

# High Risk Offenders Bill 2019

## Contents

### Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Term used: community	5
5.	Term used: serious offence	5
6.	Term used: committing a serious offence	6
7.	Term used: high risk offender	6
8.	Objects of this Act	8
9.	Act binds Crown	8
10.	Application of <i>Bail Act 1982</i>	8
11.	Proceedings under this Act	8
12.	<i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013</i> Part 2 applies	10
13.	Application of <i>Freedom of Information Act 1992</i> limited	10

### Part 2 — High Risk (Sexual and Violent) Offenders Board

#### Division 1 — Establishment and functions

14.	Board established	11
15.	Functions of Board	11

#### Division 2 — Membership and meetings

16.	Terms used	12
17.	Membership of Board	12
18.	Community members of Board	13
19.	Term of office	14
20.	Resignation	15
21.	Terminating and cancelling appointments	15

22.	Meetings of Board	16
23.	Protection of information	17
	<b>Part 3 — Cooperation and sharing of information between supporting agencies</b>	
24.	Cooperation between supporting agencies	18
25.	Disclosure of information between supporting agencies	18
	<b>Part 4 — Restriction of offenders</b>	
	<b>Division 1 — Restriction orders</b>	
26.	Continuing detention order	20
27.	Supervision order	20
28.	Court to give reasons for making restriction order	20
29.	Limitation on power to make or amend supervision order	20
30.	Conditions of supervision order	21
31.	Electronic monitoring	22
32.	Curfew	23
33.	Enforcement of electronic monitoring and curfew requirement	25
	<b>Division 2 — Applying for a restriction order</b>	
34.	Terms used	26
35.	Application for restriction order in relation to serious offender under custodial sentence	27
36.	Application for restriction order in relation to offender subject to supervision order	28
37.	Provisions relating to restriction order applications	28
38.	Application where offender discharged from sentence or supervision order	29
39.	State's duty of disclosure	29
40.	Provision of evidentiary material to applying agency	31
41.	Offender's duty of disclosure	32
42.	Orders as to disclosure requirements	33
43.	Fixing day for preliminary hearing	34
44.	Offender may file affidavits in response	34
45.	Contents of affidavit	34

---

46.	Preliminary hearing	34
47.	Discontinuing restriction order application	35
	<b>Division 3 — Making a restriction order</b>	
48.	Restriction orders	36
	<b>Division 4 — Amending a supervision order</b>	
49.	Application to amend conditions of supervision order	36
50.	Amendment of conditions of supervision order	37
	<b>Division 5 — Contravening a supervision order</b>	
51.	Warrant because of contravention	37
52.	Order permitting publication of offender’s photograph	38
53.	State may seek orders	39
54.	Reports	39
55.	Court to make orders in certain cases	39
56.	Orders made during contravention proceedings	40
	<b>Division 6 — Supervision order extended due to imprisonment</b>	
57.	Extension of supervision order	42
	<b>Division 7 — Interim supervision orders</b>	
58.	Interim supervision order	42
	<b>Division 8 — Victim submissions</b>	
59.	Terms used	43
60.	Making victim submissions	43
61.	Availability of victim submissions	44
62.	Court may have regard to victim submissions	44
	<b>Part 5 — Review of detention</b>	
63.	Purpose of this Part	45
64.	Review — periodic	45
65.	Review — application by offender subject to order	45
66.	Dealing with application	46
67.	Reports	46
68.	Review of detention under continuing detention order	46

**Part 6 — Appeals**

69.	Appeals	48
70.	Appeal does not stay decision	48
71.	Dealing with appeal	48

**Part 7 — Reports**

72.	Terms used	50
73.	Authority to examine	50
74.	Preparation of report by qualified expert	50
75.	Preparation of other report	51
76.	CEO to provide information	51
77.	CEO may seek information	52
78.	Copies of report to State and subject	53

**Part 8 — General**

79.	Mentally unfit offender	54
80.	Offence of contravening supervision order	54
81.	Procedure on some charges of offences under s. 80	55
82.	Proceedings to be criminal proceedings	56
83.	Deciding certain matters on the papers	57
84.	Evidence in certain hearings	58
85.	Court may give directions	59
86.	Appearance at hearings	59
87.	Warrant of commitment upon order for detention	59
88.	Protection from personal liability	59
89.	Approved forms	60
90.	Regulations	60

**Part 9 — Consequential amendments  
to other Acts**

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

91.	Act amended	61
92.	Section 85A amended	61
93.	Section 85G amended	62
94.	Section 85H amended	63
95.	Section 85I amended	63

	<b>Division 2 — <i>Criminal Procedure Act 2004</i></b>	
	<b>amended</b>	
96.	Act amended	63
97.	Section 51 amended	63
98.	Section 80 amended	64
	<b>Division 3 — <i>Freedom of Information Act 1992</i></b>	
	<b>amended</b>	
99.	Act amended	64
100.	Schedule 2 amended	64
101.	The Glossary amended	64
	<b>Division 4 — <i>Sentence Administration Act 2003</i></b>	
	<b>amended</b>	
102.	Act amended	65
103.	Section 50 amended	65
104.	Section 74A amended	65
105.	Section 74B amended	66
106.	Section 74D amended	66
107.	Section 74E amended	67
108.	Section 74G amended	67
109.	Section 74J amended	67
110.	Section 74K replaced	68
	74K. Subsequent PSSO after cancellation for committing offence	68
111.	Section 74L replaced	69
	74L. Offence for breach of PSSO	69
112.	Section 103 amended	69
113.	Section 119 amended	70
114.	Schedule 4 deleted	70
	<b>Division 5 — <i>Other Acts amended</i></b>	
115.	<i>Bail Act 1982</i> amended	70
116.	<i>Director of Public Prosecutions Act 1991</i> amended	71
	15A. Proceedings under <i>High Risk Offenders</i> <i>Act 2019</i>	71
117.	<i>Prisons Act 1981</i> amended	72
118.	<i>Sentencing Act 1995</i> amended	72
119.	Various references to <i>Dangerous Sexual Offenders</i> <i>Act 2006</i> replaced	73

**Part 10 — Repeal and transitional provisions**

120.	Terms used	75
121.	Act repealed	75
122.	Completion of things commenced	75
123.	Continuing effect of things done	76

**Schedule 1 — Serious offences**

**Division 1 — Offences that are serious offences in all circumstances**

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

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

**Subdivision 3 — Offences under *The Criminal Code***

**Subdivision 4 — Offences under the *Prostitution Act 2000***

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

**Division 2 — Offences that are serious offences if committed in specified circumstances**

**Subdivision 1 — Offence under *The Criminal Code***

**Subdivision 2 — Offence under the *Prostitution Act 2000***

**Defined terms**

Western Australia

LEGISLATIVE ASSEMBLY

## **High Risk Offenders Bill 2019**

**A Bill for**

**An Act to provide for the detention in custody or the supervision of persons of a particular class, 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:

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**Part 1 — Preliminary**

**1. Short title**

This is the *High Risk Offenders Act 2019*.

**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.

**3. Terms used**

In this Act, unless the contrary intention appears —

***Board*** means the High Risk (Sexual and Violent) 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 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



- 
- 1 (b) a serious offender under restriction;
- 2 **preliminary hearing** means a preliminary hearing referred to in
- 3 section 46;
- 4 **psychiatrist** has the meaning given in the *Mental Health*
- 5 *Act 2014* section 4;
- 6 **public sector body** has the meaning given in the *Public Sector*
- 7 *Management Act 1994* section 3(1);
- 8 **qualified expert** means —
- 9 (a) a psychiatrist; or
- 10 (b) a qualified psychologist;
- 11 **qualified psychologist** means a psychologist (as defined in the
- 12 *Mental Health Act 2014* section 4) who holds a master's degree
- 13 or higher in psychology;
- 14 **relevant agency** means any of the following —
- 15 (a) the Department;
- 16 (b) the department of the Public Service principally
- 17 assisting in the administration of the *Health Services*
- 18 *Act 2016*;
- 19 (c) the department of the Public Service principally
- 20 assisting in the administration of the *Housing Act 1980*;
- 21 (d) the department designated as the Police Service;
- 22 (e) the Police Force of Western Australia provided for by
- 23 the *Police Act 1892*;
- 24 (f) any other public sector body designated by the
- 25 regulations as a relevant agency;
- 26 **restriction order** means —
- 27 (a) a continuing detention order; or
- 28 (b) a supervision order;
- 29 **restriction order application** means an application under
- 30 section 35(1) or 36(1);
- 31 **serious offence** has the meaning given in section 5;

**s. 3**

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

4 **serious offender under custodial sentence** means a person —

5 (a) who is under a custodial sentence for a serious offence;  
6 or

7 (b) who —

8 (i) is under a custodial sentence for an offence or  
9 offences other than a serious offence; and

10 (ii) has been under that sentence at all times since  
11 being discharged from a custodial sentence for a  
12 serious offence;

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

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

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

18 **supporting agency** means any of the following —

19 (a) a relevant agency;

20 (b) the department of the public service principally assisting  
21 in the administration of the *Prisons Act 1981*;

22 (c) the Office of the Director of Public Prosecutions;

23 (d) the Prisoners Review Board established by the *Sentence*  
24 *Administration Act 2003* section 102;

25 (e) the Supervised Release Review Board established by the  
26 *Young Offenders Act 1994* section 151;

27 (f) any other public sector body designated by the  
28 regulations as a supporting agency;

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

31 (a) a sentence of imprisonment imposed by a court of  
32 Western Australia (including an indefinite sentence

- 1 imposed under the *Sentencing Act 1995* section 98(1)) or  
2 an indeterminate sentence imposed under *The Criminal*  
3 *Code* section 661 or 662;
- 4 (b) a sentence of imprisonment imposed under a law of the  
5 Commonwealth;
- 6 (c) a sentence of imprisonment that under the *Prisoners*  
7 *(Interstate Transfer) Act 1983* section 25(1) is deemed  
8 to have been imposed by a court of Western Australia;
- 9 (d) a sentence of detention under the *Young Offenders*  
10 *Act 1994* for an offence committed after the young  
11 offender had reached 16 years of age;

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

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

16 **4. Term used: community**

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

20 **5. Term used: serious offence**

- 21 (1) An offence is a **serious offence** if —
- 22 (a) it is specified in Schedule 1 Division 1; or
- 23 (b) it is specified in Schedule 1 Division 2, and is  
24 committed in the circumstances indicated in relation to  
25 that offence in that Division.
- 26 (2) An offence is a **serious offence** if —
- 27 (a) it was an offence under a written law that has been  
28 repealed; and
- 29 (b) the offender's acts or omissions that constituted the  
30 offence under the repealed provision would constitute a  
31 serious offence under subsection (1).

