

Authorised Version No. 045
**Serious Sex Offenders (Detention and
Supervision) Act 2009**

No. 91 of 2009

Authorised Version incorporating amendments as at
13 September 2017

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Authorised Version No. 045
**Serious Sex Offenders (Detention and
Supervision) Act 2009**

No. 91 of 2009

Authorised Version incorporating amendments as at
13 September 2017

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 Regulation; and

S. 1(3)(c)
amended by
No. 52/2015
s. 28.

Serious Sex Offenders (Detention and Supervision) Act 2009
No. 91 of 2009
Part 1—Preliminary

S. 1(3)(d)
amended by
No. 52/2015
s. 28.

- (d) provides for appeals by offenders, the Director of Public Prosecutions or the Secretary to the Department of Justice and Regulation; 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**;

S. 3 def. of
approved mental health service
repealed by
No. 26/2014
s. 455(Sch.
item 26.1).

* * * * *

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

authorised instrument of restraint means an instrument, or a type of instrument, that is approved under section 55D of the **Corrections Act 1986**;

S. 3 def. of *authorised instrument of restraint* inserted by No. 52/2015 s. 3.

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**—

S. 3 def. of *community-based disposition* amended by No. 65/2011 s. 107(Sch. item 11.1).

- (a) an old community-based order, within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**;
- (ab) a community correction order, within the meaning of the **Sentencing Act 1991**;
- (b) an old intensive correction order, within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**;
- (c) that part of an old combined custody and treatment order, (within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**) that is served in the community;

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

S. 3 def. of
custodial sentence
amended by
Nos 65/2011
s. 107(Sch.
item 11.2) (as
amended by
No. 43/2012
s. 3(Sch.
item 47.5),
32/2013 s. 59,
52/2015
s. 29(1),
31/2017
s. 15(1).

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 an old combined custody and treatment order, (within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**) that the offender serves in a prison; or
- (c) an order made by a court sentencing an offender to be detained in a youth justice centre in respect of an offence, to the extent that the offender serves any part of that sentence 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** (as in force before the commencement of section 18 of the **Sentencing Amendment (Community Correction Reform) Act 2011**); or
- (ea) an order made under section 83AR(1)(a) or (b) of the **Sentencing Act 1991** (as in force before the commencement of section 21 of the **Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013**); 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 and Regulation;

S. 3 def. of *Department* amended by No. 52/2015 s. 29(2).

designated mental health service has the same meaning as it has in the **Mental Health Act 2014**;

S. 3 def. of *designated mental health service* inserted by No. 26/2014 s. 455(Sch. item 26.2).

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;

S. 3 def. of *health service provider* substituted by No. 22/2016 s. 245.

health service provider has the same meaning as in the **Health Complaints Act 2016**;

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

S. 3 def. of *immigration detention* inserted by No. 31/2017 s. 15(2).

immigration detention has the same meaning as in section 5 of the Migration Act 1958 of the Commonwealth;

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**;

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3 def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 152.1).

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

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

S. 3 def. of *prison officer* inserted by No. 52/2015 s. 3.

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

proper officer, in relation to a court, means the officer or officers of that court prescribed by rules of that court for the purpose of the provision in which the term is used;

S. 3 def. of *proper officer* inserted by No. 12/2014 s. 26.

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

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;

S. 3 def. of
restrictive condition
inserted by
No. 32/2016
s. 4.

restrictive condition means—

- (a) a core condition referred to in section 16(2)(a), (ab), (ac) or (ad);
- (b) a condition declared by the court under section 24A to be a restrictive condition;

Secretary means the Secretary to the Department;

S. 3 def. of
specified officer
inserted by
No. 52/2015
s. 3,
substituted by
No. 32/2016
s. 30.

specified officer means a person authorised to act as a specified officer under section 158F;

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

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);

violent conduct means conduct of a kind referred to in section 16(2)(ac) or (ad);

S. 3 def. of ***violent conduct*** inserted by No. 32/2016 s. 10.

violent offence means an offence listed in Schedule 1A;

S. 3 def. of ***violent offence*** inserted by No. 32/2016 s. 10.

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.

(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.

(4A) A person is an eligible offender in relation to an application for a renewal of a supervision order under section 28(1) if the person is subject to a supervision order or an interim supervision order at the time at which the application is made.

S. 4(4A)
inserted by
No. 31/2017
s. 16.

(4B) A person is an eligible offender in relation to an application for a renewal of a detention order under section 45(1) if the person is subject to a detention order or an interim detention order at the time at which the application is made.

S. 4(4B)
inserted by
No. 31/2017
s. 16.

- (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

S. 5(1)
amended by
No. 26/2014
s. 455(Sch.
item 26.3).

- (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 a designated mental health service in which he or she has been serving that sentence.

S. 5(2)
amended by
No. 26/2014
s. 455(Sch.
item 26.4).

- (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 designated 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.

S. 6A
inserted by
No. 32/2016
s. 5.

6A Safety and protection of the community paramount in any decision under this Act

In making a decision under this Act, a person or body must give paramount consideration to the safety and protection of the community.

**6B Sex offender registration order under Sex Offenders
Registration Act 2004**

S. 6B
inserted by
No. 32/2016
s. 5.

- (1) On the making, confirmation or renewal of a supervision order or a detention order under this Act or a determination under section 78(3)(a) or (b) of a condition on a supervision order, the court must make a sex offender registration order under the **Sex Offenders Registration Act 2004** in respect of the offender if the offender is not already subject to that Act.
- (2) A sex offender registration order under the **Sex Offenders Registration Act 2004** made in the circumstances referred to in subsection (1) must be for a period of not less than 15 years.

Note

See section 11(9) and (10) of the **Sex Offenders Registration Act 2004**.

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

S. 7(3)(ab)
inserted by
No. 3/2016
s. 100,
repealed by
No. 31/2017
s. 17(1).

* * * * *

S. 7(3)(b)
amended by
No. 31/2017
s. 17(2).

- (b) the County Court, if the Magistrates' Court sentenced the offender for the relevant offence, irrespective of whether or not the Magistrates' Court was constituted by the Chief Magistrate or another magistrate.
- (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—
 - (a) 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; or

S. 9(1)
substituted by
No. 31/2017
s. 18.

- (b) in the case of an offender who is serving a custodial sentence or is in custody on remand, the offender will pose an unacceptable risk of committing a relevant offence if a supervision order is not made and the offender is in the community on the offender's release from custody on remand or at the end of the custodial sentence, whichever is earlier.
- (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 have regard to—
- (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

S. 9(3)
amended by
No. 52/2015
s. 30.

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

- S. 11(1A)
inserted by
No. 31/2017
s. 19(1).
- S. 11(2)
amended by
No. 31/2017
s. 19(2).
- S. 11(3)
inserted by
No. 31/2017
s. 19(3).
- (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.
 - (1A) If at the time of the making of a supervision order the offender is remanded in custody, the order commences on the day on which the offender is released from custody on remand.
 - (2) If at the time of the making of a supervision order the offender is not in custody on remand or serving a custodial sentence, the order commences on the commencement date specified in the order.
 - (3) Despite subsection (2), if at the time of the making of a supervision order the offender is in immigration detention, the order commences on the day on which the offender is released from immigration detention.

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.
- (4A) If an offender who is subject to a supervision order is taken into immigration detention after the commencement of the order—
 - (a) the time spent in immigration detention is not to be taken into account in calculating the remaining period of the detention order; and
 - (b) the offender is not subject to the conditions of the order while the offender is in immigration detention; and
 - (c) the offender again becomes subject to the supervision order and the conditions of the supervision order on the offender's release from immigration detention.
- (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.

S. 12(4A)
inserted by
No. 31/2017
s. 20.

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 whether by committing a relevant offence or a violent offence or by engaging in violent conduct or any one or more of these.
- (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

S. 15(3)
amended by
No. 32/2016
s. 11.

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;

- (ab) not commit a violent offence in Victoria or elsewhere;

S. 16(2)(ab)
inserted by
No. 32/2016
s. 12.

- (ac) if the court requires, or the Adult Parole Board directs, an offender to reside at a residential facility, not engage in conduct that poses a risk to the good order of the residential facility or the safety and welfare of offenders or staff at the residential facility or visitors to the residential facility;

S. 16(2)(ac)
inserted by
No. 32/2016
s. 12,
amended by
No. 31/2017
s. 21.

- (ad) not engage in conduct that threatens the safety of any person, including the offender;

S. 16(2)(ad)
inserted by
No. 32/2016
s. 12.

- (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, or the Adult Parole Board directs, an offender to reside at a residential facility, obey all instructions given by a supervision officer or a specified officer under section 137;
- (h) comply with any directions given by the Adult Parole Board under the emergency power in section 120;
- (i) obey all instructions given by a community corrections officer or a specified officer under section 151.

S. 16(2)(g)
substituted by
No. 52/2015
s. 6,
amended by
No. 31/2017
s. 21.

S. 16(2)(h)
amended by
No. 32/2016
s. 31(1).

S. 16(2)(i)
inserted by
No. 32/2016
s. 31(2).

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 or the Chief Commissioner of Police 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 or a violent offence or engaging in violent conduct or any one or more of these;

S. 17(1)(h)
amended by
No. 52/2015
s. 7(1).

S. 17(1)(j)(ii)
amended by
No. 32/2016
s. 13.

- (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.

S. 17(1A)
inserted by
No. 52/2015
s. 7(2).

(1A) If the court imposes a condition of a kind referred to in subsection (1)(m) requiring the offender to submit to electronic monitoring of the offender's compliance with the supervision order, the court must also impose the following conditions—

S. 17(1A)(b)
amended by
No. 31/2017
s. 22(1).

- (a) the offender must comply with any direction given by the Board relating to the electronic monitoring;
- (b) the offender must for 24 hours of each day be electronically monitored and wear an electronic monitoring device fitted to the offender at the direction of the Board which the offender must ensure remains operational (including being charged) at all times;

- (c) the offender must not tamper with, damage, disable or remove any electronic monitoring device or equipment used for the electronic monitoring;
- (d) the offender must accept any visit by the Secretary to the place where the offender resides, at any time that it is reasonably necessary and for any purpose including to install, repair, fit or remove any electronic monitoring device or equipment used for the electronic monitoring of the offender's compliance with the supervision order.

Note

See also section 20 regarding conditions authorising the Adult Parole Board to give directions in relation to the operation of any condition.

Note to s. 17(1A) inserted by No. 31/2017 s. 22(2).

- (2) Subject to subsection (1A) and sections 15(3) and (4), the court may impose any condition it considers appropriate under this section.

S. 17(2) amended by No. 52/2015 s. 7(3).

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

- (1) The court may also impose any other conditions that it considers appropriate—
 - (a) to reduce the risk of re-offending by the offender whether by committing a relevant offence or a violent offence or by engaging

S. 19 amended by No. 32/2016 s. 14(2) (ILA s. 39B(1)).

S. 19(a) substituted by No. 32/2016 s. 14(1).

in violent conduct or any one or more of these; or

(b) to provide for the reasonable concerns of the victim or victims of the offender in relation to their own safety and welfare.

S. 19(2)
inserted by
No. 32/2016
s. 14(2).

(2) Conditions imposed for the purposes of subsection (1)(a) may include conditions promoting the rehabilitation, and treatment, of the offender.

Examples
amended by
No. 32/2016
s. 14(3).

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.
- 4 A condition requiring the offender to undergo treatment, or rehabilitation, or programs relating to violent behavior, anger management, conflict resolution or the improvement of interpersonal relationships or interpersonal skills.

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; and

S. 20(1)(b)
amended by
No. 12/2014
s. 27(1).

(c) if the court has imposed a condition under paragraph (b) authorising the Adult Parole Board to give a direction that an offender is to reside at a residential facility, a power to impose a condition authorising the Board to give directions relating to any of the following—

S. 20(1)(c)
inserted by
No. 12/2014
s. 27(2),
substituted by
No. 52/2015
s. 8(1).

- (i) the times at which the offender must be at the residential facility;
- (ii) the conditions under which the offender may leave the residential facility;
- (iii) the monitoring (including electronic monitoring) of the offender's compliance with a direction that the offender reside at the residential facility.

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.

(1A) If the Adult Parole Board gives a direction authorised by a condition of a kind referred to in subsection (1)(c)(iii) relating to electronic monitoring, the Board must also give the following directions—

S. 20(1A)
inserted by
No. 52/2015
s. 8(2).

- (a) the offender must comply with any direction given by the Board relating to the electronic monitoring;

- (b) the offender must for 24 hours of each day be electronically monitored and wear an electronic monitoring device fitted to the offender at the direction of the Board;
 - (c) the offender must not tamper with, damage, disable or remove any electronic monitoring device or equipment used for the electronic monitoring;
 - (d) the offender must accept any visit by the Secretary to the residential facility, at any time that it is reasonably necessary and for any purpose including to install, repair, fit or remove any electronic monitoring device or equipment used for the electronic monitoring of the offender's compliance with the direction that the offender reside at the residential facility.
- (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 whether by committing a relevant offence or a violent offence or by engaging in violent conduct or any one or more of these.
- (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).

S. 20(2)(b)
amended by
No. 32/2016
s. 15.

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).

24A Court may declare a condition to be a restrictive condition

- (1) Subject to this section, on the making or renewal of a supervision order, or on a review of the order or a condition of the order, the court may declare that any of the following conditions of the order is a restrictive condition—
 - (a) that the offender must not consume alcohol;
 - (b) that the offender must not use prohibited drugs, obtain drugs unlawfully or abuse drugs of any kind;
 - (c) that the offender must reside at a specified place (including whether the offender is to reside at a residential facility);
 - (d) that the offender must be at the offender's place of residence between specified times;

S. 24A
inserted by
No. 32/2016
s. 6.

- (e) that the offender may only leave the offender's place of residence in accordance with specified conditions;
 - (f) that the offender must not visit a specified place or area or may only visit the place or area at specified times;
 - (g) that the offender must not have contact with a specified person or class of person.
- (2) A core condition under section 16(2)(a), (ab), (ac) or (ad) must not be declared to be a restrictive condition under this section.

Note

These conditions are restrictive conditions by operation of this Act: see paragraph (a) of the definition of *restrictive condition* in section 3.

- (3) A declaration under subsection (1) may only be made—
- (a) on the application of the Secretary; and
 - (b) if the court is satisfied on reasonable grounds that the declaration is necessary to address the risk of harm (including sexual harm or violence or both) to the community presented by the offender.

Note

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

- (4) In considering whether to make a declaration under subsection (1), the court must have regard to the antecedents of the offender, including any previous breaches of a supervision order.

Note

It is an offence under section 160 to fail to comply with a condition of a supervision order without a reasonable excuse.

S. 24A(5)
inserted by
No. 31/2017
s. 24.

- (5) Whether or not the court makes a declaration under subsection (1), the court must make any variation or addition to the core provisions of the supervision order that is necessary to ensure the core conditions accord with section 16 if amendments to section 16 which amend the core conditions to which the supervision order is subject have come into operation since the supervision order was made or last renewed or reviewed.

