



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS24-001562

Date of Clearance: 10/09/2024

To Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security

Subject S. 47F(1) - Direction under Division 395 of the Criminal Code to attend an assessment by a relevant expert

Timing S. 47C(1)

S. 47C(1)

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

Minister's Comments

Key Issues

1. This submission concerns the appointment of a relevant expert under Division 395 for a pre-application assessment of S. 47F(1), in relation to whom a Community Safety Order (CSO) under Division 395 of the Criminal Code may be made. The purpose of the pre-application assessment is to assess the risk of S. 47F(1) committing a serious violent or sexual offence.

2.

S. 47C(1)

3.

S. 42(1)

4. S. 42(1)

S. 47F(1) was released from immigration

detention following the High Court decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor (NZYQ)* and is currently the holder of a Class WR Bridging R (Subclass 070) visa (BVR). S. 47C(1)

5. Section 395.43 (**Attachment C**) sets out the circumstances in which you can direct a serious violent or sexual offender, S. 47C(1) be subject to an assessment by a relevant expert. An offender subject to the Direction must then attend the assessment.

6. Subsection 395.43(2) empowers the Immigration Minister to appoint a relevant expert to conduct the assessment. S. 42(1)
S. 42(1)

7.

S. 47C(1)

8.

S. 47C(1)

9. As part of the assessment, S. 47F(1) must conduct an assessment of the risk that S. 47F(1) may commit a serious violent or sexual offence, and provide a report of the assessment to you. S. 47C(1)

Appropriateness of the Direction

10. S. 47C(1) S. 47F(1) to attend the assessment with S. 47F(1). S. 42(1)

S. 42(1)

11. S. 47C(1)

The Direction

12. The Direction at **Attachment A** requires S. 47F(1) to attend an assessment with S. 47F(1) and notes that the assessment may be conducted over a number of sessions.
13. Arrangements are being made for S. 47F(1) to assess S. 47F(1) S. 47C(1) S. 47F(1) S. 47F(1) Similar arrangements will be made for additional sessions between S. 47F(1) and S. 47F(1) under the Direction.
14. S. 47F(1) must attend the assessment on your Direction. S. 42(1)

15. S. 42(1)

Legal representation and advice

16. S. 42(1)

17. S. 47C(1)

18. S. 42(1)

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S. 47C(1)

22. Section 395.34 of the Criminal Code provides for the Court to issue orders requiring the Commonwealth to bear expenses in relation to legal presentation where the offender has been unable to obtain representation. S. 42(1)

S. 42(1)

23. S. 42(1)

Background

24. On 8 November 2023, the High Court of Australia made orders in NZYQ. The High Court decided that unlawful non-citizens cannot continue to be kept in immigration detention for the purpose of their removal from Australia once there is no real prospect of their removal becoming practicable in the reasonably foreseeable future. The Court published its written reasons on 28 November 2023.

25. The new CSO Scheme was introduced into Division 395 of the Criminal Code with the commencement of the *Migration and Other Legislation Amendment (Bridging Visas, Serious Offender and Other Measures) Act 2023* (Cth) which commenced on 8 December 2023.

26. The object of the new CSO Scheme in Division 395 is to protect the community from serious harm by providing that non-citizens who pose an unacceptable risk of committing serious violent or sexual offences, and who have no real prospect of being removed from Australia in the reasonably foreseeable future, are subject to a community safety detention order or a community safety supervision order.

27. There are two types of CSOs available under Division 395:

- A community safety detention order (CSDO) – the effect of which is to detain the person in a prison for the period the order is in force, or
- A community safety supervision order (CSSO) – the effect of which is to impose conditions on the person for the period the order is in force.
 - Conditions that may be imposed under a CSSO are broad and include therapeutic and rehabilitative conditions including requiring the offender to attend treatment, rehabilitation or intervention programs or to undertake psychological or psychiatric treatment or counselling.

28. A CSO may be made for a maximum of three years in respect of an individual serious offender. Successive CSO applications may be made in respect of an individual serious offender.

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29. Division 395 of the Criminal Code, establishing the CSO Scheme, is provided in **Attachment E**.

Consultation – internal/external

30. This submission was prepared by the CSO Taskforce within Legal Group.

31. AGD have been consulted in respect of S. 47C(1)

32. The Chief Financial Officer has been consulted on financial implications for the Department.

Consultation – Secretary / Associate Secretary Immigration / ABF Commissioner

33. The Secretary, Associate Secretary Immigration and ABF Commissioner were not consulted on this submission.

Client service implications

34. Nil identified implications for client services.

S. 47C(1)

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S. 47C(1)

S. 47C(1)

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S. 47C(1)

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Media Implications

40.

S. 47C(1)

41. The CSO Taskforce will work closely with the Departmental media team throughout the filing and proceedings related to a CSO.

Attachments

Attachment A Direction made under section 395.43 of the *Criminal Code 1995*

Attachment B S. 47C(1)

Attachment C Section 395.43 of the *Criminal Code*

Attachment D Curriculum Vitae of S. 47F(1)

Attachment E Division 395 of the *Criminal Code*

Authorising Officer

Cleared by:

Marian Agbinya
Assistant Secretary
Community Safety Order Taskforce
Legal Group

Date: 10 September 2024

Mob: S. 22(1)(a)(ii)

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Through Secretary
Chief Finance Officer
Group Manager Legal

CC Associate Secretary Immigration
Group Manager Legal
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The Hon Tony Burke MP
Minister for Home Affairs
Minister for Immigration and Multicultural Affairs
Minister for Cyber Security
Minister for the Arts
Leader of the House

Ref No: MS24-001562

Criminal Code Act 1995

**Direction made under section 395.43 of the *Criminal Code Act 1995* to
S. 47F(1) to be subject to an assessment**

I, Tony Burke MP, Minister for Immigration and Multicultural Affairs
(Immigration Minister) acting under section 395.43 of the *Criminal Code Act 1995*
(the Criminal Code):

- **direct** that S. 47F(1) be subject to an assessment of the risk of S. 47F(1) committing a serious violent or sexual offence as defined in Division 395.2 of the Criminal Code.
- **appoint** S. 47F(1), as a relevant expert, to conduct the assessment and provide a report for the purposes of section 395.43(2) of the Criminal Code. S. 47F(1) is a S. 47F(1) S. 47F(1) S. 47F(1), and is a 'relevant expert' as defined in section 395.2 of the Criminal Code.

Annexure A to this Direction explains the effect of subsections 395.43(4), (5) and (8) of the Criminal Code to S. 47F(1) in compliance with s 395.43(6).

Yours sincerely

TONY BURKE

/ / 2024

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Criminal Code Act 1995

395.43 Immigration Minister may direct serious offenders to be assessed

- (1) The Immigration Minister may direct any of the following serious offenders to be subject to an assessment of the risk of the person committing a serious violent or sexual offence:
 - (a) a serious offender in relation to whom an application for a community safety order could be made;
 - (b) a serious offender in relation to whom a community safety order is in force.
- (2) The Immigration Minister may appoint a relevant expert to conduct the assessment, and provide a report, for the purposes of determining whether:
 - (a) an application for a community safety order in relation to the offender should be made; or
 - (b) an application for a variation or review of a community safety order in relation to the offender should be made.
- (3) The relevant expert who is appointed must:
 - (a) conduct an assessment of the risk of the offender committing a serious violent or sexual offence; and
 - (b) provide a report of the expert's assessment to the Immigration Minister.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.

Attendance and participation at assessment

- (4) The offender must attend the assessment.

Note: The assessment may be conducted over a number of sessions.

- (5) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:
 - (a) any criminal proceedings, except any proceedings relating to sentencing for an offence against this Division (including any appeal in relation to those proceedings); or
 - (b) any civil proceedings against the offender, except proceedings under this Division (including any appeal in relation to those proceedings).
- (6) The Immigration Minister must ensure that the effect of subsections (4), (5) and (8) is explained to the offender.

Contents of report

- (7) The expert's report may include any one or more of the following matters:
 - (a) the expert's assessment of the risk of the offender committing a serious violent or sexual offence;
 - (b) reasons for that assessment;
 - (c) the pattern or progression to date of behaviour on the part of the offender in relation to serious violent or sexual offences, and an indication of the nature of any likely future behaviour on the offender's part in relation to serious violent or sexual offences;

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- (d) efforts made to date by the offender to address the causes of the offender's behaviour in relation to serious violent or sexual offences, including whether the offender has actively participated in any rehabilitation or treatment programs;
- (e) if the offender has participated in any rehabilitation or treatment programs—whether or not this participation has had a positive effect on the offender;
- (f) any relevant background of the offender, including developmental and social factors;
- (g) factors that might increase or decrease any risks that have been identified of the offender committing a serious violent or sexual offence;
- (h) any other matters the expert considers relevant.

Assessments conducted for certain purposes

- (8) Without limiting subsection (5), an assessment of an offender conducted under paragraph (3)(a), and the report of the assessment, may be taken into account:
 - (a) by the Immigration Minister in determining whether to make any application for a community safety order, or any application for a variation or review of a community safety order, in relation to the offender; and
 - (b) by the Court in proceedings to make, vary or review any community safety order in relation to the offender.

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CURRICULUM VITAE

S. 47F(1)

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Section 395.1

Part 9.10—Community safety orders

Division 395—Community safety orders

Subdivision A—Preliminary

395.1 Object

The object of this Division is to protect the community from serious harm by providing that non-citizens who:

- (a) pose an unacceptable risk of committing serious violent or sexual offences; and
- (b) have no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future;

are subject to:

- (c) a community safety detention order; or
- (d) a community safety supervision order.

