

Authorised Version No. 005
**Serious Sex Offenders (Detention and
Supervision) Act 2009**

No. 91 of 2009

Authorised Version incorporating amendments as at
1 August 2011

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**Serious Sex Offenders (Detention and
Supervision) Act 2009**

No. 91 of 2009

Authorised Version incorporating amendments as at
1 August 2011

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes and outline

- (1) The main purpose of this Act is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision.
- (2) The secondary purpose of this Act is to facilitate the treatment and rehabilitation of such offenders.
- (3) In outline, this Act—
 - (a) defines the class of offender to whom it applies; and
 - (b) empowers the Supreme Court to make a detention order of up to 3 years, or an interim detention order, in respect of an eligible offender on the application of the Director of Public Prosecutions; and
 - (c) empowers the Supreme Court or the County Court to make a supervision order of up to 15 years, or an interim supervision order, in respect of an eligible offender on the application of the Secretary to the Department of Justice; and

- (d) provides for appeals by offenders, the Director of Public Prosecutions or the Secretary to the Department of Justice; and
- (e) provides for the review, renewal, expiry and revival of detention orders and supervision orders and interim orders; and
- (f) provides for the review of conditions of supervision orders and interim supervision orders; and
- (g) confers functions on the Adult Parole Board; and
- (h) provides for the management of offenders on supervision orders and detention orders and interim orders.

2 Commencement

- (1) This Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 1 January 2011, it comes into operation on that day.

3 Definitions

In this Act—

Adult Parole Board means the Adult Parole Board established under the **Corrections Act 1986**;

approved mental health service has the same meaning as it has in the **Mental Health Act 1986**;

assessment report means a report of a kind that complies with section 109;

certificate of available resources means a certificate prepared by the Secretary under section 195;

Commissioner has the same meaning as it has in the **Corrections Act 1986**;

community-based disposition means the following orders under the **Sentencing Act 1991**—

- (a) a community-based order;
- (b) an intensive corrections order;
- (c) that part of a combined custody and treatment order that is served in the community;

community corrections officer has the same meaning as it has in the **Corrections Act 1986**;

custodial sentence means—

- (a) an order made by a court sentencing an offender to be imprisoned or detained in a prison or police gaol in respect of an offence; or
- (b) that part of a combined custody and treatment order within the meaning of the **Sentencing Act 1991** that the offender serves in a prison; or
- (c) any part of an order made by a court sentencing an offender to be detained in a youth justice centre in respect of an offence that the offender serves in a prison or police gaol; or
- (d) an order made under section 18M of the **Sentencing Act 1991**; or
- (e) an order made under section 31(5)(a) or 31(5)(b) of the **Sentencing Act 1991**; or

- (f) a hospital security order—
but does not include—
- (g) a suspended sentence of imprisonment except as provided in paragraph (e); or
 - (h) an order made under section 18ZT or 19 of the **Sentencing Act 1991**; or
 - (i) an order made under section 59 of the **Corrections Act 1986**; or
 - (j) an order referred to in paragraph (c) in respect of any part of the sentence served in a prison or police gaol solely on a temporary basis pending the offender's return to a youth justice centre;

Department means Department of Justice;

detention order means—

- (a) a detention order made by the Supreme Court under section 36 or section 74; or
- (b) a renewed detention order made under Division 4 of Part 3; or
- (c) a detention order revived by the Court of Appeal under section 101(1)(f);

Director of Public Prosecutions means the Director of Public Prosecutions appointed under section 87AB of the **Constitution Act 1975**;

DSO division means the Detention and Supervision Order division of the Adult Parole Board;

eligible offender has the meaning set out in section 4;

health service provider has the same meaning as *provider* has in the **Health Services (Conciliation and Review) Act 1987**;

hospital security order means an order made under section 93A of the **Sentencing Act 1991**;

indefinite sentence has the same meaning as it has in the **Sentencing Act 1991**;

interim detention order means—

- (a) an order made by the Supreme Court on an application under section 51; or
- (b) an interim detention order revived by the Court of Appeal under section 101(1)(f);

interim order means an interim supervision order or an interim detention order;

interim supervision order means—

- (a) an order made by the Supreme Court or the County Court on an application under section 50; or
- (b) an interim supervision order revived by the Court of Appeal under section 101(1)(f);

medical expert means a psychiatrist, psychologist or other health service provider of a prescribed kind;

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 3 def. of *nurse* inserted by No. 13/2010 s. 51(Sch. item 50.2).

parole order means an order under section 74 of the **Corrections Act 1986**;

physical examination means an examination of a person's body that involves touching of the person or removal of the person's clothing;

police gaol has the same meaning as it has in the **Corrections Act 1986**;

prison has the same meaning as it has in the **Corrections Act 1986**;

progress report means a report under Division 2 of Part 8;

psychologist means—

- (a) a person registered or qualified to be registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student); or
- (b) a person who is qualified or registered to practise psychology in a place outside Australia;

relevant offence means an offence listed in Schedule 1;

residential facility means premises appointed under section 133 to be a residential facility;

Secretary means the Secretary to the Department;

supervision officer means—

- (a) a community corrections officer within the meaning of the **Corrections Act 1986**; or
- (b) an employee in the public service who is working at a residential facility and engaged in the supervision of offenders

S. 3 def. of *psychologist* substituted by No. 13/2010 s. 51(Sch. item 50.1).

or the day to day management of the facility;

supervision order means—

- (a) an order made by the Supreme Court or the County Court on an application under Division 1 of Part 2; or
- (b) a supervision order made by the Supreme Court under Division 2 of Part 3 or confirmed under section 73; or
- (c) a supervision order that is renewed under Division 5 of Part 2; or
- (d) a supervision order revived by the Court of Appeal under section 101(1)(f);

working day—

- (a) in relation to a court, means a day on which the offices of the court are open; and
- (b) in relation to the Secretary, means a day on which the principal office of the Department is open.

4 Who is an eligible offender?

- (1) A person is an eligible offender if—
 - (a) the person is of or over the age of 18 years; and
 - (b) a court has at any time (whether before, on or after the commencement of this Act) imposed a custodial sentence on the person in respect of a relevant offence; and
 - (c) at the time at which an application is made under Division 1 of Part 2 for a supervision order, or under Division 1 of Part 3 for a

detention order, in respect of the person, he or she is serving in Victoria—

- (i) a custodial sentence for a relevant offence (a *relevant sentence*); or
 - (ii) another custodial sentence served concurrently with the relevant sentence or cumulatively on the relevant sentence or on another sentence that was uncompleted at the time of completion of the relevant sentence, whether that other sentence was, or those sentences were, imposed before, at the same time or after the relevant sentence.
- (2) A person is an eligible offender if at the time at which an application is made under Division 1 of Part 2 for a supervision order, or under Division 1 of Part 3 for a detention order—
- (a) the person is remanded in custody, or is serving a custodial sentence, in a prison in respect of an offence; and
 - (b) the person—
 - (i) is subject to a supervision order or a detention order or an interim order; or
 - (ii) was subject to a supervision order or a detention order or an interim order at the time that the person was remanded or commenced serving a sentence of imprisonment for the offence; or
 - (iii) was an eligible offender who was the subject of an application for a supervision order or a detention order at the time the person was remanded or commenced serving a sentence of imprisonment for the offence.

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- (3) A person is an eligible offender in relation to an application for a detention order if the person is subject to a supervision order or an interim order.
 - (4) A person is an eligible offender in relation to an application for a supervision order if the person is subject to a detention order or an interim order.
 - (5) Despite any other provision of this section a person is not an eligible offender if—
 - (a) the conviction or finding of guilt in respect of the only relevant offence that makes him or her an eligible offender is set aside by a court; or
 - (b) his or her sentence in respect of that offence is altered so that he or she would not have been an eligible offender had the amended sentence been the original sentence.

5 Offender still serving a sentence when on parole

- (1) For the purposes of this Act, an offender is serving a custodial sentence even if he or she is released on parole in respect of that sentence from the prison, police gaol or approved mental health service in which he or she has been serving that sentence.
- (2) For the purposes of this Act, a person is on parole if there is in force a parole order relating to the person and the person is serving the sentence of imprisonment to which the parole order relates but is not detained in a prison, police gaol or approved mental health service.

6 Functions and powers of Adult Parole Board

The functions and powers of the Adult Parole Board under this Act are to be carried out or exercised by the DSO division.

PART 2—SUPERVISION ORDERS

Division 1—Application for supervision order

7 Secretary may apply for a supervision order

- (1) This section applies if the Secretary has determined under Part 8 that an application should be made for a supervision order in respect of an eligible offender.
- (2) The Secretary may apply to a court for a supervision order in respect of a person who is an eligible offender.
- (3) The court to which an application may be made is—
 - (a) the court that sentenced the offender for the relevant offence, if that court was the Supreme Court or the County Court; or
 - (b) the County Court, if the Magistrates' Court sentenced the offender for the relevant offence.
- (4) A court must discontinue an application if since it was made the offender has ceased to be an eligible offender because—
 - (a) the relevant conviction has been set aside on appeal; or
 - (b) his or her sentence in respect of that offence is altered so that he or she would not have been an eligible offender had the amended sentence been the original sentence.
- (5) A court may continue to deal with and determine an application even if since it was made the offender has ceased to be an eligible offender because the custodial sentence has been served or has expired.

- (6) For the purposes of this section, a custodial sentence imposed on an offender on appeal in substitution for a sentence imposed by the court against the sentence of which the appeal was brought (the *lower court*) must be taken to have been imposed by the lower court.

8 Form of application

An application under section 7—

- (a) must state that a supervision order is sought; and
- (b) must be accompanied by at least one assessment report in respect of the eligible offender.

Note

See Part 6 for the procedure in respect of the application.

Division 2—Supervision order

9 When may a court make a supervision order?

- (1) The court may make a supervision order in respect of an eligible offender only if the court is satisfied that the offender poses an unacceptable risk of committing a relevant offence if a supervision order is not made and the offender is in the community.
- (2) On hearing the application, the court may decide that it is satisfied as required by subsection (1) only if it is satisfied—
 - (a) by acceptable, cogent evidence; and
 - (b) to a high degree of probability—that the evidence is of sufficient weight to justify the decision.

-
- (3) Subject to this Division, in determining whether or not the eligible offender poses an unacceptable risk as set out in subsection (1), the court must take into account—
- (a) subject to section 113, any assessment report or progress report filed in court, whether by or on behalf of the Secretary or the offender; and
 - (b) any other report made, or evidence given, in relation to the application; and
 - (c) anything else the court considers appropriate.
- (4) In determining whether or not the offender poses an unacceptable risk as set out in subsection (1), the court must not consider the means of managing the risk or the likely impact of a supervision order on the offender.
- (5) For the avoidance of doubt the court may determine under subsection (1) that an offender poses an unacceptable risk of committing a relevant offence even if the likelihood that the offender will commit a relevant offence is less than a likelihood of more likely than not.
- (6) The Secretary has the burden of proving that the offender poses an unacceptable risk of committing a relevant offence.
- (7) If the court is satisfied as required by subsection (1), the court may—
- (a) make a supervision order; or
 - (b) make no order.

10 Supervision order

- (1) A supervision order must state that the court is satisfied that the offender poses an unacceptable risk of committing a relevant offence if a supervision order is not made and the offender is in the community.
- (2) A supervision order must specify—
 - (a) the name of the offender in respect of whom the order is made; and
 - (b) the date on which the order is made; and
 - (c) the date on which the order commences as provided by section 11; and
 - (d) the period of the order as provided by section 12; and
 - (e) the conditions of the order as provided under Division 3; and
 - (f) the latest date by which the application for the first review of the order must be made under Part 5 and the maximum intervals between subsequent reviews.
- (3) A supervision order must be signed by the judge comprising the court that made it and include his or her name.

11 Commencement of supervision order

- (1) If at the time of the making of a supervision order the offender is serving a custodial sentence, the order commences on the day on which he or she completes the custodial sentence or any consecutive custodial sentence.
- (2) If at the time of the making of a supervision order the offender is not serving a custodial sentence, the order commences on the commencement date specified in the order.

12 Period of supervision order

- (1) Unless sooner revoked, the period of a supervision order is the period (not exceeding 15 years) determined by the court and specified in the order.
- (2) If an offender who is subject to a supervision order commences to serve a custodial sentence or is taken into custody on remand after the commencement of the order, the time spent in serving that sentence or in custody on remand is to be taken into account in calculating the remaining period of the order.
- (3) However the offender is not subject to the conditions of the order while the offender is serving that sentence or is in custody on remand.
- (4) The offender becomes subject to the conditions of the supervision order again on the offender's release on parole or at the end of the custodial sentence, whichever is earlier.
- (5) If an offender is subject to a supervision order and is sentenced to a community-based disposition, the community-based disposition is to be served concurrently with the operation of the supervision order.

13 Effect of new supervision order on existing supervision order

- (1) If a supervision order (the *new order*) is made in respect of an offender who is already subject to a supervision order (the *old order*), the old order is revoked on the commencement of the new order.
- (2) The period of the new order is, unless the new order is sooner revoked, the period determined by the court under section 12, irrespective of how much of the old order remained unexpired at the time it was revoked.

14 Copy of order to go to Adult Parole Board

If the court makes a supervision order, the Secretary must cause a copy of the order to be given as soon as practicable to the Adult Parole Board.

Division 3—Conditions of supervision order

15 Conditions of supervision order

- (1) A supervision order is subject to conditions imposed by the court.
- (2) The conditions are—
 - (a) core conditions imposed under section 16; and
 - (b) any other conditions imposed under this Division.
- (3) The primary purpose of the conditions is to reduce the risk of re-offending by the offender.
- (4) The secondary purpose of the conditions is to provide for the reasonable concerns of the victim or victims of the offender in relation to their own safety and welfare.
- (5) In order to reduce the risk of re-offending by the offender, the conditions may promote the rehabilitation and treatment of the offender.
- (6) The court must ensure that any conditions of a supervision order (other than the core conditions)—
 - (a) constitute the minimum interference with the offender's liberty, privacy or freedom of movement that is necessary in the circumstances to ensure the purposes of the conditions; and
 - (b) are reasonably related to the gravity of the risk of the offender re-offending.

16 Core conditions of supervision order

- (1) A supervision order must be made subject to all the conditions set out in subsection (2).
- (2) The core conditions of a supervision order are that during the period of the order the offender must—
 - (a) not commit a relevant offence in Victoria or elsewhere;
 - (b) attend at any place as directed by the Adult Parole Board for the purpose of administering the conditions of the order;
 - (c) attend at any place directed by the Adult Parole Board for the purpose of making assessments required by the court, the Secretary or the Director of Public Prosecutions for the purposes of this Act (including a personal examination by a medical expert for the purpose of providing the court with a report to assist it to determine the need for, or form of, any of the conditions of the order);
 - (d) report to, and receive visits from, the Secretary or any person nominated by the Secretary for the purposes of this paragraph;
 - (e) notify the Adult Parole Board of any change of employment or new employment (whether paid or unpaid) at least 2 clear days before the date of commencing the new or changed employment;
 - (f) not leave Victoria except with the permission of the Adult Parole Board granted either generally or in relation to the particular case;

- (g) if the court requires an offender to reside at a residential facility, obey all reasonable instructions given by a supervision officer that are necessary to ensure the good order of the residential facility or the safety and welfare of offenders or staff or visitors to the facility;
- (h) comply with any directions given by the Adult Parole Board under the emergency power in section 120.

17 Suggested conditions

- (1) In addition to the core conditions, the court must consider imposing conditions relating to—
 - (a) where the offender may reside (including whether he or she may reside at a residential facility);
 - (b) times at which the offender must be at his or her place of residence;

Example

A condition that the offender must be at home between the hours of 7 a.m. and 10 a.m. Monday to Friday.

- (c) the conditions under which the offender may leave his or her place of residence;
- (d) places or areas that the offender must not visit or may only visit at specified times;
- (e) treatment or rehabilitation programs or activities that the offender must attend and participate in;
- (f) requiring that the offender must not consume alcohol;
- (g) requiring that the offender must not use prohibited drugs, obtain drugs unlawfully or abuse drugs of any kind;

- (h) requiring that the offender must submit, as required by the order, to breath testing, urinalysis or other test procedures (other than blood tests) approved by the Secretary for detecting alcohol or drug use;
- (i) the types of employment in which the offender must not engage;
- (j) types of behaviour that the offender must not engage in, where that behaviour—
 - (i) was preparatory to the offender's prior relevant offences; or
 - (ii) may increase the risk of the offender committing a relevant offence;
- (k) community activities in which the offender must not engage;
- (l) persons or classes of person with whom the offender must not have contact;

Examples

- 1 Persons under 18 years of age.
- 2 Victims of the offender and their families.

- (m) forms of monitoring (including electronic monitoring) of compliance with the supervision order to which the offender must submit;
 - (n) personal examinations by a medical expert which the offender must attend for the purpose of providing a report to the Adult Parole Board to assist it in determining the need for, or form of, any direction it is permitted to give to the offender under the order.
- (2) Subject to sections 15(3) and (4), the court may impose any condition it considers appropriate under this section.

18 Conditions relating to where an offender is to reside

- (1) In considering imposing a condition under section 17(1)(a) as to where an offender is to reside, the court must consider whether or not the offender should reside in a residential facility.
- (2) The court may impose a condition under section 17 that an offender is to reside in a residential facility if no other suitable accommodation is available.

19 Other discretionary conditions

The court may also impose any other conditions that it considers appropriate—

- (a) to reduce the risk of re-offending by the offender, including by promoting the rehabilitation, and treatment, of the offender; or
- (b) to provide for the reasonable concerns of the victim or victims of the offender in relation to their own safety and welfare.

Examples

- 1 A condition requiring the offender to comply with the directions of the Adult Parole Board in relation to appropriate Internet access.
- 2 A condition prohibiting Internet access.
- 3 A condition requiring the offender to comply with the directions of the Adult Parole Board in relation to drug or alcohol use.