Division 4—Expiry of supervision order

25 Expiry of supervision order

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

S. 25(c)
amended by
No. 65/2012
s. 4(a).

- (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; or

S. 25(d)
inserted by
No. 65/2012
s. 4(b).

- (d) on the deportation or removal of the offender from Australia under the Migration Act 1958 of the Commonwealth; or

S. 25(e)
inserted by
No. 65/2012
s. 4(b).

- (e) on the death of the offender.

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.

S. 28A
inserted by
No. 12/2014
s. 28.

28A Determination of application to renew supervision order

- (1) On an application under section 28 to renew a supervision order, the court may—
- (a) renew the supervision order; or
 - (b) revoke the supervision order; or
 - (c) decide not to renew or revoke the supervision order.
- (2) If the court renews a supervision order, the court may vary, add to or remove any conditions of the supervision order or direct a different period for the period between applications for review.

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.
- (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—
 - (a) 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; or
 - (b) in the case of an offender who is serving a custodial sentence or is in custody on remand, the offender will pose 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 on the offender's release from custody on remand or at the end of the custodial sentence, whichever is earlier.

**S. 35(1)
substituted by
No. 31/2017
s. 25.**

- (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
 - (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

S. 39(1A)
inserted by
No. 31/2017
s. 26(1).

S. 39(2)
amended by
No. 31/2017
s. 26(2).

S. 39(3)
inserted by
No. 31/2017
s. 26(3).

- (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.
- (1A) If at the time of the making of a detention order the offender is remanded in custody, the order commences on the day on which the offender is released from custody on remand.
- (2) If at the time of the making of a detention order the offender is not in custody on remand or serving a custodial sentence, the order commences on the commencement date specified in the order.
- (3) Despite subsection (2), if at the time of the making of a detention order the offender is in immigration detention, the order commences

on the day on which the offender is released from immigration detention.

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.
- (4) If an offender who is subject to a detention order is taken into immigration detention after the commencement of the order—
 - (a) the time spent in immigration detention is not to be taken into account in calculating the remaining period of the order; and
 - (b) the offender again becomes subject to the detention order on the offender's release from immigration detention.
- (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.

S. 40(4)
inserted by
No. 31/2017
s. 27.

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; or | S. 44(c)
amended by
No. 65/2012
s. 5(a). |
| (d) on the deportation or removal of the offender from Australia under the Migration Act 1958 of the Commonwealth; or | S. 44(d)
inserted by
No. 65/2012
s. 5(b). |
| (e) on the death of the offender. | S. 44(e)
inserted by
No. 65/2012
s. 5(b). |

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.
- (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.

S. 45A
inserted by
No. 12/2014
s. 29.

45A Determination of application to renew detention order

- (1) On an application under section 45 to renew a detention order, the Supreme Court may—
- (a) renew the detention order; or
 - (b) revoke the detention order; or
 - (c) decide not to renew or revoke the detention order; or
 - (d) make a supervision order, an interim supervision order or an interim detention order.

S. 45A(1)(c)
amended by
No. 31/2017
s. 28(1).

S. 45A(1)(d)
inserted by
No. 31/2017
s. 28(2).

Note

See also section 36(4), (5) and (6).

- (2) If the Supreme Court renews a detention order, the Supreme Court may vary the period of the detention order.

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—

- (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 remanded in custody or serving a custodial sentence as required by

S. 53(a)(ii)
substituted by
No. 31/2017
s. 29(1).

section 4 or will no longer be remanded in custody or 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 offender is released from custody on remand or 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.

S. 53(c)(i)
amended by
No. 31/2017
s. 29(2).

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
 - (ii) in the case of an application for a supervision order, the offender is no longer remanded in custody or serving a custodial sentence as required by section 4 or will no longer be remanded in custody or 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 offender is released from custody on remand or the expiry of the sentence referred to in section 4 or the expiry of the detention order (as the case requires); and

S. 54(1)(a)(ii)
substituted by
No. 31/2017
s. 30(1).

S. 54(1)(c)(i)
amended by
No. 31/2017
s. 30(2).

- (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 offender is released from custody on remand or 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.

S. 54(2)(d)(i)
amended by
No. 31/2017
s. 30(3).

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
 - (ab) if at the time of the making of the order the offender is remanded in custody, on the day on which the offender is released from custody on remand; or
 - (b) if at the time of the making of the order the offender is not in custody on remand or serving a custodial sentence, on the commencement date specified in it.

S. 56(1)(ab)
inserted by
No. 31/2017
s. 31(1).

S. 56(1)(b)
amended by
No. 31/2017
s. 31(2).

S. 56(1A)
inserted by
No. 31/2017
s. 31(3).

- (1A) Despite subsection (1)(b), if at the time of the making of an interim order the offender is in immigration detention, the order commences

on the day on which the offender is released from immigration detention.

- (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 subsections (2) and (3) 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.
- (3) If an offender who is subject to an interim order is taken into immigration detention after the commencement of the order—
- (a) the time spent in immigration detention is not to be taken into account in calculating the remaining period of the order; and
 - (b) the offender again becomes subject to the interim order on the offender's release from immigration detention.

S. 57(1)
amended by
No. 31/2017
s. 32(1).

S. 57(3)
inserted by
No. 31/2017
s. 32(2).

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.

S. 58A
inserted by
No. 83/2011
s. 4,
amended by
No. 31/2017
s. 33.

58A Provisions affecting interim supervision order

Section 12(2), (3), (4), (4A) and (5) apply with respect to an interim supervision order as if a reference in that section 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; or | S. 61(b)
amended by
No. 65/2012
s. 6(a). |
| (c) on the deportation or removal of the offender from Australia under the Migration Act 1958 of the Commonwealth; or | S. 61(c)
inserted by
No. 65/2012
s. 6(b). |
| (d) on the death of the offender. | S. 61(d)
inserted by
No. 65/2012
s. 6(b). |

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.

63A Determination of application to extend interim supervision order

S. 63A
inserted by
No. 12/2014
s. 30.

- (1) On an application under section 63(1) to extend an interim supervision order, the court that made the interim supervision order may—
- (a) extend the interim supervision order; or
 - (b) revoke the interim supervision order; or
 - (c) decide not to extend or revoke the interim supervision order.
- (2) If the court extends an interim supervision order, the court may vary, add to or remove any conditions of the interim supervision order.
- (3) Division 3 of Part 2 applies to any variation or addition of a condition of an interim supervision order under subsection (2).

63B Determination of application to extend interim detention order

S. 63B
inserted by
No. 12/2014
s. 30.

- On an application under section 63(2) to extend an interim detention order, the Supreme Court may—
- (a) extend the interim detention order; or
 - (b) revoke the interim detention order; or
 - (c) decide not to extend or revoke the interim detention order.

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.
- (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.

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.
- (3) An application is not required to be made under this section if, at the time for review of the supervision order—
 - (a) an application has been made under section 28 to renew the supervision order; and
 - (b) the application under section 28 has not been withdrawn.
- (4) When the court reviews a supervision order under this Part, the court must at the same time review any order made under section 184 in respect of the offender to determine whether that order should continue, having regard to the matters specified in section 185.

S. 65(3)
inserted by
No. 83/2011
s. 5.

S. 65(4)
inserted by
No. 65/2012
s. 7.

S. 66
amended by
No. 83/2011
s. 6 (ILA
s. 39B(1)).

66 Periodic reviews of detention orders

- (1) 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.

S. 66(2)
inserted by
No. 83/2011
s. 6.

- (2) An application is not required to be made under subsection (1) if, at the time for review of the detention order—
 - (a) an application has been made under section 45 to renew the detention order; and
 - (b) the application under section 45 has not been withdrawn.

S. 67
(Heading)
substituted by
No. 83/2011
s. 7(1).
S. 67
amended by
No. 83/2011
s. 7(2).

67 Offender serving custodial sentence or in custody on remand at time of review

Sections 65(1) and 66(1) 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 or is in custody on remand.

68 Leave for review

S. 68(1)
amended by
No. 31/2017
s. 34.

- (1) At any time (including time during which the offender is serving a custodial sentence or on remand), 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.
- (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—
 - (a) 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; or

S. 73(1)
substituted by
No. 31/2017
s. 35.

- (b) in the case of an offender who is serving a custodial sentence or is in custody on remand, the offender will pose an unacceptable risk of committing a relevant offence if a supervision order is not in effect and the offender is in the community on the offender's release from custody on remand or at the end of the custodial sentence, whichever is earlier.
- (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).
- (4A) 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 an application under subsection (3) for a detention order. **S. 73(4A) inserted by No. 83/2011 s. 8.**
- (4B) Division 2 of Part 4 applies in respect of an application for an interim detention order under subsection (4A). **S. 73(4B) inserted by No. 83/2011 s. 8.**
- (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 subsections (9) and (9A)), or revoke, the supervision order. **S. 73(6) amended by No. 52/2015 s. 9(1).**

S. 73(8)
amended by
No. 52/2015
s. 9(1).

- (7) The supervision order remains in force until the Supreme Court determines the application under subsection (3).
- (8) Subject to subsections (9) and (9A), 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).

S. 73(9)
substituted by
No. 52/2015
s. 9(2).

- (9) The court may—
- (a) vary, add or remove any conditions of a supervision order; or
 - (b) direct a different period for the period between applications for review.

S. 73(9A)
inserted by
No. 52/2015
s. 9(2),
amended by
No. 32/2016
s. 32.

- (9A) If the court exercises a power under subsection (9) in respect of the supervision order, the court must ensure that the conditions on the order are in accordance with the requirements of sections 16 and 17 as in force at the time at which the court exercises that power and make any variations and additions to the conditions that are necessary for this purpose.

S. 73(10)
amended by
No. 52/2015
s. 9(3).

- (10) Division 3 of Part 2 applies to any variation or addition of a condition of a supervision order under subsections (9) and (9A).

74 Application for review of detention order

S. 74(1)
substituted by
No. 31/2017
s. 36.

- (1) On a review of a detention order, the Supreme Court must revoke the order unless it is satisfied that—
- (a) 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; or

- (b) in the case of an offender who is serving a custodial sentence or is in custody on remand, the offender will pose an unacceptable risk of committing a relevant offence if a detention order is not in effect and the offender is in the community on the offender's release from custody on remand or at the end of the custodial sentence, whichever is earlier.
- (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.
- (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 a designated 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 a 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 as soon as practicable after the offender is released on parole or from remand.
- (3) If parole is not granted or the offender is ordered to serve a custodial sentence, 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

S. 75(1)
amended by
No. 26/2014
s. 455(Sch.
item 26.5).

S. 75(2)
substituted by
No. 12/2014
s. 31(1),
amended by
No. 52/2015
s. 31(1).

S. 75(3)
amended by
Nos 12/2014
s. 31(2),
52/2015
s. 31(2).

made as soon as practicable after the end of the custodial 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

S. 77(1)
amended by
No. 12/2014
s. 32.

- (1) The Secretary or the offender may at any time (including time during which the offender is serving a custodial sentence or on remand), 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—

S. 77(3)(a)
amended by
No. 31/2017
s. 37.

- (a) new facts or 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.
- (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.
- (3A) If the court exercises a power under subsection (3) in respect of a supervision order, the court must ensure that the conditions of the order are in accordance with the requirements of sections 16 and 17 as in force at the time the court exercises that power and make any variations and additions to the conditions that are necessary for this purpose.

S. 78(3A)
inserted by
No. 52/2015
s. 10,
amended by
No. 32/2016
s. 33.

- (4) Division 3 of Part 2 (with any necessary modifications) applies to the addition or variation of a condition under this section.

S. 78A
inserted by
No. 31/2017
s. 38.

78A Leave not required in certain circumstances for review of core conditions

- (1) Despite anything to the contrary in section 68, an application under section 68(1) for review of a supervision order may be made to the court without obtaining leave under that section if the application for review is on the ground that amendments to section 16 which amend the core conditions to which the supervision order is subject have come into operation since the supervision order was made or last renewed or reviewed.
- (2) On an application under subsection (1)—
- (a) the court must make any variation or addition to the core provisions of a supervision order that are necessary to ensure the core conditions accord with section 16; and
 - (b) the court may also deal with any other matter that could be the subject of an application under section 68 if satisfied that—
 - (i) there are new facts or circumstances which would justify the review of the order; or
 - (ii) 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.

Note

See also sections 73(9A) and 78(3A).

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.

- (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—
- (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

S. 92(1)
amended by
No. 37/2014
s. 10(Sch.
item 152.2).

- (1) A warrant issued under section 91 may be executed by any police officer 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.
- (4) A person executing a warrant is not liable for injury or damage caused by the use of force in accordance with this section.

S. 92(4)
inserted by
No. 32/2016
s. 34.

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 police officer 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.

**S. 93(4)
amended by
No. 37/2014
s. 10(Sch.
item 152.2).**

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.
- (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—
 - (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.

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
- (ca) to declare a condition on a supervision order or interim supervision order to be a restrictive condition under section 24A; 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.

S. 96(ca)
inserted by
No. 32/2016
s. 7,
amended by
No. 31/2017
s. 40.

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

S. 97(f)
amended by
No. 32/2016
s. 8(a).

S. 97(g)
inserted by
No. 32/2016
s. 8(b).

- (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; or
- (g) to not declare a condition on a supervision order to be a restrictive condition under section 24A or to declare a condition on a supervision order to be a restrictive condition under that section.

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—
 - (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.

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.

- (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;

- (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;

- (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 other than under Part 4.
- (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.

S. 113(1)
amended by
No. 83/2011
s. 9.

S. 113A
inserted by
No. 83/2011
s. 10.

113A Disputing reports filed with applications for interim orders

- (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 Part 4.
- (2) If a notice is filed under subsection (1) before the application is determined, the court may, if it considers appropriate, before taking the report or the part in dispute (as the case requires) into consideration in determining the application, give the party that filed the notice the opportunity—
 - (a) to lead evidence on the disputed matters; and
 - (b) to cross-examine the author of the report on its contents.
- (3) If a notice is not filed under subsection (1) before the application is determined, the court—
 - (a) must take the report or the part (as the case requires) into consideration in determining the application; and
 - (b) is not required to give the Secretary, the Director of Public Prosecutions or the offender an opportunity to lead evidence relating to the report or the part (as the case requires) or 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

- (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.

Example

In relation to paragraph (b), a supervision order may authorise the Adult Parole Board to give directions relating to electronic monitoring.

**Example to
s. 118
inserted by
No. 52/2015
s. 32.**

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 the Adult Parole Board at which the Adult Parole Board considers the submissions.

S. 124(2)
amended by
No. 83/2011
s. 11.

- (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—
- (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 and specified officers

S. 136
(Heading)
amended by
No. 52/2015
s. 11(1).

- (1) A supervision officer or a specified 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.

S. 136(1)
amended by
No. 52/2015
s. 11(2).

S. 136(3)
amended by
No. 52/2015
s. 11(2).

- (3) A supervision officer or a specified 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.
- (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, a member of staff of a TAFE institute within the meaning of the **Education and Training Reform Act 2006** or a member of staff of a dual sector university within the meaning of the **Education and Training Reform Act 2006** who is working at a residential facility.