395.2 Definitions

- (1) In this Division:

AFP member means:

- (a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
- (b) a special member of the Australian Federal Police (within the meaning of that Act).

Commonwealth law enforcement officer has the meaning given by Part 7.8.

community safety detention order means an order made under subsection 395.12(1).

community safety order means a community safety detention order or a community safety supervision order.

community safety order decision means:

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- (a) a decision on an application for a community safety order; or
- (b) a decision on an application to vary a community safety supervision order; or
- (c) a decision in a review of a community safety order to affirm, revoke or vary the order; or
- (d) a decision made under section 395.34 (when a serious offender is unable to engage a legal representative).

Note: See also subsection (4).

community safety order proceeding means a proceeding under Subdivision C, D or E.

community safety supervision order means an order made under subsection 395.13(1).

detained in custody has the meaning given by subsection (2).

detained in custody in a prison has the meaning given by subsection (3).

exemption condition has the meaning given by subsection 395.15(2).

immigration detention has the same meaning as in the *Migration Act 1958*.

Immigration Minister means the Minister administering the *Migration Act 1958*.

lawyer means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

monitoring device means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

Note: See also the definition of **related monitoring equipment** in this subsection.

non-citizen means a person who is not an Australian citizen.

personal information has the same meaning as in the *Privacy Act 1988*.

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police officer means:

- (a) an AFP member; or
- (b) a member (however described) of a police force of a State or Territory.

premises includes a place, an aircraft, a vehicle and a vessel.

prison includes any gaol, lock-up or remand centre.

related monitoring equipment, in relation to a monitoring device, means any electronic equipment necessary for operating the monitoring device.

relevant expert means any of the following persons who is competent to assess the risk of a serious offender committing a serious violent or sexual offence:

- (a) a person who is:
 - (i) registered as a medical practitioner under a law of a State or Territory; and
 - (ii) a fellow of the Royal Australian and New Zealand College of Psychiatrists;
- (b) any other person registered as a medical practitioner under a law of a State or Territory;
- (c) a person registered as a psychologist under a law of a State or Territory;
- (d) any other expert.

reside includes reside temporarily.

residence includes temporary residence.

senior AFP member means:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP member of, or above, the rank of Superintendent.

serious foreign violent or sexual offence means an offence against a law of a foreign country, or of part of a foreign country, where:

- (a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and

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- (b) it is constituted by conduct that, if engaged in in Australia, would constitute an offence against a law of the Commonwealth, a State or a Territory; and
- (c) the particular conduct constituting the offence involved, involves or would involve, as the case requires:
 - (i) loss of a person's life or serious risk of loss of a person's life; or
 - (ii) serious personal injury or serious risk of serious personal injury; or
 - (iii) sexual assault; or
 - (iv) sexual assault involving a person under 16; or
 - (v) the production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6); or
 - (vi) consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (v); or
 - (vii) acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.

serious offender has the meaning given by subsections 395.5(1) and (2).

Note: This definition is affected by section 395.37.

serious violent or sexual offence means an offence against a law of the Commonwealth, a State or a Territory where:

- (a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and
- (b) the particular conduct constituting the offence involved, involves or would involve, as the case requires:
 - (i) loss of a person's life or serious risk of loss of a person's life; or
 - (ii) serious personal injury or serious risk of serious personal injury; or
 - (iii) sexual assault; or
 - (iv) sexual assault involving a person under 16; or

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- (v) the production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6); or
- (vi) consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (v); or
- (vii) acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.

specified authority: a person, or person in a class of persons, is a ***specified authority*** for a requirement or condition in a community safety supervision order in relation to another person (the ***subject***) if:

- (a) the person or class is any of the following:
 - (i) a police officer, or class of police officer;
 - (ii) if the requirement or condition relates to electronic monitoring—a person, or class of person, who is involved in electronically monitoring the subject;
 - (iii) for any requirement or condition in the order—any other person, or class of person; and
- (b) the Court making the order is satisfied that the person or class is appropriate in relation to the requirement or condition; and
- (c) the person or class is specified in the order.

Definition of detained in custody etc.

- (2) A person is ***detained in custody*** if the person is detained in custody under a law of the Commonwealth, a State or a Territory.
- (3) A person is ***detained in custody in a prison*** if the person is detained in custody in a gaol, lock-up or remand centre, including under a community safety detention order. However, a person is not ***detained in custody in a prison*** if the person is in immigration detention in a gaol, lock-up or remand centre.

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When a decision is made

- (4) To avoid doubt, a decision on an application to a Supreme Court of a State or Territory for a community safety order is not made until the Court determines the application in accordance with section 395.10.

395.3 Concurrent operation intended

This Division is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

395.4 Regulations may modify operation of this Division to deal with interaction between this Division and State and Territory laws

- (1) The regulations may modify the operation of this Division so that:
- (a) provisions of this Division do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or
 - (b) no inconsistency arises between the operation of a provision of this Division and the operation of a State or Territory law specified in the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Division does not apply to:
- (a) a person specified in the regulations; or
 - (b) a body specified in the regulations; or
 - (c) circumstances specified in the regulations; or
 - (d) a person or body specified in the regulations in the circumstances specified in the regulations.
- (3) In this section:
- matter*** includes act, omission, body, person or thing.

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Subdivision B—Community safety orders

395.5 Who a community safety order may apply to and effect of community safety orders

- (1) A community safety order may be made under section 395.12 or 395.13 in relation to a person (the *serious offender*) if:
- (a) the person has been convicted of a serious violent or sexual offence; and
 - (b) the person is a non-citizen; and
 - (c) there is no real prospect of removal of the person from Australia becoming practicable in the reasonably foreseeable future; and
 - (d) a subsection of section 395.6 provides that the order may be made in relation to the person; and
 - (e) the person is at least 18 years old.

Note: Before making the order, a Court must be satisfied of certain matters under section 395.12 or 395.13.

- (2) A community safety order may be made under section 395.12 or 395.13 in relation to a person (the *serious offender*) if:
- (a) the person has been convicted of a serious foreign violent or sexual offence; and
 - (b) the person is a non-citizen; and
 - (c) there is no real prospect of removal of the person from Australia becoming practicable in the reasonably foreseeable future; and
 - (d) a subsection of section 395.6 provides that the order may be made in relation to the person; and
 - (e) the person is at least 18 years old.

Note: Before making the order, a Court must be satisfied of certain matters under section 395.12 or 395.13.

Effect of community safety detention order

- (3) The effect of a community safety detention order is to commit the person to detention in a prison for the period the order is in force.

Note 1: The period must not be more than 3 years (see subsection 395.12(5)).

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Note 2: See also:

- (a) section 395.41 (detention under the *Migration Act 1958*); and
- (b) section 395.42 (effect of prison detention on community safety order); and
- (c) subsection 395.47(2) (arrangements with States and Territories); and
- (d) section 395.50 (effect of community safety detention orders on bail or parole laws).

Effect of a community safety supervision order

- (4) The effect of a community safety supervision order is to impose on the person, for the period the order is in force, conditions contravention of which is an offence.

Note 1: The period must not be more than 3 years (see paragraph 395.13(5)(d)).

Note 2: See also sections 395.41 (detention under the *Migration Act 1958*) and 395.42 (effect of prison detention on community safety order).

395.6 Preconditions for community safety orders

Person is detained in custody in a prison

- (1) A community safety order may be made in relation to a person if the person is detained in custody in a prison serving:
- (a) a sentence of imprisonment for a serious violent or sexual offence; or
 - (b) a sentence of imprisonment for any other offence.

Person is in the community

- (2) A community safety order may be made in relation to a person if the person is in the community.

Community safety detention order is in force

- (3) A community safety order may be made in relation to a person if a community safety detention order is in force in relation to the person.

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395.7 Treatment of a serious offender in a prison under a community safety detention order

- (1) A serious offender who is detained in custody in a prison under a community safety detention order must be treated in a way that is appropriate to the offender's status as a person who is not serving a sentence of imprisonment, subject to any reasonable requirements necessary to maintain:
 - (a) the management, security or good order of the prison; and
 - (b) the safe custody or welfare of the offender or any prisoners; and
 - (c) the safety and protection of the community.
- (2) The offender must not be accommodated or detained in the same area or unit of the prison as persons who are in prison for the purpose of serving sentences of imprisonment unless:
 - (a) it is reasonably necessary for the purposes of rehabilitation, treatment, work, education, general socialisation or other group activities; or
 - (b) it is necessary for the security or good order of the prison or the safe custody or welfare of the offender or prisoners; or
 - (c) it is necessary for the safety and protection of the community; or
 - (d) the offender elects to be so accommodated or detained.
- (3) This section does not apply if the offender is serving a sentence of imprisonment.

Subdivision C—Making community safety orders

395.8 Applying for a community safety order

- (1) The Immigration Minister, or a legal representative of the Immigration Minister, (the *applicant*) may apply to a Supreme Court of a State or Territory for either of the following:
 - (a) a community safety detention order in relation to a serious offender;
 - (b) a community safety supervision order in relation to a serious offender.

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Note: The court may make a community safety supervision order under section 395.13 even if a community safety detention order is applied for.