**s. 6**

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- 1 (3) An offence is a *serious offence* if it is an offence of conspiracy,  
2 attempt or incitement to commit an offence that is a serious  
3 offence under subsection (1) or (2).
- 4 (4) An offence against the law of the Commonwealth or of any  
5 place outside Western Australia is a *serious offence* if the  
6 offender's acts or omissions that constituted the offence under  
7 that law would have constituted a serious offence under  
8 subsection (1), (2) or (3) if they had occurred in Western  
9 Australia.
- 10 (5) An offence against the law of the Commonwealth is a *serious*  
11 *offence* if —
- 12 (a) the offence is of a sexual or violent nature; and  
13 (b) the penalty for the offence specified by the law of the  
14 Commonwealth is or includes imprisonment for 7 years  
15 or more; and  
16 (c) the offence is prescribed to be a serious offence.
- 17 (6) An offence is a *serious offence* if the court sentencing the  
18 offender has declared it to be a serious offence under the  
19 *Sentencing Act 1995* section 97A.

20 **6. Term used: committing a serious offence**

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

- 25 (a) would be likely to be charged with an offence; or  
26 (b) would, if charged with an offence, be found mentally fit  
27 to stand trial; or  
28 (c) would, if tried for an offence, be convicted.

29 **7. Term used: high risk offender**

- 30 (1) An offender is a *high risk offender* if the court dealing with an  
31 application under this Act finds that it is satisfied, by acceptable

- 1 and cogent evidence and to a high degree of probability, that it  
2 is necessary to make a restriction order in relation to the  
3 offender to ensure adequate protection of the community against  
4 an unacceptable risk that the offender will commit a serious  
5 offence.
- 6 (2) The State has the onus of satisfying the court as required by  
7 subsection (1).
- 8 (3) In considering whether it is satisfied as required by  
9 subsection (1), the court must have regard to the following —
- 10 (a) any report prepared under section 74 for the hearing of  
11 the application and the extent to which the offender  
12 cooperated in the examination required by that section;
- 13 (b) any other medical, psychiatric, psychological, or other  
14 assessment relating to the offender;
- 15 (c) information indicating whether or not the offender has a  
16 propensity to commit serious offences in the future;
- 17 (d) whether or not there is any pattern of offending  
18 behaviour by the offender;
- 19 (e) any efforts by the offender to address the cause or  
20 causes of the offender's offending behaviour, including  
21 whether the offender has participated in any  
22 rehabilitation programme;
- 23 (f) whether or not the offender's participation in any  
24 rehabilitation programme has had a positive effect on  
25 the offender;
- 26 (g) the offender's antecedents and criminal record;
- 27 (h) the risk that, if the offender were not subject to a  
28 restriction order, the offender would commit a serious  
29 offence;
- 30 (i) the need to protect members of the community from that  
31 risk;
- 32 (j) any other relevant matter.

**s. 8**

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- 1 (4) In considering whether it is satisfied as required by  
2 subsection (1), the court must disregard the possibility that the  
3 offender might temporarily be prevented from committing a  
4 serious offence by —  
5 (a) imprisonment; or  
6 (b) remand in custody; or  
7 (c) the imposition of bail conditions.

8 **8. Objects of this Act**

9 The objects of this Act are —

- 10 (a) to provide for the detention in custody or the supervision  
11 of persons of a particular class to ensure adequate  
12 protection of the community and of victims of serious  
13 offences; and  
14 (b) to provide for continuing control, care or treatment of  
15 persons of a particular class.

16 **9. Act binds Crown**

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

20 **10. Application of *Bail Act 1982***

21 The *Bail Act 1982* does not apply to a person detained under  
22 this Act other than a person who —

- 23 (a) is charged with, and is in custody in relation to, an  
24 offence under section 33 or 80; and  
25 (b) is not detained under this Act for some other reason.

26 **11. Proceedings under this Act**

- 27 (1) The Attorney General may make applications under this Act,  
28 and take other proceedings for which this Act provides, in the  
29 name of the State.

- 1 (2) The Attorney General may authorise the Director of Public  
2 Prosecutions to make applications under this Act, and take other  
3 proceedings for which this Act provides, in the name of the  
4 State.
- 5 (3) The Attorney General may authorise the State Solicitor to make  
6 applications under this Act, and take other proceedings for  
7 which this Act provides, in the name of the State.
- 8 (4) If the State Solicitor is authorised under subsection (3) to make  
9 an application or take other proceedings —
- 10 (a) the State Solicitor may appear in person or be  
11 represented by a legal practitioner in the application or  
12 proceedings; and
- 13 (b) the *Director of Public Prosecutions Act 1991* Part 4  
14 applies to the State Solicitor in relation to the  
15 application or proceedings as though references in that  
16 Part —
- 17 (i) to the Director of Public Prosecutions were  
18 references to the State Solicitor; and
- 19 (ii) to the annual report of the Director of Public  
20 Prosecutions were references to the annual report  
21 of a public sector body of which the State  
22 Solicitor is an officer or employee.
- 23 (5) A defect or error in an authorisation by the Attorney General  
24 under subsection (2) or (3) does not affect the validity of —
- 25 (a) an application made or other proceedings taken in  
26 reliance on the authorisation; or
- 27 (b) an order, finding or other decision made in the  
28 application or proceedings.
- 29 (6) The CEO may make applications under section 49(1)(b)  
30 and 77(2).
- 31 (7) A police officer may make applications under section 51(1)  
32 and 81(4)(a).

**s. 12**

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1 (8) A community corrections officer may make applications under  
2 section 51(1).

3 **12. *Courts and Tribunals (Electronic Processes Facilitation)***  
4 ***Act 2013 Part 2 applies***

5 The *Courts and Tribunals (Electronic Processes Facilitation)*  
6 *Act 2013 Part 2* applies to this Act.

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

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

12 (a) this Act; or

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





1

**Division 2 — Membership and meetings**

2

**16. Terms used**

3

In this Division —

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

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

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8

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

9

10

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

11

12

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

13

14

***member*** means a member of the Board;

15

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

16

17

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**17. Membership of Board**

19

(1) The Board is to consist of —

20

(a) for each relevant agency —

21

(i) the chief executive officer or chief employee; or

22

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

23

24

25

and

26

(b) the Chief Psychiatrist, or a member of the staff assisting the Chief Psychiatrist, appointed by the Chief Psychiatrist; and

27

28

29

(c) any number of community members appointed under section 18(1).

30

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

12 **18. Community members of Board**

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

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

9 **19. Term of office**

- 10 (1) An official member is a member until —
- 11 (a) the official member ceases to be the chief executive  
12 officer or chief employee of a relevant agency, or to be  
13 the Chief Psychiatrist; or
- 14 (b) the official member appoints an appointed member.
- 15 (2) An appointed member is a member until —
- 16 (a) the appointed member ceases to be a member of staff of  
17 the relevant agency in respect of which they were  
18 appointed or of the Chief Psychiatrist; or
- 19 (b) the appointed member resigns under section 20(1); or
- 20 (c) the appointed member's appointment is cancelled under  
21 section 21(3).
- 22 (3) If the appointed member in respect of a relevant agency or in  
23 respect of the Chief Psychiatrist ceases to be a member, the  
24 chief executive officer or chief employee of the relevant agency,  
25 or the Chief Psychiatrist, immediately becomes a member  
26 unless and until a further appointment is made under  
27 section 17(1)(a)(ii) or (b).
- 28 (4) A community member is a member until —
- 29 (a) the expiry of a term of 5 years after the day of  
30 appointment (or any shorter term specified in the  
31 instrument of appointment); or

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

6 **20. Resignation**

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

15 **21. Terminating and cancelling appointments**

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

**High Risk Offenders Bill 2019**

**Part 2** High Risk (Sexual and Violent) Offenders Board

**Division 2** Membership and meetings

**s. 22**

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

4 **22. Meetings of Board**

5 (1) The chairperson may decide when and where the Board meets.

6 (2) At a meeting of the Board —

7 (a) the chairperson or a deputy nominated by the  
8 chairperson is to preside; and

9 (b) a quorum consists of 3 members including —

10 (i) the chairperson or a deputy of the chairperson;  
11 and

12 (ii) at least 1 appointed member or official member;  
13 and

14 (iii) if any community member is appointed under  
15 section 18(1), at least 1 community member;

16 and

17 (c) questions arising are to be determined by a majority of  
18 the members present and voting; and

19 (d) if there is a tie in voting, the presiding member has a  
20 second vote.

