

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

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Cameron Dick MP, Attorney-General and Minister for Industrial Relations

Title of the Bill

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

Objectives of the Amendments

The objective of the amendments to the *Dangerous Prisoners (Sexual Offenders) Act 2003* is to recognise that the first five years of a prisoner's release from detention is the highest risk period in terms of re-offending. The Act is amended to impose a minimum mandatory period of five years in relation to supervision orders. As a consequence, the Bill is amended to remove the five year cap on the duration of supervision orders. In acknowledgment of the lifting of the five year cap, the provisions in the Bill that allow for the making of further supervision orders are amended so that a released prisoner is liable to only one further supervision order in relation to a current supervision order. This limitation does not apply where a new supervision order is made under the Act. A provision is also inserted to provide that when the court is determining the appropriate period for a supervision order, the court must not have regard to the fact that the prisoner may be subject to an application for a further order in the future.

The objective of the amendments to the *Penalties and Sentences Act 1992* is to make a number of drafting amendments to the Bill to clarify the operation of provisions which allow offenders sentenced to an indefinite sentence under the Penalties and Sentences Act, which is later converted to

a finite sentence, to be granted parole by the Queensland Parole Board. The amendments will ensure that the Bill achieves its objective that all such offenders must be under the authority of the Queensland Parole Board (parole board) and the supervision of an authorised corrective services officer for at least five years. The amendments make clear that:

- such offenders are subject to at least five years parole supervision, subject to the parole board ordering a shorter period;
- the parole period cannot end before the expiry of the period of imprisonment;
- the parole board may only order a shorter period of supervision in appropriate cases, having regard to the ministerial guidelines;
- the finite term of imprisonment is extended, if necessary, to include the period of parole supervision ordered by the parole board.

It is important to note that the amendments do not alter the current interface of Part 10 and Part 9, division 3 of the Penalties and Sentences Act. An offender with a finite term may be sentenced under Part 9 for other offences but still be under an obligation to complete the period of imprisonment as extended by the initial grant of parole of up to five years by the parole board.

The amendments also make a number of drafting amendments to other clauses in the Bill.

Consultation

Department of the Premier and Cabinet and Department of Community Safety

Consistency with Fundamental Legislative Principles

The amendment to the Dangerous Prisoner (Sexual Offenders) Act to impose a minimum mandatory period of five years in relation to supervision orders will apply to applications commenced but not yet finalised. The amendment recognises that the first five years of a prisoner's release from detention is the highest risk period in terms of re-offending. The amendment is justified to ensure the adequate protection of the community from serious sexual offenders.

Pursuant to section 174 of the Penalties and Sentences Act, an offender who has been discharged from an indefinite sentence and sentenced to a

finite term, is liable to five years parole supervision regardless of the time remaining on their sentence. However, 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 ensures that offenders who are released having served their full-time nominal sentence are also liable to five years parole supervision. These amendments omit clause 43 from the Bill and insert a new clause 43 to ensure the provisions are clear and unambiguous. The extension of the extended parole period impacts on the rights and liberties of certain prisoners. The amendment is justified to ensure the protection of the community.

Notes on Provisions

Clause 1 amends clause 8 of the Bill to remove the restriction that the period of a supervision order is limited to five years after the prisoner's release from detention. New subsections (2) and (3) provide that a supervision order must be for a minimum period of five years and that when the court is determining the appropriate period for a supervision order, the court must not have regard to the fact that the prisoner may be subject to an application for a further order in the future.

Clause 2 amends clause 14 of the Bill to remove the reference to 'this subdivision' and insert the words 'sections 16A and 16B'. This amendment clarifies the application of new section 16D by ensuring that the power to give specific directions under sections 16A and 16B does not limit the power to give reasonable directions under section 16(1)(db). When giving directions under section 16(1)(db) corrective services officers will be subject to the requirements of new section 16C.

