Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Bill 2009

Explanatory Notes

Objectives of the Bill

The primary objectives of the *Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Bill 2009* (the Bill) are to:

- Increase flexibility for the management of offenders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the DPSOA); and
- Enhance the ability of the court to make indefinite sentence orders under part 10 of the *Penalties and Sentences Act 1992* (PSA).

Reasons for the Bill

In November 2007 the Government began a review of Queensland's public protection legislation in the context of the community's sustained and valid concerns about high risk sexual and violent offenders.

The review involved an extensive evaluation of the effectiveness of preventative detention legislation, namely the DPSOA and Part 10 of the PSA.

A review report entitled *"A New Public Protection Model for the Management of High Risk Sexual and Violent Offenders"* was publicly released in 2008. Consultation feedback was received on the report's recommendations, which in turn informed the development of the Bill.

The Bill continues the Government's commitment to ensuring the ongoing efficacy of Queensland's public protection legislation.

Achievement of the Objectives

The policy objectives will be achieved through a range of core provisions discussed below:

Amendments to the Dangerous Prisoners (Sexual Offenders) Act 2003

Threshold Test

Section 13 (1) and (2) of the DPSOA set out the legal test for determining whether a prisoner is a serious danger to the community. This involves a determination of whether there is an unacceptable risk that the prisoner will commit a serious sexual offence if they are released from custody, or released from custody in the absence of a supervision order. Section 13(6) of the DPSOA states that the paramount consideration for the court in deciding whether to make a continuing detention order or supervision order is the need to ensure the adequate protection of the community.

Clause 7(2) of the Bill amends section 13(6) of the DPSOA and will oblige the court, in considering whether or not to impose a supervision order, to consider not only the need to ensure the adequate protection of the community, but also whether the adequate protection of the community can be reasonably and practicably managed by a supervision order and whether any appropriate conditions of the supervision order can be reasonably and practicably managed by corrective services officers.

Clause 4 of the Bill supports the amendment to the threshold test. It inserts a new section 8A into the DPSOA which will require the Attorney-General to produce a report, prepared by the chief executive of the Department of Community Safety, setting out the requirements necessary to ensure the adequate protection of the community if the offender were to be released on a supervision order. Further, the report is to indicate the extent to which the proposed requirements can be reasonably and practicably managed by corrective services officers.

Clause 7(1) amends section 13(4) of the DPSOA and will require the court, when deciding whether the prisoner is a serious danger to the community, to consider, along with the other matters listed in section 13(4), any report produced by the Attorney-General under the new section 8A.

Length of supervision orders

The DPSOA currently imposes no restriction on the length of a supervision order that may be imposed by the court.

Clause 8 of the Bill inserts a new section 13A into the DPSOA and will limit the maximum period of a supervision order to five years.

The highest risk period for offenders is the first few years after their release from custody. It is considered that a limit is appropriate for the length of

supervision orders and that a period of five years supervision should provide adequate protection to the community.

Clause 17 of the Bill, however, inserts a new division 4A into Part 2 of the DPSOA which will allow the Attorney-General to make unlimited applications for further supervision orders of up to five years duration where risk factors remain. In this way the amendment will also facilitate an automatic review of supervision orders where previously no such process existed.

Conditions of Supervision orders

Clause 14 of the Bill inserts new sections 16B to 16D into the DPSOA. These new sections will give corrective services officers the power to issue binding directions to released prisoners on supervision orders in relation to matters such as where they are to live, if they are required to engage in treatment programs and restrictions in relation to alcohol and other substance use. This will enable corrective services officers to deal with risk factors that develop in these discreet and common problem areas without necessitating a return to court for an application to amend the conditions of an offender's supervision order.

This new power is not without fetter. The new sections include the following requirements, which must be complied with by corrective services officers who issue directions in relation to these matters:

- Under new section 16B(3) any direction must not be directly inconsistent with a requirement of the order; and
- Under new section 16C any direction must be considered reasonably necessary by the corrective services officer to ensure either the adequate protection of the community or the prisoner's rehabilitation, care or treatment.

Clause 11(4) of the Bill inserts a new sub-section (daa) into section 16(1) which will make it a standard requirement of a prisoner's conditions of supervised released that he/she comply with directions given by corrective services officers in accordance with new sections16B.

