

Dangerous Prisoners (Sexual Offenders) Amendment Bill 2007

Amendments agreed to during Consideration

1 After clause 2—

At page 4, after line 7—

insert—

‘2A Insertion of new s 9AA

‘After section 9—

insert—

‘9AA Victim’s submission relating to division 3 order

- ‘(1) As soon as practicable after the court sets a date for the hearing of an application for a division 3 order, the Attorney-General must give written notice of the application and hearing date to the following eligible person—
 - (a) subject to paragraph (b), the actual victim of the serious sexual offence for which the prisoner is serving a term or period of imprisonment;
 - (b) if the victim is under 18 years or has a legal incapacity, the victim’s parent or guardian.
- ‘(2) The notice must invite the eligible person to give to the Attorney-General, before the date stated in the notice, a written submission stating—
 - (a) the person’s views about any division 3 order or conditions of release to which the prisoner should be subject; and
 - (b) any other matters prescribed under a regulation.
- ‘(3) It is sufficient compliance with subsection (1) for the Attorney-General to give the notice to the eligible person at the eligible person’s last-known address recorded in the eligible persons register.

- ‘(4) The Attorney-General must place before the court for the hearing of the division 3 order any submission received from the eligible person before the hearing date.
- ‘(5) For the purposes of this section, the chief executive (corrective services) is authorised, if requested by the Attorney-General, to give to the Attorney-General details of the eligible person’s identity and contact details recorded in the eligible persons register.’.

2 After clause 2—

At page 4, after line 7—

insert—

‘2B Amendment of s 10 (Discontinuing application for division 3 order)

‘Section 10—

insert—

- ‘(4) If the Attorney-General received a submission from an eligible person in response to a notice given to the person under section 9AA, the Attorney-General must give the person written notice of the discontinuance of the application.’.

3 After clause 2—

At page 4, after line 7—

insert—

‘2C Amendment of s 13 (Division 3 orders)

‘Section 13(5)(b), ‘conditions’—

omit, insert—

‘requirements’.

4 Clause 3 (Amendment of s 16 (Conditions for supervised release))

At page 4, lines 9 to 12—

omit, insert—

‘(1) Section 16, heading, ‘Conditions’—

omit, insert—

‘Requirements’.

‘(2) Section 16(1)—

insert—

‘(da) comply with a curfew direction or monitoring direction;
and

(db) comply with every reasonable direction of a corrective
services officer; and’.

‘(3) Section 16(2), ‘order’, second mention—

omit, insert—

‘requirement’.

‘(4) Section 16(2)(a), examples, ‘an order’—

omit, insert—

‘a requirement’.’.

5 After clause 3—

At page 4, after line 12—

insert—

‘3A Insertion of new s 16A

‘Part 2, division 3B—

insert—

‘16A Curfew and monitoring directions

‘(1) The purpose of this section is to enable the movements of a
released prisoner to be restricted and to enable the location of
the released prisoner to be monitored.

‘(2) A corrective services officer may give 1 or both of the
following directions to the released prisoner—

(a) a direction to remain at a stated place for stated periods
(curfew direction);

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Example—

a direction to remain at the released prisoner's place of residence from 2.30p.m. to 7.00p.m. on school days, if the prisoner is not required to be at a place of employment during these hours

(b) a direction to do 1 or both of the following (***monitoring direction***)—

(i) wear a stated device;

(ii) permit the installation of any device or equipment at the place where the released prisoner resides.

‘(3) A corrective services officer may give any reasonable directions to a released prisoner that are necessary for the proper administration of a curfew direction or monitoring direction.

‘(4) This section and section 16(1)(da) do not limit section 16(1)(db).’.

6 After clause 3—

At page 4, after line 12, after clause 3A as previously inserted—

insert—

‘3B Amendment of s 19 (Amendment of conditions of supervision order or interim supervision order)

‘(1) Section 19, ‘conditions’—

omit, insert—

‘requirements’.

