TASMANIA

DANGEROUS CRIMINALS AND HIGH RISK OFFENDERS ACT 2021

No. 2 of 2021

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DANGEROUS CRIMINALS AND HIGH RISK OFFENDERS ACT 2021

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An Act to provide for the protection of the community from persons who have committed offences involving violence, or an element of violence, and who are declared to be dangerous criminals, or who have committed serious offences and are determined to be at a high risk of committing further serious offences, to amend various enactments consequent upon the enactment of this Act, and for related purposes

[Royal Assent 22 April 2021]

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Dangerous Criminals and High Risk Offenders Act 2021*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

Chief Forensic Psychiatrist has the same meaning as in the *Mental Health Act 2013*;

court means the Supreme Court, the Court of Criminal Appeal or a court of petty sessions;

custodial sentence, in relation to an offender, means a sentence, imposed by a court, that requires the offender to serve a term of imprisonment, and includes any period of such a sentence during which the offender is eligible for parole or is on parole, but does not include a sentence of imprisonment that is wholly or partly suspended;

dangerous criminal means an offender in respect of whom a declaration is in force;

dangerous criminal offence, in relation to an offender, means –

(a) the crime, of which the offender has been convicted, that is specified in the application under section 4(1) pursuant to which a declaration was made in relation to the offender; or

(b) where the offender is subject to a declaration to which section 8(1) relates – the offence in relation to which a sentence of imprisonment was imposed on the offender in accordance with section 19(3) of the *Sentencing Act 1997*, as in force before the day on which Part 2 of this Act commences; or

(c) where the offender is subject to a declaration to which section 8(2) relates – the offence in relation to which a sentence of imprisonment was imposed on the offender, pursuant to section 392(2) of the Criminal Code, as in force immediately before the commencement of the *Sentencing Act 1997*;

DCS means the Director of Corrective Services;

declaration, in relation to an offender, means –

(a) a declaration under section 7(1) that is in force in relation to the offender; and

(b) an instrument in writing that is, under section 8(1), taken to be a declaration made under section 7(1) and that is in force in relation to the offender; and

(c) an instrument in writing that is, under section 8(2), taken to be a declaration made under section 7(1) and that is in force in relation to the offender;

DPP means the Director of Public Prosecutions;

HRO order means a high risk offender order, made under section 35(1), that is in force;

interim HRO order means an interim high risk offender order, made under section 37(1), that is in force;

offender means a person whom a court has convicted of an offence;

pre-release order, in relation to an offender, means an order, made under

section 13(3) or (4) in relation to the offender, that is in force;

probation officer means a probation officer within the meaning of the *Corrections Act 1997*;

psychiatrist has the same meaning as in the *Mental Health Act 2013*;

psychologist means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the psychology profession;

relevant custodial sentence, in relation to an offender, means –

(a) a custodial sentence, for the offender's dangerous criminal offence, whether or not the sentence is being served concurrently with, or cumulatively on, another custodial sentence for another crime or offence; or

(b) a custodial sentence, for a crime or offence, that is being served cumulatively on a custodial sentence, that has been served, for the offender's dangerous criminal offence, irrespective of when the first-mentioned sentence was imposed; or

(c) a custodial sentence, for another crime or offence, that is being served cumulatively on a custodial sentence referred to in paragraph (b) that has been served, irrespective of when the first-mentioned sentence was imposed;

review application means an application made under section 10(1) or (3);

risk assessment committee means the high risk offenders assessment committee established by section 26;

serious offence means an offence against –

(a) a provision listed in Schedule 1; or

(b) a provision of the law of this State, another State, a Territory or the Commonwealth that is substantially the same as an offence listed in Schedule 1.

(2) A reference in this Act to an offender serving a custodial sentence is a reference to an offender serving in the State a custodial sentence and includes a reference to the offender being on parole while serving such a sentence.

(3) For the purposes of this Act, a custodial sentence in relation to an offender is not to be taken to expire when the offender is on parole.

PART 2 – DANGEROUS CRIMINALS

Division 1 – Declaration of dangerous criminal

4. Application for declaration that offender is dangerous criminal

(1) An application may be made by the DPP to the Supreme Court for an offender who is convicted of a crime, involving violence or an element of violence, that is specified in the application, to be declared to be a dangerous criminal.

(2) An application under subsection (1) in relation to an offender who is convicted of a crime specified in the application may be made at any of the following times:

(a) when the offender is convicted of the crime;

(b) when the offender is sentenced for the crime;

(c) when the offender is serving –

(i) a custodial sentence for the crime (whether or not the sentence is being served concurrently with, or cumulatively on, another custodial sentence for another crime or offence); or

(ii) a custodial sentence being served cumulatively on a custodial sentence for the crime to which

subparagraph (i) applies (whether or not the sentence is being served concurrently with, or cumulatively on, another custodial sentence for another crime or offence).

5. Reports and examination of offender to whom application under section 4(1) relates

(1) The Supreme Court, after receiving an application under section 4(1) in relation to an offender –

(a) must order that the DPP provide to the Court, by the date specified in the order, each report, if any, in relation to the offender, provided to the DPP under section 27(4) or section 29(5); and

(b) may order that the Chief Forensic Psychiatrist provide to the Court, by the date specified in the order, a report, prepared by a psychiatrist, psychologist or medical practitioner, as to the risk of the offender being a serious danger to the community.

(2) The Supreme Court –

(a) may order the DCS or any other person to prepare and provide to the Court a report in relation to the offender addressing the matters that the Court specifies in the order; and

(b) may have regard to the report for the purpose of determining the application under section 4(1).

(3) The Supreme Court is to provide to –

(a) the DPP a copy of a report that is provided to the Court in accordance with an order under subsection (1) or (2), other than a report provided to the Court by the DPP; and

(b) the offender a copy of a report in relation to the offender that is provided to the Court in accordance with an order under subsection (1) or (2).

(4) The Supreme Court may order an offender to submit to examination by a person who is to prepare in relation to the offender a report that is to be provided to the Court under subsection (1)(b) or (2).

(5) If –

(a) the DPP or the offender proposes to tender a report at the hearing of an application under section 4(1); and

(b) the DPP or the offender has caused the report to be prepared otherwise than in accordance with an order under subsection (2) –

the DPP or the offender, respectively, is to provide to the other party to the application a copy of the report at least 7 days, or within such

other period ordered by the Court, before the hearing of the application.

6. Procedure in relation to application

(1) This section applies in relation to an application under section 4(1).

(2) The Supreme Court may adjourn the hearing of an application to a date set by the Court.

(3) The DPP, or counsel on the DPP's behalf, must appear for the Crown at the hearing of the application.

(4) The offender to whom an application relates is entitled to be present at the hearing of the application, unless the Supreme Court, in its discretion, orders otherwise.

(5) The DPP or the offender may adduce evidence in relation to the application.

(6) If a report provided to the Court under this Part, or tendered in evidence, is disputed by a party to the application –

(a) that party is entitled to cross-examine the author of the report; and

(b) if the author of the report is cross-examined, the other party to the application is entitled to examine the author of the report by way of reply.

7. Declaration of dangerous criminal

(1) The Supreme Court may declare an offender to be a dangerous criminal if –

(a) an application under section 4(1) is made in relation to the offender; and

(b) the offender has been convicted of a crime, involving violence or an element of violence, that is specified in the application; and

(c) the offender –

(i) has not been sentenced for the crime specified in the application; or

(ii) is brought up for sentence for the crime specified in the application; or

(iii) is serving, or has been sentenced to serve, a custodial sentence in relation to the crime specified in the application (whether or not the sentence is being, or is to be, served concurrently with, or cumulatively on, another custodial sentence for another crime or offence); or

(iv) is serving, or has been sentenced to serve, a custodial sentence being served cumulatively on a custodial sentence for the crime

to which subparagraph (iii) applies (whether or not the sentence is being served concurrently with, or cumulatively on, another custodial sentence for another crime or offence); and

(d) one of the following applies in relation to the offender:

(i) the offender has at least one conviction, for a crime involving violence or an element of violence, in addition to the conviction for the crime specified in the application;

(ii) the crime specified in the application comprises multiple unlawful acts involving violence or an element of violence; and

(e) the offender has apparently attained the age of 17 years; and

(f) the Court is satisfied that the offender is, at the time when the declaration is made, a serious danger to the community; and

(g) the Court has sentenced, or intends to sentence, the offender to a term of imprisonment for the crime to which the application relates.

