

DANGEROUS PRISONERS (SEXUAL OFFENDERS) BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

This Bill provides for the continued detention or supervised release of particular prisoners to ensure adequate protection of the community and to provide continuing control, care or treatment of those prisoners to facilitate their rehabilitation, where possible.

Reasons for the objectives and how they will be achieved

Recently, there has been growing community concern about the release of convicted sex offenders, not only because of the abhorrent nature of these offences, but because of the lack of evidence that some offenders have been rehabilitated, after refusing to participate in sexual offender treatment programs.

Such concern is justified. Serious sex offenders who are not rehabilitated remain a significant danger to the community after their discharge from custody. These offenders have a high propensity to reoffend. The consequences of their offending are catastrophic for individual victims, victim's families and for the community.

These dangers are elevated where a serious sex offender has been assessed as posing an unacceptable risk for supervised release in the community under a post-prison community based release order or for remission, and is subsequently released after having served their full sentence. Such offenders are currently released into the community without supervision at the conclusion of their sentence.

This Bill effectively addresses these concerns by enabling the Supreme Court to order the post-sentence preventive detention or supervision of sex offenders who pose a serious danger to the community if released at their sentence expiry date.

At present a court may order an offender to indefinite detention pursuant to Part 10 of the *Penalties and Sentences Act 1992* (PS Act) or s 18 of the *Criminal Law Amendment Act 1945* (CLA Act).

Section 163 of the PS Act allows a court to impose an indefinite sentence on an offender convicted of a violent offence if satisfied that the offender is a serious danger to the community. ‘Violent offence’ is defined as an offence of violence carrying a maximum penalty of life imprisonment or certain sex offences carrying a maximum penalty of life imprisonment. An indefinite sentence may only be imposed pursuant to the PS Act at the time the offender is sentenced.

Section 18 of the CLA Act provides for the indeterminate detention of offenders convicted of sexual offences. An order under section 18 may be made against any prisoner currently in detention.

Section 18(4) allows the Attorney-General to apply to the Supreme Court for a declaration that a prisoner who is serving a sentence of imprisonment for a sex offence is incapable of exercising proper control over their sexual instincts and a direction that the offender be detained during Her Majesty’s pleasure at the expiry of the term of imprisonment.

An order can only be made under section 18(4) if two medical practitioners report that the prisoner—

- is incapable of exercising proper control over the person’s sexual instincts; and
- that such incapacity is capable of being cured by continued treatment; and
- that for the purposes of such treatment it is desirable that such person be detained in an institution after the expiration of the person’s sentence of imprisonment.

Section 18(4) does not extend to a prisoner who is capable of exercising control over their sexual instincts, but chooses not to. It also assumes that the person can be cured with treatment.

The language used in the 1945 Act clearly does not accord with current evidence regarding paedophilia or for that matter, violent sexual offenders. The test is outdated and is difficult for prosecuting authorities to meet.

The Bill introduces a modern and effective community protection scheme.

Administrative cost to Government of implementation

The number of prisoners who will be affected by these amendments is minimal and therefore the costs of continued detention and supervision will be funded from existing budget allocations.

Consistency with Fundamental Legislative Principles

The proposed amendments represent a potential significant imposition on the rights and liberties of prisoners serving a term of imprisonment for serious sexual offences.

It will allow the preventive detention of these prisoners beyond the term previously imposed on them by a court as punishment for their offences.

It is considered that the breach of fundamental legislative principles is justified in order to protect the community from released prisoners who pose an ongoing serious risk of reoffending and are in need of ongoing rehabilitation.

There is currently a gap in the law when it comes to the protection of the community from dangerous sexual offenders. The law does not presently provide a mechanism whereby the community can be protected from a potentially dangerous individual, who is not mentally ill for the purposes of the mental health legislation and who has not committed a criminal offence (that is other than an offence for which the individual has already been sentenced).

