Serious Offenders Bill 2018

No. 6, May 2018

Alice Petrie
Research & Inquiries Unit
Parliamentary Library & Information Service
Acknowledgments
The author would like to thank Jon Breukel, Debra Reeves, Caley Otter, Marianne Aroozoo, Igor Dosen, Michael Graham and Bella Lesman for their help in the preparation of this paper.
Contents

Introduction ................................................................................................................................. 1
Post-sentence preventive detention .......................................................................................... 2
  Benefits .................................................................................................................................. 2
  Common law principles and civil liberties .......................................................................... 2
  Human rights ......................................................................................................................... 3
Background to the Bill .............................................................................................................. 5
  Establishment of continuing detention ................................................................................ 5
  The Harper Review ............................................................................................................... 6
  Community Safety Bill .......................................................................................................... 7
  Governance Bill .................................................................................................................... 8
  The Bill .................................................................................................................................. 8
The existing post-sentence scheme ......................................................................................... 9
The Bill ..................................................................................................................................... 10
  Provisions ............................................................................................................................ 10
    Expanded eligibility of the scheme .................................................................................... 10
    Application process ........................................................................................................... 11
    Supervision orders ........................................................................................................... 11
    Detention orders ............................................................................................................... 15
    Interim orders ................................................................................................................... 16
    Review of orders ............................................................................................................... 16
    Review of scheme ............................................................................................................. 16
    Post Sentence Authority ................................................................................................... 16
Commentary ............................................................................................................................. 17
Studies and literature ............................................................................................................... 19
  Cases .................................................................................................................................... 19
  Books .................................................................................................................................... 20
  Articles and reports ............................................................................................................. 21
  Submissions ........................................................................................................................ 22
References ................................................................................................................................. 24
Introduction

The Serious Offenders Bill 2018 (the Bill) was introduced in the Legislative Assembly on 8 May 2018, and was second read on 9 May 2018. It seeks to establish a:

civil, protective scheme under which offenders who have served custodial sentences for certain serious sex offences and certain serious violent offences and who present an unacceptable risk of harm to the community can be made subject to ongoing detention or supervision.

The Bill expands on the existing post-sentence supervision and detention regime contained in the Serious Sex Offenders (Detention and Supervision) Act 2009 (SSODSA), which provides for the preventive detention of sexual offenders who pose an unacceptable risk of reoffending following the end of their prison sentence. The Bill seeks to broaden the existing criteria to include persons convicted of offences relating to serious interpersonal harm. It also makes a number of other amendments to the overarching supervision and detention scheme, including introduction of a new emergency detention power, a new intensive treatment and supervision condition, and new conditions relating to the use of firearms by offenders under an order.

The provisions contained in the Bill are largely a product of recommendations made by the 2015 Harper Review, which is discussed in more detail later in this Brief. The Victorian Government has introduced and passed two pieces of legislation implementing a number of these recommendations. The suite of amendments contained in the Bill seeks to implement the remaining recommendations of the review.

The Minister for Police, Lisa Neville MP, stated in her second reading speech on the Bill that the reforms are ‘supported by new legislation, a new governance model, and extensive operational changes across a range of government and service system areas’. She further stated that the new post-sentence scheme:

...finely balances constitutional and Charter requirements to ensure that while the first and foremost priority is the protection of the community, the scheme does not overreach beyond the safeguards required to manage risk and support community safety.

This Bill Brief will provide:

- a brief introduction to post-sentence preventive detention;
- background to the development of the Bill;
- an overview of the existing post-sentence scheme;
- an explanation of the amendments to the existing scheme as contained in the Bill; and
- information on selected research and other resources that have been published since the Harper review.

---

1 Serious Offenders Bill 2018.
3 Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic).
5 ibid., p. 1229.
Post-sentence preventive detention

Continuing detention—also referred to as post-sentence preventive detention—applies to circumstances where, following the completion of their term of imprisonment, a person remains in detention due to a risk of that person reoffending. It seeks to minimise the impact of offender recidivism on the community, while also considering the rehabilitation and treatment of the individual being detained. Such measures therefore involve a balancing of the individual rights and liberties of an offender with responsibilities to protect community safety.

Preventive detention encompasses a complex field of criminal law theory, and this Bill Brief will not consider the wide-ranging research that exists in relation to policy, principles, law and practice. It will, however, briefly touch on some of the inherent risks and implications that preventive detention schemes entail, including the interaction between preventive detention and civil liberties and human rights. A discussion of the benefits and risks of these schemes is important ahead of consideration of the provisions contained in the Bill.

In this respect, the Minister for Police acknowledges in her second reading speech on the Bill that:

As noted in the Harper Review, civil detention or supervision for preventative purposes (not as punishment for criminal conduct) is a significant departure from principles generally held to be important in a democratic society. However, the broader community agrees that these preventative measures are necessary to keep the community safe and are a justifiable departure from usual democratic principles.

Benefits

The benefits of post-sentence preventive detention rest principally in its ability to enhance the protection of community safety and welfare by minimising apparent risks of illegal activity and serious harm. It has further been argued that the prospect of continuing detention provides offenders with a greater incentive to engage in rehabilitation and treatment prior to the end of their sentence; and that a post-sentence risk assessment scheme has potential advantages in that risk is assessed according to the person’s state of mind and behaviour at the time of their release.

Common law principles and civil liberties

Post-sentence preventive detention has also been argued, however, to trespass on certain common law principles, individual rights and civil liberties by reason of:

---


- retrospectively applying continuing detention laws to offenders who were sentenced prior to the adoption of a continuing detention regime;\(^\text{12}\)
- retrospectively applying additional punishment for an offence, where continuing detention is implemented following the end of a criminal sentence and the prospect of continuing detention was not raised at the time of sentencing;\(^\text{13}\)
- implementation of what could be considered double punishment for the same conduct;\(^\text{14}\)
- diverging from the principle of finality in sentencing;\(^\text{15}\)
- diverging from the principle of proportionality in sentencing, which requires that the punishment should not exceed the seriousness of the offence;\(^\text{16}\)
- potential for preventive detention to become indefinite, if the apparent risk is maintained;\(^\text{17}\)
- application of rules of evidence and procedure for civil matters to detention, without the usual methods of disputing contested evidence;\(^\text{18}\) and
- the reason for detention being based on the risk of future behaviour, rather than as punishment for committing an offence proven in judicial proceedings.\(^\text{19}\)

**Human rights**

In addition, post-sentence preventive detention has been considered to engage a number of human rights, depending on the nature of the scheme. This is not to say that it is necessarily incompatible with these rights; rather, that human rights require careful consideration in the drafting of relevant legislation.