(2) For the purposes of this section, the Supreme Court must, in determining whether it is satisfied

that an offender is a serious danger to the community, consider –

(a) whether the nature and circumstances of each offence, involving violence or an element of violence, for which the offender has been convicted are such as to warrant the indefinite detention of the offender in accordance with this Part; and

(b) the offender's antecedents, age and character; and

(c) the need to protect the community from the offender; and

(d) each report, in relation to the offender, that is before the Court, including any report by a psychiatrist, psychologist or medical practitioner or under the *Corrections Act 1997*; and

(e) the risk of the offender being a serious danger to the community if the offender is not imprisoned; and

(f) any other matters that the Supreme Court considers relevant.

(3) The DPP has the onus of proving that an offender is a serious danger to the community.

(4) For the purposes of this section, the Supreme Court may only be satisfied that an offender is a serious danger to the community if it is satisfied

to a high degree of probability that the offender is a serious danger to the community.

(5) A reference in this section to an offender being a serious danger to the community includes a reference to the offender being a serious danger only to some members of the community.

(6) A reference in subsection (1)(d) to a conviction for a crime involving violence or an element of violence includes a reference to –

(a) any conviction for an offence, involving violence or an element of violence, against a law of this State, another State, a Territory or the Commonwealth; or

(b) any conviction for an offence, involving violence or an element of violence, against a law of this State, another State, a Territory or the Commonwealth, as a consequence of which a sentence is imposed by a court, on the committal of the accused to that court for sentence.

8. Previous declarations taken to be declarations for purposes of this Act

(1) An instrument in writing that is –

(a) a declaration made under section 19(1) of the *Sentencing Act 1997* as in force before the day on which this Part commences; and

(b) in force immediately before that day –

is to be taken to be a declaration made under section 7(1).

(2) An instrument in writing that is –

(a) a declaration made under section 392(1) of the Criminal Code, as in force immediately before the day on which the *Sentencing Act 1997* commenced; and

(b) in force immediately before the day on which this Part commences –

is to be taken to be a declaration made under section 7(1).

9. Dangerous criminal not to be released from custody

(1) An offender in respect of whom a declaration has been made is not eligible to be released from custody until that declaration is discharged.

(2) Subsection (1) has effect whether or not a relevant custodial sentence in relation to the offender has expired.

Division 2 – Review of declaration of dangerous criminal

10. Application for review of declaration

(1) The DPP may make an application to the Supreme Court (a ***review application***) for a review of a declaration in relation to an offender who is a dangerous criminal.

(2) The DPP must make an application under subsection (1) in relation to an offender –

(a) except if paragraph (b) applies, within 12 months before the day by which all relevant custodial sentences in relation to the offender have expired; and

(b) if all relevant custodial sentences in relation to the offender have expired before the day on which this section commences – at least once within the first 3-year period after the day on which this section commences; and

(c) at least once within each 3-year period after the most recent determination, to refuse to make an order discharging the declaration in relation to the offender, is made under section 15(1).

(3) An offender who is a dangerous criminal may make an application to the Supreme Court (a ***review application***) for a review of a declaration in relation to the offender, if –

(a) the review application is made after the determination of a review application made under subsection (1) in accordance with subsection (2)(a) or (b); and

(b) the Supreme Court grants leave to the offender to make the review application, on the grounds that exceptional circumstances apply in relation to the offender.

(4) A review application is to be in writing.

(5) A copy of –

(a) a review application under subsection (1) in relation to a declaration is to be served on the offender to whom the declaration relates; and

(b) a review application under subsection (3) is to be served on the DPP.

(6) A review application may be withdrawn or discontinued by leave of the Supreme Court.

(7) The DPP must provide to the risk assessment committee a copy of a review application, made under subsection (1) or subsection (3), as soon as practicable after the review application is made.

11. Reports and examination of offender to whom review application relates

(1) The Supreme Court, after receiving a review application in relation to an offender –

(a) must order that the DPP provide to the Court, by the date specified in the order, each report, if any, in relation to the offender, provided to the DPP under section 27(4) or section 29(5); and

(b) may order that the Chief Forensic Psychiatrist provide to the Court, by the date specified in the order, a report, prepared by a psychiatrist, psychologist or medical practitioner, as to the risk of

the offender still being a serious danger to the community.

(2) The Supreme Court –

(a) may order the DCS or any other person to prepare and provide to the Court a report in relation to the offender addressing the matters that the Court specifies in the order; and

(b) may have regard to the report for the purpose of determining the review application.

(3) The Supreme Court is to provide to –

(a) the DPP a copy of a report that is provided to the Court in accordance with an order under subsection (1) or (2), other than a report provided to the Court by the DPP; and

(b) the offender a copy of a report in relation to the offender that is provided to the Court in accordance with an order under subsection (1) or (2).

(4) The Supreme Court may order an offender to submit to examination by a person who is to prepare in relation to the offender a report that is to be provided to the Court under subsection (1)(b) or subsection (2).

(5) If –

(a) the DPP or the offender proposes to tender a report at the hearing of a review application; and

(b) the DPP or the offender has caused the report to be prepared otherwise than in accordance with an order under subsection (2) –

the DPP or the offender, respectively, is to provide to the other party to the review application a copy of the report at least 7 days, or within such other period ordered by the Court, before the hearing of the review application.

12. Procedure for hearing of review application

(1) The Supreme Court, on receiving a review application, must set a date for the hearing of the review application.

(2) The Supreme Court may adjourn the hearing of a review application to a date set by the Court.

(3) The DPP, or counsel on the DPP's behalf, must appear for the Crown at the hearing of the review application.

(4) The offender to whom the review application relates is entitled to be present at the hearing of the review application, unless the Supreme Court, in its discretion, orders otherwise.

(5) The DPP or the offender may adduce evidence in relation to the review application.

(6) If a report provided to the Court under this Part, or tendered in evidence, is disputed by a party to the review application –

(a) that party is entitled to cross-examine the author of the report; and

(b) if the author of the report is cross-examined, the other party to the review application is entitled to examine the author of the report by way of reply.

13. Making of pre-release orders at hearing of review application

(1) If a review application in relation to an offender has been made but the Supreme Court has not determined the application under section 15(1) by discharging, or refusing to discharge, a declaration in relation to the offender, the DPP or the offender may apply to the Supreme Court for a pre-release order to be made in relation to the offender.

(2) The Supreme Court may adjourn the hearing of a review application in relation to an offender if an application is made under subsection (1) in relation to the offender.

(3) If the Supreme Court receives an application under subsection (1) in relation to an offender, the Court must, before making a determination under section 15(1) in relation to the offender –

(a) make a pre-release order in relation to the offender; or

(b) refuse to make a pre-release order in relation to the offender.

(4) The Supreme Court may, of its own motion, before making a determination under section 15(1) in relation to an offender, make a pre-release order in relation to the offender.

(5) The Supreme Court is to make a pre-release order in relation to an offender after considering –

(a) the matters referred to in section 15(2) in relation to the review application in relation to the offender; and

(b) any report provided in accordance with an order under section 21(1), in relation to the offender.

(6) A pre-release order is an order setting out the requirements, referred to in section 20(1), that are to apply in relation to the offender to whom the order relates before the Supreme Court determines under section 15(1) the application by discharging, or refusing to discharge, a declaration in relation to the offender.

