

## YOUNG OFFENDERS AMENDMENT BILL 2004

### Explanatory Notes

#### Clause 1 Short title

Short title of the Act.

#### Clause 2 Commencement

The provisions contained in the Bill will come into operation on days to be fixed by proclamation. In particular the amendments to sections 11 and 196 of the *Young Offenders Act 1994* [see clauses 7 and 41 of the Bill] will need supporting Regulations before they can be brought into effect.

#### Clause 3 The Act amended

The amendments contained in the Bill are amendments to various provisions of the *Young Offenders Act 1994*.

#### Clause 4 Section 3 amended

Section 3 of the *Young Offenders Act 1994* defines certain terms used in the Act. A definition of “Aboriginal community” is inserted [refer to clause 11 of the Bill].

#### Clause 5 Part 3 Division 1 heading inserted

Two divisions of Part 3 of the *Young Offenders Act 1994* are created. Division 1 relates to general Departmental functions and Division 2 relates to arrangements with the council of an Aboriginal community [refer to clause 11 of the Bill].

#### Clause 6 Section 11 amended

The amendments to section 11 of the *Young Offenders Act 1994* enable the chief executive officer to appoint officers and persons to implement and administer the Act rather than the Minister. This includes the appointment of particular classes of officers and employees specified in regulations. The amendments also allow the CEO to make regulations in relation to their functions, employment conditions, disciplinary procedures and termination of employment. These provisions will make the appointment of former Ministerial employees more consistent with normal public sector appointment provisions. Transitional provisions ensure continuity of employment and conditions for existing employees.

#### Clause 7 Sections 11A to 11E inserted

Section 11A requires all people employed to work with young offenders to observe all rules made under the Act, make reports and returns required by the CEO and make records on any young offender available to the CEO or delegate.

Section 11B outlines the powers and duties of custodial staff who work with young offenders in detention centres.

Section 11C enables custodial officers to use prescribed force in prescribed circumstances where this is necessary for the management, control and security of a facility or detention centre. The State Solicitor's Office has advised the Department that existing Juvenile Custodial Rules governing the use of force require legislative backing.

Section 11D enables the CEO or superintendent of a detention centre to authorise the restraint of a young offender where necessary to prevent injury, on medical grounds or to prevent escape. The section also includes safeguards on the use of restraint. The State Solicitor's Office has advised the Department that existing Juvenile Custodial Rules governing the use of restraint require legislative backing.

Section 11E enables prison officers to provide assistance in managing critical incidents within a detention centre. Several critical incidents have occurred that required the assistance of the Emergency Support Group (ESG) of the Prisons Division of the Department of Justice. The State Solicitor's Office has advised the Department that existing powers under the *Prisons Act 1981* for the ESG do not extend to their use in detention centres. The provision allows the use of control weapons with the CEO's approval but does not allow the use of firearms. These provisions are consistent with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

Section 11F enables police officers to provide assistance in managing critical incidents within a detention centre. There is currently no authority to call on police assistance if required. This provision is identical to that provided for in section 15 of the *Prisons Act 1981*.

#### Clause 8 Section 12 amended

The amendment enables rules to be made for a young person at a Departmental or subsidised facility to wear a device for having a body sample taken or detecting the presence of an illicit substance.

Illicit drug use is a serious contributor to juvenile offending and this amendment will enable the use of devices that can detect the presence of illicit substances. The amendment anticipates technological advances, although drug detection patches that are placed on the skin have been tested in the past. These were not suitable for Departmental use.

#### Clause 9 Section 15A inserted

Section 15A enables personal information about young offenders to be provided to Government agencies in certain circumstances. It will assist in meeting a recommendation of the Gordon Inquiry that Government agencies share information that will enable the protection of vulnerable children and young people.

Specific provision is made to provide information to the Department for Community Development where it is necessary to protect children, assist in child placement, assist in an assessment of a young person or assist an investigation of an allegation of abuse.

Information may also be shared with other Government agencies with the Minister's approval if the information will promote child protection. This provision enables case by case consideration to ensure that disclosure is warranted.

Information may also be provided to adult corrective services and the Mentally Impaired Defendants Review Board where this will assist those agencies to carry out their statutory functions. Some young offenders continue offending when they are adults and these provisions will allow adult services, such as the Prisons Division of the Department of Justice and the Parole Board to obtain information where this is necessary for the person's wellbeing or generally for assessment purposes.