- (2) The Immigration Minister must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer that would reasonably be regarded as supporting a finding that:
- (a) if the application is for a community safety detention order—neither a community safety detention order nor a community safety supervision order should be made in relation to the offender; or
 - (b) if the application is for a community safety supervision order—the community safety supervision order should not be made in relation to the offender.

Content of application

- (3) The application must:
- (a) include any report or other document that the applicant intends, at the time of the application, to rely on in relation to the application; and
 - (b) include:
 - (i) a copy of any material in the possession of the applicant; and
 - (ii) a statement of any facts that the applicant is aware of; that would reasonably be regarded as supporting a finding that the order or orders mentioned in paragraph (2)(a) or (b) (as the case requires) should not be made, except any information, material or facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person); and
 - (c) include information about the offender's age; and
 - (d) if the offender is a holder under the *Migration Act 1958* of a visa that is subject to one or more conditions—specify the conditions; and
 - (e) request that the order be in force for a specified period; and

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- (f) if the application is for a community safety supervision order—include the following material:
 - (i) a copy of the proposed conditions;
 - (ii) an explanation as to why each of the proposed conditions should be imposed on the offender;
 - (iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person);
 - (iv) if the offender is subject to an order under a law of a State or Territory that is equivalent to a community safety order—a copy of that order; and
- (g) if a report was obtained under section 395.43 in relation to the offender—include a copy of the report.

Note 1: For paragraph (3)(e), the period must not be more than 3 years (see subsection 395.12(5) and paragraph 395.13(5)(d)).

Note 2: Evidence may also be adduced later under section 395.28.

Note 3: A copy of the application must be given to the serious offender under section 395.29.

395.9 Appointment of and assessment by relevant expert

- (1) If an application for a community safety order is made under section 395.8 to a Supreme Court of a State or Territory in relation to a serious offender, the Court must hold a preliminary hearing to determine whether to appoint one or more relevant experts.
- (2) The hearing must be held within 28 days after a copy of the application is given to the offender under subsection 395.29(2).
- (3) The Court may, either at the preliminary hearing or at any later time in the proceeding, appoint one or more relevant experts if the Court considers that doing so is likely to materially assist the Court in deciding whether to make a community safety order in relation to the offender.

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- (4) The Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, may nominate one or more relevant experts for the purposes of subsection (3).
- (5) The relevant expert who is appointed must:
- (a) conduct an assessment of the risk of the offender committing a serious violent or sexual offence; and
 - (b) provide a report of the expert's assessment to the Court, the Immigration Minister and the offender.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.

Attendance and participation at assessment

- (6) The offender must attend the assessment.

Note: The assessment may be conducted over a number of sessions.

- (7) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:
- (a) any criminal proceedings, except any proceedings relating to sentencing for an offence against this Division (including any appeal in relation to those proceedings); or
 - (b) any civil proceedings against the offender, except proceedings under this Division (including any appeal in relation to those proceedings).
- (8) The Court must ensure that the effect of subsections (6), (7) and (11) is explained to the offender.

Contents of report

- (9) The expert's report may include any one or more of the following matters:
- (a) the expert's assessment of the risk of the offender committing a serious violent or sexual offence;
 - (b) reasons for that assessment;
 - (c) the pattern or progression to date of behaviour on the part of the offender in relation to serious violent or sexual offences,

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and an indication of the nature of any likely future behaviour on the offender's part in relation to serious violent or sexual offences;

- (d) efforts made to date by the offender to address the causes of the offender's behaviour in relation to serious violent or sexual offences, including whether the offender has actively participated in any rehabilitation or treatment programs;
- (e) if the offender has participated in any rehabilitation or treatment programs—whether or not this participation has had a positive effect on the offender;
- (f) any relevant background of the offender, including developmental and social factors;
- (g) factors that might increase or decrease any risks that have been identified of the offender committing a serious violent or sexual offence;
- (h) any other matters the expert considers relevant.

Other relevant experts

- (10) This section does not prevent the Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, from calling their own relevant expert as a witness in the proceeding.

Assessments conducted for certain purposes

- (11) Without limiting subsection (7), an assessment of an offender conducted under paragraph (5)(a), and the report of the assessment, may be taken into account in proceedings to make, vary or review any community safety order in relation to the offender.

395.10 Determining an application for a community safety order

Determining applications for community safety detention orders

- (1) If an application is made under section 395.8 to the Supreme Court of a State or Territory for a community safety detention order in relation to a serious offender, the Court may determine the application by:

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- (a) making a community safety detention order under section 395.12; or
- (b) making a community safety supervision order under section 395.13; or
- (c) dismissing the application.

Determining applications for community safety supervision orders

- (2) If an application is made under section 395.8 to the Supreme Court of a State or Territory for a community safety supervision order in relation to a serious offender, the Court may determine the application by:
 - (a) making a community safety supervision order under section 395.13; or
 - (b) dismissing the application.

395.11 Matters a Court must have regard to in making a community safety order

- (1) In deciding whether the Court is satisfied as referred to in paragraph 395.12(1)(b) or 395.13(1)(b) in relation to a serious offender, a Supreme Court of a State or Territory must have regard to the following matters:
 - (a) the object of this Division;
 - (b) any report of an assessment received from a relevant expert, and the level of the offender's participation in the assessment, under:
 - (i) section 395.9; or
 - (ii) section 395.43;
 - (c) the results of any other assessment conducted by a relevant expert of the risk of the offender committing a serious violent or sexual offence, and the level of the offender's participation in any such assessment;
 - (d) any report, relating to the extent to which the offender can reasonably and practicably be managed in the community, that has been prepared by:
 - (i) the relevant State or Territory corrective services; or

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- (ii) any other person or body who is competent to assess that extent;
 - (e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, and the level of the offender's participation in any such programs;
 - (f) the level of the offender's compliance with any obligations to which the offender is or has been subject while:
 - (i) on release on parole for any serious violent or sexual offence; or
 - (ii) subject to a community safety order;
 - (g) the level of the offender's compliance with any conditions to which a visa that the offender is, or has been, a holder of under the *Migration Act 1958* is or has been subject;
 - (h) the offender's history of any prior convictions for, and findings of guilt made in relation to, any serious violent or sexual offence;
 - (i) if information is available about the offender's history of any prior convictions for, and findings of guilt made in relation to, any serious foreign violent or sexual offence—that information;
 - (j) the views of the sentencing court at the time any sentence for any serious violent or sexual offence was imposed on the offender;
 - (k) if information is available about the views of the sentencing court at the time any sentence for any serious foreign violent or sexual offence was imposed on the offender—that information;
 - (l) whether the offender is subject to any order under a law of a State or Territory that is equivalent to a community safety order, and if so, the conditions of the order;
 - (m) any other information as to the risk of the offender committing a serious violent or sexual offence.
- (2) Subsection (1) does not prevent the Court from having regard to any other matter the Court considers relevant.
- (3) To avoid doubt, section 395.27 (civil evidence and procedure rules in relation to community safety order proceedings) applies to the

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Court's consideration of the matters referred to in subsections (1) and (2) of this section.

395.12 Making a community safety detention order

- (1) A Supreme Court of a State or Territory may make a written order under this subsection if:
- (a) an application is made in accordance with section 395.8 for a community safety detention order in relation to a serious offender; and
 - (b) after having regard to matters in accordance with section 395.11, the Court is satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence; and
 - (c) the Court is satisfied that there is no less restrictive measure available under this Division that would be effective in protecting the community from serious harm by addressing the unacceptable risk; and
 - (d) in a case where the offender is a holder under the *Migration Act 1958* of a visa that is subject to conditions—the Court is satisfied that the conditions would not be effective in protecting the community from serious harm by addressing the unacceptable risk.

Note 1: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 395.11, as referred to in paragraph (1)(b) of this section (see subsection 395.11(3) and section 395.27).

Note 2: For paragraph (1)(c), an example of a less restrictive measure that is available under this Division is a community safety supervision order. A Court can make a community safety supervision order under section 395.13 even if a community safety detention order was applied for (see subsection 395.10(1)).

- (2) If the Court is not satisfied as mentioned in paragraph (1)(b) or (c) (or both), but is satisfied as mentioned in paragraph (1)(d), then the Court must:
- (a) seek the following material from the Immigration Minister:

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- (i) a copy of the proposed conditions that would be sought for a community safety supervision order in relation to the offender;
 - (ii) an explanation as to why each of the proposed conditions should be imposed on the offender;
 - (iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person); and
- (b) consider whether to make a community safety supervision order under section 395.13 in relation to the offender.

Note: A copy of the material must be given to the serious offender under section 395.29.

Onus of satisfying Court

- (3) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in paragraphs (1)(b), (c) and (d).

Period of order

- (4) The order must specify the period during which it is in force.

Note: The order may be suspended during the period that it is in force if the offender is detained under the *Migration Act 1958* (see section 395.41) or detained in custody in a prison other than as a result of the order (see section 395.42).

- (5) The period must be a period of no more than 3 years that the Court is satisfied is reasonably necessary to protect the community from serious harm by addressing the unacceptable risk.

Court may make successive community safety detention orders

- (6) To avoid doubt, subsection (5) does not prevent a Supreme Court of a State or Territory making a community safety detention order in relation to a serious offender that begins to be in force

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immediately after a previous community safety detention order in relation to the offender ceases to be in force.