S. 136(5)(b)
substituted by
No. 76/2013
s. 25.

S. 137
(Heading)
amended by
No. 52/2015
s. 12(1).

137 Officers may give instructions

S. 137(1)
amended by
No. 52/2015
s. 12(2).

- (1) In accordance with the supervision order applying to an offender residing at a residential facility, a supervision officer or a specified officer (as the case requires) 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.

S. 139(2)
amended by
No. 52/2015
s. 13.

- (2) A supervision officer or specified 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

S. 141(1)
amended by
No. 52/2015
s. 14(1).

- (1) A supervision officer or specified officer may require any person who wishes to enter, or who has entered, a residential facility as a visitor to give the 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.

S. 141(2)
amended by
No. 52/2015
s. 14(2).

- (2) If when asked, a person does not give the required information to a supervision officer or specified officer or gives information to a supervision officer or specified officer that is false or misleading the supervision officer or specified 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 or specified officer may, if necessary, use reasonable force to compel the person to leave the facility. **S. 141(4) amended by No. 52/2015 s. 14(2).**
- (5) A supervision officer or specified 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. **S. 141(5) amended by No. 52/2015 s. 14(2).**
- (6) A supervision officer or specified officer is not liable for injury or damage caused by the use of force in accordance with this section. **S. 141(6) inserted by No. 32/2016 s. 35.**

142 Search

- (1) The officer in charge of a residential facility may give an order or, in the case of a police officer, make a request or give permission to enter to search under this section only if the officer in charge reasonably suspects 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
- S. 142(1) amended by No. 32/2016 s. 19(1).**

S. 142(2)
amended by
Nos 52/2015
s. 15(1)(a),
32/2016
s. 19(2).

S. 142(2)(b)
amended by
No. 52/2015
s. 15(1)(b).

- (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 or a specified officer to, or request or permit a police officer to—
- (a) search any part of, or any thing in, the residential facility; or
 - (b) search and examine a supervision officer, a specified 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 Information Commissioner, in the Information Commissioner's capacity under the **Privacy and Data Protection Act 2014**;
S. 142(3)(b)(v) substituted by Nos 60/2014 s. 140(Sch. 3 item 42), 20/2017 s. 134(Sch. 1 item 16).
 - (vi) the Commissioner of the Victorian Equal Opportunity and Human Rights Commission appointed under section 169 of the **Equal Opportunity Act 2010**;
S. 142(3)(b)(vi) substituted by No. 16/2010 s. 209(Sch. item 7.1).
 - (vii) the Health Complaints Commissioner;
S. 142(3)(b)(vii) substituted by No. 22/2016 s. 246(1).
 - (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, a specified officer or an offender refuses to submit to a search under this section the officer in charge of the residential facility may order the person to leave the residential facility immediately.
S. 142(6) amended by No. 52/2015 s. 15(2).

Serious Sex Offenders (Detention and Supervision) Act 2009
No. 91 of 2009
Part 10—Management of offenders on supervision orders

S. 142(7)
amended by
Nos 52/2015
s. 15(3),
32/2016
s. 19(3).

(7) A supervision officer or a specified officer or a police officer (as the case requires) may, if necessary, use reasonable force to compel a person to obey an order to leave a residential facility.

S. 142(7A)
inserted by
No. 32/2016
s. 19(4).

(7A) If necessary, a supervision officer, a specified officer or a police officer may use reasonable force to carry out a search under this section.

S. 142(7B)
inserted by
No. 32/2016
s. 19(4).

(7B) A search under this section may continue only for as long as necessary to achieve the purpose of the search.

(8) In this section—

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

* * * * *

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;

S. 142(8)
def. of
*Health
Complaints
Commis-
sioner*
inserted by
No. 22/2016
s. 246(2)(b).

Health Complaints Commissioner means the *Commissioner* within the meaning of the **Health Complaints Act 2016**;

* * * * *

S. 142(8)
def. of
*Health
Services
Commis-
sioner*
repealed by
No. 22/2016
s. 246(2)(a).

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 and examination

- (1) In carrying out searches under section 142, a supervision officer or specified officer or police officer (as the case requires) may seize any thing found in a residential facility, whether in a person's possession or not, which the supervision officer or specified officer or police officer (as the case requires) 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 or specified officer or police officer (as the case requires) reasonably suspects relates to behaviour or conduct associated with an increased risk of the

S. 143
(Heading)
amended by
No. 32/2016
s. 20(1).

S. 143
amended by
Nos 52/2015
s. 16, 32/2016
s. 20(2)(3) (ILA
s. 39B(1)).

offender re-offending or breaching the conditions of the supervision order.

**S. 143(2)
inserted by
No. 32/2016
s. 20(3).**

- (2) A supervision officer, a specified officer or a police officer may examine any thing, or operate any electronic equipment, seized under this section for the purpose of investigating—
- (a) whether the offender has complied with the supervision order; or
 - (b) whether the offender has re-offended or has breached the conditions of the supervision order.

**S. 143(3)
inserted by
No. 32/2016
s. 20(3).**

- (3) Without limiting subsection (1), a supervision officer, a specified officer or a police officer may seize or take a sample of any thing belonging to, or found in the possession or under the control of, a supervision officer, a specified officer, an offender or any other person (other than a judge of the Supreme Court or County Court or a magistrate) if the officer suspects on reasonable grounds that—
- (a) the thing will afford evidence of the commission of an indictable offence (whether or not that offence is a breach of a supervision order); and
 - (b) it is necessary to seize or take a sample of that thing in order to prevent its concealment, loss or destruction or its use in the commission of an indictable offence (whether or not that offence is a breach of a supervision order).

**S. 143(4)
inserted by
No. 32/2016
s. 20(3).**

- (4) A police officer exercising a power under this section may direct the following persons accompanying the police officer to exercise those powers subject to the officer's direction—

- (a) a Victoria Police employee within the meaning of the **Victoria Police Act 2013**;
 - (b) any person who delivers services or advice on behalf of Victoria Police.
- (5) If necessary, a supervision officer, a specified officer or a police officer, as the case requires, may use reasonable force to carry out a seizure under this section.

S. 143(5)
inserted by
No. 32/2016
s. 20(3).

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 or specified officer who seized the thing.
- (3) A supervision officer or a specified 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.

S. 144(2)(e)
amended by
No. 52/2015
s. 17(1).

S. 144(3)
amended by
No. 52/2015
s. 17(2).

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.

S. 146
(Heading)
amended by
No. 52/2015
s. 18(1).

146 Officers may use force to enforce instructions in certain circumstances

S. 146(1)
amended by
No. 52/2015
s. 18(2).

- (1) A supervision officer or a specified 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.

S. 146(1A)
inserted by
No. 52/2015
s. 18(3).

- (1A) In compelling an offender under subsection (1) to obey an instruction, a specified officer may apply an authorised instrument of restraint to the offender if the specified officer believes on reasonable grounds that the application of the instrument of restraint is necessary to prevent the offender or another person being killed or seriously injured.

S. 146(2)
amended by
No. 52/2015
s. 18(4).

- (2) If a supervision officer or a specified 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.

(2A) If a specified officer applies an authorised instrument of restraint to compel an offender to obey an instruction, the specified officer must report that fact to the officer in charge of the residential facility as soon as possible.

S. 146(2A)
inserted by
No. 52/2015
s. 18(5).

(3) The officer in charge of a residential facility must as soon as possible report to the Commissioner any use of force or application of an authorised instrument of restraint by a supervision officer or a specified officer to compel an offender to obey an instruction that has been reported to the officer in charge.

S. 146(3)
amended by
No. 52/2016
s. 18(6).

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 Officers to be subject to direction

- (1) A community corrections officer who manages the offender is subject to the direction of the Commissioner.
- (2) A specified officer who assists in the management of the offender is subject to the direction of the Commissioner.

151 Officer may give instructions

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

S. 150
(Heading)
amended by
No. 52/2015
s. 19(1).

S. 150
amended by
No. 52/2015
s. 19(2) (ILA
s. 39B(1))

S. 150(2)
inserted by
No. 52/2015
s. 19(2).

S. 151
(Heading)
amended by
No. 52/2015
s. 20(1).

S. 151
amended by
No. 52/2015
s. 20(2).

- (a) compliance with any rehabilitation or treatment plan for the offender; or
- (ab) compliance with any conditions of the supervision order; or

S. 151(ab)
inserted by
No. 31/2017
s. 47.

- (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 suspects that the search is necessary to monitor an offender's compliance with a supervision order or an interim supervision order; or

S. 152(1)(a)
amended by
No. 32/2016
s. 21(1)(a).

- (b) reasonably suspects the offender of behaviour or conduct associated with an increased risk of the offender re-offending or breaching the conditions of the supervision order or an interim supervision order.

S. 152(1)(b)
amended by
No. 32/2016
s. 21(1)(b).

- (2) The Commissioner may at any time, direct a community corrections officer or a specified officer to—

S. 152(2)
amended by
No. 52/2015
s. 21.

- (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.

S. 152(2A)
inserted by
No. 32/2016
s. 21(2).

- (2A) A police officer may exercise a power under this section only if the police officer—
- (a) reasonably suspects 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 or breaching the conditions of a supervision order or an interim supervision order.

S. 152(2B)
inserted by
No. 32/2016
s. 21(2).

- (2B) A police officer exercising a power under this section may enter any part of the location occupied by the offender and—
- (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; and
 - (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.

S. 152(4A)
inserted by
No. 32/2016
s. 21(3).

- (4A) If necessary, a community corrections officer, a specified officer or a police officer may use reasonable force to carry out a search under this section.

S. 152(4B)
inserted by
No. 32/2016
s. 21(3).

- (4B) A search under this section may continue only for as long as necessary to achieve the purpose of the search.

(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 and examination

(1) In carrying out a search under section 152, a community corrections officer, police officer or a specified officer (as the case requires) may seize any thing found in the possession or under the control of the offender, which the 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 or breaching the conditions of the supervision order.

(2) A community corrections officer, a police officer or a specified officer (as the case requires) may examine any thing, or operate any electronic equipment, seized under subsection (1) for the purpose of investigating—

- (a) whether the offender has complied with the supervision order; or
- (b) whether the offender has re-offended or has breached the conditions of the supervision order.

S. 153
(Heading)
amended by
No. 32/2016
s. 22(1).

S. 153
amended by
Nos 52/2015
s. 22, 32/2016
s. 22(2)(4) (ILA
s. 39B(1)).

S. 153(1)(b)
amended by
No. 32/2016
s. 22(3).

S. 153(2)
inserted by
No. 32/2016
s. 22(4).

S. 153(3)
inserted by
No. 32/2016
s. 22(4).

- (3) Without limiting subsection (1), a community corrections officer, a police officer or a specified officer (as the case requires) may seize or take a sample of any thing belonging to, or found in the possession or under the control of, the offender if the officer suspects on reasonable grounds that—
- (a) the thing will afford evidence of the commission of an indictable offence (whether or not that offence is a breach of a supervision order); and
 - (b) it is necessary to seize or take a sample of that thing in order to prevent its concealment, loss or destruction or its use in the commission of an indictable offence (whether or not that offence is a breach of a supervision order).

S. 153(4)
inserted by
No. 32/2016
s. 22(4).

- (4) A police officer exercising a power under this section may direct the following persons accompanying the police officer to exercise those powers subject to the officer's direction—
- (a) a Victoria Police employee within the meaning of the **Victoria Police Act 2013**;
 - (b) any person who delivers services or advice on behalf of Victoria Police.

S. 153(5)
inserted by
No. 32/2016
s. 22(4).

- (5) If necessary, a community corrections officer, a police officer or a specified officer, as the case requires, may use reasonable force to carry out a seizure under this section.

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 or specified officer who seized the thing. S. 154(2)(e) amended by No. 52/2015 s. 23(1).
- (3) A community corrections officer or specified 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. S. 154(3) amended by No. 52/2015 s. 23(2).
- (4) This section does not apply to a thing seized by a police officer under this Division. S. 154(4) inserted by No. 32/2016 s. 23.

Note

See section 158I for the register of things seized by police officers.

Division 5—Alcohol and drug testing of offenders by supervision officers, community corrections officers or specified officers

Pt 10 Div. 5 (Heading) substituted by No. 52/2015 s. 24.

154A Definition

In this Division—

S. 154A inserted by No. 12/2014 s. 33.

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 or a specified officer

S. 154A def. of *relevant officer* amended by No. 52/2015 s. 25.

who has day to day management of the offender.

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**;

* * * * *

S. 158(5) def.
of *relevant officer*
repealed by
No. 12/2014
s. 34.

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.

Pt 10 Div. 6
(Heading and
ss 158A,
158B)
inserted by
No. 52/2015
s. 4.

Division 6—Alcohol and drug testing of offenders by police officers

S. 158A
inserted by
No. 52/2015
s. 4.

158A 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 for detecting alcohol or drug use; and
- (b) a condition directing the offender to reside at a location other than a residential facility.

S. 158B
inserted by
No. 52/2015
s. 4.

158B Offender to submit to testing

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

**Division 7—Powers of entry, search and seizure by
police officers to monitor compliance**

Pt 10 Div. 7
(Heading)
amended by
No. 32/2016
s. 24.

Pt 10 Div. 7
(Heading and
ss 158C–
158E)
inserted by
No. 52/2015
s. 4.

158BA Application of Division

This Division does not apply to premises that are a residential facility.

S. 158BA
inserted by
No. 32/2016
s. 25.

**158C Powers of entry by police officer to monitor
compliance**

S. 158C
inserted by
No. 52/2015
s. 4.

- (1) A police officer may enter any premises where an offender is residing if—
 - (a) the police officer reasonably suspects that the offender is present at the premises; and
 - (b) the entry is reasonably necessary to monitor the offender's compliance with a supervision order or interim supervision order.
- (2) If necessary, a police officer may use reasonable force to enter premises under subsection (1).

158D Announcement before entry

S. 158D
inserted by
No. 52/2015
s. 4.

- (1) Subject to subsection (2), a police officer exercising a power of entry under section 158C—
 - (a) must announce that the police officer is authorised by law to enter the premises; and
 - (b) if the police officer has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

- (2) A police officer need not comply with subsection (1) if the police officer reasonably suspects that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective monitoring of the offender's compliance with the supervision order or interim supervision order is not frustrated.

S. 158DA
inserted by
No. 32/2016
s. 26.

158DA Power to search

- (1) A police officer may exercise a power under this section only if the police officer—
- (a) reasonably suspects 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 or breaching the conditions of a supervision order or an interim supervision order.
- (2) A police officer exercising a power of entry under section 158C may—
- (a) search that part of the premises 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 premises; and
 - (b) search and examine the offender at the premises.
- (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) If necessary, a police officer may use reasonable force to carry out a search under this section.
- (6) A search under this section may continue only for as long as necessary to achieve the purpose of the search.
- (7) 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.

