

DANGEROUS SEXUAL OFFENDERS AMENDMENT BILL 2011

EXPLANATORY MEMORANDUM

The Dangerous Sexual Offenders Amendment Bill 2011 (the Bill) seeks to amend the *Dangerous Sexual Offenders Act 2006* (the DSO Act). The amendments will remedy a small number of issues that have the immediate capacity to hamper the DSO Act's effectiveness in protecting the community.

Clause Notes

Clause 1. Short title

This clause provides that this Act may be cited as the *Dangerous Sexual Offenders Amendment Act 2011*.

Clause 2. Commencement

This clause sets out the commencement provisions for the Act. Clauses 1 and 2 (the short title and commencement) will come into effect on the day the Act receives Royal Assent. The remainder of the Act will commence the following day.

Clause 3. Act amended

This clause provides that the Bill will amend the *Dangerous Sexual Offenders Act 2006*.

Clause 4. Section 3 amended

This clause will amend section 3 of the DSO Act. Section 3 of the DSO Act defines various terms used in the Act. Clause 4 of the Bill will:

- replace the existing definition of *chief executive officer* with a definition that reflects the fact that different sections of the DSO Act have different administering portfolios and different public sector agencies assisting the Minister with their administration;
- insert a definition of *commit a serious sexual offence*. The term is used in sections 7, 23 and 37 of the DSO Act and is central to the assessment of whether a person is a serious danger to the community. The proposed definition ensures that the court may consider the risk of a person committing offences outside of Western Australia and Australia when determining whether they are a serious danger to the community;
- clarify that the term *community*, as used in the DSO Act, is not limited to the community of, or communities within, Western Australia or Australia. The DSO Act is concerned with the protection of the community; this amendment will ensure that such protection is not limited unnecessarily.

Clause 5. Section 5 replaced

This clause replaces section 5 of the DSO Act. The existing section 5 prevents the *Bail Act 1982* applying to any person detained under the DSO Act. The replacement section will allow the *Bail Act* to apply to persons charged with contravening a supervision order (under

proposed section 40A – see clause 13) unless the person is also detained under the DSO Act for another reason.

Clause 6. Section 8 amended

This clause inserts two additional subsections into section 8 of the DSO Act. Currently, section 8 of the DSO Act allows the Director of Public Prosecutions (DPP) to apply to the Supreme Court for a continuing detention or supervision order.

The additional subsections inserted by clause 6 of the Bill will provide a clear mechanism for bringing an offender before the Supreme Court for the preliminary hearing of the application by:

- a. allowing the DPP to apply for a summons or warrant in respect of the offender; and
- b. giving the Supreme Court express power to issue the summons or warrant.

Clause 7. Section 21 amended

This clause amends section 21 of the DSO Act. Section 21 of the DSO Act sets out the necessary conditions for a summons or warrant to be issued in response to an offender's possible contravention of his or her supervision order.

Subclause (1) will insert a provision requiring the member of the police force or community corrections officer to advise the DPP when they apply to a magistrate for a summons or warrant.

Subclause (2) amends section 21(2) of the DSO Act to ensure that all forms are approved by the same chief executive officer (regardless of the public sector agency and Minister involved in administering the particular section of the DSO Act). This is related to the replacement definition of chief executive officer contained in clause 4 of the Bill.

Subclause (3) replaces section 21(4) and (5) of the DSO Act. The replacement provisions require the magistrate to issue a warrant in respect of a person if satisfied that there are reasonable grounds for suspecting that the person has contravened, is contravening, or is likely to contravene, their supervision order. The magistrate may only issue a summons instead of a warrant if:

- a. justified by the existence of exceptional circumstances; or
- b. the applicant (a member of the police force or a community corrections officer) consents to the issue of a summons.

Clause 8. Section 22 amended

This clause is a consequential amendment required by the insertion of proposed section 24A (see clause 11). It amends section 22 of the DSO Act to ensure that the DPP and the court may use the same process to deal with the secondary breach of a supervision order or breach of an interim supervision order (under proposed section 24A) as they use to deal with the original breach of a supervision order.

Clause 9. Section 23A inserted

This clause inserts section 23A into the DSO Act. The proposed section gives the Supreme Court express power to order a psychiatric examination and report in respect of a person suspected of contravening his or her supervision order. The resulting report may be used to assist the court in deciding (under section 23 of the DSO Act) whether to amend the supervision order or return the offender to custody.

Proposed section 23A is based on a similar provision, requiring the court to order psychiatric examinations and reports at a preliminary hearing, found in section 14(2)(a) of the DSO Act. Psychiatric examinations and reports are also required for annual reviews of detention (see section 32 of the DSO Act).

Clause 10. Section 23 amended

This clause inserts a subsection into section 23 of the DSO Act. In its current form, section 23 of the DSO Act allows the Supreme Court (if satisfied that a person has contravened or will contravene their supervision order) to make an order:

- a. amending the supervision order; or
- b. detaining the person in custody.

Proposed subsection (2), contained in clause 10 of the Bill, requires the court to give paramount consideration to protecting the community when deciding whether to make such an order.

Clause 11. Section 24A inserted

This clause inserts section 24A into the DSO Act. The proposed section details the orders that the Supreme Court may make during proceedings in respect of an alleged breach of a supervision order.

