

State and territory extended supervision order schemes (for sexual and other serious offenders)¹

Issue	New South Wales		Victoria	Queensland	Western Australia	South Australia	Northern Territory
Act	Crimes (High Risk Offenders) Act 2006	Terrorism (High Risk Offenders) Act 2017	Serious Offenders Act 2018	Dangerous Prisoners (Sexual Offenders) Act 2003	High Risk Serious Offenders Act 2020	Criminal Law (High Risk Offenders) Act 2015	Serious Sex Offenders Act 2013
Eligibility	<p>Section 51: An application can be made in respect of a ‘supervised offender’.</p> <p>A ‘supervised offender’ is an offender who is under an existing ISO, ESO, IDO or CDO or is serving a sentence of imprisonment for:</p> <ul style="list-style-type: none"> a serious offence an offence of a sexual nature a breach of an ESO, or another offence that is being served concurrently or consecutively, or partly concurrently and partly consecutively, with one or more sentences of imprisonment named earlier. <p>A person is taken to be serving a sentence of imprisonment whether the sentence is being served by way of full-time detention, or intensive correction in the community and whether the offender is in custody or on release on parole.</p>	<p>Section 23: An application can be made in relation to an eligible offender who is in custody or under supervision while serving a sentence of imprisonment for a NSW indictable offence, or under an existing ISO, ESO, IDO or CDO. An application may be made within 12 months of the end of the offender’s current custody or supervision.</p> <p>Section 7: An ‘eligible offender’ is a person who is serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for a NSW indictable offence.</p> <p>Section 20: The Supreme Court must be satisfied that the offender is any of the following:</p> <ul style="list-style-type: none"> a convicted NSW terrorist offender (section 8), a convicted NSW underlying terrorism offender (section 9), and a convicted NSW terrorism activity offender (section 10). 	<p>Section 8: A person is an ‘eligible offender’ if they:</p> <ul style="list-style-type: none"> have received a custodial sentence for a ‘serious sex offence’ or a ‘serious violence offence’, and are serving a custodial sentence for that, or a sentence for another offence served cumulatively to that offence, at the time of the application <p>A person is also an eligible offender if they are remanded or serving a custodial sentence for any offence, and, at the time the person was remanded in custody or began serving the custodial sentence, the person:</p> <ul style="list-style-type: none"> was the subject of an application for an ESO or emergency detention order (ED), or was subject to a ESO, ISO, CDO, IDO or EDO. <p>A person who is subject to an ESO, ISO, CDO, IDO or EDO is an eligible offender, regardless of whether the person is in custody.</p>	<p>Section 5: An application may be made in relation to a ‘prisoner’.</p> <p>A ‘prisoner’ means a prisoner detained in custody who is serving a period of imprisonment:</p> <ul style="list-style-type: none"> for a serious sexual offence, or that includes a term of imprisonment for a serious sexual offence, or a person serving a period of detention for a child offence that is a serious sexual offence <p>Section 19B: A person subject to an ESO is eligible for a further ESO.</p>	<p>Section 35: An application may be made in relation to a serious offender under custodial sentence.</p> <p>Section 3: A serious offender under custodial sentence means a person who is:</p> <ul style="list-style-type: none"> under a custodial sentence for a serious offence, or is under a custodial sentence for an offence or offences other than a serious offence; and has been under that sentence at all times since being discharged from a custodial sentence for a serious offence. 	<p>Section 7: An application may be made in relation to a ‘high risk offender’.</p> <p>Section 5: A ‘high risk offender’ is:</p> <ul style="list-style-type: none"> a serious sexual offender who was sentenced to a period of imprisonment in respect of a serious sexual offence a serious sexual offender who was sentenced to a period of imprisonment in respect of a serious sexual offence, who is serving a sentence of imprisonment for any of the offences specified in paragraph 5(b) a serious violent offender who was sentenced to a period of imprisonment in respect of a serious offence of violence a terror suspect who is serving a sentence of imprisonment, or a person who is subject to an ESO. 	<p>Section 23: An application may be made in relation to a ‘qualifying offender’.</p> <p>Section 22: A person is a ‘qualifying offender’ if they have been convicted of a serious sex offence, and they:</p> <ul style="list-style-type: none"> are under a sentence of imprisonment for that offence, or have served their sentence for a serious sex offence, and they are: <ul style="list-style-type: none"> under a sentence of imprisonment for another offence, or is in custody for another reason, other than under a CDO, and have not, at any time since commencing to serve the sentence for the serious sex offence, ceased to be: <ul style="list-style-type: none"> under sentence of imprisonment for an offence, or in custody for any other reason, other than a CDO.
Threshold for imposing ESO	<p>Section 5B: The Supreme Court must be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious sex offence or serious violence offence if not kept under supervision under the order.</p>	<p>Section 20: The Supreme Court must be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious terrorism offence if not kept under supervision under the order.</p>	<p>Section 14: The court must be satisfied, to a high degree of probability on the basis of acceptable, cogent evidence, that the eligible offender poses or will pose an unacceptable risk of committing a serious sex offence or violence offence if the ESO is not made and the offender is in the community.</p>	<p>Section 13: The court must be satisfied by acceptable, cogent evidence, to a high degree of probability, that the prisoner is a serious danger to the community in the absence of an order.</p> <p>A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a serious sexual offence if released without supervision.</p>	<p>Section 48: If the court finds that the offender is a high risk serious offender, the court must make a CDO or an ESO.</p> <p>Section 7: An offender is a high risk serious offender if the court is satisfied, by acceptable and cogent evidence and to a high degree of probability, that it is necessary to make an order in relation to the offender to adequately protect the community against an unacceptable risk that the</p>	<p>Section 7: The court must be satisfied that the person is a high risk offender and poses an appreciable risk to the safety of the community if the order is not made.</p>	<p>Section 31: Court may make an ESO if satisfied that the qualifying offender is a serious danger to the community.</p> <p>Section 6: A person is a serious danger to the community if there is an unacceptable risk that he or she will commit a serious sex offence unless they are subject to an order.</p> <p>Section 7: The court must be satisfied, to a high degree of probability, that there is</p>

