



Queensland

Criminal Law Amendment (Public Interest Declarations) Amendment Act 2013

Act No. 53 of 2013



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Act No. 53 of 2013

**An Act to amend the Criminal Law Amendment Act 1945 for particular
purposes**

[Assented to 29 October 2013]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Criminal Law Amendment (Public Interest Declarations) Amendment Act 2013*.

2 Act amended

This Act amends the *Criminal Law Amendment Act 1945*.

3 Amendment of long title

Long title, from ‘for,’ to ‘offences’—

omit, insert—

for the treatment and punishment of offenders convicted of sexual offences, to provide for the detention in the public interest of a particular class of offenders convicted of sexual offences

4 Amendment of s 2A (Interpretation)

Section 2A(1)—

insert—

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

5 Amendment of s 18 (Detention of persons incapable of controlling sexual instincts)

Section 18(14), definition *corrective services facility*—

omit.

6 Insertion of new pts 4 and 4A

After section 18H—

insert—

Part 4 Further detention of particular sexual offenders

Division 1 Preliminary

19 Definitions for pt 4

In this part—

chief executive (corrective services) means the chief executive of the department in which the *Corrective Services Act 2006* is administered.

continuing detention order means a continuing detention order under DPSOA.

detained person means a person subject to a public interest declaration.

DPSOA means the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

DPSOA order means a continuing detention order or supervision order.

institution means—

- (a) a corrective services facility; or
- (b) an institution prescribed for section 18(14), definition *institution*, paragraph (b).

public interest declaration means a declaration under section 21(1).

relevant event, for a detained person, means the public interest declaration stops applying or does not apply to the person—

- (a) because of a declaration made by the Governor in Council under section 22F; or

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- (b) because of a determination of the Supreme Court that a decision about the public interest declaration is affected by jurisdictional error.

Note—

See section 22K for the limited review of decisions under this part.

relevant person means—

- (a) a person subject to a continuing detention order; or
- (b) a person subject to a supervision order if the person was subject to a continuing detention order immediately before the supervision order was made.

supervision order means a supervision order under DPSOA.

20 Decisions about detention in the public interest

For deciding whether the detention of a person under division 3 is in, or is no longer in, the public interest—

- (a) the Minister or Governor in Council may have regard to any matter the Minister or Governor in Council considers relevant; and
- (b) the matters that may be relevant for deciding whether the detention is in, or is no longer in, the public interest are not limited by any provision of this Act or another Act.

Division 2 Declaration for detention in the public interest

21 Making declaration

- (1) On the recommendation of the Minister, the Governor in Council may, by gazette notice, declare that a relevant person must be detained under division 3 if the Governor in Council is satisfied the detention of the person under the division is in the public interest.
- (2) The Governor in Council can not make a public interest declaration for a relevant person unless—
 - (a) any appeal, under DPSOA, part 4, against the DPSOA order for which the person is a relevant person has been finally dealt with; or
 - (b) if there is no appeal, under DPSOA, part 4, against the DPSOA order for which the person is a relevant person—the period within which an appeal against the DPSOA order may be started under DPSOA, part 4 has ended.

22 Recommendation to make declaration

- (1) The Minister may recommend that the Governor in Council make a public interest declaration for a relevant person if the Minister is satisfied the detention of the person under division 3 is in the public interest.
- (2) The Minister may recommend that the Governor in Council make a public interest declaration for a person subject to a continuing detention order without giving the person prior notice of the proposed recommendation.

- (3) The Minister may recommend that the Governor in Council make a public interest declaration for a person subject to a supervision order only if—
 - (a) at least 14 days before the recommendation is made, the person is personally served with a written notice stating the following—
 - (i) the Minister intends to recommend that the Governor in Council make a public interest declaration for the person;
 - (ii) the grounds on which the Minister considers the detention of the person under division 3 is in the public interest;
 - (iii) that the person may, within 10 days after the notice is served on the person, make written submissions to the Minister about why the declaration should not be made; and
 - (b) the Minister has regard to any submissions made under paragraph (a)(iii).
- (4) However, the Minister may recommend that the Governor in Council make a public interest declaration for a person subject to a supervision order without complying with subsection (3) if the Minister considers it is necessary to make the declaration without compliance with the subsection because of urgent circumstances.

22A Notice of declaration

- (1) As soon as practicable after the Governor in Council makes a public interest declaration for a person, the person must be personally served with a written notice that includes—
 - (a) notice of the declaration; and

- (b) either a copy of division 3 or a summary of the effect of the declaration under division 3.
- (2) A public interest declaration is of no effect until the written notice mentioned in subsection (1) is served as mentioned in the subsection.