(7) The DPP and an offender may make submissions to the Supreme Court as to –

(a) whether the Supreme Court ought to make a pre-release order in relation to the offender; and

(b) the requirements that the Supreme Court ought to specify under section 20(1) in a

pre-release order in relation to the offender.

(8) If the Supreme Court makes under subsection (3) or (4) a pre-release order in relation to an offender to whom a review application relates, the Court must, without determining the review application –

(a) specify a date in the pre-release order to be the date to which the hearing is adjourned; and

(b) adjourn to that date the hearing in relation to the review application.

(9) A date specified in a pre-release order in relation to an offender in accordance with subsection (8) is not to be more than 12 months from the day on which the pre-release order is made.

14. Resumption of adjourned hearing where pre-release order made

(1) The hearing of a review application that is adjourned in accordance with section 13(8) is to resume, as applicable –

(a) on the date, to which the hearing of the application is adjourned, that is specified in the pre-release order under section 13(8); or

(b) on the date to which the hearing is adjourned under section 12(2); or

(c) if the date, specified in the pre-release order, to which the hearing of the application is adjourned has been varied under section 22(3)(b) – on the date to which the hearing is adjourned under section 22(4); or

(d) if the pre-release order is revoked under section 22(5)(a) – on the date to which the hearing of the review application is adjourned under section 22(6); or

(e) on the date specified in accordance with section 23(4).

(2) At the hearing of a review application in relation to an offender that resumes in accordance with subsection (1) –

(a) the Supreme Court is, subject to any adjournment under this Part, to proceed to determine under section 15(1) the review application; and

(b) the Supreme Court must, in addition to considering the matters referred to in section 15(2), consider –

(i) any reports provided to the Court in accordance with a requirement of the pre-release order in relation to the offender; and

(ii) any other evidence before the Court as to the extent to which the offender has complied with the requirements imposed on the

offender in the pre-release order; and

(c) the Supreme Court may not make another pre-release order in relation to the offender, but may, in accordance with an application under section 22(1) to vary the pre-release order, vary under section 22(3) the date specified in the pre-release order as the date to which the hearing is adjourned.

(3) If the Court of Criminal Appeal, on an appeal under section 23(1) or (2), quashes a pre-release order in relation to an offender, the Supreme Court must set a date for the hearing of the review application and either –

(a) determine under section 15(1) the application; or

(b) make under section 13(3) or (4) a further pre-release order in relation to the offender.

15. Determination of review application

(1) On a review application in relation to a declaration in relation to an offender, the Supreme Court –

(a) must make an order discharging the declaration, if it is not satisfied to a high degree of probability that the offender is still, at the time when the order is made, a serious danger to the community; or

(b) must refuse to make an order discharging the declaration, if it is satisfied to a high degree of probability that the offender is still, at the time of refusing to make the order, a serious danger to the community.

(2) The Supreme Court must, in determining whether it is satisfied that an offender is still a serious danger to the community, consider –

(a) the offender's antecedents, age and character; and

(b) the need to protect the community from the offender; and

(c) each report, in relation to the offender, that is before the Court, including any report by a psychiatrist, psychologist or medical practitioner or under the *Corrections Act 1997*; and

(d) each previous declaration in relation to the offender, any information that the court that made the declaration relied upon in deciding to make the declaration and that is information available to the Supreme Court and any reasons, specified by the court that made the declaration, as to why the declaration was made; and

(e) each previous determination of a review application in relation to an offender, any information that the court that made the determination relied upon in deciding to make the determination and that is

information available to the Supreme Court and any reasons, specified by the court that made the determination, as to why the determination was made; and

(f) the reports provided to the Court in accordance with an order under section 11; and

(g) any report provided under section 11(5) to a party to the review application; and

(h) any evidence that is adduced under section 12(5) or that is presented or tendered at the hearing of the review application; and

(i) whether the risk that the offender is still a serious danger to the community may be appropriately mitigated by imposing an HRO order on the offender instead of refusing to discharge a declaration in relation to the offender; and

(j) any other matters that the Supreme Court thinks fit.

(3) The DPP has the onus of proving that an offender is still a serious danger to the community.

(4) A reference in this section to an offender still being a serious danger to the community includes a reference to the offender still being a serious danger only to some members of the community.

16. When discharge of declaration takes effect

An order under section 15(1)(a) discharging a declaration does not take effect –

(a) if no appeal is lodged under section 19(3) in relation to the order – until the end of the period during which an appeal may be made in relation to the order; or

(b) if an appeal is lodged under section 19(3) – until the appeal is dismissed, withdrawn or discontinued.

17. Discharge of declaration does not affect existing sentence

The discharge of a declaration in relation to an offender does not affect a sentence of imprisonment imposed on the offender.

18. Applications for HRO orders where declaration discharged

(1) If –

(a) the Supreme Court, on a day, makes under section 15(1)(a) an order discharging a declaration in relation to an offender; and

(b) an application has, by that day, been made under section 33(1) for an HRO order in relation to the offender but the application has not been determined; and

(c) but for the declaration, the offender would cease to be in custody –

the Supreme Court must order that the offender must not be released from custody until the Supreme Court has determined the application made under section 33(1) and made an order under subsection (3).

(2) If the Supreme Court, on a day, makes under section 15(1)(a) an order discharging a declaration in relation to an offender and an application has not been, by that day, made under section 33(1) for an HRO order in relation to the offender –

(a) the Supreme Court must request the DPP to inform the Court whether the DPP intends to make an application under section 33(1) for an HRO order in relation to the offender; and

(b) the DPP must, within 14 days –

(i) inform the Court that the DPP does not intend to make an application under section 33(1) for an HRO order in relation to the offender; or

(ii) make an application under section 33(1) for an HRO order in relation to the offender; and

(c) the Supreme Court must, if, but for the declaration, the offender would cease to be in custody, order that the offender

must not be released from custody until an order has been made under subsection (3) in relation to the offender.

(3) If the Supreme Court makes, under section 15(1)(a), an order discharging a declaration in relation to an offender, the Supreme Court must make another order, for the release of the offender from custody from a date specified in that other order, if –

(a) it is informed in accordance with subsection (2)(b)(i) that the DPP does not intend to make an application under section 33(1) for an HRO order in relation to the offender; or

(b) an application that is made under section 33(1) for an HRO order in relation to the offender is determined by the Court after the date on which the order under section 15(1)(a) is made.

(4) Despite subsection (3), if subsection (1), (2) or (3) applies in relation to an offender and an HRO order is made under section 35(1) in relation to the offender, the Supreme Court may, if the Court considers that it is necessary to detain the offender for a period in order to enable arrangements to be made for the offender to be supervised under the HRO order –

(a) order that the offender be detained for a period specified in the order, of not more than 7 days, after the offender would, but for the order, cease to be in custody; and

(b) defer the commencement of the HRO order until the end of the period specified in the order.

19. Appeals against declaration or refusal to make declaration

(1) The DPP may, within 14 days after the Supreme Court refuses to make a declaration under section 7(1), appeal to the Court of Criminal Appeal against the refusal to make the declaration.

(2) A person who has been declared to be a dangerous criminal under section 7(1) may, within 14 days after the declaration is made, appeal to the Court of Criminal Appeal against the making of the declaration.

(3) The DPP may, within 14 days after the Supreme Court makes an order under section 15(1)(a), appeal to the Court of Criminal Appeal against the making of the order.

(4) A person who has been declared to be a dangerous criminal under section 7(1) may, within 14 days after the Supreme Court, under section 15(1)(b), refuses to make an order discharging the declaration, appeal to the Court of Criminal Appeal against the refusal of the Supreme Court to make such an order.

(5) It is not necessary to obtain the leave of the Court of Criminal Appeal for an appeal under this section.

