DRAFT SECOND READING SPEECH

HON GUY BARNETT MP

Dangerous Criminals and High Risk Offenders Amendment Bill 2025

check Hansard for delivery

Honourable Speaker, I move that the Bill now be read a second time.

The amendments contained in this Bill are the same as those that were included in the Dangerous Criminals and High Risk Offenders Amendment Bill 2025 that I introduced into Parliament earlier this year, but which lapsed with the calling of the 2025 Tasmanian state election.

This Bill makes several amendments to the *Dangerous Criminals and High Risk Offenders Act 2021* in relation to the making and operation of High Risk Offender orders.

The Act commenced in December 2021, providing for the Supreme Court to make dangerous criminal declarations or High Risk Offender (HRO) orders in relation to certain offenders following an application from the Director of Public Prosecutions

Dangerous criminal declarations have the effect of detaining an offender in custody indefinitely after all of their relevant custodial sentences have expired, subject to regular reviews by the Court to determine if the declaration remains necessary. Dangerous criminal provisions were previously contained in the *Sentencing Act 1997,* but they were repealed so that updated and improved provisions could be included in the new, standalone legislation.

The Dangerous Criminals and High Risk Offenders Act also introduced a second-tier scheme for high risk offenders, to provide for post-sentence supervision of serious sex or violent offenders in the community, subject to various conditions imposed through an HRO order.

This second-tier scheme applies to serious offenders that do not meet the threshold for indefinite detention, but nevertheless are considered to pose an unacceptable risk of committing another serious offence unless they are made subject to an HRO order. HRO orders may also operate as a ‘step-down’ mechanism for the Court to consider when reviewing a dangerous criminal declaration.

An HRO order may be made for a period of up to 5 years, and it is possible for the DPP to apply for a further HRO order to enable continued supervision

beyond the period of an initial order.

An interim HRO order may be made in circumstances where the DPP has applied for a HRO order, but it appears to the Court that the application will not be determined before the offender has been released from custody or made subject to an HRO order. An interim HRO order may not be less than 3 months or more than 6 months in duration, unless the Court considers that a longer operational period is warranted.

Honourable Speaker, the amendments in this Bill only apply to the HRO order provisions of the Act and not to dangerous criminal declarations. I will now outline the key clauses in the Bill.

Inclusion of attempted crimes as serious offences

Schedule 1 to the Act lists those offences that are considered to be serious offences for purposes of the Act. The term 'serious offence' is defined in section 3 and appears throughout Part 3 of the Act in relation to HRO orders. In particular, the term is used in section 24 to define who is a 'relevant offender', which in turn determines whether an application for an HRO order can be made in relation to that person.

Clause 4 of the Bill replaces the current definition of 'serious offence' with an expanded definition that includes an offence of attempting to commit an offence against a provision listed in Schedule 1. This means that where an offender has been convicted for attempting one of these crimes, they may be considered eligible for an HRO order application by the DPP.

This amendment addresses the current gap where, for example, a person could be considered eligible for an HRO order on the basis of having been convicted of murder but not on the basis of having been convicted of attempted murder, where the intent to commit a violent act may be indistinguishable regardless of the outcome.

Another example would be where an offender has been convicted of multiple attempted rapes over a period of time, but because the sexual act was never completed in any of those attempts, the offender would not have committed a serious offence for purposes of the Act and could not be considered for an HRO order based on that offending alone.

While this amendment slightly broadens the range of offenders who may be considered for an HRO order, it remains at the discretion of the DPP to decide whether to apply for an order in relation to any particular offender based on their individual circumstances and risk profile.

Limited period of detention to facilitate arrangements for an HRO order

Honourable Speaker, Clause 5 of the Bill inserts a new subsection (4) into

section 35 of the Act to provide that, when making an HRO order, the Court may order that the offender is detained for a period of not more than 7 days beyond the day on which they would cease to be in custody, if it is satisfied that such a period of time is required to make arrangements to give effect to the conditions imposed under the order.

