

## CDOs and ESOs - POST-SENTENCE ORDERS

HRTO eligible offender is coming up for release within 12 months\*

AFP Minister applies to State or Territory Supreme Court for a **continuing detention order (CDO)** within 12 months of the offender being released into the community (s105A.5). AFP Minister provides the offender with a copy of the CDO application within two business days of making the application (s105A.14A)

Court holds a preliminary hearing within 28 days after the offender receives a copy of the CDO application to determine whether to appoint a relevant expert. Court may appoint a relevant expert(s) if doing so is likely to materially assist the court in deciding whether to make a CDO (s105A.6)

Is the court satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious Part 5.3 offence? (s105A.7(1)(b))

Yes

Is the court satisfied that there are no less restrictive measures (for example, an ESO) in preventing the unacceptable risk? (s105A.7(1)(c))

Yes

The Court may make a CDO\*\* (s105A.7)

No

The Court must consider making an ESO (s105A.7(2))

No

The Court must consider making an ESO (s105A.7(2))

AFP Minister applies to State or Territory Supreme Court for an **extended supervision order (ESO)** within 12 months of the HRTO offender being released into the community (s105A.5). AFP Minister provides the offender with a copy of the application within two business days of making the application (s105A.14A)

Court holds a preliminary hearing within 28 days after the offender receives a copy of the ESO application to determine whether to appoint a relevant expert. Court may appoint a relevant expert(s) if doing so is likely to materially assist the court in deciding whether to make an ESO (s105A.6)

Is the court satisfied on the balance of probabilities, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious Part 5.3 offence? (s105A.7A(1)(b))

Yes

Is the court satisfied that on the balance of probabilities that each condition to be imposed on the offender is reasonably necessary, appropriate and adapted? (s105A.7A(1)(c))

Yes

The condition(s) is included in the ESO

The Court may make an ESO\*\*

No

The Court must dismiss the application and the offender is released into the community without any conditions imposed

No

The condition(s) is not included in the ESO

## INTERIM POST-SENTENCE ORDERS

Before the application for a CDO or ESO is finalised, the HRTO offender's sentence or current post-sentence order is going to end

The AFP Minister applies for an **interim detention order (IDO)** (s 105A.9)

Upon receiving the application, the Court holds a hearing to determine whether to make an IDO (s 105A.9(1A))

Is the court satisfied that before the application for the CDO will be determined, the offender's sentence of imprisonment will end, or the post sentence order in relation to the offender will end? (s 105A.9(2))

Is the court satisfied there are reasonable grounds a CDO will be made? (s 105A.9(2)(b))

Yes

The Court may make an IDO\*\*\*

No

The Court must consider making an ISO (s 105A.9(8)(b))

The AFP Minister applies for an **interim supervision order (ISO)** (s 105A.9A)

Upon receiving the application, the Court holds a hearing to determine whether to make an ISO (s 105A.9A(2))

Is the court satisfied that before the application for the ESO will be determined, the offender's sentence of imprisonment will end, or the post sentence order in relation to the offender will end? (s 105A.9A(3))

Is the court satisfied there are reasonable grounds an ESO will be made? (s 105A.9A(3)(c))

Yes

Is the court satisfied that there are reasonable grounds for considering that each condition to be imposed on the offender is reasonably necessary, appropriate and adapted? (s 105A.9A(3)(d))

Yes

The condition(s) is included in the ISO

The Court may make an ISO\*\*\*

No

The Court must dismiss the application

The condition(s) is not included in the ISO

★ This indicates where the Court may consider court-only evidence. This includes where the Court is considering an ISO or ESO application, or where the Court is required to consider an ESO application after not being satisfied that the requisite thresholds for a CDO have been met.

\* The AFP Minister may direct a HRTO-eligible offender to attend an expert assessment for the purpose of determining whether to apply for a post-sentence order (s 105A.18D).

\*\* The Court may make successive CDOs or ESOs (s 105A.7(6), 105A.7A(5)) but the period of each order must not exceed three years (s 105A.7(5), 105A.7A(4)(d)). The Minister for Home Affairs or the terrorist offender can appeal the Court's decision to make the CDO or ESO, or to include certain conditions in the ESO (s 105A.17).

CDOs and ESOs will also be subject to annual review (s 105A.10), and the Minister or terrorist offender can seek review of the order sooner where new facts or circumstances justify reviewing the order, or where it is in the interests of justice to do so (s 105A.11).

\*\*\* The Court may make an interim order for a period not exceeding 28 days (s 105A.9(5), 105A.9A(7)(c)). The total period of all interim orders must not be more than 3 months, unless the Court is satisfied that exceptional circumstances apply (s 105A.9(6), 105A.9A(8)).