A penalty of \$6000 or imprisonment for 2 years applies if information is used for any unauthorised purpose.

Clause 10 Section 17 amended

The amendment enables victims of juvenile crime to be given the name and last known residential address of the young person for the purpose of taking civil action against the young person.

This provision will assist victims of juvenile crime to seek compensation.

A penalty of \$6000 or imprisonment for 2 years applies if information is used for any other purpose.

Clause 11 Part 3 Division 2 inserted

The amendment creates a Division 2 of the Act – Arrangements with the council of an Aboriginal community.

These arrangements allow the CEO to make agreements with Aboriginal communities to supervise young offenders on various community orders. The provisions will help overcome problems for juvenile justice staff in providing supervision in remote locations and increase the likelihood of Aboriginal offenders completing community orders.

Section 17A defines relevant terms.

Section 17B enables the CEO to make agreements with Aboriginal communities to supervise young offenders on a variety of community orders either imposed by a court or by the Supervised Release Review Board.

Section 17C enables the CEO to appoint and cancel the appointment of a person from a panel of people nominated by the community to monitor the young person on a community based order. The appointment may be paid or honorary.

Section 17D provides for worker's compensation for the monitor. This provision is identical to the protection afforded to honorary community corrections officers and volunteers under section 100 of the *Sentence Administration Act 2003*.

Clause 12 Section 25 amended

The amendments to section 25 of the *Young Offenders Act 1994* clarify the existing intent of the legislation in relation to referral of young people to a juvenile justice team. A referral to a team is not to be construed as a guilty plea and all parties to the proceedings must agree to the referral to a team before it can deal with a matter.

Clause 13 Section 28 replaced

The amendments clarify the effects of a court referral to a juvenile justice team. Appearance at a team allows minor offending to be dealt with in a way that leaves the young person without any criminal record. The clarifications made are that when the court refers a young person to a team there is no requirement for a guilty plea, no finding of guilt is recorded, no adjournment is made for a report on a young person's suitability and no order is made against the young person.

Clause 14 Section 29 amended

At times confusion occurs about whether or not a caution or juvenile justice team appearance counts as a first offence. Cautions and team processes are intended to divert minor offenders from the criminal justice system and so should not be construed as first offences. Amendments to section 29 of the *Young Offenders Act 1994* clarify this intention.

Clause 15 Section 31 amended

The amendments to section 31 of the *Young Offenders Act 1994* define the term "victim" and simplify references to this party to juvenile justice team proceedings.

Clause 16 Section 32 amended

The intent of section 32 of the *Young Offenders Act 1994* is that all parties (the young person, responsible adult and victim) must agree to the outcome of a juvenile justice team process and if they do not the matter is referred back to the court.

The inclusion of subsection (1a) clarifies that all parties and not just the young person must agree to the outcome.

The amendment to subsection (2) enables a team to proceed if the young person cannot be present, provided there is a good reason for the absence. Cases have occurred where a young person has become terminally ill or the family has moved interstate.

Amendments to subsection (3) define "a party" to team proceedings and enable the team Coordinator to exclude a party from direct contact with others if that party is considered to pose a risk to the safety of another party. Occasionally participants become extremely emotional and this provision enables the Coordinator to prevent harm occurring. The excluded party maintains the capacity to agree or not with the process continuing and the outcome.

Clause 17 Section 35 amended

The amendment to section 35 of the *Young Offenders Act 1994* defines that the CEO approves Aboriginal communities in which elders, wardens or other appropriate community members may take the place of a Juvenile Justice Team Coordinator or Police member of the team. This amendment relates to amendments in clauses 18 and 19.

Clause 18 Section 36 amended

The amendment to section 36 of the *Young Offenders Act 1994* enables the CEO to appoint and revoke an appointment of a member of an approved Aboriginal community as a Juvenile Justice Team Coordinator.

Clause 19 Section 37 amended

The amendments to section 37 of the *Young Offenders Act 1994* allow members of approved Aboriginal communities to substitute for a Juvenile Justice Team Coordinator or Police member of the team. Young Aboriginal offenders in remote areas have less opportunity than other offenders to attend a Juvenile Justice Team because of their isolation. The amendment will help overcome this disadvantage in a culturally relevant way.