20 Condition authorising Adult Parole Board to give directions

- (1) The power of the court to impose conditions under this Division includes—
 - (a) a power to impose a condition authorising the Adult Parole Board to give directions to an offender in relation to the operation of any condition; and

- (b) a power to impose a condition authorising the Adult Parole Board to give a direction that an offender is to reside at a residential facility or prohibiting the Board from giving such a direction.

Examples

- 1 A condition that the offender comply with all reasonable directions of the Adult Parole Board in relation to the times at which the offender must be at his or her nominated place of residence in order to reduce any risk of contact with children.
 - 2 A direction that the offender remain at his or her nominated place of residence between the hours of 7 a.m. and 10 a.m., Monday to Friday, unless otherwise directed by the Adult Parole Board.
- (2) The Adult Parole Board should aim to ensure that any directions it gives—
- (a) constitute the minimum interference with the offender's liberty, privacy or freedom of movement that is necessary in the circumstances to ensure the purposes of the conditions; and
 - (b) are reasonably related to the gravity of the risk of the offender re-offending.
- (3) It is a condition of a supervision order that the offender comply with any direction given under an authorisation referred to in subsection (1).

21 Submissions relating to conditions

The Secretary and the offender may make submissions to the court in relation to the conditions of a supervision order.

Note

A victim of the offender may also make a submission, see Division 4 of Part 6.

22 Certificate of available resources

- (1) The Secretary may provide the court with a certificate of available resources.
- (2) The court must consider any certificate of available resources provided by the Secretary.
- (3) The court may require the Secretary to give evidence or to provide the court with a further certificate to clarify or expand on the matters dealt with in the certificate of available resources.
- (4) The court must not impose a condition on a supervision order that is inconsistent with the certificate of available resources.

23 Court to consider victim submissions

Before imposing any condition (other than a core condition) on a supervision order, the court—

- (a) must consider any victim submission it receives in relation to the matter under Division 4 of Part 6; and
- (b) may, in its absolute discretion, give the submission the weight that the court sees fit in determining whether to impose the condition on the supervision order.

24 Temporary conditions

- (1) The court may, in a particular case, impose a temporary condition (other than a core condition) on a supervision order to apply for a specified period not exceeding 6 months.
- (2) The court may require the parties to the application for the supervision order to attend the court before the end of that specified period for a hearing for the purpose of imposing final conditions on the supervision order.

- (3) At the hearing—
- (a) the Secretary may provide a new certificate of available resources; and
 - (b) the parties may make further submissions in relation to the proposed final conditions.
- (4) Division 2 of Part 6 applies to a hearing under subsection (2).

Division 4—Expiry of supervision order

25 Expiry of supervision order

A supervision order expires on the first of the following to occur—

- (a) at the end of its period of operation; or
- (b) on its revocation by a court on a review under Part 5 or on appeal under Part 7; or
- (c) on it being replaced by another supervision order or a detention order.

26 Notices in relation to indefinite sentence

- (1) The Director of Public Prosecutions must ensure that the Secretary is notified as soon as practicable if an indefinite sentence is imposed on an offender who is subject to a supervision order.
- (2) As soon as practicable after being notified under subsection (1), the Secretary must cause notice of the indefinite sentence and of its effect on the supervision order to be given to the Adult Parole Board.

27 Effect of expiry of supervision order

On the expiry of a supervision order, the offender ceases to be subject to the conditions of the order and to any directions given by the Adult Parole Board under the order.

Division 5—Renewal of supervision order

28 Renewal of supervision order

- (1) The Secretary may, at any time while a supervision order is in force, apply to the court that made the order for it to be renewed.
- (2) An application may continue to be dealt with and determined by the court even if since it was made the supervision order sought to be renewed has expired.
- (3) Subject to this Division, this Act (with any necessary modifications) applies to an application under subsection (1) in the same way as it applies to an application under section 7.
- (4) An application for renewal of a supervision order may be accompanied by a progress report in respect of the offender instead of an assessment report.
- (5) More than one application may be made under subsection (1) for the renewal of a supervision order in respect of an offender.
- (6) The expiry of the supervision order sought to be renewed before it is renewed does not prevent the order being made renewing the supervision order or it having effect as a renewed supervision order.
- (7) An application can be made for renewal of a supervision order even if the offender is serving a custodial sentence or is remanded in custody.

29 Renewed supervision order

- (1) A renewed supervision order must state that the court making it is satisfied that the offender poses an unacceptable risk of committing a relevant offence if a supervision order is not made and the offender is in the community.

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- (2) A renewed supervision order must specify—
- (a) the name of the offender in respect of whom the order is made; and
 - (b) the date on which the order is made; and
 - (c) the date on which the order commences as provided by section 30; and
 - (d) the period of the order as provided by section 12; and
 - (e) the conditions of the order as provided by Division 3; and
 - (f) the latest date by which the application for the first review of the order must be made under Part 5 and the maximum intervals between subsequent reviews.
- (3) A renewed supervision order must be signed by the judge comprising the court that made it and include his or her name.

30 Commencement of renewed supervision order

A renewed supervision order commences on the date specified in the order whether or not the previous order has expired.

31 Effect of renewed order

- (1) This Act applies to a renewed supervision order in the same way that it applies to any other supervision order.
- (2) On the making of a renewed supervision order any requirement to seek a review of the previous supervision order ceases.

32 Copy of renewed order to go to Adult Parole Board

If the court makes an order renewing a supervision order, the Secretary must cause a copy of the renewing order to be given as soon as practicable to the Adult Parole Board.

PART 3—DETENTION ORDERS

Division 1—Application for detention order

33 Director of Public Prosecutions may apply for a detention order

- (1) This section applies if the Director of Public Prosecutions has determined under Part 8 to apply for a detention order in respect of an eligible offender.
- (2) The Director of Public Prosecutions may apply to the Supreme Court to make a detention order in respect of a person who is an eligible offender.
- (3) The Supreme Court must discontinue an application if since it was made the offender has ceased to be an eligible offender because—
 - (a) the relevant conviction has been set aside on appeal; or
 - (b) his or her sentence in respect of that offence is altered so that he or she would not have been an eligible offender had the amended sentence been the original sentence.
- (4) The Supreme Court may determine an application even if, since the application was made, the offender has ceased to be an eligible offender because—
 - (a) the custodial sentence has been served or has expired; or
 - (b) the eligible offender is no longer subject to a supervision order.

34 Form of application

An application under section 33 must—

- (a) state that a detention order is sought; and
- (b) be accompanied by—
 - (i) at least one assessment report in respect of the eligible offender; or
 - (ii) if the eligible offender is subject to a supervision order, a progress report and the last assessment report in respect of the offender.

Note

See Part 6 for the procedure in respect of the application.

Division 2—Detention order

35 Court must first be satisfied that there is an unacceptable risk

- (1) On an application under section 33, the Supreme Court may make an order in respect of an eligible offender only if the Court is satisfied that the offender poses an unacceptable risk of committing a relevant offence if a detention order or supervision order is not made and the offender is in the community.
- (2) In determining whether the offender is likely to commit a relevant offence in the circumstances described in subsection (1), the Supreme Court must, subject to this Division, have regard to—
 - (a) any assessment report or progress report filed in the Court, whether by or on behalf of the Director of Public Prosecutions or the offender; and
 - (b) any other report made, or evidence given, in relation to the application; and

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- (c) anything else the Court considers appropriate.
- (3) In determining whether or not the offender poses an unacceptable risk as set out in subsection (1), the Supreme Court must not consider the means of managing the risk or the likely impact of a detention order or supervision order on the offender.
- (4) For the avoidance of doubt the Supreme Court may determine under subsection (1) that an offender poses an unacceptable risk of committing a relevant offence even if the likelihood that the offender will commit a relevant offence is less than a likelihood of more likely than not.
- (5) The Director of Public Prosecutions has the burden of proving that the offender poses an unacceptable risk as set out in subsection (1).

36 Decision to make order

- (1) If the Supreme Court is satisfied that the unacceptable risk set out in section 35(1) exists, the Court before making a detention order must be satisfied that the risk of the offender committing a relevant offence would be unacceptable unless a detention order were made.
- (2) For the avoidance of doubt the Supreme Court may determine under subsection (1) that an offender poses an unacceptable risk of committing a relevant offence even if the likelihood that the offender will commit a relevant offence is less than a likelihood of more likely than not.
- (3) If the Supreme Court is satisfied that the risk would be unacceptable unless a detention order were made, it may make a detention order in respect of the offender.

- (4) If it is not satisfied that the risk would be unacceptable unless a detention order were made, the Supreme Court may make a supervision order in respect of the offender.
- (5) The Supreme Court may make no order in circumstances where it is empowered to make a detention order or supervision order under this section.
- (6) Divisions 2 to 4 of Part 2 (with any necessary modifications) apply to the making of a supervision order under this section as if it were a supervision order made under that Part.

37 Evidence to be of sufficient weight to justify decision

The Supreme Court may decide that it is satisfied as required by section 35(1) or 36(1) only if it is satisfied—

- (a) by acceptable, cogent evidence; and
- (b) to a high degree of probability—

that the evidence is of sufficient weight to justify the decision.

38 Detention order

- (1) A detention order must state that the Supreme Court is satisfied that the offender poses an unacceptable risk of committing a relevant offence if the detention order is not made and the offender is in the community.
- (2) A detention order must also specify—
 - (a) the name of the offender in respect of whom the order is made; and
 - (b) the date on which the order is made; and
 - (c) the date on which the order commences as provided by section 39; and

- (d) the period of the order as provided by section 40; and
 - (e) the latest date by which an application for the first review of the order must be made under Part 5 and the maximum intervals between subsequent reviews.
- (3) A detention order must be signed by the judge who made it and include his or her name.

39 Commencement of detention order

- (1) If at the time of the making of a detention order the offender is serving a custodial sentence, the order commences on the day on which he or she completes the service of the custodial sentence or any consecutive custodial sentence.
- (2) If at the time of the making of a detention order the offender is not serving a custodial sentence, the order commences on the commencement date specified in the order.

40 Period of detention order

- (1) Unless sooner revoked, the period of a detention order is the period (not exceeding 3 years) determined by the Supreme Court and specified in the order.
- (2) If an offender who is subject to a detention order commences serving a custodial sentence or is taken into custody on remand after the commencement of the order, the time spent in serving that sentence or in custody on remand is to be taken into account in calculating the remaining period of the order.
- (3) However section 115 does not apply to the offender while the offender is serving that sentence.

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- (4) Subsection (3) ceases to apply on the offender's release on parole.
 - (5) If an offender is subject to a detention order and is sentenced to a community-based disposition, the community-based disposition commences on the expiry of the detention order.

41 Effect of new detention order on existing detention order

- (1) If a detention order (the *new order*) is made in respect of an offender who is already subject to a detention order (the *old order*), the new order replaces the old order and the old order is revoked on the commencement of the new order.
- (2) The period of the new order is, unless the new order is sooner revoked, the period determined by the Supreme Court under section 40, irrespective of the period of the old order that remained unexpired at the time it was revoked.

42 Effect of detention order

The effect of a detention order is to commit the offender to detention in a prison for the period of the order.

Note

See Part 9 in relation to the management of an offender on a detention order.

43 Copy of detention order to go to Adult Parole Board

If the Supreme Court makes a detention order, the Director of Public Prosecutions must cause a copy of the order to be given as soon as practicable to the Secretary and the Adult Parole Board.

Division 3—Expiry of detention order

44 Expiry of detention order

A detention order expires on the first of the following to occur—

- (a) at the end of its period of operation; or
- (b) on its revocation by a court on a review under Part 5 or on appeal under Part 7; or
- (c) on it being replaced by another detention order or a supervision order.

Division 4—Renewal of detention order

45 Renewal of detention order

- (1) The Director of Public Prosecutions may, at any time while a detention order is in force, apply to the Supreme Court for the order to be renewed.
- (2) An application may continue to be dealt with and determined by the Supreme Court even if since it was made the detention order sought to be renewed has expired.
- (3) Subject to this Division, this Act (with any necessary modifications) applies to an application under subsection (1) in the same way as it applies to an application under section 33.
- (4) An application for renewal of a detention order may be accompanied by a progress report in respect of the offender instead of an assessment report.
- (5) More than one application may be made under subsection (1) for the renewal of a detention order in respect of an offender.

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- (6) The expiry of the detention order sought to be renewed before it is renewed does not prevent the order being made renewing the detention order or it having effect as a renewed detention order.
 - (7) An application can be made for renewal of a detention order even if the offender is serving a custodial sentence or is remanded in custody.

46 Renewed detention order

- (1) A renewed detention order must state that the Supreme Court is satisfied that the offender poses an unacceptable risk of committing a relevant offence if the detention order is not made and the offender is in the community.
- (2) A renewed detention order must specify—
 - (a) the name of the offender in respect of whom the order is made; and
 - (b) the date on which the order is made; and
 - (c) the date on which the order commences as provided by section 47; and
 - (d) the period of the order as provided by section 40; and
 - (e) the latest date by which an application for the first review of the order must be made under Part 5 and the maximum intervals between subsequent reviews.
- (3) A renewed detention order must be signed by the judge who made it and include his or her name.

47 Commencement of renewed order

A renewed detention order commences on the date specified in the order whether or not the previous order has expired.

48 Effect of renewed order

- (1) This Act applies to a renewed detention order in the same way as it applies to any other detention order.
- (2) On the making of a renewed detention order, any requirement to seek a review of the previous order ceases.

49 Copy of renewed order to go to Adult Parole Board

If the court makes an order renewing a detention order, the Director of Public Prosecutions must cause a copy of the renewing order to be given as soon as practicable to the Secretary and the Adult Parole Board.

PART 4—INTERIM ORDERS

Division 1—Application for interim order

50 Secretary may apply for interim supervision order

- (1) The Secretary may apply to a court for an interim supervision order in respect of an offender who is the subject of—
- (a) an application under section 7 for a supervision order; or
 - (b) an application under section 28 for renewal of a supervision order.

Note

See Part 6 for the procedure in respect of the application.

- (2) An application under this section may be made at the time of making the application referred to in subsection (1)(a) or (1)(b) or at any subsequent time before that application is determined, whether or not—
- (a) in the case of an application referred to in subsection (1)(a), the offender has ceased to be an eligible offender because he or she is no longer serving a custodial sentence as required by section 4; or
 - (b) in the case of an application referred to in subsection (1)(b), the supervision order has expired.
- (3) An application under this section must be made to the same court as that to which the application referred to in subsection (1)(a) or (1)(b) was made.
- (4) More than one application may be made under this section for an interim supervision order in respect of an offender.

51 Director of Public Prosecutions may apply for interim detention order

- (1) The Director of Public Prosecutions may apply to the Supreme Court for an interim detention order in respect of an offender who is the subject of—
- (a) an application under section 33 for a detention order; or
 - (b) an application under section 45 for renewal of a detention order.

Note

See Part 6 for the procedure in respect of the application.

- (2) An application under this section may be made at the time of making the application referred to in subsection (1)(a) or (1)(b) or at any subsequent time before that application is determined, whether or not—
- (a) in the case of an application referred to in subsection (1)(a), the offender has ceased to be an eligible offender because he or she is no longer serving a custodial sentence as required by section 4; or
 - (b) in the case of an application referred to in subsection (1)(b), the detention order has expired.
- (3) More than one application may be made under this section for an interim detention order in respect of an offender.

52 When court may determine application if offender is no longer serving custodial sentence

- (1) A court must not continue to deal with an application under section 50 or 51 if since it was made the offender has ceased to be an eligible offender because—

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- (a) the relevant conviction has been set aside on appeal; or
 - (b) his or her sentence in respect of that offence is altered so that he or she would not have been an eligible offender had the amended sentence been the original sentence.
- (2) A court may continue to deal with and determine an application under section 50 even if since it was made the offender has ceased to be an eligible offender because the custodial sentence has been served or has expired.
- (3) The Supreme Court may continue to deal with and determine an application under section 51 even if, since the application was made, the offender has ceased to be an eligible offender because—
- (a) the custodial sentence has been served or has expired; or
 - (b) the eligible offender is no longer subject to a supervision order or detention order.

Division 2—Interim order

53 When may a court make an interim supervision order?

A court may only make an interim supervision order in respect of an offender if—

- (a) the court is satisfied that—
 - (i) the Secretary has applied for a supervision order or renewal of a supervision order in respect of the offender; and
 - (ii) in the case of an application for a supervision order, the offender is no longer serving a custodial sentence as required by section 4 or will no longer

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- be serving that sentence when that application is determined; and
- (iii) in the case of an application for renewal of a supervision order, the supervision order has expired or will have expired before that application can be determined; and
- (b) it appears to the court that the documentation supporting the application for the supervision order would, if proved, justify the making of a supervision order; and
- (c) the court is satisfied that it is in the public interest to make an interim supervision order, having regard to—
- (i) the reasons why the application referred to in paragraph (a) was not, or will not be, determined before the expiry of the sentence referred to in section 4 or the expiry of the supervision order (as the case requires); and
 - (ii) any other matters that the court considers appropriate.

Note

See also section 54(2) for the power of the court to make an interim supervision order when an interim detention order is not justified.

