



Queensland

Dangerous Prisoners (Sexual Offenders) Amendment Act 2007

Act No. 35 of 2007



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Act No. 35 of 2007

**An Act to amend the *Dangerous Prisoners (Sexual Offenders)
Act 2003***

[Assented to 29 August 2007]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007*.

2 Act amended

This Act amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

2A Insertion of new s 9AA

After section 9—

insert—

‘9AA Victim’s submission relating to division 3 order

- ‘(1) As soon as practicable after the court sets a date for the hearing of an application for a division 3 order, the Attorney-General must give written notice of the application and hearing date to the following eligible person—
- (a) subject to paragraph (b), the actual victim of the serious sexual offence for which the prisoner is serving a term or period of imprisonment;
 - (b) if the victim is under 18 years or has a legal incapacity, the victim’s parent or guardian.
- ‘(2) The notice must invite the eligible person to give to the Attorney-General, before the date stated in the notice, a written submission stating—
- (a) the person’s views about any division 3 order or conditions of release to which the prisoner should be subject; and
 - (b) any other matters prescribed under a regulation.
- ‘(3) It is sufficient compliance with subsection (1) for the Attorney-General to give the notice to the eligible person at

the eligible person's last-known address recorded in the eligible persons register.

- '(4) The Attorney-General must place before the court for the hearing of the division 3 order any submission received from the eligible person before the hearing date.
- '(5) For the purposes of this section, the chief executive (corrective services) is authorised, if requested by the Attorney-General, to give to the Attorney-General details of the eligible person's identity and contact details recorded in the eligible persons register.'

2B Amendment of s 10 (Discontinuing application for division 3 order)

Section 10—

insert—

- '(4) If the Attorney-General received a submission from an eligible person in response to a notice given to the person under section 9AA, the Attorney-General must give the person written notice of the discontinuance of the application.'

2C Amendment of s 13 (Division 3 orders)

Section 13(5)(b), 'conditions'—

omit, insert—

'requirements'.

3 Amendment of s 16 (Conditions for supervised release)

- (1) Section 16, heading, 'Conditions'—

omit, insert—

'Requirements'.

- (2) Section 16(1)—

insert—

- ‘(da) comply with a curfew direction or monitoring direction; and
- (db) comply with every reasonable direction of a corrective services officer; and’.
- (3) Section 16(2), ‘order’, second mention—
omit, insert—
‘requirement’.
- (4) Section 16(2)(a), examples, ‘an order’—
omit, insert—
‘a requirement’.

3A Insertion of new s 16A

Part 2, division 3B—

insert—

‘16A Curfew and monitoring directions

- ‘(1) The purpose of this section is to enable the movements of a released prisoner to be restricted and to enable the location of the released prisoner to be monitored.
- ‘(2) A corrective services officer may give 1 or both of the following directions to the released prisoner—
 - (a) a direction to remain at a stated place for stated periods (***curfew direction***);
Example—
a direction to remain at the released prisoner’s place of residence from 2.30p.m. to 7.00p.m. on school days, if the prisoner is not required to be at a place of employment during these hours
 - (b) a direction to do 1 or both of the following (***monitoring direction***)—
 - (i) wear a stated device;
 - (ii) permit the installation of any device or equipment at the place where the released prisoner resides.
- ‘(3) A corrective services officer may give any reasonable directions to a released prisoner that are necessary for the

proper administration of a curfew direction or monitoring direction.

- ‘(4) This section and section 16(1)(da) do not limit section 16(1)(db).’.

3B Amendment of s 19 (Amendment of conditions of supervision order or interim supervision order)

- (1) Section 19, ‘conditions’—

omit, insert—

‘requirements’.

- (2) Section 19—

insert—

- ‘(3) If the court amends the requirements on an application made by the chief executive, the court must also amend the supervision order or interim supervision order to include the requirements mentioned in section 16(1)(da) and (db), if the order does not already include the requirements.
- ‘(4) To the extent the supervision order or interim supervision order includes a requirement mentioned in section 16(1), the order can not be amended under this section in relation to the requirement.’.

3C Insertion of new s 19A

Part 2, division 4—

insert—

‘19A Removal or reinstatement of requirement to comply with curfew direction or monitoring direction

- ‘(1) This section applies to a requirement of a supervision order or interim supervision order that a released prisoner comply with a curfew direction or monitoring direction.
- ‘(2) The court may, on application by the released prisoner, remove the requirement if the released prisoner satisfies the court on the balance of probabilities that the adequate

protection of the community can be ensured without the requirement.