‘(2) Section 19—

insert—

‘(3) If the court amends the requirements on an application made by the chief executive, the court must also amend the supervision order or interim supervision order to include the requirements mentioned in section 16(1)(da) and (db), if the order does not already include the requirements.

‘(4) To the extent the supervision order or interim supervision order includes a requirement mentioned in section 16(1), the

order can not be amended under this section in relation to the requirement.'?'.

7 After clause 3—

At page 4, after line 12, after clause 3B as previously inserted—

insert—

'3C Insertion of new s 19A

'Part 2, division 4—

insert—

'19A Removal or reinstatement of requirement to comply with curfew direction or monitoring direction

- '(1) This section applies to a requirement of a supervision order or interim supervision order that a released prisoner comply with a curfew direction or monitoring direction.
- '(2) The court may, on application by the released prisoner, remove the requirement if the released prisoner satisfies the court on the balance of probabilities that the adequate protection of the community can be ensured without the requirement.
- '(3) An application under subsection (2) may only be made—
 - (a) for the first time, after 2 years from the date the requirement was included in the order; or
 - (b) if paragraph (a) does not apply, after 1 year from the date an application by the released prisoner under this section was last decided.
- '(4) At the hearing of the application, the chief executive may place before the court evidence of the released prisoner's compliance, or noncompliance, with the order.
- '(5) The court must have regard to the evidence placed before it under subsection (4) in considering whether the adequate protection of the community can be ensured without the requirement.
- '(6) The court may, on application made at any time by the chief executive with the Attorney-General's consent, reinstate a

requirement of a supervision order or interim supervision order removed under this section.’.’.

8 Clause 4 (Amendment of s 20 (Summons or warrant for released prisoner suspected of contravening a supervision order or interim supervision order))

At page 4, after line 18—

insert—

‘(1A) Section 20(1), ‘condition’—

omit, insert—

‘requirement’.’.

9 Clause 5 (Replacement of s 21 (Contravention of supervision order or interim supervision order))

At page 6, lines 24 and 25—

omit, insert—

‘the *existing order*) as amended under subsection (7).

‘(7) For subsection (6), the court—

(a) must amend the existing order to include the requirements mentioned in section 16(1)(da) and (db), if the existing order does not already include the requirements; and

(b) may amend the existing order to include any other requirements the court considers appropriate to ensure adequate protection of the community.’.

10 After clause 5—

At page 6, after line 25—

insert—

‘5A Insertion of new s 21A

‘After section 21—

insert—

‘21A Victim’s submission relating to further order

- ‘(1) As soon as practicable after the court sets a date for the hearing for making its final decision under section 22 in relation to the prisoner, the Attorney-General must give written notice of the issue of the warrant and hearing date to the following eligible person—
- (a) subject to paragraph (b), the person mentioned in section 9AA(1)(a) as the actual victim of the serious sexual offence for which the prisoner was serving a term or period of imprisonment;
 - (b) if the victim is under 18 years or has a legal incapacity, the victim’s parent or guardian.
- ‘(2) The notice must invite the eligible person to give to the Attorney-General, before the date stated in the notice, a written submission stating—
- (a) the person’s views about any further order or conditions of release to which the prisoner should be subject; and
 - (b) any other matters prescribed under a regulation.
- ‘(3) It is sufficient compliance with subsection (1) for the Attorney-General to give the notice to the eligible person at the eligible person’s last-known address recorded in the eligible persons register.
- ‘(4) The Attorney-General must place before the court for the hearing of the division 3 order any submission received from the eligible person before the hearing date.
- ‘(5) For the purposes of this section, the chief executive (corrective services) is authorised, if requested by the Attorney-General, to give to the Attorney-General details of the eligible person’s identity and contact details recorded in the eligible persons register.’.