158DB Power to seize and examine seized items

- (1) In carrying out a search under section 158DA, a police officer may seize any thing found in the possession of or under the control of the offender which the police 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 or breaching the conditions of the supervision order.
- (2) A police officer may examine any thing, or operate any electronic equipment seized under this section for the purpose of investigating—

S. 158DB
inserted by
No. 32/2016
s. 26.

- (a) whether the offender has complied with the supervision order; or
 - (b) whether the offender has re-offended or has breached the conditions of the supervision order.
- (3) Without limiting subsection (1), a police officer may seize or take a sample of any thing belonging to, or found in the possession or under the control of, the offender if the officer suspects on reasonable grounds that—
- (a) the thing will afford evidence of the commission of an indictable offence (whether or not that offence is a breach of a supervision order); and
 - (b) it is necessary to seize or take a sample of that thing in order to prevent its concealment, loss or destruction or its use in the commission of an indictable offence (whether or not that offence is a breach of a supervision order).
- (4) A police officer exercising a power under this section may direct the following persons accompanying the police officer to exercise those powers subject to the officer's direction—
- (a) a Victoria Police employee within the meaning of the **Victoria Police Act 2013**;
 - (b) any person who delivers services or advice on behalf of Victoria Police.
- (5) If necessary, a police officer may use reasonable force to carry out a seizure under this section.

S. 158E
inserted by
No. 52/2015
s. 4.

158E Report to DSO division of Adult Parole Board

- (1) The Chief Commissioner of Police must advise the Secretary in writing of the exercise of any power of entry under section 158C.

- (2) The Secretary must report to the DSO division of the Adult Parole Board any exercise of a power of entry under section 158C.

Division 8—Specified officers

Pt 10 Div. 8
(Heading and
s. 158F)
inserted by
No. 52/2015
s. 4.

158F Specified officers

S. 158F
inserted by
No. 52/2015
s. 4.

- (1) A prison officer who is a community corrections officer referred to in section 12(4) of the **Corrections Act 1986** is authorised to act as a specified officer.
- (2) A prison officer in a class of prison officers who are community corrections officers referred to in section 12(4) of the **Corrections Act 1986** is authorised to act as a specified officer.
- (2A) A member of a class of prison officers who are community corrections officers referred to in section 12(4) of the **Corrections Act 1986** is authorised to act as a specified officer.
- (3) In performing a function under Division 4 or 5 of this Part, a specified officer may—
- (a) direct an offender to do or not to do anything that the specified officer believes on reasonable grounds is necessary for the safety of—
- (i) the specified officer; or
- (ii) the offender; or
- (iii) any other person; and

S. 158F(1)
substituted by
No. 32/2016
s. 36.

S. 158F(2)
substituted by
No. 32/2016
s. 36.

S. 158F(2A)
inserted by
No. 32/2016
s. 36.

- (b) use reasonable force to compel an offender to obey a direction if the specified officer believes on reasonable grounds that the use of force is necessary to prevent the specified officer, the offender or any other person being killed or seriously injured; and
- (c) apply an authorised instrument of restraint to an offender if the specified officer believes on reasonable grounds that the application of the instrument of restraint is necessary to prevent the offender or another person being killed or seriously injured.

Pt 10 Div. 9
(Heading and
ss 158G–
158S)
inserted by
No. 32/2016
s. 27.

Division 9—General provisions relating to entry, search and seizure under this Part or other provisions of this Act

S. 158G
inserted by
No. 32/2016
s. 27.

158G Warning that search or seizure is to occur and that reasonable force may be used

Immediately before a search under section 142, 152, 158DA or 171A or a seizure under section 143, 153, 158DB or 171A is carried out, a police officer, community correction officer, supervision officer or specified officer, as the case requires, must inform the offender that—

- (a) the search or seizure (as the case requires) is to occur; and
- (b) reasonable force may be used to assist in the conduct of the search or seizure.

**158H Officer may direct offender to provide assistance—
computers and other devices**

S. 158H
inserted by
No. 32/2016
s. 27.

- (1) This section applies in relation to a computer or device that belongs to, or is in the possession or under the control of—
 - (a) the offender—
 - (i) at the location or premises being searched under this Part or section 171A; or
 - (ii) that has been seized under this Part or section 171A; or
 - (b) a supervision officer, a specified officer, an offender or any other person (other than a judge of the Supreme Court or County Court or a magistrate), in the case of a search under section 142 or a seizure under section 143.
- (2) For the purposes of exercising a search power or seizure power referred to in subsection (1), a police officer, community corrections officer, supervision officer or specified officer (as the case requires) may direct the offender or other person to provide information or other assistance that is reasonably necessary to enable the officer or a person assisting the officer to—
 - (a) access data held in, or accessible from, the computer or device; or
 - (b) copy to a data storage device data held in, or accessible from, the computer or device; or
 - (c) convert into documentary or another intelligible form—
 - (i) data held in, or accessible from, the computer or device; or

- (ii) data held in a data storage device to which the data was copied as described in paragraph (b).
- (3) Before giving a direction under subsection (2), the officer must state that the offender or other person may commit an offence if the offender—
- (a) has relevant knowledge of—
 - (i) the computer or device or a computer network of which the computer or device forms or formed a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer or device; and
 - (b) without reasonable excuse, fails to comply with the direction.
- (4) An offender or other person who has relevant knowledge and who has been given a warning under subsection (3) must not, without reasonable excuse, fail to comply with a direction given under subsection (2).

Penalty: Level 6 imprisonment (5 years maximum).

- (5) In this section—
- access**, in relation to data held in a computer or device, means—
- (a) the display of the data by the computer or device or any other output of the data from the computer or device; or
 - (b) the copying or moving of the data to any other place in the computer or to a device; or
 - (c) in the case of a program, the execution of the program;

data includes—

- (a) information in any form; and
- (b) any program or part of a program;

data held in a computer or device includes—

- (a) data entered or copied into the computer or device; and
- (b) data held in any removable data storage device for the time being in the computer; and
- (c) data held in a data storage device on a computer network of which the computer or device forms part;

data storage device means any thing containing or designed to contain data for use by a computer;

Examples

A USB storage device or a file server.

device includes a data storage device, a smartphone and a SIM card;

relevant knowledge means information or other assistance that would enable the officer to—

- (a) access data held in, or accessible from, a computer or device that belongs to, or is in the possession or under the control of, the offender or other person at the location or premises being searched; or
- (b) copy to a data storage device data held in, or accessible from, a computer or device referred to in paragraph (a); or

- (c) convert into documentary or another intelligible form—
 - (i) data held in, or accessible from, a computer or device referred to in paragraph (a); or
 - (ii) data held in a data storage device to which the data was copied as described in paragraph (b).

S. 158I
inserted by
No. 32/2016
s. 27.

158I Register of things seized by police officers

- (1) The Chief Commissioner of Police must establish and maintain a register of things seized by a police officer under this Part or section 171A.
- (2) The register must contain the prescribed details for each thing seized.

S. 158J
inserted by
No. 32/2016
s. 27.

158J Things seized by officers must be photographed or otherwise recorded

All things seized under this Act by a police officer, a community corrections officer, a supervision officer or a specified officer (as the case requires) must be photographed or otherwise recorded.

S. 158K
inserted by
No. 32/2016
s. 27.

158K Officer must provide receipt for seized things

- (1) As soon as practicable after seizing a thing under this Part or section 171A, a police officer must—
 - (a) give the offender or person from whom the thing was seized a receipt for the thing; or
 - (b) if the offender or person from whom the thing was seized refuses to accept the receipt, leave the receipt in a conspicuous place at the location or premises being searched.

- (2) As soon as practicable after seizing a thing under this Part, a community corrections officer, a supervision officer or a specified officer (as the case requires) must—
- (a) give the offender or person from whom the thing was seized a receipt for the thing; or
 - (b) if the offender or person from whom the thing was seized refuses to accept the receipt, leave the receipt in a conspicuous place at the location or premises being searched.
- (3) A receipt under subsection (1) or (2) must—
- (a) contain the prescribed information; and
 - (b) be signed in accordance with the regulations.

158L Retention by Chief Commissioner of Police or Commissioner of seized things

S. 158L
inserted by
No. 32/2016
s. 27.

- (1) The Chief Commissioner of Police may retain any thing seized by a police officer under section 143, section 153, Division 7 of this Part or section 171A for as long as—
- (a) one of the following conditions are met—
 - (i) the police officer suspects on reasonable grounds that the thing will compromise the welfare or safety of a member of the public or the offender's compliance with a supervision order;
 - (ii) the police officer suspects on reasonable grounds that the thing relates to behaviour or conduct associated with an increased risk of the offender re-offending or breaching the conditions of the supervision order;

- (iii) the thing is reasonably required for the purposes of an investigation of, or a proceeding for, an offence against this Act or any other offence; and
 - (b) the thing is not subject to forfeiture, destruction or disposal under this Act or any other Act or law.
- (2) The Commissioner may retain any thing seized under section 143 or 153 (other than a thing seized by a police officer under that section) for as long as—
 - (a) one of the following conditions are met—
 - (i) the community corrections officer, supervision officer or specified officer (as the case requires) suspects on reasonable grounds that the thing will compromise the welfare or safety of a member of the public or the offender's compliance with a supervision order;
 - (ii) the community corrections officer, supervision officer or specified officer (as the case requires) suspects on reasonable grounds that the thing relates to behaviour or conduct associated with an increased risk of the offender re-offending or breaching the conditions of the supervision order;
 - (iii) in the case of a thing seized under section 143, the supervision officer or specified officer (as the case requires) suspects on reasonable grounds that the thing will compromise—

- (A) the good order or management of the residential facility; or
- (B) the safety and welfare of offenders of staff of the facility or of visitors to the facility;
- (iv) the thing is reasonably required for the purposes of an investigation of, or a proceeding for, an offence against this Act or any other Act or law or any other offence; and
- (b) the thing is not subject to forfeiture, destruction or disposal under this Act or any other Act or law.

158M Return of seized things if grounds for seizure no longer applies

S. 158M
inserted by
No. 32/2016
s. 27.

- (1) Any thing seized by a police officer, a community corrections officer, a supervision officer or a specified officer (as the case requires) under this Part or section 171A must be returned, if the grounds set out in the applicable section under which it was seized for its seizure no longer apply—
 - (a) to the offender or, if the thing was seized under section 143, to any other person from whom it was seized; or
 - (b) if subsection (2) applies, to its lawful owner, if it is reasonably practicable to do so.

Note

This section does not preclude the possibility that things may be retained indefinitely.

- (2) If the police officer, community corrections officer, supervision officer or specified officer (as the case requires) who seized the thing believes that the offender is not the owner of the thing and is not entitled at law to possess it, the

thing may be returned to another person who the officer reasonably believes to be the owner of the seized thing.

- (3) Despite subsection (1), if an offender from whom any thing was seized is residing at a residential facility, the thing returned to the offender under this section may be stored at the residential facility as part of the property of the offender and not given directly to the offender.

S. 158N
inserted by
No. 32/2016
s. 27.

158N Return of seized property—retrieval notices

- (1) This section applies to things seized at a location or premises other than a residential facility.
- (2) If the Chief Commissioner of Police or the Commissioner is no longer authorised under section 158L to retain a thing seized under this Part or section 171A, the Chief Commissioner of Police or Commissioner (as the case requires) must make reasonable efforts to serve a written retrieval notice on—
- (a) the serious sex offender; or
 - (b) if the Chief Commissioner of Police or the Commissioner reasonably believes that the offender is not the owner of the thing, another person who the Chief Commissioner of Police or the Commissioner, as the case requires, believes to be the owner of the seized thing.
- (3) A retrieval notice under subsection (1) must be given in accordance with the regulations and include any prescribed information.
- (4) If the Chief Commissioner of Police has made reasonable efforts to notify a person in accordance with this section and the regulations, and the thing has not been retrieved, the thing is to be dealt with under Division 3 of Part 4 of the **Victoria Police Act 2013** as if it were unclaimed property.

- (5) If the Commissioner has made reasonable efforts to notify a person in accordance with this section and the regulations and the seized thing has not been retrieved, the seized thing is taken to be forfeited to the Crown and the Minister may direct that the seized thing forfeited to the Crown under this section be disposed of in any manner that the Minister thinks fit, including destruction.

158O Return of seized property—application to Magistrates' Court

S. 158O
inserted by
No. 32/2016
s. 27.

- (1) The following persons may apply to the Magistrates' Court for the return of a thing seized under this Part or section 171A—
- (a) the serious sex offender from whom the thing was seized;
 - (b) a person claiming to be the lawful owner of the thing seized.
- (2) The applicant must serve a copy of the application as soon as practicable on—
- (a) the Chief Commissioner of Police or the Commissioner, as the case requires; and
 - (b) any other person who the applicant has reason to believe is the owner of the seized thing.
- (3) The Magistrates' Court may order the seized thing be returned to the applicant if satisfied on the balance of probabilities that—
- (a) the Chief Commissioner of Police or the Commissioner, as the case requires, is not authorised to retain the thing under section 158L; and
 - (b) the thing is not subject to forfeiture, destruction or disposal under this Act or any other Act or law.

S. 158P
inserted by
No. 32/2016
s. 27.

- (4) The Magistrates' Court may refuse to make an order under subsection (3) if the Court is satisfied that the applicant is not the owner of the thing.

158P Chief Commissioner of Police or Commissioner may apply to Magistrates' Court for disposal or destruction order

- (1) The Chief Commissioner of Police or the Commissioner, as the case requires, may apply to the Magistrates' Court for an order that a thing seized under this Part or section 171A may be destroyed or disposed of.
- (2) A copy of an application under subsection (1) must be served on the following persons as soon as practicable—
- (a) the serious sex offender from whom the thing was seized;
 - (b) if the Chief Commissioner of Police or the Commissioner believes that the offender is not the owner of the thing, any other person who the Chief Commissioner of Police or the Commissioner, as the case requires, believes to be the owner of the seized thing.
- (3) On an application under this section, the Magistrates' Court may order—
- (a) that the seized thing be forfeited to the Crown and destroyed or disposed of in accordance with the order; or
 - (b) that the thing be returned to the owner.
- (4) The Magistrates' Court may order that the seized thing be forfeited to the Crown and destroyed or disposed of in accordance with the order if satisfied on the balance of probabilities that—
- (a) the grounds on which the thing was seized are still satisfied; and

- (b) the thing is no longer reasonably required to be retained for the purposes of an investigation of or a proceeding for an offence against this Act or any other offence.
- (5) If the Magistrates' Court orders that the seized thing be disposed of by sale, the Court may order that the proceeds of the sale be paid to the owner of the thing.
- (6) The Magistrates' Court may order that the seized thing be returned to the owner if satisfied on the balance of probabilities that—
 - (a) the Chief Commissioner of Police or the Commissioner, as the case requires, is not authorised to retain the thing under section 158L; and
 - (b) the thing is not subject to forfeiture, destruction or disposal under this Act or any other Act or law.
- (7) An order under this section does not take effect until—
 - (a) the day that is 30 days after the day on which the order was made; or
 - (b) if an appeal is made before the expiry of the period referred to in paragraph (a), the appeal is determined.

