



# Criminal Law Amendment Act 1945

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## Reprint note

As to the validity of parts 4 and 4A, and of aspects of the long title, see *Attorney-General (Qld) v Lawrence* [2014] 2 Qd R 504; [2013] QCA 364 and *Attorney-General (Qld) v Fardon* [2014] 2 Qd R 532; [2013] QCA 365.

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Queensland

# Criminal Law Amendment Act 1945

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# Criminal Law Amendment Act 1945

**An Act to make further provision for the treatment and punishment of offenders convicted of sexual offences, to provide for the detention in the public interest of a particular class of offenders convicted of sexual offences, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Criminal Law Amendment Act 1945*.

### 2A Interpretation

(1) In this Act—

*corrective services facility* see the *Corrective Services Act 2006*, schedule 4.

*offence of a sexual nature* includes any offence constituted wholly or partly by an act whereby the offender has exhibited a failure to exercise proper control over the offender's sexual instincts and any offence in the circumstances associated with the committal whereof the offender has exhibited a failure to exercise such proper control over the offender's sexual instincts, and includes an assault of a sexual nature.

(2) This section shall be read as one with the Criminal Code and the *Justices Act 1886*.

## Part 2                      Probation of offenders                                         convicted of sexual offences

### 17      Probation orders in cases of sexual offences

- (1) A recognisance ordered to be entered into under orders in section 656 of the Criminal Code, by an offender who has been convicted of an offence of a sexual nature shall, if the court or, upon summary conviction, the justices so order, contain a condition that the offender be under the supervision of such person as may be named in the order or in any order from time to time made in amendment thereof (which order or orders are hereby authorised to be made by the court or the justices, as the case may be), during the period specified in the order and such other conditions for securing such supervision as may be specified in the order, (in this section called a *probation order*).
- (2) For the purposes of this section the Governor in Council may appoint persons as probation officers or children's probation officers.
- (3) Except as otherwise permitted by this section, the person named in any probation order shall be selected from amongst the probation officers and, in the case of an offender under the age of 18 years, such person shall, in the absence of good reason to the contrary shown to the court or justices making the order, be selected from amongst the children's probation officers.
- (4) It shall be lawful to name in a probation order as the person to undertake supervision in any special case, a person who is the agent of a voluntary society and any sums payable by way of salary, remuneration or otherwise for the performance of his or her duties under this section to such agent may be paid to the society.
- (4A) In subsection (4)—  
*voluntary society* means a society carrying on mission work in connection with Magistrates Courts or any work of that

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nature in connection with the supervision and care of offenders.

- (5) It shall be the duty of a probation officer, subject to the direction of the court or justices—
- (a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the probation officer may think fit;
  - (b) to see that such person observes the conditions of the person's recognisance;
  - (c) to report to the court or justices as to such person's behaviour;
  - (d) to advise, assist, and befriend such person, and, when necessary, to endeavour to find such person suitable employment.
- (6) A probation officer shall be entitled to be paid such salary or to receive such remuneration for acting under a probation order as the Governor in Council directs, and may in either case be paid such out-of-pocket expenses as may be allowed by the Governor in Council.

## **Part 3    Indeterminate detention of offenders convicted of sexual offences**

### **18    Detention of persons incapable of controlling sexual instincts**

- (1) In any case where a person has been found guilty of an offence of a sexual nature committed upon or in relation to a child under the age of 16 years—
- (a) if such person was found so guilty on indictment—the judge presiding at the trial of such person for that offence may at the judge's discretion direct that 2 or more medical practitioners named by the judge (of

whom 1 shall be a person registered under the Health Practitioner Regulation National Law as a specialist registrant in the specialty of psychiatry where the judge is of opinion that the services of such a person are reasonably available), inquire as to the mental condition of the offender, and in particular whether the offender's mental condition is such that the offender is incapable of exercising proper control over the offender's sexual instincts; or