- ‘(3) An application under subsection (2) may only be made—
 - (a) for the first time, after 2 years from the date the requirement was included in the order; or
 - (b) if paragraph (a) does not apply, after 1 year from the date an application by the released prisoner under this section was last decided.
- ‘(4) At the hearing of the application, the chief executive may place before the court evidence of the released prisoner’s compliance, or noncompliance, with the order.
- ‘(5) The court must have regard to the evidence placed before it under subsection (4) in considering whether the adequate protection of the community can be ensured without the requirement.
- ‘(6) The court may, on application made at any time by the chief executive with the Attorney-General’s consent, reinstate a requirement of a supervision order or interim supervision order removed under this section.’.

4 Amendment of s 20 (Summons or warrant for released prisoner suspected of contravening a supervision order or interim supervision order)

- (1) Section 20, heading, ‘Summons or warrant’—
omit, insert—
‘Warrant’.
- (1A) Section 20(1), ‘condition’—
omit, insert—
‘requirement’.
- (2) Section 20(2), from ‘apply for’ to ‘a warrant’—
omit, insert—
‘apply for a warrant’.

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- (3) Section 20(3), ‘summons or’—
omit.
- (4) Section 20(4) and (5)—
omit, insert—
- ‘(4) However, the warrant may be issued only if the complaint is under oath.’.
- (5) Section 20(6), ‘summons or’—
omit.
- (6) Section 20(8)—
renumber as section 20(9).
- (7) Section 20(7)—
omit, insert—
- ‘(7) If the magistrate issues a warrant under subsection (3), the commissioner of the police service or the chief executive must give a copy of the warrant to the Attorney-General within 24 hours after the warrant is issued.
- ‘(8) The *Police Powers and Responsibilities Act 2000*, sections 800 to 802, apply to the application for the warrant—
 - (a) as if the warrant were a prescribed authority, within the meaning of section 800 of that Act, that could be obtained under that Act; and
 - (b) if the application is made by a corrective services officer, as if the corrective services officer were a police officer.

Note—

The *Police Powers and Responsibilities Act 2000*, sections 800 to 802 provide for obtaining prescribed authorities by phone, fax, radio, email or another similar facility.’.

- (8) Section 20(9), as renumbered, from ‘affect’—
omit, insert—
‘affect the court’s ability to make a further order under section 22.’.

5 Replacement of s 21 (Contravention of supervision order or interim supervision order)

Section 21—

omit, insert—

‘21 Interim order concerning custody generally

- ‘(1) This section applies if a released prisoner is brought before the court under a warrant issued under section 20.
- ‘(2) The court must—
- (a) order that the released prisoner be detained in custody until the final decision of the court under section 22; or
 - (b) release the prisoner under subsection (4).
- ‘(3) The released prisoner may, when the issue of his or her custody is raised under subsection (2), or at any time after the court makes an order under that subsection detaining the prisoner, apply to the court to be released pending the final decision.
- ‘(4) The court may order the release of the released prisoner only if the prisoner satisfies the court, on the balance of probabilities, that his or her detention in custody pending the final decision is not justified because exceptional circumstances exist.
- ‘(5) If the court adjourns an application under subsection (3), the court must order that the released prisoner remain in custody pending the decision on the application.
- ‘(6) If the court orders the released prisoner’s release, the court must order that the prisoner be released subject to the existing supervision order or existing interim supervision order (each the *existing order*) as amended under subsection (7).
- ‘(7) For subsection (6), the court—
- (a) must amend the existing order to include the requirements mentioned in section 16(1)(da) and (db), if the existing order does not already include the requirements; and

- (b) may amend the existing order to include any other requirements the court considers appropriate to ensure adequate protection of the community.’.

5A Insertion of new s 21A

After section 21—

insert—

‘21A Victim’s submission relating to further order

- ‘(1) As soon as practicable after the court sets a date for the hearing for making its final decision under section 22 in relation to the prisoner, the Attorney-General must give written notice of the issue of the warrant and hearing date to the following eligible person—
- (a) subject to paragraph (b), the person mentioned in section 9AA(1)(a) as the actual victim of the serious sexual offence for which the prisoner was serving a term or period of imprisonment;
 - (b) if the victim is under 18 years or has a legal incapacity, the victim’s parent or guardian.
- ‘(2) The notice must invite the eligible person to give to the Attorney-General, before the date stated in the notice, a written submission stating—
- (a) the person’s views about any further order or conditions of release to which the prisoner should be subject; and
 - (b) any other matters prescribed under a regulation.
- ‘(3) It is sufficient compliance with subsection (1) for the Attorney-General to give the notice to the eligible person at the eligible person’s last-known address recorded in the eligible persons register.
- ‘(4) The Attorney-General must place before the court for the hearing of the division 3 order any submission received from the eligible person before the hearing date.
- ‘(5) For the purposes of this section, the chief executive (corrective services) is authorised, if requested by the Attorney-General, to give to the Attorney-General details of the eligible person’s

identity and contact details recorded in the eligible persons register.’.