158Q Proceeds of sale or disposal to be paid into Consolidated Fund

Subject to an order to the contrary under section 158P, any amount received from the sale or disposal of seized things under this Part or section 171A must be paid into the Consolidated Fund.

S. 158Q
inserted by
No. 32/2016
s. 27.

S. 158R
inserted by
No. 32/2016
s. 27.

158R Destruction or disposal of seized things with owner's consent

The Chief Commissioner of Police or the Commissioner may destroy or dispose of a seized thing with the consent of the owner.

S. 158S
inserted by
No. 32/2016
s. 27.

158S No liability

- (1) A supervision officer or a specified officer is not liable for injury or damage caused by the use of force in accordance with—
 - (a) section 142 or 143; or
 - (b) section 146.
- (2) A community corrections officer, a police officer or a specified officer is not liable for injury or damage caused by the use of force in accordance with section 152 or 153.
- (3) A police officer is not liable for injury or damage caused by the use of force in accordance with—
 - (a) section 142 or 143; or
 - (b) section 158C; or
 - (c) section 158DA or 158DB; or
 - (d) section 165 or 171A.
- (4) A specified officer is not liable for injury or damage caused by the use of force in accordance with section 158F.

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).

Notes

- 1 Section 10AB of the **Sentencing Act 1991** requires that a term of imprisonment of not less than 12 months be imposed for an offence against section 160 in the case of intentional or reckless failure to comply with a restrictive condition of a supervision order unless the court finds under section 10A of that Act that a special reason exists.
 - 2 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10AB of that Act do not apply and the court has full sentencing discretion.
- (2) This section does not apply to a failure by the offender to comply with a condition relating to medical treatment.

Notes to
s. 160(1)
inserted by
No. 32/2016
s. 9.

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.
- (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
 - (ca) may increase the offender's risk of committing a violent offence or engaging in violent conduct or is preparatory to a violent offence or that conduct; 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.

S. 162(1)(ca)
inserted by
No. 32/2016
s. 16.

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

S. 164
amended by
No. 37/2014
s. 10(Sch.
item 152.2).

A police officer 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

S. 165(1)
amended by
No. 37/2014
s. 10(Sch.
item 152.2).

- (1) The police officer 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 police officer apprehends and detains an offender under this Division.
- (2) A police officer may search the offender and any vehicle, package or thing in the offender's possession if the police officer 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.

S. 166(1)
amended by
No. 37/2014
s. 10(Sch.
item 152.3(a)).

S. 166(2)
amended by
No. 37/2014
s. 10(Sch.
item 152.3(b)).

167 Procedural requirements for offender apprehended and detained

- (1) This section applies if a police officer apprehends and detains an offender under this Division.
- (2) A police officer 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

S. 167(1)
amended by
No. 37/2014
s. 10(Sch.
item 152.4).

S. 167(2)
amended by
No. 37/2014
s. 10(Sch.
item 152.4).

(b) give the offender a notice containing the prescribed information about the offender's rights and responsibilities under this Division.

S. 167(3)
amended by
No. 37/2014
s. 10(Sch.
item 152.4).

(3) A police officer must comply with subsection (2) as soon as practicable after the offender is apprehended and detained.

S. 167(4)
amended by
No. 37/2014
s. 10(Sch.
item 152.4).

(4) If the offender wishes to communicate with a friend, relative or legal practitioner, a police officer 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.

S. 167(5)
amended by
No. 37/2014
s. 10(Sch.
item 152.4).

(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 police officer must arrange for the offender to have access to a competent interpreter.

S. 168
amended by
No. 32/2016
s. 37.

168 Duration of holding powers

The maximum period for which an offender may be detained under this Division is 72 hours after the detention begins.

169 Notice to Secretary

S. 169(1)
amended by
No. 37/2014
s. 10(Sch.
item 152.4).

(1) A police officer 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 police officer 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.

S. 170
amended by
No. 37/2014
s. 10(Sch.
item 152.4).

Division 4—Enforcement of offence

171 Powers of arrest

- (1) A police officer may arrest an offender if the police officer 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.

S. 171(1)
amended by
No. 37/2014
s. 10(Sch.
item 152.5).

171A Powers of entry and search by police officer to arrest offender

- (1) For the purpose of arresting an offender under section 171, a police officer may enter and search any premises (including any residence or vehicle) where the police officer reasonably suspects the offender to be present.
- (2) If necessary, a police officer may use reasonable force to enter premises under subsection (1).

S. 171A
inserted by
No. 52/2015
s. 5.

Serious Sex Offenders (Detention and Supervision) Act 2009
No. 91 of 2009
Part 11—Breach of supervision order

S. 171A(3)
inserted by
No. 32/2016
s. 28.

(3) A police officer exercising a power of entry under subsection (1) may—

(a) search that part of the premises 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 premises; and

(b) search and examine the offender at the premises.

S. 171A(4)
inserted by
No. 32/2016
s. 28.

(4) For the purposes of subsection (3), a search of an offender means either or both a garment search or a pat-down search.

S. 171A(5)
inserted by
No. 32/2016
s. 28.

(5) To the extent practicable, a pat-down search must be conducted by a person of the same sex as the offender being searched.

S. 171A(6)
inserted by
No. 32/2016
s. 28.

(6) A search under this section may continue only for as long as necessary to achieve the purpose of the search.

S. 171A(7)
inserted by
No. 32/2016
s. 28.

(7) In carrying out a search under subsection (3), a police officer may seize any thing found in the possession or under the control of the offender which the police 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 or breaching the conditions of the supervision order.

S. 171A(8)
inserted by
No. 32/2016
s. 28.

(8) A police officer may examine any thing, or operate any electronic equipment seized under subsection (7) for the purpose of investigating—

- (a) whether the offender has complied with a supervision order; or
 - (b) whether the offender has re-offended or has breached the conditions of a supervision order.
- (9) Without limiting subsection (8), a police officer may seize or take a sample of any thing belonging to, or found in the possession or under the control of, the offender if the officer suspects on reasonable grounds that—
- (a) the thing will afford evidence of the commission of an indictable offence (whether or not that offence is a breach of a supervision order); and
 - (b) it is necessary to seize or take a sample of that thing in order to prevent its concealment, loss or destruction or its use in the commission of an indictable offence (whether or not that offence is a breach of a supervision order).
- (10) A police officer exercising a power under this section may direct the following persons accompanying the police officer to exercise those powers subject to the officer's direction—
- (a) a Victoria Police employee within the meaning of the **Victoria Police Act 2013**;
 - (b) any person who delivers services or advice on behalf of Victoria Police.
- (11) If necessary, a police officer may use reasonable force to carry out a search or a seizure under this section.

S. 171A(9)
inserted by
No. 32/2016
s. 28.

S. 171A(10)
inserted by
No. 32/2016
s. 28.

S. 171A(11)
inserted by
No. 32/2016
s. 28.

S. 171A(12)
inserted by
No. 32/2016
s. 28.

(12) 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.

Note

See Division 9 of Part 10 which also applies to searches and seizure under this section.

S. 171B
inserted by
No. 52/2015
s. 5.

171B Announcement before entry

- (1) Subject to subsection (2), a police officer exercising a power of entry under section 171A—
 - (a) must announce that the police officer is authorised by law to enter the premises; and
 - (b) if the police officer has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) A police officer need not comply with subsection (1) if the police officer reasonably suspects that immediate entry to the premises is required to ensure—
 - (a) the safety of any person; or
 - (b) that the prevention of a continuation of the breach of a condition of a supervision order or interim supervision order is not frustrated; or
 - (c) that the arrest in relation to the breach of a condition of a supervision order or interim supervision order is not frustrated.

171C Report to DSO division of Adult Parole Board

- (1) The Chief Commissioner of Police must advise the Secretary in writing of the exercise of any power of entry under section 171A.
- (2) The Secretary must report to the DSO division of the Adult Parole Board any exercise of a power of entry under section 171A.

S. 171C
inserted by
No. 52/2015
s. 5.

172 Proceedings for offence

- (1) Proceedings for an offence against section 160 may only be brought by the Secretary or a police officer by the filing of a charge-sheet.

S. 172(1)
amended by
No. 37/2014
s. 10(Sch.
item 152.6).

* * * * *

S. 172(2)
amended by
No. 65/2012
s. 8(1),
repealed by
No. 52/2015
s. 33.

* * * * *

S. 172(3)
substituted by
No. 83/2011
s. 12(1),
amended by
Nos 65/2012
s. 8(2),
37/2014
s. 10(Sch.
item 152.6),
repealed by
No. 52/2015
s. 33.

- (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.
- (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).
 - (8) In this section, *the Registrar* means the police officer holding the position of Registrar for the purposes of Regulations made under the **Sex Offenders Registration Act 2004**.

S. 172(8)
inserted by
No. 83/2011
s. 12(2),
amended by
No. 37/2014
s. 10(Sch.
item 152.6).

172A Transfer of proceedings

- (1) If a proceeding is commenced under section 172 for an offence against section 160, the Magistrates' Court must order that the proceeding be transferred to the court that made the supervision order.
- (2) The Magistrates' Court under subsection (1) may be constituted by a proper officer of the court.
- (3) An order under subsection (1) must be in the prescribed form.

S. 172A
inserted by
No. 12/2014
s. 35.

172B Issue of warrant to arrest on failure to comply with bail or summons

If a proceeding is transferred under section 172A, the court to which the proceeding is transferred may issue a warrant to arrest the offender if the offender does not attend before that court—

- (a) in accordance with his or her undertaking of bail; or
- (b) in answer to a summons that has been served.

S. 172B
inserted by
No. 12/2014
s. 35.

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 must 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.

S. 180(a)
amended by
No. 65/2012
s. 9.

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—Publication

Pt 13 Div. 1
(Heading)
amended by
No. 65/2012
s. 10.

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 police officer may publish the identity and location of an offender—

S. 182(2)
amended by
No. 37/2014
s. 10(Sch.
item 152.6).

(a) to the Australian Crime Commission (by whatever name described) established by the Australian Crime Commission Act 2002 of the Commonwealth, for entry on the Australian National Child Offender Register; and

S. 182(2)(a)
substituted by
No. 54/2016
s. 37(1).

(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—

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

(a) at the request of a police officer that disclosed that information; and

S. 182(3)(a)
amended by
No. 37/2014
s. 10(Sch.
item 152.6).

(b) for the purposes of subsection (2)(b) or (2)(c).

(3A) On and from 1 July 2016, the publication of an identity and location of an offender by a police officer to the Australian Crime Commission for entry on the Australian National Child Offender Register is taken to be a lawful publication.

S. 182(3A)
inserted by
No. 54/2016
s. 37(2).

(4) In this section—

media organisation means a person or body that engages in journalism;

S. 182(4)
inserted by
No. 64/2010
s. 27,
substituted by
No. 65/2012
s. 11.

publish means—

- (a) insert in a newspaper or other periodical publication; or
- (b) disseminate by broadcast, telecast or cinematograph; or
- (c) otherwise disseminate to the public by any means.

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

Note to s. 184
inserted by
No. 65/2012
s. 12.

Note

Section 65(4) requires that an order under this section in respect of an offender who is subject to a supervision order must be reviewed when that supervision order is reviewed.

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) the protection of children, families and the community;
- (d) the offender's compliance with any order made under this Act;
- (e) the location of the residential address of the offender.

S. 185(c)
substituted by
No. 65/2012
s. 13.

S. 185(d)
inserted by
No. 65/2012
s. 13.

S. 185(e)
inserted by
No. 65/2012
s. 13.

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.

- (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 use or disclose to another relevant person any information obtained by the person in carrying out a function under this Act or any other Act if—

S. 189(1)
amended by
No. 83/2011
s. 13(1),
substituted by
No. 52/2015
s. 34(1),
amended by
No. 32/2016
s. 38(1)(a).

- (a) the use or disclosure is reasonably necessary to enable the relevant person or the other relevant person to carry out a function under this Act or a relevant Act, including the following—

S. 189(1)(a)
amended by
No. 32/2016
s. 38(1)(b).

- (i) preparing assessment reports, progress reports or any other reports or documents required by this Act;
- (ii) making or responding to an application under this Act;
- (iii) managing an offender under—
 - (A) this Act; or
 - (B) the **Corrections Act 1986**; or
 - (C) the **Sentencing Act 1991**; or

- (b) the use or disclosure is specifically authorised or required by or under this Act or another Act; or

S. 189(1)(b)
amended by
No. 32/2016
s. 38(1)(c).

- (c) the use or disclosure is authorised by the person to whom the information relates; or

S. 189(1)(c)
amended by
No. 32/2016
s. 38(1)(d).

Serious Sex Offenders (Detention and Supervision) Act 2009
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S. 189(1)(d)
substituted by
No. 32/2016
s. 38(1)(e).

(d) the relevant person believes on reasonable grounds it is necessary to use or disclose the information—

S. 189(1)(d)(i)
amended by
No. 31/2017
s. 61(a).

- (i) to reduce the risk of a person committing a violent offence or a sexual offence or both or engaging in violent conduct; or
- (ii) to lessen or prevent a threat to the life, health, safety or welfare of any person.

S. 189(1A)
inserted by
No. 52/2015
s. 34(1).

(1A) A person who is or has been a relevant person must not use or disclose any information obtained by the person in carrying out a function under this Act unless the use or disclosure is authorised by subsection (1).

Penalty: 120 penalty units.

- (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—

S. 189(4)
def. of
relevant Act
amended by
Nos 83/2011
s. 13(2),
65/2012 s. 14,
26/2014
s. 455(Sch.
item 26.6),
52/2015
s. 34(2)(3).

relevant Act means—

- (aa) the **Bail Act 1977**; or
- (aab) the **Children, Youth and Families Act 2005**; or
- (aaba) the **Corrections Act 1986**; or
- (aac) the **Crimes Act 1958**; or
- (a) the **Disability Act 2006**; or
- (ab) the **Family Violence Protection Act 2008**; or

- (b) the **Housing Act 1983**; or
- (c) the **Mental Health Act 2014**; or
- (caa) the **Personal Safety Intervention Orders Act 2010**; or
- (ca) the **Sentencing Act 1991**; or
- (d) the **Sex Offenders Registration Act 2004**; or
- (da) the **Summary Offences Act 1966**; or
- (e) the **Working with Children Act 2005**;
or
- (f) the Crimes Act 1914 of the Commonwealth; or
- (g) the Criminal Code Act 1995 of the Commonwealth; or
- (h) the Migration Act 1958 of the Commonwealth;

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 delivers services or advice to or on behalf of the Department whether paid or unpaid; or
- (e) the Secretary to the Department of Health and Human Services; or
- (f) any person employed in the Department of Health and Human Services; or
- (g) any person who delivers services or advice on behalf of the Department of Health and Human Services; or

S. 189(4)
def. of
relevant person
amended by
Nos 83/2011
s. 13(3),
37/2014
s. 10(Sch.
item 152.7),
21/2015
s. 3(Sch. 1
item 48),
52/2015
ss 34(4)(5),
32/2016
s. 38(2)(3),
31/2017
s. 61(b)(i).