- (b) if such person was found so guilty on summary conviction—the Magistrates Court before which the charge was heard, in addition to or before sentencing such person to any lawful punishment, may order that such person be brought before a judge of the Supreme Court with a view to such person being dealt with by such judge as prescribed by paragraph (a).
- (1A) In the case of an order made under subsection (1)(b) before sentence, the Magistrates Court shall make such adjournments as are necessary and shall commit the convicted person to a corrective services facility or watch-house, until such person has been dealt with by a judge as hereinafter prescribed in this section and thereafter may (in the cases provided for in subsection (3B) or (6)(d) or in cases where the judge refuses to direct detention under either of the subsections), sentence such person to any lawful punishment.
  - (2) The medical practitioners shall conduct the inquiry by means of personal examination and observation of the offender and by reference to the depositions and such other records relating to the offender as they think necessary, and shall give their report on oath to the judge.
  - (3) If the medical practitioners report to the judge that the offender is incapable of exercising proper control over the offender's sexual instincts the judge may, either in addition to or in lieu of imposing any other sentence where the offender was convicted on indictment, or in addition to the punishment (if any) imposed or to be imposed by the Magistrates Court where the offender was summarily convicted, declare that the



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offender is so incapable and direct that the offender be detained in an institution during Her Majesty's pleasure.

- (3A) However, the offender shall be entitled to cross-examine such medical practitioners in relation to and to call evidence in rebuttal of such report, and no such order shall be made unless the judge shall consider the matters reported to be proved.
- (3B) When an offender whom a judge directs under subsection (3) to be detained was summarily convicted and the decision with respect to the lawful punishment to be awarded was reserved, such offender shall, unless the judge when so directing otherwise orders (which order is hereby authorised to be made by the judge) again be brought before the Magistrates Court in terms of the adjournment made by that court for sentence.
- (4) In any case where 2 medical practitioners, 1 of whom is registered under the Health Practitioner Regulation National Law as a specialist registrant in the specialty of psychiatry, report to the Attorney-General that any person who is serving a sentence of imprisonment imposed upon the person for an offence of a sexual nature (whether committed upon or in relation to a child under the age of 16 years or upon or in relation to a person over that age)—
- (a) is incapable of exercising proper control over the person's sexual instincts; and
  - (b) that such incapacity is capable of being cured by continued treatment; and
  - (c) that for the purposes of such treatment it is desirable that such person be detained in an institution after the expiration of the person's sentence of imprisonment;
- the Attorney-General may cause an application to be made to a judge of the Supreme Court for a declaration and direction in respect of such person as prescribed by subsection (3).
- (4A) Upon such application the medical practitioners shall report to the judge upon oath and the prisoner shall be entitled to cross-examine such medical practitioners in relation to and to call evidence in rebuttal of such report, and no such order

shall be made unless the judge shall consider the matters reported to be proved.

- (5) Every offender or prisoner in respect of whom a direction is given under subsection (3) or (4)—
- (a) shall be detained in such institution as the Governor in Council directs, and until the Governor in Council gives a direction as to such institution, in a corrective services facility or watch-house; and
  - (b) shall not be released until the Governor in Council is satisfied on the report of 2 medical practitioners that it is expedient to release the offender or prisoner.
- (6) If the medical practitioners report to the judge that the offender or, in the case of an application made under subsection (4) the judge is of the opinion that the prisoner, is not incapable of exercising proper control over his or her sexual instincts, but that his or her mental condition is subnormal to such a degree that he or she requires care, supervision and control in an institution either in his or her own interests or for the protection of others, and the judge after considering the report and any evidence submitted in rebuttal thereof is of opinion that the offender requires such care, supervision, and control, the judge may—
- (a) direct that the offender or prisoner be detained in an institution either for such period as the judge directs or during Her Majesty's pleasure; or
  - (b) where the offender was convicted on indictment—pass sentence on the offender and in addition direct as mentioned in paragraph (a); or
  - (c) where the offender was summarily convicted and lawful punishment imposed by a Magistrates Court in addition direct as mentioned in paragraph (a); or
  - (d) where the offender was summarily convicted and the decision with respect to the lawful punishment to be awarded was reserved—direct, as mentioned in paragraph (a), but in such case the prisoner shall, unless the judge when so directing otherwise orders (which

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order is hereby authorised to be made by the judge), again be brought before the Magistrates Court in terms of the adjournment made by that court for sentence.