54 When may a court make an interim detention order?

- (1) The Supreme Court may only make an interim detention order in respect of an offender if—
- (a) the Court is satisfied that—
 - (i) the Director of Public Prosecutions has applied for a detention order or renewal of a detention order in respect of the offender; and

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- (ii) in the case of an application for a detention order, the offender is no longer serving a custodial sentence as required by section 4 or will no longer be serving that sentence when that application is determined; and
 - (iii) in the case of an application for renewal of a detention order, the detention order has expired or will have expired before that application can be determined; and
 - (b) it appears to the Court that the documentation supporting the application for the detention order would, if proved, justify the making of a detention order; and
 - (c) the Court is satisfied that it is in the public interest to make an interim detention order, having regard to—
 - (i) the reasons why the application referred to in paragraph (a) was not, or will not be, determined before the expiry of the sentence referred to in section 4 or the expiry of the detention order (as the case requires); and
 - (ii) any other matters that the Court considers appropriate.
- (2) The Supreme Court may make an interim supervision order if—
- (a) the court is satisfied that the Director of Public Prosecutions has applied for a detention order or renewal of a detention order in respect of the offender; and
 - (b) the Court considers that an interim detention order is not justified; and

- (c) it appears to the Court that the documentation supporting the application for the interim detention order would, if proved, justify the making of an interim supervision order; and
- (d) the Court is satisfied that it is in the public interest to make an interim supervision order, having regard to—
 - (i) the reasons why the application referred to in paragraph (a) was not, or will not be, determined before the expiry of the sentence referred to in section 4 or the expiry of the detention order (as the case requires); and
 - (ii) any other matters that the Court considers appropriate.

55 Interim order

- (1) An interim order must state that the court making it is satisfied that the making of the order is justified and that it is in the public interest to make the order.
- (2) An interim order must also specify—
 - (a) the name of the offender in respect of whom the order is made; and
 - (b) the date on which the order is made; and
 - (c) the date on which the order commences as provided by section 56; and
 - (d) the period of the order as provided by section 57; and
 - (e) the conditions of the order as provided by section 58.
- (3) An interim order must be signed by the judge comprising the court that made it and include his or her name.

56 Commencement of interim order

- (1) In the case of an interim order made in relation to an application referred to in section 50(1)(a) or 51(1)(a), the order commences—
 - (a) if at the time of the making of the order the offender is serving a custodial sentence, on the day on which he or she completes the service of any custodial sentence or any consecutive custodial sentence; or
 - (b) if at the time of the making of the order the offender is not serving a custodial sentence, on the commencement date specified in it.
- (2) In the case of an interim order made in relation to an application referred to in section 50(1)(b) or 51(1)(b), the order commences—
 - (a) immediately on the expiry of the previous detention order or supervision order, if that order is still in force at the time the interim order is made; or
 - (b) on the commencement date specified in the interim order if the previous order has expired by the time the interim order is made.

57 Period of interim order

- (1) Subject to subsection (2) and section 61, the period of an interim order is the period determined by the court and specified in the order.
- (2) The total period for which the offender may be made subject to an interim order pending the determination of any one application referred to in section 50(1)(a) or (b) or 51(1)(a) or (b) cannot exceed 4 months, unless the court making or extending the order considers that exceptional circumstances exist.

58 Conditions of interim supervision order

Division 3 of Part 2 applies with respect to an interim supervision order as if a reference in that Division to a supervision order were a reference to an interim supervision order.

59 Application of Act to interim order

- (1) Part 10 applies to an offender who is subject to an interim supervision order as if it were a supervision order.
- (2) Part 9 applies to an offender who is subject to an interim detention order as if it were a detention order.

60 Copy of interim order to go to Adult Parole Board

- (1) If a court makes an interim supervision order, the Secretary must cause a copy of the order to be given as soon as practicable to the Adult Parole Board.
- (2) If the Supreme Court makes an interim detention order, the Director of Public Prosecutions must cause a copy of the order to be given as soon as practicable to the Secretary and the Adult Parole Board.

Division 3—Expiry of interim order

61 Expiry of interim order

An interim order expires on the first of the following to occur—

- (a) at the end of its period of operation or that period as extended under Division 4; or
- (b) on the determination of the application referred to in section 50(1)(a) or (b) or 51(1)(a) or (b) in relation to which the interim order was made.

62 Effect of expiry of interim supervision order

On the expiry of an interim supervision order, the offender ceases to be subject to the conditions of the order and to any instructions or directions given by the Adult Parole Board in relation to it under the order.

Division 4—Extension of interim order

63 Extension of interim order

- (1) At any time while an interim supervision order is in force, the Secretary may apply to the court that made the order to extend the order.

Note

See Part 6 for the procedure in respect of the application.

- (2) At any time while an interim detention order is in force, the Director of Public Prosecutions may apply to the Supreme Court to extend the order.

Note

See Part 6 for the procedure in respect of the application.

- (3) Without limiting subsection (1) or (2), an application under either subsection may be made by oral submission at a directions hearing under section 83.
- (4) Section 53 or 54 (as the case requires and with any necessary modifications) applies to an application to extend an interim order in the same way as it applies to an application under section 50 or 51 for an interim order.
- (5) An order extending an interim order cannot be made if—
- (a) the interim order has expired; or

- (b) the offender has ceased to be an eligible offender because—
 - (i) the relevant conviction has been set aside on appeal; or
 - (ii) his or her sentence in respect of that offence is altered so that he or she would not have been an eligible offender had the amended sentence been the original sentence.
- (6) An order extending an interim order may be made whether or not—
 - (a) if the interim supervision order is in relation to an application referred to in section 50(1)(a) or 51(1)(a), the offender has ceased to be an eligible offender because he or she is no longer serving a custodial sentence; or
 - (b) if the interim order is in relation to an application referred to in section 50(1)(b) or 51(1)(b), the supervision order or detention order has expired.
- (7) Subject to sections 57(2) and 61, an interim order may be extended for the period determined by the court and specified in the order extending the interim order.
- (8) An interim order in respect of an offender may be extended under this section more than once.

Note

Section 57(2) imposes a maximum period of 4 months for an interim supervision order, unless exceptional circumstances exist.

64 Order extending interim order

- (1) An order extending an interim order must state that the court making it is satisfied that extending the interim order is justified and that it is in the public interest to do so.

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- (2) An order extending an interim order must also specify—
- (a) the name of the offender in respect of whom the order is made; and
 - (b) the date on which the order is made; and
 - (c) the period for which the interim order is extended.
- (3) An order extending an interim order must be signed by the judge comprising the court that made it and include his or her name.
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PART 5—REVIEW OF ORDERS AND CONDITIONS

Division 1—Review of orders

65 Periodic reviews of supervision orders

- (1) The Secretary must apply to the court that made a supervision order for review of that order—
 - (a) no later than 3 years after it was first made or any earlier first review date specified in the order; and
 - (b) after that, at intervals of no more than 3 years or any shorter intervals specified in the order.
- (2) An application is not required to be made under this section if a detention order has subsequently been made in respect of the offender.

66 Periodic reviews of detention orders

The Director of Public Prosecutions must apply to the Supreme Court for review of a detention order—

- (a) no later than 1 year after it was first made or any earlier first review date specified in the order; and
- (b) after that, at intervals of no more than 1 year or any shorter intervals specified in the order.

67 Offender serving custodial sentence at time of review

Sections 65 and 66 do not apply to require a review if the time for review of the supervision order or detention order occurs while the offender is serving a custodial sentence.

68 Leave for review

- (1) Any of the following persons may apply to the court that made a supervision order for leave to apply for a review of that order—
 - (a) the Secretary, on his or her own initiative or on the recommendation of the Adult Parole Board;
 - (b) the Director of Public Prosecutions;
 - (c) the offender who is subject to the order.
- (2) Either of the following persons may apply to the Supreme Court for leave to apply for a review of a detention order—
 - (a) the Director of Public Prosecutions;
 - (b) the offender who is subject to the order.
- (3) The court may grant the leave sought if the court is satisfied that—
 - (a) there are new facts or circumstances which would justify a review of the order; or
 - (b) it would be in the interests of justice, having regard to the purposes of the order and the manner and effect of its implementation, to review the order.

69 To which court is an application for review to be made?

An application for review of a supervision order or detention order must be made to the court that made the order.

70 Form of application

An application for review of a supervision order or a detention order must—

- (a) set out the nature of the order sought; and
- (b) be accompanied by a progress report in respect of the offender.

71 Purpose of review

The purpose of a review is to determine—

- (a) whether a supervision order or a detention order should remain in operation or be revoked; and
- (b) if a supervision order is revoked, whether the order should be replaced with a different supervision order or a detention order; and
- (c) if a detention order is revoked, whether it should be replaced with a supervision order.

Note

Part 6 provides for the procedure on a review.

72 What is the court to consider?

- (1) In reviewing a detention order or supervision order, the court must consider—
 - (a) a progress report relating to the offender;
 - (b) any other report made, or evidence given, by a medical expert;
 - (c) any report made by the Secretary, the Director of Public Prosecutions or the Adult Parole Board;
 - (d) any submissions made by the parties to the review.

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- (2) In reviewing a detention order or supervision order, the court may also consider—
- (a) any previous assessment report or progress report or reports filed with the court in relation to the offender; and
 - (b) anything else that the court considers appropriate.

73 Decision on supervision order—general

- (1) Subject to subsection (3), on a review of a supervision order, the court must revoke the supervision order unless it is satisfied that the offender still poses an unacceptable risk of committing a relevant offence if a supervision order is not in effect and the offender is in the community.
- (2) Sections 9(2), (4), (5) and (6) (with any necessary modifications) apply to the review of a supervision order.
- (3) If on a review of a supervision order, the court or the Director of Public Prosecutions considers that a detention order should be made in respect of the offender, the Director may apply to the Supreme Court for the detention order.
- (4) Division 2 of Part 3 applies in respect of an application for a detention order under subsection (3).
- (5) If the Supreme Court makes a detention order on an application under subsection (3), it must revoke the supervision order.
- (6) If an application is made under subsection (3) and the Supreme Court does not make the detention order, it may confirm (subject to subsection (9)), or revoke, the supervision order.

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- (7) The supervision order remains in force until the Supreme Court determines the application under subsection (3).
 - (8) Subject to subsection (9), the court must confirm the supervision order unless—
 - (a) the court has revoked the supervision order;
or
 - (b) an application for a detention order has been made under subsection (3).
 - (9) The court may vary, add to or remove any conditions of a supervision order or direct a different period for the period between applications for review.
 - (10) Division 3 of Part 2 applies to any variation or addition of a condition of a supervision order under subsection (9).

74 Application for review of detention order

- (1) On a review of a detention order, the Supreme Court must revoke the order unless it is satisfied that the offender still poses an unacceptable risk of committing a relevant offence if a detention order is not in effect and the offender is in the community.

Note

See Part 6 for the procedure in respect of the application.

- (2) Sections 36(2), (3), (4) and (5) and 37 (with any necessary modifications) apply to the review of a detention order.
- (3) If the Supreme Court is not satisfied that the risk would be unacceptable unless a detention order were made, the Court may revoke the detention order and make a supervision order.

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- (4) Part 2 (with any necessary modifications) applies to the making of a supervision order under this section.

75 Effect of custodial order on time for review

- (1) This section applies if an offender is in prison, a police gaol or an approved mental health service serving a custodial sentence or on remand while subject to a supervision order or detention order.
- (2) If the time for a review of the supervision order or detention order occurs while the offender is in custody, the application for review of the order under this Part must be made—
- (a) before the end of the non-parole period for that offender; or
 - (b) if a non-parole period is not fixed, before the end of the custodial sentence.
- (3) If parole is not granted and a supervision order or detention order applies to an offender at the end of the custodial sentence, the application for review of the order under this Part must be made before the end of the sentence.
- (4) If the order will expire during the period that an offender is remanded in custody or serving a sentence of imprisonment no review is required.

Note

An application can be made to renew the order before it expires.

Division 2—Review of conditions of supervision order

76 Application of Division

This Division applies if a court makes a supervision order or an interim supervision order in relation to an offender.

77 Application for review of condition of supervision order

- (1) The Secretary or the offender may at any time, with the leave of the court that made the order, apply to the court to review any condition of the supervision order or interim supervision order other than a core condition.
- (2) An application may be accompanied by a certificate of available resources or a progress report or both.
- (3) The court may grant leave under this section if the court is satisfied that—
 - (a) new facts and circumstances have arisen since the conditions were made that would justify the review; or
 - (b) it would generally be in the interests of justice, having regard to the purposes of the conditions and the manner or effect of their implementation, to review the conditions.
- (4) Before determining whether to grant leave, the court may request a supplementary certificate of available resources from the Secretary.
- (5) The court must have regard to any certificate of available resources in considering the matters under subsection (3).

78 Power of court on review

- (1) If the court grants leave for an application under this Division, the court must grant the offender, the Adult Parole Board and the Secretary the opportunity to be heard in respect of the application.
- (2) The court must consider any submissions made under subsection (1) and any certificate of available resources.

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- (3) The court may—
- (a) vary, add or remove any conditions of the supervision order; or
 - (b) confirm the conditions of the supervision order; or
 - (c) review the supervision order in accordance with this Part.
- (4) Division 3 of Part 2 (with any necessary modifications) applies to the addition or variation of a condition under this section.
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PART 6—PROCEEDINGS RELATING TO ORDERS

Division 1—Applications for orders

79 Nature of proceeding

- (1) Any proceeding on an application under Part 2, 3, 4 or 5 and any appeal relating to an application under Part 7 are civil in nature.
- (2) Despite subsection (1), the rules regulating the practice and procedure of a court in civil proceedings do not apply to a proceeding on an application under Part 2, 3, 4 or 5 or an appeal under Part 7.

80 Service of application and other documents

- (1) As soon as practicable after an application is made under Part 2, 3, 4 or 5 the applicant must cause the following to be served on any other party to the application—
 - (a) a copy of the application;
 - (b) a copy of any assessment report or progress report that accompanied the application.
- (2) As soon as practicable after an application is made under Part 2, 3, 4 or 5, the Secretary or the Director of Public Prosecutions (as the case requires) must cause to be served on the offender a notice in the prescribed form setting out—
 - (a) the offender's rights in relation to the application; and
 - (b) the procedure for hearing and determining the application; and
 - (c) the nature of the order for which the application is made.
- (3) The documents to be served in relation to an application under section 63(1) may be served by post.

81 Exclusion of evidence from disclosure

The court may by order exclude evidence from disclosure under this Part if the court is satisfied that—

- (a) it is in the public interest not to disclose it to the offender; and
- (b) the material cannot be suitably redacted or communicated to the offender in a way that would not prejudice the public interest; and
- (c) the making of the order in the circumstances would not lead to significant unfairness to the offender.

Division 2—Procedure for hearings

82 Hearing of application

- (1) The court to which an application is made under Part 2, 3 or 5 may only begin to hear the application—
 - (a) after at least 25 working days have passed since it was made or, if satisfied that it is in the interests of justice to do so, any shorter period; and
 - (b) if the court is satisfied that the offender has had a reasonable opportunity to obtain an independent report of any kind.
- (2) A court may adjourn the hearing of an application under Part 2, 3 or 5 to give the offender the opportunity to obtain legal representation or an independent report of any kind or both.

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- (3) An offender who obtains an independent report on which the offender intends to rely must cause—
- (a) a copy to be filed in court; and
 - (b) a copy to be served on the Secretary or the Director of Public Prosecutions (as the case requires)—
- as soon as practicable after obtaining it.
- (4) An offender may obtain more than one independent report.
- (5) A court may resume a hearing that was adjourned by it in accordance with subsection (2) even though the offender is not legally represented or has not obtained an independent report if satisfied that he or she has had a reasonable opportunity to do so.
- (6) The court may direct—
- (a) the Secretary or the Director of Public Prosecutions (as the case requires) to obtain, within the period specified by the court, another assessment report or a report of any other kind; or
 - (b) the offender to obtain, within the period specified by the court, another report of any kind—
- to assist it in determining the application.
- (7) A copy of a report obtained under subsection (6) must be filed in the court and, subject to any order under section 81, served on the other party as soon as practicable after it is obtained.

83 Directions hearings

- (1) The court to which an application is made under Part 2, 3, 4 or 5 may fix a date for a directions hearing to be conducted in relation to the hearing of the application.

- (2) At a directions hearing the court may give such directions as it thinks necessary about the hearing of the application.
- (3) An offender is entitled to be present at any directions hearing.
- (4) For the purposes of subsection (3), an offender may be present before the court by audio visual link or audio link in accordance with Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**.

84 Court may order offender to attend for examination

- (1) The court to which an application is made under Part 2, 3, 4 or 5 may at any time order the offender to whom the application relates to attend for a personal examination by a medical expert or any other person for the purpose of enabling that expert or other person to make a report, or give evidence, to the court.
- (2) Nothing in this section empowers the making of an order that would require an offender to submit to a physical examination or in any way actively to cooperate in the carrying out of a personal examination.

85 Attendance of offender at hearings

- (1) Subject to this section, the offender must be present during the hearing of any application under Part 2, 3, 4 or 5.
- (2) If the offender acts in a way that makes the hearing in the offender's presence impracticable, the court may order that the offender be removed and the hearing continue in his or her absence.
- (3) If the offender is unable to be present at a hearing because of illness or for any other reason, the court may proceed with the hearing in his or her absence if it is satisfied that—

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- (a) doing so will not prejudice the offender's interests; and
 - (b) the interests of justice require that the hearing should proceed even in the absence of the offender.
- (4) For the purposes of subsection (1), an offender may be present before the court by audio visual link or audio link in accordance with Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**.

86 Adjournment of hearing

- (1) The court hearing an application under Part 2, 3, 4 or 5 may, on the application of a party to the proceeding or without any such application, adjourn the hearing of the proceeding—
 - (a) to any time and place; and
 - (b) for any purposes; and
 - (c) on any terms as to costs or otherwise—
that it considers necessary or just in the circumstances.
- (2) On an adjournment, the **Bail Act 1977** applies, with any necessary modifications, to and in respect of an offender who is being held in custody under Division 3 as if the offender were accused of an offence and were being held in custody in relation to that offence.

87 Legal representation

The offender is entitled to a reasonable opportunity to obtain legal representation for the hearing of any application under Part 2, 3, 4 or 5.