Related amendments concerning the issue of a warrant of committal are also included through the insertion of new subsections (5) and (6) to ensure that any extended period of detention is properly authorised.

These amendments mirror the existing provisions in section 37 of the Act that apply to interim HRO orders. Like section 37, the amendments are designed to facilitate the successful release from custody of persons subject to HRO orders, so as to avoid a lack of suitable arrangements leading to a breach of conditions.

It is important to note that this limited extension of the detention period may only be granted where the Court considers it is necessary. It will not occur by default or simply as a matter of course.

Clarification regarding operational period of HRO orders

Honourable Speaker, I now turn to clause 6 of the Bill, which amends section 39 of the Act. Under section 39, an HRO order or interim HRO order is suspended when the offender who is subject to that order is in lawful custody, for example, if they are remanded in custody when charged with a crime or sentenced to a custodial term.

Suspension means that the order remains in place, but the obligations under that order – such as reporting to a probation officer or residing at certain premises – are suspended. This ensures that an offender is not found in breach of the conditions of their order simply because they are physically unable to meet those conditions due to being held in custody.

Interim HRO orders are not normally made for a period of more than 6 months. Section 39(5) provides that if an interim HRO order is suspended for a period, the operational period is extended by the period. This means that if an offender subject to an interim HRO order is placed in custody, time stops running for the order and then resumes again when the offender is released. This ensures that the relatively short duration of an interim HRO order does not completely expire during any custodial period.

Subsection (5) was intentionally drafted to apply only to interim HRO orders and not HRO orders, which may have an operational period of up to 5 years. Where an offender subject to an HRO order is placed in lawful custody, their obligations under the order are suspended but the time period of the order continues to run.

Despite this deliberate drafting, questions were raised within my Department of Justice around the desirability of explicitly reflecting this intention in the Act, for the removal of any doubt. Clause 6 of the Bill inserts a new subsection (5A) into section 39 of the Act to make this clear and unambiguous.

I note that this is not a change of policy, but rather confirms the policy intent when the Act was originally passed by the Parliament and reflects a distinction between HRO orders and interim HRO orders.

The HRO order provisions are premised on the Court being able to satisfy itself in relation to the risk profile the offender at the time the Court makes the order. If section 39(5) were to apply to HRO orders as well as interim HRO orders, it could potentially extend the HRO order's operational period and its obligations on the offender well beyond what the Court considered appropriate at the time the order was made.

Inclusion of additional offences relating to children and young persons as serious offences

Finally, I turn to clause 7 of the Bill, which expands the list of serious offences within Schedule 1 to the Act to include 18 additional offences relating to children and young persons. This will enable an offender who has been convicted of one or more of these offences to be considered for a risk assessment by the high risk offenders assessment committee and for the DPP to apply for an HRO order in relation to such offenders, provided that they meet the other requirements for being a 'relevant offender' as set out in section 24 of the Act.

Honourable Speaker, this change delivers on the Government's 2024 election commitment to ensure that child sexual offenders can be assessed for the risk that they pose to the community and the need for monitoring through an HRO order.

As with the expansion to the definition of 'serious offence' to include attempts, this reform will broaden the range of offenders who may potentially be made subject to an HRO order. However, whether a risk assessment is undertaken in relation to a particular offender will remain for determination by the risk assessment committee. Similarly, whether an application for an HRO order is ultimately made in relation to a particular offender will remain at the discretion of the DPP.

It is also important to note that none of the amendments in this Bill make any change to the statutory test that the Supreme Court applies under section 35(2) of the Act in deciding whether to make an HRO order. Nor do they change the matters that the Court, under section 36, must have regard to in making that decision.

Honourable Speaker, I would like to thank all of the stakeholders who

provided feedback during the development of this Bill and the public consultation process. That feedback is always considered carefully and is an important part of improving and updating Tasmania's legislation.

I commend the Bill to the House.