Clause 3 amends clause 17 of the Bill by amending new section 19B which allows the Attorney-General to apply for a further supervision order in relation to a released prisoner. This amendment renders a released prisoner liable to one further supervision order. However, this restriction does not prevent the court from imposing new supervision orders under the Act. Subsection (5) covers the situation where a supervision order ends, the released prisoner re-offends, is sentenced to imprisonment and the

Attorney-General makes an application under the Act. A supervision order resulting from the application will be a new supervision order and new Division 4A will apply to allow for a further supervision order at its end.

Subsection (5) also covers the situation where the court rescinds a supervision order because of a contravention and makes a continuing detention order. In the event that the prisoner is subsequently released on a supervision order, that supervision order is a new order and new Division 4A will apply to allow for a further supervision order at its end.

Clause 4 amends clause 17 of the Bill by inserting the words ‘and the operation of any further supervision order for the release prisoner’ into new section 19D. This amendment clarifies that the divisions of the Act listed in section 19D apply to an application for a further supervision order and the operation of the order.

Clause 5 amends clause 17 of the Bill by inserting a new subsection (e) into new section 19D(1). New subsection (e) provides that in relation to an application for a further supervision order the Attorney-General must serve the released prisoner with the application within seven business days after the filing.

Clauses 6, 7 and 8 amend clause 17 and are consequential to the insertion of new section 19D(1) (e).

Clauses 9 and 10 amend clause 17 and are consequential to the amendment to clause 8 of the Bill to remove the restriction that the period of a supervision order is limited to five years after the prisoner’s release from detention.

Clause 11 amends clause 25 of the Bill by changing the heading of new section 43AA to read ‘Contravention of relevant order.’ This is a drafting issue.

Clause 12 amends clause 25 of the Bill by changing the heading of new section 43AB to read, ‘applying for change of name without permission.’ This is a drafting issue.

Clause 13 amends clause 30 of the Bill to refer to the *Penalties and Sentences Act 1992*. This amendment is being made to clarify that section 51 applies to both parole orders issued by a board and court ordered parole.

Clause 14 amends clause 31 which provides the transitional provisions. New section 59 is inserted to provide that new section 13A applies to any applications commenced but not determined before commencement of this amending Bill. New section 60 provides that new section 13A applies to

the making of a supervision order under section 30 of the Act in relation to a prisoner subject to a continuing detention order made before commencement of this amending Bill.

Clause 15 amends clause 31 of the Bill by renumbering section 59, inserted by the Bill. This is consequential to the insertion of new sections 59 and 60.

Clause 16 amends clause 31 of the Bill by renumbering section 60, inserted by the Bill. This is consequential to the insertion of new sections 59 and 60.

Clause 17 amends clause 31 of the Bill by renumbering section 61, inserted by the Bill. This is consequential to the insertion of new sections 59 and 60.

Clause 18 amends clause 32 of the Bill to include a definition of ‘further supervision order’. This is a drafting issue.

Clause 19 amends clause 32 of the Bill as a consequence of the new definition of ‘further supervision order’. This is a drafting issue.

Clause 20 amends clause 34 of the Bill which amends the definition section of the Penalties and Sentences Act. Section 4 of the Penalties and Sentences Act is amended by the insertion of definitions for ‘board guidelines’, ‘dangerous prisoners application’ and ‘finite sentence’.

Clause 21 amends clause 34 of the Bill by inserting a new definition of ‘term of imprisonment’ into section 4 of the Penalties and Sentences Act. The new definition clarifies that when a finite sentence is extended under new section 174B(6) of the Penalties and Sentences Act (refer to clause 26 of these amendments) the ‘term of imprisonment’ includes the extended finite sentence. This ensures the deemed extension will have a general effect.

Clause 22 inserts a new clause 34A into the Bill to amend section 9 of the Penalties and Sentences Act to provide that in sentencing an offender a court must not have regard to whether or not the offender may become subject to an order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Clause 23 amends clause 40 of the Bill by removing a reference to section 166C. The amendment is to clarify the admissibility of the section 166A report.