88 Admissibility of evidence

- (1) Subject to subsection (2) and Division 4, the ordinary rules of evidence apply to evidence given or called at the hearing under Part 2, 3, 4 or 5.
- (2) In making its decision the court may receive in evidence—
 - (a) the offender's antecedents and criminal history;
 - (b) any material relied on in an assessment report or progress report relating to the offender;
 - (c) anything relevant to the issue contained in any medical, psychiatric, psychological or other report tendered in any proceeding against the offender for a relevant offence.

89 Matters to which court may have regard

Without limiting any other provision of this Act, the court hearing and determining an application under Part 2, 3, 4 or 5 may have regard to—

- (a) whether the offender cooperated, or cooperated fully, in the preparation of an assessment report or progress report, including in any examination for the purposes of an additional assessment under Part 8; and
- (b) if the offender did not cooperate, or did not cooperate fully, in the preparation of an assessment report or progress report, his or her reasons for this; and
- (c) whether an assessment report or progress report was made without a personal examination of the offender.

90 Reasons for decisions

A court that determines an application under Part 2, 3, 4 or 5 must—

- (a) state the reasons for its decision; and
- (b) cause those reasons to be entered in the records of the court; and
- (c) cause a copy of any order made by it to be provided to—
 - (i) the Secretary; and
 - (ii) the Director of Public Prosecutions if the Director is an applicant or a respondent to an application; and
 - (iii) the offender.

Division 3—Arrest of offender to attend hearing

91 Power to issue arrest warrant

- (1) If the offender fails to attend at a hearing under Part 2, 3, 4, 5 or 7, the court may, on application by the Secretary or the Director of Public Prosecutions, issue a warrant for the arrest of the offender if satisfied by evidence on oath or by affidavit—
 - (a) that notice of the hearing was served on the offender; or
 - (b) that there are reasonable grounds to believe that the offender is evading service of notice of the hearing.
- (2) A court may also issue an arrest warrant if satisfied that an offender who is the subject of an application made to it under Part 2, 3, 4, 5 or 7 has absconded or is unlikely to attend a hearing held under that Part.

92 Execution of arrest warrant

- (1) A warrant issued under section 91 may be executed by any member of the police force and the person executing it may use any reasonable force that is necessary to enter any premises, vessel, aircraft or vehicle for the purpose of executing it.
- (2) The warrant may be executed even if the warrant is not at the time in the possession of the person executing it.
- (3) A person executing the warrant may only use the reasonable force that is necessary for the execution of the warrant.

93 Arrested offender to be brought before court

- (1) If the offender is arrested under the warrant, he or she must be brought, as soon as practicable, before the court which issued the warrant which may—
 - (a) admit him or her to bail, with any security that the court thinks fit, on any conditions that the court thinks necessary to ensure his or her attendance at the hearing under Part 2, 3, 4, 5 or 7; or
 - (b) order his or her continued detention in police custody for the purpose of ensuring his or her attendance at the hearing under Part 2, 3, 4, 5 or 7 until the conclusion of the hearing; or
 - (c) if the court is satisfied that there are reasonable grounds to believe that it is necessary to prevent the offender from escaping from police custody, order the detention of the offender in a prison or a police gaol for the purpose of ensuring his or her attendance at the hearing under Part 2,

3, 4, 5 or 7 until the conclusion of the hearing; or

(d) order the release of the offender.

- (2) If an offender is detained under this section, he or she must, within 14 days after he or she was brought, or last brought, before the court in accordance with this section, or within such shorter or longer time as the court has fixed on his or her last attendance before the court under this section, be again brought before the court which may then exercise any of the powers of the court under subsection (1).
- (3) If an offender detained in police custody under this section, other than an offender detained in accordance with an order made under subsection (1)(c), is required to be detained overnight, the Chief Commissioner of Police must arrange for the offender to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.
- (4) If an offender is detained in a prison in accordance with an order made under subsection (1)(c), the court may make an order for the offender to be delivered into the custody of a member of the police force for the purpose of bringing him or her before the court on the hearing of any application under Part 2, 3, 4, 5 or 7.

Division 4—Victim submissions

94 Victim submission

- (1) A person who is a victim (within the meaning of section 30A of the **Corrections Act 1986**) of the offender may make a submission to the court for consideration by the court in relation to any application under Part 2, 3, 4 or 5.

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- (2) The Secretary or the Director of Public Prosecutions (as the case requires) must give notice of an application under Part 2, 3, 4 or 5 to each person included on the victims register established under the **Corrections Act 1986** who is a victim (within the meaning of section 30A of that Act) of the eligible offender.
 - (3) The notice must specify—
 - (a) the nature of the application; and
 - (b) the period within which the victim submission can be made in relation to the application.
 - (4) A person who is notified under subsection (2) who wishes to make a victim submission must do so within the period specified in the notice served on the person under subsection (2).
 - (5) A victim submission—
 - (a) must be in writing; and
 - (b) must address matters relating to the person's views about any conditions to which a supervision order should be subject; and
 - (c) must include any other prescribed matters.

95 Victim submission not to be released to offender without consent

- (1) The court must not release a victim submission to the offender in relation to whom the order is being made unless—
 - (a) the release of the submission is, in the opinion of the court, essential in the interests of fairness and justice; and
 - (b) before releasing the victim submission, the court has asked the person who made the victim submission whether he or she—

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- (i) consents to the submission being released to the offender; or
 - (ii) wishes to amend the submission so that it can be released to the offender; or
 - (iii) wishes to withdraw the submission.
- (2) If a person who made a victim submission does not consent to the submission being released to the offender, amend the submission so that it can be released to the offender or withdraw the submission when asked whether or not to do so by the court under subsection (1)(b), the court—
- (a) must not release the victim submission to the offender; and
 - (b) in considering the victim submission when determining to impose a condition on the supervision order, may reduce the weight it would otherwise have given to the submission if the person who made it had consented as provided for in subsection (1)(b).
- (3) Despite subsections (1) and (2), the court may take reasonable steps to disclose to the offender, or the offender's legal representative, the substance of the victim submission if the court is satisfied that those steps would not reasonably lead to the identification of the victim who made the submission.
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PART 7—APPEALS

Division 1—Appeals relating to supervision, detention and interim orders

96 Appeals by offenders

An offender who is subject to a supervision order, a detention order or an interim order may appeal to the Court of Appeal against a decision made by a court—

- (a) to make the order; or
- (b) to renew or extend the order; or
- (c) to impose conditions (other than core conditions) on the order; or
- (d) to impose a particular period of operation of the order; or
- (e) not to revoke the order on a review under Part 5; or
- (f) to revoke the order and make a new supervision order or detention order.

97 Appeals by the Secretary

The Secretary, if he or she considers that it is in the public interest to do so, may appeal to the Court of Appeal against a decision made by a court—

- (a) not to make a supervision order or an interim supervision order; or
- (b) not to renew a supervision order; or
- (c) not to extend an interim supervision order; or
- (d) to revoke a supervision order on a review; or
- (e) to impose a particular period of operation of a supervision order or an interim supervision order; or

- (f) to impose or not to impose conditions (other than core conditions) on a supervision order or an interim supervision order.

98 Appeals by the Director of Public Prosecutions

The Director of Public Prosecutions, if he or she considers that it is in the public interest to do so, may appeal to the Court of Appeal against a decision made by the Supreme Court—

- (a) not to make a detention order or an interim detention order; or
- (b) not to renew a detention order; or
- (c) not to extend an interim detention order; or
- (d) to revoke a detention order on a review; or
- (e) to impose a particular period of operation of a detention order or an interim detention order.

99 Procedure for appeals

- (1) If the offender or the Secretary or the Director of Public Prosecutions proposes to appeal under this Division, he or she must, in accordance with rules of court, file with the Court of Appeal a notice of appeal setting out the grounds of the appeal within—
 - (a) 28 days after the day on which the decision appealed from was made; or
 - (b) any extension of that period granted under subsection (2).

- (2) The Court of Appeal may at any time extend the time within which a notice of appeal may be filed under this Division if the Court considers that it is in the interests of justice to do so.
- (3) As soon as practicable after giving notice of appeal to the Court of Appeal under subsection (1), the appellant must cause a copy of the notice to be served on the respondent to the appeal.
- (4) If the Secretary or the Director of Public Prosecutions is the appellant, the document served under subsection (3) must be accompanied by a notice in the prescribed form setting out the offender's rights in relation to, and the procedure for the hearing and determination of, the appeal.
- (5) The filing of a notice of appeal with the Court of Appeal does not, unless the court that made the decision or the Court of Appeal otherwise orders, stay the operation of the decision.
- (6) Section 84 and Division 2 of Part 6 (with any modifications) apply to the hearing of an appeal under this Part.

100 Powers to consider new evidence

In considering an appeal under this Part, the Court of Appeal may—

- (a) consider new evidence that is relevant to the application; and
- (b) direct the Secretary to provide a new assessment report or progress report in respect of the offender.

101 Powers of Court of Appeal

- (1) On an appeal under this Division, the Court of Appeal may make any order the Court considers appropriate including an order to—

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- (a) confirm the decision; or
 - (b) revoke the supervision order or the renewed supervision order; or
 - (c) revoke the detention order or renewed detention order; or
 - (d) revoke the interim order or extended interim order; or
 - (e) if the relevant decision was to vary or add a condition to a supervision order, revoke the variation or revoke or vary the condition; or
 - (f) if the decision was to revoke a supervision order or detention order or an interim order, make an order reviving the order; or
 - (g) if the decision was to revoke a supervision order and make a detention order, revoke the detention order and restore the supervision order; or
 - (h) set aside the decision and remit the matter to the court which made that decision, with or without any directions.
- (2) If the Court of Appeal remits a matter to a court under subsection (1)(h), that court may make or renew a supervision order or detention order or make or extend an interim order in respect of the offender even if—
- (a) the offender is not then an eligible offender because he or she is no longer serving a custodial sentence, except where—
 - (i) the relevant conviction has been set aside on appeal; or
 - (ii) his or her sentence in respect of that offence is altered so that he or she would not have been an eligible

offender had the amended sentence
been the original sentence; or

(b) the order to be renewed or extended has
expired—

as the case requires.

(3) A direction under subsection (1)(h) may include
directions as to whether or not the court to which
the matter is remitted should be constituted by the
judge who made the decision appealed from.

102 Court of Appeal may make interim order

(1) If the Court of Appeal remits a matter to a court
under section 101(1)(h), the Court of Appeal may
make an interim supervision order or an interim
detention order (as the case requires) in respect of
the offender, if the Court of Appeal is satisfied
that—

(a) the making of the order is justified; and

(b) it is in the public interest to make the order.

(2) Subject to this section, this Act applies to an
interim order made by the Court of Appeal in the
same way as it applies to any other like interim
order.

(3) The period of an interim order made by the Court
of Appeal is the period beginning on the making
of the order and ending at the time that the matter
has been determined by the court to which the
matter has been remitted.

(4) A charge for an offence against section 160 in
relation to an interim order made by the Court of
Appeal is to be heard in the court to which the
matter has been remitted and for that purpose any
reference in Part 11 to the court that made the
interim order is taken to be a reference to the court
to which the matter has been remitted.

Division 2—Appeals relating to publication of information

103 Appeal relating to publication of information

- (1) Any person affected by a decision of the court under Division 1 of Part 13 may appeal to the Court of Appeal against that decision.
 - (2) On an appeal under subsection (1), the Court of Appeal may make any order that a court can make under Division 1 of Part 13.
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PART 8—ASSESSMENT OF ELIGIBLE OFFENDERS

Division 1—Assessment

104 Secretary to consider whether order should be made in respect of eligible offender

- (1) The Secretary may determine whether or not—
 - (a) an application should be made for a supervision order under Part 2 in respect of an eligible offender;
 - (b) a matter should be referred to the Director of Public Prosecutions for determination as to whether an application should be made under Part 3 for a detention order in respect of an eligible offender.
- (2) In considering a matter under subsection (1), the Secretary—
 - (a) must have regard to an assessment report in respect of the eligible offender; and
 - (b) may have regard to any other report, information or matter the Secretary considers relevant.
- (3) Nothing in this Part requires the Secretary to apply for a supervision order in respect of a particular eligible offender.

105 Referral to Director of Public Prosecutions

- (1) If the Secretary considers that an application should be made for a detention order, the Secretary must refer the matter to the Director of Public Prosecutions for consideration.
- (2) The Secretary must provide the Director of Public Prosecutions with a copy of the assessment report and any other report or information requested by the Director.

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- (3) The Director of Public Prosecutions must determine whether or not to make an application for a detention order in respect of an eligible offender.
 - (4) In determining the matter, the Director of Public Prosecutions—
 - (a) must have regard to the assessment report relating to the eligible offender; and
 - (b) may have regard to any other report, information or matter the Director considers relevant.
 - (5) Nothing in this Part requires the Director of Public Prosecutions to apply for a detention order in respect of a particular eligible offender.
 - (6) If the Director of Public Prosecutions determines not to apply for a detention order in respect of a particular eligible offender, the Director may refer the matter back to the Secretary.
 - (7) On the referral of a matter to the Secretary under subsection (6), or on the determination of the Director of Public Prosecutions not to apply for a detention order, the Secretary may determine that an application should be made for a supervision order or not to proceed with the matter.

106 Who can make an assessment report?

- (1) An assessment report can only be made by a medical expert following a personal examination of an offender.
- (2) A medical expert may still make an assessment report even if the offender does not cooperate, or does not cooperate fully, in the examination by the expert.

107 Secretary may direct offender to attend for examination

- (1) For the purposes of section 106, the Secretary, by written notice served on an offender, may direct the offender to attend a specified medical expert at a place and on a date and time specified in the direction for a personal examination.
- (2) The Secretary, by written notice served on an offender, may vary or revoke a direction given to the offender under this section.
- (3) An offender must not fail, without reasonable excuse, to comply with—
 - (a) a direction given to the offender under subsection (1); or
 - (b) that direction as varied under subsection (2).

Penalty: Level 7 imprisonment (2 years maximum).

- (4) Despite section 106(1), a medical expert may still make an assessment report if the offender does not comply with a direction given under this section.
- (5) Nothing in this section empowers the giving of a direction that would require an offender to submit to a physical examination or in any way actively to cooperate in the carrying out of a personal examination.

108 Additional assessments

- (1) If a medical expert considers it necessary to do so for the purposes of making an assessment report, the medical expert may seek an assessment of the offender from another medical expert (an *additional assessment*).

- (2) For the purposes of an additional assessment, the Secretary, by written notice served on an offender, may direct the offender to attend a specified medical expert at a place and on a date and time specified in the direction for a personal examination.
 - (3) The Secretary, by written notice served on an offender, may vary or revoke a direction given to the offender under this section.
 - (4) An offender must not fail, without reasonable excuse, to comply with—
 - (a) a direction given to the offender under subsection (2); or
 - (b) that direction as varied under subsection (3).
- Penalty: Level 7 imprisonment (2 years maximum).
- (5) A medical expert may still make an additional assessment if the offender does not comply with a direction given under this section.
 - (6) Nothing in this section empowers the giving of a direction that would require an offender to submit to a physical examination or in any way actively to cooperate in the carrying out of a personal examination.

109 What is an assessment report?

- (1) An assessment report must address the following matters in relation to the offender—
 - (a) whether or not the offender has a propensity to commit relevant offences in the future;
 - (b) the pattern or progression to date of sexual offending behaviour on the part of the offender and an indication of the nature of any likely future sexual offending behaviour on his or her part;

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- (c) efforts made to date by the offender to address the causes of his or her sexual offending behaviour, including whether he or she has actively participated in any rehabilitation or treatment programs;
 - (d) if the offender has participated in any rehabilitation or treatment programs, whether or not this participation has had a positive effect on him or her;
 - (e) relevant background of the offender, including developmental and social factors and other offending behaviour;
 - (f) factors that might increase or decrease any identified risks;
 - (g) if an additional assessment of the offender has been obtained under section 108, the results of that assessment;
 - (h) any other relevant matters.
- (2) An assessment report must state—
- (a) the medical expert's assessment of the risk that the offender will commit another relevant offence if released in the community and not made subject to a detention order or supervision order; and
 - (b) reasons for that assessment.
- (3) In stating an assessment and the reasons for it under subsection (2), the medical expert may have regard to any additional assessment obtained under section 108 in respect of the offender.

Division 2—Progress reports

110 Progress report to be prepared

The Secretary or the Director of Public Prosecutions (as the case requires)—

- (a) must cause a progress report to be prepared in relation to an offender for the purposes of any application under Part 5; and
- (b) may cause a progress report to be prepared in relation to an offender for the purposes of an application for renewal of an order under Part 2 or 3.

111 Application of Division 1

Sections 106 to 108 apply (with any necessary modifications) to the preparation of a progress report as if it were an assessment report.

112 Progress report

- (1) A progress report must address the following matters in relation to an offender—
 - (a) whether or not the offender has a propensity to commit relevant offences in the future;
 - (b) efforts made by the offender in the previous 12 months or since the last review to address the causes of the offender's sexual offending behaviour, including whether or not the offender participated in any rehabilitation or treatment programs; and
 - (c) if the offender has participated in any rehabilitation or treatment programs, whether or not this participation has had a positive effect on him or her;
 - (d) factors that might increase or decrease any identified risks;

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- (e) if an additional assessment of the offender has been obtained under section 108, the results of that assessment;
 - (f) any other relevant matters.
- (2) A progress report must state—
- (a) the medical expert's assessment of the risk that the offender will commit another relevant offence if released in the community and not made subject to a detention order or supervision order; and
 - (b) reasons for that assessment.
- (3) In stating an assessment and the reasons for it under subsection (2), the medical expert may have regard to any additional assessment obtained under section 108 in respect of the offender.

Division 3—Disputed reports

113 Disputing reports

- (1) The Secretary, the Director of Public Prosecutions or the offender may file with the court a notice of intention to dispute the whole or any part of any assessment report, progress report or other report made to the court or filed with an application under this Act.
- (2) If a notice is filed under subsection (1) before the application is determined, the court must not take the report or the part in dispute (as the case requires) into consideration in determining the application unless the party that filed the notice has been given the opportunity—
 - (a) to lead evidence on the disputed matters; and
 - (b) to cross-examine the author of the report on its contents.