395.13 Making a community safety supervision order

- (1) A Supreme Court of a State or Territory may make a written order under this subsection, in accordance with sections 395.14 and 395.15, if:
- (a) any of the following applies:
 - (i) an application is made in accordance with section 395.8 for a community safety supervision order in relation to a serious offender;
 - (ii) an application is made in accordance with section 395.8 for a community safety detention order in relation to a serious offender, and the Court is not satisfied as mentioned in paragraph 395.12(1)(b) or (c) (or both), but is satisfied as mentioned in paragraph 395.12(1)(d);
 - (iii) the Court has reviewed under section 395.25 a community safety detention order in relation to a serious offender and the Court is not satisfied as mentioned in paragraph 395.25(6)(a); and
 - (b) after having regard to matters in accordance with section 395.11, the Court is satisfied on the balance of probabilities, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence; and
 - (c) in a case where the offender is a holder under the *Migration Act 1958* of a visa that is subject to conditions—the Court is satisfied that the conditions would not be effective in protecting the community from serious harm by addressing the unacceptable risk; and
 - (d) the Court is satisfied on the balance of probabilities that:
 - (i) each of the conditions; and
 - (ii) the combined effect of all of the conditions;to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, for the

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purpose of protecting the community from serious harm by addressing the unacceptable risk.

Determining whether conditions are reasonably necessary, appropriate and adapted

- (2) For the purposes of paragraph (1)(d), in determining whether each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).
- (3) If the coming into effect of the order would result in the offender being taken to be granted a visa under section 76AA of the *Migration Act 1958*, then, for the purposes of paragraph (1)(d) of this section, in determining whether each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account the conditions to which the visa would be subject.

Onus of satisfying Court

- (4) The Immigration Minister bears the onus of satisfying the Court of:
 - (a) the matters referred to in paragraphs (1)(b) and (d); and
 - (b) if paragraph (1)(c) applies—the matters referred to in paragraph (1)(c).

Content of order

- (5) The order must:
 - (a) state that the Court is satisfied of:
 - (i) the matters mentioned in paragraphs (1)(b) and (d); and
 - (ii) if paragraph (1)(c) applies—the matters mentioned in paragraph (1)(c); and
 - (b) specify the name of the offender to whom the order relates; and
 - (c) specify all of the conditions, and any exemption conditions, that are to be imposed in accordance with section 395.14 or 395.15 on the offender by the order; and

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- (d) specify the period during which the order is to be in force, which must be a period of no more than 3 years that the Court is satisfied is reasonably necessary to protect the community from serious harm by addressing the unacceptable risk; and
- (e) state that the offender's lawyer may request a copy of the order.

Note: The order may be suspended during the period that it is in force if the offender is detained under the *Migration Act 1958* (see section 395.41) or detained in custody in a prison (see section 395.42).

Court may make successive community safety supervision orders

- (6) To avoid doubt, paragraph (5)(d) does not prevent a Supreme Court of a State or Territory making a community safety supervision order in relation to a serious offender that begins to be in force immediately after a previous community safety supervision order, or community safety detention order, in relation to the offender ceases to be in force.

Automatic revocation of community safety detention orders etc.

- (7) A community safety detention order that is in force in relation to a serious offender is revoked by force of this subsection if:
 - (a) a Court makes a community safety supervision order in relation to the offender; and
 - (b) the community safety detention order is in force immediately before the community safety supervision order begins to be in force.

395.14 Conditions of community safety supervision orders

- (1) The conditions that a Court may impose on a serious offender by a community safety supervision order are:
 - (a) any conditions that the Court is satisfied; and
 - (b) those conditions whose combined effect the Court is satisfied;on the balance of probabilities, are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting

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the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

Note: The Court may, under section 395.15, specify conditions from which exemptions may be granted.

- (2) If the offender is subject to an order under a law of a State or Territory that is equivalent to a community safety order, the Court must consider the conditions under that State or Territory order in imposing conditions in accordance with subsection (1).

General rules about conditions

- (3) To avoid doubt, without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a condition imposed under this section may:
- (a) prohibit or restrict specified conduct of the offender, or impose obligations on the offender; or
 - (b) impose restrictions and obligations on the offender in relation to classes of conduct, and prohibit other classes of that conduct; or
 - (c) impose different restrictions, obligations and prohibitions in relation to different classes of conduct; or
 - (d) for conduct that is prohibited by a condition described in a paragraph of subsection (5) of this section—impose restrictions and obligations on the offender in relation to that conduct instead of prohibiting that conduct; or
 - (e) for conduct described in a paragraph of subsection (5) or (7) of this section—impose different restrictions, obligations and prohibitions in relation to that conduct.
- (4) A condition imposed under this section must not require the offender to remain at specified premises for more than 12 hours within any 24 hours.

General conditions

- (5) Without limiting this section, the conditions that the Court may impose in accordance with subsection (1) include conditions relating to the following:

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- (a) that the offender not be present at one or more of the following:
 - (i) specified areas or places;
 - (ii) specified classes of areas or places;
 - (iii) any area or place determined by a specified authority;
- (b) that the offender reside at specified premises, and not begin to reside at any other premises without the prior permission of a specified authority;
- (c) that the offender remain at specified premises between specified times each day, or on specified days, subject to subsection (4);
- (d) that the offender not leave the State or Territory in which the offender's residence is located;
- (e) that the offender not change the offender's name, or use any name that is not specified in the order;
- (f) that the offender not apply for any licence to operate equipment, machinery, a heavy vehicle or a weapon, or any licence to possess a weapon;
- (g) that the offender not communicate or associate by any means (including through third parties) with one or more of the following:
 - (i) specified individuals;
 - (ii) specified classes of individuals;
 - (iii) any individuals determined by a specified authority;
- (h) that the offender not access or use specified forms of telecommunication or other technology (including the internet);
- (i) that the offender not possess or use specified articles or substances;
- (j) that the offender not carry out specified activities;
- (k) that the offender not engage in one or more of the following:
 - (i) specified work;
 - (ii) specified classes of work;
 - (iii) specified activities relating to specified work or classes of work;

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- (l) that the offender not engage in any training or education without the prior permission of a specified authority;
- (m) that the offender do any or all of the following:
 - (i) attend and participate in treatment, rehabilitation or intervention programs or activities;
 - (ii) undertake psychological or psychiatric assessment or counselling;as specified in the order or as directed by a specified authority;
- (n) that the offender attend and participate in interviews and assessments (including for the purposes of paragraph (m)) as specified in the order or as directed by a specified authority;
- (o) that the offender allow the results of the interviews and assessments referred to in paragraph (n), and any other specified information, to be disclosed to a specified authority;
- (p) that the offender provide specified information to a specified authority within a specified period or before a specified event;
- (q) that the offender comply with any reasonable direction given to the offender by a specified authority in relation to any specified condition (whether or not the condition is imposed in accordance with this subsection).

Note: See also subsection (10) and section 395.2 in relation to references to premises, reside or residence, and work.

- (6) If a condition of the order authorises a specified authority to give a direction, the specified authority may give a direction only if the specified authority is satisfied that the direction is reasonable in all the circumstances to give effect to:
 - (a) the condition; or
 - (b) the object of this Division (see section 395.1).

Conditions relating to monitoring and enforcement

- (7) Without limiting this section, the conditions that the Court may impose in accordance with subsection (1) include conditions relating to the following:

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- (a) that the offender submit to testing by a specified authority in relation to the possession or use of specified articles or substances;
- (b) that the offender allow the offender to be photographed by a specified authority;
- (c) that the offender allow impressions of the offender's fingerprints to be taken by a specified authority;
- (d) that the offender be subject to electronic monitoring (for example, by wearing a monitoring device at all times), and comply with directions given by a specified authority in relation to electronic monitoring;
- (e) a condition that:
 - (i) the person carry at all times a specified mobile phone; and
 - (ii) the person be available to answer any call from a specified authority or, as soon as reasonably practicable, return a call that the person was unable to answer; and
 - (iii) the person comply with specified directions, or any directions given by a specified authority, in relation to the condition in subparagraph (i) or (ii);
- (f) that the offender attend at places, and report to persons, at times, specified:
 - (i) in the order; or
 - (ii) by a specified authority;
- (g) that the offender allow visits at specified premises from, and entry to specified premises by, a specified authority at any time for the purpose of ensuring the offender's compliance with a condition imposed in accordance with paragraph (5)(c);
- (h) that the offender provide a specified authority with a schedule setting out the offender's proposed movements for a specified period and comply with that schedule during the period;
- (i) that the offender allow any police officer to enter specified premises and:
 - (i) search the offender; and

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- (ii) search the offender's residence or any premises which the offender intends to be the offender's residence; and
- (iii) search any other premises under the offender's control; and
- (iv) seize any item found during those searches, including to allow the item to be examined forensically;
- (j) that the offender facilitate access (including by providing passwords or in any other way) to one or more of the following:
 - (i) electronic equipment or technology;
 - (ii) any data held within, or accessible from, any electronic equipment or technology;owned or controlled by the offender, for the purposes of a police officer searching and seizing any such equipment or accessing such data (or both).

Note 1: For paragraphs (b) and (c), restrictions apply to the use of photographs or impressions of fingerprints (see section 395.16).

Note 2: For paragraph (d), see also section 395.17 (obligations relating to monitoring devices).

- (8) A power exercised under a condition imposed in accordance with subsection (7) (other than a power to give a direction) may be exercised only if the person exercising the power is satisfied that it is reasonably necessary to do so in order to:
 - (a) give effect to the order; or
 - (b) facilitate or monitor compliance with the order.