- (6A) Every offender or prisoner in respect of whom such a direction is given—
- (a) shall be detained in such institution as the Governor in Council directs, and, until the Governor in Council gives a direction as to such institution, in a corrective services facility or watch-house; and
  - (b) where the detention ordered is during Her Majesty's pleasure—shall not be released until the Governor in Council is satisfied, on the report of 2 medical practitioners, that the offender or prisoner is fit to be at liberty.
- (7) Where the judge orders detention during Her Majesty's pleasure in addition to imprisonment or in the case of a prisoner the detention shall commence forthwith upon the expiration of the term of imprisonment.
- (7A) In all other cases it shall commence forthwith upon the making of such order.
- (8) An offender or prisoner detained under this section, other than a detainee released under part 3A, must be examined at least once in every 3 months by the chief psychiatrist or by a medical practitioner appointed by the chief psychiatrist (who is hereby authorised to make such appointment) to conduct examinations under this subsection, either generally or of a particular offender or prisoner.
- (8A) A medical practitioner making an examination under subsection (8) shall forthwith furnish a report of the examination to the chief psychiatrist.
- (9) An offender or prisoner detained in an institution pursuant to this section may be removed at any time to another institution by order of the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered.

- (9A) Moreover, the provisions of the *Corrective Services Act 2006*, section 68, shall, subject to all necessary modifications, apply to and in respect of any such offender or prisoner.
- (11) The provisions of this section may by order of a judge made on the application of a Crown law officer be applied in any or every respect to any offender who, before the passing of this section, was found guilty either on summary conviction or on indictment, of an offence of a sexual nature committed upon or in relation to a child under the age of 16 years and who, at the passing of this section, is undergoing, or subject to be sentenced to, imprisonment for such offence.
- (12) The Governor in Council may from time to time make all such regulations as appear necessary for giving effect to this section and particularly for giving effect to the provisions of this section as respects orders made under this section by Magistrates Courts.
- (13) For the purposes of the Criminal Code, chapter 67—
- (a) an offender or prisoner directed to be detained in an institution pursuant to this section shall be deemed to be a person convicted on indictment and such direction shall be deemed to be a sentence; and
  - (b) a refusal by a judge of the Supreme Court to direct any offender or prisoner to be detained in an institution pursuant to this section shall, as respects the right of appeal had by the Attorney-General under chapter 67, be deemed to be a sentence.
- (14) In this section—
- chief psychiatrist** see the *Mental Health Act 2016*, schedule 3.
- institution** means—
- (a) a corrective services facility or watch-house; or
  - (b) another institution prescribed under a regulation to be an institution for this section.
- release** means unconditional release and does not include release under part 3A.

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## Part 3A                      Conditional release of    offenders detained under pt 3

### 18A    Definitions for pt 3A

In this part—

*corrective services officer* means a person who holds an appointment as a corrective services officer under the *Corrective Services Act 2006*, section 275.

*detainee* means an offender or prisoner who is detained in an institution during Her Majesty's pleasure under a direction under section 18(3), (4) or (6).

*institution* see section 18.

*parole order* see the *Corrective Services Act 2006*, schedule 4.

*Queensland board* means the Parole Board Queensland established under the *Corrective Services Act 2006*.

### 18B    Parole orders under Corrective Services Act 2006

- (1) The *Corrective Services Act 2006*, chapter 5 applies to a detainee, subject to this part, as if—
- (a) instead of being detained at Her Majesty's pleasure, the detainee were a prisoner serving a term of life imprisonment (a *notional term of life imprisonment*) to whom the *Corrective Services Act 2006*, section 181(2)(d) applies, subject to subsection (2); and
  - (b) for a detainee whose detention began under section 18(7) at the end of a term of imprisonment (an *original term of imprisonment*)—the detainee began to serve the notional term of life imprisonment when the detainee began to serve the original term of imprisonment; and
  - (c) for a detainee whose detention began under section 18(7A) when the judge ordered the detention—the detainee began to serve the notional term

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of life imprisonment when the judge ordered the detention.