PART 9—MANAGEMENT OF OFFENDERS ON DETENTION ORDERS

114 Function of Adult Parole Board in relation to detention orders

The Adult Parole Board is responsible for reviewing and monitoring the progress of offenders on detention orders and interim detention orders.

115 Status of offender on detention orders or interim detention orders

- (1) An offender in custody in a prison under a detention order or interim detention order must be treated in a way that is appropriate to his or her status as an unconvicted prisoner subject to any reasonable requirements necessary to maintain—
 - (a) the management, security and good order of the prison; and
 - (b) the safe custody and welfare of the offender or any other prisoners.
- (2) Except as provided in subsection (3), an offender in custody in a prison under a detention order or interim detention order must not be accommodated or detained in the same area or unit of the prison as persons who are in prison for the purpose of serving custodial sentences.
- (3) An offender may be accommodated or detained in the same area or unit of the prison as persons who are in prison for the purpose of serving custodial sentences—
 - (a) if it is reasonably necessary for the purposes of rehabilitation, treatment, work, education, general socialisation and other group activities of this kind; or

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- (b) if it is necessary for the safe custody or welfare of the offender or prisoners or the security or good order of the prison; or
 - (c) if the offender has elected to be so accommodated or detained.

116 Relationship to Corrections Act 1986

An offender on a detention order is to be managed under the **Corrections Act 1986** subject to this Part.

**PART 10—MANAGEMENT OF OFFENDERS ON
SUPERVISION ORDERS**

Division 1—Introductory

117 Definition

In this Part, *supervision order* includes interim supervision order.

Division 2—Functions and powers of Adult Parole Board

118 Functions of Adult Parole Board

The Adult Parole Board has the following functions under this Act—

- (a) to monitor compliance with and administer the conditions of a supervision order;
- (b) to give directions and instructions to an offender in accordance with any authorisation given to the Adult Parole Board under a supervision order;
- (c) to make decisions to ensure the carrying into effect of the conditions of supervision orders;
- (d) to make recommendations to the Secretary in relation to applying to a court to review the conditions of supervision orders;
- (e) to review and monitor the progress of offenders on supervision orders;
- (f) any other function conferred on the Adult Parole Board by or under this Act.

119 Directions by Adult Parole Board

If the conditions of a supervision order authorise the Adult Parole Board to give directions to an offender, the Adult Parole Board may give directions to an offender in accordance with that authorisation.

120 Emergency power of direction

- (1) The emergency power of the Adult Parole Board is the power to give directions to an offender to manage the offender in a way that is inconsistent with, or not provided for by the conditions of the supervision order.
- (2) The Adult Parole Board may exercise its emergency power to give a direction to the offender if—
 - (a) there is an imminent risk of harm to the offender or to the community; or
 - (b) accommodation specified by the court as a condition of the order becomes unavailable—

and the Adult Parole Board believes on reasonable grounds that because of the urgency of the situation it is not practicable for an application to be made to the court for a variation of the conditions of the supervision order.

- (3) An emergency direction ceases to have effect 72 hours after it is given.
- (4) If the Adult Parole Board gives a direction under this section, it must notify the Secretary of that direction before it ceases to have effect.

121 Instructions

In addition to its powers to give directions authorised under a supervision order, the Adult Parole Board may give any instructions to an offender that are necessary to give effect to the conditions of or directions under a supervision order and are consistent with that order.

122 Notice of directions or instructions

The Adult Parole Board must notify the offender of any directions or instructions it gives in relation to the offender.

123 Offender may make submissions

- (1) The offender is entitled to make written submissions to the Adult Parole Board about a direction relating to the offender.
- (2) The submissions must be made within 21 days after the notice of the direction is given to the offender.
- (3) In the submissions the offender may specify that he or she wishes to attend a meeting of the Adult Parole Board to be heard in relation to the submissions.

124 Attendance of offender at meetings of Adult Parole Board

- (1) If required by the Adult Parole Board, an offender must attend a meeting of the Board for a purpose relating to the giving of a direction or instruction by the Board.
- (2) An offender who has specified under section 123 that he or she wishes to attend a meeting of the Adult Parole Board to be heard in relation to the submissions is entitled to be present at the part of a meeting of Adult Parole Board at which the Adult Parole Board considers the submissions.

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- (3) At the meeting the offender—
- (a) must be given the opportunity to be heard in relation to the direction; and
 - (b) may ask the reasons for the direction; and
 - (c) may give a response to those reasons.
- (4) For the purposes of this section, an offender may be present before the Adult Parole Board by audio visual link or audio link.
- (5) The Adult Parole Board may hold a meeting of a kind referred to in subsection (2) in the absence of the offender if the Adult Parole Board is satisfied that the offender does not wish to be present at the meeting.
- (6) In this section—
- audio link** means facilities (including telephone) that enable audio communication between persons at different places;
- audio visual link** means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

125 Decision of Adult Parole Board on submissions

The Adult Parole Board must consider the offender's written submissions under section 123 and any response by the offender at a meeting under section 124 and confirm or vary the direction as soon as practicable.

126 Reasons for directions

- (1) The Adult Parole Board must give the offender a statement of reasons for its decision under section 125 as soon as practicable after making the decision.

- (2) At the written request of the offender, the Adult Parole Board must give the offender a statement of reasons for any other decision made by the Adult Parole Board in relation to the offender.
- (3) The request under subsection (2) must be made within 28 days after the decision is made.
- (4) The Adult Parole Board must give the statement of reasons under subsection (2) as soon as practicable, and in any event within 15 working days, after the request is received.
- (5) The statement of reasons must set out—
 - (a) the reasons for the decision; and
 - (b) the findings on material questions of fact that formed the basis of the decision, referring to the evidence or other material on which those findings were based.
- (6) A statement of reasons need not be given under this section if the Adult Parole Board has already given a written statement containing the matters referred to in subsection (5) to the offender (whether as part of the decision or separately).
- (7) The Adult Parole Board is not required to give a statement of reasons to an offender if the chairperson considers that it is not in the public interest to do so having regard to the nature of the evidence or information that would be disclosed by the giving of the statement.

127 Offender may inspect documents with permission of the Adult Parole Board

- (1) An offender, with the permission of the Adult Parole Board, may inspect any document that contains any evidence on which the Adult Parole Board has relied or intends to rely in making a decision to give a direction or instruction to the offender.

- (2) The Adult Parole Board may refuse permission under subsection (1) if the chairperson considers that it is not in the public interest to permit the inspection of the documents, having regard to the nature of the evidence or information that would be disclosed by the inspection.
- (3) An offender may not make a copy of any document inspected by him or her under subsection (1) and must return the document to the Adult Parole Board within the time specified by the Adult Parole Board.

128 Adult Parole Board must notify Secretary of certain matters

If the Adult Parole Board grants permission under section 127 to an offender, the Adult Parole Board, within 7 working days after granting the permission, must notify the Secretary setting out details of the permission granted.

129 Victim submissions

- (1) A person who is a victim (within the meaning of section 30A of the **Corrections Act 1986**) of the offender may make a submission to the Adult Parole Board for consideration by the Adult Parole Board in determining any direction it may give to an offender under the conditions of a supervision order.
- (2) The Adult Parole Board must give notice of a proposed direction to each person included on the victims register established under the **Corrections Act 1986** who is a victim (within the meaning of section 30A of that Act) of the offender.

- (3) The notice must specify—
 - (a) the nature of the direction; and
 - (b) the period within which the victim submission can be made in relation to the direction.
- (4) A person wishing to make a victim submission must do so within the period specified in a notice served on the person under subsection (2).
- (5) A victim submission—
 - (a) must be in writing; and
 - (b) must address matters relating to the person's views about any directions to which the offender should be subject; and
 - (c) must include any other prescribed matters.

130 How victim submissions are dealt with by the Adult Parole Board

- (1) Before giving an offender any direction under a supervision order, the Adult Parole Board—
 - (a) must consider whether it is appropriate for it to consider victim submissions in relation to the matter to be determined having regard to the conditions of the supervision order; and
 - (b) if it considers it appropriate—
 - (i) must consider any victim submission it receives in relation to the matter being determined; and
 - (ii) may, in its absolute discretion, give that submission the weight that the Adult Parole Board sees fit in determining whether to give a direction.
- (2) The Adult Parole Board must not release a victim submission to the offender in relation to whom the direction is being determined unless—

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- (a) the release of the submission is, in the opinion of the Adult Parole Board, essential in the interests of fairness and justice; and
 - (b) before releasing the victim submission, the Adult Parole Board has asked the person who made the victim submission whether he or she—
 - (i) consents to the submission being released to the offender; or
 - (ii) wishes to amend the submission so that it can be released to the offender; or
 - (iii) wishes to withdraw the submission.
- (3) If a person who made a victim submission does not consent to the submission being released to the offender, amend the submission so that it can be released to the offender or withdraw the submission when he or she is asked whether he or she wishes to do so by the Adult Parole Board under subsection (2)(b), the Adult Parole Board—
- (a) must not release the victim submission to the offender; and
 - (b) in considering the victim submission when determining to give a direction, may reduce the weight it would otherwise have given to the submission if the person who made it had complied with subsection (2)(b).
- (4) Despite subsections (2) and (3), the Adult Parole Board may take reasonable steps to disclose to the offender, or the offender's legal representative, the substance of the victim submission if the Adult Parole Board is satisfied that those steps would not reasonably lead to the identification of the victim who made the submission.

131 Urgent review of conditions of supervision order

- (1) This section applies if the Adult Parole Board gives a direction under its emergency power and believes that the management of the offender under that direction should continue for more than 72 hours.
- (2) The Adult Parole Board may recommend to the Secretary that an urgent application be made to the court under Part 5 for a review of the conditions of the supervision order.

132 Report to the court

- (1) This section applies if the Adult Parole Board exercises its emergency power in relation to an offender.
- (2) The Secretary must, within 5 working days after the Adult Parole Board initiates the use of the emergency power, report to the court that made the supervision order in relation to the offender.
- (3) The report must set out—
 - (a) details of the emergency situation; and
 - (b) an explanation as to why the offender could not be managed during the emergency situation consistently with the conditions of the supervision order; and
 - (c) how the emergency power was exercised; and
 - (d) how the emergency situation was resolved.

Division 3—Management of offenders at residential facilities

133 Appointment of residential facilities

- (1) The Governor in Council, by order published in the Government Gazette, may appoint any premises (including part of any building or place)

other than a prison or police gaol to be a residential facility for the purposes of this Act.

- (2) The maximum number of persons to reside in a residential facility is the number (if any) stated in the order.
- (3) The Governor in Council, by order published in the Government Gazette, may revoke the appointment of any premises as a residential facility.
- (4) An order under subsection (1) or (3) comes into operation on its making or on a later date stated in the order.
- (5) The purpose of a residential facility is to provide for one or more of the following—
 - (a) the supervision and case management of offenders on supervision orders;
 - (b) the safe accommodation of offenders on supervision orders;
 - (c) the protection of the community from offenders on supervision orders;
 - (d) the provision of support to offenders to assist them in complying with the conditions of supervision orders.

134 Management of residential facility

- (1) The Commissioner is responsible for the management and good order of a residential facility.
- (2) In managing an offender at a residential facility the Commissioner must give effect to any conditions of the supervision order and any directions given by the Adult Parole Board in accordance with that order.

135 Persons working at residential facility to be subject to direction

A person working at a residential facility—

- (a) as a psychiatrist, registered medical practitioner, dentist, nurse or health worker, is subject to the directions of the Commissioner relating to the good order of the facility; or
- (b) in any other capacity, is subject to the directions of the Commissioner.

136 Duties of supervision officers

- (1) A supervision officer must, when required by the Commissioner, make reports and returns and keep records and give those reports, returns and records to the Commissioner or to any person or body stated in the requirement.
- (2) A supervision officer must, when required by the Commissioner—
 - (a) report to a court concerning an offender or a person who comes before the court for sentencing; and
 - (b) report to the Adult Parole Board concerning an offender.
- (3) A supervision officer working at a residential facility—
 - (a) must not jeopardize the good order of the facility; and
 - (b) must report immediately to the officer in charge of the residential facility anything which might reasonably be thought to jeopardize the good order of the facility.

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- (4) In relation to a supervision officer working at a residential facility as a psychiatrist, registered medical practitioner, dentist, nurse or health worker, subsections (1) and (2) apply as if they referred to reports, returns and records concerning the good order of a residential facility only.
- (5) In this section *supervision officer* includes—
- (a) a person who works at a residential facility as a psychiatrist, registered medical practitioner, dentist, nurse or health worker; or
 - (b) an employee in the teaching service or a member of staff of a TAFE Institute who is working at a residential facility.

137 Supervision officer may give instructions

- (1) In accordance with the supervision order applying to an offender residing at a residential facility, a supervision officer may give to the offender such reasonable instructions as are necessary to ensure—
- (a) the good order of the residential facility; or
 - (b) the safety and welfare of offenders or of staff of the facility or visitors to the facility; or
 - (c) compliance with the conditions of the supervision order; or
 - (d) compliance with any directions given by the Adult Parole Board to the offender in accordance with the supervision order.
- (2) A power to give instructions under subsection (1) includes the power to give instructions to an offender outside the residential facility that are necessary to give effect to the conditions of the supervision order.

138 Offender entitled to enter and leave residential facility

An offender directed to reside at a residential facility is entitled to enter and leave the residential facility at any time subject to—

- (a) the conditions of the supervision order; and
- (b) the directions of the Adult Parole Board; and
- (c) any instructions under section 137; and
- (d) this Division.

139 Visitors

(1) Visitors may enter a residential facility at any time subject to—

- (a) the conditions of the supervision order; and
- (b) the directions of the Adult Parole Board; and
- (c) any reasonable requirements of the Commissioner relating to the good order of the facility or the safety and welfare of offenders or staff at the facility or visitors to the facility; and
- (d) this Division.

(2) A supervision officer may give to a visitor to a residential facility any instructions that are necessary for the management and good order of the facility or the safety and welfare of offenders or staff at the facility or visitors to the facility.

140 Exclusion of visitors for safety reasons

The officer in charge of a residential facility may by order prohibit certain persons from visiting the facility if the officer in charge believes on reasonable grounds that the person's entry into the facility might endanger the good order of the facility or the safety and welfare of offenders or staff at the facility or visitors to the facility.

141 Visitors to give certain information

- (1) A supervision officer may require any person who wishes to enter, or who has entered, a residential facility as a visitor to give the supervision officer information as to—
 - (a) the purpose of the visit or intended visit; and
 - (b) the person's identity, address, occupation and age; and
 - (c) the person's relationship (if any) to any offender the person wishes to visit.
- (2) If when asked, a person does not give the required information to a supervision officer or gives information to a supervision officer that is false or misleading the supervision officer may—
 - (a) if the person has not entered the facility, by order prohibit the person from entering the facility; or
 - (b) if the person has entered the facility, order the person to leave the facility immediately.
- (3) A person ordered to leave a residential facility under this section may only re-enter the facility with the Commissioner's permission.
- (4) If a person disobeys an order to leave a residential facility, a supervision officer may, if necessary, use reasonable force to compel the person to leave the facility.
- (5) A supervision officer who orders a person to leave a residential facility or uses force to compel a person to leave a residential facility must as soon as possible report the fact to the officer in charge of the facility.

142 Search

- (1) The officer in charge of a residential facility may give an order under this section only if the officer in charge reasonably believes that the search is necessary—
 - (a) for the good order of the residential facility; or
 - (b) the safety and welfare of offenders or of staff of the facility or of visitors to the facility; or
 - (c) to monitor an offender's compliance with a supervision order or an interim supervision order; or
 - (d) because the officer in charge reasonably suspects the offender of behaviour or conduct associated with an increased risk of the offender re-offending.
- (2) The officer in charge of a residential facility may, at any time, order a supervision officer to—
 - (a) search any part of, or any thing in, the residential facility; or
 - (b) search and examine a supervision officer, an offender or any other person (other than a judge of the Supreme Court or County Court or a magistrate) in a residential facility; or
 - (c) require a person (other than a judge of the Supreme Court or County Court or a magistrate) wishing to enter a residential facility to submit to a search and examination of the person and anything in the person's possession or under the person's control.
- (3) A search under subsection (2) includes the power to read any correspondence in the possession of an offender that is not—

- (a) sealed in an envelope or container unless the envelope or container has already been opened and resealed after the offender received it; or
- (b) addressed to or from—
 - (i) the Minister, the Secretary, the Commissioner;
 - (ii) a member of Parliament;
 - (iii) a lawyer representing the offender, or from whom the offender is seeking legal advice;
 - (iv) the Ombudsman;
 - (v) the Privacy Commissioner;
 - (vi) the Commissioner of the Victorian Equal Opportunity and Human Rights Commission appointed under section 169 of the **Equal Opportunity Act 2010**;
 - (vii) the Health Services Commissioner;
 - (viii) the Human Rights Commissioner;
 - (ix) any person authorised to act on behalf of a person listed in subparagraphs (iv) to (viii);
- (4) For the purposes of subsection (2) a search of a person means either or both a garment search or a pat-down search.
- (5) To the extent practicable a pat-down search must be conducted by a person of the same sex as the person being searched.
- (6) If a person other than a supervision officer or an offender refuses to submit to a search under this section the officer in charge of the residential

S. 142(3)(b)(vi)
substituted by
No. 16/2010
s. 209(Sch.
item 7.1).

facility may order the person to leave the residential facility immediately.

(7) A supervision officer may, if necessary, use reasonable force to compel a person to obey an order to leave a residential facility.