¹ ESO, ISO, CDO and ICO are used consistently in this document to describe the following types of orders, though the language does differ among jurisdictions:

ESO (extended supervision order) – has been used to describe post-sentence orders where the offender is in the community subject to conditions

ISO (interim supervision order) – has been used to describe short-term post-sentence orders that are made on an interim basis, where the offender is in the community subject to conditions, pending determination of an application for a post-sentence order

CDO (continuing detention order) – has been used to describe post-sentence orders where the offender is detained in custody

IDO (interim detention order) – has been used to describe short-term post-sentence orders that are made on an interim basis, where the offender is detained in custody, pending determination of an application for a post-sentence order

Attachment B: State and territory schemes

Issue	New South Wales		Victoria	Queensland	Western Australia	South Australia	Northern Territory
					<p>offender will commit a serious offence.</p> <p>Section 29: A court cannot make an ESO unless satisfied on the balance of probabilities that the offender will substantially comply with the standard conditions of the order as made.</p>		<p>acceptable and cogent evidence of sufficient weight to justify the decision that the person is a serious danger.</p>
Duration of an ESO	Section 10: A period not exceeding 5 years.	Section 26: A period not exceeding 3 years.	Section 19: A period not exceeding 15 years.	Section 13A: A period of at least five years.	Section 27: The period stated in the order.	Section 12: A period not exceeding 5 years.	Section 17: A period of at least five years.
Conditions	<p>Section 11: An ESO or interim ESO may direct an offender to comply with such conditions as the Supreme Court considers appropriate, including (but not limited to) directions requiring the offender to do, or not do, the things listed in paragraphs 11(a)-(n).</p> <p>An ESO must include a condition requiring the offender not to leave New South Wales except with the approval of the Commissioner of Corrective Services.</p>	<p>Section 29: An ESO or ISO may direct an eligible offender to comply with such conditions as the Supreme Court considers appropriate, including (but not limited to) requiring the offender to do any of the things listed in subsection 29(1)).</p> <p>Unless the Court orders differently, an ESO or ISO must include conditions requiring the eligible offender to do or refrain from doing the things listed in subsection 29(1A).</p>	<p>Section 31: The core conditions of an ESO apply to the offender during the period of the order are listed in section 31.</p> <p>Section 32: The Court may impose an intensive treatment and supervision condition</p> <p>Section 33: The court must consider imposing the conditions in section 34 and 35:</p> <ul style="list-style-type: none"> section 34 – conditions related to residence section 35 – suggested conditions <p>Section 36: The court may impose a condition authorising the Post Sentence Authority to give directions to an offender.</p> <p>Section 38: The court has a discretion to impose any other condition it considers appropriate, having regard to the purposes of conditions of the order.</p>	<p>Section 13: The court may order that the prisoner be released from custody subject to the requirements it considers appropriate, as stated in the ESO.</p> <p>Section 16: If a court makes an ESO, the order must contain the requirements in paragraphs 16(1)(a)-(f).</p> <p>The ESO may contain any other requirement the court considers appropriate:</p> <ul style="list-style-type: none"> to ensure adequate protection of the community, or for the prisoner’s rehabilitation or care or treatment. 	<p>Section 30: The conditions that the court must impose under a supervision order are set out in subsection 30(2). This includes being subject to electronic monitoring under section 31.</p> <p>A supervision order may contain any other terms the court thinks appropriate to:</p> <ul style="list-style-type: none"> to ensure adequate protection of the community for the rehabilitation, care or treatment of the offender subject to the order, or to ensure adequate protection of victims of serious offences committed by the offender subject to the order. 	<p>Section 10: The conditions in paragraphs 10(1)(a)-(e) apply in relation to an ESO, as well as:</p> <ul style="list-style-type: none"> any other condition that the Court thinks fit and specifies in the order, and any condition imposed by the Parole Board under section 11. 	<p>Section 18: An ESO must include the compulsory requirements set out in subsection 18(1).</p> <p>Section 19: A court making an ESO may include in it any other requirements the court considers appropriate.</p>
Variation and review	<p>Section 13: The Supreme Court may at any time vary or revoke an ESO or ISO on application of the State or the offender.</p> <p>Without limiting the grounds for revoking an ESO or ISO, the Supreme Court may revoke an ESO or ISO if satisfied that circumstances have changed sufficiently to render the order unnecessary.</p>	<p>Section 31: The Supreme Court may at any time vary or revoke an ESO or ISO on the application of the State or the eligible offender to whom it applies.</p> <p>Without limiting the grounds for revoking an ESO or interim ESO, the Supreme Court may revoke an ESO or ISO if satisfied that circumstances have changed sufficiently to render the order unnecessary.</p>	<p>Section 102: Any party may apply to the relevant court for leave to review an ESO.</p> <p>Section 99: The Secretary must apply to the court that made an ESO for review of the order at least every three years.</p> <p>Section 110: The Secretary and the offender may, at any time, apply with leave of the court for a review of the conditions of an ESO or ISO, other than the core conditions.</p>	<p>Section 19: The court may, on application, amend the requirements of an ESO or ISO if the court is satisfied that—</p> <ul style="list-style-type: none"> the subject of the order is not able to comply with the requirements of the order because of a change in circumstances, or an amendment of the requirements is necessary or desirable for any other reason. 	<p>Section 49: The offender who is subject to the ESO or the chief executive officer (Director-General) of the Department of Justice (with the consent of the AG) may apply to the Court to amend the conditions of a supervision order.</p>	<p>Section 11: The Parole Board may vary or revoke a condition it has imposed, either of its own motion or on application by either party.</p> <p>Section 13: The Supreme Court may vary a condition (including a condition imposed by the Parole Board) or revoke the order on application by the Attorney, or application by the subject of the order (with the leave of the court).</p>	<p>Section 40: The Attorney-General or a supervisee may apply to the Supreme Court to amend an SO.</p> <p>Section 73: The Attorney-General may apply to the Supreme Court to revoke an ESO.</p> <p>Subsection 74: A supervisee may seek leave to apply for revocation of an ESO.</p>

