chief executive officer to do so, to provide each psychiatrist with any report or relevant information to assist the risk assessment, despite any other law or duty.

Subclauses (4) and (5) provide that anyone providing required information to the chief executive officer is not liable for doing so and failure to so provide the information may be the subject of a court application compelling delivery of such information.

Clause 39. Copies of report to DPP and person examined

This clause provides that the psychiatrist must give a copy of the report to the DPP who, in turn, must serve a copy on the person examined.

Part 6 – General

Clause 40. Proceedings to be criminal proceedings

This clause provides that proceedings under the Act are to be taken to be criminal proceedings for all purposes.

Clause 41. Deciding certain matters on the papers

This clause applies to the manner of a court deciding whether grounds are made out at a preliminary hearing for a hearing to consider an application for a detention or supervision order or grounds are made out for the amendment of a supervision order, setting out how and on what evidence a court may base its decisions on.

Subclause (2) provides that the court may decide entirely or partly from a consideration of the documents filed without the offender or person subject to the order appearing, consenting to or being heard.

Subclause (3) provides that a court may receive into evidence any document relevant to the antecedents or criminal record of the offender or person subject to the order or anything relevant contained in the official transcript of any judicial proceedings against the offender

or person subject to the order for a serious sexual offence or in any report tendered in a proceeding of that kind.

Clause 42. Evidence in certain hearings

This clause sets out that all hearings other than preliminary hearings and hearings to amend a supervision order, are to be heard by way of oral evidence and the ordinary rules of evidence apply, except that subclause (4) allows the court to have regard to, for example, the person's antecedents, criminal record, and anything relevant contained in the official transcript of proceedings regarding a serious sexual offence and various medical reports and others tendered in proceedings of that kind.

Clause 43. Court may give directions

This clause provides that the court may give directions in relation to the conduct of a proceeding under this Act.

Clause 44. Appearance at hearings

This clause confirms that a person is entitled to appear at any hearings for a supervision order or a detention order or reviews of any continuing detention order.

Clause 45. Warrant of commitment upon order for detention

This clause provides that if a court orders that a person be detained in custody, it must issue a warrant for apprehension, if necessary and committal into custody.

Clause 46. Approved forms

This clause provides for approval of forms by the chief executive officer.

Clause 47. Regulations

This clause provides for a regulation making power.