- (2) If a detainee committed the relevant offence before 1 July 1997, the *Corrective Services Act 2006*, chapter 5 applies to the detainee as if the period of 15 years mentioned in section 181(2)(d) of that Act were a period of 13 years.
- (3) In this section—  
*relevant offence* means—
  - (a) for a detainee dealt with by a judge under section 18(1)—the offence mentioned in section 18(1) of which the detainee was found guilty; or
  - (b) for a detainee about whom an application was made under section 18(4)—the offence mentioned in section 18(4) for which the detainee was serving a sentence of imprisonment.

### **18C No exceptional circumstances parole order**

A detainee may not apply for or be granted an exceptional circumstances parole order under the *Corrective Services Act 2006*, chapter 5.

### **18D Submissions by Attorney-General**

- (1) If a detainee applies to the Queensland board for a parole order, the Queensland board must give the Attorney-General a copy of the application.
- (2) The Attorney-General may make written submissions to the Queensland board in relation to the application.
- (3) The Queensland board must consider any submissions by the Attorney-General when deciding whether to grant the application.

### **18E Additional test for conditional release**

The Queensland board must not grant a detainee a parole order unless, in addition to any other matter of which the Queensland board must be satisfied under the *Corrective Services Act 2006*, the Queensland board is satisfied the detainee does not represent an unacceptable risk to the safety of others.

### **18F Additional conditions may be imposed**

A parole order for a detainee may, in addition to any other conditions, contain conditions the Queensland board considers reasonable requiring the detainee to—

- (a) submit to medical, psychiatric or psychological treatment; or
- (b) report for drug testing to a corrective services officer.

### **18G Detainee deemed a prisoner for offence of being unlawfully at large**

To remove any doubt, it is declared that a detainee released under this part is a prisoner for the *Corrective Services Act 2006*, section 124(k).

### **18H Effect on unconditional release**

- (1) This section applies to a detainee who has been released under this part, whether before or after the commencement of this section.
- (2) The detainee can not be released under section 18(5)(b) or (6A)(b).

## Part 4 Further detention of particular sexual offenders

### Division 1 Preliminary

#### 19 Definitions for pt 4

In this part—

*chief executive (corrective services)* means the chief executive of the department in which the *Corrective Services Act 2006* is administered.

*continuing detention order* means a continuing detention order under DPSOA.

*detained person* means a person subject to a public interest declaration.

*DPSOA* means the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

*DPSOA order* means a continuing detention order or supervision order.

*institution* means—

- (a) a corrective services facility; or
- (b) an institution prescribed for section 18(14), definition *institution*, paragraph (b).

*public interest declaration* means a declaration under section 21(1).

*relevant event*, for a detained person, means the public interest declaration stops applying or does not apply to the person—

- (a) because of a declaration made by the Governor in Council under section 22F; or



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- (b) because of a determination of the Supreme Court that a decision about the public interest declaration is affected by jurisdictional error.

*Note—*

See section 22K for the limited review of decisions under this part.

***relevant person*** means—

- (a) a person subject to a continuing detention order; or
- (b) a person subject to a supervision order if the person was subject to a continuing detention order immediately before the supervision order was made.

***supervision order*** means a supervision order under DPSOA.

## **20 Decisions about detention in the public interest**

For deciding whether the detention of a person under division 3 is in, or is no longer in, the public interest—

- (a) the Minister or Governor in Council may have regard to any matter the Minister or Governor in Council considers relevant; and
- (b) the matters that may be relevant for deciding whether the detention is in, or is no longer in, the public interest are not limited by any provision of this Act or another Act.

## **Division 2 Declaration for detention in the public interest**

### **21 Making declaration**

- (1) On the recommendation of the Minister, the Governor in Council may, by gazette notice, declare that a relevant person must be detained under division 3 if the Governor in Council is satisfied the detention of the person under the division is in the public interest.

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- (2) The Governor in Council can not make a public interest declaration for a relevant person unless—
  - (a) any appeal, under DPSOA, part 4, against the DPSOA order for which the person is a relevant person has been finally dealt with; or
  - (b) if there is no appeal, under DPSOA, part 4, against the DPSOA order for which the person is a relevant person—the period within which an appeal against the DPSOA order may be started under DPSOA, part 4 has ended.

