



New South Wales

Crimes (Serious Sex Offenders) Amendment Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes (Serious Sex Offenders) Act 2006* as follows:

- (a) to require the Supreme Court to be satisfied that an offender poses an unacceptable risk of committing a serious sex offence before it can make an order under the Act,
- (b) to extend the definition of serious sex offence for the purposes of the Act,
- (c) to expand the matters to which the Supreme Court is to have regard when determining whether to make an order,
- (d) to make provision with respect to the term of orders,
- (e) to permit a corrective services officer to have access to an offender's computer equipment when the offender is under a supervision order,
- (f) to permit a continuing detention order to be sought in respect of an offender who is the subject of a supervision order if circumstances change and the supervision order is no longer adequate,

- (g) to provide for supervision orders to be suspended or expire on the making of a detention order,
- (h) to provide for victims to make statements about proposed orders,
- (i) to provide for proceedings for offences under the Act,
- (j) to enable the Supreme Court to make an extended supervision order at the same time as a continuing detention order.

This Bill also amends the *Crimes (Administration of Sentences) Act 1999* with respect to the effect that orders under the *Crimes (Serious Sex Offenders) Act 2006* have on parole and parole orders.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7

Schedule 1 [1] inserts definitions of *Corrective Services NSW* and *sentencing court* for the purposes of the *Crimes (Serious Sex Offenders) Act 2006 (the Principal Act)*.

Schedule 1 [2] updates the definition of *corrective services officer*.

Schedule 1 [3] extends the definition of *serious sex offence* to include an offence that was not a serious sex offence at the time it was committed but which was committed in such circumstances that it would be such an offence were it committed in those circumstances at the time an order is sought under the Principal Act against the offender.

Schedule 1 [5] updates the test to be applied by the Supreme Court when determining to make an order under the Principal Act. The Court must be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious sex offence before it can make an order (currently the Court must be satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence). **Schedule 1 [6] and [16]** clarify that the Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence.

Schedule 1 [7] and [8] provide 2 additional matters that the Supreme Court must have regard to when determining an application for an order under the Principal Act. These are any report prepared by Corrective Services NSW as to the extent to which the offender can reasonably and practicably be managed in the community and the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender.

Schedule 1 [9] and [10] provide for an extended supervision order to be extended to account for any time that the order is suspended because the offender is in lawful custody.

Schedule 1 [11] provides that a condition of an extended supervision order or an interim supervision order can require an offender to permit a corrective services officer to have access to any computer or related equipment at the offender's residential address or in the possession of the offender.

Schedule 1 [12] provides that the Supreme Court's power to vary an order under the Principal Act does not permit it to extend the period of an order so that period is greater than would otherwise be permitted under the Principal Act. **Schedule 1 [23]** makes a consequential amendment.

Schedule 1 [13] provides that the State of New South Wales can apply for a continuing detention order against a person who is the subject of an interim or extended supervision order if altered circumstances mean the person cannot be adequately supervised under the supervision order. **Schedule 1 [19]** requires the Supreme Court to be satisfied of this before making a continuing detention order. **Schedule 1 [14]** requires the application for the continuing detention order to specifically address these matters. **Schedule 1 [13]** also contains an existing power to make such an application where a person has been found guilty of breaching a supervision order. **Schedule 1 [15], [18] and [21]** make consequential amendments.

Schedule 1 [17] requires the Supreme Court to have regard to the level of an offender's compliance with any interim supervision order when determining an application for a continuing detention order.

Schedule 1 [20] omits a provision that deals with the interaction of parole orders and orders under the Principal Act. This matter is proposed to be included in the *Crimes Administration of Sentences) Act 1999* by Schedule 2 to the proposed Act.

Schedule 1 [22] provides that, on the making of a continuing detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person expires and ceases to have effect and, on the making of an interim detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person is suspended and ceases to have effect until such time as the interim detention order expires.

Schedule 1 [24] provides for registered victims to be notified of applications under the Principal Act and to be given an opportunity to make a statement setting out the person's views about the proposed order and any conditions to which the order may be subject. The statement may be placed before the Supreme Court for consideration. The Supreme Court and the State of New South Wales must not disclose a statement to the offender unless the person who made the statement consents to the disclosure. **Schedule 1 [4]** inserts a note clarifying that a statement must not be disclosed without consent as part of the pre-trial procedures.