Victoria’s *Charter of Human Rights and Responsibilities Act 2006* (the Charter) includes the protection against arbitrary detention (section 21(2)) and the right to humane treatment when deprived of liberty (section 22).\(^\text{20}\) Section 22(2) provides that persons detained without charge must be segregated from convicted persons except where reasonably necessary, and that those persons must be treated in a way that is appropriate for a person who has not been convicted.

In addition, international human rights law further protects the right to liberty and the prohibition on arbitrary detention, and rights to a fair trial, as contained in the International Covenant on Civil and Political Rights (ICCPR).\(^\text{21}\) Depending on the nature of preventive detention, other rights relating to

---


\(^\text{16}\) The Law Council of Australia further argues that the original sentence imposed by the court ‘reflects the synthesis of all of the purposes of sentencing, including punishment, deterrence, denunciation and protection of the community from the offender’. See, Law Council of Australia (2016) op. cit., paras. 12-3.

\(^\text{17}\) T. Tulich & J. Blackbourn (2015) op. cit.

\(^\text{18}\) Law Council of Australia (2017) op. cit., para. 103.

\(^\text{19}\) ibid.


\(^\text{21}\) *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171; [1980] ATS 23 (entered into force 23 March 1976), articles 9(1) and 14(1)-(3). Further discussion of the engagement of these rights in relation to continuing detention schemes can be found in the following resources:
children and persons with disabilities, for example, may also be relevant. Australia has voluntarily accepted human rights obligations under the ICCPR, as well as a number of other international treaties and conventions to which it is a party. These obligations are only legally binding under Australian law where they have been implemented in domestic legislation. However, Australia is obliged to respect, protect and fulfil these obligations, and is required to report periodically to the treaty body committees in accordance with reporting requirements.

The United Nations Human Rights Committee (UNHRC), which monitors state parties’ implementation of the ICCPR, has commented on the compatibility of post-sentence preventive detention schemes with the right to liberty and security of the person in its General comment no. 35. In particular, it stated that states should ‘only use such detention as a last resort and regular periodic reviews by an independent body must be assured to decide whether continued detention is justified’, and that they must ‘exercise caution and provide appropriate guarantees in evaluating future dangers’. In relation to the accommodation of relevant offenders, it has provided that the conditions of detention must be distinct from those of convicted prisoners, and aimed at rehabilitation and reintegration of the person. The UNHRC has previously provided views on Australian continuing detention schemes in relation to a number of communications submitted to it, including in Tillman v Australia and Fardon v Australia. These findings are discussed in more detail later in this Brief.
Background to the Bill

This background section uses the introduction of supervision order powers, and initial government consideration of a post-sentence detention system in Victoria, as the starting point for a historical outline of the scheme. It is not intended to be comprehensive and aims to provide further context to the provisions introduced in the Bill.

Establishment of continuing detention

Post-sentence supervision was first established in Victoria as part of the Serious Sex Offenders Monitoring Act 2005, which introduced ‘extended supervision orders’ for offenders convicted of certain sexual offences who remained a serious danger to the community.\(^{28}\) The Adult Parole Board was granted authority to give instructions or directions to offenders under an extended supervision order.

In May 2006, the then Attorney-General, Rob Hulls MP, requested advice from the Sentencing Advisory Council on the merits of introducing a continued detention scheme. The final report follows the release of a Community Issues Paper in September 2006,\(^{29}\) a Discussion and Options Paper,\(^{30}\) and a Recidivism of Sex Offenders Research Paper in January 2007.\(^{31}\) The Sentencing Advisory Council issued its final report in May 2007.\(^{32}\) This report did not support the introduction of a continuing detention scheme. The panel stated:

A narrow majority of the Council has concluded that regardless of how carefully a continuing detention scheme is to be structured, the inherent dangers involved outweigh its potential benefits. This view particularly takes into account the existence of less extreme approaches to achieving community protection, such as extended supervision. Members of the Council taking this position were concerned about the inability of clinicians accurately to predict risk, the potential of such schemes to limit human rights and due process unjustifiably, the lack of evidence to support claims that continuing detention will reduce overall risks to the community, and the availability of other, more cost-effective means of reducing risk.

However, a significant minority of the Council was of the view that a continuing detention scheme should be introduced in Victoria to deal with the ‘critical few’ offenders who pose a serious risk to the safety of community members. These Council members believe such a scheme can be crafted to ensure that the competing rights and interests of offenders and of the broader community are balanced appropriately and orders made in only the most compelling cases.\(^{33}\)

In 2009, the Victorian Government introduced legislation to establish post-sentence detention for serious sexual offenders in the SSODSA,\(^{34}\) which commenced on 1 January 2010. It expanded on the

---

\(^{28}\) Serious Sex Offenders Monitoring Act 2005 (Vic).
\(^{29}\) Sentencing Advisory Council (2006) High-Risk Offenders: Continued Detention and Supervision Options—Community Issues Paper, August, Melbourne, SAC.
\(^{30}\) Sentencing Advisory Council (2007) High-Risk Offenders: Post-Sentence Supervision and Detention—Discussion and Options Paper, January, Melbourne, SAC.
\(^{34}\) Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic).
supervision order powers established under the *Serious Sex Offenders Monitoring Act 2005*, and transferred responsibility for the determination of supervision order conditions to the courts.

A number of pieces of legislation subsequently amended and expanded the post-sentence scheme:

- **Serious Sex Offenders (Detention and Supervision) Amendment Act 2011**—introduced amendments to notice requirements, the period of supervision orders, and review requirements, and updated provisions in regard to information sharing;\(^ {35} \)
- **Serious Sex Offenders (Detention and Supervision) Amendment Act 2012**—made a number of miscellaneous changes, including provision that a supervision or detention order expires on the death or deportation of the offender;\(^ {36} \)
- **Corrections Legislation Amendment Act 2014**—amended the scheme to allow the Adult Parole Board to impose conditions on persons who have been directed to reside at a residential facility and to enable courts to vary the terms of, or revoke, the supervision order;\(^ {37} \)
- **Crimes Amendment (Protection of Children) Act 2014**—amended the scheme to include a number of further sex offences relating to children to the list of offences subject to the provisions;\(^ {38} \)
- **The Serious Sex Offenders (Detention and Supervision) and Other Acts Amendment Act 2015**—introduced new police powers in relation to offenders, such as powers of entry to monitor compliance with an order, and further provided for the management of offenders, including the introduction of ‘specified officers’ and electronic monitoring provisions. The Act further introduced a presumption against bail.\(^ {39} \)

**The Harper Review**

In May 2015, the then Minister for Corrections appointed a Complex Adult Victim Sex Offender Management Review Panel to review the legislative and governance models provided for under the SSODSA. This review is commonly referred to as the ‘Harper Review’.