Division 3 – Pre-release orders

20. Requirements of pre-release orders

(1) The Supreme Court is to specify in a pre-release order in relation to an offender the requirements that it thinks fit, including, but not limited to including, any of the following requirements:

(a) a requirement that the offender participate in, or complete, one or more rehabilitation, treatment or re-integration programs specified in the order;

(b) a requirement that the offender participate in, or complete, one or more activities, specified in the order, that may assist in the rehabilitation or re-integration into society of the offender;

(c) a requirement that the offender achieve certain results, or that certain circumstances must have arisen, as a result of the offender's participation in, or completion of, a rehabilitation, treatment or re-integration program specified in the order;

(d) a requirement that relevant reports, specified in the order, in relation to the offender be prepared and provided to the Supreme Court;

(e) a requirement that information, specified in the order, as to the accommodation, employment, or any other support, that

will be available to the offender if the declaration in relation to the offender is discharged, be provided to the Supreme Court.

(2) For the purposes of subsection (1)(d), a relevant report in relation to the offender is a report, prepared by a psychiatrist, psychologist or medical practitioner or under the *Corrections Act 1997*, that may assist the Supreme Court to determine –

(a) the extent to which the offender has complied with the requirements of a pre-release order imposed on the offender; or

(b) whether the offender is still a serious danger to the community.

(3) The Supreme Court is to provide to the DPP and the offender a copy of a report provided to the Court in accordance with a requirement of a pre-release order imposed under subsection (1)(d).

(4) A pre-release order does not take effect –

(a) if no appeal is lodged under section 23(1) or (2) in relation to the pre-release order – until the end of the period in which an appeal may be made in relation to the order; or

(b) if an appeal is lodged under section 23(1) or (2) in relation to the pre-release order and the appeal is dismissed – until the dismissal of the appeal; or

(c) if an appeal is lodged under section 23(1) or (2) in relation to the pre-release order and the appeal is upheld.

21. Orders before, or ancillary to, making of pre-release orders

(1) The Supreme Court may, before or at the hearing of a review application in relation to an offender, order the DCS to provide to the Court, within a period specified in the order, a report as to any one or more of the following:

(a) the rehabilitation, treatment, or re-integration, programs that the DCS makes available to offenders to assist in the rehabilitation or re-integration into society of offenders;

(b) the training, education or other activities that the DCS makes available to offenders to assist in the rehabilitation or re-integration into society of offenders;

(c) the opinion of the DCS as to whether the offender is suitable to participate in such a program or activities –

so as to assist the Supreme Court to determine whether to make a pre-release order and what requirements to specify under section 20(1) on a pre-release order, if any, in relation to the offender.

(2) The Supreme Court is to provide to the DPP and the offender a copy of a report provided to the

Court in accordance with an order under subsection (1).

(3) If the Supreme Court makes a pre-release order, the Court may make an order in relation to an offender requiring the DCS to ensure that –

(a) the offender is, within the period specified in the order, given all reasonable opportunities to attend and participate in a program or activity specified, in accordance with section 20(1), in a requirement of the pre-release order; and

(b) the reports, or information, specified, in accordance with section 20(1), in a requirement of the pre-release order, are obtained and provided to the Supreme Court within the period that is specified in the order under this subsection.

(4) If the Supreme Court makes a pre-release order in relation to an offender to whom a review application relates, the Supreme Court may make a further order under section 11(2) for the provision of a report for the purposes of the hearing of the review application at the date to which the hearing is adjourned in accordance with this Part.

22. Variation or revocation of pre-release orders or ancillary orders

(1) The DPP or the offender may apply to the Supreme Court for the variation or revocation of

a pre-release order, or of an order made under section 21, in relation to the offender.

(2) If an application is made under subsection (1) –

(a) by the DPP – the DPP must serve on the offender notice of the application within 7 days after the application is made; or

(b) by the offender – the offender must serve on the DPP notice of the application within 7 days after the application is made.

(3) If an application is made under subsection (1) for the variation of a pre-release order, the Supreme Court may –

(a) vary the pre-release order by varying or revoking a requirement specified in the pre-release order; or

(b) vary the date specified, in the pre-release order, as the date to which the hearing of the review application to which the pre-release order relates is adjourned, but not so that the date is more than 15 months from the day on which the order was first made or the day on which the order was confirmed under section 23(4), whichever is the later.

(4) If the Supreme Court varies under subsection (3) the date specified in the pre-release order as the date to which the hearing of the review application to which the pre-release order relates is adjourned, the Supreme Court must set that

date as the date to which the hearing of the review application is adjourned.

(5) If an application is made under subsection (1) for the revocation of a pre-release order, the Supreme Court may –

(a) revoke the pre-release order; or

(b) refuse to revoke the pre-release order.

(6) If the Supreme Court revokes under subsection (5)(a) a pre-release order in relation to an offender, the Supreme Court must set a date for the hearing of the review application in relation to the offender that was adjourned under section 13(8).

(7) If an application is made under subsection (1) for the variation or revocation of an order made under section 21, the Supreme Court may –

(a) vary or revoke the order; or

(b) refuse to vary or revoke the order.

(8) The DPP and an offender may make submissions to the Supreme Court as to whether a pre-release order, or an order made under section 21, ought to be varied or revoked as specified in an application under subsection (1).

23. Appeals in relation to making of, or refusal to make, pre-release order

(1) The DPP may, within 14 days after the Supreme Court –

(a) makes or refuses to make a pre-release order under section 13(3), appeal to the Court of Criminal Appeal against the making of the order by the Supreme Court or the refusal by the Supreme Court to make such an order; or

(b) makes a pre-release order under section 13(4), appeal to the Court of Criminal Appeal against the making of the order by the Supreme Court.

(2) An offender may, within 14 days after the Supreme Court –

(a) makes or refuses to make a pre-release order under section 13(3) in relation to the offender, appeal to the Court of Criminal Appeal against the making of the order by the Supreme Court or the refusal by the Supreme Court to make such an order; or

(b) makes a pre-release order under section 13(4) in relation to the offender, appeal to the Court of Criminal Appeal against the making of the order by the Supreme Court.

(3) It is not necessary to obtain the leave of the Court of Criminal Appeal for an appeal under this section.

(4) If the Court of Criminal Appeal, on an appeal under this section, confirms the making of a pre-release order, the Court of Criminal Appeal may vary the date specified in the order to be the date

to which the hearing of the application in relation to the offender is to be adjourned, but not so that the date is more than 12 months from the day on which the Court of Criminal Appeal makes the order.

PART 3 – HIGH RISK OFFENDERS

Division 1 – Interpretation of Part 3

24. Interpretation of Part 3

In this Part –

application means an application made under section 33;

breach includes fail to comply;

chairperson of the risk assessment committee – see section 26(3);

operational period – see section 39;

prescribed officer has the same meaning as in section 42AB of the *Sentencing Act 1997*;

relevant agency – see section 25;

relevant offender means an offender who has been convicted of a serious offence, who has attained the age of 18 years and who is –

(a) in custody –

(i) pursuant to a declaration under section 7(1); or

(ii) in accordance with section 37(2); or

(iii) in accordance with an order under section 18(1) or (4); or

(b) subject to an HRO order or an interim HRO order; or

(c) serving a custodial sentence –

(i) for a serious offence; or

(ii) for an offence against section 41; or

(iii) for an offence, against a law of another State, a Territory or the Commonwealth, that is being served concurrently with or consecutively on, or partly concurrently with and partly consecutively on, one or more sentences of imprisonment referred to in subparagraph (i) or (ii);

risk assessment, in relation to a relevant offender, means an assessment as to the likelihood of the offender committing a serious offence unless there is an HRO order in force in relation to the offender.