21 (3) The Board may, if it thinks fit, conduct a meeting at which all or  
22 some members participate by telephone or other similar means,  
23 but any member who speaks on a matter at the meeting must be  
24 able to be heard by the other members at the meeting.

25 (4) Subject to this section the chairperson is to determine the  
26 procedure for convening and conducting meetings of the Board.

1   **23.    Protection of information**

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

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

10          Penalty: a fine of \$2 500.

1 **Part 3 — Cooperation and sharing of information**  
2 **between supporting agencies**

3 **24. Cooperation between supporting agencies**

- 4 (1) A supporting agency must cooperate with other supporting  
5 agencies in the performance of —  
6 (a) its own serious offender functions; and  
7 (b) the serious offender functions of other supporting  
8 agencies.
- 9 (2) The duty to cooperate includes a duty to provide reasonable  
10 assistance and support to other supporting agencies in  
11 connection with the exercise of their serious offender functions.
- 12 (3) Cooperation between supporting agencies in the performance of  
13 serious offender functions may include —  
14 (a) the development of multi-agency management plans for  
15 offenders; and  
16 (b) providing assistance and support to offenders through  
17 joint programs.

18 **25. Disclosure of information between supporting agencies**

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



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

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**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

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

3            (2)    The onus of proof as to the matter described in subsection (1) is  
4            on the offender.

5            (3)    This section does not apply to the making of an interim  
6            supervision order.

7    **30.    Conditions of supervision order**

8            (1)    In this section —

9            *make public* means —

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

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

13            (2)    A supervision order in relation to an offender must require that  
14            the offender —

15            (a)    report to a community corrections officer at the place,  
16            and within the time, stated in the order and advise the  
17            officer of the offender's current name and address; and

18            (b)    report to, and receive visits from, a community  
19            corrections officer as directed by the court; and

20            (c)    notify a community corrections officer of every change  
21            of the offender's name, place of residence or place of  
22            employment at least 2 days before the change happens;  
23            and

24            (d)    be under the supervision of a community corrections  
25            officer and comply with any reasonable direction of the  
26            officer (including a direction for the purposes of  
27            section 31 or 32); and

28            (e)    not leave, or stay out of, the State of Western Australia  
29            without the permission of a community corrections  
30            officer; and

**High Risk Offenders Bill 2019**

**Part 4** Restriction of offenders

**Division 1** Restriction orders

**s. 31**

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- 1 (f) not commit a serious offence during the period of the  
2 order; and
- 3 (g) be subject to electronic monitoring under section 31.
- 4 (3) A supervision order in relation to an offender may require the  
5 offender not to make public any statement, information or  
6 opinion relating directly or indirectly to any victim of a serious  
7 offence committed by the offender.
- 8 (4) When considering whether to impose a requirement under  
9 subsection (3) the court must have regard to —
- 10 (a) the gravity and nature of the offender's offences; and  
11 (b) the likely impact on the victims of the offender  
12 providing or making available any statement,  
13 information or opinion; and  
14 (c) the public interest generally.
- 15 (5) A supervision order may contain any other terms that the court  
16 thinks appropriate —
- 17 (a) to ensure adequate protection of the community; or  
18 (b) for the rehabilitation, care or treatment of the offender  
19 subject to the order; or  
20 (c) to ensure adequate protection of victims of serious  
21 offences committed by the offender subject to the order.
- 22 (6) Without limiting subsection (5), a supervision order may  
23 provide that —
- 24 (a) for the period specified in the order the offender is  
25 subject to a curfew under section 32; and  
26 (b) the photograph and locality of the offender must not be  
27 published under the *Community Protection (Offender  
28 Reporting) Act 2004* section 85G.

29 **31. Electronic monitoring**

- 30 (1) In this section —  
31 ***approved*** means approved by the CEO.

- 1           (2) The purpose of electronic monitoring of an offender subject to a  
2 supervision order is to enable the location of the offender to be  
3 monitored.
- 4           (3) For the purposes of the electronic monitoring of an offender  
5 subject to a supervision order, a community corrections officer  
6 may do any of the following —
- 7               (a) direct the offender to wear an approved electronic  
8 monitoring device;
- 9               (b) direct the offender to permit the installation of an  
10 approved electronic monitoring device at the place  
11 where the offender resides or, if the offender does not  
12 have a place of residence, at any other place specified by  
13 the community corrections officer;
- 14               (c) give any other reasonable direction to the offender  
15 necessary for the proper administration of the electronic  
16 monitoring of the offender.
- 17           (4) A community corrections officer may suspend the electronic  
18 monitoring of an offender subject to a supervision order —
- 19               (a) while satisfied that it is not practicable to subject the  
20 offender to electronic monitoring; or
- 21               (b) while satisfied that it is not necessary for the offender to  
22 be subject to electronic monitoring.

23 **32. Curfew**

- 24           (1) In this section —  
25 *specified* means specified by a community corrections officer  
26 from time to time.
- 27           (2) The purpose of a curfew is to allow for the movements of an  
28 offender subject to a supervision order to be restricted during  
29 periods when there is a risk of the offender committing a serious  
30 offence.



1 **33. Enforcement of electronic monitoring and curfew**  
2 **requirement**

- 3 (1) A community corrections officer may —
- 4 (a) direct the occupier of a place where an electronic  
5 monitoring device has been installed under section 31(3)  
6 to give the device to a community corrections officer  
7 within a time specified by the officer; and
- 8 (b) at any time, enter a place where an electronic monitoring  
9 device has been installed under section 31(3) and  
10 retrieve the device.

- 11 (2) A person must not —
- 12 (a) fail to comply with a direction under subsection (1)(a);  
13 or
- 14 (b) hinder a community corrections officer exercising  
15 powers under subsection (1)(b).

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

- 18 (3) A person must not, without reasonable excuse, interfere with the  
19 operation of an electronic monitoring device required to be  
20 worn or installed under section 31(3).

21 Penalty for this subsection: imprisonment for 3 years.

- 22 (4) If a person is convicted of an offence under subsection (3)  
23 committed at a time when the person had reached 18 years of  
24 age, then, despite any other written law, the court sentencing the  
25 person —

- 26 (a) must sentence the person to a term of imprisonment of at  
27 least 12 months; and
- 28 (b) must not suspend the term of imprisonment.

**High Risk Offenders Bill 2019**

**Part 4** Restriction of offenders

**Division 2** Applying for a restriction order

**s. 34**

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- 1 (5) To ascertain whether or not an offender who is subject to a  
2 curfew is complying with the curfew, a community corrections  
3 officer may, at any time —
- 4 (a) enter or telephone a place specified under section 32(3)  
5 in relation to the offender; and
- 6 (b) enter or telephone the offender's place of employment  
7 or any other place where the offender is authorised or  
8 required to attend; and
- 9 (c) question any person at any place referred to in  
10 paragraph (a) or (b).
- 11 (6) A person must not —
- 12 (a) hinder a community corrections officer exercising  
13 powers under subsection (5); or
- 14 (b) fail to answer a question put under subsection (5)(c) or  
15 give an answer that the person knows is false or  
16 misleading in a material particular.
- 17 Penalty for this subsection: a fine of \$12 000 or imprisonment  
18 for 12 months.
- 19 (7) An act or omission of an offender subject to a supervision order  
20 that is a contravention of subsection (2), (3) or (6) —
- 21 (a) does not constitute an offence under this section; but  
22 (b) is, for the purposes of this Act, taken to be a  
23 contravention of a requirement of the order (if it is not  
24 otherwise).

25 **Division 2 — Applying for a restriction order**

26 **34. Terms used**

27 In this Division —

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

- 30 (a) if the application is made by the Attorney General, the  
31 Department; and



- 1 (b) if the application is made by the Director of Public
- 2 Prosecutions, the Office of the Director of Public
- 3 Prosecutions; and
- 4 (c) if the application is made by the State Solicitor, the State
- 5 Solicitor’s Office;

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

- 8 (a) a copy of every recorded statement, whether written or
- 9 oral, by any person who may be able to give evidence
- 10 that is relevant to the application, irrespective of
- 11 whether or not it assists the case of the State or of the
- 12 offender;
- 13 (b) a copy of every recording of evidence given by a person
- 14 mentioned in paragraph (a), irrespective of whether or
- 15 not it assists the case of the State or of the offender;
- 16 (c) if there is no statement or recording referred to in
- 17 paragraph (a) or (b), a written summary of the evidence
- 18 to be given by a person mentioned in paragraph (a);
- 19 (d) a copy of any document or object to which a statement
- 20 or recording referred to in paragraph (a) refers;
- 21 (e) a copy of every other document or object that the State
- 22 intends to tender in evidence at the hearing of the
- 23 application;
- 24 (f) a copy of every other document or object that may assist
- 25 the offender’s case.

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

- 28 (1) The State may apply to the Supreme Court for a restriction order
- 29 in relation to a serious offender under custodial sentence who is
- 30 not a serious offender under restriction.
- 31 (2) Subsection (1) applies whether the custodial sentence was
- 32 imposed before or after the commencement of this section and
- 33 whether or not the offender is in custody.

**High Risk Offenders Bill 2019**

**Part 4** Restriction of offenders

**Division 2** Applying for a restriction order

**s. 36**

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1 (3) If the offender is in custody, an application under subsection (1)  
2 cannot be made unless there is a possibility that the offender  
3 might be released from custody within the period of 1 year after  
4 the application is made.

5 (4) An application under subsection (1) need not specify whether  
6 the restriction order sought is a continuing detention order or a  
7 supervision order.