## **22 Recommendation to make declaration**

- (1) The Minister may recommend that the Governor in Council make a public interest declaration for a relevant person if the Minister is satisfied the detention of the person under division 3 is in the public interest.
- (2) The Minister may recommend that the Governor in Council make a public interest declaration for a person subject to a continuing detention order without giving the person prior notice of the proposed recommendation.
- (3) The Minister may recommend that the Governor in Council make a public interest declaration for a person subject to a supervision order only if—
  - (a) at least 14 days before the recommendation is made, the person is personally served with a written notice stating the following—
    - (i) the Minister intends to recommend that the Governor in Council make a public interest declaration for the person;
    - (ii) the grounds on which the Minister considers the detention of the person under division 3 is in the public interest;
    - (iii) that the person may, within 10 days after the notice is served on the person, make written submissions

to the Minister about why the declaration should not be made; and

- (b) the Minister has regard to any submissions made under paragraph (a)(iii).
- (4) However, the Minister may recommend that the Governor in Council make a public interest declaration for a person subject to a supervision order without complying with subsection (3) if the Minister considers it is necessary to make the declaration without compliance with the subsection because of urgent circumstances.

## **22A Notice of declaration**

- (1) As soon as practicable after the Governor in Council makes a public interest declaration for a person, the person must be personally served with a written notice that includes—
- (a) notice of the declaration; and
  - (b) either a copy of division 3 or a summary of the effect of the declaration under division 3.
- (2) A public interest declaration is of no effect until the written notice mentioned in subsection (1) is served as mentioned in the subsection.

## **Division 3 Dealing with detained person**

### **22B Effect of declaration generally**

- (1) A public interest declaration has effect for the detained person—
- (a) on and from the day it takes effect under section 22A; and
  - (b) until a relevant event happens for the person.
- (2) While a public interest declaration has effect for the detained person—

[s 22C]

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- (a) DPSOA does not apply to the person; and
- (b) the person must no longer be detained, or subject to supervised release, under DPSOA; and
- (c) this part operates in relation to the person despite any other Act; and
- (d) the person must be detained in an institution; and
- (e) the person is a prisoner for the purposes of the *Corrective Services Act 2006* other than the following provisions of that Act—
  - (i) chapter 2, part 2, division 11;
  - (ii) chapter 5.

*Note—*

See division 5 for what happens when a public interest declaration ends or does not apply to a person.

- (3) However, the person may be detained in a watch-house until the person can be conveniently taken to an institution.
- (4) If the person is not being detained in an institution or watch-house under DPSOA when the public interest declaration is made, the person may be arrested without warrant by a police officer and taken to an institution or watch-house for detention under this section.

## **22C Annual examination of detained person**

- (1) The chief executive (corrective services) must ensure a detained person is examined at least once every year by 2 psychiatrists appointed by the chief executive (corrective services) to conduct examinations under this section, either generally or of the person.
- (2) A detained person must submit to an examination required by the chief executive under subsection (1).
- (3) A psychiatrist who conducts an examination of a person under subsection (1) must give the chief executive (corrective services) a report that—

- (a) indicates the psychiatrist's assessment of the level of risk that the person will commit an offence of a sexual nature if released from detention, and the reasons for the assessment; and
  - (b) includes any other matter the psychiatrist considers relevant.
- (4) The psychiatrist must prepare the report on the basis of—
- (a) the psychiatrist's examination and observation of the person; and
  - (b) any other report or information the psychiatrist considers relevant.
- (5) For the purposes of preparing the report, the chief executive (corrective services) must give each psychiatrist any medical, psychiatric, prison or other relevant report or information relating to the person that is in that chief executive's possession or to which that chief executive has, or may be given, access.
- (6) A person in possession of a report or information mentioned in subsection (5) must give a copy of the report or information to the chief executive (corrective services) if asked by that chief executive.
- (7) Subsection (6) authorises and requires the person to give the report or information despite any other law to the contrary or any duty of confidentiality attaching to the report or information.
- (8) A person giving a report or information under subsection (6) is not liable, civilly, criminally or under an administrative process, for giving the report or information.
- (9) If subsection (8) applies to a person giving a report or information, section 22R does not apply to the giving of the report or information.
- (10) In this section—

*psychiatrist* means a person registered under the Health Practitioner Regulation National Law to practise in the

medical profession as a specialist registrant in the specialty of psychiatry, other than as a student.