An offender's failure to comply with any such direction would allow corrective services recourse to the formal contravention process contained in Division 5 of the DPSOA which results in the released offender's immediate detention and appearance before the Supreme Court.

Review periods for continuing detention orders

Section 27 of the DPSOA requires continuing detention orders to be reviewed annually. Clause 21 of the Bill increases the interval for the first review to 2 years, but retains an annual review mechanism for all subsequent reviews.

The first review period is unique in that it is generally during this period that offenders, who have not yet undertaken a sex offender treatment program in custody, will complete one. A two year period for the first review represents a more appropriate interval to allow offenders time to complete treatment programs and demonstrate a reduction in their risk of re-offending.

Change of Name

Clause 25 of the Bill inserts a new offence section 43AB into the DPSOA which extends the prohibition applying to offenders on continuing detention orders contained in section 27 of the *Corrective Services Act 2006* to offenders on supervision orders in the community. Requiring a released prisoner to seek the chief executive's permission before changing their name will provide further protection for the community against the risk posed by these offenders.

Improved victim provisions

Clause 5 and several consequential clauses of the Bill amend the DPSOA to provide that the chief executive of the Department of Community Safety, instead of the Attorney-General, be responsible for notifying victims in relation to DPSOA proceedings. The Department of Community Safety's Victims Register is staffed by officers who are experienced in responding to and supporting victims.

Clause 29 of the Bill inserts a new section 49A into the DPSOA which will make it clear that, for the purposes of DPSOA hearings, it is not mandatory for a victim to provide to the chief executive of the Department of Community Safety, details of the harm caused to them by the crime. The new provision will also clarify that where details of the harm caused to a victim by the crime are absent at the hearing, this does not of itself give rise to an inference that the crime caused little or no harm to the victim or that the victim has no interest in the outcome of the application.

Clause 19 of the Bill amends section 21A of the DPSOA to allow victims to 'opt-out' of receiving notification of contravention hearings for DPSOA offenders on supervision orders or interim supervision orders. Victims are

currently required to be notified of all contravention proceedings. For some victims the notification itself can cause distress, while for others the frequency with which some DPSOA offenders breach their orders, means that they may have nothing new to add to submissions lodged in respect of earlier contravention hearings.

Parole

Section 51 of the DPSOA ensures that offenders subject to a continuing detention order or interim continuing detention order are not eligible for parole. There is currently no similar provision to prevent the parole board granting parole to an offender who is the subject of an ongoing application by the Attorney-General for a DPSOA order.

At the preliminary hearing of the Attorney-General's application for an order, the court, under section 8(1) of the DPSOA, will determine whether or not there are reasonable grounds for suspecting that the offender poses a serious danger to the community in the absence of a DPSOA order. If the court is so satisfied, it will set a date for the hearing of the Attorney-General's application and order that the offender undergo risk assessments. The court will only make an interim order for detention (or supervision) under the DPSOA in cases where the offender's custodial sentence has expired or is due to expire imminently.

It is therefore incongruous for the parole board to retain the power to grant an offender parole in circumstances where a court has made a threshold determination as to the potential risk posed by the offender.

Clause 30 of the Bill replaces the current section 51 of the DPSOA to ensure that once a court has set a date, under section 8(1) of the DPSOA, for the hearing of the Attorney-General's application, and that application has not been discontinued or finally decided, an offender will not be eligible for parole.

Amendments to the Penalties and Sentences Act 1992

Before imposing an indefinite sentence, the court is required by section 163(3) of the PSA to be satisfied :

> "(b) that the offender is a *serious danger to the community* because of-
>
> (i) the offender's antecedents, character, age, health or mental condition; and
>
> (ii) the severity of the violent offence; and
>
> (iii) any special circumstances."

It is further provided in s.163(4) that in determining whether the offender is a *serious danger to the community*, the court must have regard to a number of matters including whether the nature of the offence is exceptional and the offender's antecedents, age and character. It is, however, unnecessary for the court to find the existence of all of these matters in order to make a finding that the threshold of *serious danger to the community* is met.