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

10 (1) The State may apply to the Supreme Court for a restriction order  
11 in relation to an offender who is subject to a supervision order  
12 (the *current order*) that is to expire within 1 year.

13 (2) An application under subsection (1) must specify whether the  
14 restriction order sought is a continuing detention order or a  
15 supervision order.

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

18 **37. Provisions relating to restriction order applications**

19 (1) A restriction order application must be accompanied by any  
20 affidavits to be relied on by the State for the purpose of seeking  
21 an order or orders under section 46.

22 (2) Within 7 days after making a restriction order application, the  
23 State must give the offender a copy of the application and any  
24 affidavits accompanying it.

25 (3) At the time of, or after, making a restriction order application,  
26 the State may apply to the Supreme Court for a summons or  
27 warrant if the offender —

28 (a) is not in custody; or

29 (b) may not be in custody at the time of the preliminary  
30 hearing.

- 1           (4) If the State applies under subsection (3), the Supreme Court  
2           may issue, in the form approved under section 89 —
- 3               (a) a summons requiring the offender to appear before the  
4               Supreme Court for the preliminary hearing; or
- 5               (b) a warrant directed to all police officers for the offender  
6               to be arrested and brought before the Supreme Court for  
7               the preliminary hearing.

8           **38. Application where offender discharged from sentence or**  
9           **supervision order**

10           A restriction order application may proceed and the offender  
11           may be dealt with in accordance with this Act even if, while the  
12           application is pending —

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

17           **39. State's duty of disclosure**

18           (1) As soon as practicable after the preliminary hearing in relation  
19           to a restriction order application, the State must give to the  
20           offender —

- 21               (a) any evidentiary material in the possession of the  
22               applying agency that may be relevant to the application;  
23               and
- 24               (b) any other prescribed document that is in the possession  
25               of the applying agency.

26           (2) Subsection (3) applies if, after complying with subsection (1)  
27           and before the application is finally dealt with, the applying  
28           agency receives or obtains any of the following material (*new*  
29           *evidentiary material*) —

- 30               (a) additional evidentiary material that may be relevant to  
31               the application;

**High Risk Offenders Bill 2019**

**Part 4** Restriction of offenders

**Division 2** Applying for a restriction order

**s. 39**

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- 1 (b) any statement or recording described in  
2 subsection (4)(b);
- 3 (c) the name or address of a person described in  
4 subsection (4)(c).
- 5 (3) The State must give new evidentiary material to the offender as  
6 soon as practicable after receiving or obtaining it.
- 7 (4) A requirement under this section to give evidentiary material  
8 includes a requirement —
- 9 (a) if it is not practicable to copy a document or object  
10 referred to in paragraph (d), (e) or (f) of the definition of  
11 ***evidentiary material*** in section 34 — to give a notice  
12 that describes the document or object and states where  
13 and when it can be inspected; and
- 14 (b) if a copy of a statement or recording of a person is  
15 given — to give a copy of any statement or recording of  
16 the person that contains material that is inconsistent with  
17 that statement or recording; and
- 18 (c) to give —
- 19 (i) notice of the name and, if known, the address of  
20 any person who the applying agency thinks may  
21 be able to give evidence that may assist the  
22 offender’s case but from whom no statement or  
23 recording of the kind referred to in paragraph (a)  
24 or (b) of the definition of ***evidentiary material***  
25 has been obtained; and
- 26 (ii) a description of the evidence concerned.
- 27 (5) The operation of this section is subject to —
- 28 (a) the *Evidence Act 1906* sections 19C and 106HB(3); and
- 29 (b) any other written law that relates to the disclosure of  
30 specific information; and
- 31 (c) the law on privilege; and
- 32 (d) the law on public interest immunity.

1       (6) This section does not affect the operation of the *Criminal*  
2       *Investigation Act 2006* section 117.

3       **40. Provision of evidentiary material to applying agency**

4       (1) The applying agency in relation to a restriction order application  
5       may request a supporting agency or any other person, body or  
6       agency to provide to the applying agency any evidentiary  
7       material, or any document prescribed under section 39(1)(b),  
8       that is in its possession.

9       (2) A supporting agency or other person, body or agency must  
10      comply with a request under subsection (1).

11      (3) If a supporting agency or other person, body or agency discloses  
12      information in good faith under subsection (2) —

13           (a) no civil or criminal liability is incurred in respect of the  
14           disclosure; and

15           (b) the disclosure is not to be regarded as a breach of any  
16           duty of confidentiality or secrecy imposed by law; and

17           (c) the disclosure is not to be regarded as a breach of  
18           professional ethics or standards or as unprofessional  
19           conduct.

20      (4) In relation to any information disclosed under this section, the  
21      applying agency and its members and staff are bound by any  
22      duty of confidentiality that applies to the supporting agency, or  
23      other person, body or agency, disclosing the information.

24      (5) Subsection (4) does not prevent the disclosure of information —

25           (a) to the court, or in the proceedings, in the course of the  
26           restriction order application; or

27           (b) to the offender under section 39.

1 **41. Offender's duty of disclosure**

2 (1) In this section —

3 *expert evidence material* relevant to a restriction order  
4 application means —

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

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

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

16 (2) The offender must, at least 28 days before the day fixed under  
17 section 46 for the hearing of a restriction order application,  
18 lodge with the court and give to the State a copy of —

19 (a) any expert evidence material relevant to the application;  
20 and

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

22 (i) any document that the State intends to adduce at  
23 the hearing of the application; or

24 (ii) any evidence to be given by a witness that the  
25 State intends to call at the hearing of the  
26 application;

27 and

28 (c) written notice of the grounds for any objection  
29 mentioned in paragraph (b).

30 (3) If, after complying with subsection (2), an offender receives or  
31 obtains further expert evidence material relevant to the  
32 application, the offender must lodge the further material with

1           the court and give a copy of it to the State as soon as  
2           practicable.

3   **42. Orders as to disclosure requirements**

4   (1) In this section —

5           *disclosure requirement* means a requirement under section 39  
6           or 41 to disclose material.

7   (2) The powers in this section may be exercised by the court on its  
8           own initiative or on an application by a party to a restriction  
9           order application.

10 (3) The court may make an order in respect of a disclosure  
11       requirement —

12       (a) that dispenses with all or part of the requirement, if it is  
13       satisfied that —

14           (i) there is a good reason to do so; and

15           (ii) no miscarriage of justice will result;

16       or

17       (b) that shortens or extends the time for obeying the  
18       requirement; or

19       (c) that amends or cancels an order made previously under  
20       this section, whether by the court or some other court; or

21       (d) as to any other matter that the court considers just.

22 (4) An application for an order under this section may be made  
23       without notice to the offender and may be dealt with in the  
24       absence of the offender.

25 (5) An application for an order under this section that is made  
26       without notice to the offender must not be dealt with in open  
27       court and the only persons who may be present when it is dealt  
28       with are the applicant and any other persons permitted by the  
29       court.

- 1            (6) If an order is made under this section in the absence of the  
2            offender, the order must not be given or disclosed to the  
3            offender without the permission of the court.

4            **43. Fixing day for preliminary hearing**

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

11           **44. Offender may file affidavits in response**

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

16           **45. Contents of affidavit**

17           An affidavit for use in a preliminary hearing must be confined  
18           to the evidence the person making it could give orally except  
19           that it may contain statements based on information and belief if  
20           the person making the affidavit states the source of the  
21           information and the grounds for the belief.

22           **46. Preliminary hearing**

- 23           (1) The main purpose of the preliminary hearing is to decide  
24           whether the court is satisfied that there are reasonable grounds  
25           for believing that the court might, in accordance with section 7,  
26           find that the offender is a high risk offender.
- 27           (2) If the court is satisfied as described in subsection (1) —  
28                      (a) the court must order that the offender undergo  
29                      examination by a psychiatrist and a qualified  
30                      psychologist for the purpose of preparing reports in



- 1                   accordance with section 74 to be used on the hearing of  
2                   the restriction order application; and
- 3           (b)   the court may, on the application of the State or of the  
4           offender, order that a person or body named by the court  
5           prepare a report in accordance with section 75 to be used  
6           on the hearing of the restriction order application on  
7           questions or topics set out in the order; and
- 8           (c)   the court may —
- 9                   (i)   if the offender is in custody and might otherwise  
10                  be released from custody before the restriction  
11                  order application is finally decided, order that the  
12                  offender be detained in custody for the period  
13                  stated in the order; and
- 14                  (ii)  if the offender is not in custody, order that the  
15                  offender be detained in custody for the period  
16                  stated in the order;
- 17                                   and
- 18           (d)   the court must, except as provided in subsection (3), fix  
19           a day for the hearing of the restriction order application.
- 20   (3)   The court may defer fixing a day for the hearing of the  
21   restriction order application or, if it has already fixed a day,  
22   adjourn the hearing if —
- 23           (a)   the offender has been charged with a further offence;  
24           and
- 25           (b)   that charge has not been dealt with; and
- 26           (c)   the court considers that the interests of justice require  
27           that the restriction order application should not be heard  
28           until that charge has been dealt with.

29   **47.   Discontinuing restriction order application**

- 30           (1)   The State may discontinue a restriction order application at any  
31           time by lodging a notice of discontinuance with the court and  
32           giving it to the offender.

1 (2) The application is dismissed when the court makes an order in  
2 terms of the notice of discontinuance.

3 (3) When an application is dismissed under subsection (2), any  
4 order under section 46(2)(c) relating to the offender is  
5 discharged.