Access to lawyers

- (9) This section does not affect the offender's right to contact, communicate or associate with the offender's lawyer unless the offender's lawyer is a specified individual, or an individual in a specified class of individuals, as mentioned in paragraph (5)(g). If the offender's lawyer is so specified, the offender may contact, communicate or associate with any other lawyer who is not so specified.

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References to work

- (10) In subsection (5), a reference to work includes a reference to voluntary work.

395.15 Conditions where exemptions may be granted

- (1) A Supreme Court of a State or Territory that makes a community safety supervision order in relation to a serious offender may specify conditions included in the order that are to be exemption conditions.
- (2) An **exemption condition** is a condition specified in the order from which the offender may apply for a temporary exemption.
- (3) The Court may make provision in relation to applications for temporary exemptions.
- (4) The offender may apply, in writing, to a specified authority for an exemption from an exemption condition. The application must:
 - (a) include a reason for the exemption; and
 - (b) comply with any other requirements provided for under subsection (3).
- (5) If the offender so applies, the specified authority may:
 - (a) require further information to be provided by the offender before making a decision in relation to the application; and
 - (b) either:
 - (i) grant or refuse the exemption; or
 - (ii) grant the exemption subject to any reasonable directions specified in writing by the specified authority.

395.16 Treatment of photographs and impressions of fingerprints

- (1) A photograph, or an impression of fingerprints, taken of or from a serious offender as mentioned in paragraph 395.14(7)(b) or (c) must be used only for the purpose of ensuring compliance with a community safety supervision order relating to the offender.
- (2) The photograph or the impression must be destroyed if:

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- (a) no community safety supervision order has been in force in relation to the offender for 12 months; and
- (b) either:
 - (i) no proceedings relating to a community safety supervision order relating to the offender were on foot in that 12-month period; or
 - (ii) proceedings relating to a community safety supervision order relating to the offender were discontinued or completed within that 12-month period.
- (3) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct contravenes subsection (1).

Penalty: Imprisonment for 2 years.

395.17 Obligations relating to monitoring devices

Additional obligations on serious offender

- (1) If the Court imposes a condition under paragraph 395.14(7)(d) in a community safety supervision order that a serious offender wear a monitoring device, then:
 - (a) the condition must require the offender to wear the monitoring device at all times; and
 - (b) the order must include the condition referred to in paragraph 395.14(7)(e); and
 - (c) the order must include a condition that the offender do all of the following:
 - (i) allow a specified authority to enter the offender's residence at any reasonable time for any purpose relating to the electronic monitoring of the offender;
 - (ii) allow a specified authority to install, repair or fit the monitoring device or any related monitoring equipment;
 - (iii) take the steps specified in the order (if any) and any other reasonable steps to ensure that the monitoring device and any related monitoring equipment are or remain in good working order;

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- (iv) if the offender becomes aware that the monitoring device and any related monitoring equipment are not in good working order—notify a specified authority as soon as reasonably practicable;
- (v) allow a specified authority, police officer or corrective services officer to remove the monitoring device;
- (vi) allow a police officer to remove any related monitoring equipment.

Powers of specified authorities and others

- (2) After including the condition under paragraph 395.14(7)(d) in the order, the Court must also include in the order an authorisation for:
 - (a) one or more specified authorities to enter the offender's residence as specified in the order at any reasonable time for any purpose relating to the electronic monitoring of the offender; and
 - (b) one or more specified authorities to install, repair or fit the monitoring device and any related monitoring equipment; and
 - (c) one or more specified authorities or police officers to take the steps specified in the order to ensure that the device and any related monitoring equipment are or remain in good working order; and
 - (d) one or more specified authorities, police officers or corrective services officers to remove the monitoring device; and
 - (e) one or more police officers to remove any related monitoring equipment.
- (3) If:
 - (a) a monitoring device is installed on the offender; and
 - (b) any of the following events occurs:
 - (i) the condition under paragraph 395.14(7)(d) is removed from the order;
 - (ii) the order ceases to be in force;
 - (iii) the offender is detained in custody;

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the device and any related monitoring equipment may be removed in accordance with paragraph (2)(d) or (e) even though:

- (c) for subparagraph (b)(i) or (ii)—no authorisation under subsection (2) is in force; or
- (d) for subparagraph (b)(iii)—the offender is not required to comply with a condition of the order because of section 395.41 or 395.42.

Note: For the definition of *detained in custody*, see section 395.2.

Powers relating to monitoring devices and related electronic equipment

- (4) Before exercising a power referred to in paragraph (2)(a), (b), (d) or (e), or subsection (3), a specified authority, police officer or corrective services officer must inform the offender:
 - (a) that the device and equipment are to be installed, repaired, fitted or removed (as the case requires); and
 - (b) of the proposed timing of the taking of the action; and
 - (c) that the offender may consent to the taking of the action; and
 - (d) that if consent is not given, reasonable force may be used to take the action, or to enter the offender's residence in order to take the action.
- (5) If the offender does not give consent, reasonable force may be used by a police officer to take the action, or to enter the offender's residence in order to take the action.

395.18 Copy of a community safety supervision order must be given to serious offender's lawyer

- (1) A copy of a community safety supervision order that is made under section 395.13 in relation to a serious offender must be given to the offender's lawyer as soon as practicable after being requested by the lawyer.
- (2) This section does not entitle the lawyer to request, or be given a copy of, a document other than the order.

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Subdivision D—Varying a community safety supervision order

395.19 Application for variations of community safety supervision orders

Requirement to apply for variation

- (1) If the Immigration Minister is satisfied that a condition in a community safety supervision order in relation to a serious offender is no longer reasonably necessary, or reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence, the Immigration Minister or a legal representative of the Immigration Minister must apply to a Supreme Court of a State or Territory to vary, under section 395.20, the order by:
- (a) removing the condition; or
 - (b) varying the condition.

Note 1: The Immigration Minister or legal representative may also apply under subsection (2) for other variations of the order, including adding conditions.

Note 2: A copy of the application must be given to the offender under section 395.29.

Who may otherwise apply

- (2) Any of the following persons (the **applicant**) may (subject to subsection (1)) apply to a Supreme Court of a State or Territory to vary, under section 395.20, a community safety supervision order in relation to a serious offender, by adding, varying or removing one or more conditions mentioned in section 395.14:
- (a) the Immigration Minister or a legal representative of the Immigration Minister;
 - (b) the offender or a legal representative of the offender.

Note: If the application is made by or on behalf of the Immigration Minister, a copy of the application must be given to the offender under section 395.29.

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- (3) An application under subsection (1) or (2) must be made to the Supreme Court of the State or Territory where the offender resides.

Note: See subsection 395.2(1) for the definition of *reside*.

Contents of application

- (4) An application under subsection (1) or (2) must include:
- (a) a copy of the conditions as sought to be varied; and
 - (b) if the applicant is the Immigration Minister or a legal representative of the Immigration Minister—the following material:
 - (i) an explanation as to why each condition that is sought to be added or varied should be added or varied;
 - (ii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be added or varied—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person);
 - (iii) the outcomes and particulars of all previous applications made under this section (whether by or on behalf of the Immigration Minister or the offender) for variations of the order; and
 - (c) if the applicant is the offender or a legal representative of the offender—the outcomes and particulars of all previous applications made under this section by or on behalf of the offender for variations of the order; and
 - (d) if a report was obtained under section 395.43 in relation to the offender for the purposes of determining whether to apply for the variation—a copy of the report.
- (5) If the applicant is the offender or a legal representative of the offender, the applicant:
- (a) may also include in the application an explanation as to why each condition that is sought to be varied or removed should be varied or removed; and

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- (b) must cause a copy of the application to be served on the Immigration Minister within 2 business days after the application is made.

Adducing additional evidence

- (6) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the Court in relation to the application to vary the order:
- (a) the Immigration Minister;
 - (b) one or more AFP members;
 - (c) the offender;
 - (d) one or more representatives of the offender.
- (7) Subsection (6) does not otherwise limit the power of the Court to control proceedings in relation to an application to vary a community safety supervision order.

395.20 Varying a community safety supervision order (other than by consent)

- (1) If an application is made in accordance with subsection 395.19(1) or (2), and subsection (2) of this section, to a Supreme Court of a State or Territory to vary a community safety supervision order in relation to a serious offender, the Court may vary the order, but only if:
- (a) for an application for the order to be varied by adding or varying conditions—the Court is satisfied on the balance of probabilities that each of the conditions being added or varied is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence; and
 - (b) for an application for the order to be varied by removing conditions—the Court is not satisfied on the balance of probabilities that each of the conditions being removed is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from

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serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

Note: See section 395.22 for the terms of a varied community safety supervision order.

- (2) For the purposes of subsection (1), in determining whether each of the conditions to be added, varied or removed by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).
- (3) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in subsection (1).

Relevant experts

- (4) The Court may appoint one or more relevant experts for the purposes of the proceedings relating to the application. If the Court does so, subsections 395.9(5) to (9) apply in relation to the proceedings.
- (5) The Immigration Minister, the offender, or a legal representative of the Immigration Minister or offender, may nominate one or more relevant experts for the purposes of subsection (4).
- (6) Subsection (4) does not prevent the Immigration Minister, the offender, or a legal representative of the Immigration Minister or offender, from calling another relevant expert as a witness in the proceedings.

