

CLAUSE NOTES

Sentencing Amendment (Dangerous Criminals and High Risk Offenders) Bill 2020

PART 1 – PRELIMINARY

Clause 1: Short title

This clause provides that, once passed, the Bill will be cited as the *Dangerous Criminals and High Risk Offenders Act 2020* (the Act).

Clause 2: Commencement

This clause provides for the provisions of the Act to commence on proclamation.

Clause 3: Interpretation

This clause provides definitions for specific terms that are used within the Act.

Clause 3(2) provides that a reference to an offender serving a custodial sentence is a reference to an offender serving a custodial sentence in Tasmania, and includes a reference to the offender being on parole.

Clause 3(2) provides that for the purposes of the Act, a custodial sentence is not taken to expire when the offender is on parole.

PART 2 – DANGEROUS CRIMINALS

Division 1 – Declaration of dangerous criminal

Clause 4: Application for declaration that offender is dangerous criminal

This clause provides that an application for a dangerous criminal declaration may be made by the Director of Public Prosecutions (DPP) for an offender who is convicted of a crime involving violence or an element of violence.

The application may be made at the time the offender is convicted of that crime, when they are sentenced for that crime, when they are serving a custodial sentence for that crime, or when they are serving another custodial sentence that is being served cumulatively with the sentence for the crime involving violence or an element of violence.

Clause 5: Procedure in relation to application

This clause sets out the procedure for the hearing of an application for a dangerous criminal declaration including adjournment, the appearance of DPP or counsel on the DPP's behalf, the entitlement of the offender to be present unless the Supreme Court orders otherwise, the adducing of evidence by DPP or offender, and examination and cross-examination of the authors of reports.

Clause 6: Declaration of dangerous criminal

This clause sets out the pre-requisites for an offender to be declared a dangerous criminal. The prerequisites include that the Court is satisfied to a high degree of probability that the offender is a serious danger to the community. This includes a reference to the offender being a serious danger only to some members of the community.

Other prerequisites include that the offender must have 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, or alternatively the crime specified in the application must comprise multiple unlawful acts involving violence or an element of violence. For this purpose, an additional crime may be a crime that was committed against the law of another State or Territory or the Commonwealth.

This clause also sets out a mandatory list of factors that the Supreme Court must consider when determining whether an offender is a serious danger to the community.

It provides that the DPP has the onus of proving that an offender is a serious danger to the community, and that the test for this determination requires the Court to be satisfied to a high degree of probability.

Clause 7: Previous declarations taken to be declarations for purposes of this Act

This clause provides that dangerous criminal declarations made pursuant to previous legislative provisions under the *Sentencing Act 1997* and under the Criminal Code are taken to be declarations made under provisions in the new Act.

This enables declarations made prior to commencement of the new Act to be subject to the new provisions, including provisions relating to reviews of declarations.

Clause 8: Dangerous criminal not to be released from custody

This clause provides that an offender who has been declared a dangerous criminal is not eligible to be released from custody until that declaration is discharged. For example, such an offender can not be released on parole.

Division 2 – Review of declaration of dangerous criminal

Clause 9: Application for review of declaration

This clause sets out when an application may be made for the Court to review an offender's dangerous criminal declaration.

The DPP must apply for an initial review within 12 months before the expiry of all relevant custodial sentences in relation to the offender. For offenders declared as dangerous criminals under previous legislation and whose relevant custodial sentences have already expired before the Act commences, the DPP must apply for the initial review within the first 3 years of the Act's operation.

Following the initial review, the DPP must apply for a further review within 3 years of the most recent decision by the Court to refuse to discharge the dangerous criminal declaration.

At any time following the initial review, an offender may apply for a review of their declaration, provided that the Court has granted leave to do so on the grounds that exceptional circumstances apply.

This clause also sets out procedural requirements relating to the making of a review application.

Clause 10: Reports and examination of offender to whom review application relates

This clause sets out the requirements for the provision of reports to the Court relating to the offender, for the purpose of undertaking a review of a dangerous criminal declaration.