## **22D Giving report of annual examination to detained person**

The chief executive (corrective services) must, as soon as practicable after receiving a report about a detained person under section 22C(2), give a copy of the report to—

- (a) the person and the person's legal representative; and
- (b) the Minister.

## **22E Annual review of detention by Minister**

- (1) The Minister must, as soon as practicable after receiving a report about a detained person under section 22D—
  - (a) consider the report; and
  - (b) make a recommendation to the Governor in Council to make, or not to make, a declaration under section 22F.
- (2) The Minister may recommend that the Governor in Council make a declaration under section 22F if satisfied that detaining the person under this division is no longer in the public interest.
- (3) Before making a recommendation under this section, the Minister—
  - (a) must decide whether the continued detention of the person under this division is in the public interest; and
  - (b) must have regard to the report, and any other report about the person previously given to the Minister under section 22D; and
  - (c) must give the person a reasonable opportunity to make submissions about the Minister's recommendation, and have regard to any submissions made.

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## **Division 4                   Ending of declaration for detention**

### **22F    Declaration to end detention**

- (1) This section applies if, on the recommendation of the Minister, the Governor in Council is satisfied that detaining a detained person under division 3 is no longer in the public interest.
- (2) The Governor in Council may, by gazette notice, declare that division 3 no longer applies to the person.
- (3) Notice of the declaration must be personally served on the person.
- (4) The continuing detention declaration stops applying to the person when the declaration is gazetted.

## **Division 5                   Effect of ending of declaration for detention etc.**

### **22G    End of detention and revival of DPSOA order**

- (1) If a relevant event happens for a detained person—
  - (a) the person is no longer to be detained under division 3; and
  - (b) the DPSOA order for which the person was a relevant person revives, unless it is a supervision order and the period for which the order had effect, as stated in the order, has passed.
- (2) If a supervision order is revived under subsection (1)(b), the period for which the person was detained under division 3 must be counted as part of the period for which the order has effect.
- (3) However, this section is subject to sections 22I and 22J.

## **22H Review Of Continuing Detention Order**

- (1) This section applies if—
  - (a) a continuing detention order is revived under section 22G(3); and
  - (b) because of the operation of this part, the period within which a review under DPSOA, section 27 must be completed for the order has passed without the review being carried out.
- (2) The Attorney-General must immediately make any necessary applications for a review to be carried out under DPSOA, section 27.

## **22I Application for amendment of supervision order**

- (1) This section applies if—
  - (a) the DPSOA order for which a detained person was a relevant person is a supervision order; and
  - (b) the period for which the supervision order has effect, as stated in the order, has not passed.
- (2) An application may be made under DPSOA, part 2, division 4 for the amendment of the supervision order on or before the day a relevant event happens for the detained person.
- (3) If an application is made under subsection (2), section 22G(1) does not take effect for the detained person until the application is finally dealt with under DPSOA.
- (4) This section does not affect the operation of DPSOA, part 2, division 4 for applications made under that division after the day the relevant event happens.

## **22J Further supervision order**

- (1) This section applies if—
  - (a) the DPSOA order for which a detained person was a relevant person is a supervision order; and



- (b) the order can not be revived, under section 22G(3), because the period for which the order had effect, as stated in the order, has passed.
- (2) The Attorney-General may apply for a further supervision order under DPSOA, part 2, division 4A as if the person were subject to a supervision order.
- (3) The application—
  - (a) may be made on or before the day a relevant event happens for the detained person; or
  - (b) if the application is not made on or before the day mentioned in paragraph (a)—must be made as soon as practicable after that day.
- (4) This section applies despite DPSOA, section 19B(3).
- (5) If an application for a further supervision order is made under subsection (2) on or before the day a relevant event happens for the detained person, section 22G(1) does not take effect for the person until the application is finally dealt with under DPSOA.

## **Division 6                      Limitation of review**

### **22K      Limitation of review**

- (1) This section applies to the following—
  - (a) a decision of the Minister to recommend that the Governor in Council make a public interest declaration;
  - (b) a decision of the Governor in Council to make a public interest declaration;
  - (c) a decision of the Minister to recommend that the Governor in Council not make a declaration under section 22F;
  - (d) a decision of the Governor in Council not to make a declaration under section 22F.

