

Dangerous Prisoners (Sexual Offenders) Amendment Bill 2007

Explanatory notes for Amendments to be moved during consideration in detail by the Honourable Kerry Shine, Attorney-general and Minister for Justice and Minister Assisting the Premier in Western Queensland

Title of the Bill

Dangerous Prisoners (Sexual Offenders) Amendment Bill 2007

Objectives of the Amendments

The amendments are to be moved during consideration in detail of the Dangerous Prisoners (Sexual Offenders) Amendment Bill 2007 introduced into the Legislative Assembly on 17 April 2007.

The amendments will ensure that all prisoners released under the *Dangerous Prisoners (Sexual Offenders) Act 2003* are subject to electronic monitoring and curfew requirements where Corrective Services deem it necessary.

Achievement of the Objectives

The amendments will make it mandatory for every prisoner released on a supervision order by the Supreme Court to be subject to electronic monitoring and a curfew if directed by a corrective services officer.

Section 16(1) of the *Dangerous Prisoner (Sexual Offenders) Act 2003* is amended to insert, as a mandatory requirement of a supervision order, that a released prisoner must comply with a curfew and monitoring direction. Further, new section 16A is inserted into the Act to provide that a corrective services officer may give a curfew and monitoring direction to a released prisoner.

When a released prisoner is brought before the Supreme Court for having contravened a requirement of the supervision order, the Supreme Court

may, in exceptional circumstances, release the prisoner to an interim supervision order pending finalisation of contravention proceedings. If the Court decides to release the prisoner, the amendments will ensure that an electronic monitoring requirement will be imposed upon release until the finalisation of the proceedings.

When the Supreme Court determines that a released prisoner is likely to contravene, is contravening, or has contravened the supervision order it can order continued detention or that the prisoner remain on a continuing supervision order. Where it is determined that the released prisoner will remain on a supervision order, a new supervision order will be issued including an electronic monitoring requirement. This will occur even if the Court determines to not otherwise amend the supervision order.

When the chief executive of Corrective Services successfully applies to the Supreme Court for an amendment of a supervision order, any amended order will include electronic monitoring and curfew requirements in addition to other requirements imposed by the court.

Estimated Cost for Government Implementation

The costs of operating electronic monitoring will continue to be met from funding allocated to Queensland Corrective Services.

Consistency with Fundamental Legislative Principles

There may be an argument that the imposition of a mandatory electronic monitoring requirement on every supervision order may not have sufficient regard to the rights and liberties of individuals as required by the *Legislative Standards Act 1992*.

Prisoners released on supervision orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* are prisoners the Court has determined pose a serious danger to the community if they are not subject to appropriate levels of supervision. The community expects that sex offenders released under the Dangerous Prisoner's legislation will be subject to stringent and intense supervision and surveillance in the community.

The ability of the Government to apply stringent controls and limitations on released prisoners is vital. Electronic monitoring with associated curfews allows Corrective Services to impose movement restrictions on these offenders and to effectively monitor compliance with such restrictions. This provides an additional layer of control over those offenders who pose the highest risk to community safety.

The ability for Corrective Services to determine the need for electronic monitoring ensures that this surveillance tool is utilised in response to an offender's increasing or diminishing risk.

Corrective Services plays a specialist role in relation to offender assessment and identification of criminogenic risks and needs. This means that decisions regarding whether curfew and electronic monitoring requirements should continue, be amended or removed, are informed by the ongoing monitoring and assessment by officers who work directly with the offenders.

The amendments only provide for the imposition of electronic monitoring after the Supreme Court has determined to exercise its discretion and make an order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Consultation

The Department of the Premier and Cabinet and Queensland Corrective Services have been consulted on the policy objectives and on the drafting of the provisions.

Notes On Provisions

Amendment 1 inserts clause 2A into the Bill which amends section 13 of the Act to substitute the term 'requirements' for 'conditions'. This amendment rectifies the current inconsistency in the Act where the two terms are used interchangeably. The amendments will ensure a consistent use of terminology throughout the Act.