6 **Division 3 — Making a restriction order**

7 **48. Restriction orders**

8 (1) If the court hearing a restriction order application finds that the  
9 offender is a high risk offender, the court must —

10 (a) make a continuing detention order in relation to the  
11 offender; or

12 (b) except as provided in section 29, make a supervision  
13 order in relation to the offender.

14 (2) In deciding whether to make an order under subsection (1)(a)  
15 or (b), the paramount consideration is to be the need to ensure  
16 adequate protection of the community.

17 **Division 4 — Amending a supervision order**

18 **49. Application to amend conditions of supervision order**

19 (1) An application to the Supreme Court to amend the conditions of  
20 a supervision order may be made —

21 (a) by the offender who is subject to the supervision order;  
22 or

23 (b) with the Attorney General's consent, by the CEO.

24 (2) An offender making an application under subsection (1)(a) must  
25 give notice of the application to —

26 (a) the Attorney General; and

27 (b) the CEO.

1       (3) The CEO must give notice of an application under  
2       subsection (1)(b) to the offender who is subject to the order.

3       **50. Amendment of conditions of supervision order**

4       (1) On an application under section 49 the court may, except as  
5       provided in section 29, amend the conditions of a supervision  
6       order if the court is satisfied that —

- 7               (a) the offender who is subject to the order is unable to  
8               comply with the conditions of the order because of a  
9               change in the offender’s circumstances; or  
10              (b) the amendment is necessary or desirable for any other  
11              reason.

12       (2) Before amending the conditions the court must be satisfied  
13       that —

- 14              (a) it is reasonable to make the amendment in all the  
15              circumstances; and  
16              (b) the conditions, as amended, will be sufficient to ensure  
17              adequate protection of the community.

18       **Division 5 — Contravening a supervision order**

19       **51. Warrant because of contravention**

20       (1) A police officer or community corrections officer who  
21       reasonably suspects that an offender who is subject to a  
22       supervision order is likely to contravene, is contravening, or has  
23       contravened, a condition of the order may apply to a magistrate  
24       for —

- 25              (a) the issue of a warrant under subsection (3); and  
26              (b) an order under section 52.

27       (2) A person making an application under subsection (1) must  
28       advise the State as soon as practicable that the application has  
29       been made.

**High Risk Offenders Bill 2019**

**Part 4** Restriction of offenders

**Division 5** Contravening a supervision order

**s. 52**

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- 1 (3) Subject to subsection (5), if the magistrate is satisfied that there  
2 are reasonable grounds for the suspicion described in  
3 subsection (1), the magistrate must issue, in the form approved  
4 under section 89, a warrant directed to all police officers for the  
5 offender who is subject to the supervision order to be arrested  
6 and brought before the Supreme Court for it to consider the  
7 suspected or anticipated contravention.
- 8 (4) A warrant under subsection (3) must state the suspected or  
9 anticipated contravention, and may state it in general terms.
- 10 (5) A magistrate cannot issue a warrant under subsection (3) for the  
11 arrest of an offender unless the application for the warrant is  
12 supported by evidence on oath.
- 13 (6) For the purpose of arresting an offender under a warrant under  
14 subsection (3), a police officer may enter and search any  
15 premises (including any residence or vehicle) where the police  
16 officer reasonably suspects the offender to be present.
- 17 **52. Order permitting publication of offender's photograph**
- 18 (1) A magistrate issuing a warrant under section 51(3) may order  
19 that, until the offender is arrested or appears before the Supreme  
20 Court, a photograph of the offender may be published under the  
21 *Community Protection (Offender Reporting) Act 2004*  
22 section 85G.
- 23 (2) Subsection (1) applies despite —
- 24 (a) any condition of a supervision order referred to in  
25 section 30(6)(b); or
- 26 (b) any other order of a court which would prohibit the  
27 publication of a photograph of the offender.
- 28 (3) A magistrate must not make an order under subsection (1)  
29 unless the magistrate considers it necessary in the interests of  
30 justice and for the adequate protection of the community.

1 **53. State may seek orders**

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

15 **54. Reports**

- 16 If an application is made under section 53 in relation to an  
17 offender, the court —
- 18 (a) may order that the offender undergo examination by 1 or  
19 more qualified experts for the purpose of preparing a  
20 report or reports in accordance with section 74; and
- 21 (b) on the application of the State or of the offender, may  
22 order that a person or body named by the court prepare a  
23 report in accordance with section 75 on questions or  
24 topics set out in the order.

25 **55. Court to make orders in certain cases**

- 26 (1) If, on the hearing of an application under section 53, the court is  
27 satisfied on the balance of probabilities that the offender to  
28 whom the application relates has contravened or is contravening  
29 a condition of a supervision order, the court must —
- 30 (a) rescind the supervision order and make a continuing  
31 detention order in relation to the offender; or

**High Risk Offenders Bill 2019**

**Part 4** Restriction of offenders

**Division 5** Contravening a supervision order

**s. 56**

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- 1 (b) except as provided in section 29, make an order  
2 amending the conditions of the supervision order, or  
3 extending the period for which the offender is to be  
4 subject to the supervision order, or both; or
- 5 (c) except as provided in section 29, make an order  
6 affirming the supervision order without amendment or  
7 extension.
- 8 (2) If, on the hearing of an application under section 53, the court is  
9 satisfied on the balance of probabilities that the offender to  
10 whom the application relates is likely to contravene a condition  
11 of a supervision order, the court must —
- 12 (a) rescind the supervision order and make a continuing  
13 detention order in relation to the offender; or
- 14 (b) except as provided in section 29, make an order —
- 15 (i) amending the conditions of the supervision  
16 order; or
- 17 (ii) amending the conditions of, and extending the  
18 period for which the offender is to be subject to,  
19 the supervision order.
- 20 (3) In deciding which order to make under subsection (1) or (2), the  
21 paramount consideration is to be the need to ensure adequate  
22 protection of the community.

23 **56. Orders made during contravention proceedings**

- 24 (1) This section applies if an offender who is subject to a  
25 supervision order is before the Supreme Court and proceedings  
26 on an application made under section 53 in respect of the  
27 offender are pending (the *pending proceedings*).
- 28 (2) The court may at any time in the pending proceedings —
- 29 (a) if the offender is detained in custody, order the offender  
30 to be released, subject to subsection (3); or
- 31 (b) if the offender is not detained in custody, order the  
32 offender to be detained in custody.

- 1 (3) The court cannot order the offender to be released unless it is  
2 satisfied on the balance of probabilities that —
- 3 (a) releasing the offender is justified by exceptional  
4 circumstances; and
- 5 (b) the offender will substantially comply with the standard  
6 conditions of the supervision order, including any  
7 amendments to the standard conditions made under  
8 subsection (7)(b).
- 9 (4) The onus of proof as to the matter described in subsection (3)(b)  
10 is on the offender.
- 11 (5) For the purposes of subsection (3), in considering whether  
12 releasing the offender is justified by exceptional circumstances  
13 the court may, as it thinks fit, receive and take into account  
14 information put before it, whether or not that information would  
15 normally be admissible in a court of law.
- 16 (6) In making a decision under subsections (2) and (3), the  
17 paramount consideration is to be the need to ensure adequate  
18 protection of the community.
- 19 (7) If the court releases the offender —
- 20 (a) the offender remains subject to the supervision order;  
21 and
- 22 (b) the court may, before the pending proceedings are  
23 determined, make an interim order amending the  
24 supervision order to include any requirements the court  
25 considers appropriate to ensure adequate protection of  
26 the community; and
- 27 (c) the court may order the offender to reappear before the  
28 court at any adjourned hearing of the pending  
29 proceedings; and
- 30 (d) if it is alleged that the offender has further breached the  
31 supervision order or breached an order made under  
32 paragraph (c), the court may issue a warrant to have the  
33 offender arrested and brought before the court.

1 **Division 6 — Supervision order extended due to imprisonment**

2 **57. Extension of supervision order**

3 (1) This section applies if an offender who is subject to a  
4 supervision order is sentenced to imprisonment for any offence,  
5 whether committed before or after the supervision order was  
6 made.

7 (2) The period for which the supervision order applies is extended  
8 by any period after the order is made during which the offender  
9 is in custody serving the sentence of imprisonment.

10 **Division 7 — Interim supervision orders**

11 **58. Interim supervision order**

12 (1) In this section —  
13 *specified* means specified by the court in an order made under  
14 this section.

15 (2) This section applies if —

16 (a) proceedings on a restriction order application or an  
17 application made under section 49 or 53 are pending  
18 (the *pending proceedings*); and

19 (b) the offender to whom the pending proceedings relate is  
20 not in custody; and

21 (c) the court is satisfied that, to ensure adequate protection  
22 of the community, it is desirable to make an order under  
23 this section.

24 (3) If the offender is subject to a supervision order that may  
25 otherwise expire before the pending proceedings are finally  
26 determined, the court may at any time in the pending  
27 proceedings order that the supervision order is to continue until  
28 the pending proceedings are finally determined or until another  
29 specified date.



- 1 (4) If the offender has been subject to a supervision order that has  
 2 expired, the court may at any time in the pending proceedings  
 3 order that the supervision order is to be reinstated with effect  
 4 from a specified date and is to continue until the pending  
 5 proceedings are finally determined or until another specified  
 6 date.
- 7 (5) In any other case, the court may at any time in the pending  
 8 proceedings order that, with effect from a specified date and  
 9 until the pending proceedings are finally determined or until  
 10 another specified date, the offender is to be subject to stated  
 11 conditions that the court, subject to subsection (6), considers  
 12 appropriate.
- 13 (6) Section 30 applies to an order under this section as if it were a  
 14 supervision order.