11 Clause 6 (Amendment of s 22 (Court may make further order))

At page 6, lines 26 to 33 and page 7, lines 1 to 35—

omit, insert—

‘6 Replacement of s 22 (Court may make further order)

‘Section 22—

omit, insert—

‘22 Court may make further order

- ‘(1) The following subsections apply if the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order (each the *existing order*).
- ‘(2) Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must—
- (a) if the existing order is a supervision order, rescind it and make a continuing detention order; or
 - (b) if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.
- ‘(3) For the purpose of deciding whether to make a continuing detention order as mentioned in subsection (2)(a), the court may do any or all of the following—
- (a) act on any evidence before it or that was before the court when the existing order was made;
 - (b) make any order necessary to enable evidence of a kind mentioned in section 13(4) to be brought before it, including an order in the nature of a risk assessment order.
- ‘(4) To remove any doubt, it is declared that the court need not make an order in the nature of a risk assessment order if the court is satisfied that the evidence otherwise available under subsection (3) is sufficient to make a decision under subsection (2)(a).
- ‘(5) If the court makes an order in the nature of a risk assessment order, the psychiatrist or each psychiatrist examining the

released prisoner must prepare a report about the released prisoner and, for that purpose, section 11 applies.

- ‘(6) For applying section 11 to the preparation of the report—
 - (a) section 11(2) applies with the necessary changes; and
 - (b) section 11(3) only applies to the extent that a report or information mentioned in the subsection has not previously been given to the psychiatrist.
- ‘(7) If the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order or interim supervision order, the court—
 - (a) must amend the existing order to include the requirements mentioned in section 16(1)(da) and (db), if the existing order does not already include the requirements; and
 - (b) may otherwise amend the existing order in a way the court considers appropriate—
 - (i) to ensure adequate protection of the community; or
 - (ii) for the prisoner’s rehabilitation or care or treatment.
- ‘(8) The existing order may not be amended under subsection (7)(b) so as to remove any requirements mentioned in section 16(1).’.

12 After clause 8—

At page 8, after line 25—

insert—

‘8A Amendment of s 30 (Review hearing)

‘Section 30—

insert—

- ‘(4A) If the court makes the order under subsection (3)(b), the supervision order must include the requirements mentioned in section 16(1)(da) and (db).’.

13 After clause 8—

At page 8, after line 25, after clause 8A as previously inserted—

insert—

‘8B Amendment of s 31 (Appeals)

‘Section 31, after ‘a decision’—

insert—

‘of the court’.’.

14 Clause 9 (Insertion of new s 43B)—

At page 9, line 5, ‘condition’—

omit, insert—

‘requirement’.

15 Clause 12 (Insertion of new pt 7)

At page 10, lines 23 to 27—

omit, insert—

‘(1) Section 16(1)(da) and (db) do not apply to a supervision order or interim supervision order that is in force at the commencement (the *existing order*), unless the court amends the requirements of the existing order to include the requirements stated in the paragraphs.

‘(1A) Without limiting the *Acts Interpretation Act 1954*, section 20, the repeal and re-enactment of section 22 does not affect any order made under section 22 before its repeal.’.

16 Clause 13 (Amendment of schedule (Dictionary))

At page 11, after line 1—

insert—

‘(1) Schedule—

insert—

‘curfew direction see section 16A(2)(a).

eligible person means a person registered as an eligible person in relation to the prisoner on the eligible persons register.

eligible persons register means the eligible persons register kept under the *Corrective Services Act 2006*.

monitoring direction see section 16A(2)(b).

requirement, of an order, includes—

- (a) a condition, including a condition of an order made before the commencement of the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007*; and
- (b) a provision of an order made before the commencement of that Act under section 16(2) or 22(1) as in force at any time before the commencement of that Act.

‘(2)’.

17 **Clause 13 (Amendment of schedule (Dictionary))**

At page 11, line 5—

omit, insert—

‘21(2)(a) or 22(2)(b)’.