The Panel undertook substantial research into issues relating to complex sex offenders, including the consideration of 46 cases of offenders subject to post-detention or supervision orders; 48 meetings with organisations, experts and individuals with relevant expertise, as well as with three victims of crime; and a voluntary questionnaire of offenders under supervision and detention orders.\(^ {40} \)

The final report was provided to the Victorian Government in November 2015,\(^ {41} \) and included 35 recommendations aimed at improving the operation of the post-sentence supervision and detention legislative framework.

The report further set out four ‘pillars’ which underpinned the advice contained in the report (see Table 1 below).

---

\(^ {35} \) *Serious Sex Offenders (Detention and Supervision) Amendment Act 2011* (Vic).

\(^ {36} \) *Serious Sex Offenders (Detention and Supervision) Amendment Act 2012* (Vic).

\(^ {37} \) *Corrections Legislation Amendment Act 2014* (Vic).

\(^ {38} \) *Crimes Amendment (Protection of Children) Act 2014* (Vic).

\(^ {39} \) *Serious Sex Offenders (Detention and Supervision) and Other Acts Amendment Act 2015* (Vic).

\(^ {40} \) See, Complex Adult Victim Sex Offender Management Review Panel (2015) *Advice on the legislative and governance models under the Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic), November, Corrections Victoria, p. vii, ‘scope and methodology’.

\(^ {41} \) W. Noonan, Minister for Police (2015) *Serious Sex Offender Review Delivered to Government*, media release, 30 November.
1. Early intervention and continuity of care to reduce the risk of serious interpersonal harm

The report aims to ensure that ‘a carefully selected cohort, consisting only of the most serious and greatest risk offenders, are provided with incentives and opportunities to engage in interventions involving treatment and management’, in order to provide ‘so far as possible that at the end of their sentence they do not pose an unacceptable risk of further relevant offending’. If, however, these measures are ineffective, an offender may then be subject to post-sentence detention or supervision, with the continued provision of treatment and rehabilitation services.

2. Reducing the number of victims of serious interpersonal harm

The report emphasises that the scheme should be extended to protect the community ‘against acts of serious interpersonal harm, regardless of the characterisation of the offending as sexual or violent or both.’

3. Independent and rigorous oversight

The report supports the establishment of an independent authority responsible for the ‘continuous and seamless management of offenders who have committed serious offences.’

4. Responsive service delivery and intensive case management

The report supports the strengthening of service delivery aimed at minimising the risk associated with offenders, consisting of coordinated, multi-disciplinary responses with provision of incentives and opportunities to engage in immediate post-release interventions.

In relation to offenders convicted of serious violent crimes, the report stated that:

In the Panel’s opinion, any improvement in the post sentence legislative framework must encompass the extension of that framework to the management of the risk of violent offending; expanding its focus to protect the community from all acts of serious interpersonal harm.43

The Victorian Government made the report public on 24 April 2016, and announced that it had accepted all of the recommendations contained in the report. It further announced an allocation of $84 million, as part of the 2016/17 Budget, to overhaul the scheme and implement the recommended changes.44

Community Safety Bill

The Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Bill 2016 (Community Safety Bill) was introduced in the Legislative Assembly on 22 March 2016.45 As the public release of the Harper Review did not occur until after the Community Safety Bill passed the Legislative Assembly, there was some community confusion as to what extent the amendments were based on the report’s recommendations.46

---

43 ibid., p. vii.
45 Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Bill 2016 (Vic).
46 See, for example, Liberty Victoria (2016) Liberty Victoria Comments on the Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Bill 2016, media release, 18 April.
The amendments to the scheme contained in the Bill included:

- a mandatory minimum 12-month term of imprisonment for intentional or reckless breaches of ‘restrictive conditions’ of supervision orders;
- expansion of the core conditions on supervision orders to include a ban on violent offending and behaviour;
- extension of the period a person subject to the scheme can be held by Victoria Police without charge, from 10 to 72 hours;
- provision of further search and seizure powers for police in relation to the management of a relevant offender; and
- provision that ‘community safety’ is the primary consideration of the Adult Parole Board and the courts in making decisions with regard to the supervision and management of serious sex offenders.

The Community Safety Bill passed both houses of parliament on 24 May 2016 and commenced on 1 June 2016.47

**Governance Bill**

The second legislative response to the Harper Review was the Serious Sex Offenders (Detention and Supervision) Amendment (Governance) Bill 2017 (Governance Bill), which was introduced in the Legislative Assembly on 22 August 2017.48 This Bill sought to make a number of substantive amendments to the post-sentence supervision and detention scheme, including:

- establishment of the Post Sentence Authority to provide independent oversight of the post-sentence scheme, including its functions, powers and membership;
- provision of the coordination of services for relevant offenders between responsible agencies and panels, including the creation of coordinated services plans;
- provision of further information-sharing mechanisms between relevant departments and agencies; and
- provision for the transferral of summary offences relating to the breach of a supervision order to a higher court.

The Governance Bill passed both houses of parliament on 19 October 2017, and came into operation on 27 February 2018.49

**The Bill**

The Serious Offenders Bill 2018 was then introduced in the Legislative Assembly on 8 May 2018.

---

47 *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic).
48 *Serious Sex Offenders (Detention and Supervision) Amendment (Governance) Bill 2017* (Vic).
The existing post-sentence scheme

The existing scheme, as contained in the SSODSA, currently allows for two main mechanisms to be used in relation to persons convicted of a serious sex offence who are deemed to be at an unacceptable risk of reoffending following the end of their sentence: supervision orders and detention orders. The basic elements of the scheme are set out below.

**Eligible offenders** are persons convicted of certain serious sex offences. A full list is laid out in Schedule 1 of the SSODSA. Eligible offenders must be over the age of 18.

---

### Supervision orders

**Supervision orders** provide for the post-sentence supervision of persons convicted of certain serious offences. They can include placement in a residential facility or in the community depending on the circumstances; as well as a number of conditions being placed on the person.

**Application**

An application is made by the Secretary of the Department of Justice & Regulation to the County Court or Supreme Court prior to an eligible offender completing their sentence. It must include an assessment report. The burden of proof rests with the Secretary.

**Determination**

The court must be satisfied to a high degree of probability based on acceptable, cogent evidence that the person poses an unacceptable risk of committing further relevant offences if a supervision order is not made.

An order can be made for up to 15 years, and renewed subsequently for further 15 year periods.