Amendment 2 amends clause 3 of the Bill which amends section 16(1) of the Act. Section 16(1) provides a number of mandatory requirements of a supervision or interim supervision order. Amendment 2 inserts, as a mandatory requirement of a supervision order, that a released prisoner must comply with a curfew and monitoring direction. Amendment 2 also amends section 16 to substitute the term 'requirements' for 'conditions'.

Amendment 3 inserts clause 3A into the Bill which inserts new section 16A into the Act. New section 16A clarifies the authority of corrective services officers to issue directions to released offenders in relation to enforcing a curfew and subjecting the offender to electronic monitoring. The provision

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also gives corrective services officers the power to issue any reasonable direction necessary for the proper administration of a curfew or electronic monitoring.

Amendment 4 inserts clause 3B into the Bill which amends section 19 of the Act to provide that if the Chief Executive successfully applies for an amendment to a supervision order, the amended supervision order must include the requirement that the released prisoner comply with a curfew or monitoring direction. Amendment 4 also clarifies that the mandatory requirements provided in section 16(1) are not subject to amendment under section 19.

Amendment 5 inserts clause 3C into the Bill which inserts new section 19A into the Act. New section 19A allows a released prisoner to apply to the Supreme Court for the removal of the requirement of the supervision order that the released prisoner comply with a curfew and monitoring direction.

In relation to such an application, the onus is upon the released prisoner to satisfy the court on the balance of probabilities that the adequate protection of the community can be ensured without the requirement. An application may only be made after two (2) years from the date the requirement was included in the order. In the event of an unsuccessful application, the released prisoner cannot make a further application for removal for a period of one (1) year.

New section 19A also provides that the chief executive of Corrective Services, may, at any time, with the Attorney-General's consent, apply to have the curfew and monitoring requirement reinstated.

Amendment 6 amends clause 4 of the Bill which amends section 20 of the Act. The amendment is a consequential amendment to effect the change in terminology from 'condition' to 'requirement'.

Amendment 7 amends clause 5 of the Bill which amends section 21 of the Act and is concerned with the circumstance where a released prisoner is brought back before the Supreme Court for contravening a supervision order and the court is satisfied that exceptional circumstances exist to justify releasing the prisoner on a supervision order until the matter is finally determined. The amendment provides that in such a case, the supervision order must include the requirements that the released prisoner comply with a curfew or monitoring direction and with every reasonable direction of a corrective services officer.

Amendment 8 amends clause 6 of the Bill by substituting a new section 22. Amendment 8 is concerned with the circumstance where the Supreme

Court makes a final determination in relation to a contravention hearing, to allow a released prisoner to remain on a supervision order. The amendment provides that in such a case, the supervision order must include the requirements that the released prisoner comply with a curfew or monitoring direction and with every reasonable direction of a corrective services officer.

Amendment 9 inserts a new clause 8A into the Bill and amends section 30 of the Act to provide that where the court, at a annual review hearing of a continuing detention order, determines to release a prisoner on a supervision order, the supervision order must include the requirements that the released prisoner comply with a curfew or monitoring direction and with every reasonable direction of a corrective services officer.

Amendment 10 inserts a new clause 8B into the Bill. The amendment amends section 31 of the Act to clarify that appealable ‘decisions’ under section 31 of the Act are decisions of the court. Therefore, any decision by a corrective services officer to give a monitoring or curfew direction would not be appealable under section 31.

Amendment 11 amends clause 9 and is a consequential amendment to effect the change in terminology from ‘condition’ to ‘requirement’.

Amendment 12 amends clause 12 of the Bill to clarify that the new requirements in relation to the mandatory curfew and monitoring directions and the direction to comply with every reasonable direction of a corrective services officer, do not apply to existing orders unless the orders are amended by the court to include such requirements. This ensures that the amendments do not apply retrospectively to alter the obligations of released offenders.