Once the threshold is met courts retain a wide discretion as to whether to impose an indefinite sentence as pursuant to s. 163(1). The High Court has repeatedly stated that in exercising this discretion judges must have a clear appreciation of the exceptional nature of an indefinite sentence order. The power to impose an indefinite sentence is a discretion which is only exercised by courts in exceptional circumstances in view of the extraordinary departure from the fundamental sentencing principles of proportional punishment that this kind of sentence represents.

The amendments to the PSA contained in the Bill are not intended to alter the existing threshold.

Expansion of Offences for which Indefinite Sentence order can be made

Currently under sections 162 and 163 of the PSA an indefinite sentence may only be imposed for Queensland Criminal Code offences carrying a maximum penalty of life imprisonment where the offence involves violence or is one of several specified sexual offences.

Clauses 35 and 45 of the Bill amend the PSA by expanding the range of offences for which an indefinite sentence may be imposed. A specific schedule of certain offences, carrying maximum penalties ranging from between 10 years to life imprisonment, is inserted into the PSA. The new schedule captures only those sexual and violent offences where the risk posed by the offender to the community is likely to be most acute. The schedule retains those offences captured by the current indefinite sentencing regime and will serve to more appropriately reflect the preventative purpose of the order.

Prohibition on court considering availability of DPSOA

It is currently open to the courts to consider the future prospect of the Attorney-General, prior to the release of the prisoner, making an application for a permanent detention order or supervision order under the DPSOA as a relevant factor in deciding whether or not an indefinite

sentence is necessary to protect the community from the risk posed by an offender.

This is concerning as there is no guarantee that the current preventative detention regime under DPSOA will remain available at the expiration of a lengthy term of imprisonment, which would be the alternative where an indefinite sentence was not imposed.

Clause 41 of the Bill inserts a new section 172D into the PSA prohibiting the court, when considering whether or not to impose an indefinite sentence, from having regard to the later availability of an order under Division 3 of the DPSOA were the offender to be granted a finite sentence.

Report by QCS

Under section 167(3) of the PSA the court may consider reports presented to it when considering whether to impose an indefinite sentence, but there is no specific provision allowing the court to order, or be provided with, an assessment of the offender. This is in contrast to the situation for periodic reviews of indefinite sentences where the court, under section 176 of the PSA, may order reports about the offender to be obtained. In practice, medical reports and assessments are usually only used at the time of sentencing where there has already been an interaction between the offender and the mental health processes or there are previous assessments available due to the offender having spent time in custody on previous convictions.

Clause 39 of the Bill inserts new sections 166A to 166C into the PSA. These sections require that before a court imposes an indefinite sentence it must order that a report, from the chief executive of the Department of Community Safety in relation to the offender, be obtained. This report may include reports from Queensland Corrective Services as to the offender's conduct in custody and assessed level of risk as well as psychiatric or psychological reports as deemed appropriate by the chief executive or ordered by the court. It will be a matter for the court to determine what weight to attach to any such report. This amendment is not intended to limit the court's power to hear any other evidence.

An indefinite sentence is an extraordinary order for a court to make. These amendments will ensure that prior to making such an order the court is able to appropriately inform itself as to the level of risk posed by an offender.

Post-release supervision

Currently, pursuant to section 174 of the PSA an offender who has been discharged from an indefinite sentence and sentenced to a finite term, is liable to 5 years parole supervision regardless of the time remaining on their sentence. For example, a prisoner serving a 20 year nominal sentence that applies for, and is granted parole, at 18 years would be subject to up to five years parole notwithstanding that he or she only had 2 years of their sentence remaining. This five year supervision period only applies where the offender submits an application for parole and is approved for release to parole. Offenders who serve their full-time nominal sentence are not subject to any parole upon release.

Clause 43 of the Bill amends section 174 to provide that where an offender has been sentenced under section 173(1)(b), and is not granted parole before the end of the term of their imprisonment, the offender, at the end of that term of imprisonment must be under the authority of the Queensland Parole Board and the supervision of an authorised corrective services officer for 5 years.

Estimated Cost for Government Implementation

It is not anticipated that the proposed amendments will significantly impact

on prisoner numbers or impact on the costs involved in the supervision of released prisoners.