15 **Division 8 — Victim submissions**

16 **59. Terms used**

17 In this Division —

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

20 *relevant application* means —

- 21 (a) a restriction order application; and  
 22 (b) an application under section 49 to amend the conditions  
 23 of a supervision order; and  
 24 (c) an application under section 53 for an order under  
 25 section 55; and  
 26 (d) an application under section 64 or 65 for the review of  
 27 an offender’s detention.

28 **60. Making victim submissions**

- 29 (1) Where a relevant application is made in relation to an offender,  
 30 a victim of a serious offence committed by that offender may

**High Risk Offenders Bill 2019**

**Part 4** Restriction of offenders

**Division 8** Victim submissions

**s. 61**

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1 make a submission to the court in relation to the need to ensure  
2 adequate protection of the victim.

3 (2) Another person may make a submission on the victim's behalf  
4 if —

5 (a) because of age, disability or any other reason the victim  
6 is incapable of making a submission personally; and

7 (b) the court is satisfied that it is appropriate for that other  
8 person to do so.

9 (3) A victim submission must be in writing.

10 **61. Availability of victim submissions**

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

13 (a) the victim making the submission or on whose behalf  
14 the submission is made has consented to the submission  
15 being made available; and

16 (b) the court has afforded the victim making the submission  
17 an opportunity to amend the submission before it is  
18 made available.

19 **62. Court may have regard to victim submissions**

20 (1) Except as provided in subsections (2) and (3), in considering a  
21 relevant application the court may have regard to any victim  
22 submission made.

23 (2) The court must not have regard to a victim submission —

24 (a) that is not made available at the hearing of the relevant  
25 application; or

26 (b) that is withdrawn.

27 (3) If the victim making a submission has amended the submission,  
28 the court must have regard only to the amended submission.

**Part 5 — Review of detention**

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**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

**s. 66**

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

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

7                      **66. Dealing with application**

8                      (1) As soon as practicable after an application is made under  
9                      section 64 or 65, the court must give directions for the hearing  
10                      of the application.

11                      (2) Subject to subsection (3), the application must be heard, and the  
12                      review must be carried out, as soon as it is practicable to do so  
13                      in accordance with any directions given by the court.

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

16                      **67. Reports**

17                      (1) Unless the court otherwise orders, the CEO must engage 1 or  
18                      more qualified experts to prepare reports in accordance with  
19                      section 74 to be used on a review under this Part.

20                      (2) On the application of the State or the offender whose detention  
21                      is to be reviewed, the court may order the CEO to engage a  
22                      person or body named by the court to prepare a report in  
23                      accordance with section 75 on questions or topics set out in the  
24                      order.

25                      **68. Review of detention under continuing detention order**

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

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

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**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.

- 1       (2) The Court of Appeal —
- 2           (a) has all the powers and duties of the court making the
- 3                decision against which the appeal is made; and
- 4           (b) may draw inferences of fact, not inconsistent with the
- 5                findings of the court making the decision against which
- 6                the appeal is made; and
- 7           (c) may, on special grounds, receive further evidence as to
- 8                questions of fact, either orally in court, by affidavit, or
- 9                in another way.

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**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).



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

3 **75. Preparation of other report**

4 (1) A person or body providing a report in relation to a subject  
5 under this section must —

6 (a) examine the subject, if in the reporter's opinion  
7 examination is necessary or desirable having regard to  
8 the questions and topics to be addressed in the report;  
9 and

10 (b) prepare an independent report.

11 (2) The report must set out —

12 (a) the reporter's opinion on all questions and topics  
13 specified in the order or engagement for its preparation;  
14 and

15 (b) the basis for that opinion.

16 (3) The reporter must have regard to any report or information  
17 given under section 76(2).

18 (4) The reporter must prepare the report even if the subject does not  
19 cooperate, or does not cooperate fully, in any examination the  
20 reporter considers necessary or desirable.

21 **76. CEO to provide information**

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

**s. 77**

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- 1 (2) Subject to subsection (3), the CEO must give to a reporter  
2 preparing a report under section 75 any medical, psychiatric,  
3 prison or other relevant report or information relevant to the  
4 questions and topics to be addressed in the report —
- 5 (a) that is in the CEO’s possession or to which the CEO has,  
6 or may be given, access; and
- 7 (b) that the reporter considers it necessary or desirable to  
8 consider, having regard to the questions and topics to be  
9 addressed in the report.
- 10 (3) Before giving any document to a reporter under subsection (1)  
11 or (2) the CEO may edit the document to remove or erase any  
12 material —
- 13 (a) that would identify any person other than the subject; or  
14 (b) if a report is to be prepared under section 74, that does  
15 not relate to the subject; or
- 16 (c) if a report is to be prepared under section 75, that is not  
17 relevant to the questions and topics to be addressed in  
18 the report.
- 19 (4) The CEO must give to the State a copy of anything that the  
20 CEO gives to a reporter under subsection (1) or (2).

21 **77. CEO may seek information**

- 22 (1) A person in possession of any medical, psychiatric, prison or  
23 other relevant report or information relating to the subject must  
24 give a copy of the report or the information to the CEO if asked  
25 by the CEO to do so.
- 26 (2) If a person asked under subsection (1) to give a copy of any  
27 report or information to the CEO refuses to do so, the CEO may  
28 apply to the court for an order requiring the person to give the  
29 report or information to the CEO.

- 1       (3) If a person discloses a report or information to the CEO in good  
2       faith under subsection (1) or (2) —
- 3           (a) no civil or criminal liability is incurred in respect of the  
4           disclosure; and
- 5           (b) the disclosure is not to be regarded as a breach of any  
6           duty of confidentiality or secrecy imposed by law; and
- 7           (c) the disclosure is not to be regarded as a breach of  
8           professional ethics or standards or as unprofessional  
9           conduct.

10   **78. Copies of report to State and subject**

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

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**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) 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) 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.
- (4) A police officer who charges an offender with an offence under this section must inform the State as soon as practicable.

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- 1   **81.    Procedure on some charges of offences under s. 80**
- 2       (1) Except as provided in this section, the procedure applicable to  
3       and in relation to a charge of an offence under section 80(1) is  
4       the procedure applicable to and in relation to a charge of any  
5       other simple offence.
- 6       (2) A prosecution of a charge of an offence under section 80(1)  
7       against an offender in relation to certain conduct may be  
8       commenced in the Supreme Court only if proceedings have  
9       been commenced under Part 4 Division 5 in respect of the  
10      offender in relation to the same conduct, and have not been  
11      concluded.
- 12      (3) Only an authorised officer (as defined in the *Criminal*  
13      *Procedure Act 2004* section 80) can commence a prosecution of  
14      a charge of an offence under section 80(1) in the Supreme  
15      Court.
- 16      (4) If proceedings on a charge of an offence under section 80(1) in  
17      relation to certain conduct and proceedings commenced under  
18      Part 4 Division 5 in relation to the same conduct are in progress  
19      against an offender at the same time —
- 20          (a) a court of summary jurisdiction dealing with the charge  
21          must, on an application made by a police officer or the  
22          State, transfer the charge to the Supreme Court; and
- 23          (b) the State must prosecute the charge in the Supreme  
24          Court; and
- 25          (c) a judge of the Supreme Court must deal with the charge  
26          summarily under the *Criminal Procedure Act 2004* as if  
27          it were a prosecution of a simple offence in a court of  
28          summary jurisdiction, but —
- 29              (i) the Supreme Court cannot charge a fee for or in  
30              respect of any act or proceeding that relates to  
31              the prosecution; and
- 32              (ii) the Supreme Court cannot order a party to the  
33              prosecution to pay another party's costs of or

**s. 82**

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- 1    relating to the prosecution, except under the  
2    *Criminal Procedure Act 2004* section 166(2);
- 3    and
- 4                      (d) any findings of fact by the Supreme Court in the  
5    proceedings on the charge may be used in the  
6    proceedings under Part 4 Division 5; and
- 7                      (e) if the offender is convicted of the charge, the sentencing  
8    of the offender may be adjourned until after the  
9    proceedings under Part 4 Division 5 are concluded; and
- 10                      (f) if the Supreme Court fines the offender for the offence,  
11    the court may make an order under the *Sentencing*  
12    *Act 1995* section 59 in respect of the fine.
- 13                      (5) A person who is dissatisfied with a decision (as defined in the  
14    *Criminal Appeals Act 2004* section 6) made by the Supreme  
15    Court under subsection (4) in proceedings on a charge of an  
16    offence under section 80(1) may, with the leave of the Court of  
17    Appeal, appeal against it.
- 18                      (6) For the purposes of subsection (5), the *Criminal Appeals*  
19    *Act 2004* Part 2, with any necessary changes, applies as if —
- 20    (a) the decision referred to in subsection (5) were a decision  
21    of a court of summary jurisdiction; and
- 22    (b) a reference in that Part to a court of summary  
23    jurisdiction were a reference to the Supreme Court; and
- 24    (c) a reference in that Part to the Supreme Court were a  
25    reference to the Court of Appeal.
- 26                      (7) Despite the *Criminal Appeals Act 2004* section 13(1), the appeal  
27    is to be dealt with by the Court of Appeal.
- 28                      **82.                      Proceedings to be criminal proceedings**
- 29                      (1) Proceedings under this Act or on an appeal under this Act are to  
30    be taken to be criminal proceedings for all purposes.