25. Meaning of relevant agency

For the purposes of this Part, each of the following is a relevant agency:

(a) the Department;

(b) the department primarily responsible in relation to the administration of the *Tasmanian Health Service Act 2018*;

(c) the department primarily responsible in relation to the administration of the *Mental Health Act 2013*;

(d) the department primarily responsible in relation to the administration of the *Disability Services Act 2011*;

(e) the department primarily responsible in relation to the administration of the *Police Service Act 2003*;

(f) any other unit of administration of the State, another State, a Territory, or the Commonwealth, that is prescribed.

Division 2 – Risk assessment of relevant offenders

26. High risk offenders assessment committee

(1) The high risk offenders assessment committee (the ***risk assessment committee***) is established.

(2) The risk assessment committee consists of the following members:

(a) the Secretary of the Department or a person who is nominated by the Secretary of the Department;

(b) a representative, of the unit of administration, within the department primarily responsible in relation to the administration of the *Corrections Act 1997*, that is primarily responsible for the management of prisons, who is nominated by the Secretary of that department;

(c) a representative, of the department primarily responsible in relation to the administration of the *Corrections Act 1997*, who is nominated by the Secretary of that department;

(d) a representative, of the department primarily responsible in relation to the administration of the *Tasmanian Health Service Act 2018*, who is nominated by the Secretary of that department;

(e) a representative, of the department primarily responsible in relation to the administration of the *Disability Services Act 2011*, who is nominated by the Secretary of that department;

(f) a representative, of the department primarily responsible in relation to the administration of the *Police Service Act 2003*, who is nominated by the Secretary of that department;

(g) the Chief Forensic Psychiatrist or a person nominated by the Chief Forensic Psychiatrist;

(h) a representative of any other unit of administration of the State, another State, a Territory, or the Commonwealth, that is prescribed.

(3) The member of the risk assessment committee under subsection (2)(a) is the chairperson of the risk assessment committee.

(4) The risk assessment committee has the following functions:

(a) to ensure the preparation of reports for the purposes of this Division in relation to relevant offenders and, where it thinks fit, to cause risk assessments of relevant offenders to be conducted;

(b) to facilitate cooperation between, and the co-ordination of, relevant agencies in the preparation of risk assessments of relevant offenders and the management of relevant offenders who are subject to HRO orders;

(c) to facilitate information sharing between relevant agencies in relation to risk assessment of relevant offenders, applications for HRO orders and the management of relevant offenders who are subject to HRO orders;

(d) to advise relevant agencies in relation to –

(i) the management of relevant offenders who are subject to HRO orders; and

(ii) other matters relating to the operation of this Part.

27. Preparation of reports in relation to offenders

(1) If the risk assessment committee is of the opinion that it is necessary or desirable to do so, the committee –

(a) is to ensure that a behavioural report in relation to a relevant offender is prepared and provided to the committee; and

(b) is to ensure that one or more management reports are prepared in relation to a relevant offender and provided to the committee.

(2) For the purposes of this section, a behavioural report in relation to a relevant offender is –

(a) if the relevant offender is in custody – a report, prepared by the unit of administration primarily responsible for the administration of prisons, as to the behaviour of the offender while in custody; or

(b) if the relevant offender is subject to an HRO order – a report, prepared by the

unit of administration primarily responsible for the management of persons on parole, as to the offender's behaviour while subject to the HRO order.

(3) For the purposes of this section, a management report in relation to a relevant offender is a report from a relevant agency in relation to –

(a) the management and supervision of the offender; and

(b) any support or treatment of the offender; and

(c) any conditions that the relevant agency is of the opinion that the Court should, if it makes an HRO order in relation to the offender, consider specifying under section 38(2) in the order.

(4) As soon as practicable after a behavioural report, or a management report, in relation to a relevant offender is provided to the risk assessment committee, the committee is to provide to the DPP a copy of the report.

28. Committee to determine whether risk assessment of relevant offender to be carried out

(1) The risk assessment committee, after considering each report in relation to a relevant offender that is provided to the committee under section 27, is to determine whether a risk assessment of the relevant offender is to be carried out.

(2) The risk assessment committee may only determine under subsection (1) that a risk assessment of a relevant offender is not to be carried out if, having regard to the circumstances of the relevant offender, the committee considers that it is not necessary or desirable for a risk assessment of the relevant offender to be carried out.

(3) If the risk assessment committee determines under subsection (1) that a risk assessment of a relevant offender is to be carried out, the chairperson of the risk assessment committee is –

(a) to appoint a person to conduct a risk assessment of the relevant offender; and

(b) to provide to the person any report in relation to the offender that is provided to the committee under section 27.

(4) The person appointed under subsection (3) to conduct a risk assessment of a relevant offender is to be a member of the one of the relevant classes of persons that the chairperson considers, having regard to the circumstances of the relevant offender, to be the class of persons most suited to conduct the risk assessment of the relevant offender.

(5) For the purposes of subsection (4), the following are the relevant classes of persons:

(a) psychiatrists;

(b) psychologists;

(c) medical practitioners.

29. Conduct of risk assessment

(1) A person appointed under section 28(3) to conduct a risk assessment of a relevant offender is to conduct a risk assessment of the relevant offender.

(2) The risk assessment of the relevant offender may, but is not required to, include an examination of the relevant offender in person by the person conducting the risk assessment.

(3) A person appointed to conduct the risk assessment of a relevant offender must, after completing the risk assessment, provide to the risk assessment committee a report in relation to the relevant offender.

(4) The report in relation to the relevant offender is to set out the opinion, of the person who conducted the risk assessment, as to the likelihood of the relevant offender committing another serious offence unless there is an HRO order in force in relation to the relevant offender and is to specify the reasons why the person is of that opinion.

(5) As soon as practicable after the risk assessment committee is provided under subsection (3) with a report in relation to a relevant offender, the committee is to provide to the DPP a copy of the report.

30. Determination by DPP as to whether to apply for HRO order in relation to offender

(1) The DPP, after receiving all reports in relation to a relevant offender under section 27(4) or section 29(5), must decide whether to make an application for an HRO order in relation to the relevant offender.

(2) The DPP is to notify the risk assessment committee as soon as practicable after having determined whether to make an application for an HRO order in relation to a relevant offender.

31. Cooperation between relevant agencies in relation to dangerous offenders

(1) In this section –

dangerous offender functions and powers, in relation to a relevant agency, means the functions and powers of the agency that relate to, or are relevant to –

(a) risk assessments for the purposes of this Part; and

(b) the management of relevant offenders.

(2) Each relevant agency, in the performance and exercise of the dangerous offender functions and powers of the agency, has a duty to cooperate with other relevant agencies.

(3) The duty to cooperate with other relevant agencies includes the following duties:

(a) the duty to disclose to a relevant agency information that is likely to be of assistance to that agency in the performance and exercise of that agency's dangerous offender functions and powers;

(b) the duty to provide reasonable assistance and support to a relevant agency in connection with the performance and exercise by that agency of that agency's dangerous offender functions and powers;

(c) the duty to cooperate in relation to the performance and exercise of the functions and powers of the risk assessment committee under this Part.

(4) Cooperation between relevant agencies in the performance and exercise of dangerous offender functions and powers may include, but is not limited to including, any of the following:

(a) the development of management plans, for relevant offenders, that involve multiple relevant agencies;

(b) providing assistance and support to relevant offenders through joint programs.

32. Exchange of information and cooperative management of dangerous offenders

(1) Two or more relevant agencies may enter into an arrangement (a ***cooperative protocol***) with each other to enable –

(a) information held by any of the agencies concerned to be shared or exchanged between those agencies; and

(b) the cooperative management of relevant offenders.

(2) The information to which a cooperative protocol may relate is limited to the following:

(a) information concerning relevant offenders;

(b) any other information that is prescribed.

(3) Under a cooperative protocol, each relevant agency that has entered into the protocol is authorised –

(a) to request and receive information held by any other relevant agency that has entered into the protocol; and

(b) to disclose information to any of the relevant agencies that have entered into the protocol –

without the consent of any person concerned, but only to the extent that the information is reasonably necessary to assist in the performance or exercise of functions or powers under this Act

or the functions or powers of the relevant agency to which the information is disclosed.