Consistency with Fundamental Legislative Principles

There may be an argument that certain proposed amendments to the DPSOA do not have sufficient regard to the rights and liberties of individuals as required by the *Legislative Standards Act 1992*.

Clause 21 amends section 27 of the DPSOA to increase the first review of a continuing detention order from one to two years. Whilst this impacts on the rights of detained prisoners, such an interval for the first review will afford sufficient time to implement the Court's recommendations and assess the prisoner's progress in achieving the goals in his/her individual management plan. More importantly it will allow more time for the manifestation of changes in behaviour and reduction in risk to the community. All subsequent reviews on an annual basis will remain unchanged by the Bill.

Amendments to Part 10 of the PSA will have the effect of widening the court's ability to impose indefinite sentences. Whilst this will arguably

affect the rights and liberties of individuals the Bill seeks to minimise infringements of fundamental legislative

principles by retaining a rigorous judicial process including:

- requiring the Attorney-General's consent to an application being made;
- providing for notice to be given to the court of the intention to make the application;
- specific evidence provisions;
- requiring the court to set out reasons when imposing an indefinite sentence;
- requiring the prosecution to bear the onus of proof at all times;
- the right of the offender to appeal the order; and
- the right of the offender for the court to review the order.

It is considered that the breach of fundamental legislative principles is justified in order to protect the community from prisoners who pose a significant risk to the community.

Clause 44 sets out transitional provisions that give rise to a retrospective application of the Part 10 amendments. There is retrospectivity to the extent that a person who has committed an offence prior to commencement but is sentenced after commencement will be subject to the new provisions. Whilst this may adversely affect the rights and liberties of certain offenders it is justified in order to protect the community from offenders who pose a serious danger to the community.

Consultation

Consultation was undertaken with key Department of Justice and Queensland Corrective Services' stakeholders on a consultation draft of the Bill. All submissions received were considered in finalising the Bill and informed development of the Bill. Broad consultation also took place with Queensland Government departments during the preparation and finalisation of the Bill.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Act is the *Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2009*.

Clause 2 provides that the Act will commence on a day to be fixed by Proclamation.

Clause 3 provides that Part 2 of the Act amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Clause 4 creates a new section 8A. New section 8A provides that where a date for hearing of a Division 3 application has been set pursuant to section 8, the Attorney-General may produce to the court a report that sets out the proposed supervision order conditions considered necessary to ensure the adequate protection of the community. The report will also indicate the extent to which the conditions can also be reasonably and practicably managed by corrective services officers.

Clause 5 (1) amends section 9AA (1) to (3) to replace reference to 'Attorney-General' in section 9AA with 'chief executive'. The affect of this amendment is to require the chief executive of the Department of Community Safety rather than the Attorney-General to provide the required notice to victims in relation to the hearing of Division 3 applications.

Subclause (2) inserts new subsection (3A) into section 9AA. This provides that prior to the hearing of a DPSOA application, the chief executive must either provide the Attorney-General with any submission received from an eligible person or notify the Attorney-General that the eligible person has not provided a submission.

Subclause (3) omits section 9AA (5).

Clause 6 amends section 10 to replace reference to 'Attorney-General' in sub section (4) with 'chief executive'. The affect of this amendment is that where the Attorney-General discontinues an application for a Division 3 order by notice to the registrar and prisoner, it is the chief executive rather

than the Attorney-General who is required to notify the eligible person who has provided a submission.

Clause 7 subclause (1) inserts a new subsection (aa) into section 13(4). The affect of this amendment is that in deciding whether a prisoner is a serious danger to the community, in the absence of a Division 3 order, the court must have regard to a report produced by the Attorney-General pursuant to new section 8A.

Subclause (2) amends section 13(6) to set out the matters the court must consider when determining whether to impose either a continuing detention order or supervision order. Sub section (6) retains the general proposition that in making the determination on the type of division 3 order, the paramount consideration is the need to ensure adequate protection of the community. The sub section however further requires the court to consider whether adequate protection of the community can be reasonably and practically managed by a supervision order and also whether the requirements can be reasonably and practically managed by corrective services officers.