Any behavioural report, management report or risk assessment report in relation to the offender that the risk assessment committee has provided to the DPP must be provided to the Court.

The Court may order the Chief Forensic Psychiatrist to provide 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. The Court may also order the Director of Corrective Services or any other person to prepare and provide a

report in relation to the offender. The Court may order an offender to submit to examination by a person who is preparing any of these reports.

The DPP or offender may also prepare reports other than those ordered by Court. However, if they intend to use such reports in the review application, they must be provided to the other party prior to the hearing.

Clause 11: Procedure for hearing of review application

This clause sets out the procedure for the hearing of a review application, including the setting of hearing dates, legal representation, the adducing and tendering of evidence and reports, and examination and cross-examination of the authors of reports.

Clause 12: Making of pre-release orders at hearing of review application

This clause sets out the procedure for making a pre-release order in relation to an offender whose dangerous criminal declaration is being reviewed.

A pre-release order is an order setting out the requirements that are to apply in relation to the offender before their review application is finally determined by the Court. The purpose of a pre-release order is to provide the Court with further information that it may consider before determining whether or not the declaration should be discharged.

A pre-release order may be made upon application by the DPP or the offender, or of the Court's own motion.

Before making a pre-release order, the Court must consider the matters listed under section 14(2) that relate to determination of whether the offender is still a serious danger to the community.

If the Court makes a pre-release order, it must specify a date to which the review hearing is adjourned. This may be no more than 12 months from the date that the Court makes the order.

Clause 13: Resumption of adjourned hearing where pre-release order made

This clause sets out the procedures that apply for determining a review application where a pre-release order has been made.

It sets out the date on which the review hearing must resume, including circumstances where the date specified in the pre-release

order has been varied by the Supreme Court or by the Court of Criminal Appeal, or where the order has been revoked.

When the hearing resumes, the Court is to proceed to determine the review application or may, as an alternative, vary the date to which the hearing is adjourned as specified in the pre-release order, subject to the limitations set out in section 21(3)(b).

If the Court proceeds to determine the review application, it must consider the extent to which the offender has complied with any requirements in the pre-release order.

The Court may not make another pre-release order except in circumstances where an order it previously made has been quashed by the Court of Criminal Appeal.

Clause 14: Determination of review application

This clause requires the Court, upon review, to discharge a dangerous criminal declaration unless it is satisfied to a high degree of probability that the offender is still a serious danger to the community.

The clause also sets out a mandatory list of factors that the Court must consider when making its determination. These include whether the risk that the offender is still a serious danger to the community may be appropriately mitigated by imposing a high risk offender (HRO) order on the offender instead of refusing to discharge the dangerous criminal declaration.

Clause 15: When discharge of declaration takes effect

This clause provides that discharge of a dangerous criminal declaration does not take effect until there has been an opportunity for the DPP to lodge an appeal against the Court's order to discharge the declaration and any such appeal has been dismissed, withdrawn or discontinued.

Clause 16: Discharge of declaration does not affect existing sentence

The clause clarifies that the discharge of a dangerous criminal declaration does not affect a sentence of imprisonment imposed on the offender.

Clause 17: Applications for HRO orders where declaration discharged

Where a dangerous criminal declaration is discharged and the offender would otherwise cease to be in custody, this clause requires the Court to order that the offender is kept in custody

until any application by the DPP for a high risk offender (HRO) order in relation to the offender has been made and determined.

If the DPP has not already made an HRO order application by the day on which the Court orders the dangerous criminal declaration to be discharged, the Court must request the DPP to advise whether such an application will be made and the DPP must, within 14 days, either make the application or confirm that no application will be made.

Where an HRO order is made, the Court may also order the detention of an offender for a limited additional period of up to 7 days to enable arrangements to be made to supervise the offender in the community pursuant to the HRO order.

