

Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the *Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018*.

Policy objectives and the reasons for them

The objective of the Amendment is to:

1. Introduce a framework so that court-ordered Division 3 supervision orders are indeterminate rather fixed term;
2. Enable the Governor in Council to review a supervision order, and on the review, decide the supervision order no longer applies if the Governor in Council is satisfied the released prisoner is no longer a serious danger to the community;
3. Establish 'indeterminate supervision orders' to enable supervision requirements to apply to a released repeat sex offender, by operation of law; and
4. Ensure that paramount importance is given to the safety and protection of the community.

Achievement of policy objectives

To achieve these objectives, the Bill amends the *Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA)* as follows:

1. the court must not state an end day for the supervision order. This means that all supervision orders are 'indeterminate' and will operate until the Governor in Council is satisfied that the prisoner is no longer a serious danger to the community;
2. the Governor in Council must review the released prisoner's supervision order. For prisoners subject to a supervision order made after the commencement of the Bill, the Governor in Council must review the order 5 years after the order is made by the court. For prisoners subject to a supervision order made before the commencement of the Bill, the review must be undertaken during the last 6 months of the supervision order. There will be subsequent annual reviews while the order continues to have effect. In deciding whether a released prisoner is a serious danger to the community, the Governor in Council must have regard to the matters the court considers when making a supervision order;
3. a new provision is inserted in the *DPSOA* to ensure that all offenders convicted of two or more serious sexual offences are subject to an indeterminate supervision order by operation of law and without a specific order. The repeat offender is subject to the indeterminate supervision order until the Attorney-General is satisfied that the supervision order is no longer in the public interest; and

4. the Objects of the *DPSOA* are amended to ensure that in making a decision under the Act, a person or body must give paramount consideration to the safety and protection of the community. The *DPSOA* is further amended to ensure that the first and foremost priority is the protection of the community. These provisions reflect the principles introduced in Victoria's recently introduced legislation, the *Serious Offenders Act 2018*.

Alternative ways of achieving policy objectives

There are no known alternate ways of achieving the same policy objective.

Estimated cost for government implementation

It is not possible to estimate the financial implication for government as the relevant cost will depend on the number of persons who are and become subject to the provisions as a result of the change.

Consistency with fundamental legislative principles

The Bill potentially departs from the fundamental legislative principles (FLPs) as outlined in section 4 of the *Legislative Standards Act 1992*.

Section 4(2) of the *Legislative Standards Act 1992* provides that legislation must have sufficient regard to the rights and liberties of individuals and the institution of Parliament. Subsection (2) provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice and where rights and liberties, or obligations, are dependent on administrative power, whether the power is sufficiently defined and subject to appropriate review.

The proposed amendments are based on s 18 of the *Criminal Law Amendment Act 1945*, and in 2014, the validity of those laws were held to be constitutional by the High Court in *Pollentine v Bleijie* [2014] HCA 30 (*Pollentine*). Enabling the Governor in Council to review an indeterminate supervision order is consistent with FLPs in that prior to making a decision, the Governor in Council must consider the same statutory criteria the court considers when deciding whether to make a division 3 order. In addition, the Governor in Council, before making a decision, must have regard to the report of two psychiatrists. As such, the Governor in Council's decision to continue a supervision order is not subject to the unconfined discretion of the Executive and does not lack sufficient safeguards. Rather, any decision made will be based on the statutory criteria, including the consideration of medical opinion about the risk of an offender reoffending. In addition, any administrative decision made is judicially reviewable.

Consultation

There was consultation undertaken on the Bill with the Queensland Law Society.

Consistency with legislation of other jurisdictions

This legislation is specific to the *Dangerous Prisoners (Sexual Offenders) Act 2003*, however there are similar elements to legislation recently passed by the Victorian Parliament.

Notes on provisions

Clause 1 refers to the short title of the Bill.

Clause 2 refers to the Act which will be amended, the *DPSOA*.

Clause 3 amends the Objects of the Act to omit the word adequate, which implies a lower threshold than paramount.

Clause 4 inserts a new s 3A into the *DPSOA* to ensure that an entity gives paramount consideration to the safety and protection of the community when making a decision under the Act.

Clause 5 inserts a new provision into s 13 of the *DPSOA* which provides that the court must not have regard to the means of managing the risk or the likely impact of a Division 3 order on the prisoner. When making a Division 3 order, the court may decide that a prisoner is a serious danger to the community even if the likelihood that the prisoner will commit a serious sexual offence is less than more likely than not.