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*	*	*	*	*
*	*	*	*	*

- (k) the Chief Commissioner of Police; or
- (l) a police officer; or
- (la) any Victoria Police employee within the meaning of the **Victoria Police Act 2013**; or
- (lb) any person who delivers services or advice on behalf of Victoria Police; or
- (lc) an Australian lawyer for the purpose of obtaining legal advice or representation in relation to the administration or operation of this Act; or
- (m) the Secretary to the Department of Immigration and Border Protection of the Commonwealth; or
- (n) any person employed in the Department of Immigration and Border Protection of the Commonwealth; or
- (o) any person who delivers services or advice on behalf of the Department of Immigration and Border Protection of the Commonwealth; or
- (p) the Secretary to the Attorney-General's Department of the Commonwealth; or
- (q) any person employed in the Attorney-General's Department of the Commonwealth; or
- (r) any person who delivers services or advice on behalf of the Attorney-General's Department of the Commonwealth; or

- (s) the Commissioner of the Australian Federal Police; or
- (t) a member or a special member of the Australian Federal Police; or
- (u) the Commonwealth Director of Public Prosecutions; or
- (v) any person employed in the Office of the Commonwealth Director of Public Prosecutions; or
- (w) any person who delivers services or advice on behalf of the Office of the Commonwealth Director of Public Prosecutions; or
- (x) the Director of Public Prosecutions for Victoria; or
- (y) the Chief Crown Prosecutor within the meaning of the **Public Prosecutions Act 1994**; or
- (z) any Crown Prosecutor or Associate Crown Prosecutor within the meaning of the **Public Prosecutions Act 1994**; or
- (za) the Solicitor for Public Prosecutions appointed under the **Public Prosecutions Act 1994**; or
- (zb) any person employed in the Office of Public Prosecutions for Victoria; or
- (zc) any person who delivers services or advice on behalf of the Office of Public Prosecutions for Victoria;

sexual offence means an offence listed in Schedule 1.

S. 189(4)
def. of *sexual offence*
inserted by
No. 31/2017
s. 61(b)(ii).

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 and Human Services; or

S. 190(2)(c)
amended by
No. 52/2015
s. 35(a).

S. 190(2)(d)
repealed by
No. 52/2015
s. 35(b).

S. 190(2)(e)
amended by
No. 83/2011
s. 14(1).

S. 190(2)(f)
inserted by
No. 83/2011
s. 14(2).

* * * * *

- (e) the Chief Commissioner of Police; or
- (f) the Director of Public Prosecutions for Victoria.

191 Disclosure of information to responsible persons

- (1) The Secretary may disclose to a responsible person any information in respect of an offender obtained by the Secretary in carrying out a function under this Act.
- (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.

S. 191(1)
substituted by
No. 52/2015
s. 36.

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
 - (d) by a disability service within the meaning of the **Disability Act 2006**; or
 - (e) by a designated mental health service within the meaning of the **Mental Health Act 2014**.

S. 192(2)(a)
amended by
No. 83/2011
s. 15.

S. 192(2)(e)
substituted by
No. 26/2014
s. 455(Sch.
item 26.7).

192A Disclosure of certain information is not breach of section 4 of Judicial Proceedings Reports Act 1958

Section 4 of the **Judicial Proceedings Reports Act 1958** does not prevent a disclosure of information, including the identity of a victim, that is made for the purposes of the administration of this Act or of an order made under this Act or an order or sentence made or imposed by a court under the **Sentencing Act 1991** or for the purposes of an application for an order under this Act or the **Sentencing Act 1991**.

S. 192A
inserted by
No. 25/2014
s. 16.

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 and Regulation any of the Secretary's powers and functions under this Act other than this power of delegation.

S. 196
amended by
No. 52/2015
s. 37.

197 Delegation by Commissioner

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

S. 197
amended by
No. 52/2015
s. 38.

198 Regulations

- (1) 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.

S. 198
amended by
No. 32/2016
s. 29 (ILA
s. 39B(1)).

S. 198(2)
inserted by
No. 32/2016
s. 29.

- (2) Without limiting subsection (1), the regulations may make provision for or with respect to any matters in respect of or incidental to seizure of things under Part 10 or section 171A, including, but not limited to the following—
- (a) the form of, and information to be included in, receipts and registers;
 - (b) processes for returning seized things.

S. 198(3)
inserted by
No. 32/2016
s. 29.

- (3) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (d) may require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (e) may provide in a specified case or class of case for the exemption of persons or things from any of the provisions of the regulations—
 - (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to any extent that is specified; and

(f) may impose a penalty not exceeding
20 penalty units for a contravention of the
regulations.

199 Transitional provisions

Schedule 2 has effect.

199A Further transitional provisions

Schedule 3 has effect.

S. 199A
inserted by
No. 52/2015
s. 26.

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.**

Pt 15 Divs 2, 3
(Headings
and ss 201–
219)
repealed by
No. 70/2013
s. 3(Sch. 1
item 50).

* * * * *

Schedules

Schedule 1—Relevant offences

Section 3

- | | | | | | |
|----|--|---|---|---|---|
| 1 | An offence against a provision of Subdivisions (8A) to (8FA) of Division 1 of Part I of the Crimes Act 1958 that involves sexual penetration. | Sch. 1
item 1
substituted by
Nos 74/2014
s. 32(1),
47/2016
s. 42(1). | | | |
| * | * | * | * | * | Sch. 1
item 2
substituted by
No. 74/2014
s. 32(1),
repealed by
No. 47/2016
s. 42(1). |
| * | * | * | * | * | Sch. 1
items 3, 4
repealed by
No. 36/2014
s. 6(4)(a). |
| 5 | An offence against section 40(1) (sexual assault), or 41(1) (sexual assault by compelling sexual touching), of the Crimes Act 1958 . | Sch. 1
item 5
amended by
No. 74/2014
s. 32(2)(a). | | | |
| 6 | An offence against section 42(1) (assault with intent to commit a sexual offence), or 43(1) (threat to commit a sexual offence), of the Crimes Act 1958 . | Sch. 1
item 6
amended by
No. 74/2014
s. 32(2)(b). | | | |
| 7 | An offence against section 44(1) of the Crimes Act 1958 (procuring sexual act by threat). | Sch. 1 item 7
substituted by
No. 47/2016
s. 42(2). | | | |
| 7A | An offence against section 45(1) of the Crimes Act 1958 (procuring sexual act by fraud). | Sch. 1 item 7A
inserted by
No. 36/2014
s. 6(4)(b),
substituted by
No. 47/2016
s. 42(2). | | | |

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- Sch. 1 item 8 substituted by No. 47/2016 s. 42(2). 8 An offence against section 46(1) of the **Crimes Act 1958** (administration of an intoxicating substance for a sexual purpose).
- Sch. 1 item 8A inserted by No. 36/2014 s. 6(4)(c), substituted by No. 47/2016 s. 42(2). 8A An offence against section 47(1) of the **Crimes Act 1958** (abduction or detention for a sexual purpose).
- Sch. 1 item 8B inserted by No. 36/2014 s. 6(4)(c), repealed by No. 47/2016 s. 42(2). * * * * *
- Sch. 1 item 9 substituted by No. 47/2016 s. 42(2). 9 An offence against section 49D(1) of the **Crimes Act 1958** (sexual assault of a child under the age of 16).
- Sch. 1 item 9A inserted by No. 47/2016 s. 42(2). 9A An offence against section 49E(1) of the **Crimes Act 1958** (sexual assault of a child aged 16 or 17 under care, supervision or authority).
- Sch. 1 item 10 substituted by No. 47/2016 s. 42(2). 10 An offence against section 49F(1) of the **Crimes Act 1958** (sexual activity in the presence of a child under the age of 16).
- Sch. 1 item 10A inserted by No. 47/2016 s. 42(2). 10A An offence against section 49G(1) of the **Crimes Act 1958** (sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority).
- Sch. 1 item 11 substituted by No. 47/2016 s. 42(2). 11 An offence against section 49H(1) of the **Crimes Act 1958** (causing a child under the age of 16 to be present during sexual activity).
- Sch. 1 item 11A inserted by No. 47/2016 s. 42(2). 11A An offence against section 49I(1) of the **Crimes Act 1958** (causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity).

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- | | | |
|-----|--|---|
| 12 | An offence against section 49J(1) of the Crimes Act 1958 (persistent sexual abuse of a child under the age of 16). | Sch. 1 item 12 substituted by No. 47/2016 s. 42(2). |
| 12A | An offence against section 49K(1) of the Crimes Act 1958 (encouraging a child under the age of 16 to engage in, or be involved in, sexual activity). | Sch. 1 item 12A inserted by No. 47/2016 s. 42(2). |
| 13 | An offence against section 49L(1) of the Crimes Act 1958 (encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity). | Sch. 1 item 13 substituted by No. 47/2016 s. 42(2). |
| 13A | An offence against section 49M(1) of the Crimes Act 1958 (grooming for sexual conduct with a child under the age of 16). | Sch. 1 item 13A inserted by No. 47/2016 s. 42(2). |
| 14 | An offence against section 49N(1) of the Crimes Act 1958 (loitering near schools etc. by sexual offender). | Sch. 1 item 14 substituted by No. 47/2016 s. 42(2). |
| 14A | An offence against section 49P(1) of the Crimes Act 1958 (abduction or detention of a child under the age of 16 for a sexual purpose). | Sch. 1 item 14A inserted by No. 47/2016 s. 42(2). |
| 15 | An offence against section 49Q(1) of the Crimes Act 1958 (causing or allowing a sexual performance involving a child). | Sch. 1 item 15 substituted by No. 47/2016 s. 42(2). |
| 15A | An offence against section 49R(1) of the Crimes Act 1958 (inviting or offering a sexual performance involving a child). | Sch. 1 item 15A inserted by No. 47/2016 s. 42(2). |
| 16 | An offence against section 49S(1) of the Crimes Act 1958 (facilitating a sexual offence against a child). | Sch. 1 item 16 substituted by No. 47/2016 s. 42(2). |

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- | | |
|---|---|
| Sch. 1
item 16A
inserted by
No. 47/2016
s. 42(2). | 16A An offence against section 51B(1) of the Crimes Act 1958 (involving a child in the production of child abuse material). |
| Sch. 1 item 17
substituted by
No. 47/2016
s. 42(2). | 17 An offence against section 51C(1) of the Crimes Act 1958 (producing child abuse material). |
| Sch. 1
item 17A
inserted by
No. 47/2016
s. 42(2). | 17A An offence against section 51D(1) of the Crimes Act 1958 (distributing child abuse material). |
| Sch. 1 item 18
substituted by
No. 47/2016
s. 42(2). | 18 An offence against section 51E(1) of the Crimes Act 1958 (administering a website used to deal with child abuse material). |
| Sch. 1
item 18A
inserted by
No. 47/2016
s. 42(2). | 18A An offence against section 51F(1) of the Crimes Act 1958 (encouraging use of a website to deal with child abuse material). |
| Sch. 1 item 19
substituted by
No. 47/2016
s. 42(2). | 19 An offence against section 51G(1) of the Crimes Act 1958 (possession of child abuse material). |
| Sch. 1
item 19A
inserted by
No. 47/2016
s. 42(2). | 19A An offence against section 51H(1) of the Crimes Act 1958 (accessing child abuse material). |
| Sch. 1 item 20
substituted by
No. 47/2016
s. 42(2). | 20 An offence against section 51I(1) of the Crimes Act 1958 (assisting a person to avoid apprehension). |
| Sch. 1
item 20A
inserted by
No. 47/2016
s. 42(2). | 20A An offence against section 52C(1) of the Crimes Act 1958 (sexual assault of a person with a cognitive impairment or mental illness). |

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- | | | |
|-----|---|---|
| 21 | An offence against section 52D(1) of the Crimes Act 1958 (sexual activity in the presence of a person with a cognitive impairment or mental illness). | Sch. 1 item 21 substituted by No. 47/2016 s. 42(2). |
| 21A | An offence against section 52E(1) of the Crimes Act 1958 (causing a person with a cognitive impairment or mental illness to be present during sexual activity). | Sch. 1 item 21A inserted by No. 47/2016 s. 42(2). |
| 22 | An offence against section 53B(1) of the Crimes Act 1958 (using force, threat etc. to cause another person to provide commercial sexual services). | Sch. 1 item 22 substituted by No. 47/2016 s. 42(2). |
| 22A | An offence against section 53C(1) of the Crimes Act 1958 (causing another person to provide commercial sexual services in circumstances involving sexual servitude). | Sch. 1 item 22A inserted by No. 47/2016 s. 42(2). |
| 23 | An offence against section 53D(1) of the Crimes Act 1958 (conducting a business in circumstances involving sexual servitude). | Sch. 1 item 23 substituted by No. 47/2016 s. 42(2). |
| 23A | An offence against section 53E(1) of the Crimes Act 1958 (aggravated sexual servitude). | Sch. 1 item 23A inserted by No. 47/2016 s. 42(2). |
| 24 | An offence against section 53F(1) of the Crimes Act 1958 (deceptive recruiting for commercial sexual services). | Sch. 1 item 24 substituted by No. 47/2016 s. 42(2). |
| 25 | An offence against section 53G(1) of the Crimes Act 1958 (aggravated deceptive recruiting for commercial sexual services). | Sch. 1 item 25 substituted by No. 47/2016 s. 42(2). |
| | * * * * * | Sch. 1 items 25A–25C inserted by No. 42/2015 s. 27, repealed by No. 47/2016 s. 42(2). |

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- Sch. 1 item 26 substituted by No. 47/2016 s. 42(2).
- 26 An offence against section 54A(1) of the **Crimes Act 1958** (bestiality).
- Sch. 1 item 27 amended by Nos 74/2014 s. 32(2)(c), 52/2015 s. 39(1), 47/2016 s. 42(3).
- 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 an offence against a provision of Subdivisions (8A) to (8FA) of Division 1 of Part I of the **Crimes Act 1958**.
- Sch. 1 item 28 amended by Nos 74/2014 s. 32(2)(c), 52/2015 s. 39(1), 47/2016 s. 42(3).
- 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 an offence against a provision of Subdivisions (8A) to (8FA) of Division 1 of Part I of the **Crimes Act 1958**.
- Sch. 1 item 29 amended by No. 63/2010 s. 81(Sch. item 11.1).
- 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 30 amended by No. 63/2010 s. 81(Sch. item 11.2).
- 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 31 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 32 amended by No. 63/2010 s. 81(Sch. item 11.3).
- 32 An offence against section 11(1) of the **Sex Work Act 1994** (allowing child to take part in sex work).
- Sch. 1 item 32A inserted by No. 52/2015 s. 39(2).
- 32A An offence against section 41DA of the **Summary Offences Act 1966** (distribution of intimate image).