Clause 18: Appeals against declaration or refusal to make declaration

This section provides for the DPP or the offender to appeal to the Court of Criminal Appeal in relation to a decision by the Supreme Court to make or refuse to make a dangerous criminal declaration, or a decision by the Supreme Court upon review to discharge or refuse to discharge a dangerous criminal declaration.

Division 3 – Pre-release orders

Clause 19: Requirements of pre-release orders

This clause sets out a non-exhaustive list of the requirements that the Court may include in a pre-release order.

These may include the preparation of a report that assists the Court in determining the extent to which the offender has complied with the requirements of a pre-release order or whether the offender is still a serious danger to the community. Any such report must be provided to the DPP and the offender.

This clause also provides that a pre-release order does not take effect until there has been an opportunity for the DPP or the offender to lodge an appeal in relation to the order or until any such appeal has been dismissed or upheld.

Clause 20: Orders before, or ancillary to, making of pre-release orders

This clause provides for the Court to make orders that assist it in determining whether to make a pre-release order and what conditions should be included in such an order.

It enables the Court to obtain information from the Director of Corrective Services (DCS) about the availability of programs and activities that may assist with the offender's rehabilitation or

reintegration into society, and the DCS's opinion as to the suitability of the offender to participate in such programs or activities.

The clause also provides for the Court to make orders requiring the DCS to ensure an offender is given all reasonable opportunities to attend and participate in any specified programs or activities.

Where a pre-release order is made, this clause provides for the Court to order the DCS to prepare a further report in relation to the offender. This report would enable the DCS to address any matters arising during the period to which the pre-release order relates, to assist the Court in determining the review of the offender's dangerous criminal declaration.

Clause 21: Variation or revocation of pre-release orders or ancillary orders

This clause provides for the DPP or offender to apply to the Court to vary or revoke a pre-release order or an order made under section 20.

A pre-release order may be varied by varying or revoking a requirement of the order, or by varying the date specified in the order to which the review application is adjourned. It cannot be varied so as to extend the adjournment date more than 15 months from the day on which the order was first made by the Supreme Court, or confirmed by the Court of Criminal Appeal, whichever is the later.

Where a pre-release order is revoked or the date of the order is varied, the Court must set a new date for the hearing of the review application to resume.

Clause 22: Appeals in relation to making, or refusal to make, pre-release order

This section provides for the DPP or the offender to appeal to the Court of Criminal Appeal in relation to a decision by the Supreme Court to make or refuse to make a pre-release order.

PART 3 – HIGH RISK OFFENDERS

Division 1 – Interpretation of Part 3

Clause 23: Interpretation of Part 3

This clause provides definitions for specific terms that are used within Part 3 of the Act.

Clause 24: Meaning of relevant agency

This clause identifies the agencies that are considered to be a *relevant agency* for purposes of Part 3 of the Act.

Division 2 – Risk assessment of relevant offenders

Clause 25: High risk offenders assessment committee

This clause establishes the high risk offenders assessment committee (the *risk assessment committee*) and sets out its membership.

The clause also sets out the functions of the risk assessment committee.

Clause 26: Preparation of reports in relation to offenders

This clause provides for a behavioural report and/or management report to be prepared in relation to a *relevant offender*, as defined in section 23, by the appropriate relevant agency. It also sets out the matters that such reports are to address.

The clause provides that the reports are to be provided to the risk assessment committee, and that the committee must provide copies of the reports to the DPP.

Clause 27: Committee to determine whether risk assessment of relevant offender to be carried out

This clause requires the risk assessment committee to consider any behavioural and management reports that have been prepared in relation to a relevant offender and to determine whether a risk assessment of that offender is to be carried out.

It provides for the committee to appoint a psychiatrist, psychologist or medical practitioner to undertake the risk assessment and for that person to be provided with any behavioural report or management report in relation to the offender.