**Conditions**

In making a determination, the court can set a number of conditions on the order. Core conditions are ones that a court must include. These are set out in full in the Act, and include not committing a violent offence; not engaging in conduct that threatens public safety; and notifying the Post Sentence Authority of changes to employment.

Discretionary conditions are ones that a court can impose in relation to the particular risks posed by each offender, and must be relevant and pose the minimum interference with the person's liberty, privacy or freedom of movement. They are set out in full in the Act, and include participation in treatment or rehabilitation programs, curfews, requiring the person not to drink alcohol, and electronic monitoring.

The court may also impose any other conditions that it considers appropriate, including temporary conditions; and specify restrictive conditions, which, if breached, could result in a minimum 12 month term of imprisonment. Other breaches of conditions that are not restrictive face a five year maximum penalty.

**Review**

Orders must be reviewed at least every three years.

---

### Detention orders

**Detention orders** provide for the continued detention of persons convicted of certain serious offences who are deemed to be at an unacceptable risk of committing further offences if released into the community.

**Application**

An application is made by the Director of Public Prosecutions (DPP) to the Supreme Court prior to an eligible offender completing their sentence. It must include an assessment report. The burden of proof rests with the DPP.

**Determination**

The court must be satisfied to a high degree of probability based on acceptable, cogent evidence that the person poses an unacceptable risk of committing further relevant offences if a detention order or supervision order is not made. It can make either a detention or supervision order depending on the circumstances.

An order can be made for up to three years, and renewed subsequently for further three year periods.

**Conditions**

The person is committed to detention in a prison for the period of the order. The person must be treated appropriately in terms of their status as an unconvicted prisoner. They must also be detained in a separate area of the prison to convicted prisoners. A number of exceptions apply to this provision, including where it is reasonably necessary for rehabilitation, work, education or general socialisation.

**Review**

Orders must be reviewed at least every 12 months.
The Bill

The Serious Offenders Bill 2018 seeks to repeal the existing continuing detention and supervision scheme for persons convicted of serious sex offences, as discussed above, in establishing the expanded scheme.\(^{50}\)

The following section outlines some of the major changes the Bill seeks to make to the existing scheme.

Provisions

Expanded eligibility of the scheme

A critical finding of the Harper Review was that the application of the existing post-sentence detention scheme should be expanded to include other types of offenders who have committed acts of serious interpersonal harm.\(^{51}\) It also emphasised that the scheme should be confined to offenders who pose an ‘unacceptable risk’ of causing serious interpersonal harm.\(^{52}\)

The Bill implements these recommendations by amending the eligibility of the scheme to include the following offences:

- murder;
- manslaughter (with the exception of culpable driving causing death);
- child homicide;
- defensive homicide (if the person was sentenced prior to the enactment of the Crimes Amendment (Abolition of Defensive Homicide) Act 2014);
- causing serious injury intentionally in circumstances of gross violence;
- causing serious injury recklessly in circumstances of gross violence;
- causing serious injury intentionally;
- causing serious injury recklessly;
- kidnapping; and
- arson causing death.\(^{53}\)

The existing list of eligible serious sex offences as set out in the SSODSA has been retained in the Bill, excluding any summary offences.\(^{54}\) The Bill also specifies the inclusion of offences against section 77A (home invasion) and 77B (aggravated home invasion) of the Crimes Act 1958.\(^{55}\)

---

\(^{50}\) Serious Offenders Bill 2018, cl 350.


\(^{52}\) Complex Adult Victim Sex Offender Management Review Panel (2015) op. cit., recommendation 6, p. xxii. The Panel further advised in recommendation 4 of this report that an audit of offenders should be undertaken in order to ensure that the ‘cohort of offenders eligible for post-sentence supervision or detention ... is appropriately confined to those offenders who present the greatest likelihood of causing serious interpersonal harm.’ The Minister’s second reading speech explains that an audit of this nature was conducted in 2016; however, it does not provide any further detail in relation to the terms and findings of the audit. See, L. Neville, Minister for Police (2018) ‘Second reading speech: Serious Offenders Bill 2018’, Debates, Victoria, Legislative Assembly, 9 May, pp. 1224–5.

\(^{53}\) See, Serious Offenders Bill 2018, sch 2.

\(^{54}\) Serious Offenders Bill 2018, sch 1. The summary offences now excluded include distribution of an intimate image and threat to distribute an intimate image.

\(^{55}\) Serious Offenders Bill 2018, sch 1 cls 46–7.
Schedules 1 and 2 of the Bill each specify that the scheme also seeks to capture intention to commit, conspiracy to commit or incitement to commit any of the above offences.66 It would also capture equivalent offences from other Australian jurisdictions.57

Application process
In assessing an application for a detention or supervision order, a court will continue to apply the ‘unacceptable risk’ test previously included in the SSODSA.58 However, under the Bill, the court would be able to consider whether an offender ‘poses, or after release from custody will pose, an unacceptable risk of committing a serious sex offence or a serious violence offence or both if a detention order or a supervision order is not made and the offender is in the community’.59 This means that a comprehensive risk determination can be made regardless of the nature of the offender’s original conviction. For example, an offender could be subject to a supervision order because they pose an unacceptable risk of committing a serious sex offence, despite having been originally convicted of a serious violence offence.

The maximum length of orders remains unchanged from those provided under the SSODSA; detention orders have a maximum length of three years,60 and supervision orders have a maximum length of 15 years.61 However, both types of order can be renewed indefinitely, provided that the necessary thresholds continue to be met.62

Supervision orders
Conditions on supervision orders
The existing scheme mandates a number of ‘core conditions’ to be tied to a supervision order, as well as a number of ‘discretionary conditions’, which the court is able to impose in relation to particular risks posed by each offender.

The purposes of conditions of supervision orders are to reduce the risk of the offender reoffending, and to provide for the reasonable safety and welfare concerns of the victim/s of the offender.63 In relation to the former, the Bill inserts a new clause to stipulate that the conditions may address types of behaviour that may increase the risk of the offender committing a serious sex offence or serious violence offence, or the risk of the offender engaging in behaviour or conduct that threatens the safety of any person (including the offender).64

Both the core and discretionary conditions are updated in the Bill, including a number of minor phrasing changes.65 In particular, the Bill introduces a new Schedule 3, which amends the list of additional offences not to be committed as core conditions of a supervision order (in addition to

---

56 Serious Offenders Bill 2018, sch 1 cls 65–6 and sch 2 cls 6–7.
57 Serious Offenders Bill 2018, sch 1 cl 67 and sch 2 cl 8.
58 The court must further be satisfied ‘to a high degree of probability’. See Serious Offenders Bill 2018, cl 14(3) (supervision orders) and cl 62(2) (detention orders).
59 Serious Offenders Bill 2018, cl 63 (detention orders). For the equivalent provision for supervision orders, see, cl 14.
60 Serious Offenders Bill 2018, cl 69(1).
61 Serious Offenders Bill 2018, cl 19(1).
62 Serious Offenders Bill 2018, cl 22 (supervision orders) and cl 71 (detention orders).
63 Serious Offenders Bill 2018, cls 27(1)–(2).
64 Serious Offenders Bill 2018, cl 27(3)(b).
65 Serious Offenders Bill 2018, cls 31 (core conditions), 34–5 (other conditions relating to residence and suggested conditions).
serious sex offences and serious violence offences). Offences added to this list relate to home invasion; aggravated home invasion; carjacking; aggravated carjacking; culpable driving causing death; and summary offences including distribution of an intimate image and threat to distribute an intimate image.