6 Replacement of s 22 (Court may make further order)

Section 22—

omit, insert—

‘22 Court may make further order

- ‘(1) The following subsections apply if the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order (each the *existing order*).
- ‘(2) Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must—
- (a) if the existing order is a supervision order, rescind it and make a continuing detention order; or
 - (b) if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.
- ‘(3) For the purpose of deciding whether to make a continuing detention order as mentioned in subsection (2)(a), the court may do any or all of the following—
- (a) act on any evidence before it or that was before the court when the existing order was made;
 - (b) make any order necessary to enable evidence of a kind mentioned in section 13(4) to be brought before it, including an order in the nature of a risk assessment order.
- ‘(4) To remove any doubt, it is declared that the court need not make an order in the nature of a risk assessment order if the court is satisfied that the evidence otherwise available under subsection (3) is sufficient to make a decision under subsection (2)(a).

- ‘(5) If the court makes an order in the nature of a risk assessment order, the psychiatrist or each psychiatrist examining the released prisoner must prepare a report about the released prisoner and, for that purpose, section 11 applies.
- ‘(6) For applying section 11 to the preparation of the report—
- (a) section 11(2) applies with the necessary changes; and
 - (b) section 11(3) only applies to the extent that a report or information mentioned in the subsection has not previously been given to the psychiatrist.
- ‘(7) If the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order or interim supervision order, the court—
- (a) must amend the existing order to include the requirements mentioned in section 16(1)(da) and (db), if the existing order does not already include the requirements; and
 - (b) may otherwise amend the existing order in a way the court considers appropriate—
 - (i) to ensure adequate protection of the community; or
 - (ii) for the prisoner’s rehabilitation or care or treatment.
- ‘(8) The existing order may not be amended under subsection (7)(b) so as to remove any requirements mentioned in section 16(1).’.

7 Insertion of new s 22A

Part 2, division 5—

insert—

‘22A Appearance by Attorney-General

‘The Attorney-General has a right of appearance before the court hearing a matter under section 21 or 22 and may do any or all of the following—

- (a) make submissions;
- (b) call evidence;
- (c) test the evidence before the court.’.

8 Amendment of s 25 (Duty to disclose)

- (1) Section 25(1), after ‘order’—

insert—

‘and for the hearing of a matter under section 22’.

- (2) Section 25(3), from ‘things’—

omit, insert—

‘things—

- (a) for an application for a division 3 order—at least 7 days before the application is heard; or
- (b) for the hearing of a matter under section 22—as soon as practicable after—
 - (i) the Attorney-General is given a copy of the warrant issued under section 20 for the prisoner to whom the matter relates; and
 - (ii) the warrant is executed.’.

8A Amendment of s 30 (Review hearing)

Section 30—

insert—

- ‘(4A) If the court makes the order under subsection (3)(b), the supervision order must include the requirements mentioned in section 16(1)(da) and (db).’.

8B Amendment of s 31 (Appeals)

Section 31, after ‘a decision’—

insert—

‘of the court’.

9 Insertion of new s 43B

After section 43A—

insert—

‘43B Offence of contravening supervision order or interim supervision order

‘(1) A person subject to a supervision order or interim supervision order who, without reasonable excuse, contravenes a requirement of the order commits an offence.

Maximum penalty—2 years imprisonment.

‘(2) A proceeding for an offence against subsection (1) is to be taken in a summary way under the *Justices Act 1886*.’.

10 Amendment of s 45 (Other hearings)

(1) Section 45(1), ‘applications’—

omit, insert—

‘matters’.

(2) Section 45(1)(c), ‘an application’—

omit, insert—

‘a proceeding’.

(3) Section 45(2), ‘an application’—

omit, insert—

‘the matter’.

11 Amendment of s 49 (Appearance at hearings)

Section 49(1), from ‘section 13’—

omit, insert—

‘section 13, 18, 22, 27 or 28.’.

12 Insertion of new pt 7

After section 56—

- ‘(2) Section 43B is not effective to impose criminal liability retrospectively.
- ‘(3) In this section—
commencement means the commencement of this section.’.

13 Amendment of schedule (Dictionary)

- (1) Schedule—

insert—

‘*curfew direction* see section 16A(2)(a).

eligible person means a person registered as an eligible person in relation to the prisoner on the eligible persons register.

eligible persons register means the eligible persons register kept under the *Corrective Services Act 2006*.

monitoring direction see section 16A(2)(b).

requirement, of an order, includes—

- (a) a condition, including a condition of an order made before the commencement of the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007*; and
- (b) a provision of an order made before the commencement of that Act under section 16(2) or 22(1) as in force at any time before the commencement of that Act.
- (2) Schedule, definition, *interim detention order*, ‘22(1)(c) or (3)(c)’—

omit, insert—

‘21(2)(a) or 22(2)(b)’.