Clause 28: Conduct of risk assessment

This clause sets out the requirements for a risk assessment. It includes the requirement that the person conducting the assessment must prepare a report that sets out their opinion as to the likelihood of the relevant offender committing another serious

offence unless there is an HRO order in force in relation to that offender, and the reasons for that opinion.

The risk assessment report must be provided to the risk assessment committee, and the committee must provide a copy of the report to the DPP.

Clause 29: Determination by DPP as to whether to apply for HRO order in relation to offender

This clause provides that, after receiving all reports provided by the risk assessment committee, the DPP must decide whether to make an application for an HRO in relation to the relevant offender and must notify the committee of the decision.

Clause 30: Co-operation between relevant agencies in relation to dangerous offenders

This clause defines the *dangerous offender functions and powers* of a relevant agency and requires relevant agencies to co-operate with each other in the performance and exercise of those functions and powers

The clause provides non-exhaustive lists of the duties of relevant agencies in co-operating with each other, and activities that co-operation may involve.

Clause 31: Exchange of information and co-operative management of dangerous offenders

This clause authorises relevant agencies to share or exchange information in order to assist in the performance and exercise of their functions and powers under the Act.

Division 3 – Application for HRO orders and hearings

Clause 32: Applications for HRO orders

This clause provides that the DPP may apply for a high risk offender (HRO) order in relation to a *relevant offender*, as defined in section 23.

Where the offender is not serving a custodial sentence but is subject to an existing HRO order, the application must be made not more than 9 months before the current order is due to expire.

Where the offender is serving a custodial sentence for a serious offence, or for the offence of breaching an HRO order or interim HRO order, or if they are serving a custodial sentence for another

offence that is being served concurrently or consecutively with such a sentence, the application must be made not more than 9 months before the offender's sentence of imprisonment is due to expire.

An application may also be made when an offender subject to a dangerous criminal declaration has that declaration discharged by the Court.

This clause sets out the requirements for documentation that must accompany an application, including any reports provided to the DPP by the risk assessment committee. It also provides for the DPP to specify the conditions that should be included in an HRO order, and for service of the application and accompanying documents on the offender.

Clause 33: Hearing of application

This clause sets out the procedure for the hearing of an application for an HRO order, including the setting of hearing dates, the adducing and tendering of evidence and reports, and examination and cross-examination of the authors of reports.

The Court may order the Chief Forensic Psychiatrist to provide a report prepared by a psychiatrist, psychologist or medical practitioner as to the likelihood of the offender committing another serious HRO offence unless an HRO order is made in relation to the offender. The Court may also order an offender to submit to examination by a person who is preparing such a report.

Division 4 – HRO orders and interim HRO orders

Clause 34: HRO orders

This clause sets out the legal test for making an HRO order. The Court may only make an HRO order if it 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.

Clause 35: Matters to be considered in determining whether to make HRO order

This clause sets out a mandatory list of factors that the Court must consider when determining whether or not to make an HRO order.

It provides that the safety of the community must be the paramount consideration of the Court in making its determination.

Clause 36: Interim HRO orders

This clause provides for the making of interim HRO orders.

An interim HRO order may be made if it appears to the Court that a relevant offender may cease to be in custody or be subject to an existing HRO order before the Court can determine an HRO order application in relation to that offender.

The Court may also order the detention of an offender for a limited period of up to 7 days after the offender would cease to be in custody, to enable arrangements to be made to supervise the offender in the community pursuant to the interim HRO order or an HRO order.

Clause 37: Conditions of HRO order or interim HRO order

This clause provides a list of conditions that the Court must specify on an HRO order or interim HRO order and also provides a non-exhaustive list of conditions that the Court may, at its discretion, impose on such an order.

This clause also clarifies the circumstances under which an offender is permitted to not be at premises approved by a probation officer, if the Court has imposed the condition specified under subsection (2)(a).

Clause 38: Operational period of HRO orders

This clause requires the Court to specify the operational period of an HRO order or interim HRO order.

An HRO order may have an operational period of no more than 5 years.