These amendments address that inadequacy by providing for a mechanism whereby prisoners who, if released, pose an unacceptable risk of committing a further offence of a sexual nature, may be detained when it is appropriate to do so for the protection of the community. It is the need to protect the community which is the paramount reason for the introduction of the Bill.

The power to detain following the expiry of a sentence of imprisonment already exists in section 18(4) of the CLA Act. These amendments reflect an updating of the outmoded concepts contained in that section.

The Bill contains a number of safeguards to ensure that no person is unfairly or inappropriately detained.

CONSULTATION

There has been consultation with relevant Government agencies on the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides that the dictionary in the schedule defines particular words used in this Act.

Clause 3 outlines the objects of this Act.

Clause 4 provides that the *Bail Act 1980* does not apply to a person detained under this Act.

PART 2—CONTINUING DETENTION OR SUPERVISION

Division 1—Application for orders

Clause 5 provides that the Attorney-General may apply to the Supreme Court for a division 3 order (continuing detention order; supervision order) and orders under clause 8 (risk assessment order; interim detention order) in relation to a prisoner.

‘Prisoner’ is defined for the purpose of clause 5 as a prisoner in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serious sexual offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this Act. ‘Serious sexual offence’ is defined in the schedule as an offence of a sexual

nature, whether committed in Queensland or outside Queensland, involving violence (which includes intimidation or threats) or against children.

The extension of the definition of serious sexual offence to offences committed outside Queensland ensures that prisoners who have transferred to a Queensland prison from interstate will be captured by this legislation.

Subclause (2) (a) and (b) provide that the application must state the orders sought and be accompanied by any affidavits to be relied on by the Attorney-General for the purpose of the preliminary hearing.

Subclause (2)(c) provides that the Attorney-General may only bring an application during the last six months of the prisoner's period of imprisonment. This is to ensure that the prisoner is able to take full advantage of any opportunities for rehabilitation offered during the term of imprisonment.

Subclauses (3) and (4) provide that upon the filing of the application, the registrar must record a return date for the matter to come before the court for a preliminary hearing. The return date must be within 14 business days after the filing of the application.

Clause 6 provides that the prisoner may file affidavits to be relied on for the preliminary hearing.

Clause 7 confines the contents of an affidavit to the evidence the person making it could give if giving evidence orally, however, an affidavit for use in a preliminary hearing may contain statements based on information and belief.

Clause 8 (1) provides the threshold test the Attorney-General must meet in order to have the matter set down for the hearing of the application for a division 3 order. The Attorney-General must satisfy the court that there are reasonable grounds for believing that the prisoner is a serious danger to the community in the absence of a continuing detention order or a supervision order is made. A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody, or if released from custody without a supervision order being made.

If the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community, the court must set the matter down for the final hearing and may make a risk assessment order and/or an interim detention order.

Pursuant to subclause (2)(a), a risk assessment order is an order that the prisoner undergo examinations by 2 psychiatrists named by the court who are to prepare independent reports.

Subclause (2)(b) provides that a court may order the detention of the prisoner if satisfied that the prisoner may be released from custody before the application is finally decided.

Subclause (4) ensures that the Act continues to apply to a prisoner the subject of an application even if the prisoner is released from custody prior to the application being finalised.

Clause 9 provides for what a risk assessment authorises.

Clause 10 provides the mechanism for discontinuing an application. Subclause (3) states that if the prisoner has been order to be detained under clause 8(2)(b) the Attorney-General must apply to the court for an immediate rescission of the order.

Division 2—Psychiatric examinations

Clause 11 provides for the preparation of the psychiatric reports as ordered pursuant to a risk assessment order. Subclause (2) states that the report must indicate the psychiatrist's assessment of the level of risk that the prisoner will commit another serious sexual offence if released and the reasons for that opinion.

In order to ensure a clinically sound assessment, subclause (3) provides that the chief executive of corrective services must give each psychiatrist any medical, psychiatric, prison or other relevant report or information in relation to the prisoner in the chief executive's possession or to which the chief executive has, or may be given, access.