Clause 24 amends clause 41 of the Bill by redrafting new section 172D in light of the amendment to section 9 of the Penalties and Sentences Act provided in clause 22.

Clause 25 amends clause 42 of the Bill by replacing ‘sentence (a *finite sentence*)’ with ‘impose a sentence (a *finite sentence*) on.’ This is a drafting issue.

Clause 26 replaces clause 43 of the Bill which has been redrafted to ensure the new sections 174 to 174C are clear and unambiguous.

The new section 174 clarifies how an offender, originally sentenced to an indefinite sentence, on whom a finite sentence is imposed by the court may apply for parole. Section 174 applies where the offender makes an application for parole before the last six months of his or her period of imprisonment. The new section 174 will ensure the policy objective of ensuring these offenders when released, must be under five years parole supervision subject to subsection 174(8) and 174 (9).

Subsection (5) makes clear that the parole period cannot end before the relevant period of imprisonment ends.

Subsection (7) provides that the parole period decided by the parole board must be five years, subject to subsections (8) and (9).

Subsection (8) provides that the parole period may be more than five years where the rest of the offender’s period of imprisonment is more than five years.

Subsection (9) provides that the parole period may be less than five years only if the board considers that period is appropriate having regard to any relevant board guidelines. This principle is subject to the requirement in subsection (5) that the parole period cannot end before the relevant period of imprisonment ends.

Subsection (10) inserts a definition for relevant period of imprisonment as being a period of imprisonment including a finite term of imprisonment, whether or not the finite term has ended.

Some examples of how section 174 will operate are provided below:

Offender A has a relevant period of imprisonment of 20 years expiring on 30 June 2020. The offender became eligible for parole and was released on 1 July 2013. The offender must be on parole until the end of the period of imprisonment as required by s 174(5). The parole period must be 5 years, subject to subsections (8) and (9). Under subsection (8) the parole period can be more than 5 years where the rest of the offender’s period of imprisonment is more than 5 years. The Board therefore imposes a parole period of 7 years expiring on 30 June 2020 ensuring that the offender is on parole until the expiry of the period of imprisonment.

Offender B has a finite term of imprisonment of 20 years expiring on 30 June 2020. The offender was released to parole on 1 July 2018. Under s174(5) the offender must be on parole until the end of the period of imprisonment. This period is only 2 years. The parole board must set a parole period of 5 years subject to subsections (8) and (9). Here subsection (9) is relevant and the Board may set a parole period of less than 5 years only if it considers it appropriate having regard to any Ministerial Guidelines. The Queensland Board decided that that the offender will be on parole for 5 years, until 30 June 2023. This parole period of 5 years extends beyond the expiry of the offender's term of imprisonment.

The new section 174A provides for the release to parole of an offender on whom a finite sentence is imposed. Section 174A applies when the offender is not currently on parole six months before the relevant period of imprisonment ends.

Subsection (2) provides that this section applies even if the offender had made an application under section 174 but that application has not been decided. This clarifies how an application made, but not decided, will be treated for the purposes of section 174A.

Subsection (3) provides that the parole board must make a parole order for the offender within that six month period.

Subsection (4) provides that if the offender has made an application, subsection (3) applies even if the decision on the application was not or would not have been to grant parole. This subsection applies where an offender may have made an application before the last six months of the period of imprisonment which was refused by the parole board. Even though the board refused parole on that application it must still grant the offender parole under section 174A.

Subsection (5) provides that even if an offender has not made an application subsection (3) applies as if the offender had lawfully made an application.

Subsection (6) allows the board to release the offender to parole at any time during the last six months of the period of imprisonment. This gives the board flexibility in setting the parole release date.

Subsection (7) provides that the board must set the parole period.

Subsection (8) provides that the period must be five years, subject to subsection (9).

Subsection (9) provides that the parole period may be less than five years only if the board considers it appropriate having regard to any relevant board guidelines.