Division 3 Dealing with detained person

22B Effect of declaration generally

- (1) A public interest declaration has effect for the detained person—
 - (a) on and from the day it takes effect under section 22A; and
 - (b) until a relevant event happens for the person.
- (2) While a public interest declaration has effect for the detained person—
 - (a) DPSOA does not apply to the person; and
 - (b) the person must no longer be detained, or subject to supervised release, under DPSOA; and
 - (c) this part operates in relation to the person despite any other Act; and
 - (d) the person must be detained in an institution; and
 - (e) the person is a prisoner for the purposes of the *Corrective Services Act 2006* other than the following provisions of that Act—
 - (i) chapter 2, part 2, division 10 or 11;
 - (ii) chapter 5.

Note—

See division 5 for what happens when a public interest declaration ends or does not apply to a person.

- (3) However, the person may be detained in a watch-house until the person can be conveniently taken to an institution.
- (4) If the person is not being detained in an institution or watch-house under DPSOA when the public interest declaration is made, the person may be arrested without warrant by a police officer and taken to an institution or watch-house for detention under this section.

22C Annual examination of detained person

- (1) The chief executive (corrective services) must ensure a detained person is examined at least once every year by 2 psychiatrists appointed by the chief executive (corrective services) to conduct examinations under this section, either generally or of the person.
- (2) A detained person must submit to an examination required by the chief executive under subsection (1).
- (3) A psychiatrist who conducts an examination of a person under subsection (1) must give the chief executive (corrective services) a report that—
 - (a) indicates the psychiatrist's assessment of the level of risk that the person will commit an offence of a sexual nature if released from detention, and the reasons for the assessment; and
 - (b) includes any other matter the psychiatrist considers relevant.
- (4) The psychiatrist must prepare the report on the basis of—

- (a) the psychiatrist's examination and observation of the person; and
 - (b) any other report or information the psychiatrist considers relevant.
- (5) For the purposes of preparing the report, the chief executive (corrective services) must give each psychiatrist any medical, psychiatric, prison or other relevant report or information relating to the person that is in that chief executive's possession or to which that chief executive has, or may be given, access.
- (6) A person in possession of a report or information mentioned in subsection (5) must give a copy of the report or information to the chief executive (corrective services) if asked by that chief executive.
- (7) Subsection (6) authorises and requires the person to give the report or information despite any other law to the contrary or any duty of confidentiality attaching to the report or information.
- (8) A person giving a report or information under subsection (6) is not liable, civilly, criminally or under an administrative process, for giving the report or information.
- (9) If subsection (8) applies to a person giving a report or information, section 22R does not apply to the giving of the report or information.
- (10) In this section—
- psychiatrist* means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of psychiatry, other than as a student.

22D Giving report of annual examination to detained person

The chief executive (corrective services) must, as soon as practicable after receiving a report about a detained person under section 22C(2), give a copy of the report to—

- (a) the person and the person's legal representative; and
- (b) the Minister.

22E Annual review of detention by Minister

- (1) The Minister must, as soon as practicable after receiving a report about a detained person under section 22D—
 - (a) consider the report; and
 - (b) make a recommendation to the Governor in Council to make, or not to make, a declaration under section 22F.
- (2) The Minister may recommend that the Governor in Council make a declaration under section 22F if satisfied that detaining the person under this division is no longer in the public interest.
- (3) Before making a recommendation under this section, the Minister—
 - (a) must decide whether the continued detention of the person under this division is in the public interest; and
 - (b) must have regard to the report, and any other report about the person previously given to the Minister under section 22D; and
 - (c) must give the person a reasonable opportunity to make submissions about the Minister's recommendation, and have regard to any submissions made.

Division 4 Ending of declaration for detention

22F Declaration to end detention

- (1) This section applies if, on the recommendation of the Minister, the Governor in Council is satisfied that detaining a detained person under division 3 is no longer in the public interest.
- (2) The Governor in Council may, by gazette notice, declare that division 3 no longer applies to the person.
- (3) Notice of the declaration must be personally served on the person.
- (4) The continuing detention declaration stops applying to the person when the declaration is gazetted.

Division 5 Effect of ending of declaration for detention etc.

22G End of detention and revival of DPSOA order

- (1) If a relevant event happens for a detained person—
 - (a) the person is no longer to be detained under division 3; and
 - (b) the DPSOA order for which the person was a relevant person revives, unless it is a supervision order and the period for which the order had effect, as stated in the order, has passed.
- (2) If a supervision order is revived under subsection (1)(b), the period for which the person was

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detained under division 3 must be counted as part of the period for which the order has effect.

- (3) However, this section is subject to sections 22I and 22J.

22H Review of continuing detention order

- (1) This section applies if—
 - (a) a continuing detention order is revived under section 22G(3); and
 - (b) because of the operation of this part, the period within which a review under DPSOA, section 27 must be completed for the order has passed without the review being carried out.
- (2) The Attorney-General must immediately make any necessary applications for a review to be carried out under DPSOA, section 27.