(4) This section does not limit the operation under any Act under which a relevant agency is authorised or required to disclose information to another person or body.

Division 3 – Application for HRO orders and hearings

33. Applications for HRO orders

(1) The DPP may apply to the Supreme Court for an HRO order in relation to a person who is, at the time when the application is made, a relevant offender.

(2) An application may only be made under subsection (1) in relation to a relevant offender if –

(a) where there is an HRO order in relation to the offender – the application is made not more than 9 months before the order is due to expire; or

(b) where the offender is serving a custodial sentence –

(i) for a serious offence; or

(ii) for an offence against section 41; or

(iii) for another offence, against a law of this State, another State, a Territory or the Commonwealth,

that is being served concurrently with or consecutively on, or partly concurrently with and partly consecutively on, one or more sentences of imprisonment referred to in subparagraph (i) or (ii) –

the application is made not more than 9 months before the sentence of imprisonment is due to expire; or

(c) a declaration under section 7(1) applies in relation to the offender or the offender is in custody in accordance with an order under section 15.

(3) An application under subsection (1) in relation to a relevant offender must be accompanied by –

(a) each report in relation to the relevant offender that is provided to the DPP under section 27(4) or section 29(5); and

(b) documents in relation to any matters that the DPP considers to be relevant to the determination of the Supreme Court as to whether or not to make an HRO order in relation to the offender.

(4) An application under subsection (1) in relation to a relevant offender may specify the kinds of conditions, referred to in section 38, that the DPP considers appropriate for inclusion in an HRO order that may be made in relation to the offender.

(5) The DPP must, within 7 days after making an application under subsection (1) in relation to a relevant offender or within a longer period allowed by the Supreme Court, serve on the offender –

(a) a copy of the application; and

(b) a copy of the documents, referred to in subsection (3), in relation to the application.

34. Hearing of application

(1) The Supreme Court must, within 28 days after receiving an application or within a longer period allowed by the Court, conduct a hearing in relation to the application.

(2) The Supreme Court, after receiving an application in relation to an offender, may order that the Chief Forensic Psychiatrist provide to the Court, by the date specified in the order, a report, prepared by a psychiatrist, psychologist or medical practitioner, as to the likelihood of the offender committing another serious offence unless an HRO order is made in relation to the offender.

(3) If an order is made under subsection (2), the date specified in the order is to be no later than 14 days before the date set for the hearing of the application.

(4) The Supreme Court may order an offender to whom an application relates to submit to

examination by a person who is to prepare, in relation to the offender, a report in accordance with an order under subsection (2).

(5) A copy of a report to be provided to the Supreme Court in accordance with an order under subsection (2) is to be provided to the DPP and the offender.

(6) The DPP or the offender may adduce evidence at a hearing in relation to an application.

(7) If a document or report provided to the Court, or tendered, under this Part is disputed by a party to the application –

(a) the disputing party to the application is entitled to cross-examine the author of the report; and

(b) if the author of the report is cross-examined, the other party is entitled to examine the author of the report by way of reply.

Division 4 – HRO orders and interim HRO orders

35. HRO orders

(1) The Supreme Court may determine the hearing of an application in relation to an offender –

(a) by making a high risk offender order (an ***HRO order***) in relation to the offender; or

(b) by refusing to make a high risk offender order in relation to the offender.

(2) The Supreme Court may only make an HRO order in relation to an offender if the Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious offence unless an HRO order is made in relation to the offender.

(3) The Supreme Court is not required to determine that it is more likely than not that an offender will commit a serious offence, in order to be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious offence unless an HRO order is made in relation to the offender.

36. Matters to be considered in determining whether to make HRO order

(1) The safety of the community must be the paramount consideration of the Supreme Court in determining whether or not to make an HRO order in relation to an offender.

(2) In determining whether or not to make an HRO order in relation to an offender, the Supreme Court must have regard to the following matters:

(a) the reports, if any, provided to the Court in accordance with an order under section 34(2);

(b) the report, provided to the Court, of any other assessment prepared by a

psychiatrist, psychologist or medical practitioner as to –

(i) the likelihood of the offender committing a further serious offence; and

(ii) the willingness of the offender to participate in any such assessment; and

(iii) the level of the offender's participation in the assessment;

(c) any report, provided to the Court, that is prepared by DCS as to the extent to which the offender can reasonably and practicably be managed in the community;

(d) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs and the level of the offender's participation in any such programs;

(e) if the offender is a dangerous criminal, the options, if any, that are available and that might reduce the likelihood of the offender re-offending, if the offender is not kept in custody;

(f) the likelihood that the offender will comply with the terms and conditions of an HRO order;

(g) the level of the offender's compliance with any obligations or conditions to which the offender is, or has been, subject while on release on parole, while subject to an HRO order, or under the *Community Protection (Offender Reporting) Act 2005*;

(h) the offender's criminal history, including prior convictions and findings of guilt in respect of offences committed in the State or elsewhere, and any pattern in the committing of offences indicated by that history;

(i) the comments made by the sentencing court in passing any sentence imposed on the offender in relation to a serious offence;

(j) any evidence that is adduced under section 34(6) or that is presented at a hearing under section 34 in relation to the application;

(k) any other information that is available to the Supreme Court as to the likelihood that the offender will commit a further serious offence.

(3) In determining whether or not to make an HRO order in relation to an offender, the Supreme Court may also take into consideration any other matter it considers relevant.

37. Interim HRO orders

(1) The Supreme Court may, on receiving an application, make an interim high risk offender order (an ***interim HRO order***) in relation to an offender if it appears to the Court that –

(a) the offender will cease to be in custody, or to be subject to an HRO order, before the Supreme Court determines whether to make, or refuse to make, an HRO order in relation to the offender; and

(b) the matters alleged in information before the Court would, if proved, justify the making of an HRO order in relation to the offender.

(2) If the offender to which an interim HRO order relates is in custody, the Supreme Court may, if the Court considers that it is necessary to detain the offender for a period in order to enable arrangements to be made for the offender to be supervised under an HRO order or the interim HRO order –

(a) order that the offender be detained for a period specified in the order, of not more than 7 days, after the offender would, but for the order, cease to be in custody; and

(b) defer the commencement of the interim HRO order until the end of that period.

(3) As soon as practicable after making an order under subsection (2)(a), the Supreme Court must issue a warrant of committal of the offender for

the period specified in the order after the offender would, but for the order, cease to be in custody.

(4) A warrant under subsection (3) is sufficient authority for the offender to be kept in custody in accordance with the terms of the warrant.

(5) The Supreme Court may, subject to section 39(8), make a second or subsequent interim HRO order in relation to an offender.

38. Conditions of HRO order or interim HRO order

(1) The Supreme Court must specify the following conditions in an HRO order, or an interim HRO order, in relation to an offender:

(a) a condition that the offender must not, during the operational period of the order, commit an offence that is punishable by imprisonment;

(b) a condition that the offender must report, on or before a day specified in the order, to a probation officer at the place specified in the order;

(c) a condition that the offender must, during the operational period of the order, report to a probation officer as required by the probation officer;

(d) a condition that the offender must, during the operational period of the order, reside

at premises approved by a probation officer;

(e) a condition that the offender must, during the operational period of the order, permit a police officer to enter the premises at which the offender resides;

(f) a condition that the offender must, during the operational period of the order, permit a police officer to –

(i) conduct a search of the premises at which the offender resides; and

(ii) conduct a frisk search, within the meaning of the *Search Warrants Act 1997*, of the offender, at the premises at which the offender resides or at any other place or premises; and

(iii) take a sample of a substance found on the premises at which the offender resides or on the person of the offender;

(g) a condition that the offender must comply with any reasonable and lawful directions of a police officer, probation officer or prescribed officer, including any directions as to the kind of employment, or the place of employment, of the offender;

(h) a condition that the offender must, during the operational period of the order, if

directed by a probation officer to engage in a personal development activity, counselling or treatment, engage in the activity, counselling, or treatment, in accordance with any directions given by the probation officer;

(i) a condition that the offender must not leave the State except with the approval of the DCS;

(j) a condition that the offender must, during the operational period of the order, submit to the supervision of a probation officer or prescribed officer as required by the probation officer or prescribed officer.