395.21 Varying community safety supervision order by consent

- (1) Any of the following persons (the ***applicant***) may apply to a Supreme Court of a State or Territory to vary a community safety supervision order in relation to a serious offender by varying or removing one or more conditions mentioned in section 395.14:
 - (a) the Immigration Minister or a legal representative of the Immigration Minister;
 - (b) the offender or a legal representative of the offender.

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- (2) The application must be made to the Court of the State or Territory where the offender resides.

Note: See subsection 395.2(1) for the definition of *reside*.

- (3) The Court may vary the order if the Court is satisfied that:
- (a) written consent to the variation has been given by:
 - (i) if the applicant is the Immigration Minister or a legal representative of the Immigration Minister—the serious offender; or
 - (ii) if the applicant is the offender or a legal representative of the offender—the Immigration Minister; and
 - (b) the variation does not involve adding any conditions to the order; and
 - (c) the variation is appropriate in the circumstances.

395.22 Terms of a varied community safety supervision order

A community safety supervision order in relation to a person that is varied under section 395.20, 395.21 or 395.26 must:

- (a) state that the Court is satisfied:
 - (i) for a variation under subsection 395.20(1) or 395.21(3)—of the matters mentioned in that subsection; or
 - (ii) for a variation under section 395.26—of the matters mentioned in subsection 395.26(1), (3) or (4) (as the case requires); and
- (b) specify the variations to the conditions that are to be made; and
- (c) state the period during which the order, as varied, is in force; and
- (d) state that the offender's lawyer may request a copy of the order.

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Subdivision E—Review of community safety order

395.23 Periodic review of community safety order

When application for review must be made

- (1) The Immigration Minister, or a legal representative of the Immigration Minister, must, before the end of the period referred to in subsection (2), apply to a Supreme Court of a State or Territory for a review of a community safety order that is in force in relation to a serious offender.

Note: A copy of the application must be given to the offender under section 395.29.

- (2) The application must be made:
- (a) before the end of 12 months after the order began to be in force (unless paragraph (b) or (c) applies); or
 - (b) if the order has been reviewed under this Subdivision by a Supreme Court of a State or Territory—before the end of 12 months after the most recent review ended (unless paragraph (c) applies); or
 - (c) if paragraph (a) or (b) would otherwise apply and, at the time described in that paragraph, the community safety order is suspended under section 395.42 because the offender is detained in custody in a prison—on or before the day the offender's detention in a prison ends.
- (3) Despite subsection (1), an application for a review is not required if an application for a new community safety order in relation to the offender has been made and not withdrawn.

Review must be conducted before end of period

- (4) On receiving the application, the Court must begin the review of the order before the end of that period.

Note: For the process for reviewing a community safety order, see section 395.25.

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Where application must be made

- (5) The application must be made to the Court of the State or Territory where:
- (a) for a community safety detention order—the prison in which the offender is detained is located; or
 - (b) for a community safety supervision order—the offender resides.

Note: See subsection 395.2(1) for the definition of *reside*.

Order ceases to be in force if application not made

- (6) If an application is not made in accordance with this section, the order ceases to be in force at the end of the period referred to in subsection (2).

395.24 Review of community safety order on application

- (1) The following persons may apply to a Supreme Court of a State or Territory for review of a community safety order:
- (a) the Immigration Minister or a legal representative of the Immigration Minister;
 - (b) a serious offender, or a legal representative of a serious offender, in relation to whom the community safety order is in force.

Note 1: For the process for reviewing a community safety order, see section 395.25.

Note 2: A copy of the application must be given to the serious offender under section 395.29.

- (2) The application must include a copy of any report obtained under section 395.43 for the purposes of determining whether an application for a review of the community safety supervision order should be made.
- (3) The Court may review the order if the Court is satisfied that:
- (a) there are new facts or circumstances which would justify reviewing the order; or

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- (b) it would be in the interests of justice, having regard to the purposes of the order and the manner and effect of its implementation, to review the order.
- (4) Otherwise, the Court must dismiss the application.
- (5) The application must be made to the Court of the State or Territory where:
 - (a) for a community safety detention order—the prison in which the offender is detained is located; or
 - (b) for a community safety supervision order—the offender resides.

Note: See subsection 395.2(1) for the definition of *reside*.

395.25 Process for reviewing a community safety order

- (1) This section applies if, under section 395.23 or 395.24, a Supreme Court of a State or Territory reviews a community safety order that is in force in relation to a serious offender.

Parties to the review

- (2) The parties to the review are:
 - (a) the Immigration Minister; and
 - (b) the offender.

Relevant experts

- (3) The Court may appoint one or more relevant experts for the purposes of the review. If the Court does so, subsections 395.9(5) to (9) apply in relation to the review.
- (4) The Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, may nominate one or more relevant experts for the purposes of subsection (3).
- (5) Subsection (3) does not prevent the Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, from calling their own relevant expert as a witness in the review.

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Affirming or revoking the order

- (6) The Court may affirm the order (including affirm the order with variations made under section 395.26) if, after having regard to the matters in section 395.11, the Court is satisfied that the Court:
- (a) for a community safety detention order—could have made the order under section 395.12; or
 - (b) for a community safety supervision order—could have made the order under section 395.13, or could have made the order disregarding paragraph 395.13(1)(d).

Note: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 395.11, as referred to in this subsection (see subsection 395.11(3) and section 395.27).

- (7) If the review is of a community safety detention order, and the Court does not affirm the order under subsection (6), the Court must:
- (a) consider making a community safety supervision order in relation to the offender under section 395.13; and
 - (b) seek the following material from the Immigration Minister:
 - (i) a copy of the proposed conditions that would be sought for a community safety supervision order;
 - (ii) an explanation as to why each of the proposed conditions should be imposed on the offender;
 - (iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person); and
 - (c) if the Court does not make a community safety supervision order in relation to the offender—revoke the community safety detention order.

Note: If the Court makes a community safety supervision order in relation to the offender, the community safety detention order is revoked under subsection 395.13(7).

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- (8) If the Court does not affirm a community safety supervision order under subsection (6), the Court must revoke the order.

Onus of satisfying Court

- (9) The Immigration Minister must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer that would reasonably be regarded as supporting a finding that the order should not be affirmed.
- (10) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in section 395.12 or 395.13.
- (11) The Immigration Minister, or the legal representative of the Immigration Minister, must present to the Court:
- (a) a copy of any material in the possession of the Immigration Minister or legal representative; and
 - (b) a statement of any facts that the Immigration Minister or legal representative is aware of;
- that would reasonably be regarded as supporting a finding that:
- (c) the order should not be affirmed, or should not be affirmed in the terms in which the order is made; or
 - (d) if the court is considering making a community safety supervision order under subsection (7)—a community safety supervision order should not be made.

395.26 Varying community safety orders after review

Varying the period specified by a community safety order

- (1) A Supreme Court of a State or Territory must vary a community safety order in relation to a serious offender to specify a shorter period for which the order will be in force if:
- (a) the Court affirms the order under subsection 395.25(6); and
 - (b) the Court is not satisfied that the period currently specified is reasonably necessary to protect the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

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The shorter period must be a period that the Court is satisfied is reasonably necessary to address the unacceptable risk.

Note: See section 395.22 for the terms of a varied community safety supervision order.

Varying or removing conditions

- (2) A Supreme Court of a State or Territory must vary, or remove, a condition imposed by a community safety supervision order if:
- (a) the Court affirms the order under subsection 395.25(6); and
 - (b) the Court is not satisfied that the condition is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.
- (3) The Court must be satisfied that a condition that is varied under subsection (2) is (after the variation) reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

Varying to add conditions

- (4) The Court may vary a community safety supervision order to add one or more conditions if the Court is satisfied that the conditions are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

Object of this Division

- (5) For the purposes of subsections (3) and (4), in determining whether a condition to be varied or imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).

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Onus of satisfying Court

- (6) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in subsection (1), (3) or (4).

Subdivision F—Provisions relating to community safety order proceedings

395.27 Civil evidence and procedure rules in relation to community safety order proceedings

- (1) A Supreme Court of a State or Territory must, subject to subsection (2), apply the rules of evidence and procedure for civil matters during a community safety order proceeding.
- (2) Despite anything in the rules of evidence and procedure, the Court may receive in evidence in the proceeding evidence of:
- (a) the level of the serious offender's compliance with any conditions (however described) to which the offender is or has been subject while:
 - (i) on release on parole for any offence; or
 - (ii) subject to a community safety supervision order; and
 - (b) the offender's history of any prior convictions for, and findings of guilt made in relation to, any offence; and
 - (c) the level of the offender's compliance with any conditions to which a visa that the offender is, or has been, a holder of under the *Migration Act 1958* is or has been subject.

395.28 Adducing evidence and making submissions

A party to a community safety order proceeding in a Supreme Court of a State or Territory may adduce evidence (including by calling witnesses or producing material), or make submissions, to the Court in relation to the proceeding.