22I Application for amendment of supervision order

- (1) This section applies if—
 - (a) the DPSOA order for which a detained person was a relevant person is a supervision order; and
 - (b) the period for which the supervision order has effect, as stated in the order, has not passed.
- (2) An application may be made under DPSOA, part 2, division 4 for the amendment of the supervision order on or before the day a relevant event happens for the detained person.
- (3) If an application is made under subsection (2), section 22G(1) does not take effect for the detained person until the application is finally dealt with under DPSOA.

- (4) This section does not affect the operation of DPSOA, part 2, division 4 for applications made under that division after the day the relevant event happens.

22J Further supervision order

- (1) This section applies if—
 - (a) the DPSOA order for which a detained person was a relevant person is a supervision order; and
 - (b) the order can not be revived, under section 22G(3), because the period for which the order had effect, as stated in the order, has passed.
- (2) The Attorney-General may apply for a further supervision order under DPSOA, part 2, division 4A as if the person were subject to a supervision order.
- (3) The application—
 - (a) may be made on or before the day a relevant event happens for the detained person; or
 - (b) if the application is not made on or before the day mentioned in paragraph (a)—must be made as soon as practicable after that day.
- (4) This section applies despite DPSOA, section 19B(3).
- (5) If an application for a further supervision order is made under subsection (2) on or before the day a relevant event happens for the detained person, section 22G(1) does not take effect for the person until the application is finally dealt with under DPSOA.

Division 6 Limitation of review

22K Limitation of review

- (1) This section applies to the following—
 - (a) a decision of the Minister to recommend that the Governor in Council make a public interest declaration;
 - (b) a decision of the Governor in Council to make a public interest declaration;
 - (c) a decision of the Minister to recommend that the Governor in Council not make a declaration under section 22F;
 - (d) a decision of the Governor in Council not to make a declaration under section 22F.
- (2) The *Judicial Review Act 1991*, part 4 does not apply to the decision.
- (3) Subject to subsection (4), the decision—
 - (a) is final and conclusive; and
 - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (4) The *Judicial Review Act 1991*, part 5 applies to the decision to the extent it is affected by jurisdictional error.
- (5) In this section—

decision includes a decision or conduct leading up to or forming part of the process of making a decision.

Part 4A Miscellaneous provisions for operation of part 4

Division 1 Preliminary

22L Meaning of particular terms

In this part, a term used in the part and defined in section 19 has the meaning it has under that section.

22M References to operation of part 4

In this part, a reference to the operation of part 4 includes a reference to the purported operation of part 4.

Division 2 Provisions about DPSOA orders

22N Application of div 2

This division applies if—

- (a) because of the operation of part 4, there is a public interest declaration for a person; and
- (b) the public interest declaration stops applying or does not apply to the person other than because of—
 - (i) a declaration made by the Governor in Council under section 22F; or

- (ii) a determination of the Supreme Court that a decision about the public interest declaration is affected by jurisdictional error.

22O End of detention and revival of DPSOA order

- (1) The person must no longer be detained in an institution because of the operation of part 4.
- (2) The DPSOA order for which the person was a relevant person revives, unless it is a supervision order and the period for which the order had effect, as stated in the order, has passed.
- (3) If a supervision order is revived under subsection (2), the period for which the person was detained because of the operation of part 4 must be counted as part of the period for which the order has effect.

22P Review of continuing detention order

- (1) This section applies if—
 - (a) the DPSOA order for which the person was a relevant person is a continuing detention order; and
 - (b) the order is revived under section 22O(2) or otherwise; and
 - (c) because of the operation of part 4, the period within which a review under DPSOA, section 27 must be completed for the order has passed without the review being carried out.
- (2) The Attorney-General must immediately make any necessary applications for the review to be carried out under DPSOA, section 27.

22Q Further supervision order

- (1) This section applies if—
 - (a) the DPSOA order for which the person was a relevant person is a supervision order; and
 - (b) the order can not be revived, under section 22O(2) or otherwise, because the period for which the order had effect, as stated in the order, has passed.
- (2) The Attorney-General may apply for a further supervision order under DPSOA, part 2, division 4A as if the person were subject to a supervision order.
- (3) The application must be made as soon as practicable after the day the public interest declaration stops applying or does not apply to the person.
- (4) This section applies despite DPSOA, section 19B(3).

Division 3 Protection from liability

22R Protection from liability

- (1) A public official is not civilly liable for an act done, or omission made, for the operation of part 4, if the act was done, or omission was made, honestly and without negligence.
- (2) If subsection (1) prevents a civil liability attaching to a public official, the liability attaches instead to the State.
- (3) In this section—

public official means—

 - (a) the Minister; or
 - (b) the chief executive (corrective services); or

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- (c) a person acting under the authority of part 4 or a person mentioned in paragraph (a) or (b).

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