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

4       **83. Deciding certain matters on the papers**

- 5       (1) In this section —  
6       *relevant proceeding* means a judicial proceeding for —  
7       (a) a serious offence; or  
8       (b) another offence that the court considers relevant, having  
9       regard to the matter for decision before the court.
- 10      (2) This section applies to how the court may decide —  
11      (a) whether it is satisfied, as described in section 46(1), that  
12      there are reasonable grounds for the belief described in  
13      that subsection; or  
14      (b) whether it is satisfied as required by section 50.
- 15      (3) The court may decide entirely or partly from a consideration of  
16      documents lodged with the court, without the offender or  
17      witnesses appearing and without the offender consenting to, or  
18      being heard on, the making of the decision.
- 19      (4) In making its decision, the court may receive in evidence —  
20      (a) any document relevant to the antecedents or criminal  
21      record of the offender; or  
22      (b) anything relevant contained in the official transcript of  
23      any relevant proceeding against the offender; or  
24      (c) any relevant material that was tendered to the court, or  
25      that informed the court, in a relevant proceeding against  
26      the offender; or  
27      (d) any relevant material of the kind mentioned in  
28      section 7(3) relating to the offender.

**s. 84**

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- 1     **84.     Evidence in certain hearings**
- 2         (1)    In this section —
- 3             ***relevant proceeding*** means a judicial proceeding for —
- 4                 (a)    a serious offence; or
- 5                 (b)    another offence that the court considers relevant, having
- 6                         regard to the matter for decision before the court.
- 7         (2)    This section applies to —
- 8                 (a)    a restriction order application; and
- 9                 (b)    an application under section 64 or 65 for a review; and
- 10                (c)    an application for an order under section 55.
- 11        (3)    Before the court makes a decision or order on the hearing of an
- 12             application it must, if the evidence is admissible —
- 13                 (a)    hear evidence called by the State; and
- 14                 (b)    if the offender elects to give or call evidence, hear
- 15                         evidence given by or on behalf of the offender.
- 16        (4)    Except as modified by subsection (5), ordinary rules of evidence
- 17             apply to evidence given or called under subsection (3).
- 18        (5)    In making its decision, the court may receive in evidence —
- 19                 (a)    any document relevant to the antecedents or criminal
- 20                         record of the offender; or
- 21                 (b)    anything relevant contained in the official transcript of
- 22                         any relevant proceeding against the offender; or
- 23                 (c)    any relevant material that was tendered to the court, or
- 24                         that informed the court, in a relevant proceeding against
- 25                         the offender; or
- 26                 (d)    any relevant material of the kind mentioned in
- 27                         section 7(3) relating to the offender.



1   **85.     Court may give directions**

2           The court may, on its own initiative or on the application of a  
3           party, give directions —

- 4           (a)   with respect to evidence received or to be received under  
5                section 84(5); or  
6           (b)   otherwise in relation to the conduct of a proceeding  
7                under this Act.

8   **86.     Appearance at hearings**

9       (1)   In this section —

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

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

14       (2)   An offender is entitled to appear at the hearing of a restriction  
15           order application against the offender.

16       (3)   An offender is entitled to appear at the hearing of an application  
17           under section 64 or 65 for the review of the offender's detention  
18           under a continuing detention order.

19       (4)   The court may direct that an offender entitled under this section  
20           to appear is to appear by means of a video link or an audio link.

21   **87.     Warrant of commitment upon order for detention**

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

25   **88.     Protection from personal liability**

26       (1)   In this section —

27           *protected person* means —

- 28           (a)   a member of the Board; and  
29           (a)   a person employed in a supporting agency; and

**s. 89**

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- 1                      (b) a person appointed under the *Director of Public*  
2    *Prosecutions Act 1991* or a person on the staff referred  
3    to in section 30 of that Act; or
- 4                      (c) a qualified expert ordered or engaged to provide a report  
5    under section 74; or
- 6                      (d) a person or body ordered or engaged to provide a report  
7    under section 75; or
- 8                      (b) a person employed by a body or agency prescribed by  
9    regulations for the purposes of this definition.
- 10                    (2) In this section, a reference to the doing of anything includes a  
11    reference to the omission to do anything.
- 12                    (3) A civil action does not lie against a protected person for  
13    anything done, in good faith, in the performance or purported  
14    performance of a function under this Act.
- 15                    (4) The protection given by this section applies even though the  
16    thing done as described in subsection (3) may have been  
17    capable of being done whether or not this Act had been enacted.

18                    **89.        Approved forms**

19    The CEO may approve forms for use under this Act.

20                    **90.        Regulations**

21    The Governor may make regulations prescribing all matters that  
22    are required or permitted by this Act to be prescribed, or are  
23    necessary or convenient to be prescribed for giving effect to the  
24    purposes of this Act.

1 **Part 9 — Consequential amendments to other Acts**

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

4 **91. Act amended**

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

7 **92. Section 85A amended**

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

10  
11 ***HRO supervision order*** means a supervision order  
12 under the *High Risk Offenders Act 2019*;

13 ***serious sexual offence*** means —

- 14 (a) an offence specified in the *High Risk Offenders*  
15 *Act 2019* Schedule 1, other than an offence  
16 under —

- 17 (i) the *Bush Fires Act 1954* section 32; or  
18 (ii) the *Road Traffic Act 1974* section 59; or  
19 (iii) *The Criminal Code* section 279, 280,  
20 281, 283, 294, 297, 304(2), 332, 333,  
21 338E, 343 392, 393, 444 or 445A;

22 or

- 23 (b) an offence under a written law that has been  
24 repealed, if the offender's acts or omissions that  
25 constituted the offence under the repealed  
26 provision would constitute a serious sexual  
27 offence under paragraph (a); or  
28 (c) an offence of conspiracy, attempt or incitement  
29 to commit an offence that is a serious sexual  
30 offence under paragraph (a) or (b); or

**High Risk Offenders Bill 2019**

**Part 9** Consequential amendments to other Acts

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

**s. 93**

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- 1 (d) an offence against the law of the  
2 Commonwealth or of any place outside  
3 Western Australia, if the offender's acts or  
4 omissions that constituted the offence under  
5 that law would constitute a serious sexual  
6 offence under paragraph (a) or (c).
- 7 (e) an offence against the law of the  
8 Commonwealth if —
- 9 (i) the offence is of a sexual nature; and  
10 (ii) the penalty for the offence specified by  
11 the law of the Commonwealth is or  
12 includes imprisonment for 7 years or  
13 more; and
- 14 (c) the offence is prescribed to be a serious  
15 sexual offence.  
16
- 17 (3) In section 85A in the definition of *publish* delete  
18 "Commissioner." and insert:  
19  
20 Commissioner;  
21
- 22 **93. Section 85G amended**
- 23 Delete section 85G(2)(a) and insert:  
24
- 25 (a) if —
- 26 (i) the person has been convicted of a  
27 serious sexual offence; and
- 28 (ii) the person is subject to a HRO  
29 supervision order; and

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

4 or  
5

6 **94. Section 85H amended**

7 In section 85H(2)(b) delete "DSO supervision order; and" and  
8 insert:  
9

10 HRO supervision order; and  
11

12 **95. Section 85I amended**

13 In section 85I(2)(a)(iii) delete "DSO supervision order" and  
14 insert:  
15

16 HRO supervision order  
17

18 **Division 2 — *Criminal Procedure Act 2004* amended**

19 **96. Act amended**

20 This Division amends the *Criminal Procedure Act 2004*.

21 **97. Section 51 amended**

22 In section 51(5A) delete "*Dangerous Sexual Offenders Act 2006*  
23 section 40A" and insert:  
24

25 *High Risk Offenders Act 2019* section 80(1)  
26

1 **98. Section 80 amended**

2 After section 80(2)(c) insert:

3

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

7

8 **Division 3 — Freedom of Information Act 1992 amended**

9 **99. Act amended**

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

11 **100. Schedule 2 amended**

12 In Schedule 2 —

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

14

15 The High Risk (Sexual and Violent) Offenders Board.

16

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

18

19 The State Solicitor, but only in relation to documents  
20 originating with or received by the State Solicitor in  
21 connection with functions under the *High Risk Offenders*  
22 *Act 2019*.

23

24 **101. The Glossary amended**

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

26

- 27 (3A) In connection with its functions under the *High Risk*  
28 *Offenders Act 2019*, the State Solicitor is to be regarded as a  
29 separate agency and is not to be regarded as a part of the  
30 department in which the State Solicitor is employed.

31

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

3 (3) A document originating with or received by the State  
4 Solicitor in connection with functions under the *High Risk*  
5 *Offenders Act 2019* is not to be regarded as a document of  
6 the department in which the State Solicitor is employed.  
7

8 **Division 4 — *Sentence Administration Act 2003* amended**

9 **102. Act amended**

10 This Division amends the *Sentence Administration Act 2003*.

11 **103. Section 50 amended**

12 In section 50(ca) delete “*Dangerous Sexual Offenders Act 2006*  
13 section 17(1)(a); and” and insert:  
14

15 *High Risk Offenders Act 2019* section 48(1)(a); and  
16

17 **104. Section 74A amended**

18 (1) In section 74A delete the definition of *serious violent offence*.

19 (2) In section 74A insert in alphabetical order:  
20

21 *serious offence* has the meaning given in the *High Risk*  
22 *Offenders Act 2019* section 5;

23 *serious offender under restriction* has the meaning  
24 given in the *High Risk Offenders Act 2019* section 3.  
25

26 (3) In section 74A in the definition of *prisoner* delete “violent”.