Schedule 1 [25] provides for proceedings under the Principal Act to be dealt with summarily before the Local Court (and in the case of an offence under section 12 of

the Principal Act summarily before the Supreme Court). **Schedule 1 [25]** also enables the Supreme Court to make an extended supervision order in respect of a person at the same time that it makes a continuing detention order in respect of the person. The extended supervision order commences at the end of the continuing detention order.

Schedule 1 [26] and [29] repeal redundant provisions and a redundant word. **Schedule 1 [28]** makes a consequential amendment.

Schedule 1 [27] provides for a review of the Principal Act to be undertaken by the Attorney General 3 years after the commencement of the proposed Act.

Schedule 1 [30] permits regulations under the Principal Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [31] inserts transitional provisions that apply the amendments made by the proposed Act to existing offences and orders.

Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

Schedule 2 [1] provides that an offender is not eligible for release on parole if the offender is the subject of an interim detention order.

Schedule 2 [2] provides that an offender's obligations under a parole order are suspended while the offender is subject to an interim supervision order or an interim detention order.

Schedule 2 [3] provides that an offender's obligations under an interim supervision order are taken to be obligations under a parole order which means the offender's parole order may be revoked if the offender fails to comply with his or her obligations under the interim supervision order.

Schedule 2 [4] provides that any parole order to which an offender is subject is revoked if a continuing detention order is made against the offender.

Schedule 2 [5] permits regulations under the *Crimes (Administration of Sentences) Act 1999* to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



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Crimes (Serious Sex Offenders) Amendment Bill 2010

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New South Wales

Crimes (Serious Sex Offenders) Amendment Bill 2010

No. , 2010

A Bill for

An Act to amend the *Crimes (Serious Sex Offenders) Act 2006* to make further provision with respect to supervision orders and detention orders; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Serious Sex Offenders) Amendment Act 2010</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7	1
		2
[1] Section 4 Definitions		3
Insert in alphabetical order:		4
<i>Corrective Services NSW</i> has the same meaning it has in the		5
<i>Crimes (Administration of Sentences) Act 1999</i> .		6
<i>sentencing court</i> , in relation to an offender serving a sentence of		7
imprisonment, means:		8
(a) the court by which the sentence was imposed, and		9
(b) any court that heard an appeal in respect of that sentence.		10
[2] Section 4, definition of “corrective services officer”		11
Omit “the Department of Corrective Services”.		12
Insert instead “Corrective Services NSW”.		13
[3] Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”		14
Insert after section 5 (1) (c):		15
(c1) an offence by a person that, at the time it was committed,		16
was not a serious sex offence for the purposes of this Act		17
but which was committed in circumstances that would		18
make the offence a serious sex offence if it were		19
committed at the time an application for an order against		20
the person is made under this Act, and		21
		22
[4] Section 7 Pre-trial procedures		23
Insert after section 7 (2):		24
Note. Section 21A (6) provides that the State of New South Wales must		25
not disclose a victim statement to the offender unless the person who		26
made the statement consents to the disclosure.		27
[5] Sections 9 (2) and 17 (2) and (3)		28
Omit “is likely to commit a further” wherever occurring.		29
Insert instead “poses an unacceptable risk of committing a”.		30

[6] Section 9 (2A)	1
Insert after section 9 (2):	2
(2A) The Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence.	3 4 5 6
[7] Sections 9 (3) (d1) and 17 (4) (d1)	7
Insert after sections 9 (3) (d) and 17 (4) (d) respectively:	8
(d1) any report prepared by Corrective Services NSW as to the extent to which the offender can reasonably and practicably be managed in the community,	9 10 11
[8] Sections 9 (3) (h1) and 17 (4) (h1)	12
Insert after sections 9 (3) (h) and 17 (4) (h) respectively:	13
(h1) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,	14 15
[9] Section 10 Term of extended supervision order	16
Omit section 10 (1). Insert instead:	17
(1) An extended supervision order commences when it is made, or when the offender's current custody or supervision expires, whichever is the later.	18 19 20
(1A) An extended supervision order expires at the end of:	21
(a) such period (not exceeding 5 years from the day on which it commences) as is specified in the order, or	22 23
(b) if the order is suspended for any period, the period specified in paragraph (a) plus each period during which the order is suspended.	24 25 26
[10] Section 10 (2)	27
Omit “, but that suspension does not affect the expiry date of the order”.	28
[11] Section 11 Conditions that may be imposed on supervision order	29
Insert after section 11 (a):	30
(a1) to permit any corrective services officer to access any computer or related equipment that is at the offender's residential address or in the possession of the offender, or	31 32 33