Clause 8 inserts a new section 13A in Part 2, division 3 that provides that in relation to supervision orders, the court must state a period for which the order is to have effect. Subsection (2) of the new section 13A further provides that a supervision order can not end later than 5 years after the prisoner's release day.

Clause 9 amends section 15 to replace the term 'at the end of the prisoner's period of imprisonment' with the term 'on the prisoner's release day'.

Clause 10 inserts a new part 2, division 3B, subdivision 1 headed: 'Requirements for supervised release'.

Clause 11 (1) amends the heading to section 16 by replacing the term 'supervised release' with 'orders'.

Subclause (2) amends section 16(1) to replace the existing term 'a judicial authority' with the more specific term: 'the court or a relevant appeal court'.

Subclause (3) amends section 16(1)(b) and (2) to replace the existing term 'the judicial authority' with the more specific term: 'the court or a relevant appeal court'.

Subclause (4) inserts into section 16(1) a further sub section (daa) that sets out an additional requirement for supervision orders or interim supervision

orders. The additional requirement is that the prisoner complies with any reasonable direction under section 16B given to the prisoner.

Subclause (5) amends the condition for a supervision order or interim supervision order contained in section 16(1) (db). The effect of the amendment is that an order for a supervision order or interim supervision order must contain the requirement that the prisoner comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order.

Clause 12 inserts a new part 2, division 3B, subdivision 2 heading:' Directions to released prisoners'.

Clause 13 amends section 16A by omitting the current subsection 16A (4) and replacing it with a new provision. The effect of the new section 16A (4) is that a direction relating to curfew or monitoring under section 16A must not be directly inconsistent with a requirement of the relevant order for the released prisoner.

Clause 14 inserts new sections 16B, 16C and 16D into Part 2, division 3B, subdivision 2.

New section 16B empowers a corrective services officer to give a released prisoner reasonable directions about the prisoner's accommodation, rehabilitation, care or treatment, and drug or alcohol use. Such a direction must not be directly inconsistent with a requirement of the order.

New section 16C sets out criteria for the giving of directions by corrective services officers under section 16(1) (db) or 16B. A corrective services officer may give a direction only if the officer reasonably believes the direction is necessary to ensure the adequate protection of the community or for the prisoner's rehabilitation, care or treatment.

New section 16D provides that the section 16(1) (db) requirement in a supervision or interim supervision order that the released prisoner comply with every reasonable direction of a corrective services officer is not limited by the requirement in section 16(1) (da) or the new requirement in section 16(1) (daa) relating to directions about the released prisoner's accommodation, rehabilitation or drug or alcohol use.

Clause 15 subclause (1) amends the heading in section 17 from '*Court to give reasons'* to '*Court or relevant appeal court to give reasons'*.

Subclause (2) amends section 17 to replace the term "a judicial authority" with the term: "the court or a relevant appeal court".

Clause 16 amends section 19(3) such that where a court amends the requirements of a supervision order or interim supervision order on application by the chief executive, the court must also amend the order to include all of the requirements listed in section 16(1) if the order does not already include all of these requirements.

Clause 17 inserts a new Part 2, Division 4A entitled: "Extending supervised release".

New section 19B under this division enables the Attorney-General to apply for a further supervision order where the application is made within the last 6 months of a current order. This provision also permits the making of further orders in this manner regardless of how many supervision orders have already been made upon the released prisoner.

New section 19C requires that in any application under new section 19B, the Attorney-General must set out the period of supervised release that is sought. The application must also be supported by affidavits.

New section 19D applies the relevant procedural and evidentiary provisions that apply to an initial application for an order under the Act to the new provisions inserted by this Bill allowing the Attorney-General to apply for further supervision orders.

New section 19E requires the court, when granting a further supervision order, to state the period for which it is to have effect. This period can be any period up to 5 years after the end of the current order.

New section 19F provides that a further supervision order will have effect for the period stated in the order.

Clause 18 amends section 21(7) (a) such that where the court orders the release of a prisoner brought before them on a section 20 contravention warrant and orders that the prisoner be released subject to the existing supervision order or existing interim supervision order, the court must amend the existing order to include all of the requirements listed in section 16(1) if the order does not already include all of these requirements.