Amendments 13 and 14 amend clause 13 of the Bill which amends the Schedule (Dictionary) of the Act. The amendments insert definitions for curfew direction, monitoring direction and requirement. Curfew and monitoring direction are defined earlier in the Act. Requirement is defined to include a condition and a provision of an order made before the commencement of the amendments. The Dictionary is further amended to update the section references for the definition of interim detention order to reflect amendments being made to sections 21 and 22.

Dangerous Prisoners (Sexual Offenders) Amendment Bill 2007

Explanatory Notes for Amendments to be moved during consideration in detail by Mark McArdle, Member for Caloundra

Title of the Bill

Dangerous Prisoners (Sexual Offenders) Amendment Bill 2007

Objectives of the Bill

The objective of the legislation is to introduce new provisions into the Dangerous Prisoners (Sexual Offenders) act, the bill to be moved during consideration in detail.

Reasons for Bill

The Shadow Attorney General and Minister for Justice is responsible for the administration and support of the portfolio from the opposition. The Queensland Coalition has been pushing the poor policy management around dangerous prisoners by the government for a long time now, the continued flaws in the current monitoring system reflect a government out of touch with protecting the communities interests.

It was pointed out to government officials in a previous briefing that there had been no consultation with either the police or the courts, or any victim interest groups about amendments previously proposed by the Government. This lack of any respect or recognition of victims within this act has given rise to the first part of the proposed amendments put forward by the Queensland Coalition.

The second part of the amendments, that is compulsory monitoring of all dangerous prisoners. The Queensland Coalition believe that effective monitoring should be done through GPS satellite devices as well as radio frequency monitoring. The need to monitor has shown that offenders are less likely to re-offend and add an additional layer of security. It is

important to note that the Coalition believe that Dangerous Sexual Offenders who pose a risk should remain behind bars indefinitely.

These amendments are to add balance to the process by giving victims of Dangerous Prisoners a voice and also ensuring that effective management of Dangerous Prisoners who are released by courts.

Current legislation

The current legislation does not allow the victims of dangerous prisoners a voice in the process when it comes to deciding on a detention or supervision order.

Under current legislation there are is no compulsory electronic monitoring provisions and there is no retrospective component to the application of electronic monitoring.

Achievements of Objectives

The bill achieves the objectives by amending the Dangerous Prisoner (Sexual Offenders) Act 2003

Estimated Cost for Government Implementation

The bill will need to be covered by the cost of electronic monitoring each person given a supervision order under the act.

Consultation

Consultation has occurred with victim support groups and the prison officers association.

Notes On Provisions

Part 1 Preliminary

These provisions are to be inserted into the Dangerous Prisoners (Sexual Offenders) Amendment Bill 2007.

Clause one introduces a new section 9AA. This section requires the Attorney General to give notice to victims of the prisoner for which the application for a division 3 order applies.

This section is a requirement on the Attorney General to provide notice to the victim, which allows that victim to submit their views and provide information relevant to any application for a division 3 order or any conditions of release.

Sub clause 3,4 and 5 outline the operation for which the Attorney General must take to comply with the intent of the section. It also provides protection for victims if they do not wish to be identified.

Sub-clause 2B provides that the Attorney General must give written notice of a discontinuance of proceedings.

Clause 3 inserts the provision relating to compulsory conditions attached to a supervision order. These include a curfews, and the wearing of electronic monitoring.

Clause 4 introduces the fitting of monitoring devices to all prisoners whom a supervision order is made and that the said device is to be worn for the duration of the order.

Sub-clause 2 provides for fitting of electronic monitoring devices retrospectively.

Clause 4 also outlines provisions to cover the unauthorised damage or removal of the device.

Clause 5A again outlines provisions for victim submissions to be made at the time a further order is made. This means that that Attorney General must provide eligible persons the opportunity to present information to the court at the time of hearing and making final decision.

Clause 6 deals with the requirement, this is not an option the court must impose this condition to make a curfew order when making a further supervision order.

Clause 7 and 8 deal machinery aspects of the bill.

Clause 9 inserts additional definitions of specific terminology relevant to the amendments proposed including 'eligible person' and 'monitoring devices'.