

FACT SHEET

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

The Bill repeals the current dangerous criminal declaration provisions in the *Sentencing Act 1997* and establishes new standalone legislation, the *Dangerous Criminals and High Risk Offenders Act*. The Bill responds to the Government's election commitment and the Tasmania Law Reform Institute research paper titled 'A Comparative Review of National Legislation for the Indefinite Detention of 'Dangerous Criminals'.

The Bill updates Tasmania's legislative framework for indefinite detention of dangerous criminals and introduces a new, second-tier scheme that provides for post-sentence supervision of serious sex and violence offenders, referred to as high risk offenders, within the community.

Features of the Bill include:

Dangerous Criminals

- The Bill confirms that an application for a dangerous criminal declaration may be made at the time an offender is convicted or sentenced for a crime involving violence (or an element of violence), or at the time they are serving a custodial sentence for that crime, or a custodial sentence for another crime that is being served concurrently or cumulatively with that sentence.
- The new provisions remove the current requirement that a dangerous criminal declaration may only be made by the convicting or sentencing judge, allowing greater flexibility for the Director of Public Prosecutions (DPP) to make an application when it is warranted.
- The Bill introduces periodic, mandatory reviews of an offender's dangerous criminal declaration by the Supreme Court, and the capacity for the offender to apply for a review at other times under exceptional circumstances. The Bill includes mandatory factors that the Court must consider when making a dangerous criminal declaration or reviewing a declaration and reforms the test and standard of proof that apply in declarations and reviews, bringing them into line with the majority of Australian jurisdictions that have indefinite detention legislation. The factors include whether the risk to the community may be appropriately mitigated by imposing a high risk offender order on the offender instead of refusing to discharge the declaration.
- The Bill empowers the Supreme Court to make pre-release orders during a review of a dangerous criminal declaration, which may require the offender to participate in rehabilitation, treatment or re-integration programs or other activities specified by the Court, or achieve certain results, before the Court determines whether the offender's declaration may be discharged.

- The Bill provides that an offender who is subject to a dangerous criminal declaration cannot be released from custody while the declaration is in place.

High Risk Offenders

- The new second-tier scheme in the Bill enables the DPP to apply for high risk offender (HRO) orders in relation to serious offenders who do not meet the threshold for being declared a dangerous criminal, but may nevertheless pose a risk to the community if no supervising conditions are in place when they are released post-sentence. The Bill provides that the safety of the community must be the Court's paramount consideration in determining whether to make an HRO order.
- The Bill provides that, where the Court makes an HRO order, it must impose a set of mandatory conditions on the offender including reporting and residential conditions, permitting police to enter premises and conduct searches, not leaving the State without approval, and complying with directions by a probation officer to engage in treatment, counselling or other activities. The Court may also impose additional conditions as required, including electronic monitoring, curfews, prohibitions on entering certain places or making contact with certain people, and submitting to drug and alcohol testing.
- The Bill provides that an HRO order may have an operational period of up to 5 years, which may effectively be extended by applying for a new order. The Bill makes it an offence to breach a condition of an HRO order and includes powers of arrest where an offender fails to appear before the Court or where a police officer believes on reasonable grounds that an offender subject to an HRO order has breached, is breaching, or is about to breach, a condition of the order.
- The Bill also provides for the making of interim HRO orders.
- To support the new provisions, the Bill also establishes the high risk offenders assessment committee, which will include representatives from the Departments of Justice, Health, Communities Tasmania and Police, Fire and Emergency Management. The Bill provides for these agencies to cooperate and exchange information as required to manage and supervise offenders who are subject to HRO orders. The committee will also facilitate behavioural reports, management reports and risk assessments in relation to offenders, which will inform the DPP's decision on whether to apply for an HRO order and be provided to the Supreme Court when HRO order applications are made and when reviews of dangerous criminal declarations are undertaken.