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395.29 Giving copies of applications etc. to serious offenders

- (1) This section applies if the Immigration Minister, or a legal representative of the Immigration Minister, (the *applicant*) applies to a Supreme Court of a State or Territory for:
 - (a) a community safety order; or
 - (b) a variation of a community safety supervision order under section 395.19; or
 - (c) a review of a community safety order;in relation to a serious offender.
- (2) Within 2 business days after the application is made, the applicant must (subject to sections 395.30 to 395.32) give a copy of the application to the offender personally, and to the offender's legal representative.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.
- (3) If the Court seeks material from the Immigration Minister under paragraph 395.12(2)(a) or 395.25(7)(b), within 2 business days after the material is provided to the Court, the applicant must (subject to sections 395.30 to 395.32) give a copy of the material to the offender personally, and to the offender's legal representative.
- (4) If:
 - (a) the community safety order is made or varied; and
 - (b) neither the offender nor a legal representative of the offender is present during the proceedings in which the order is made or varied;the applicant must (subject to sections 395.30 to 395.32), within 2 business days after the order is made or varied, give to the offender personally, and to the offender's legal representative, a copy of the order that is made, or of the order as varied.

395.30 Information excluded from application or material—national security information

- (1) This section applies if the Immigration Minister, or a legal representative of the Immigration Minister, (the *applicant*) gives a

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copy of an application or material to a serious offender, or a serious offender's legal representative, (the **recipient**) under subsection 395.29(2) or (3).

- (2) The applicant is not required to include any information in the application or material if a Minister (the **decision-maker**) is likely to:
- (a) take any actions in relation to the information under the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or
 - (b) seek an order of a court preventing or limiting disclosure of the information.
- (3) However, the applicant must (subject to subsection (4)) give the recipient personally a complete copy of the application or material if any of the following events occurs:
- (a) the decision-maker decides not to take any of the actions referred to in paragraph (2)(a) or (b);
 - (b) a Minister gives a certificate under Subdivision C of Division 2 of Part 3A of the *National Security Information (Criminal and Civil Proceedings) Act 2004*;
 - (c) a court makes an order in relation to any action taken by the decision-maker under paragraph (2)(a) or (b).
- (4) Subsection (3) is subject to:
- (a) the certificate referred to in paragraph (3)(b); or
 - (b) any order made by a court.
- (5) The copy of the application or material must be given under subsection (3):
- (a) within 2 business days of the event referred to in subsection (3); and
 - (b) within a reasonable period before:
 - (i) if the application is for a community safety order—the preliminary hearing referred to in section 395.9; or
 - (ii) if the application is for a variation or review of a community safety order—the hearing on the application.

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395.31 Information excluded from application or material—public interest immunity

- (1) This section applies if:
- (a) the Immigration Minister, or a legal representative of the Immigration Minister, (the *applicant*) gives a copy of an application or material to a serious offender, or a serious offender's legal representative, under subsection 395.29(2) or (3); and
 - (b) information (however described) is excluded from the application or material on the basis of public interest immunity.
- (2) The applicant must give written notice to the offender, and the offender's legal representative, personally stating that the information has been excluded on the basis of public interest immunity. The notice must be given at the time that a copy of the application or material is given to the offender or legal representative.
- (3) To avoid doubt, nothing in this section imposes an obligation on the offender to satisfy the Court that a claim of public interest immunity should not be upheld.

Note: The offender may seek to access any information, material or facts that are likely to be protected by public interest immunity (for example, through a subpoena). Under the law of public interest immunity, the person claiming the immunity must make and substantiate the claim, and satisfy the Court that the claim should be upheld.

395.32 Information excluded from application and material

- (1) This section applies if:
- (a) the Immigration Minister, or a legal representative of the Immigration Minister, (the *applicant*) is required to give a copy of an application or material to a serious offender, or a serious offender's legal representative, under subsection 395.29(2) or (3); and
 - (b) the application or material contains any of the following material (*relevant material*):

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- (i) terrorism material within the meaning of paragraph 105A.14D(1)(b);
 - (ii) child abuse material within the meaning of Part 10.6;
 - (iii) abhorrent violent material within the meaning of Subdivision H of Division 474.
- (2) The applicant may apply to the Supreme Court of a State or Territory referred to in subsection 395.29(1) for an order in relation to the manner in which the relevant material is to be dealt with.
- (3) The Court may make an order in relation to the manner in which the relevant material is to be dealt with, including that the relevant material:
 - (a) be provided to the offender's legal representative; or
 - (b) be available for inspection by the offender at specified premises.

395.33 Giving documents to serious offenders who are detained in custody

- (1) A document that is required to be given under this Division to a serious offender who is detained in custody is taken to have been given to the offender at the time referred to in paragraph (3)(b) if the document is given to the following person (the *recipient*):
 - (a) the legal representative of the offender;
 - (b) if the offender does not have a legal representative—the chief executive officer (however described) of the prison or other facility in which the offender is detained, or a delegate of the chief executive officer.
- (2) The recipient must, as soon as reasonably practicable, give the document to the offender personally.
- (3) Once the recipient has done so, the recipient must notify the Court and the person who gave the recipient the document, in writing:
 - (a) that the document has been given to the offender; and
 - (b) of the day that document was so given.

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395.34 When a serious offender is unable to engage a legal representative

- (1) This section applies if:
 - (a) a community safety order proceeding relating to a serious offender is before a Supreme Court of a State or Territory; and
 - (b) the offender, due to circumstances beyond the offender's control, is unable to engage a legal representative in relation to the proceeding.
- (2) The Court may make either or both of the following orders:
 - (a) an order staying the proceeding for such period and subject to such conditions as the Court thinks fit;
 - (b) an order requiring the Commonwealth to bear, in accordance with the regulations (if any), all or part of the reasonable costs and expenses of the offender's legal representation for the proceeding.
- (3) The regulations may prescribe matters that the Court may, must or must not take into account in determining either or both of the following:
 - (a) whether circumstances are beyond the offender's control;
 - (b) reasonable costs and expenses of the offender's legal representation for the proceeding.
- (4) This section does not limit any other power of the Court.

395.35 Reasons for decisions

A Supreme Court of a State or Territory that makes a community safety order decision in a community safety order proceeding must:

- (a) state the reasons for its decision; and
- (b) cause those reasons to be entered in the records of the Court; and
- (c) cause a copy of any order it made to be provided to each party to the proceeding.

Note: See also subsection 395.2(4) for when a Court makes a community safety order decision.

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395.36 Right of appeal

- (1) An appeal lies to the court of appeal (however described) of a State or Territory if:
 - (a) the Supreme Court of the State or Territory makes a community safety order decision; and
 - (b) the court of appeal has jurisdiction to hear appeals from the Supreme Court in relation to civil matters.
- (2) The appeal is to be by way of rehearing. In particular, in relation to the appeal, the court of appeal:
 - (a) subject to this subsection, has all the powers, functions and duties that the Supreme Court has in relation to the relevant community safety order proceedings; and
 - (b) may receive further evidence as to questions of fact (orally in court, by affidavit or in any other way) if the court of appeal is satisfied that there are special grounds for doing so.
- (3) The appeal against the decision of the Supreme Court may be made:
 - (a) as of right, within 28 days after the day on which the decision was made; or
 - (b) by leave, within such further time as the court of appeal allows.
- (4) The making of the appeal does not stay the operation of the order.
- (5) This section does not limit any other right of appeal that exists apart from this section.

395.37 Consequences of sentences ending or orders ceasing to be in force

- (1) This section applies in relation to a community safety order proceeding if:
 - (a) the proceeding is any of the following:
 - (i) a proceeding on an application for a community safety order in relation to a serious offender;

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- (ii) an appeal against a decision to dismiss such an application;
 - (iii) an appeal against a decision to revoke a community safety order in relation to a serious offender;
 - (iv) an appeal against a decision (including in a review of such an order) to specify a particular period for which such an order will be in force;
 - (v) an appeal against a decision under section 395.34 to stay a community safety order proceeding in relation to a serious offender (including a decision under that section to stay a proceeding for a specified period or to impose a specified condition); and
- (b) before the application or appeal is determined (whether before or after the appeal is made) one of the following events occurs:
- (i) a sentence of imprisonment referred to in subsection 395.6(1) ends;
 - (ii) a community safety order in relation to the offender ceases to be in force;
 - (iii) a community safety order in force in relation to the offender was revoked as referred to in subparagraph (a)(iii) of this subsection.
- (2) For the purposes of the community safety order proceeding, the offender is taken to remain a serious offender:
- (a) who is serving a sentence of imprisonment; or
 - (b) in relation to whom a community safety order is in force;
- despite the event in subsection (1) occurring.

Power of police officer to detain serious offender

- (3) If a community safety detention order is in force in relation to the offender at any time after the offender is released as mentioned in paragraph (1)(b):
- (a) any police officer may take the offender into custody; and
 - (b) any police officer may detain the offender;
- for the purpose of giving effect to the order.

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- (4) A police officer, in:
- (a) taking the offender into custody; or
 - (b) detaining the offender;
- under subsection (3) has the same powers and obligations as the police officer would have if the police officer were arresting the offender, or detaining the offender, for an offence.
- (5) In subsection (4):
- offence* means:
- (a) if the police officer is an AFP member—an offence against a law of the Commonwealth; or
 - (b) if the police officer is not an AFP member—an offence against a law of the State or Territory of whose police force the police officer is a member.