Clause 19 subclause (1) amends section 21A sub sections (1) to (3) to replace reference to the '*Attorney-General*' with '*chief executive*'. The effect of this will be that the obligations to give notice to victims with respect to DPSOA application will shift to the chief executive of the Department of Community Safety.

Subclause (2) replaces the term '*written notice'* with the more appropriate term '*hearing notice'*.

Subclause (3) inserts a new sub-section (1A) in section 21A. This new sub-section provides that the chief executive is not obliged to notify a victim pursuant to section 21A(1) where the chief executive has already given the eligible person a hearing notice or where the person has informed the chief executive that they do not wish to receive any hearing notices relating to the prisoner.

Subclause (4) inserts a new subsection (3A) into section 21A. New sub-section (3A) requires the chief executive of the Department of Community Safety to provide to the Attorney-General any submission received from the eligible person before the hearing date or alternatively information that the victim has declined to provide a written submission. Additionally the chief executive must advise the Attorney-General where an eligible person has informed the chief executive that they no longer wish to receive hearing notices in relation to the prisoner.

Subclause (5) omits the current section 21A (5)

Clause 20 subclause (1) amends section 22(3)(b) to include a report under the new section 8A as a matter to which the court must have regard to in deciding whether a prisoner is a serious danger to the community.

Subclause (2) amends section 22(3) to require that a court in deciding whether to make a continuing detention order as mentioned in section 22(2)(a), may consider any further report or revised report in the nature of a report described in new section 8A.

Subclause (3) amends section 22(7)(a) so that where it is satisfied that despite the contravention of an existing order, a supervision order or interim supervision order can be made, the court must amend the existing order to include all the requirements under section 16(1) if the order does not already include all those requirements.

Clause 21 amends section 27 to require that the first review of a continuing detention order be finalised by the end of two years after the first order was made. All subsequent reviews must start within 12 months after the completion of the hearing for the last review.

Clause 22 inserts a new section 28A that extends the application of the new section 8A to applications for reviews of detention orders under sections 27 and 28. The effect of this new provision is that upon a review of a detention order whether it is on the application of the Attorney-General or the prisoner, the Attorney-General may produce a report, prepared by the chief executive of corrective services, that proposes the requirements

necessary to ensure the adequate protection of the community if the offender were to be released on a supervision order.

Clause 23 subclause (1) amends section 30 to state that the section applies where on the hearing of a review of a continuing detention order under section 27 or 28, and having regard to 'required matters', the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order. The term 'required matters' has supplanted the existing term: 'matters mentioned in section 13(4)'. A 'required matter' is defined in the amended section 30 to include the matters mentioned in section 13(4) in addition to any report produced under the new section 28A.

Subclause (2) amends section 30(4) to set out the test to be applied by the court in determining whether or not to affirm or rescind the continuing detention order on review. In addition to the paramount consideration of the need to ensure adequate protection of the community, the court must consider whether adequate protection of the community can be reasonably and practicably managed by a supervision order and also whether the requirements can be reasonably and practicably managed by corrective services officers.

Subclause (3) omits section 30(4A).

Subclause (4) inserts a definition of the term: '*required matters'*. This term means the matters mentioned in section 13(4) as well as any reports by the Attorney-General or the chief executive given under section 28A.

Clause 24 subclause (1) amends section 41(2) to replace the term 'the judicial authority' with the term 'the court'.

Subclause (2) amends section 41(2) to replace the term 'a judicial authority' with the term: 'the court hearing an appeal'.

Clause 25 inserts a new part 4A entitled: 'Offences'. Two new offences are created under this part.

New section 43AA makes it an offence for a released prisoner to contravene a supervision order or interim supervision order, without a reasonable excuse. The offence is punishable by 2 years imprisonment.

New section 43AB makes it an offence for a released prisoner to change their name under the *Births, Deaths and Marriages Registration Act 2003*, without the consent of the chief executive. Sub section (2) of new section 43AB sets out the matters that the chief executive must consider when deciding whether or not to give permission.

New section 43AC confirms that proceedings for the new offences are summary offences.

Clause 26 omits section 43B. The offence provided for in section 43B has been superseded by the offence in new section 43AA.

Clause 27 amends section 44 to enable the court to impose an interim supervision order (under new section 19D) entirely or partly from a consideration of the documents filed.

