

## CLAUSE NOTES

### Dangerous Criminals and High Risk Offenders Amendment Bill 2025

**Clause 1      Short title**

Specifies the name of the proposed Act.

**Clause 2      Commencement**

Provides that the Act commences on the day that it receives Royal Assent.

**Clause 3      Principal Act**

Provides that the Principal Act being amended by this Act is the *Dangerous Criminals and High Risk Offenders Act 2021*.

**Clause 4      Section 3 amended (Interpretation)**

This clause amends section 3 of the Principal Act to replace 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.

The defined term *serious offence* appears throughout Part 3 of the Principal Act in relation to High Risk Offender (HRO) orders. In particular, the term is used in section 24 to define who is an *eligible offender*, which in turn determines whether an application for an HRO order can be made in relation to that person.

The expanded definition of *serious offence* means that where an offender has been convicted for attempting one of the crimes listed in Schedule 1 to the Principal Act, that offender may be considered eligible for an HRO order application. Whether an application is actually made in relation to a particular offender will remain at the discretion of the Director of Public Prosecutions.

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.

**Clause 5      Section 35 amended (HRO orders)**

This clause inserts new subsections (4), (5) and (6) into section 35 of the Principal Act.

The new subsection (4) allows the Supreme Court to make an order for a limited extension of an offender's detention in custody prior to their release subject to an HRO order. The Court may only make such an order if it is considered necessary to make sure arrangements are in

place so that any conditions imposed under the HRO order can be met when the offender is released.

The new subsections (5) and (6) contain related amendments concerning the issue of a warrant of committal, to ensure that any period of detention ordered under the new subsection (4) is properly authorised.

The new subsections mirror a similar capacity for the Court to order a limited extension of detention that already exists in section 37 of the Principal Act in relation 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.

## **Clause 6      Section 39 amended (Operational period of HRO orders)**

This clause amends section 39 of the Principal Act to explicitly confirm that the operational period of an HRO order is not extended when that order is suspended for a period.

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 deliberately 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 a (non-interim) HRO order is placed in lawful custody, their obligations under the order are suspended but the time period of the order continues to run.

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.

While subsection (5) does not currently apply to extend the operational period of HRO orders while they are suspended, the insertion of the

proposed new subsection (5A) into section 39 of the Principal Act will remove any doubt by making this explicit, confirming the original policy intent of the provisions.

This clause also makes a minor amendment to subsection (3)(b) of section 39 that is consequential to the amendments in clause 5.

**Clause 7      Schedule 1 amended (Serious Offences)**

This clause expands the list of serious offences within Schedule 1 to the Principal Act by inserting further offences relating to children and young persons.

These amendments will enable an offender who has been convicted of one or more of these additional offences to be considered as an *eligible offender* for purposes of section 24 of the Principal Act. This will allow them to be considered for a risk assessment by the high risk offenders assessment committee under Division 2 of Part 3 of the Principal Act and for the Director of Public Prosecutions to apply for an HRO order in relation to such offenders.

Whether a risk assessment is undertaken in relation to a particular offender will remain for determination by the risk assessment committee in accordance with section 28 of the Principal Act.

Similarly, whether an application for an HRO order is ultimately made in relation to a particular offender will remain at the discretion of the Director of Public Prosecutions.

**Clause 8      Repeal**

This is a standard provision for amending legislation, repealing this amending Act one year after its amendments have been incorporated into the Principal Act.