Clause 6 amends s 13A of the *DPSOA* so that a court must not fix a period to a supervision order.

Clause 7 inserts a new provision into the *DPSOA* which provides that a supervision order has effect in accordance with its stated terms. The supervision order applies at the time the prisoner is released or the date the order is made, whichever is the later. The supervision order continues until such time the Governor in Council decides under s 19B(4) that the supervision order no longer applies to the released prisoner.

Clause 8 sees the replacement of Part 2 Division 4A omits s 13A of the *DPSOA* pertaining to extending supervised release. A new division 'reviews of supervision order' is inserted detailing when the Governor in Council must review supervision orders. In relation to reviews of supervision orders made after the commencement of the Act, the Governor in Council must review the released prisoner's supervision order 5 years after the order is made by the court, with subsequent annual reviews thereafter. On the review, if the Governor in Council is satisfied that the released prisoner is no longer a serious danger to the community, the Governor in Council may decide that the supervision order no longer applies to the released prisoner.

The review of supervision orders also applies to released prisoners that are currently subject to a supervision order made before the commencement of the Act. If the period fixed under repealed section 13A has not ended on the commencement, the Governor in Council must review the supervision order during the last 6 months of the released prisoner's supervision order. On the review, if the Governor in Council is satisfied that the released prisoner continues to be a serious danger to the community, the Governor in Council may decide that the supervision order continues in accordance with its terms and until the Governor in Council decides that it no longer applies to the released prisoner. There must be subsequent annual reviews while a released prisoner's supervision order continues to have effect. In deciding whether a released prisoner is a serious danger to the community, the Governor in Council must have regard to the matters mentioned in s 13(4)(aa) to (j) in the *DPSOA* and any report produced for the review under s 19E of the *DPSOA*. For the purposes of the review, the released prisoner must be examined by 2 psychiatrists.

Clause 9 inserts a new s 43AAA into the *DPSOA* which provides for definitions of 'released prisoner' and 'relevant order'. A released prisoner includes a person subject to an indeterminate supervision order that has taken effect under s 43AL. A relevant order, for a person subject to an indeterminate supervision order, means the indeterminate supervision order.

Clause 10 inserts a new Part 4B in the *DPSOA* in relation to indeterminate supervision orders for repeat offenders (an offender who is convicted of two or more serious sexual offences). This division applies to a repeat offender who is a prisoner detained in custody serving a period of imprisonment or subject to a division 3 order. A repeat offender is subject to all requirements contained in the

indeterminate supervision order, including a 'monitoring device requirements' and the 'other requirements'. In addition, a repeat offender will be subject to a monitoring device requirements indefinitely.

An indeterminate supervision order takes effect for a repeat offender on the prisoner's release day or for an offender subject to a division 3 order, on the day on which the division 3 order ends. The 'other requirements' will apply to the repeat offender until the Attorney-General decides by review under cl 43AQ(2) of the Bill that the other requirements no longer apply.

A released repeat offender must be examined once every 3 years by 2 psychiatrists for the purposes of ascertaining the level of risk that the repeat offender will commit an offence of a sexual nature. The Attorney-General must give the examination report to the repeat offender. The Attorney-General may decide the other requirement still apply if the Attorney-General decides that subjecting the repeat offender to the indeterminate supervision order continues to be in the public interest. The Attorney-General may still apply to the court for a division 3 order in relation to a prisoner. These divisions do not affect the power of the court to make a division 3 order in relation to a prisoner.

Clause 11 inserts a new provision into the *DPSOA* providing that the amendments to the Act must be reviewed 3 years after the Act's commencement.

Clause 12 clarifies that a reference to a supervision order includes a reference to a further supervision order made under this Act before the commencement. Clause 12 also clarifies that ss 3A and 13 apply to a decision relating to an application made but not decided before the commencement (an existing application). Clause 12 also withdraws any application for a further supervision order that has been made but not finally dealt with. In addition, when applying part 4B, it does not matter whether any or all the two or more serious sexual offences were committed, or the offender was convicted, before or after the commencement of the Act.

Schedule 1 consequential amendments provides for the omission and insertion of words and phrases contained in the *DPSOA*. The Schedule provides for new definitions, including 'indeterminate supervision order', 'monitoring device requirements', 'other requirements', 'released prisoner', 'relevant order', 'repeat offender' and 'supervision order'.