(2) The Supreme Court may specify any one or more of the following conditions in an HRO order, or an interim HRO order, in relation to an offender:

(a) a condition that the offender must, during the operational period of the order, during the times, specified in the order, of the days of the week specified in the order, be at premises approved by a probation officer, except if the offender is not, for a relevant reason, at the premises;

(b) a condition that the offender must, during all of the operational period of the order or such periods, within the operational period, as are determined from time to

time by the Supreme Court, submit to electronic monitoring, including by wearing or carrying an electronic device;

(c) a condition that if the offender is, in accordance with paragraph (b), required to submit to electronic monitoring –

(i) the offender must not remove, tamper with, damage or disable any device used for the purpose of the electronic monitoring; and

(ii) the offender must comply with all reasonable and lawful directions given to the offender in relation to the electronic monitoring;

(d) if the order is subject to a condition under paragraph (f) or (g), a condition that the offender must, during the operational period of the order, when directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of alcohol, an illicit drug or medication;

(e) a condition that the offender must, during the operational period of the order, appear before the Court at the places, days and times, that the Court specifies in the order;

(f) a condition that the offender must, during the operational period of the order, take medication as required by a psychiatrist

or a medical practitioner or by another person specified by the Court;

(g) a condition that the offender must not, during the operational period of the order –

(i) consume alcohol or an illicit drug; or

(ii) possess, use or administer, including self-administer, a substance included in Schedule 1 to the *Misuse of Drugs Act 2001* or in a manner that would be unlawful under the *Poisons Act 1971*;

(h) a condition that the offender –

(i) must permit a police officer to access any computer, mobile telephone or other device that is at the premises at which the offender resides or is in the possession of the offender; and

(ii) must provide to a police officer, on demand, any electronic password required to access information, including any record of any website browsing history, stored on such a computer, mobile telephone or other device;

(i) a condition that the offender must comply with requirements, specified in

the order, about access to and use of the internet;

(j) a condition that the offender must periodically report to a police officer or prescribed officer and provide to the officer information in relation to the conditions of the order and the address of the premises at which the offender resides;

(k) a condition that could be imposed on the offender if the offender were a reportable offender within the meaning of the *Community Protection (Offender Reporting) Act 2005*;

(l) a condition that the offender must not change his or her name;

(m) a condition that the offender must not reside in or visit specified locations or classes of locations;

(n) a condition that the offender must not associate or make contact with persons specified in the order or persons within a class of persons that is specified in the order;

(o) a condition that the offender must not engage in conduct that is specified in the order or conduct that is within a class of conduct that is specified in the order;

(p) a condition that the offender must not engage in employment specified in the

order or employment that is within a class of employment specified in the order;

(q) a condition that the offender must provide, to a police officer, probation officer or prescribed officer, information requested by the officer in relation to any employment or financial affairs of the offender;

(r) any other condition that the Court thinks fit.

(3) For the purposes of subsection (2)(a), an offender is, for a relevant reason, not at premises approved by a probation officer if the offender is not at premises approved by a probation officer –

(a) because the offender is travelling to or from, or is at, premises at which the offender is seeking urgent medical treatment or dental treatment; or

(b) because it is necessary not to be on the premises in order to avoid, or minimise a serious risk of, the death of, or injury to, the offender or another person; or

(c) with the approval, of a probation officer, given –

(i) so as to enable the offender to comply with a condition of the order; or

(ii) so as to enable the offender to seek or engage in employment; or

(iii) so as to enable the offender to attend an educational or training course or activity; or

(iv) so as to enable the offender to attend a rehabilitative or re-integrative activity or program; or

(v) so as to enable the offender to attend a court; or

(vi) for any other purpose approved by the probation officer.

39. Operational period of HRO orders

(1) The Supreme Court must, when it imposes an HRO order, or an interim HRO order, on an offender, specify the period of the order (the ***operational period***).

(2) The operational period –

(a) of an HRO order may not be specified to be more than 5 years; or

(b) of an interim HRO order may not be specified to be less than 3 months or more than 6 months, unless the Supreme Court considers that a longer operational period is warranted.

(3) The operational period of an HRO order, or an interim HRO order, in relation to an offender

commences on whichever of the following days is the later:

(a) the day on which the order is made;

(b) the day to which the commencement of the order is deferred under section 37(2)(b);

(c) the day on which the offender ceases to be in custody;

(d) the day on which the offender ceases under section 15(1) to be subject to a declaration under section 7(1);

(e) the day on which the offender ceases to be subject to another HRO order or interim HRO order.

(4) An HRO order, or an interim HRO order, in relation to an offender remains in force until –

(a) the operational period expires; or

(b) the order is cancelled under this Act; or

(c) a declaration is made under section 7(1) in relation to the offender –

whichever occurs first.

(5) If an interim HRO order is suspended for a period, the operational period is extended by the period.

(6) An HRO order, or an interim HRO order, in relation to an offender, and the offender's

obligations under the order, are suspended during any period, after the operational period begins, in which the offender is in lawful custody, whether under this Act or any other law.

(7) Nothing in this section prevents the Supreme Court from making a second or subsequent HRO order, or an interim HRO order, in relation to an offender.

(8) Despite subsection (7), the Supreme Court may not make a consecutive interim HRO order in relation to an offender, if the total period of all consecutive interim HRO orders in relation to the offender would be more than 6 months or a longer period determined by the Court.

(9) A day, or a part of a day, on which an interim HRO order is suspended does not count in the calculation of a period that applies in relation to an offender under subsection (8).

Division 5 – Variation, cancellation and breach of HRO orders and interim HRO orders

40. Application to vary or cancel HRO order or interim HRO order

(1) An offender who is subject to an HRO order or an interim HRO order, or the DPP, may apply to the Supreme Court for the order to be varied or cancelled.

(2) A copy of the application and notification of the time and place of the hearing of the application

is to be served, within 7 days after the application is made, on –

(a) the offender, if the applicant is the DPP; or

(b) the DPP, if the application is made by the offender.

(3) Despite subsection (2), if –

(a) the offender to whom an application relates, and the DPP, consent to it; or

(b) the Supreme Court considers it appropriate to do so in the circumstances –

the Supreme Court may hear and determine an application at any time before the expiration of the 7-day period after the application is served as required by subsection (2) or without such service having been effected.

(4) If the offender to whom the application relates is before the Supreme Court and the Supreme Court is unable to immediately deal with the application, the Supreme Court may adjourn the proceedings and, if the offender is in custody, either grant the offender bail or remand the offender in custody.

(5) Subject to subsection (6), at the hearing of the application, the Supreme Court may –

(a) vary the HRO order, or the interim HRO order, by doing any one or more of the following:

(i) adding a condition to the order;

(ii) removing or altering a condition of the order;

(iii) altering, subject to section 39(8), the operational period of the order;

(iv) specifying or altering a period specified in the order; or

(b) cancel the HRO order or interim HRO order; or

(c) refuse to vary or cancel the HRO order or the interim HRO order.

(6) The Supreme Court may, under subsection (5), vary or cancel an HRO order, or an interim HRO order, to which an application relates, whether or not the application was to vary or cancel the order.

(7) The Supreme Court must not vary or cancel the HRO order, or the interim HRO order, under subsection (5) unless the Court is satisfied that –

(a) changes in the offender's circumstances since the making of the order have rendered the offender unable to comply with any one or more of the conditions of the order; or

(b) it is otherwise appropriate to do so.