An interim HRO order may have an operational period of no less than 3 months and no more than 6 months, unless the Supreme Court considers that a longer period is warranted.

This clause also clarifies when an HRO order or interim HRO order commences, when such an order remains in force, and the circumstances in which an offender's obligations under the order may be suspended.

The clause provides that a Court may make a second or subsequent HRO order or interim HRO order in relation to an offender. The total period of all consecutive interim HRO orders in relation to an offender may not be more than 6 months, or a longer period determined by the Court.

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

Clause 39: Application to vary or cancel HRO order or interim HRO order

This clause provides for the DPP or an offender to apply to the Court to vary or cancel an HRO order or interim HRO order in relation to that offender, and sets out the procedural requirements in relation to such an application.

The clause provides for the Court to vary an order by adding, removing or altering a condition in the order, altering the operational period, or specifying or altering a period in the order.

Clause 40: Breach of HRO order or interim HRO order

This clause provides that it is an offence for an offender to contravene a condition of an HRO order or interim HRO order, and that proceedings for such an offence are to be dealt with in the Supreme Court.

Where an offender is found guilty of such an offence, the Court may impose a fine or a sentence of imprisonment. The Court may also vary the HRO order or interim order.

Clause 41: Arrest for failure to appear at certain applications or for breach or suspected breach of HRO order

This clause provides for the arrest of an offender in certain circumstances.

The Court may issue a warrant to arrest an offender if they fail to appear at the hearing of an application under Part 3 of the Act that was not made by the offender or on their behalf, or if reasonable efforts have been made to serve the application on the offender but have been unsuccessful.

Where an offender is arrested under a warrant, they must be brought before the Court as soon as practicable, and the Court may remand them in custody or on bail to appear at a hearing of the application.

This clause also provides authority for a police officer to arrest an offender if the police officer believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a

condition of their HRO order or interim HRO order. For the purpose of making such an arrest, a police officer may enter and search any premises, motor vehicle, aircraft or vessel where the officer reasonably suspects the offender to be present.

Division 6 – Appeal

Clause 42: Appeal

This clause provides for the DPP or the offender to appeal to the Court of Criminal Appeal in relation to a decision by the Supreme Court to make or refuse to make an HRO order or interim HRO order, or to impose conditions on such an order.

PART 4 – MISCELLANEOUS

Clause 43: Proceedings

This clause clarifies that proceedings under the Act are criminal proceedings.

Clause 44: Protection from liability

This clause provides protection from liability in relation to a person's acts or omissions in good faith in the performance of functions or powers under the Act.

Clause 45: Information sharing

This clause clarifies the application of the *Personal Information Protection Act 2004* to the Act.

Clause 46: Disclosure of compliance information

This clause provides for a judge, magistrate or relevant officer to request any person involved in the treatment or supervision of an offender to disclose any information in the person's possession about the offender's compliance with the conditions of any order made under this Act or another Act, and requires the person to comply with that request.

This clause also provides protections for a person who discloses information in good faith in accordance with such a request.

Clause 47: Regulations

This clause provides for regulations to be made for purposes of the Act.

Clause 48: Administration of Act

This clause provides that, until provision is made under the *Administrative Arrangements Act 1990*, the administration of this Act is assigned to the Minister for Justice and the responsible department is the Department of Justice.

Clause 49: Consequential Amendments

This clause provides that the legislation specified in Schedule 2 is amended as specified in that Schedule.

SCHEDULE 1 – SERIOUS OFFENCES

This schedule sets out the offences under the *Criminal Code Act 1924* and the *Sex Industry Offences Act 2005* that are considered to be a *serious offence*, as defined in section 3 of the Act, for purposes of the provisions relating to high risk offenders in Part 3 of the Act.

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

This schedule sets out consequential amendments to the: *Annulled Convictions Act 2003*; *Corrections Act 1997*; *Court Security Act 2017*; *Custodial Inspector Act 2016*; and *Sentencing Act 1997*