Attachment B: State and territory schemes

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Breach of an ESO	<p>Section 12: A person who fails to comply with the requirements of an ESO or ISO is guilty of an offence.</p> <p><i>Maximum penalty: 500 penalty units, or imprisonment for 5 years, or both.</i></p>	<p>Section 30: A person to whom an ESO or ISO applies must comply with the requirements of the order.</p> <p><i>Maximum penalty: 500 penalty units or imprisonment for 5 years, or both.</i></p>	<p>Section 112: A party may apply to review the core conditions, without leave, if there has been an amendment to the Act which has modified the core conditions since the ESO was imposed. On this application, the court must alter the conditions of the order to accord with the core conditions specified in s31 as then in force.</p>	<p>Section 169: An offender who is subject to an ESO or interim ESO must not, without reasonable excuse, contravene a condition of the order.</p> <p><i>Penalty: Level 6 imprisonment (5 years maximum)</i></p>	<p>Subsection 43AA: A released prisoner who contravenes an ESO without a reasonable excuse commits a misdemeanour.</p> <p><i>Maximum penalty: 2 years imprisonment.</i></p> <p>If the offence involves removing or tampering with a device for the purpose of preventing the location of the released prisoner being monitored, the released prisoner commits a crime.</p> <p><i>Maximum penalty: Imprisonment for five years</i></p>	<p>Section 33: A person must not without reasonable excuse remove, or interfere with, or interfere with the operation of, an electronic monitoring device required to be worn or installed under section 31(3) in such a way as to prevent or impede monitoring of the offender’s location.</p> <p>Section 80: An offender subject to an ESO must not, without reasonable excuse, contravene a requirement of the order.</p> <p><i>Penalty: Imprisonment for three years</i></p> <p>If an offender is convicted of an offence under subsection 80(1) for an act or omission that is also a contravention of subsection 33(3) then the offender must be sentenced to at least 12 months imprisonment, unless it would be clearly unjust given the circumstances of the offence and the person.</p>	<p>Section 15: If the presiding member, deputy presiding member, or other member of the Parole Board suspect on reasonable grounds that a person may have breached their ESO conditions they may be brought before the Parole Board (either by summons or arrest warrant).</p> <p>Section 17: If the Parole Board is satisfied that the person has breached a condition of their order, the Parole Board may vary or revoke a condition of the ESO imposed by the Board, impose further conditions or refer the matter to the Supreme Court to determine whether a CDO should be made.</p>	<p>Section 46: A supervisee must not engage in conduct that results in a contravention of a requirement of his or her SO.</p> <p><i>Maximum penalty: 200 penalty units, or imprisonment for 2 years.</i></p>