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- 32B An offence against section 41DB of the **Summary Offences Act 1966** (threat to distribute intimate image). Sch. 1 item 32B inserted by No. 52/2015 s. 39(2).
- * * * * *
- 33A An offence against section 60B(2) of the **Crimes Act 1958** (loitering near schools etc.) inserted in the **Crimes Act 1958** on 21 December 1993 by section 10 of the **Crimes (Amendment) Act 1993** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**. Sch. 1 item 33A inserted by No. 47/2016 s. 42(4).
- 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.
- 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**.
- 35A Without limiting item 34 or 35, an offence referred to in paragraphs (dab) to (dar) of clause 1 of Schedule 1 to the **Sentencing Act 1991** that involves sexual penetration. Sch. 1 item 35A inserted by No. 47/2016 s. 42(5).
- 35B Without limiting item 34, 35 or 35A, an offence referred to in paragraph (a)(iv) to (xviii) of clause 1 of Schedule 1 to the **Sentencing Act 1991** as in force immediately before their repeal. Sch. 1 item 35B inserted by No. 47/2016 s. 42(5).
- 35C An offence against section 44(3) of the **Crimes Act 1958** (incest by sexual penetration of a parent, step-parent or lineal ancestor) as in force immediately before the commencement of section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, if the offender is convicted and sentenced to imprisonment for that offence before that commencement. Sch. 1 item 35C inserted by No. 31/2017 s. 63(1).

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Sch. 1
item 35D
inserted by
No. 31/2017
s. 63(1).

35D An offence against section 44(4) of the **Crimes Act 1958** (incest by sexual penetration of a sibling or half-sibling) as in force immediately before the commencement of section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**, if the offender is convicted and sentenced to imprisonment for that offence before that commencement.

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.

Sch. 1 item 38
amended by
Nos 52/2015
s. 39(3),
32/2016 s. 39,
31/2017
s. 63(2).

38 An offence against section 270.3, 270.5, 270.6, 270.6A 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.

Sch. 1
item 39A
inserted by
No. 52/2015
s. 39(4).

- 39A An offence against any of the following sections of the Criminal Code of the Commonwealth—
- (i) section 272.8(1) or (2) (sexual intercourse with child outside Australia);
 - (ii) section 272.11(1) (persistent sexual abuse of child outside Australia);
 - (iii) section 272.12(1) or (2) (sexual intercourse with young person outside Australia—defendant in position of trust or authority);
 - (iv) section 272.13(1) or (2) (sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority);

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- (v) section 272.14(1) (procuring child to engage in sexual activity outside Australia);
 - (vi) section 272.15(1) ("grooming" child to engage in sexual activity outside Australia);
 - (vii) section 272.18(1) (benefiting from offence against this Division);
 - (viii) section 272.19(1) (encouraging offence against this Division);
 - (ix) section 272.20(1) or (2) (preparing for or planning offence against this Division).
- 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);
 - (iva) section 474.24A(1) (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people);
 - (ivb) section 474.25A(1) or (2) (using a carriage service for sexual activity with person under 16 years of age);
 - (ivc) section 474.25B(1) (aggravated offence—child with mental impairment or under care, supervision or authority of defendant);

Sch. 1
item 40(iva)
inserted by
No. 52/2015
s. 39(5).

Sch. 1
item 40(ivb)
inserted by
No. 52/2015
s. 39(5).

Sch. 1
item 40(ivc)
inserted by
No. 52/2015
s. 39(5).

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Sch. 1
item 40(vi)
amended by
No. 52/2015
s. 39(6).

- (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);

Sch. 1
item 40(vii)
inserted by
No. 52/2015
s. 39(7).

- (vii) section 474.27A(1) (using a carriage service to transmit indecent communication to person under 16 years of age).

- 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.

Schedule 1A—Violent offences

Section 3

Sch. 1A
inserted by
No. 32/2016
s. 17.

- 1 Murder.
- 2 Manslaughter.
- 3 An offence against any of the following sections of the **Crimes Act 1958**—
 - (a) section 5A (child homicide);
 - (b) section 15A (causing serious injury intentionally in circumstances of gross violence);
 - (c) section 15B (causing serious injury recklessly in circumstances of gross violence);
 - (d) section 16 (causing serious injury intentionally);
 - (e) section 17 (causing serious injury recklessly);
 - (f) section 18 (causing injury intentionally or recklessly);
 - (g) section 19 (administering certain substances);
 - (h) section 20 (threats to kill);
 - (i) section 21 (threats to inflict serious injury);
 - (j) section 21A (stalking);
 - (k) section 22 (conduct endangering life);
 - (l) section 23 (conduct endangering persons);
 - (m) section 24 (negligently causing serious injury);
 - (n) section 25 (setting traps etc. to kill);
 - (o) section 26 (setting traps etc. to cause serious injury);
 - (p) section 27 (extortion with threat to kill);
 - (q) section 28 (extortion with threat to destroy property etc.);
 - (r) section 29 (using firearm to resist arrest etc.);
 - (s) section 30 (threatening injury to prevent arrest);

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Schedule 1A—Violent offences

- (t) section 31 (assaults);
 - (u) section 31A (use of firearms in commission of offences);
 - (v) section 31B (being armed with criminal intent);
 - (w) section 32 (performing female genital mutilation);
 - (x) section 33 (taking person from Victoria with intention of having prohibited female genital mutilation performed);
 - (y) section 63A (kidnapping);
 - (z) section 75 (robbery);
 - (za) section 75A (armed robbery);
 - (zb) section 76 (burglary);
 - (zc) section 77 (aggravated burglary);
 - (zca) section 195H (affray);
 - (zcb) section 195I (violent disorder);
 - (zd) section 197 (destroying or damaging property);
 - (ze) section 197A (arson causing death);
 - (zf) section 198 (threats to destroy or damage property);
 - (zg) section 199 (possessing anything with intent to destroy or damage property);
 - (zh) section 317 (offences connected with explosive substances);
 - (zi) section 317A (bomb hoaxes).
- 4 An offence at common law of kidnapping.
- 5 An offence at common law of false imprisonment.

Sch. 1A
item 3(zca)
inserted by
No. 32/2017
s. 11(1).

Sch. 1A
item 3(zcb)
inserted by
No. 32/2017
s. 11(1).

- 6 An offence at common law of common assault.
- 7 An offence against any of the following sections of the **Family Violence Protection Act 2008**—
- (a) section 37 (contravention of family violence safety notice);
 - (b) section 37A (contravention of family violence safety notice intending to cause harm or fear for safety);
 - (c) section 123 (contravention of family violence intervention order);
 - (d) section 123A (contravention of family violence intervention order intending to cause harm or fear for safety);
 - (e) section 125A (persistent contravention of family violence safety notice or family violence intervention order).
- 8 An offence against section 100 (contravention of personal safety intervention order) of the **Personal Safety Intervention Orders Act 2010**.
- 9 An offence that, at the time it was committed, was an offence listed in this Schedule.
- 10 An offence of conspiracy to commit, incitement to commit or attempting to commit an offence listed in this Schedule.
- 11 An 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.

Sch. 1A item 6
amended by
No. 32/2017
s. 11(2).

Schedule 2—Transitional provisions

Section 199

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

- (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—
 - (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 142 to 146 of the new Act apply as if the offender were residing at the residential facility under a supervision order or interim supervision order.

Sch. 2 cl. 11(2)
amended by
No. 83/2011
s. 16.

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—Further transitional provisions

1 Serious Sex Offenders (Detention and Supervision) and Other Acts Amendment Act 2015

- (1) This Act, as amended by Division 1 of Part 2 of the **Serious Sex Offenders (Detention and Supervision) and Other Acts Amendment Act 2015**, applies to a supervision order or interim supervision order in force immediately before the commencement of that Division if, after that commencement—
- (a) the order is renewed; or
 - (b) the order is reviewed; or
 - (c) a condition to which the order is subject is reviewed.
- (2) On and after the day on which Division 1 of Part 2 of the **Serious Sex Offenders (Detention and Supervision) and Other Acts Amendment Act 2015** comes into operation, a direction given by the Adult Parole Board that is authorised by a condition of a kind referred to in section 20(1)(c) relating to electronic monitoring that is in effect immediately before that day is taken to include the directions set out in section 20(1A).

Sch. 3
repealed by
No. 70/2013
s. 3(Sch. 1
item 50),
new Sch. 3
inserted by
No. 52/2015
s. 27.

2 Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016

This Act, as amended by Part 2 of the **Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016**, applies to a supervision order or an interim supervision order in force immediately before the commencement of that Part if, after that commencement—

- (a) the order is renewed; or

Sch. 3 cl. 2
inserted by
No. 32/2016
s. 18.

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Schedule 3—Further transitional provisions

- (b) the order is reviewed; or
 - (c) a condition to which the order is subject is reviewed.
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative 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.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

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a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication 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**

Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011 (as amended by No. 43/2012)

Assent Date: 22.11.11
Commencement Date: S. 107(Sch. item 11) on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

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**Serious Sex Offenders (Detention and Supervision) Amendment Act 2011,
No. 83/2011**

Assent Date: 21.12.11
Commencement Date: Ss 4–16 on 1.3.12: Special Gazette (No. 45) 21.2.12
p. 1
Current State: This information relates only to the provision/s
amending the **Serious Sex Offenders (Detention and
Supervision) Act 2009**

**Serious Sex Offenders (Detention and Supervision) Amendment Act 2012,
No. 65/2012**

Assent Date: 7.11.12
Commencement Date: Ss 4–14 on 1.12.12: Special Gazette (No. 399)
27.11.12 p. 1
Current State: This information relates only to the provision/s
amending the **Serious Sex Offenders (Detention and
Supervision) Act 2009**

**Sentencing Amendment (Abolition of Suspended Sentences and Other Matters)
Act 2013, No. 32/2013**

Assent Date: 4.6.13
Commencement Date: S. 59 on 1.9.14: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Serious Sex Offenders (Detention and
Supervision) Act 2009**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 3(Sch. 1 item 50) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Serious Sex Offenders (Detention and
Supervision) Act 2009**

**Education and Training Reform Amendment (Dual Sector Universities)
Act 2013, No. 76/2013**

Assent Date: 17.12.13
Commencement Date: S. 25 on 1.1.14: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Serious Sex Offenders (Detention and
Supervision) Act 2009**

Corrections Legislation Amendment Act 2014, No. 12/2014

Assent Date: 18.3.14
Commencement Date: Ss 27–34 on 8.4.14: Special Gazette (No. 112) 8.4.14
p. 1; ss 26, 35 on 1.5.14: Special Gazette (No. 112)
8.4.14 p. 1
Current State: This information relates only to the provision/s
amending the **Serious Sex Offenders (Detention and
Supervision) Act 2009**

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Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014, No. 25/2014

Assent Date: 8.4.14
Commencement Date: S. 16 on 9.4.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Mental Health Act 2014, No. 26/2014

Assent Date: 8.4.14
Commencement Date: S. 455(Sch. item 26) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Crimes Amendment (Protection of Children) Act 2014, No. 36/2014

Assent Date: 3.6.14
Commencement Date: S. 6(4) on 27.10.14: Special Gazette (No. 350) 7.10.14 p. 1
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 152) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 42) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Crimes Amendment (Sexual Offences and Other Matters) Act 2014, No. 74/2014

Assent Date: 21.10.14
Commencement Date: S. 32 on 1.7.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

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

Statute Law Revision Act 2015, No. 21/2015

Assent Date: 16.6.15
Commencement Date: S. 3(Sch. 1 item 48) on 1.8.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Crimes Amendment (Child Pornography and Other Matters) Act 2015, No. 42/2015

Assent Date: 22.9.2015
Commencement Date: S. 27 on 1.12.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Serious Sex Offenders (Detention and Supervision) and Other Acts Amendment Act 2015, No. 52/2015

Assent Date: 13.10.15
Commencement Date: Ss 28–39 on 14.10.15: s. 2(1); ss 3–27 on 1.12.15: Special Gazette (No. 363) 24.11.15 p. 1
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 2016, No. 3/2016

Assent Date: 16.2.16
Commencement Date: S. 100 on 1.5.16: Special Gazette (No. 114) 26.4.16 p. 1
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Health Complaints Act 2016, No. 22/2016

Assent Date: 3.5.16
Commencement Date: Ss 245, 246 on 1.2.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016, No. 32/2016

Assent Date: 31.5.16
Commencement Date: Ss 4–18, 30–39 on 1.6.16: s. 2(1); ss 19–29 on 31.10.16: Special Gazette (No. 319) 18.10.16 p. 1
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

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

Crimes Amendment (Sexual Offences) Act 2016, No. 47/2016

Assent Date: 6.9.16
Commencement Date: S. 42 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Police and Justice Legislation Amendment (Miscellaneous) Act 2016, No. 54/2016

Assent Date: 18.10.16
Commencement Date: S. 37 on 19.10.16: s. 2(1)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017

Assent Date: 16.5.17
Commencement Date: S. 134(Sch. 1 item 16) on 1.9.17: s. 2(3)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Corrections Legislation Miscellaneous Amendment Act 2017, No. 31/2017

Assent Date: 15.8.17
Commencement Date: Ss 15–22, 24–38, 40, 47, 61, 63 on 16.8.17: s. 2(1)
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Crimes Legislation Amendment (Public Order) Act 2017, No. 32/2017

Assent Date: 15.8.17
Commencement Date: S. 11 on 13.9.17: Special Gazette (No. 303) 12.9.17 p. 1
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

3 Amendments Not in Operation

This publication does not include amendments made to the **Serious Sex Offenders (Detention and Supervision) Act 2009** by the following Act/s.

National Domestic Violence Order Scheme Act 2016, No. 53/2016

Assent Date: 18.10.16
Commencement Date: S. 125 not yet proclaimed
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Sex Offenders Registration Amendment (Miscellaneous) Act 2017, No. 25/2017

Assent Date: 20.6.17
Commencement Date: S. 57 not yet proclaimed
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

Corrections Legislation Miscellaneous Amendment Act 2017, No. 31/2017

Assent Date: 15.8.17
Commencement Date: Ss 23, 39, 41–46, 48–60, 62 not yet proclaimed
Current State: This information relates only to the provision/s amending the **Serious Sex Offenders (Detention and Supervision) Act 2009**

At the date of this publication, the following provisions amending the **Serious Sex Offenders (Detention and Supervision) Act 2009** were Not in Operation:

Amending Act/s:

National Domestic Violence Order Scheme Act 2016, No. 53/2016

125 Sharing of information

In section 189(4) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, after paragraph (ab) of the definition of *relevant Act* insert—

"(ac) the **National Domestic Violence Order Scheme Act 2016**; or".

**Sex Offenders Registration Amendment (Miscellaneous)
Act 2017, No. 25/2017**

**57 Sex offender registration order under Sex Offenders
Registration Act 2004**

In section 6B(2) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for "must be" **substitute** "must require that the person comply with the reporting obligations under that Act".

**Corrections Legislation Miscellaneous Amendment
Act 2017, No. 31/2017**

23 Other discretionary conditions

Insert the following example after example 4 at the foot of section 19 of the **Serious Sex Offenders (Detention and Supervision) Act 2009**—

"5 A condition requiring the offender to comply with the directions of the Adult Parole Board in relation to computers and other devices (as defined in section 158H(5)) in the possession or control of the offender for the purposes of auditing by a supervision officer, specified officer or police officer."