(8) In this section—

S. 142(8)
def. of
*Equal
Opportunity
and Human
Rights
Commissioner*
repealed by
No. 16/2010
s. 209(Sch.
item 7.2).

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garment search means a search of any article of clothing worn by a person or in the person's possession, where the article of clothing is touched or removed from the person's body;

Health Services Commissioner means the Commissioner as defined in the **Health Services (Conciliation and Review) Act 1987**;

Human Rights Commissioner means the Human Rights Commissioner appointed under the Human Rights and Equal Opportunity Commission Act 1986 of the Commonwealth;

pat-down search means a search of a person where the person's clothed body is touched.

143 Seizure

In carrying out searches under section 142, a supervision officer may seize any thing found in a residential facility, whether in a person's possession or not, which the supervision officer reasonably suspects will compromise—

- (a) the good order or management of the residential facility; or
- (b) the safety and welfare of offenders or of staff of the facility or of visitors to the facility; or
- (c) the welfare or safety of a member of the public; or
- (d) the offender's compliance with the supervision order—

or which the supervision officer reasonably suspects relates to behaviour or conduct associated with an increased risk of the offender re-offending.

144 Register of seized things

- (1) The Commissioner must establish and maintain a register of things seized under section 143 at a residential facility.
- (2) The register for a residential facility must contain for each thing seized—
 - (a) a description of the thing;
 - (b) the name of the person from whom the thing was seized;
 - (c) the name and address of the owner of the thing (if known);
 - (d) the time and place of the seizure;
 - (e) the name and signature of the supervision officer who seized the thing.
- (3) A supervision officer as soon as practicable after seizing a thing under section 143 must inform the officer in charge of the residential facility of the seizure and record the details of the seizure in the register.

145 Photographing

- (1) A supervision officer may at any time take photographs of an offender residing at a residential facility for the purposes of identifying the offender, or of completing records concerning the offender.
- (2) A supervision officer may give to the offender all necessary instructions to ensure the taking of accurate photographs.

146 Supervision officers may use force to enforce instructions in certain circumstances

- (1) A supervision officer may use reasonable force to compel an offender residing at the facility (whether the offender is inside or outside the facility) to obey an instruction if he or she believes on reasonable grounds that the use of force is necessary—
 - (a) to prevent the offender or another person being killed or seriously injured; or
 - (b) to prevent serious damage to property.
- (2) If a supervision officer uses force to compel the person to obey an instruction, he or she must report that fact to the officer in charge of the residential facility as soon as possible.
- (3) The officer in charge of a residential facility must as soon as possible report to the Commissioner any use of force by a supervision officer to compel an offender to obey an instruction that has been reported to the officer in charge.

147 Access to residential facility

- (1) The Commissioner may authorise any person to enter a residential facility.

- (2) An authority under subsection (1) is subject to the conditions determined by the Commissioner and stated in the authority.
- (3) A person who is authorised to enter a residential facility and who, whilst at the facility—
 - (a) contravenes this Act, or the regulations; or
 - (b) contravenes a direction given by the Commissioner; or
 - (c) contravenes a condition to which the authority to enter is subject; or
 - (d) does anything which, in the Commissioner's opinion, threatens the good order of the facility—

must, if ordered by the Commissioner, leave the facility immediately.

Division 4—Management of offenders at other locations

148 Application of Division

This Division applies if an offender is directed or instructed under a supervision order or an interim supervision order to reside at a location other than a residential facility.

149 Management of offender

- (1) The Commissioner is responsible for the management of the offender.
- (2) In managing an offender the Commissioner must give effect to any conditions of the supervision order and any directions given by the Adult Parole Board in accordance with that order.
- (3) The Commissioner may direct a community corrections officer to be responsible for the day to day management of the offender.

150 Community corrections officers to be subject to direction

A community corrections officer who manages the offender is subject to the direction of the Commissioner.

151 Community corrections officer may give instructions

In accordance with the supervision order applying to the offender, a community corrections officer may give to the offender such reasonable instructions as are necessary to ensure—

- (a) compliance with any rehabilitation or treatment plan for the offender; or
- (b) compliance with any directions given by the Adult Parole Board to the offender in accordance with the order.

152 Search

- (1) The Commissioner may give a direction under this section only if the Commissioner—
 - (a) reasonably believes that the search is necessary to monitor an offender's compliance with a supervision order or an interim supervision order; or
 - (b) reasonably suspects the offender of behaviour or conduct associated with an increased risk of the offender re-offending.
- (2) The Commissioner may at any time, direct a community corrections officer to—
 - (a) search that part of the location that is occupied by the offender, and any thing (including any vehicle) belonging to or in the possession of, or under the control of, the offender, at the location; or

- (b) search and examine the offender at the location.
- (3) For the purposes of subsection (2) a search of an offender means either or both a garment search or a pat-down search.
- (4) To the extent practicable a pat-down search must be conducted by a person of the same sex as the offender being searched.
- (5) In this section—

garment search means a search of any article of clothing worn by a person or in the person's possession, where the article of clothing is touched or removed from the person's body;

pat-down search means a search of a person where the person's clothed body is touched.

153 Seizure

In carrying out a search under section 152, a community corrections officer may seize any thing found in the possession or under the control of the offender, which the community corrections officer reasonably suspects—

- (a) will compromise—
 - (i) the welfare or safety of a member of the public; or
 - (ii) the offender's compliance with the supervision order; or
- (b) relates to behaviour or conduct associated with an increased risk of the offender re-offending.

154 Register of seized things

- (1) The Commissioner must establish and maintain a register of things seized under this Division.

- (2) The register must contain for each thing seized—
 - (a) a description of the thing;
 - (b) the name of the person from whom the thing was seized;
 - (c) the name and address of the owner of the thing (if known);
 - (d) the time and place of the seizure;
 - (e) the name and signature of the community corrections officer who seized the thing.
- (3) A community corrections officer as soon as practicable after seizing a thing under section 153 must inform the Commissioner of the seizure and record the details of the seizure in the register.

Division 5—Alcohol and drug testing of offenders

155 Application of Division

This Division applies if a supervision order contains—

- (a) a condition requiring an offender to submit, to breath testing, urinalysis or other test procedures approved by the Secretary for detecting alcohol or drug use; and
- (b) a condition directing the offender to reside at a residential facility or other location.

156 Offender to submit to testing

- (1) At the direction of a relevant officer, the offender must submit to breath testing, urinalysis or other test procedures approved by the Secretary for detecting alcohol or drug use.
- (2) The relevant officer may only give a direction under this section if the officer has reasonable grounds to suspect that the offender has breached

a condition of the supervision order by consuming alcohol or drugs.

157 Secretary to approve test procedures

- (1) The Secretary may approve test procedures for the purpose of this Division.
- (2) The Secretary must publish a notice of the approved test procedures in the Government Gazette.

158 Taking of samples of drugs and alcohol

- (1) A relevant officer may take for analysis a sample of a substance that the officer believes to be a drug of dependence or alcohol that is found in the possession of an offender and that was not lawfully in the possession of the offender.
- (2) The relevant officer who takes a sample of a substance that the officer believes to be a drug of dependence or alcohol must as soon as possible advise the relevant officer in charge of that fact.
- (3) The relevant officer in charge must ensure that the sample is—
 - (a) sealed and labelled in accordance with the approved test procedures; and
 - (b) delivered to an appropriate testing agency for analysis in accordance with the approved test procedures.
- (4) The relevant officer in charge must maintain a register in accordance with the approved test procedures of each test carried out in respect of offenders at the residential facility or other location.
- (5) In this section—

drug of dependence has the same meaning as it has in the **Drugs, Poisons and Controlled Substances Act 1981**;

relevant officer means—

- (a) in the case of an offender directed to reside at a residential facility, a supervision officer; or
- (b) in the case of an offender directed to reside at another location, a community corrections officer who has day to day management of the offender;

relevant officer in charge means—

- (a) in the case of a residential facility, the officer in charge of the residential facility; or
 - (b) in the case of any other location, the Commissioner.
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PART 11—BREACH OF SUPERVISION ORDER

Division 1—Introductory

159 Definition

In this Part, *supervision order* includes interim supervision order.

Division 2—Breach of order

160 Offence to breach order

- (1) An offender must not, without reasonable excuse, fail to comply with a condition of a supervision order.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) This section does not apply to a failure by the offender to comply with a condition relating to medical treatment.

Example

A requirement to take medication.

161 Adult Parole Board may inquire into breach

- (1) The Adult Parole Board may make any inquiries that the Board considers are appropriate and reasonable in order to inquire into any alleged breach of the conditions of a supervision order.
- (2) For the purposes of the inquiry, the Adult Parole Board may require the offender to attend before it so that it may make inquiries into the alleged breach.
- (3) Subject to subsection (4), the Adult Parole Board must provide to the offender any report or other information on which the Board intends to rely in making a determination.

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- (4) The Adult Parole Board is not required to give a report or information to an offender under this section if the chairperson considers that it is not in the public interest to do so having regard to the nature of the information that would be disclosed by the giving of the report or information.
 - (5) Subject to subsection (6), the Adult Parole Board must give the offender the opportunity to respond to any report or information provided under subsection (3).
 - (6) The Adult Parole Board may complete its inquiry without hearing the offender if—
 - (a) the offender refuses to attend when requested; or
 - (b) the Board considers that it must complete its inquiry as soon as practicable; or
 - (c) the Board considers it appropriate to do so in the circumstances.

162 Seriousness of breach

- (1) The Adult Parole Board may consider that conduct by an offender is a serious breach of the conditions of a supervision order if it—
 - (a) creates a risk to the safety of the community; or
 - (b) is a repeated failure to comply with any condition; or
 - (c) may increase the offender's risk of committing a relevant offence or is preparatory to a relevant offence; or
 - (d) seriously compromises the offender's rehabilitation or treatment.
- (2) Nothing in subsection (1) limits the circumstances in which a breach of a supervision order may be considered to be a serious breach.

163 Action by Adult Parole Board in respect of breach

If after an inquiry under this Part, the Adult Parole Board is satisfied that the offender has breached a condition of the supervision order, the Board, taking into account the seriousness of the breach, may do one or more of the following—

- (a) take no action;
- (b) give a formal warning to the offender;
- (c) vary any directions that it has given to the offender under any condition of the order;
- (d) recommend that the Secretary apply to the court under Part 5 to review the conditions of the supervision order;
- (e) recommend to the Secretary to refer the matter to the Director of Public Prosecutions to consider whether or not to apply to the Supreme Court for a detention order in respect of the offender;
- (f) recommend that the Secretary bring proceedings in respect of the offence.

Division 3—Holding power

164 Criteria for exercise of powers

A member of the police force may exercise a power under this Division in relation to an offender only if there are reasonable grounds to suspect that there is an imminent risk that the offender will breach a condition of a supervision order.

165 Detention power

- (1) The member of the police force may, using the force that is reasonably necessary, apprehend and detain the offender.

- (2) The offender may be detained at a police station, but may be detained in a police gaol only if the officer considers it necessary to do so for the protection of any person or property, or to prevent the offender from escaping from detention.

Note

Section 49E of the **Summary Offences Act 1966** makes it an offence to escape or attempt to escape from a place where a person is being lawfully detained.

- (3) Nothing in section 479C of the **Crimes Act 1958** applies to an offender who escapes or attempts to escape from detention under this Division.

166 Search of person

- (1) This section applies if a member of the police force apprehends and detains an offender under this Division.
- (2) A member of the police force may search the offender and any vehicle, package or thing in the offender's possession if the member suspects, on reasonable grounds, that the offender has in the offender's possession any object that may cause injury or damage or may be used to escape.
- (3) To remove doubt, for the purposes of subsection (2) a suspicion that searching the offender or any vehicle, package or thing in the offender's possession would provide evidence that an offence has been or is being committed is not by itself sufficient grounds for conducting the search.

167 Procedural requirements for offender apprehended and detained

- (1) This section applies if a member of the police force apprehends and detains an offender under this Division.

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- (2) A member of the police force must—
- (a) inform the offender that the offender—
 - (i) may communicate or attempt to communicate with a friend or relative to inform the friend or relative of the person's whereabouts; and
 - (ii) may communicate or attempt to communicate with a legal practitioner; and
 - (b) give the offender a notice containing the prescribed information about the offender's rights and responsibilities under this Division.
- (3) A member of the police force must comply with subsection (2) as soon as practicable after the offender is apprehended and detained.
- (4) If the offender wishes to communicate with a friend, relative or legal practitioner, a member of the police force must—
- (a) afford the offender reasonable facilities as soon as practicable to enable the person to do so; and
 - (b) allow the offender's legal practitioner or a clerk of the legal practitioner to communicate with the offender in circumstances in which, as far as practicable, the communication will not be overheard.
- (5) If the offender does not have sufficient knowledge of the English language to enable the offender to understand why the offender is subject to detention, a member of the police force must arrange for the offender to have access to a competent interpreter.

168 Duration of holding powers

The maximum period for which an offender may be detained under this Division is 10 hours after the detention begins.

169 Notice to Secretary

- (1) A member of the police force must notify the Secretary immediately if an offender is detained under this Division.
- (2) The Secretary must notify the Adult Parole Board as soon as practicable of the detention of an offender under this Division.

170 No questioning during holding period

While an offender is detained under this Division, a member of the police force must not interview or question the offender in relation to any offence or alleged offence or in relation to any breach or alleged breach of a condition of a supervision order.

Division 4—Enforcement of offence

171 Powers of arrest

- (1) A member of the police force may arrest an offender if the member reasonably suspects that the offender has breached one or more of the conditions of a supervision order or an interim supervision order.
- (2) An offender who is arrested under this section must as soon as practicable be remanded in custody or released on bail in accordance with the requirements of the **Bail Act 1977**.
- (3) Any period that the offender was held under Division 3 must be taken into account in determining whether the offender should be released on bail.

172 Proceedings for offence

- (1) Proceedings for an offence against section 160 may only be brought by the Secretary or a member of the police force by the filing of a charge-sheet.
- (2) The person bringing the proceedings must give the offender at least 14 days notice of his or her intention to file a charge-sheet charging him or her with an offence against section 160.
- (3) The Secretary may dispense with the period of notice required by subsection (2) if the Secretary considers that a charge-sheet should be filed without delay, having regard to the seriousness of the alleged breach of the order.
- (4) Despite anything to the contrary in the **Criminal Procedure Act 2009**—
 - (a) on the filing of a charge-sheet referred to in subsection (1), an application under section 12(1) of that Act for the issue of a summons to answer to the charge or a warrant to arrest may be made to the registrar at any venue of the Magistrates' Court;
 - (b) a summons to answer to the charge issued on an application referred to in paragraph (a) must direct the accused to attend to answer the charge at the court which made the supervision order;
 - (c) a warrant to arrest issued on an application referred to in paragraph (a) authorises the person to whom it is directed to bring the accused when arrested before a bail justice or before the court which made the supervision order to be dealt with according to law.

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- (5) The Supreme Court or the County Court may, if it made the supervision order or interim supervision order, grant a summary hearing of an offence against section 160.
 - (6) Subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing of summary offences applies so far as is appropriate to the hearing of the offence under subsection (5).
 - (7) Subsections (5) and (6) apply despite anything to the contrary in any Act or rule of law (other than the Charter of Human Rights and Responsibilities).
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PART 12—CHANGE OF NAME

173 Application of Part

This Part applies despite anything to the contrary in the **Births, Deaths and Marriages Registration Act 1996**.

174 Definitions

In this Part—

change of name application means an application by or on behalf of an offender for registration of a change of the offender's name;

offender means an offender who is subject to a supervision order or an interim supervision order;

Victorian Registrar means Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**.

175 Applications for change of name by or on behalf of an offender

- (1) In this section, *Registrar* means—
 - (a) the Victorian Registrar; or
 - (b) an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages.
- (2) An offender must not make a change of name application to a Registrar without having first obtained the written approval of the Adult Parole Board.

Penalty: 5 penalty units.

- (3) A person must not make a change of name application to a Registrar on behalf of an offender unless the written approval of the Adult Parole Board is first obtained.

Penalty: 5 penalty units.

176 Approval by Adult Parole Board

- (1) Subject to subsection (2), the Adult Parole Board may only approve a change of name application if the Adult Parole Board is satisfied that the change of name is in all the circumstances necessary or reasonable.
- (2) The Adult Parole Board must not approve a change of name application if the Adult Parole Board is satisfied that the change of name would, if registered, be reasonably likely—
- (a) to be regarded as offensive by a victim of crime or an appreciable sector of the community; or
 - (b) to be used to evade or hinder supervision of the offender during the period of the supervision order or interim supervision order.

177 Approval to be notified in writing

If the Adult Parole Board approves a change of name application, the Adult Parole Board must—

- (a) as soon as practicable, give written notice of the approval to the person who made the application; and
- (b) if the offender consents, give a copy of the written notice of approval to the Victorian Registrar.

178 Registration of change of name

- (1) The Victorian Registrar must not register a change of name under the **Births, Deaths and Marriages Registration Act 1996** if—
 - (a) the Victorian Registrar knows that—
 - (i) the application for the change of name is made by or on behalf of an offender; and
 - (ii) the change of name relates to the name of the offender; and
 - (b) the Victorian Registrar has not received a copy of the notice of approval of the Adult Parole Board to the application under section 177.
- (2) If the Victorian Registrar does not register a change of name because of the operation of subsection (1), the Victorian Registrar must give written notice of the application to the secretary of the Adult Parole Board.

179 Registrar may correct Register

Without limiting section 43 of the **Births, Deaths and Marriages Registration Act 1996**, the Victorian Registrar may correct the Register under that section if—

- (a) the name of an offender on the Register was changed because of a change of name application; and
- (b) the Adult Parole Board has not approved that change of name application under section 176.