1 **105. Section 74B amended**

2 (1) In section 74B:

3 (a) delete “In this Part” and insert:

4

5 (1) In this Part

6

7 (b) in paragraphs (a) and (f) delete “violent”;

8 (c) in paragraph (h) delete “any” and insert:

9

10 subject to subsection (2), any

11

12 (2) At the end of section 74B insert:

13

14 (2) In this Part a reference to the PSSO considerations does  
15 not include a reference to considerations relating to the  
16 community’s interest in punishment or deterrence of  
17 offences.

18

19 **106. Section 74D amended**

20 Delete section 74D(3) and insert:

21

22 (3) Subject to subsection (5), the Board must make a PSSO  
23 in respect of the prisoner if it considers that the order is  
24 necessary for the prevention of harm to the community  
25 from further offending by the prisoner.

26 (4) In considering under subsection (3) whether a PSSO is  
27 necessary, the Board must have regard to —

28 (a) the PSSO considerations relating to the  
29 prisoner; and

30 (b) the report made by the CEO under section 74C;  
31 and



1 (c) any other information about the prisoner  
2 brought to its attention.

3 (5) The Board must not make a PSSO in respect of a  
4 serious offender under restriction.  
5

6 **107. Section 74E amended**

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

8  
9 a period of not less than 6 months and not more than 2 years, as  
10 the Board specifies in the order,  
11

12 **108. Section 74G amended**

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

14 **109. Section 74J amended**

15 (1) In section 74J(2) delete “section.” and insert:

16  
17 subsection.  
18

19 (2) After section 74J(2) insert:

20  
21 (3) If a supervised offender, during the PSSO period,  
22 becomes a serious offender under restriction, the PSSO  
23 applicable to the supervised offender is cancelled by  
24 operation of this subsection.  
25

1 **110. Section 74K replaced**

2 Delete section 74K and insert:

3

4 **74K. Subsequent PSSO after cancellation for committing**  
5 **offence**

6 (1) In this section —

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

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

13 *further term* means a term of imprisonment imposed  
14 upon a supervised offender in respect of a further  
15 offence.

16 (2) If a PSSO is cancelled by operation of section 74J(2),  
17 the Board may subsequently make another PSSO in  
18 respect of the supervised offender.

19 (3) The PSSO period specified in the subsequent PSSO —

20 (a) must begin on —

21 (i) if the supervised offender is not released  
22 on parole — the day on which the  
23 supervised offender is released after  
24 serving the further term; or

25 (ii) if the supervised offender is released on  
26 parole — the day after the day on which  
27 the further term ends;

28 and

29 (b) must not be longer than the remaining PSSO  
30 period of the cancelled PSSO.

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

4 **111. Section 74L replaced**

5           Delete section 74L and insert:  
6

7 **74L. Offence for breach of PSSO**

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

10           Penalty: imprisonment for 3 years.  
11

12 **112. Section 103 amended**

13           Delete section 103(2) and insert:  
14

15           (2) The Minister must not nominate a person as the  
16           chairperson unless —

17                   (a) the person has served as, or is qualified for  
18                   appointment as, a judge of the District Court of  
19                   Western Australia, the Supreme Court of  
20                   Western Australia or another State or Territory,  
21                   the High Court of Australia or the Federal  
22                   Court of Australia; and

23                   (b) if the person holds judicial office, the person  
24                   has consented in writing to be nominated.

25           (2A) A person holding a judicial office must retire upon  
26           being nominated as the chairperson.  
27

**High Risk Offenders Bill 2019**

**Part 9** Consequential amendments to other Acts

**Division 5** Other Acts amended

**s. 113**

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1 **113. Section 119 amended**

2 After section 119(1)(b) insert:

3

4 (ba) under the *High Risk Offenders Act 2019*  
5 section 25(1) or 40(2); or  
6

7 **114. Schedule 4 deleted**

8 Delete Schedule 4.

9 **Division 5 — Other Acts amended**

10 **115. *Bail Act 1982* amended**

11 (1) This section amends the *Bail Act 1982*.

12 (2) In Schedule 1 Part C clause 3D(1) delete the definition of  
13 ***section 40A offence*** and insert:

14

15 ***section 80 offence*** means the offence under the *High Risk*  
16 *Offenders Act 2019* section 80(1) of contravening a  
17 requirement of a supervision order;  
18

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

22

23 *High Risk Offenders Act 2019* section 3.  
24

25 (4) In Schedule 1 Part C clause 3D(2):

26 (a) in paragraph (a) delete “section 40A offence; or” and  
27 insert:

28

29 section 80 offence; or  
30

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

2

3                    section 80 offence

4

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

7

8                    section 80 offence

9

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

12

13                   section 80 offence

14

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

16                   **Bail in cases under *High Risk Offenders Act 2019* section 80(1)**

17                   **116. *Director of Public Prosecutions Act 1991* amended**

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

20                   (2) After section 15 insert:

21

22                   **15A. *Proceedings under High Risk Offenders Act 2019***

23                   (1) It is a function of the Director to make applications and  
24                   take other proceedings as authorised under the *High*  
25                   *Risk Offenders Act 2019* section 11(2).

26                   (2) Despite section 10(1)(a), the Director must make  
27                   applications and take other proceedings as authorised  
28                   under the *High Risk Offenders Act 2019* section 11(2)  
29                   in the name of the State.

30

1 **117. Prisons Act 1981 amended**

2 (1) This section amends the *Prisons Act 1981*.

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

6

7 serious offence (as defined in the *High Risk Offenders Act 2019*  
8 section 5)

9

10 **118. Sentencing Act 1995 amended**

11 (1) This section amends the *Sentencing Act 1995*.

12 (2) In section 97A(1) in the definition of *offence* delete “*Sentence*  
13 *Administration Act 2003* Schedule 4;” and insert:

14

15 *High Risk Offenders Act 2019* Schedule 1;

16

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

18

19 (2) This section applies if —

20 (a) a court is sentencing an offender to  
21 imprisonment for an indictable offence; and

22 (b) the offence —

23 (i) involved the use of, or counselling or  
24 procuring the use of, or conspiring or  
25 attempting to use, a firearm against  
26 another person; or

27 (ii) involved the use of, or counselling or  
28 procuring the use of, or conspiring or  
29 attempting to use, serious violence  
30 against another person; or

- 1 (iii) resulted in serious harm to, or the death  
 2 of, another person.
- 3 (3) The sentencing court may declare the offence  
 4 committed by the offender to be a serious offence for  
 5 the purposes of —
- 6 (a) the *High Risk Offenders Act 2019*; and  
 7 (b) the *Sentence Administration Act 2003* Part 5A.  
 8

9 **119. Various references to *Dangerous Sexual Offenders Act 2006***  
 10 **replaced**

- 11 (1) This section amends the Acts listed in the Table.
- 12 (2) In the provisions listed in the Table delete “*Dangerous Sexual*  
 13 *Offenders Act 2006*” and insert:  
 14

15 *High Risk Offenders Act 2019*

17 **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) s. 98(3)(aa)

**High Risk Offenders Bill 2019**

**Part 9** Consequential amendments to other Acts

**Division 5** Other Acts amended

**s. 119**

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<i>Young Offenders Act 1994</i>	s. 189(7)(c) s. 190(2A)
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1           **Part 10 — Repeal and transitional provisions**

2   **120.    Terms used**

3           In this Part —

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

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

7   **121.    Act repealed**

8           The *Dangerous Sexual Offenders Act 2006* is repealed.

9   **122.    Completion of things commenced**

10          (1) If an application to court made, appeal lodged, or other  
11             proceedings taken, under a provision of the repealed Act has not  
12             been finally determined by commencement day, the application,  
13             appeal or proceedings —

14                 (a) continues; and

15                 (b) may be determined under this Act; and

16                 (c) for the purposes of determining it under this Act is taken  
17                     to have been made, lodged or taken under the  
18                     corresponding provision of this Act.

19          (2) An application made, appeal lodged, or other proceedings taken,  
20             by the Director of Public Prosecutions under a provision of the  
21             repealed Act which continues under subsection (1) may be  
22             continued —

23                 (a) by or under the authority of the Attorney General as  
24                     provided in section 11; or

25                 (b) by the Director of Public Prosecutions as provided in  
26                     section 7A of the repealed Act.

**s. 123**

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1 **123. Continuing effect of things done**

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

6 (a) continues in effect; and

7 (b) is taken to have been made, given or issued under the  
8 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
7.	s. 219	Distributing child exploitation material

**High Risk Offenders Bill 2019****Schedule 1** Serious offences**Division 1** Offences that are serious offences in all circumstances

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<b>Item</b>	<b>Provision</b>	<b>Description of offence</b>
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
24.	s. 328	Aggravated sexual coercion

<b>Item</b>	<b>Provision</b>	<b>Description of offence</b>
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

1

**Subdivision 4 — Offences under the *Prostitution Act 2000***

<b>Item</b>	<b>Provision</b>	<b>Description of offence</b>
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
4.	s. 18	Agreement for prostitution by child

**High Risk Offenders Bill 2019**

**Schedule 1** Serious offences

**Division 2** Offences that are serious offences if committed in specified circumstances

1

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

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

2

**Division 2 — Offences that are serious offences if committed in specified circumstances**

3

4

**Subdivision 1 — Offence under *The Criminal Code***

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

5

**Subdivision 2 — Offence under the *Prostitution Act 2000***

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

6



## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
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 .....	120
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 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
relevant application.....	59

Defined terms

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relevant proceeding.....	83(1), 84(1)
repealed Act .....	120
report.....	72
reporter.....	72
restriction order.....	3
restriction order application .....	3
second agency .....	25(1)
serious offence .....	3, 5(1)-(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)