**Dangerous Prisoners (Sexual Offenders) Act 2003**

Regime to keep sexual offenders in custody beyond their release *or* to be subject to special supervision by Corrective Services upon release (separate to parole).

All applications heard in the Supreme Court with appeals to the COA

Enables AG to apply for 2 of orders:

Continuing detention order (s 13(5)(a)

This is an order requiring prisoner to be held in custody indefinitely beyond their sentence. Must be reviewed within first 2 years and then annually thereafter.

Supervision order (s 13)5(b)

This is an order allowing release but subjecting the person to strict conditions in the community. Made for a specified period of time

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| **Who does it apply to?** |

A ‘prisoner’ (s 5) which is further defined under s 5(6) to mean a prisoner detained in custody serving a period of imprisonment for a serious **sexual offence**

Important notes:

* Per sch 1 definitions: ‘serious sexual offence’ means an offence of a sexual nature, whether committed in Qld or elsewhere, involving violence, against a child or against a person (real or fictitious) believed to be under 16
  + Violence further defined in sch 1 to include intimidation and threats
* Includes a child serving a detention order - s 5(6)(c)
* Includes suspended parole orders – s 6(d)

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| **Filing of application by Attorney General and preliminary hearing** |

**s 5(2) – AG’s application must:**

1. state orders sought, be accompanied
2. be accompanied by any affidavits to be relied upon at the preliminary hearing
3. be made during the last 6 months of the period of imprisonment (‘*period of imprisonment’ definition cross-references to PSA which refers to the unbroken period the offender is to serve) – i.e. the last 6 months of their actual imprisonment part*

*response by prisoner*

s 6 – prisoner may file affidavits to be relied on at preliminary hearing – must be served on AG at least 3 days before hearing

**preliminary hearing and orders – section 8**

8(1) – if the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger in the absence of a final order, the court must set a date for a final hearing. In doing so, the court may also, under (2),

1. order the prisoner undergo examinations by 2 psychiatrists appointed by the court (*standard procedure* – ***risk assessment order*** *under s 11)*
2. **if satisfied matter won’t be decided before release, either:**
   1. order release from custody be serviced as per 16(1) conditions; or
   2. order the prisoner be detained for a stated period

8A – AG may provide report about proposed supervisory conditions and/or whether supervision can be appropriately managed.

**How long do interim orders apply?**

14(2) – interim detention order will remain until end of period of imprisonment or as otherwise ordered by the court (the stated period)

15(2) – comes into effect upon release date and remain in force for the period stated in the order (no limit)

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| **Making of final orders** |

**Section 13 - continuing detention or supervision order**

Court may make a final order (either form) if satisfied the prisoner is a serious danger to the community in the absence of an order - 13(1).

13(2) then provides a prisoner is a ‘serious danger to the community’ is there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody or released from custody without a supervision order being made.

**Standard to be applied and onus of proof**

13(3) – may decide it is satisfied only if it is satisfised:

1. By acceptable, congent evidence; and
2. To a high degree of probability

That the evidence is of sufficient weight to justify the decision.

13(7) – AG bears onus in proving prisoner is a serious danger to the community.

**Criteria to be considered**

13(4) – in deciding whether a prisoner is a serious danger to the community within the meaning of (1), the court must have regard to the following:

(aa) any report produced under section 8A (*report prepared by AG*)

(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner’s offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner’s participation in **rehabilitation programs** has had a positive effect on the prisoner;

(g) the prisoner’s antecedents and criminal history;

(h) **the risk that the prisoner will commit another serious sexual offence** if released into the community;

(i) the **need to protect members of the community** from that risk;

(j) any other relevant matter.

**Choosing between continued detention order or supervision order**

13(6) – in deciding whether to make a CDO or SO, the paramount consideration is to be the need to ensure adequate protection of the community; and

b) the court must consider whether-

i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and

ii) requirements under section 16 can be reasonably achieved and practicably managed by corrective service officers

*\*\* s 16 is the mandatory requirements for a supervision order or interim supervision order\*\**

**How long are the final orders?**

13(5)(a) – continued detention orders are indefinite

Will remain in place until rescinded (14(1)(b)

13A – for a supervision order, the court must state the period, which must be **at least 5 years** from the making of the order or the end of the period of imprisonment (whichever is the later)

**Other points about final orders**

* 9AA - Victim must be notified by AG of final hearing and application – victim may provide submission to AG and court at hearing
* 9A – court may adjourn hearing (either on application or on own initiative) with making of temporary detention or supervision orders
* 51 – continuing detention order has the effect of preventing any application for parole from being considered

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| **Continuing detention orders** |

**S 27 – periodic review** – first review must occur within 2 years of having effect and annually thereafter

**s 30** sets out criteria at review – very similar to original test for final order under s 13 – may either affirm order or order supervise release or rescind order.

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| **Supervision orders** |

**S 16 - Mandatory conditions**

Whether interim or final:

1. report to a corrective services officer at the place, and within the time, stated in the order and advise the officer of the prisoner’s current name and address; and
2. report to, and receive visits from, a corrective services officer as directed by the court or a relevant appeal court; and
3. notify a corrective services officer of every change of the prisoner’s name, place of residence or employment at least 2 business days before the change happens; and
4. be under the supervision of a corrective services officer; and

(da) comply with a curfew direction or monitoring direction; and

(daa) comply with any reasonable direction under section 16B

given to the prisoner; and

(db) comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order; and

1. not leave or stay out of Queensland without the permission of a corrective services officer; and
2. not commit an offence of a sexual nature during the period of the order.

(2) – order may contain any other requirement the court considers appropriate either to ensure adequate protection of the community or for the prsioner’s rehabilitation or care or treatment

**Breaching supervision order**

S 20 enables a police officer or CSO to apply to Magistrate for a warrant to be brought before the SC (for either interim or a final order)

S 43AA creates an offence to contravene a supervision order. Max penalty is 2 years, HOWEVER under (2) if they offend by tampering with a monitoring device to prevent their location, minimum penalty is 1 year of actual custody and MP is 5 years