180 Information-sharing between the Secretary and the Victorian Registrar

Despite an order made under section 184 or any other law to the contrary—

- (a) the Secretary may notify the Victorian Registrar of the name (including any other name by which he or she is or has previously been known), date of birth and residential address or addresses of any offender; and
- (b) if the Secretary has given notification under paragraph (a) in respect of an offender, the Secretary must notify the Victorian Registrar as soon as practicable of the expiry of that offender's supervision order, detention order or interim order.

181 Notice to Secretary

The Adult Parole Board must give written notice to the Secretary about any application for change of name it receives and of any approval it gives under this Part.

**PART 13—RESTRICTION AND SHARING OF
INFORMATION**

Division 1—Suppression of publication

182 Offence to publish certain information

- (1) A person must not publish or cause to be published—
- (a) any evidence given in a proceeding before a court under this Act; or
 - (b) the content of any report or other document put before the court in the proceeding; or
 - (c) any information that is submitted to the court that might enable a person (other than the offender) who has attended or given evidence in the proceeding to be identified; or
 - (d) any information that might enable a victim of a relevant offence committed by the offender to be identified—

unless the court authorises that publication under section 183.

Penalty: 600 penalty units in the case of a body corporate;

120 penalty units or imprisonment for 1 year or both in any other case.

- (2) A member of the police force may publish the identity and location of an offender—
- (a) to the CrimTrac Agency established as an Executive Agency by the Governor-General by order under section 65 of the Public Service Act 1999 of the Commonwealth, for entry on the Australian National Child Offender Register; and

S. 182(3)
inserted by
No. 64/2010
s. 27.

- (b) in the course of law enforcement functions;
and
 - (c) in the execution of a warrant referred to in
section 172 or the arrest or apprehension of
an offender under section 171 or 172.
- (3) Despite subsection (1) a media organisation may
publish the identity and location of an offender if
the information is published—
- (a) at the request of a member of the police force
that disclosed that information; and
 - (b) for the purposes of subsection (2)(b)
or (2)(c).

S. 182(4)
inserted by
No. 64/2010
s. 27.

- (4) In this section—
- media organisation* means a person or body that
engages in journalism.

183 Publication order

- (1) In any proceedings before a court under this Act,
the court, if satisfied that exceptional
circumstances exist, may make an order
authorising the publication of any material
referred to in section 182(1).
- (2) Nothing in section 182 prevents the court from
publishing the reasons for a decision under this
section.

184 Restriction on identification of offender

- (1) In any proceedings before a court under this Act,
the court, if satisfied that it is in the public interest
to do so, may order that any information that
might enable an offender or his or her
whereabouts to be identified must not be
published except in the manner and to the extent
(if any) specified in the order.

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- (2) An order under this section may be made on the application of the offender or on the court's own initiative.

185 Matters to which court must have regard

In making a decision under section 183 or 184, the court must have regard to the following—

- (a) whether the publication would endanger the safety of any person;
- (b) the interests of any victims of the offender;
- (c) whether the publication would enhance or compromise the purposes of this Act.

186 Offence to publish information

A person must not publish or cause to be published any material in contravention of an order under this Division.

Penalty: 600 penalty units in the case of a body corporate;
120 penalty units or imprisonment for 1 year or both in any other case.

Division 2—Recording and sharing of information

187 Record of eligible offenders

- (1) The Secretary may establish and maintain records of eligible offenders.
- (2) Information in the record in respect of each eligible offender may include information relating to—
 - (a) the name and location of the offender;
 - (b) any unique identifying numbers allocated to the offender in the criminal justice system;

- (c) the sentence currently being served by the offender and any previous offences and sentences, and the ages of any victims of the offender;
- (d) any assessments provided to the Secretary as to the offender's risk of re-offending.

188 Additional information to be obtained by Secretary

- (1) The Secretary may request any information (including medical information) kept in relation to an offender from—
 - (a) the Governor of a prison;
 - (b) the Commissioner;
 - (c) the Director of Public Prosecutions;
 - (d) a Regional Manager within the meaning of the **Corrections Act 1986**;
 - (e) an officer within the meaning of Part 9 of the **Corrections Act 1986**.
- (2) The request must be made for one or more of the following purposes—
 - (a) making the information available for use in preparing—
 - (i) an assessment report in relation to the offender; or
 - (ii) a progress report in relation to the offender; or
 - (iii) any other report requested by a court in relation to the offender for the purposes of this Act;
 - (b) the carrying out of any of the Secretary's functions or duties under this Act.

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- (3) The person to whom a request is made under subsection (1) must provide the information to the Secretary.
 - (4) The Secretary may make the information available for the use of a person preparing a report in accordance with subsection (2).

189 Sharing of information

- (1) A relevant person may divulge or communicate to another relevant person any information obtained by the person if the person divulging or communicating that information believes on reasonable grounds that to do so is necessary to enable the other relevant person to carry out functions under this Act or a relevant Act, including—
 - (a) preparing assessment reports, progress reports or any other reports or documents required by this Act;
 - (b) making or responding to an application under this Act;
 - (c) managing an offender under this Act.
- (2) Section 182 does not apply to the disclosure of information under this section.
- (3) Nothing in this section limits or affects any requirement imposed by any other provision of this Act for the Secretary to notify the Adult Parole Board of any matter.
- (4) In this section—

relevant Act means—

 - (a) the **Disability Act 2006**; or
 - (b) the **Housing Act 1983**; or
 - (c) the **Mental Health Act 1986**; or

(d) the **Sex Offenders Registration Act 2004**; or

(e) the **Working with Children Act 2005**;

relevant person means—

(a) any member, or the secretary, of the Adult Parole Board; or

(b) the Secretary; or

(c) any person employed in the Department; or

(d) any person who deliver services on behalf of the Department; or

(e) the Secretary to the Department of Health; or

(f) any person employed in the Department of Health; or

(g) any person who delivers services on behalf of the Department of Health; or

(h) the Secretary to the Department of Human Services; or

(i) any person employed in the Department of Human Services; or

(j) any person who delivers services on behalf of the Department of Human Services; or

(k) the Chief Commissioner of Police; or

(l) a member of the police force.

190 Guidelines for disclosure

- (1) A relevant person must develop guidelines in relation to the accessing of information under section 189 that attempt to ensure that access to the information is restricted to the greatest extent that is possible without interfering with the

purpose of this Act or a relevant Act referred to in section 189.

- (2) In this section, *relevant person* means—
- (a) the Chairperson of the Adult Parole Board;
or
 - (b) the Secretary; or
 - (c) the Secretary to the Department of Health; or
 - (d) the Secretary to the Department of Human Services; or
 - (e) the Chief Commissioner of Police.

191 Disclosure of information to responsible persons

- (1) The Secretary may disclose any information relating to an application under this Act in respect of an offender to a responsible person.
- (2) In this section, *responsible person* means a person who is a guardian of the offender or otherwise legally responsible for the care of the offender.

192 Sharing information with healthcare providers

- (1) The Secretary may disclose to a person providing health care to an offender any condition of a supervision order that may be relevant to the provision of health care.
- (2) In this section, *health care* includes care provided—
- (a) by a public hospital, denominational hospital multi-purpose service or registered community health service within the meaning of the **Health Services Act 1988**;
or
 - (b) by a rehabilitation centre; or
 - (c) by an aged care facility; or

Serious Sex Offenders (Detention and Supervision) Act 2009

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Part 13—Restriction and Sharing of Information

s. 192

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- (d) by a disability service within the meaning of the **Disability Act 2006**; or
 - (e) by an approved mental health service within the meaning of the **Mental Health Act 1986**.
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PART 14—GENERAL

193 Service of documents

- (1) A document required or permitted by or under this Act to be served may be served—
 - (a) in the case of service on an offender, by delivering it personally to the offender; or
 - (b) in the case of service on the Secretary, by sending it by post addressed to the Secretary at the principal office of the Department; or
 - (c) in the case of the Adult Parole Board, by sending it by post to the secretary of the Adult Parole Board; or
 - (d) in the case of the Director of Public Prosecutions, by sending it by post addressed to the Director.
- (2) If it appears to the court to which an application under Part 2, 3, 4 or 5 is made, by evidence on oath or by affidavit, that personal service on the offender cannot be, or is unlikely to be effected promptly, the court may make an order for substituted service.
- (3) A document that is not required to be served personally on an offender under this Act may be given to the offender by posting the document to the offender or by delivering it to the offender's legal representative by post, document exchange, facsimile transmission or, with the consent of the recipient, email.

194 Costs

Except where the court considers exceptional circumstances exist, the parties to any proceedings on an application under this Act must each bear their own costs.

195 Certificate of available resources

- (1) The Secretary may prepare a certificate of available resources in respect of an offender for the purposes of this Act.
- (2) The certificate of available services must—
 - (a) state whether or not there are facilities or services available for the accommodation, care, monitoring, rehabilitation or treatment of the offender; and
 - (b) if there are, give an outline of those facilities or services.
- (3) If there are no facilities or services available, the certificate may contain any other options the Secretary considers it appropriate for the court to consider in making the proposed order or in refusing to make any order.

196 Delegation by Secretary

The Secretary may by instrument delegate to any employee of the Department of Justice any of the Secretary's powers and functions under this Act other than this power of delegation.

197 Delegation by Commissioner

The Commissioner may by instrument delegate to any employee of the Department of Justice any of the Commissioner's powers and functions under this Act other than this power of delegation.

198 Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

199 Transitional provisions

Schedule 2 has effect.

**PART 15—REPEAL AND CONSEQUENTIAL AMENDMENT
OF OTHER ACTS**

**Division 1—Repeal of Serious Sex Offenders Monitoring
Act 2005**

**200 Repeal of Serious Sex Offenders Monitoring
Act 2005**

The **Serious Sex Offenders Monitoring Act 2005** is repealed.

See:
Act No.
1/2005.
Reprint No. 2
as at
3 June 2008
and
amending
Act No.
5/2009.
LawToday:
www.
legislation.
vic.gov.au

Division 2—Amendments to Corrections Act 1986

201 Offender in legal custody of Secretary

(1) In section 6(d) of the **Corrections Act 1986**, for "Victoria." **substitute** "Victoria; or".

(2) After section 6(d) of the **Corrections Act 1986** **insert—**

"(e) a detention order or interim detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**."

(3) At the end of section 6A of the **Corrections Act 1986** **insert—**

"(4) A person in respect of whom a detention order or an interim detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** has been made is deemed to be in the legal custody of the Secretary following the occurrence of either event set out in subsection (1)(b)."

See:
Act No.
117/1986.
Reprint No. 8
as at
2 April 2009
and
amending
Act No.
55/2009.
LawToday:
www.
legislation.
vic.gov.au

- (4) In section 6B(1)(a) of the **Corrections Act 1986** after "custody" **insert** "under a detention order or an interim detention order under the **Serious Sex Offenders (Detention and Supervision) Act 2009** or".

202 Information for victims

- (1) In section 30A(1) of the **Corrections Act 1986**—

- (a) **insert** the following definitions—

"detention order means a detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim detention order under that Act;

supervision order means a supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim supervision order under that Act;"

- (b) in the definition of *relevant offence*, for "**Serious Sex Offenders Monitoring Act 2005**" substitute "**Serious Sex Offenders (Detention and Supervision) Act 2009**";
- (c) in the definition of *victim*, in paragraph (d)(i), after "an extended supervision order" (wherever occurring) **insert** ", a supervision order or a detention order".

- (2) In section 30A(2AA) of the **Corrections Act 1986**—

- (a) after "an extended supervision order" (wherever occurring) **insert** ", a supervision order or a detention order"; and
- (b) in paragraph (b) **omit** "or renewed";

(c) after paragraph (b) **insert**—

"(ba) if a supervision order or detention order is made or renewed—

(i) the date on which it commences, the period of the order and any instructions or directions, or any variation of the instructions or directions, given to the offender by the Adult Parole Board under section 119, 120(2) or 121 the **Serious Sex Offenders (Detention and Supervision) Act 2009**;

(ii) details of any changes affecting the operation of the order;"

(d) in paragraph (c), after "supervision order" **insert** ", supervision order or detention order".

(3) After section 30A(2AB) of the **Corrections Act 1986** **insert**—

"(2AC) Subsection (2AA) applies—

(a) despite an order made under section 183 of the **Serious Sex Offenders (Detention and Supervision) Act 2009**; and

(b) despite sections 182 and 188 of the **Serious Sex Offenders (Detention and Supervision) Act 2009**."

203 Inclusion on victims register

(1) In section 30C(3) of the **Corrections Act 1986**, after "an extended supervision order" (wherever occurring) **insert** ", a supervision order or a detention order".

- (2) In section 30C(4) of the **Corrections Act 1986**, after "relevant extended supervision order" **insert** ", supervision order or detention order".

204 Release of information to family members

In section 30G(b) of the **Corrections Act 1986**, after "an extended supervision order" (wherever occurring) **insert** ", a supervision order or detention order".

205 Membership of Adult Parole Board

For section 61(2)(d) of the **Corrections Act 1986** **substitute—**

- "(d) one or more persons appointed by the Governor in Council as full-time members; and".

206 Divisions of Adult Parole Board

- (1) In section 64(2) of the **Corrections Act 1986** for "A division" **substitute** "Subject to section 64A, a division".
- (2) In section 64(3) of the **Corrections Act 1986** for "The chairperson" **substitute** "Subject to section 64A, the chairperson".

207 New section 64A inserted

After section 64 of the **Corrections Act 1986** **insert—**

"64A Detention and Supervision Order division

- (1) There is to be a Detention and Supervision Order division (***DSO division***) of the Adult Parole Board.
- (2) The chairperson may determine a number of members of the Board (the ***DSO panel***) who are eligible to sit as members of the DSO division.

- (3) The Secretary is not eligible to sit as a member of the DSO division.
- (4) The chairperson may select 3 members of the DSO panel to constitute the DSO division from time to time.
- (5) At least one of the members of the DSO division must be a Judge, retired Judge, Magistrate or retired Magistrate.
- (6) The chairperson may select a member of the DSO division to be the chairperson or acting chairperson of the division.
- (7) The chairperson or acting chairperson of the DSO division may determine the times and places that the division is to meet.
- (8) A question is not to be decided at a meeting of the DSO division unless the chairperson, or acting chairperson, and 2 other members of the division are present.

Note

Section 6 of the **Serious Sex Offenders (Detention and Supervision) Act 2009** provides that the DSO division is to exercise the powers and carry out the functions of the Adult Parole Board under that Act."

208 Meetings of Adult Parole Board

- (1) In section 66(1) of the **Corrections Act 1986** for "The Board" **substitute** "Subject to section 64A, the Board".
- (2) In section 66(5) of the **Corrections Act 1986** for "A question" **substitute** "Subject to section 64A, a question".

209 Functions of Board

After section 69(1)(ab) of the **Corrections Act 1986** insert—

"(ac) the **Serious Sex Offenders (Detention and Supervision) Act 2009**; and".

210 Secretary to provide assistance to Board

At the end of section 70 of the **Corrections Act 1986** insert—

"(2) Without limiting subsection (1), the Secretary must provide such employees of the Department of Justice and such other assistance to the Board as is necessary to assist the Board in carrying out its functions under the **Serious Sex Offenders (Detention and Supervision) Act 2009**."

211 Reports

(1) After section 72(1)(be) of the **Corrections Act 1986** insert—

"(bf) the operation of the **Serious Sex Offenders (Detention and Supervision) Act 2009** during that period, including—

- (i) details of the number of persons in respect of whom a detention order or interim detention order was made during that period; and
- (ii) details of the number of persons in respect of whom a supervision order or interim supervision order was made during that period; and
- (iii) details of the number of persons directed during that period to reside in a residential facility; and

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- (iv) details of the number of persons in respect of whom an emergency power was exercised under Part 10 of that Act during that period; and
 - (v) details of the number of offenders who were required to comply with electronic monitoring under a supervision order or an interim supervision order; and
 - (vi) details of any breaches of conditions of a supervision order or interim supervision order by offenders and the actions taken by the Adult Parole Board in respect of those breaches; and
 - (vii) details of the number of detention orders or supervision orders completed during the period; and
 - (viii) the activities of the Adult Parole Board during that period; and".
- (2) After section 72(4) of the **Corrections Act 1986** insert—
- "(4A) When required by the Minister, the Board must give to the Minister a report and recommendations concerning a person who at the time of the report—
- (a) is serving a sentence of imprisonment; or
 - (b) is the subject of a detention order or interim detention order or supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**".

- (3) In section 72(5) of the **Corrections Act 1986** after "**Serious Sex Offenders Monitoring Act 2005**" insert "or the **Serious Sex Offenders (Detention and Supervision) Act 2009**".

212 Officers subject to Board's directions

After section 73(2) of the **Corrections Act 1986** insert—

- "(3) The employees provided under section 70 to assist the Adult Parole Board in carrying out functions under the **Serious Sex Offenders (Detention and Supervision) Act 2009** are subject to the directions of the Board in carrying out those functions."

213 Secretary may direct offender to work

For section 84H(1) of the **Corrections Act 1986** substitute—

- "(1) The Secretary may direct any prisoner or offender other than—
- (a) a prisoner on remand; or
 - (b) a prisoner who is a person in respect of whom a detention order or an interim detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** has been made—

to work in any prison industry or work program approved by the Secretary."

214 Definitions

In section 104E of the **Corrections Act 1986**, for the definition of *monitored person substitute*—

"monitored person means a person who is subject to—

- (a) an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**; or
- (b) a supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**;"

215 Substitution of section 104F

For section 104F of the **Corrections Act 1986** substitute—

"104F Application of this Division

- (1) This Division applies if a relevant person or body instructs or directs a monitored person to attend a community corrections centre for the purposes of that Act.
- (2) In this section, *relevant person or body* means—
 - (a) in the case of a person who is subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**, the Secretary, acting under section 16(1) of the **Serious Sex Offenders Monitoring Act 2005**; or
 - (b) in the case of a person who is subject to a supervision order or interim supervision order under the **Serious**

Sex Offenders (Detention and Supervision) Act 2009, the Adult Parole Board, acting under a condition of that order imposed under section 16(2)(b) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**."