39 Execution of arrest warrant

After section 92(4) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** **insert**—

- "(5) A person who uses force to execute the warrant under this section must report the fact to the Chief Commissioner of Police as soon as possible.
- (6) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a person that has been reported to the Chief Commissioner of Police under this section."

41 Visitors to give certain information

After section 141(5) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

- "(5A) The officer in charge of a residential facility must report to the Commissioner as soon as possible any use of force by a supervision officer or specified officer that has been reported to the officer in charge under this section.
- (5B) The Commissioner must report to the Secretary as soon as possible any use of force by a supervision officer or specified officer that has been reported to the Commissioner under this section."

42 New sections 141A and 141B inserted

After section 141 of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"141A Offences relating to operation or possession of remotely piloted aircraft or helicopter

- (1) A person (other than a person referred to in subsection (2) or a prescribed person or a person belonging to a prescribed class of persons) must not intentionally or recklessly operate or attempt to operate a remotely piloted aircraft or a helicopter or possess a remotely piloted aircraft—
- (a) in any direction in the airspace above a residential facility at or below 400 feet above ground level; or
- (b) in or at a residential facility; or

- (c) outside but near a residential facility—
in a manner that threatens or is likely to threaten the good order or security of the facility or any person in the facility, unless the person has a reasonable excuse.
Penalty: 2 years imprisonment.
- (2) A person does not contravene subsection (1) if the person operates or attempts to operate a remotely piloted aircraft or a helicopter or is in possession of a remotely piloted aircraft—
- (a) in accordance with this Act or the regulations; or
 - (b) in accordance with an authorisation given by the officer in charge under section 141B; or
 - (c) in accordance with a law of the Commonwealth; or
 - (d) for the purposes of law enforcement by a law enforcement agency; or
 - (e) for the purposes of an emergency or recovery from an emergency under the **Emergency Management Act 2013**.
- (3) If a supervision officer or a specified officer believes on reasonable grounds that a person is committing or has committed an offence against subsection (1), the officer may order the person to leave the neighbourhood of the residential facility.
- (4) Before ordering a person to leave in accordance with subsection (3), a supervision officer or a specified officer must advise the person of the reason why that person is being ordered to leave.

- (5) A person must not fail to comply with an order to leave given under subsection (3).
Penalty: 5 penalty units.
- (6) If a supervision officer or a specified officer believes on reasonable grounds that a person has committed an offence against subsection (1), the officer may apprehend the person without warrant.
- (7) A supervision officer or a specified officer who has apprehended a person in accordance with subsection (6) must deliver as soon as possible the person into the custody of a police officer to be dealt with according to law.
- (8) The **Crimes Act 1958** (except section 458(1) and 458(2)) applies to the apprehension of a person under this section as if the person were found committing an offence within the meaning of section 458(1)(a) of that Act.
- (9) Where a provision of this section is inconsistent with a law of the Commonwealth, the law of the Commonwealth prevails to the extent of the inconsistency.
- (10) For the purposes of subsection (9), a provision of this section is inconsistent with a law of the Commonwealth if it would be inconsistent within the meaning of section 109 of the Constitution of the Commonwealth.
- (11) In this section—
law enforcement agency means—
(a) Victoria Police; or
(b) the Australian Federal Police;

remotely piloted aircraft includes the controls for the aircraft.

141B Officer in charge may give authorisation

The officer in charge of a residential facility may, by instrument, authorise a person, or a class of persons, to operate or attempt to operate a remotely piloted aircraft or a helicopter or to possess a remotely piloted aircraft in, at or outside but near the residential facility."

43 Search

(1) After section 142(2) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"(2A) The officer in charge of a residential facility may order a supervision officer or a specified officer to conduct a search outside but near the residential facility, if the officer in charge believes on reasonable grounds that a person is committing or has committed an offence against section 141A(1).

(2B) A supervision officer or a specified officer may conduct a search outside but near a residential facility if the officer believes on reasonable grounds that a person is committing or has committed an offence against section 141A(1).

(2C) In conducting a search under subsection (2A) or (2B), a supervision officer or a specified officer may—

- (a) search and examine a person who is reasonably believed to have committed the offence including any thing belonging to, in the possession of or under the control of, the person, including the person's vehicle; or

- (b) search the location at which the offence is reasonably believed to have been committed; or
 - (c) require a person outside but near the residential facility to submit to a search if the officer reasonably believes that a thing on the person or in the person's possession will afford evidence of the commission of the offence; or
 - (d) search and examine any thing outside but near the residential facility, including a place where offenders are, if the officer reasonably believes that the thing will afford evidence of the commission of the offence; or
 - (e) seize any thing in accordance with section 143(1A)."
- (2) In section 142(4) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for "subsection (2)" **substitute** "subsection (2), (2A) or (2B)".
- (3) After section 142(7B) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—
- "(7C) A supervision officer or specified officer who uses force to compel a person to leave a residential facility or to carry out a search under this section must report the fact to the officer in charge of the residential facility as soon as possible.
- (7D) The officer in charge of the residential facility must report to the Commissioner as soon as possible any use of force by a supervision officer or specified officer that has been reported to the officer in charge under this section.

- (7E) The Commissioner must report to the Secretary as soon as possible any use of force by a supervision officer or specified officer that has been reported to the Commissioner under this section.
- (7F) A police officer who uses force to compel a person to leave a residential facility or to carry out a search under this section must report the fact as soon as possible to the Chief Commissioner of Police.
- (7G) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section."

44 Seizure and examination

- (1) After section 143(1) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

- "(1A) In carrying out searches under section 142(2A) or (2B), a supervision officer or a specified officer may seize—
- (a) any thing found on a person or in a person's possession; or
 - (b) any thing found in, at or outside but near a residential facility—

which the officer believes on reasonable grounds will afford evidence of the commission of an offence against section 141A(1)."

(2) After section 143(5) of the **Serious Sex Offenders (Detention and Supervision) Act 2009 insert—**

- "(6) A supervision officer or specified officer who uses force to carry out a seizure under this section must report as soon as possible the fact to the officer in charge of the residential facility.
- (7) The officer in charge of the residential facility must report to the Commissioner as soon as possible any use of force by a supervision officer or specified officer that has been reported to the officer in charge under this section.
- (8) The Commissioner must report to the Secretary as soon as possible any use of force by a supervision officer or specified officer that has been reported to the Commissioner under this section.
- (9) A police officer who uses force to carry out a seizure under this section must report as soon as possible the fact to the Chief Commissioner of Police.
- (10) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section."

45 Register of seized things

In section 144(1) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, after "residential facility" **insert** "or outside but near a residential facility".

46 Officers may use force to enforce instructions in certain circumstances

After section 146(3) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"(4) The Commissioner must report to the Secretary as soon as possible any use of force or application of an authorised instrument of restraint by a supervision officer or specified officer that has been reported to the Commissioner under this section."

48 Search

After section 152(4B) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"(4C) A community corrections officer or specified officer who uses force to carry out a search under this section must report as soon as possible the fact to the Commissioner.

(4D) The Commissioner must report to the Secretary as soon as possible any use of force by a community corrections officer or specified officer that has been reported to the Commissioner under this section.

(4E) A police officer who uses force to carry out a search under this section must report as soon as possible the fact to the Chief Commissioner of Police.

(4F) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section."

49 Seizure and examination

After section 153(5) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

- "(6) A community corrections officer or specified officer who uses force to carry out a seizure under this section must report the fact to the Commissioner as soon as possible.
- (7) The Commissioner must report to the Secretary as soon as possible any use of force by a community corrections officer or specified officer that has been reported to the Commissioner under this section.
- (8) A police officer who uses force to carry out a seizure under this section must report the fact to the Chief Commissioner of Police as soon as possible.
- (9) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section."

50 Powers of entry by police officer to monitor compliance

After section 158C(2) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

- "(3) A police officer who uses force to enter premises under subsection (2) must report the fact to the Chief Commissioner of Police as soon as possible.
- (4) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has

been reported to the Chief Commissioner of Police under this section."

51 Power to seize and examine seized items

After section 158DB(5) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

- "(6) A police officer who uses force to carry out a seizure under this section must report the fact to the Chief Commissioner of Police as soon as possible.
- (7) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section."

52 New Division 7A inserted into Part 10

After section 158E of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"Division 7A—Auditing of offender's computer and other devices

158EA Application of Division

This Division applies if a supervision order contains a condition requiring an offender to comply with the directions of the Adult Parole Board in relation to computers and other devices in the possession or control of the offender for the purposes of auditing by an officer for any images, programs or other material that may—

- (a) constitute a breach of the conditions of the supervision order; or
- (b) increase the risk that the offender may commit an offence.

158EB Definitions

In this Division—

device has the same meaning as in section 158H(5);

officer means a supervision officer, specified officer or police officer.

158EC Offender to comply with direction

An offender must comply with a direction of the Adult Parole Board to produce to an officer a computer or device in the offender's possession or under the offender's control.

158ED Search if offender fails to comply

- (1) If an offender fails to comply with a direction under 158EC, an officer may enter any part of the location at which the offender resides and—
 - (a) search that part of the location and any thing (including any vehicle) belonging to or in the possession of, or under the control of, the offender at the location; and
 - (b) search and examine the offender at the location.
- (2) For the purposes of subsection (1), a search of an offender means either or both a garment search or a pat-down search.
- (3) To the extent practical, a pat-down search must be conducted by a person of the same sex as the offender being searched.
- (4) If necessary, an officer may use reasonable force to carry out a search under this section.

- (5) A search under this section may continue only for as long as necessary to achieve the purpose of the search.
- (6) A supervision officer or specified officer who uses force to carry out a search under this section must report the fact to the Commissioner as soon as possible.
- (7) The Commissioner must report to the Secretary as soon as possible any use of force by a supervision officer or specified officer that has been reported to the Commissioner under this section.
- (8) A police officer who uses force to carry out a search under this section must report the fact to the Chief Commissioner of Police as soon as possible.
- (9) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section.
- (10) 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.

158EE Seizure and examination if offender fails to comply

- (1) In carrying out a search under section 158ED, an officer may seize or operate any computer or other device for

- the purpose of auditing the computer or other device for any images, programs or other material that may—
- (a) constitute a breach of the conditions of the supervision order; or
 - (b) increase the risk that the offender may commit an offence.
- (2) An officer exercising a power under this section may direct one or more of the following persons accompanying the officer to exercise those powers subject to the officer's direction—
- (a) a Victoria Police employee within the meaning of the **Victoria Police Act 2013**;
 - (b) any person who delivers services or advice on behalf of Victoria Police.
- (3) If necessary, an officer may use reasonable force to carry out a seizure under this section.
- (4) A supervision officer or specified officer who uses force to carry out a seizure under this section must report the fact to the Commissioner as soon as possible.
- (5) The Commissioner must report to the Secretary as soon as possible any use of force by a supervision officer or specified officer that has been reported to the Commissioner under this section.
- (6) A police officer who uses force to carry out a seizure under this section must report the fact to the Chief Commissioner of Police as soon as possible.

- (7) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section.

158EF Register of things seized

- (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; and
 - (b) the name of the person from whom the thing was seized; and
 - (c) the name and address of the owner of the thing (if known); and
 - (d) the time and place of the seizure; and
 - (e) the name and signature of the officer who seized the thing.
- (3) As soon as practicable after seizing a thing under section 158EE, an officer must inform the Commissioner of the seizure and record the details of the seizure in the register.
- (4) This section does not apply to a thing seized by a police officer under this Division.

Note

See section 158I for the register of things seized by police officers."

53 Specified officers

After section 158F(3) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

- "(4) A specified officer who uses force to compel an offender to obey a direction under this section must report the fact as soon as possible—
- (a) if the use of force occurs at a residential facility, to the officer in charge of the facility; or
 - (b) if the use of force occurs other than at a residential facility, to the Commissioner.
- (5) A specified officer who applies an authorised instrument of restraint to an offender under this section must report the fact as soon as possible—
- (a) if the application occurs at a residential facility, to the officer in charge of the facility; or
 - (b) if the application occurs other than at a residential facility, to the Commissioner.
- (6) The officer in charge of the residential facility must report to the Commissioner as soon as possible any use of force or application of an authorised instrument of restraint by a specified officer that has been reported to the officer in charge under this section.

- (7) The Commissioner must report to the Secretary as soon as possible any use of force or application of an authorised instrument of restraint by a specified officer that has been reported to the Commissioner under this section."

54 Warning that search or seizure is to occur and that reasonable force may be used

In section 158G of the **Serious Sex Offenders (Detention and Supervision) Act 2009**—

- (a) after "158DA" insert ", 158ED";
(b) after "158DB" insert ", 158EE".

55 Officer may direct offender to provide assistance—computers and other devices

- (1) In section 158H(1)(b) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for "section 143." substitute "section 143; or".

- (2) After section 158H(1)(b) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"(c) an officer (within the meaning of section 158EB) or a person referred to in section 158EE(2), in the case of a search under section 158ED or a seizure under section 158EE."

- (3) In section 158H(2)(c) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for "paragraph (b)." substitute "paragraph (b); or".

(4) After section 158H(2)(c) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"(d) delete data held in the computer or other device."

(5) In section 158H(5) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, in the definition of *device*, after "smartphone" insert ", any other type of telephone capable of storing data".

56 Retention by Chief Commissioner of Police or Commissioner of seized things

(1) In section 158L(1) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, after "Division 7" insert "or 7A".

(2) In section 158L(2) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for "(other than a thing seized by a police officer under that section)" substitute "or Division 7A (other than a thing seized by a police officer under that section or Division)".

57 Chief Commissioner of Police or Commissioner may apply to Magistrates' Court for disposal or destruction order

In section 158P(2)(b) of the **Serious Sex Offenders (Detention and Supervision) Act 2009**, for "or Police" substitute "of Police".

58 Detention power

After section 165(1) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"(1A) A police officer who uses force to apprehend and detain the offender under this Division must report the fact to the Chief Commissioner of Police as soon as possible.

- (1B) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section."

59 Search of person

After section 166(3) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

- "(4) If necessary, a police officer may use reasonable force to carry out a search under this section.
- (5) A police officer who uses force to carry out a search under this section must report the fact to the Chief Commissioner of Police as soon as possible.
- (6) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section."

60 Powers of entry and search by police officer to arrest offender

After section 171A(11) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

- "(11A) A police officer who under this section uses force to enter premises or to carry out a search or a seizure must report the fact to the Chief Commissioner of Police as soon as possible.

(11B) The Chief Commissioner of Police must report to the Secretary as soon as possible any use of force by a police officer that has been reported to the Chief Commissioner of Police under this section."

62 Regulations

After section 198(2) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** insert—

"(2A) Without limiting subsection (1), the regulations may provide for the exemption of persons or classes of persons from the operation of section 141A(1)."

4 Explanatory details

No entries at date of publication.