Clause 28 amends section 49 to include reference to the new section 19D. The effect of this is that a prisoner has a right of appearance at a preliminary hearing with respect to an application by the Attorney-General for a further supervision order.

Clause 29 inserts a new section 49A which provides that it is not mandatory for a victim to provide to the chief executive of the Department of Community Safety details of the harm caused to them by the crime. The new provision will also clarify that where details of the harm caused to a victim by the crime are absent at the hearing, this does not of itself give rise to an inference that the crime caused little or no harm to the victim or that the victim has no interest in the outcome of the application.

Clause 30 replaces the current section 51 of the DPSOA to ensure that once a court has set a date, under section 8(1) of the DPSOA, for the hearing of the Attorney-General's application, and that application has not been discontinued or finally decided, an offender will not be eligible for parole.

Clause 31 inserts a new part 8 entitled: '*Transitional provisions for Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2009'*.

New section 59 provides that any supervision order or interim supervision order that is in force at commencement will continue to remain in force in accordance with the order's terms notwithstanding new section 13A. The provisions contained in part 2 division 4A will apply to existing orders.

New section 60 provides that the new section 16B, that empowers a corrective services officer to give a released prisoner reasonable directions about the prisoner's accommodation, rehabilitation, care or treatment, and drug or alcohol use does not apply with regard to any supervision order or interim supervision order that is in force at commencement. The exception to this is where the court amends the requirements of an existing order to include a requirement to comply with any direction given to the relevant prisoner under section 16B.

New section 61 provides that where a continuing detention order is in force at the time of commencement, and no application for review has been made under section 27 or 28, the first review must start within 12 months after the completion of the hearing for the order.

Clause 32 amends the schedule dictionary to omit the definitions of the terms: '*judicial authority'* and '*supervision order'*. Definitions of '*current order'*, '*relevant appeal court'* and '*supervision order'* are inserted. The definition of '*interim supervision order'* is amended to include reference to new section 19D (2).

Clause 33 provides that Part 3 of the Act amends the *Penalties and Sentences Act 1992*.

Clause 34 amends section 4 to insert definitions for the terms: finite sentence, *finite term*, *indefinite sentence*, *nominal sentence, qualifying offence, Queensland board* and *serious harm*.

Clause 35 amends section 162 to omit the definition of "*violent offence*" and insert a new definition of "*qualifying offence*". Under this new definition, a '*qualifying offence'* is an indictable offence contained in the new schedule 2 to the Act or an offence involving the counselling or procuring the commission of, or attempting or conspiring to commit an offence contained in the new schedule 2.

Clause 36 subclause (1) is an amendment to section 163 that is consequential to the replacement of the term "*violent offence*" with "*qualifying offence*".

Subclause (2) amends section 163(4)(d) to replace the term '*serious physical harm'* with the term; '*serious harm'*.

Clause 37 is an amendment to section 165 that is consequential to the replacement of the term "*violent offence*" with "*qualifying offence*".

Clause 38 subclause (1) is an amendment to section 166 that is consequential to the replacement of the term "*violent offence*" with "*qualifying offence*".

Subclause (2) amends section 166(b) by supplanting the term '*called by prosecution and the offender*' with the term '*received by the court'*. The effect of this amendment is that after an offender is advised that the court may consider the imposition of an indefinite sentence, the court must adjourn the sentence for at least 20 business days from date of conviction so that the evidence on sentence can be received by the court.

Clause 39 inserts new sections 166A to166C.

New section 166A provides that where the court adjourns the offender's sentencing, it must order that the chief executive of the Department of Community Safety prepare a report about the offender and provide the same to the court within a stated period. The court may also order the chief executive to provide or obtain any other report that the court considers appropriate to enable it to impose the proper sentence. The term 'report' is defined to include an assessment of, or information about, the prisoner.

New section 166B provides that where a report is ordered pursuant to new section 166A, the court must provide a copy to the prosecution and the offender's lawyers. The court must ensure that both parties are afforded sufficient time before sentence to consider and respond to the report prior to sentence. Additionally the section provides that the court may order that the report, or part of the report, not be shown to the offender.