216 Photographing

For section 104K(3) of the **Corrections Act 1986** substitute—

- "(3) Any direction given under subsection (2) is deemed to be—
- (a) in the case of a person who is subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**, a lawful direction of the Secretary under section 16(1) of that Act for the purposes of section 15(3) of that Act; or
 - (b) in the case of a person who is subject to a supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**, a lawful direction of the Adult Parole Board given under section 119 of that Act."

217 Substitution of section 104L

For section 104L of the **Corrections Act 1986** substitute—

"104L Application of this Division

- (1) This Division applies if a relevant person or body instructs or directs a monitored person to receive visits from an officer for the purposes of that Act.

- (2) In this section, *relevant person or body* means—
- (a) in the case of a person who is subject to an extended supervision order or interim extended supervision order under the **Serious Sex Offenders Monitoring Act 2005**, the Secretary, acting under section 16(1) of the **Serious Sex Offenders Monitoring Act 2005**; or
 - (b) in the case of a person who is subject to a supervision order or interim supervision order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**, the Adult Parole Board, acting under a condition imposed under section 16(2)(d) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**."

218 Regional Manager to ensure that officers have access to certain information

- (1) In section 104N(1) of the **Corrections Act 1986**, after "this Act" insert ", the **Serious Sex Offenders (Detention and Supervision) Act 2009**".
- (2) In section 104N(2) of the **Corrections Act 1986**, after "the regulations" insert ", the **Serious Sex Offenders (Detention and Supervision) Act 2009**".

Division 3—Amendment of other Acts

219 Consequential amendments

On the coming into operation of an item in Schedule 3, the Act specified in the heading to that item is amended as set out in that item.

SCHEDULES

SCHEDULE 1

Section 3

RELEVANT OFFENCES

- 1 An offence against the **Crimes Act 1958** that involves sexual penetration (within the meaning given by section 35(1) of the **Crimes Act 1958**).

Note

Item 1 covers any offence against the **Crimes Act 1958** that involves sexual penetration including rape (section 38), incest (section 44), sexual penetration of child under 16 (section 45(1)), sexual penetration of 16 or 17 year old (section 48(1)), sexual penetration of person with a cognitive impairment by providers of medical or therapeutic services (section 51(1)) and sexual penetration of person with a cognitive impairment by providers of special programs (section 52(1)).

- 2 An offence against section 38A of the **Crimes Act 1958** (compelling sexual penetration).
- 3 An offence against section 47A of the **Crimes Act 1958** (persistent sexual abuse of child under the age of 16).
- 4 An offence against section 49A of the **Crimes Act 1958** (facilitating sexual offences against children).
- 5 An offence against section 39 of the **Crimes Act 1958** (indecent assault).
- 6 An offence against section 40(1) of the **Crimes Act 1958** (assault with intent to rape).
- 7 An offence against section 47(1) of the **Crimes Act 1958** (indecent act with child under the age of 16).
- 8 An offence against section 49(1) of the **Crimes Act 1958** (indecent act with 16 or 17 year old child).
- 9 An offence against section 51(2) of the **Crimes Act 1958** (indecent act with person with a cognitive impairment by providers of medical or therapeutic services).

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- 10 An offence against section 52(2) of the **Crimes Act 1958** (indecent act with person with a cognitive impairment by providers of special programs).
- 11 An offence against section 53 of the **Crimes Act 1958** (administration of drugs etc.).
- 12 An offence against section 54 of the **Crimes Act 1958** (occupier etc. permitting unlawful sexual penetration).
- 13 An offence against section 55 of the **Crimes Act 1958** (abduction or detention).
- 14 An offence against section 56 of the **Crimes Act 1958** (abduction of child under the age of 16).
- 15 An offence against section 57 of the **Crimes Act 1958** (procuring sexual penetration by threats or fraud).
- 16 An offence against section 58 of the **Crimes Act 1958** (procuring sexual penetration of a child).
- 17 An offence against section 59 of the **Crimes Act 1958** (bestiality).
- 18 An offence against section 60AB of the **Crimes Act 1958** (sexual servitude).
- 19 An offence against section 60AC of the **Crimes Act 1958** (aggravated sexual servitude).
- 20 An offence against section 60AD of the **Crimes Act 1958** (deceptive recruiting for commercial sexual services).
- 21 An offence against section 60AE of the **Crimes Act 1958** (aggravated deceptive recruiting for commercial sexual services).
- 22 An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.).
- 23 An offence against section 68(1) of the **Crimes Act 1958** (production of child pornography).
- 24 An offence against section 69 of the **Crimes Act 1958** (procurement of minor for child pornography).

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- 25 An offence against section 70(1) of the **Crimes Act 1958** (possession of child pornography).
- 26 An offence against section 70AC of the **Crimes Act 1958** (sexual performance involving a minor).
- 27 An offence against section 76 of the **Crimes Act 1958** (burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault.
- 28 An offence against section 77 of the **Crimes Act 1958** (aggravated burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault.
- 29 An offence against section 5(1) of the **Sex Work Act 1994** (causing or inducing a child to take part in sex work). Sch. 1 item 29 amended by No. 63/2010 s. 81(Sch. item 11.1).
- 30 An offence against section 6(1) of the **Sex Work Act 1994** (obtaining payment for sexual services provided by a child). Sch. 1 item 30 amended by No. 63/2010 s. 81(Sch. item 11.2).
- 31 An offence against section 7(1) of the **Sex Work Act 1994** (agreement for provision of sexual services by a child). Sch. 1 item 31 amended by No. 63/2010 s. 81(Sch. item 11.2).
- 32 An offence against section 11(1) of the **Sex Work Act 1994** (allowing child to take part in sex work). Sch. 1 item 32 amended by No. 63/2010 s. 81(Sch. item 11.3).
- 33 An offence against section 57A of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** (publication or transmission of child pornography).
- 34 An offence against a provision of an Act amended or repealed before the commencement of this Act of which the necessary elements at the time it was committed consisted of elements that constitute any of the offences referred to in items 1 to 33.

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- 35 Without limiting item 34, an offence referred to in paragraph (ab), (ac), (b), (c), (d) or (e) of clause 1 of Schedule 1 to the **Sentencing Act 1991**.
- 36 An offence against section 50BA, 50BB, 50DA or 50DB of the Crimes Act 1914 of the Commonwealth (offences involving sexual intercourse outside Australia with child under the age of 16).
- 37 An offence against section 50BC or 50BD of the Crimes Act 1914 of the Commonwealth.
- 38 An offence against section 270.6 or 270.7 of the Criminal Code of the Commonwealth.
- 39 An offence against section 271.4 (trafficking in children) or section 271.7 (domestic trafficking in children) of the Criminal Code of the Commonwealth in circumstances where the purpose of the exploitation is to provide sexual services within the meaning of that section.
- 40 An offence against any of the following sections of the Criminal Code of the Commonwealth—
- (i) section 474.19(1) (using a carriage service for child pornography material);
 - (ii) section 474.20(1) (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);
 - (iii) section 474.22(1) (using a carriage service for child abuse material);
 - (iv) section 474.23(1) (possessing, controlling, producing, supplying or obtaining child abuse material through a carriage service);
 - (v) section 474.26 (using a carriage service to procure persons under 16 years of age);
 - (vi) section 474.27 (using a carriage service to "groom" persons under 16 years of age).

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- 41 An offence against section 233BAB of the Customs Act 1901 of the Commonwealth involving items of child pornography or of child abuse material.
 - 42 An offence that, at the time it was committed, was an offence listed in this Schedule.
 - 43 An offence an element of which is an intention to commit an offence of a kind listed in this Schedule.
 - 44 An offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this Schedule.
 - 45 Any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute an offence of a kind listed in this Schedule.
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SCHEDULE 2

Section 199

TRANSITIONAL PROVISIONS

1 Definitions

In this Schedule—

commencement day means the day on which this Act comes into operation;

extended supervision order has the same meaning as it had in the old Act;

interim extended supervision order has the same meaning as it had in the old Act;

old Act means **Serious Sex Offenders Monitoring Act 2005**;

new Act means **Serious Sex Offenders (Detention and Supervision) Act 2009**.

2 Interpretation of Legislation Act 1984 not affected

This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

3 Old Act to continue in relation to orders under old Act

Despite the repeal of the old Act and subject to this Schedule, the old Act and any regulations under the old Act continue to apply in relation to an extended supervision order (including a suspended order) or interim extended supervision order existing immediately before the commencement day until—

- (a) the order is revoked; or
 - (b) a decision to make the order is quashed or set aside under section 39(1)(d) of the old Act;
- or

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- (c) a supervision order or detention order is made in respect of the offender under the new Act.

4 Review of extended supervision order

- (1) Part 5 of the new Act applies to the review of an extended supervision order as if it were a supervision order under the new Act.
- (2) On a review of an extended supervision order under Part 5, if the court determines to confirm the extended supervision order, the court must make a supervision order under the new Act in respect of the offender.
- (3) An application for review of an extended supervision order that has been suspended under the old Act may be made by the Secretary at any time during the period of the suspension.
- (4) In this section *extended supervision order* includes an extended supervision order that has been suspended under the old Act.

5 Renewal of extended supervision order

Division 5 of Part 2 of the new Act applies to the renewal of an extended supervision order as if it were a supervision order and the court may make a renewed supervision order under that Division in respect of that order.

6 Appeals

- (1) If, after the commencement day, the Court of Appeal remits a matter to the court under section 39(1)(d) of the old Act, the court must consider the matter as if it were an application by the Secretary for a supervision order under the new Act.
- (2) If the Secretary considers that an application should be made for a detention order in respect of the offender, the Secretary may—

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- (a) ask the court to stay the hearing of the application; and
 - (b) refer the matter to the Director of Public Prosecutions for consideration under Part 8.
- (3) If the Director of Public Prosecutions determines not to apply for a detention order, the Secretary may ask the court to proceed with the matter as an application for a supervision order under the new Act.
- (4) On the remittal of a matter under section 39(1)(d) of the old Act after the commencement day, the offender is taken to be an eligible offender for the purpose of any application for a supervision order or a detention order under the new Act.

7 Application for an order

Anything done in respect of an application for an extended supervision order or interim extended supervision order in respect of an offender under the old Act that was made but not concluded before the commencement day, is taken to have been done (as far as applicable) for the purposes of the first application for a supervision order in respect of the offender under the new Act.

8 Eligible offender

Section 4 of the new Act applies as if—

- (a) a reference to a supervision order includes a reference to an extended supervision order; and
- (b) a reference to an interim order includes a reference to an interim extended supervision order.

9 Victims submissions

- (1) This clause applies if a supervision order is made under the new Act in respect of an offender who was subject to an extended supervision order or interim extended supervision order immediately before the commencement day.
- (2) A victim submission made under section 16A of the old Act in respect of an offender is taken to be a victim submission made under section 129 of the new Act in respect of the offender.

10 Change of name

- (1) The old Act does not apply to an application for a change of name by an offender that was made but not approved under that Act before the commencement day.
- (2) An offender who is subject to an extended supervision order or interim extended supervision order may apply under Part 12 of the new Act for a change of name as if the offender were subject to a supervision order under the new Act.

11 Management of offenders

- (1) This clause applies if an offender who is subject to an extended supervision order or an interim extended supervision order resides at a facility which is a residential facility within the meaning of the new Act.
- (2) Sections 137 and 143 to 145 of the new Act apply as if the offender were residing at the residential facility under a supervision order or interim supervision order.

12 Information sharing

Sections 189 and 190 of the new Act apply in respect of anything done in respect of the old Act after the commencement day as if a reference to this Act included a reference to the old Act.

13 Transitional regulations

The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the new Act.

SCHEDULE 3

Section 219

CONSEQUENTIAL AMENDMENTS

1 Disability Act 2006

- 1.1 In section 152(2)(e) for "**2005.**" substitute "**2005;**".
- 1.2 After section 152(2)(e) insert—
 - "(f) a supervision order or interim supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**".
- 1.3 In section 152(3)—
 - (a) for "or (2)(e)" substitute ", (2)(e) or (2)(f)"; and
 - (b) for "Adult Parole Board" substitute "relevant person or body".
- 1.4 After section 152(3) insert—
 - "(4) In subsection (3), *relevant person or body* means—
 - (a) in the case of an order specified in subsection (2)(b) or (2)(e)—the Adult Parole Board; and
 - (b) in the case of an order specified in subsection (2)(f)—the Secretary to the Department of Justice."
- 1.5 In section 153(1) for "or 152(2)(e)" substitute ", 152(2)(e) or 152(2)(f)".
- 1.6 In section 154(1) for "or 152(2)(e)" substitute ", 152(2)(e) or 152(2)(f)".
- 1.7 In section 154(5) for "or 152(2)(e)" substitute ", 152(2)(e) or 152(2)(f)".

1.8 In section 155(5) for "or 152(2)(e)" **substitute**
", 152(2)(e) or 152(2)(f)".

1.9 In section 156(1) for "or 152(2)(e)" **substitute**
", 152(2)(e) or 152(2)(f)".

1.10 In section 157(1) for "or 152(2)(e)" **substitute**
", 152(2)(e) or 152(2)(f)".

2 Sentencing Act 1991

2.1 Section 5(2BA)(b) is **repealed**.

2.2 After section 5(2BC) **insert**—

"(2BD) In sentencing an offender, a court—

- (a) must not have regard to the fact that the offender is subject to an order made under the **Serious Sex Offenders (Detention and Supervision) Act 2009** but, if relevant to the conditions of any sentence imposed by it, may have regard to the conditions (if any) imposed on that order and the terms of any current directions or instructions given by the Adult Parole Board under section 119, 120(2) or 121 of that Act;
- (b) must not have regard to any possibility or likelihood of an application being made under that Act for an order in respect of the offender.

(2BE) For the purposes of subsection (2BD)(a), the court may request the Secretary to the Department of Justice to provide it with a report setting out—

-
- (a) the conditions of the supervision order or interim supervision order to which the offender is subject under that Act; and
 - (b) the terms of any current directions or instructions given by the Adult Parole Board under section 119, 120(2) or 121 of that Act in relation to that order."

3 Sex Offenders Registration Act 2004

For section 70J **substitute**—

"70J Registrable offender who is also subject to a supervision or detention order or extended supervision order

- (1) This section applies to a registrable offender who is also subject to—
 - (a) a supervision order, detention order or interim order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**; or
 - (b) an extended supervision order or interim extended supervision order within the meaning of the **Serious Sex Offenders Monitoring Act 2005**; or
- (2) Despite this Part, an application by or on behalf of a registrable offender to whom this section applies for registration of a change of the offender's name must be made under and in accordance with the **Serious Sex Offenders (Detention and Supervision) Act 2009**."

4 Surveillance Devices Act 1999

After section 8(2)(a) **insert**—

"(aa) the installation, use or maintenance of a tracking device in accordance with a detention order or supervision order or an interim order under the **Serious Sex Offenders (Detention and Supervision) Act 2009**; or".

5 Transport Act 1983

In section 86(1), in the definition of *category 2 offence*, after paragraph (ci) **insert**—

"(cia) an offence against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182 or 186); or".

6 Victims' Charter Act 2006

6.1 In section 3(1) **insert** the following definitions—

"detention order means a detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim detention order under that Act;

supervision order means a supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim supervision order under that Act;"

6.2 In section 17(2), after "an extended supervision order" **insert** ", a supervision order or a detention order".

6.3 In section 17(4), after "an extended supervision order" **insert** ", a supervision order or a detention order".

6.4 In the Note at the foot of section 17(4) after "2005" insert "or sections 129 and 130 of the **Serious Sex Offenders (Detention and Supervision) Act 2009**".

7 Working with Children Act 2005

7.1 In section 3(1)—

(a) in the definition of *relevant offence*, after paragraph (e) insert—

"(ea) against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182 or 186); or";
and

(b) insert the following definitions—

detention order means a detention order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim detention order under that Act;

supervision order means a supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009** or an interim supervision order under that Act;".

7.2 After section 12(1)(b) insert—

"(ba) who is subject to a supervision order or a detention order; or".

7.3 In section 13(1)(e), after "(other than section 42(3))" (wherever occurring) insert "or against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182 or 186)".

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7.4 After section 20(2)(d) **insert**—

"(da) the person becoming subject to a supervision order or a detention order; or".

7.5 After section 25(2)(d) **insert**—

"(da) the person being no longer subject to a supervision order or detention order; or".

7.6 In section 33(2)(a)(ii), after "**2005**" **insert** "or a supervision order or a detention order".

7.7 In section 33(2)(b)(ii) after "**2005**" **insert** "or a supervision order or a detention order".

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 12 November 2009

Legislative Council: 27 November 2009

The long title for the Bill for this Act was "A Bill for an Act to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision, to amend the **Corrections Act 1986** and other Acts and to repeal the **Serious Sex Offenders Monitoring Act 2005** and for other purposes."

The **Serious Sex Offenders (Detention and Supervision) Act 2009** was assented to on 15 December 2009 and came into operation on 1 January 2010: Government Gazette 24 December 2009 page 3397.

Serious Sex Offenders (Detention and Supervision) Act 2009
No. 91 of 2009

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Serious Sex Offenders (Detention and Supervision) Act 2009** by Acts and subordinate instruments.

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 50) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Equal Opportunity Act 2010, No. 16/2010

Assent Date: 27.4.10
Commencement Date: S. 209(Sch. item 7) on 1.8.11: s. 2(4)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date: 28.9.10
Commencement Date: S. 81(Sch. item 11) on 1.11.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Justice Legislation Further Amendment Act 2010, No. 64/2010

Assent Date: 28.9.10
Commencement Date: S. 27 on 28.10.10: Government Gazette 28.10.10 p. 2583
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

3. Explanatory Details

No entries at date of publication.