Section 174B describes the effect of granting a parole order under section 174 and 174A.

Subsection (2) provides that the *Corrective Services Act 2006*, Chapter 5, Part 1, Divisions 5 and 6 apply to the order. This ensures that the order can be managed in the same way as any other parole order granted by the board.

Subsection (3) provides that section 5(6) of the Dangerous Prisoners (Sexual Offenders) Act continues to apply to an offender subject to the application of section 174 or 174A. If an offender released to parole under either of these sections is returned to custody, the Attorney-General may make an application under the Dangerous Prisoners (Sexual Offenders) Act in relation to the offender.

Subsection (4) provides that the offender released under section 174 or section 174A must be under the authority of the parole board and the supervision of an authorised corrective services officer.

Subsection (5) provides that subsections (6) and (7) apply if there would, other than for section 174B, be a period (the gap period) between the end of the period of imprisonment and the last day of the parole period.

Subsection (6) provides that the finite term included in the relevant period of imprisonment is taken to extend by the gap period.

Subsection (7) provides that any term of imprisonment ordered to be served cumulatively with the finite term is taken to be ordered to be served cumulatively with the finite term as extended.

Subsection (8) provides that relevant period of imprisonment in section 174B has the same definition as in section 174(10).

Some examples of how section 174B would operate are provided below:

Offender C was sentenced to a finite term of 20 years due to expire on 30 June 2020. After that term was imposed the offender was sentenced to a cumulative term of 12 months for an assault committed in a corrective services facility. The offender's period of imprisonment now expires on 30 June 2021. On 1 January 2021 the offender is released to parole under section 174A. The Queensland Board sets a parole period of 5 years, which will expire on 31 December 2025. The gap period, from 30 June 2021 to 31

December 2025 is 4 years 6 months. The finite term of 20 years is extended by 4 years 6 months.

Offender D was sentenced to a finite term of 20 years due to expire on 30 June 2020. The offender was released to parole on 1 July 2018. The Queensland Board set a parole period of 5 years which would expire on 30 June 2023. The finite term was extended by the gap period of 3 years and became a 23 year term of imprisonment. After being released the offender was sentenced to a cumulative term of imprisonment of 3 months for possessing a dangerous drug. The 3 month term of imprisonment will be served cumulatively on the extended finite term. The prisoner's period of imprisonment is now 23 years and 3 months and will expire on 30 September 2023.

The new section 174C describes the effect of cancellation on a parole order issued under section 174 or 174A.

Subsection (2) provides that if parole is cancelled no further order may be made under section 174 or 174A. This ensures that the offender's finite term of imprisonment can only be extended once under section 174 or 174A.

Subsection (3) provides that any extension of the finite term under section 174B(6) continues to apply.

Subsection (4) provides that the offender can still apply for parole under the Corrective Services Act.

Subsection (5) provides that the parole board must hear and decide any application for further parole.

Subsection (6) provides that subsection (5) applies despite section 187 of the Corrective Services Act. This ensures that if the offender has a period of imprisonment of less than eight years, but has a finite term of imprisonment, that application will be heard by the Queensland Parole Board.

Clause 27 amends clause 44 of the Bill which inserts new section 217 into the Penalties and Sentences Act. New section 217 is the transitional provision. The amendment is consequential to the amendments provided in clauses 22 and 24.

Clause 28 amends clause 44. The amendment is consequential to the amendments provided in clauses 22 and 24. New section 9(8) and amended part 10 (other than new sections 172D and 174 to 174C) of the Penalties

and Sentences Act will only apply to the sentencing of an offender if the conviction for the offence takes place after the date of assent of this Bill.

Clauses 29 and 30 amend clause 44 of the Bill, such amendments being consequential to the amendment provided in clause 24. The effect of the amendments is that new sections 172D and 174 to 174C apply to an offender on whom a finite sentence has been imposed no matter when the relevant offence or conviction happened or happens, or when the finite sentence was made.

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