The Bill largely maintains the existing list of discretionary conditions, which includes items such as a requirement not to consume alcohol, a requirement to participate in rehabilitation activities, and types of employment in which the offender must not engage. In addition, the Bill introduces a new condition as to firearms and weapons, which allows the court to consider imposing a condition that the offender must not contravene the Firearms Act 1996 or the Control of Weapons Act 1990. This condition has also been added to the list of conditions that can be considered to be a ‘restrictive condition’. The Minister for Police has stated that the aim of this new condition is to ‘provide a safety net and prompt consideration of weapon and firearm issues’. The Bill also provides that a court may cancel an offender’s firearms authority, or revoke a weapons approval or the application of a weapons exemption.

The Bill also introduces an intensive treatment and supervision condition, which a court may impose on offenders to require them to reside at a residential treatment facility. This condition is discussed further below.

The Bill maintains the existing provision of judicial discretion in establishing further conditions that the court considers appropriate, with regard to the purposes referred to earlier.

The Bill further provides that in considering the conditions to impose on a supervision order, the court must have regard to other orders that the offender is subject to. This includes family violence orders, personal safety intervention orders and other intervention orders. However, the Bill also provides an exemption to this requirement where it is necessary to reduce the risk of the offender reoffending, or to address the reasonable concerns of a victim in relation to their safety and welfare.

Accommodation

In 2017, the Victorian Government announced the establishment of a new residential treatment centre in Ararat, adjacent to the Hopkins Correctional Centre, to provide ‘intensive treatment and interventions to up to 20 supervision order offenders in a secure therapeutic environment’. This

---

66 Serious Offenders Bill 2018, sch 3.  
67 These are reorganised in the Bill into ‘other conditions relating to residence’ and ‘suggested conditions’: see Serious Offenders Bill 2018, cls 34–5.  
68 Serious Offenders Bill 2018, cl 37.  
69 Serious Offenders Bill 2018, cl 41(1)(h).  
71 Serious Offenders Bill 2018, cl 39.  
72 Serious Offenders Bill 2018, cl 32.  
73 This section has been reworded to refer back to the purposes of conditions on supervision orders, rather than containing them in the section. See Serious Offenders Bill 2018, cl 38.  
74 Serious Offenders Bill 2018, cl 30(1).  
75 Serious Offenders Bill 2018, cl 30(2).  
facility is aimed at providing a ‘secure, but non-punitive’ accommodation option for certain persons subject to a supervision order.77

As mentioned above, the Bill provides that a court can impose an intensive treatment and supervision condition on a supervision order. This requirement can be imposed if the court deems it necessary to manage the risk of the person reoffending, and it is considered that there are no less restrictive alternatives available.78 In imposing this condition, a treatment and supervision plan must be prepared for the offender and considered by the court.79

If an intensive treatment and supervision condition is imposed, further conditions must also be imposed on the supervision order. This includes requisite attendance at treatment or rehabilitation activities set out in the treatment and supervision plan, restrictions on the ability of an offender to leave the facility, and mandatory use of electronic monitoring devices.80

Intensive treatment and supervision conditions can operate for a period of up to two years,81 with potential for renewal for a further 12-month period, and then further renewal in ‘exceptional circumstances’.82 The Minister stated in her second reading speech on the Bill that the intention of these provisions is to provide ‘flexibility to manage the offender in the most appropriate environment’, while mitigating ‘the risk of the facility permanently housing offenders who are not engaging with treatment’.83

Persons who reside in residential treatment facilities are under the legal custody of the Commissioner.84

The Bill introduces a number of intended safeguards aimed at ensuring that residential treatment facilities retain a ‘therapeutic and non-punitive purpose’.85 This includes annual court reviews of intensive treatment and supervision conditions;86 facilitation of visits to facilities by judges or independent prison visitors;87 and provision for certain rights of offenders, including access to medical care and educational programs.88

Existing community accommodation in the form of residential facilities, such as Corella Place near Ararat, will retain their current functions as accommodation for serious sex offenders, and will not be required to house persons convicted of other serious violent crimes.89 The Minister’s second reading speech: Serious Offenders Bill 2018', Debates, Victoria, Legislative Assembly, 9 May, p. 1227.

87 Ibid.
speech specifies that this is intended to manage the risks of co-locating serious sex offenders with serious violent offenders in community-based accommodation.\textsuperscript{90}

Powers to manage persons
The Bill maintains the existing provisions under the SSODSA that allow a court to authorise the Post Sentence Authority to give directions to persons subject to supervision orders in relation to the conditions imposed on them.\textsuperscript{91} In certain emergency situations, the Post Sentence Authority is able to direct management of a person for up to 72 hours in a way that is inconsistent with the conditions of their order.\textsuperscript{92}

The Bill largely maintains the existing powers that can be exercised by police officers and corrections staff in managing supervision order offenders, such as search and seize powers.\textsuperscript{93}

The Bill does, however, provide broader powers to community corrections officers to give instructions in relation to the management of persons subject to a supervision order who are residing in the community.\textsuperscript{94} Specifically, it authorises officers to give instructions that are necessary to ensure ‘the safety and welfare of an offender or any other person’.\textsuperscript{95}

Emergency detention orders
The Bill introduces new emergency detention orders that can apply to persons subject to a supervision order (or interim supervision order). The Bill allows the Secretary of the Department of Justice and Regulation to apply to the Supreme Court for an emergency detention order, which would allow the detention of an offender in prison for up to seven days in the case of altered circumstances where the offender poses an imminent risk of committing a serious sex or violence offence.\textsuperscript{96} In such an application, the Secretary will be required to demonstrate that the circumstances have been substantially altered to provide that the risk of the person reoffending is now imminent, and that there are no practicable alternative means to mitigate the risk.\textsuperscript{97}