[12] Sections 13 (1A) and 19 (1A)	1
Insert after sections 13 (1) and 19 (1) respectively:	2
(1A) The period of an order must not be varied so that the period is greater than that otherwise permitted under this Part.	3 4
[13] Section 14 Application for continuing detention order	5
Omit section 14 (2). Insert instead:	6
(2) The State of New South Wales may apply to the Supreme Court for a continuing detention order against a person who is subject to an extended supervision order or an interim supervision order if:	7 8 9 10
(a) the person is found guilty of an offence under section 12, or	11 12
(b) because of altered circumstances, adequate supervision of the person cannot be provided under an extended supervision order or an interim supervision order.	13 14 15
(2A) An application under subsection (1) may not be made more than 6 months before:	16 17
(a) the end of the offender's total sentence, or	18
(b) the expiry of the existing continuing detention order, as appropriate.	19 20
(2B) An application under subsection (2) in respect of a person who is serving a sentence of imprisonment by way of full-time detention may not be made more than 6 months before the end of the person's total sentence.	21 22 23 24
[14] Section 14 (3) (a)	25
Insert "(and if the application is made under subsection (2), the matters referred to in section 17 (4A) and (4B) to the extent that is relevant to the application)" after "section 17 (4)".	26 27 28
[15] Section 14A Application for continuing detention order on breach of extended supervision order or interim supervision order	29 30
Omit the section.	31

[16] Section 17 Determination of application for continuing detention order	1
Insert after section 17 (3):	2
(3A) The Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence.	3 4 5 6
[17] Section 17 (4) (f)	7
Omit “earlier”. Insert instead “interim supervision order or an”.	8
[18] Section 17 (4A)	9
Omit “section 14A”. Insert instead “section 14 (2) (a)”.	10
[19] Section 17 (4B)	11
Insert after section 17 (4A):	12
(4B) In determining an application made under section 14 (2) (b), the Supreme Court cannot make a continuing detention order unless it is satisfied that circumstances have altered since the making of the extended supervision order or interim supervision order and those altered circumstances mean that adequate supervision of the person cannot be provided under an extended supervision order or an interim supervision order.	13 14 15 16 17 18 19
[20] Section 17A Special provisions relating to parole	20
Omit the section.	21
[21] Section 18 Term of continuing detention order	22
Omit “section 14A” from section 18 (1A). Insert instead “section 14 (2)”.	23
[22] Section 18A	24
Insert after section 18:	25
18A Detention order causes any supervision order to cease to have effect	26 27
(1) On the making of a continuing detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person expires and ceases to have effect.	28 29 30
(2) On the making of an interim detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person is suspended and ceases to have effect until such time as the interim detention order expires.	31 32 33 34

[23] Section 19 Detention order may be varied or revoked	1
Omit “such an application” from section 19 (2).	2
Insert instead “an application under this section”.	3
[24] Section 21A	4
Insert after section 21:	5
21A Victim statements	6
(1) As soon as practicable after an application for an order under this Act is made in respect of an offender, the person acting on behalf of the State of New South Wales for the purposes of the application must take such steps as are reasonable to ensure that written notice of the application is given to:	7 8 9 10 11
(a) each victim of the offender, or	12
(b) if any such victim is under 18 years of age or lacks legal capacity—that victim’s parent or guardian.	13 14
(2) The notice must inform the person that the person may provide, before the date stated in the notice, a written statement setting out:	15 16 17
(a) the person’s views about the order and any conditions to which the order may be subject, and	18 19
(b) any other matters prescribed by the regulations.	20
(3) It is sufficient for the notice to be sent to the person at the person’s last known address as recorded in the Victims Register.	21 22
(4) Any statement received before the final hearing date in respect of the application may be placed before the Supreme Court for consideration in respect of the application.	23 24 25
(5) A person who makes a statement may amend or withdraw the statement.	26 27
(6) The Supreme Court and the State of New South Wales must not disclose a statement to the offender to which the application relates unless the person who made the statement consents to the disclosure.	28 29 30 31
(7) If consent is not provided the Supreme Court may:	32
(a) reduce the weight given to the statement, and	33
(b) take reasonable steps to disclose to the offender, or the offender’s legal representative, the substance of the statement but only if the Court is satisfied that those steps	34 35 36