Clause 12 provides that the psychiatrist must give a copy of the report to the Attorney-General who must then immediately serve a copy on the prisoner.

Division 3—Orders

Clause 13 provides the test to be applied before the court can make a continuing detention order or supervision order. Pursuant to subclauses (1) and (2) the court must be satisfied that the prisoner is a serious danger to

the community in the absence of a continuing detention order or supervision order. A prisoner is a serious danger if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody or if released without a supervision order being made.

The onus is upon the Attorney-General to satisfy the court to high degree of probability as to the above.

Subclause (4) lists a number of matters that the court must have regard to in deciding whether a prisoner is a serious danger to the community.

Subclause (5) provides that if the court is satisfied as to the test as outlined in clause 13(2), the court may make a continuing detention order or a supervision order. However, in deciding which order to make the paramount consideration is the need to ensure adequate protection of the community.

Clause 14 outlines the effect of a continuing detention order. The prisoner remains a prisoner for the purposes of the *Corrective Services Act 2000*, however, is not eligible for post-prison community based release.

Clause 15 outlines the effect of a supervision order. The order has effect upon being made or at the end of the prisoner's period of imprisonment, whichever is the later. The court is not limited as to the length of the order.

Clause 16 (1) lists the mandatory conditions of a supervision order. In effect, the prisoner is released under the supervision of a corrective services officer and must report to and receive visits from the officer as directed by the court. Upon release from custody the prisoner must report to the officer the prisoner's current name and address and notify the officer of every change of name, residence and employment. The prisoner must not leave or stay out of Queensland without the permission of a corrective services officer and must not commit an offence of a sexual nature during the period of the order.

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

Clause 17 provides that the court must give reasons for making a continuing detention order or supervision order.

Division 4—Amendment of supervision orders

Clause 18 provides that either the prisoner subject to a supervision order (released prisoner) or the Attorney-General may bring an application for an amendment of a supervision order.

Clause 19 empowers the court to amend the conditions of a supervision order if satisfied that the released prisoner is not able to comply with a condition because of a change in the released prisoner's circumstances or an amendment is necessary or desirable for any other reason. Subclause (2) states that the court must ensure that the conditions as amended ensure adequate protection of the community and are reasonable in all the circumstances.

Division 5—Contravention of supervision order

Clause 20 provides that a police officer or authorised corrective services officer may apply to a magistrate for a summons requiring a released prisoner to appear before the Supreme Court, or a warrant for the arrest of the released prisoner requiring the released prisoner to be brought before the Supreme Court, if the officer reasonably suspects the released prisoner is likely to contravene, is contravening, or has contravened, a condition of the supervision order.

Subclause (4) provides that the magistrate may only issue a warrant if satisfied the released prisoner would not appear in answer to a summons.

Clause 21 provides that if a released prisoner is brought before the court under a summons or warrant issued under clause 20, the Attorney-General may apply to the court for further orders.

Clause 22 provides that if a court is satisfied on the balance of probabilities that the released prisoner is likely to contravene, is contravening, or has contravened, the supervision order, it may make a continuing detention order, amend the supervision order or make any other order the court considers appropriate to achieve compliance with the supervision order or that is necessary to protect the community.

Division 6—Return to custody of released prisoner

Clauses 23 and 24 provide that if a released prisoner is sentenced to a term of imprisonment, the supervision order is suspended for any period the released prisoner is in custody on remand or serving the term of imprisonment. Pursuant to clause 24(2) the period of the supervision order is extended by any period the released prisoner is in custody.

Considering that it is a condition of a supervision order that the prisoner not commit an offence of a sexual nature while subject to the order, clauses 23 and 24 will have application where the subsequent offence for which the released prisoner is imprisoned is an offence other than an offence of a sexual nature. If the released prisoner was convicted and sentenced for an offence of a sexual nature the Attorney-General would apply for further orders pursuant to clause 21.

Division 7—Disclosure provisions

Clause 25 provides that the Attorney-General's duty to disclose is the same duty to disclose the prosecution has in a criminal proceeding.