[s 22L]

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- (2) The *Judicial Review Act 1991*, part 4 does not apply to the decision.
- (3) Subject to subsection (4), the decision—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
  - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (4) The *Judicial Review Act 1991*, part 5 applies to the decision to the extent it is affected by jurisdictional error.
- (5) In this section—

*decision* includes a decision or conduct leading up to or forming part of the process of making a decision.

## **Part 4A                      Miscellaneous provisions for operation of part 4**

### **Division 1                      Preliminary**

#### **22L      Meaning of particular terms**

In this part, a term used in the part and defined in section 19 has the meaning it has under that section.

#### **22M      References to operation of part 4**

In this part, a reference to the operation of part 4 includes a reference to the purported operation of part 4.

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## **Division 2                      Provisions about DPSOA orders**

### **22N      Application of div 2**

This division applies if—

- (a) because of the operation of part 4, there is a public interest declaration for a person; and
- (b) the public interest declaration stops applying or does not apply to the person other than because of—
  - (i) a declaration made by the Governor in Council under section 22F; or
  - (ii) a determination of the Supreme Court that a decision about the public interest declaration is affected by jurisdictional error.

### **22O      End of detention and revival of DPSOA order**

- (1) The person must no longer be detained in an institution because of the operation of part 4.
- (2) The DPSOA order for which the person was a relevant person revives, unless it is a supervision order and the period for which the order had effect, as stated in the order, has passed.
- (3) If a supervision order is revived under subsection (2), the period for which the person was detained because of the operation of part 4 must be counted as part of the period for which the order has effect.

### **22P      Review of continuing detention order**

- (1) This section applies if—
  - (a) the DPSOA order for which the person was a relevant person is a continuing detention order; and
  - (b) the order is revived under section 22O(2) or otherwise; and

[s 22Q]

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- (c) because of the operation of part 4, the period within which a review under DPSOA, section 27 must be completed for the order has passed without the review being carried out.
- (2) The Attorney-General must immediately make any necessary applications for the review to be carried out under DPSOA, section 27.

## **22Q Further supervision order**

- (1) This section applies if—
  - (a) the DPSOA order for which the person was a relevant person is a supervision order; and
  - (b) the order can not be revived, under section 22O(2) or otherwise, because the period for which the order had effect, as stated in the order, has passed.
- (2) The Attorney-General may apply for a further supervision order under DPSOA, part 2, division 4A as if the person were subject to a supervision order.
- (3) The application must be made as soon as practicable after the day the public interest declaration stops applying or does not apply to the person.
- (4) This section applies despite DPSOA, section 19B(3).

## **Division 3 Protection from liability**

### **22R Protection from liability**

- (1) A public official is not civilly liable for an act done, or omission made, for the operation of part 4, if the act was done, or omission was made, honestly and without negligence.
- (2) If subsection (1) prevents a civil liability attaching to a public official, the liability attaches instead to the State.
- (3) In this section—

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*public official* means—

- (a) the Minister; or
- (b) the chief executive (corrective services); or
- (c) a person acting under the authority of part 4 or a person mentioned in paragraph (a) or (b).

## Part 5 Transitional provisions

### 23 Transfer of reporting obligations to Offender Reporting Act

- (1) This section applies to a person who was subject to a reporting order under section 19 immediately before the commencement of this section.
- (2) The person is no longer subject to the order.
- (3) However, part 4, as in force immediately before the commencement of this section, applies to the person if the person is prosecuted for an offence against section 19(5) or 20(6) that was committed before the repeal of that part.
- (4) If the person has—
  - (a) appealed against the making of the order under section 19(6); or
  - (b) applied to have the order revoked under section 19B(1); the appeal or application is terminated.
- (5) If the person had any expectation of being able—
  - (a) to appeal against the making of the order under section 19(6); or
  - (b) to apply to have the order revoked under section 19B(1); the expectation is extinguished.
- (6) In this section—

*expectation* includes right, privilege, entitlement and eligibility.

*Offender Reporting Act* means the *Child Protection (Offender Reporting) Act 2004*.