New section 166C provides that lawyers for the offender may in advance of the sentence, file with the court a notice of intention to dispute the whole or part of the report given under section 166A. Where such a notice is filed, the court must not take the report of the part in dispute into consideration on the sentence unless the offender's lawyers have been given the opportunity to lead evidence on the disputed matters and to cross-examine the author of the report on its contents.

Clause 40 subclause (1) is an amendment to section 167 that is consequential to the replacement of the term "*violent offence*" with "*qualifying offence*".

Subclause (2) inserts a new subsection (4) into section 167 that provides that with regard to a report provided pursuant to section 166A, subsections (1) and (2) of section 167 do not affect the admissibility, under section 166C.

Clause 41 inserts new section 172D. New section 172D prohibits the court determining whether to impose an indefinite sentence from having regard to the availability of an order under Division 3 of the DPSOA were the offender to be granted a finite sentence.

Clause 42 subclause (1) replaces subsection 173 (1)(b). The new sub section (1)(b) incorporates a consequential amendment, replacing the term "*violent offence*" with "*qualifying offence.* Additionally the concept of '*finite sentence*' is introduced to describe the sentence that is imposed on

the offender by the court after the indefinite sentence is discharged upon review.

Subclause (2) amends section 173(3) to replace the term '*a sentence imposed under subsection (1)(b)*' with the term '*finite sentence*'.

Clause 43 replaces existing section 174 and creates new sections 174A, 174B and 174C.

New section 174 provides that an offender who has been sentenced to a finite sentence must apply for parole at least 6 months before the finite term ends. The Queensland Parole Board must hear and decide the application notwithstanding section 187 of the *Corrective Services Act 2006*. Where the application is granted, the offender must be under the authority of the Queensland Parole Board and supervision of an authorised corrective services officer for at least 5 years or a shorter period decided by the board. Sub section (6) provides that where the finite term ends within 5 years from when the parole starts, the duration of parole is taken to extend until the end of either 5 years or if a shorter supervision period has been decided – that period.

New section 174A provides that where an offender has been sentenced to a finite sentence and is not on parole 6 months before the finite term ends, the Queensland Parole Board must make a parole order under section 194 of the *Corrective Services Act 2006* as if an application had been made under section 174 before the end of the 6 month period. The parole order must be for the duration of either at least 5 years or a shorter period as decided by the Queensland Parole Board.

Subsection (6) provides that where the finite term ends within 5 years from when the parole starts, the duration of parole is taken to extend until the end of either 5 years or if a shorter supervision period has been decided – that period.

New section 174B provides that chapter 5, part 1, divisions 5 and 6 apply to parole orders made under sections 174 and 174A. The provision also clarifies that the making of a parole order or the application of section 174 or 174A does not limit or otherwise affect any application of the *Dangerous Prisoner (Sexual Offenders) Act 2003* to the prisoner the subject of the order.

New section 174C provides that where a parole order granted under section 174 or 174A is cancelled, those sections cease to apply to the offender in so far as the sentence can not be further extended. Therefore an offender's

parole can only be extended under sections 174 and 174A on one occasion. Sub section (2) of new section 174C provides that a prisoner who has received an extended sentence under section 174 or 174A whose parole is later cancelled, will be able to apply for parole under the ordinary parole provisions of the *Corrective Services Act 2006*.

Clause 44 inserts a new section 217, which provides the transitional provisions

of the Act. The amendments to Part 10 of the PSA (with the exception of sections 174 to 174C) will apply to an offender no matter when the offence the subject of the indefinite sentence application or review application occurred but only if the conviction for that offence occurred after the date of assent of the amendments.

With regards to new sections 174 to 174C, these will apply to all offenders on whom a finite sentence has been imposed no matter when the offence or conviction occurred or when the finite sentence was made.

Clause 45 inserts new schedule 2, *Qualifying Offences.* The schedule sets out the Criminal Code offences to which the application of the indefinite sentencing regime contained in Part 10 of the PSA will extend.

Clause 46 provides that part 4 of the Act amends the *Births, Deaths and Marriages Registration Act 2003*.

Clause 47 amends section 42 of the *Births, Deaths and Marriages Registration Act 2003* to empower the registrar to correct the register upon application of the chief executive under section 43AB(4) of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.