The Bill also seeks to enable the Supreme Court to decide that an application for an emergency detention order can be heard and determined in the absence of the offender.\textsuperscript{98} The Minister stipulated during her second reading speech that this provision ‘may be necessary in circumstances where an offender has or is likely to abscond’.\textsuperscript{99} The court is required to consider, as part of its determination, any assessment or progress reports or other evidence or matters; and is also able (but not required) to consider the likely impact of an emergency detention order on the offender.\textsuperscript{100}

\textsuperscript{91} Serious Offenders Bill 2018, cl 36.
\textsuperscript{92} Serious Offenders Bill 2018, cl 142.
\textsuperscript{93} These provisions have been reworded. Serious Offenders Bill 2018, pt 14.
\textsuperscript{94} Serious Offenders Bill 2018, cl 209(1).
\textsuperscript{95} Serious Offenders Bill 2018, cl 209(a).
\textsuperscript{96} Serious Offenders Bill 2018, pt 7.
\textsuperscript{97} Serious Offenders Bill 2018, cl 87(2).
\textsuperscript{98} Serious Offenders Bill 2018, cl 88.
\textsuperscript{100} Serious Offenders Bill 2018, cl 89.
The Bill allows for the right to appeal a decision to either make or not make an emergency detention order, as well as the duration of the order, by either the offender or the Secretary.\(^{101}\)

The Minister has stated in relation to the making of emergency detention orders:

...it is anticipated that expanding the scheme to clearly allow the risks of violent offending to be managed will mean that these strengthened emergency powers will only be exercised when necessary to protect the community.\(^{102}\)

**Contravention of orders**

The Bill largely re-enacts the existing provisions of the SSODSA in relation to the consequences of a breach of a supervision order by an offender. This includes a maximum five-year term of imprisonment for failure to comply with a condition of a supervision order, and a mandatory minimum sentence of 12 months’ imprisonment for the breach of a restrictive condition.\(^{103}\)

The Bill further largely re-enacts the existing provisions of the SSODSA in relation to the prosecution of such offences.\(^{104}\)

**Detention orders**

**Accommodation**

The existing provisions relating to detention orders are largely retained, although substantially rewritten. This includes provisions relating to applications, effects, and notification and appeal requirements.\(^{105}\) The provisions relating to the management of offenders subject to detention and interim detention orders would also apply to persons who would be subject to new emergency detention orders under the Bill.\(^{106}\)

Under the existing scheme, the effect of a detention order is to ‘commit the offender to detention in a prison for the period of the order.’\(^{107}\) However, it also specifies that an offender subject to a detention order should be treated in a way that is appropriate to their status as an unconvicted prisoner, except where it is necessary for the management, security and good order of the prison, and the safe custody and welfare of the offender or other persons serving a custodial sentence.\(^{108}\)

The scheme maintains the requirement that a relevant offender must be detained in a separate area of the prison from persons serving a custodial sentence. It also maintains the exceptions to this requirement, including in situations where:

(a) it is reasonably necessary for the purposes of rehabilitation, treatment, work, education and general socialisation and for related purposes; or

(b) it is necessary for the safe custody or welfare of the offender or persons serving custodial sentences or the security or good order of the prison; or

---

\(^{101}\) [Serious Offenders Bill 2018, cl 115(2) and 116(f)–(g)].


\(^{103}\) These provisions have been reworded. [Serious Offenders Bill 2018, cl 169].

\(^{104}\) As above, these provisions have been reworded. [Serious Offenders Bill 2018, cl 173–7].

\(^{105}\) See, for example, [Serious Offenders Bill 2018, pts 5, 6, 8 and 16].

\(^{106}\) [Serious Offenders Bill 2018, pt 16].

\(^{107}\) [Serious Offenders Bill 2018, cl 66].

\(^{108}\) [Serious Offenders Bill 2018, cl 255(1)].
The offender has elected to be so accommodated or detained.\textsuperscript{109}

The Minister specified in her second reading speech on the Bill that while detained, ‘offenders will be provided with opportunities to engage in rehabilitation and treatment programs to reduce their risk of reoffending’.\textsuperscript{110} No further information regarding these rehabilitation and treatment programs is contained within the existing or draft legislation.

\textit{Interim orders}

The existing provisions relating to applications for interim orders as specified in the SSODSA are largely retained in the Bill. Interim orders apply where an application for a supervision or detention order is waiting to be heard, but before the application can be determined, the person will be released from custody, or the person’s existing order will expire.\textsuperscript{111}

\textit{Review of orders}

The Bill requires that both supervision and detention orders be reviewed regularly. The Director of Public Prosecutions is responsible for ensuring the application for a review of a detention order at least every 12 months;\textsuperscript{112} and the Secretary of the Department of Justice and Regulation is responsible for ensuring the application for a review of a supervision order at least every three years.\textsuperscript{113} In addition, additional reviews can be sought at any time by the offender, the Secretary or the Director of Public Prosecutions provided that certain criteria are met. These include that there a new facts or circumstances or if it is in the interests of justice.\textsuperscript{114}

The Bill seeks to make one change to the existing scheme in allowing applications for review of a supervision order to be made even if the person is remanded in custody.\textsuperscript{115} Under the existing scheme, an application can only be made after that person has left custody.

\textit{Review of scheme}

The Bill provides that the Minister ‘must cause a review to be undertaken of the operation and effectiveness of this Act within five years after the commencement of all of the provisions of this Act’.\textsuperscript{116} The report of this review must be tabled by the Minister in both houses of parliament within 14 sitting days of receipt by the Minister.\textsuperscript{117}

\textit{Post Sentence Authority}

The Post Sentence Authority oversees the management of the post sentence scheme.

The Bill inserts a new division into the provisions dealing with the Post Sentence Authority, which introduces significant security powers at the premises of the Authority. Security officers are empowered to conduct a garment search, pat-down search or scanning search of offenders,\textsuperscript{118} and may

\textsuperscript{109} Serious Offenders Bill 2018, cl 255(3).
\textsuperscript{111} Serious Offenders Bill 2018, pt 4 (interim supervision orders) and 6 (interim detention orders).
\textsuperscript{112} Serious Offenders Bill 2018, cl 100(1).
\textsuperscript{113} Serious Offenders Bill 2018, cl 99(1).
\textsuperscript{114} Serious Offenders Bill 2018, cl 102.
\textsuperscript{115} Serious Offenders Bill 2018, cl 106(2).
\textsuperscript{116} Serious Offenders Bill 2018, cl 348(1).
\textsuperscript{117} Serious Offenders Bill 2018, cl 348(2).
\textsuperscript{118} Serious Offenders Bill 2018, cl 320(1).
use reasonable force to carry out a search. Security officers may also seize items on or in the possession of the offender during a search, and must provide warnings prior to search or seizure. Further, security officers may give directions to offenders and use reasonable force to compel an offender to obey a direction, including using a weapon (other than a firearm) or an authorised instrument of restraint, to do so. The security officer is not liable for injury or damage that occurs as a result of their use of force.