	could not reasonably be expected to lead to the identification of the victim or the person who made the statement.	1 2 3
(8)	In this section: <i>victim</i> of an offender means a victim who is recorded on the Victims Register in respect of the offender and who is a victim of an offence committed by the offender for which the offender is currently serving, or most recently served, a sentence of imprisonment. <i>Victims Register</i> has the same meaning it has in the <i>Crimes (Administration of Sentences) Act 1999</i> .	4 5 6 7 8 9 10 11
[25]	Sections 25A and 25B	12
	Insert after section 25:	13
25A	Proceedings for offences	14
(1)	Proceedings for an offence under this Act or the regulations are to be dealt with summarily before the Local Court.	15 16
(2)	Proceedings for an offence under section 12 may also be dealt with summarily before the Supreme Court.	17 18
25B	Orders may be made at same time	19
(1)	Nothing in this Act prevents the Supreme Court from making an extended supervision order in respect of a person at the same time that it makes a continuing detention order in respect of the person.	20 21 22 23
(2)	In such a case, despite section 10 (1), the extended supervision order commences on the expiry of the continuing detention order and expires:	24 25 26
(a)	at the end of such period (not exceeding 5 years from the day on which it commences) as is specified in the order, or	27 28
(b)	if the order is suspended for any period, the period specified in paragraph (a) plus each period during which the order is suspended.	29 30 31
[26]	Section 31 and Schedule 1	32
	Omit the provisions.	33
[27]	Section 32 Review of Act	34
	Omit “this Act” from section 32 (3).	35
	Insert instead “the <i>Crimes (Serious Sex Offenders) Amendment Act 2010</i> ”.	36

[28] Schedule 2 Savings, transitional and other provisions	1
Omit the source reference “(Section 31 (2))” from the Schedule.	2
[29] Schedule 2, clause 1 (1)	3
Omit “the <i>Law</i> ”. Insert “ <i>Law</i> ”.	4
[30] Schedule 2, clause 1 (1)	5
Insert at the end of the subclause:	6
<i>Crimes (Serious Sex Offenders) Amendment Act 2010</i>	7
[31] Schedule 2, Part 5	8
Insert after Part 4:	9
Part 5 Provisions consequent on enactment of Crimes (Serious Sex Offenders) Amendment Act 2010	10
	11
	12
7 Definition	13
In this Part:	14
<i>2010 amending Act</i> means the <i>Crimes (Serious Sex Offenders) Amendment Act 2010</i> .	15
	16
8 Application of 2010 amending Act	17
(1) The amendments made to this Act by the 2010 amending Act apply to and in respect of offences committed before the commencement of this clause in the same way as they apply to and in respect of offences committed on or after that commencement.	18
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	22
(2) This Act, as amended by the 2010 amending Act, applies to and in respect of a person who is subject to an order under this Act that commenced before the commencement of this clause in the same way as it applies to and in respect of a person who is made subject to an order under this Act after that commencement.	23
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	25
	26
	27

Schedule 2	Amendment of Crimes (Administration of Sentences) Act 1999 No 93	1
		2
[1]	Section 126 Eligibility for release on parole	3
	Insert “or an interim detention order” after “continuing detention order” in section 126 (4).	4 5
[2]	Section 160A Relationship of parole orders to orders under the Crimes (Serious Sex Offenders) Act 2006	6 7
	Insert “, an interim supervision order or an interim detention order” after “extended supervision order” in section 160A (1).	8 9
[3]	Section 160A (2)	10
	Insert “or interim supervision order” after “extended supervision order” in section 160A (2).	11 12
[4]	Section 160A (3)	13
	Insert after section 160A (2):	14
	(3) Any parole order to which an offender is subject is revoked if a continuing detention order is made against the offender under the <i>Crimes (Serious Sex Offenders) Act 2006</i> .	15 16 17
[5]	Schedule 5 Savings, transitional and other provisions	18
	Insert at the end of clause 1 (1):	19
	<i>Crimes (Serious Sex Offenders) Amendment Act 2010</i>	20