41. Breach of HRO order or interim HRO order

(1) A person in respect of whom an HRO order, or an interim HRO order, is made must not contravene a condition of the order.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term of 2 years, or both.

(2) Proceedings for an offence against subsection (1) are to be dealt with in a court of petty sessions.

42. Arrest for failure to appear at certain applications or for breach or suspected breach of HRO order

(1) The Supreme Court may issue a warrant to arrest an offender if –

(a) an application in relation to an offender is made or adjourned under this Part; and

(b) the application was not made by or on behalf of the offender; and

(c) either –

(i) the offender fails to appear at the hearing of the application; or

(ii) reasonable efforts have been made to serve the application on the offender but have been unsuccessful.

(2) Without limiting the generality of subsection (1)(c)(ii), reasonable efforts are to be taken to have been made to serve the application on an offender to whom an HRO order, or an interim HRO order, relates if a copy of the application is, during the operational period of the order, left at the premises which the person who made the application believes to be the premises at which the offender resides or was last known to reside.

(3) If an offender to whom an HRO order, or an interim HRO order, relates is arrested under subsection (1) –

(a) the offender is, as soon as practicable, to be brought before the Supreme Court; and

(b) the Supreme Court may remand the offender in custody, or on bail, to appear before the Court at a time specified by the Court for the Court to determine the application made to the Court under this Part.

(4) A police officer who believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a condition of an HRO order, or an interim HRO order, may, for the purposes of making an arrest under subsection (5), enter and search any premises, motor vehicle, aircraft, or vessel, where the officer reasonably suspects the offender to be present.

(5) A police officer may arrest an offender to whom an HRO order, or an interim HRO order, relates if the police officer believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a condition of the order.

Division 6 – Appeal

43. Appeal

(1) An appeal to the Court of Criminal Appeal by the DPP or the offender lies from any determination of the Supreme Court –

(a) to make, or refuse to make, an HRO order, or an interim HRO order, in relation to an offender; or

(b) to impose conditions on an HRO order, or an interim HRO order, in relation to an offender.

(2) An appeal against the decision of the Supreme Court may be made, as of right, within 14 days of the day on which the decision was made, or, by leave of the Court of Criminal Appeal, within a longer period allowed by the Court of Criminal Appeal.

(3) The making of an appeal does not stay the operation of an HRO order or an interim HRO order.

(4) Without limiting the jurisdiction of the Court of Criminal Appeal, if the Court of Criminal

Appeal remits a matter to the Supreme Court for decision after an appeal is made, the Court of Criminal Appeal may make, under section 37, an interim HRO order that is to be in force for a period, specified in the order, of not more than 28 days or a longer period allowed by the Court of Criminal Appeal.

(5) The Court of Criminal Appeal may, in accordance with subsection (4), make under section 37 more than one interim HRO order, but only if the combined period during which any interim HRO orders made by the Court of Criminal Appeal pursuant to the appeal, or that are made by the Supreme Court and are an order to which the appeal relates, do not exceed a total of 3 months or a longer period determined by the Court of Criminal Appeal.

(6) If the Court of Criminal Appeal remits a matter to the Supreme Court for decision after an appeal is made, the HRO order, or the interim HRO order, continues in force, subject to any order made by the Court of Criminal Appeal.

(7) This section does not limit any right of appeal that may exist apart from this section.

PART 4 – MISCELLANEOUS

44. Proceedings

Proceedings under this Act (including proceedings on an appeal against this Act) are criminal proceedings.

45. Protection from liability

No liability attaches to a person for any act or omission in good faith and in the performance or exercise, or the purported performance or exercise, of the person's functions or powers under this Act.

46. Information sharing

A person who is a personal information custodian within the meaning of the *Personal Information Protection Act 2004* is not taken to contravene that Act by reason only of collecting, using, disclosing, or otherwise dealing with, personal information, for the purposes of this Act.

47. Disclosure of compliance information

(1) In this section –

compliance information means information about an offender's compliance with the conditions of any order made under this Act or another Act;

relevant officer means a court diversion officer, or case manager, appointed under the *Sentencing Act 1997*.

(2) A judge, magistrate or relevant officer may request any person involved in the treatment or supervision of the offender to disclose any compliance information in the person's possession and the person must comply with that request.

(3) Subsection (2) has effect despite the *Personal Information Protection Act 2004* or any legislation relating to the confidentiality or privacy of information.

(4) If a person discloses compliance information in good faith under this section –

(a) the person does not, by reason of that disclosure, incur any criminal, civil or administrative liability; and

(b) the person is not, by reason of that disclosure –

(i) taken to have breached any rule of law or practice that would otherwise prohibit the person from disclosing the compliance information; or

(ii) taken to have broken any professional or other oath, or breached any professional or other code, standard or guideline of ethics or etiquette, that might

otherwise bar the person from, or condemn the person for, disclosing the compliance information; or

(iii) liable to condemnation or disciplinary action by any professional body or other person.

48. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(3) The regulations may –

(a) provide that a contravention of any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(4) The regulations may –

(a) include provisions of a savings or transitional nature consequent on the

enactment of this Act or the making of any regulations under this Act; and

(b) provide for any of those savings or transitional provisions to take effect on the day on which a provision of this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

49. Administration of Act

Until provision is made in respect of this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Justice; and

(b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

50. Consequential amendments

The legislation specified in Schedule 2 is amended as specified in that Schedule.

SCHEDULE 1 – SERIOUS OFFENCES

Section 3(1)

1.	*Criminal Code Act 1924*	
	Section 124	Penetrative sexual abuse of a child [*or* young person]
	Section 125A	Persistent sexual abuse of a child [*or* young person]
	Section 125C(2)	Procuring a child [*or* young person] for penetrative sexual abuse
	Section 126	Penetrative sexual abuse of a person with a mental impairment
	Section 130	Involving a person under the age of 18 years in the production of child exploitation material
	Section 130A	Producing child exploitation material
	Section 130B	Distributing child exploitation material
	Section 158	Murder
	Section 159	Manslaughter
	Section 167A	Causing death by dangerous driving
	Section 170	Committing an unlawful act intended to cause bodily harm

	Section 170A	Persistent family violence
	Section 172	Wounding [*or* causing grievous bodily harm]
	Section 185	Rape
	Section 191A	Kidnapping
	Section 240(4)	Aggravated armed robbery
	Section 268	Arson
2.	*Sex Industry Offences Act 2005*	
	Section 9(1)	Procuring, or otherwise causing or permitting, a child to provide sexual services in a sexual services business
	Section 9(2)	Receiving a fee or reward that a person knows, &c., is derived, directly or indirectly, from sexual services provided by a child in a sexual services business

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Section 50

Annulled Convictions Act 2003

1. Section 10(4) is amended by omitting "is subsequently declared to be a dangerous criminal under section 19 of the *Sentencing Act 1997*" and substituting "subsequently becomes a dangerous criminal, within the meaning of the *Dangerous Criminals and High Risk Offenders Act 2021*".

Corrections Act 1997

1. Section 3 is amended by omitting "declared as a dangerous criminal under section 19 of the *Sentencing Act 1997*" from the definition of *prisoner* and substituting "who is a dangerous criminal, within the meaning of the *Dangerous Criminals and High Risk Offenders Act 2021*".

Court Security Act 2017

1. Section 18A(d) is amended by omitting "section 19 of the *Sentencing Act 1997*" and substituting "the *Dangerous Criminals and High Risk Offenders Act 2021*".

Custodial Inspector Act 2016

1. Section 4 is amended by omitting "a person declared to be a dangerous criminal under section 19 of the *Sentencing Act 1997*" from the

definition of *prisoner* and substituting "a person who is a dangerous criminal within the meaning of the *Dangerous Criminals and High Risk Offenders Act 2021*".

Sentencing Act 1997

1. Division 3 of Part 3 is repealed.

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