A security officer is also authorised to arrest an offender without a warrant if they believe on reasonable grounds that the offender has committed a serious offence. This is the only provision in the Bill, or in the overarching SSODSA, which allows someone other than a police officer to arrest an offender.

The Bill also seeks to expand the eligibility criteria for appointment of the positions of Chair and Deputy Chair of the Post Sentence Authority, to include alongside former magistrates or judges, ‘an Australian lawyer of at least 10 years’ experience’. These appointments may be made on either a full-time or a sessional basis.

**Commentary**

The compatibility of the Bill with the rights contained in Victoria’s *Charter of Human Rights and Responsibilities Act 2006* (the Charter) was scrutinised by Victorian Parliament’s Scrutiny of Acts and Regulations Committee in its *Alert Digest No. 7*.

In its report, the committee raised concerns regarding the right to liberty (double punishment, retrospective criminal penalties, and the detention or supervision of certain offenders without further charge or conviction) in relation to the broad eligibility of offenders for the post sentence scheme. It determined to write to the Minister to seek further information as to whether there may be a less restrictive alternative to capturing all persons convicted of serious sex offences and serious violence offences in the criteria, such as the imposition of a minimum sentence threshold of three or four years’ imprisonment.

The committee also raised concerns regarding the right to a fair hearing in respect of contraventions of a supervision order. It noted that clause 169(1) of the Bill makes it an offence for a person to contravene a condition of their supervision order (other than one relating to medical treatment of self-harm) without a reasonable excuse, with a maximum five-year term of imprisonment. The committee considered that the clause’s compatibility with fair hearing and liberty rights ‘may depend on the clarity and accessibility of the rules on how charges of contravening a supervision order are to be determined’. It determined to write to the Minister to seek further information as to whether clause 169(1) relates to a summary or an indictable offence; clarification on the terms of hearings and

---

119 *Serious Offenders Bill 2018*, cl 320(4).
120 *Serious Offenders Bill 2018*, cl 320(5).
121 *Serious Offenders Bill 2018*, cl 321.
122 *Serious Offenders Bill 2018*, cl 322.
123 *Serious Offenders Bill 2018*, cl 327.
124 *Serious Offenders Bill 2018*, cl 323(1).
125 *Serious Offenders Bill 2018*, cl 293(2)(c).
127 ibid., p. 25.
128 ibid., p. 30.
129 ibid.
130 ibid., p. 31.
convictions of breaches under this clause; and the nature of the legal consequences arising from a
determination of the Post Sentence Authority that a contravention is a serious contravention.\footnote{ibid., pp. 32–3.}
Studies and literature

There is an extensive amount of research in the field of continuing and preventive detention, and it is not the intent of this Brief to provide an overview of this research, or of arguments for or against such schemes.

As the Bill largely implements the final recommendations of the Harper Review, this section will instead provide a selection of relevant articles, cases and literature in the area of continuing detention that have been published in the post-Harper Review period. In particular, the introduction of continuing detention for high risk terrorist offenders through the Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016 (Cth) has seen renewed academic interest in continuing detention practice, and in preventive justice theory more broadly.

Cases

Miller & Carroll v New Zealand

In November 2017, the UNHRC adopted views that New Zealand had breached its obligations under the International Covenant for Civil and Political Rights in relation to two persons detained after the culmination of their prison sentences.\(^\text{132}\)

Under New Zealand’s system of continuing detention, offenders may be sentenced to an indeterminate prison sentence at the time of sentencing (rather than at the end of their sentence). Prisoners who receive this sentence are able to be released on parole, but can be recalled at any time and are managed by the Department of Corrections for the remainder of their life.\(^\text{133}\) The two persons who submitted the communication to the UNHRC alleged that their continued detention following the end of their sentences breached a number of their rights under the ICCPR.

The UNHRC considered that, in the circumstances, the substantial length of the continuing detention—as well as New Zealand’s failure to change the nature of detention conditions to one centred on rehabilitation following the end of the complainants’ prison sentences—breached rights to liberty (the prohibition against arbitrary detention) and to humane treatment in detention (in relation to the rehabilitation of convicted prisoners).\(^\text{134}\) The committee further considered that the complainants’ right to challenge their detention had been breached due to the limited options of review available to them.\(^\text{135}\)

In relation to assessments of risk, the committee stated that:

...as the length of preventive detention increases, the State party bears an increasingly heavy burden to justify continued detention and to show that the threat posed by the individual cannot be addressed by

---


\(^\text{134}\) International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171; [1980] ATS 23 (entered into force 23 March 1976), articles 9 (1) and 10(3).

\(^\text{135}\) ibid., article 9(4).
alternative measures. As a result, a level of risk which might reasonably justify a short-term preventive
detention, may not necessarily justify a longer period of preventive detention.136

The decision was issued on 19 April 2018 in Geneva.

This decision follows earlier communications considered by the UNHRC concerning preventive
detention in Australia. *Tillman v Australia* concerned the continued detention of an offender under the
*Crimes (Serious Sex Offenders) Act 2006* (NSW),137 and *Fardon v Australia* concerned the continued
detention of an offender under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld).138 In both
matters, the committee issued views that the continued detention of the persons breached rights to
liberty (the prohibition against arbitrary detention) under article 9(1) of the ICCPR.139

Books

*Regulating preventive justice: principle, policy and practice*

This book provides a collection of articles in the space of contemporary critical theory on preventive
justice. The compilation includes a number of contributions relating to evaluation of the legitimacy
and effectiveness of preventive justice measures. In one article, Legrand and Elliott consider the
evaluation of policy outcomes in the space of counter-terrorism measures, and suggest application of
‘twin tests’ of ‘effectiveness and appropriateness’.140

In another article, Murray evaluates the role of the courts in preventive justice, in lending ‘independent
oversight and impartial review’ while facing a risk that their role ‘may be compromised in the
process’.141

Further, Tulich further discusses the values and principles that should be used to guide preventive
measures, and explains that preventive justice theory can provide for a conceptual framework to
evaluate practices.142

---

136 UN Human Rights Committee (2017) *Views adopted by the Committee under article 5 (4) of the Optional
Protocol, concerning communication No. 2502/2014*, adopted at the 121st session (16 October–10 November
2017), CCPR/C/121/D/2502/2014, para 8.5.
137 UN Human Rights Committee (2010) *Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights concerning Communication No.
138 UN Human Rights Committee (2010) *Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights concerning Communication No.
139 For further discussion of these cases and their implications, see B. McSherry (2014) ‘Chapter 7: Human Rights
Issues’, *Managing Fear: The Law and Ethics of Preventive Detention and Risk Assessment*, New York, Routledge,
pp. 171-204.
141 S. Murray (2018) ‘Preventive justice, the courts and the pursuit of legitimacy’, in T. Tulich, R. Ananian-Welsh,
Articles and reports


This report provides an overview of the state of justice reinvestment in Australia, which it explains is ‘a data-driven approach to reducing criminal justice system expenditure and improving criminal justice system outcomes through reductions in imprisonment and offending’.\(^{143}\) It further explains that the concept is a ‘comprehensive strategy that employs targeted, evidence-based interventions to achieve cost savings which can be reinvested into delivering further improvements in social and criminal justice outcomes’.\(^{144}\) The report includes discussion around the prospects of justice reinvestment reducing levels of recidivism in Australia.