PART 3—ANNUAL REVIEWS

Clause 26 states that the purpose of Part 3 is to ensure that a prisoner's continued detention is subject to regular review.

Clause 27 provides for the annual review of continuing detention orders.

Clause 28 enables a prisoner to apply to the court for the order to be reviewed at any time after the court makes its first review under clause 27. However, the prisoner must obtain the leave of the court to apply on the ground that there are exceptional circumstances that relate to the prisoner.

Clause 29 provides that the chief executive of corrective services must arrange for the examination of the prisoner by 2 psychiatrists for the purposes of the review. For the purposes of the review and the examinations, clauses 11 and 12 apply.

Clause 30 in effect provides that a review is by way of a rehearing whereby the court must determine whether to affirm or rescind the continuing detention order or make a supervision order. A court may only affirm the continuing detention order or make a supervision order if satisfied to a high degree of probability that the prisoner is a serious danger to the community in the absence of a continuing detention order or supervision order is made. A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody or released without a supervision order being made.

PART 4—APPEALS

Clause 31 provides that either the Attorney-General or prisoner may appeal a decision of the court to the Court of Appeal.

Clause 32 provides that an appeal must be started within 1 month after the decision is made. The Court of Appeal can extend this period.

Clause 33 provides for the starting of an appeal.

Clause 34 provides for the giving of the notice of appeal and notice of application for extension of time to the respondent by the Registrar.

Clause 35 provides for the abandoning of applications for an extension of time to appeal.

Clause 36 provides for the abandoning of an appeal.

Clause 37 sets out certain procedural requirements to be followed by a lawyer acting for a prisoner.

Clause 38 sets out certain procedural requirements for a lawyer withdrawing from acting for a prisoner.

Clause 39 provides for the prisoner to apply for leave to be present at the hearing of the appeal.

Clause 40 sets out certain procedural requirements in relation to a prisoner in custody.

Clause 41 provides that an appeal does not stay the operation of the decision. Subclause (2) provides that the Court of Appeal, a judge of appeal

or the court may order that that the prisoner be detained in custody if the prisoner may be released before the appeal is finally decided.

Clause 42 empowers the Court of Appeal to issue a warrant for the prisoner's apprehension and committal into custody if a detention order is made under clause 41.

Clause 43 provides that an appeal is by way of a rehearing, and sets out the powers of Court of Appeal in deciding the appeal.

Clause 44 provides that the court may decide the preliminary hearing entirely or partly from a consideration of the documents filed.

Clause 45 confirms that all hearings other than the preliminary hearing are to be heard by way of oral evidence and that subject to subclause (4) the ordinary rules of evidence apply. Subclause (4) allows the court to have regard to the prisoner's antecedents and criminal history, and for example the sentencing remarks for a previous offence and any report tendered in such proceedings.

PART 5—GENERAL

Clause 46 provides that the court may give directions in relation to the conduct of a proceeding under this Act.

Clauses 47 and *48* are general service provisions.

Clause 49 confirms that a prisoner is entitled to appear at all hearings other than a preliminary hearing.

Clause 50 confirms that an order of the court or the Court of Appeal that a prisoner be detained in custody is taken to be a warrant committing the prisoner into custody for the *Corrective Services Act 2000*.

Clause 51 provides that a prisoner subject to a continuing detention order, an interim detention order or an order under clause 41(2) is not eligible for post-prison community based release under the *Corrective Services Act 2000*.

Clause 52 provides for the approval of forms.

Clause 53 provides that the Governor in Council may make regulations under this Act.

PART 6—AMENDMENT OF CORRECTIVE SERVICES ACT 2000

Clause 54 provides that this part amends the *Corrective Services Act 2000*.

Clause 55 amends s 15 of the *Corrective Services Act 2000* by inserting a new subclause (3). The new subclause (3) provides that a prisoner, subject to a risk assessment order, must submit to the examinations by the 2 psychiatrists named in the order.