Subdivision G—Offences relating to community safety supervision orders

395.38 Offence for contravening a community safety supervision order

- (1) A person commits an offence if:
- (a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition the order imposes; and
 - (d) if the condition is an exemption condition—there is no exemption in force at the time the conduct is engaged in that exempts the person from the application of the condition.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (2) A person commits an offence if:

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- (a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and
- (b) the order includes an exemption condition; and
- (c) an exemption is in force in relation to the condition; and
- (d) a direction is specified in relation to the exemption condition under subparagraph 395.15(5)(b)(ii); and
- (e) the person engages in conduct; and
- (f) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

395.39 Offence relating to monitoring devices

- (1) A person commits an offence if:
- (a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and
 - (b) the order requires the person to wear a monitoring device; and
 - (c) the person engages in conduct; and
 - (d) the conduct results in interference with, or disruption or loss of, a function of the monitoring device or any related monitoring equipment.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (2) A person (the **perpetrator**) commits an offence if:
- (a) the perpetrator knows that, or is reckless as to whether, a community safety supervision order is in force in relation to another person; and
 - (b) the order is not suspended under section 395.41 or 395.42; and

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- (c) the perpetrator knows that, or is reckless as to whether, the order requires the other person to wear a monitoring device; and
- (d) the perpetrator engages in conduct; and
- (e) the conduct results in interference with, or disruption or loss of, a function of the monitoring device or any related monitoring equipment.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) Strict liability applies in relation to paragraph (2)(b).
- (4) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

395.40 Mandatory 1 year imprisonment for offences

If a person is convicted of an offence against section 395.38 or 395.39, the Court must impose a sentence of imprisonment of at least 1 year.

Subdivision H—Miscellaneous

395.41 Detention under the *Migration Act 1958*

- (1) The fact that:
 - (a) a community safety order is in force in relation to a serious offender; or
 - (b) a serious offender is detained in accordance with a community safety detention order;does not prevent the offender being detained under the *Migration Act 1958*.

Note: For example, the offender may be detained under the *Migration Act 1958* if there is a real prospect of the removal of the offender from Australia becoming practicable in the reasonably foreseeable future.

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Effect of detention on community safety orders

- (2) A community safety detention order in relation to a serious offender is suspended during the period that the offender is detained under the *Migration Act 1958*.
- (3) A community safety supervision order in relation to a serious offender is suspended during the period that the offender is detained under the *Migration Act 1958*.

Effect of suspension

- (4) A community safety order continues to be in force during the period in which the order is suspended under this section.
- (5) However, the offender is not required to comply with any condition in a community safety supervision order during the period that the order is suspended.

395.42 Effect of prison detention on community safety order

Effect of prison detention on community safety orders

- (1) A community safety detention order in relation to a serious offender is suspended during the period that the offender is detained in custody in a prison other than as a result of the order.

Note: For the definition of *detained in custody in a prison*, see section 395.2.

- (2) A community safety supervision order in relation to a serious offender is suspended during the period that the offender is detained in custody in a prison.

Effect of suspension

- (3) A community safety order continues to be in force during the period in which the order is suspended under this section.
- (4) However, the offender is not required to comply with any condition in a community safety supervision order during the period that the order is suspended.

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395.43 Immigration Minister may direct serious offenders to be assessed

- (1) The Immigration Minister may direct any of the following serious offenders to be subject to an assessment of the risk of the person committing a serious violent or sexual offence:
 - (a) a serious offender in relation to whom an application for a community safety order could be made;
 - (b) a serious offender in relation to whom a community safety order is in force.
- (2) The Immigration Minister may appoint a relevant expert to conduct the assessment, and provide a report, for the purposes of determining whether:
 - (a) an application for a community safety order in relation to the offender should be made; or
 - (b) an application for a variation or review of a community safety order in relation to the offender should be made.
- (3) The relevant expert who is appointed must:
 - (a) conduct an assessment of the risk of the offender committing a serious violent or sexual offence; and
 - (b) provide a report of the expert's assessment to the Immigration Minister.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.

Attendance and participation at assessment

- (4) The offender must attend the assessment.

Note: The assessment may be conducted over a number of sessions.

- (5) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:
 - (a) any criminal proceedings, except any proceedings relating to sentencing for an offence against this Division (including any appeal in relation to those proceedings); or

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- (b) any civil proceedings against the offender, except proceedings under this Division (including any appeal in relation to those proceedings).
- (6) The Immigration Minister must ensure that the effect of subsections (4), (5) and (8) is explained to the offender.

Contents of report

- (7) The expert's report may include any one or more of the following matters:
 - (a) the expert's assessment of the risk of the offender committing a serious violent or sexual offence;
 - (b) reasons for that assessment;
 - (c) the pattern or progression to date of behaviour on the part of the offender in relation to serious violent or sexual offences, and an indication of the nature of any likely future behaviour on the offender's part in relation to serious violent or sexual offences;
 - (d) efforts made to date by the offender to address the causes of the offender's behaviour in relation to serious violent or sexual offences, including whether the offender has actively participated in any rehabilitation or treatment programs;
 - (e) if the offender has participated in any rehabilitation or treatment programs—whether or not this participation has had a positive effect on the offender;
 - (f) any relevant background of the offender, including developmental and social factors;
 - (g) factors that might increase or decrease any risks that have been identified of the offender committing a serious violent or sexual offence;
 - (h) any other matters the expert considers relevant.

Assessments conducted for certain purposes

- (8) Without limiting subsection (5), an assessment of an offender conducted under paragraph (3)(a), and the report of the assessment, may be taken into account:

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- (a) by the Immigration Minister in determining whether to make any application for a community safety order, or any application for a variation or review of a community safety order, in relation to the offender; and
- (b) by the Court in proceedings to make, vary or review any community safety order in relation to the offender.

395.44 Sharing information

Requesting information

- (1) The Immigration Minister may request a person prescribed by the regulations for the purposes of this subsection to give the Immigration Minister information (including personal information) that the Immigration Minister reasonably believes to be relevant to the administration or execution of this Division.
- (2) The request need not be in writing.
- (3) Despite any law of the Commonwealth, a State or a Territory (whether written or unwritten), the person may provide the information to the Immigration Minister.

Disclosing information

- (4) The Immigration Minister may disclose information to a person prescribed by the regulations for the purposes of this subsection if:
 - (a) the information was acquired by any of the following in the exercise of a power under, or the performance of a function or duty in connection with, this Division:
 - (i) the Immigration Minister;
 - (ii) a legal representative of the Immigration Minister;
 - (iii) the Secretary of the Department administered by the Immigration Minister;
 - (iv) an APS employee in the Department administered by the Immigration Minister; and
 - (b) the Immigration Minister reasonably believes that the disclosure is necessary to enable the person to exercise the

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person's powers, or to perform the person's functions or duties; and

- (c) if the regulations provide that information may be disclosed to the person only if specified circumstances are met—those circumstances are met.
- (5) Subsection (4) applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

395.45 Sharing information relating to community safety supervision orders

- (1) An AFP member may disclose information (including personal information), to a person employed or engaged by a body covered by an arrangement under subsection 395.48(1), for the purpose of facilitating the performance of any functions or the exercise of any powers in relation to community safety supervision orders.
- (2) A person (the *first person*) employed or engaged by a body covered by an arrangement under subsection 395.48(1) may disclose information (including personal information) to another person if the first person reasonably believes that the disclosure is authorised by the arrangement.
- (3) This section applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

395.46 Delegation by the Immigration Minister

The Immigration Minister may, in writing, delegate any of the Immigration Minister's powers or functions under section 395.44 to any of the following persons:

- (a) the Secretary of the Department administered by the Immigration Minister;
- (b) any APS employee in that Department who performs duties in connection with the administration or execution of this Division.

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395.47 Arrangement with States and Territories

- (1) The Immigration Minister may arrange for a serious offender in relation to whom a community safety detention order is in force to be detained in a prison of a State or Territory.
- (2) If an arrangement is made under subsection (1), the community safety detention order is taken to authorise the chief executive officer (however described) of the prison to detain the offender in the prison while the order is in force.

395.48 Arrangements by Australian Federal Police Commissioner for functions and powers relating to community safety supervision orders

- (1) The Commissioner of the Australian Federal Police may make an arrangement with a State or Territory, or any other body, for the performance of any functions or the exercise of any powers in relation to community safety supervision orders.
- (2) Without limiting subsection (1), for the purposes of section 395.45, the arrangement may authorise a person employed or engaged by a body covered by the arrangement to disclose information (including personal information).
- (3) The Commissioner of the Australian Federal Police may, in writing, delegate to a senior AFP member the Commissioner's powers under subsection (1).

395.49 Annual report

- (1) The Immigration Minister must, as soon as practicable after each 30 June, cause a report to be prepared about the operation of this Division during the year ended on that 30 June.
- (2) Without limiting subsection (1), a report relating to a year must include the number of each of the following:
 - (a) applications for each kind of community safety order made during the year;
 - (b) each kind of community safety order made during the year;

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- (c) applications for review of each kind of community safety order made by serious offenders during the year;
 - (d) applications for review of each kind of community safety order made by the Immigration Minister, or a legal representative of the Immigration Minister, during the year;
 - (e) each kind of community safety order affirmed during the year;
 - (f) each kind of community safety order varied during the year;
 - (g) community safety orders revoked (including by operation of this Act) during the year.
- (3) The Immigration Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

395.50 Effect of community safety detention orders on bail or parole laws

- (1) A person in relation to whom a community safety detention order is in force is not eligible to be released on bail or parole until the order ceases to be in force.
- (2) Subsection (1) does not prevent the person from applying, before the order ceases to be in force, to be released on bail if the person is charged with an offence while the order is in force.

Note: Although the person can apply to be released on bail, as a result of subsection (1), the person cannot be released on bail until the community safety detention order ceases to be in force.

- (3) This section applies despite any law of the Commonwealth, a State or a Territory.