This article by a former analyst at Victoria Police argues against the necessity of post-sentence preventive detention practices in Victoria. The author questions the long-term consequences of expanding risk-based detention to encompass further crime types, and describes them as ‘far reaching and potentially harmful’.\(^{145}\)

She further questions the implications that the scheme has for offenders subject to continuing detention, who may not see their detention as part of a broader strategy to reduce risk to the community, but rather, simply as arbitrary punishment for a crime that has not been committed.\(^{146}\)

In relation to the calculation of risk, the article states:

> The offenders are detained on a case-by-case basis in accordance to risk and relevant offenses. While on the surface this may appear to make sense, it fails to address the fact that risk is inherent, even in the general population, and should not be used to determine whether or not someone is denied their basic human rights.\(^{147}\)

It further comments on potential effects for persons with an intellectual disability:

> …a portion of these offenders have an intellectual disability, which extremely limits their capacity to reduce the threat they pose through behavioural regulation. Are they to be punished for their disability?\(^{148}\)


Smith and Nolan’s article examines the role and capability of psychometric risk assessments in predicting future recidivism, in the context of post-sentence preventive detention of high risk terrorist offenders.

---


\(^{144}\) ibid.


\(^{146}\) The Harper Review discusses offenders’ views on their post-sentence supervision and detention orders that were provided through a questionnaire: see Complex Adult Victim Sex Offender Management Review Panel (2015) op. cit., pp. 50-3.

\(^{147}\) C. Van den Bosch (2017) op. cit., p. 23.

\(^{148}\) ibid.
offenders. In particular, it emphasises the central role that risk assessment plays in analysis of the scheme as a whole:

The deprivation of liberty a CDO [continuing detention order] regime imposes is only defensible if there are accurate and reliable risk assessment tools that can determine which offenders are at a high risk of reoffending and which offenders are not.149

In measuring the effectiveness of such regimes, Smith and Nolan argue that ‘without appropriately-validated risk assessment tools, it is difficult to measure whether any interventions are effective’.150

The authors also raise concerns regarding the accuracy of risk assessments in relation to sex offenders and violent offenders.151 They claim that:

The use of risk assessments in general, and in particular to support any form of deprivation of liberty, has been highly contentious, predominantly as risk assessment can be erroneous. As Kirby J stated in Fardon v Attorney-General (Qld), “Experts in law, psychology and criminology have long recognised the unreliability of predictions of criminal dangerousness.” Errors in risk assessment “undermine the objectives of the regime” as a defensible CDO scheme depends on accurate and reliable risk assessment…152


The UNSW Law Journal released a number of articles as part of a thematic edition in July 2015. Among the contributions to this edition, a number of relevant articles include:


Submissions

In 2016, the federal Parliamentary Joint Committee on Intelligence and Security conducted an inquiry into the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016, which establishes a scheme for the continuing preventive detention of high risk terrorist offenders following the end of their custodial sentence. While the subject and provisions of the this bill substantially differ to the Victorian scheme, the inquiry considered a number of similarities, including issues relating to successive use of detention orders, applications for orders and standards of proof, risk assessment tools, review and appeal rights and human rights considerations. The submissions to this inquiry provide insight into academic and advocacy perspectives on these elements of continuing detention

150 ibid, p. 179.
151 ibid.
152 ibid, p. 167.
measures.\textsuperscript{153} The final report of the committee further provides a summary of a number of the perspectives put forward in the submissions.\textsuperscript{154}


References


Andrews, D., Premier (2016) Keeping the Most Serious Criminals Secure, to Keep Victorians Safe, media release, 24 April


Complex Adult Victim Sex Offender Management Review Panel (2015) Advice on the legislative and governance models under the Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic), November, Corrections Victoria


Law Council of Australia (2016) Submission to the Parliamentary Joint Committee on Intelligence and Security, Review of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016, 12 October, Canberra, Parliament of Australia


Liberty Victoria (2016) Liberty Victoria Comments on the Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Bill 2016, media release, 18 April


Noonan, W., Minister for Police (2015) *Serious Sex Offender Review Delivered to Government*, media release, 30 November

NZ Department of Corrections (2016) ‘Types of sentences’, accessed online 17 May 2018


Parliamentary Joint Committee on Intelligence and Security (2016) ‘Submissions’, *Inquiry into the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016*, accessed online 22 May 2018


Scrubity of Acts and Regulations Committee (2018) *Alert Digest No. 7*, 22 May, Melbourne, SARC, pp. 22–33


Tulich, T. & J. Blackbourn (2015) ‘The government still needs to demonstrate that indefinite detention for terrorists is necessary’, *The Conversation*, 14 December


UN Human Rights Committee (2014) *General comment No. 35 on article 9 (liberty and security of person), CCPR/C/GC/35*


Research & Inquiries Service

Bills Briefs are produced by the Parliamentary Library’s Research & Inquiries service. They provide analysis on selected components of new Bills and topical issues in response to, and in anticipation of, the needs of Members of the Victorian Parliament.

This research publication is current as at the time of printing. It should not be considered a complete guide to the particular subject or legislation covered. While it is intended that all information provided is accurate, it does not represent professional legal opinion. Any views expressed are those of the author(s).

Some hyperlinks may only be accessible on the Parliament of Victoria's intranet. All links are current and available as at the time of publication.

Author

Alice Petrie
Research & Inquiries Officer
Victorian Parliamentary Library & Information Service
Department of Parliamentary Services

Enquiries:

Jon Breukel
Coordinator, Research & Inquiries
Victorian Parliamentary Library & Information Service
Parliament House
Spring Street, Melbourne
Telephone (03) 9651 8633
Email: research@parliament.vic.gov.au