Proposed section 24A(1) stipulates that proposed section 24A applies during *pending proceedings*, and gives meaning to that term.

Proposed subsection (2) provides that, during pending proceedings, the court may release the person who is the subject of the proceedings or may detain them in custody. This is qualified by proposed subsection (3), which provides that the person may not be released unless:

- a. it is justified by the existence of exceptional circumstances; or
- b. the DPP consents to the release.

Subsection (4) requires the court, in deciding whether to detain or release the person, to give paramount consideration to the protection of the community.

Proposed subsection (5) sets out the conditions that apply and the actions that may be taken if the court releases the person during the pending proceedings. If the court releases the person, he or she remains subject to the existing supervision order as well as any additional requirements contained in an interim order made by the court. In the event that the person is alleged to have further breached the supervision order or interim order, the court may issue a warrant for his or her arrest.

Clause 12. Section 37 amended

This clause makes a minor amendment to section 37(1) of the DSO Act. Section 37(1) of the DSO Act currently requires the psychiatrist named in an order under section 14(2)(a) or subject to an arrangement under section 32(1) to conduct the necessary examination and prepare a report. The amendment proposed by clause 12 of the Bill simply applies the same requirements to psychiatrists named in orders under proposed section 23A(1) (see clause 9).

Clause 13. Sections 40A and 40B inserted

This clause inserts sections 40A and 40B into Part 6 of the DSO Act. The proposed sections make it an offence to contravene a supervision order, and set out the procedure for dealing with a charge of the offence.

Proposed section 40A – Offence of contravening a supervision order

Proposed section 40A makes it an offence for a person to contravene a requirement of his or her supervision order. The maximum penalty for the offence is 2 years imprisonment. A police officer is permitted to arrest a person without a warrant if the officer has reasonable grounds to suspect that the person has contravened their supervision order.

Regardless of whether the person is arrested without a warrant, if a police officer charges a person with the offence of contravening a supervision order, proposed section 40A(3) requires the officer to inform the DPP as soon as practicable. This provision, combined with proposed section 21(2A) (inserted by clause 7(1) of the Bill), will assist the DPP to effectively coordinate the two possible responses to the alleged contravention of a supervision order.

Proposed section 40B – Procedure on some charges of offences under s. 40A

Proposed section 40B is based, in part, on sections 52 and 53 of the *Bail Act 1982*. It sets out the procedure for dealing with charges of offences under proposed section 40A.

Proposed section 40B(1) provides that a charge of contravening of supervision order (under proposed section 40A) is to be dealt with in the usual manner for a simple offence unless proceedings under Part 2 Division 4 of the DSO Act¹ are also underway.

If proceedings under Part 2 Division 4 of the DSO Act have commenced in the Supreme Court in relation to the same alleged contravention, proposed section 40B(2) allows prosecution of a proposed section 40A offence to be commenced in the Supreme Court (rather than in the Magistrates Court). This prevents both the Magistrates Court and the Supreme Court having to determine the same facts.

Proposed section 40B(3) stipulates that only an authorised officer, (as defined in the *Criminal Procedure Act 2004*) may commence the prosecution in the Supreme Court. Authorised officers include the Attorney General, the Solicitor-General, the State Solicitor, the DPP, and authorised members of the DPP's staff.

¹ Part 2 Division 4 of the DSO Act also relates to contravention of a supervision order. If the contravention is made out, it allows the Supreme Court to amend the supervision order or make an order that the person be detained in custody. Unlike proposed section 40A, it does not allow the court to impose a penalty for the contravention.

Proposed subsection (4) provides for a charge under proposed section 40A to be transferred to the Supreme Court if it commenced in the Magistrates Court. The charge must be prosecuted by the DPP in the Supreme Court and must be dealt with summarily by a judge of the Supreme Court with the exception that fees may not be charged or costs awarded.

Paragraphs (d) and (e) of proposed section 40B(4) are concerned with ensuring that simultaneous proceedings under Part 2 Division 4 of the DSO Act and proposed section 40A have congruent outcomes and do not result in unnecessary duplication of effort for the court, witnesses, and other parties. It will also ensure that there is no duplication of punishment for the offender.

Proposed subsection (4)(f) ensures that, if the Supreme Court fines the person for the offence, the court may also order that the person is to be imprisoned if he or she fails to pay the fine.

Proposed subsections (5), (6) and (7) set out the process for appealing against a decision of the Supreme Court in proceedings on a charge of contravening a supervision order under proposed section 40A.

Clause 14. Section 46A inserted

This clause inserts section 46A into the DSO Act. Proposed section 46A is based, in part, on section 109 of the *Community Protection (Offender Reporting) Act 2004*. The proposed section provides protection from liability for employees of the Department of Corrective Services, the DPP, members of the DPP's staff, and psychiatrists. The protection applies to any act or omission done in good faith while performing a function under the DSO Act.

Clause 15. Section 48 inserted

This clause inserts section 48 into the DSO Act. Proposed section 48 allows for the inclusion of transitional provisions in Schedule 1 to the DSO Act.

Clause 16. Schedule 1 inserted

This clause inserts Schedule 1 to the DSO Act. Schedule 1 contains transitional provisions related to the amendments made by the Bill.