Clause 20 Section 37A inserted

A new section 37A is inserted into the *Young Offenders Act 1994* that clarifies the original intent of the legislation that legal representation is not permitted for any person participating in juvenile justice team appearances. Team processes are about a young person accepting responsibility and making reparation and so legal representation and an adversarial approach are not appropriate.

Clause 21 Section 54 amended

The amendment to section 54 of the *Young Offenders Act 1994* enables the court to order that a young offender on a community order wears a device for detecting illicit drug use. Clauses 23, 28, 38 and 41 of the Bill also refer to such devices.

The Department has previously experimented with using dermal sweat patches. Although these proved ineffective in time technology will be developed that can be used to monitor drug use. The amendment will enable the use of such technology when it becomes available.

Clause 22 Section 103 amended

The amendment to section 103 of the *Young Offenders Act 1994* requires the court to consider a report prior to determining whether to allow the Department to use curfew and monitoring conditions with young offenders on Conditional Release Orders. Refer to clauses 23 of the Bill.

Clause 23 Sections 109A and 109B inserted

The amendment inserts new sections 109A and 109B into the *Young Offenders Act 1994*.

Section 109A enables the Department to specify where a young offender on a Conditional Release Order must reside, to impose conditions about when the young person may or may not leave this place and to check that the young person is complying with these conditions (curfew conditions). Curfew conditions are limited to a certain number of hours in a day and cannot be used continuously for more than six months.

Section 109B enables the Department to use electronic monitoring of curfews and devices to detect illicit drug use. Provision is also made to recover monitoring devices and makes interfering with or damaging a device an offence.

The curfew and monitoring conditions cannot be used after the Conditional Release Order expires. Their purpose is to assist stabilise a young person so that they can benefit from the positive elements of the order. Once a young person is stable the conditions can be lifted. They may also be reapplied if the young person's behaviour begins to deteriorate.

These new provisions are similar to the curfew provisions that apply in relation to Intensive Supervision Orders under section 75 of the *Sentencing Act 1995*.

Clause 24 Section 114 amended

The amendment to section 114 of the *Young Offenders Act 1994* enables the court to deal with breaches of a Conditional Release Order retrospectively. Refer also to clause 25 of the Bill.

If a Conditional Release Order runs its term without being cancelled the young offender ceases to be liable to serve the term of detention to which it relates. Unless a breach can be brought before the court before the term of the Conditional Release Order expires, the court is powerless to deal with the breach.

Clause 25 Section 115 amended

The amendment to section 115 of the *Young Offenders Act 1994* requires that action to breach a Conditional Release Order retrospectively must be taken within six months of the order expiring. Refer also to clause 24 of the Bill.

Clause 26 Section 119A inserted

The new section 119A of the *Young Offenders Act 1994* stays a sentence of detention if a young offender escapes legal custody. This prevents time at large counting towards completion of the sentence. The new section 119A is identical to the provisions that apply in respect of prisoners under section 8(1) and (3) of the *Sentence Administration Act 2003*.

Clause 27 Section 132 amended

The amendments to section 132 of the *Young Offenders Act 1994* clarify that the Supervised Release Review Board may defer or deny supervised release for a period. The intent of legislation is that all young offenders in detention should have access to supervised release to assist in their reintegration to the community. However, there are instances when the Board considers that release should be deferred or denied for a period and the amendment clarifies this and provides a clear basis for current practice.

Clause 28 Sections 136A and 136B inserted

The new sections 136A and 136B of the *Young Offenders Act 1994* enable curfew and monitoring provisions to apply to Supervised Release Orders. The provisions mirror those in clause 23 of the Bill.

Clause 29 Section 145 amended

The amendments to section 145 of the *Young Offenders Act 1994* enable a Supervised Release Order to be breached retrospectively within six months of the expiry of the order. These amendments allow the court and the Supervised Release Review Board to take action for a breach.

Clause 30 Section 147A inserted

The new section 147A of the *Young Offenders Act 1994* automatically cancels a Supervised Release Order if the young offender re-offends and receives a custodial sentence. This amendment is necessary to clarify the operation of the amendments to section 149 [refer to clause 31 of the Bill]. The new section 147A is identical to the provisions that apply in relation to offenders on parole under section 67 of the *Sentence Administration Act 2003*.

Clause 31 Section 149 amended

The amendment to sub-section (1) of section 149 of the *Young Offenders Act 1994* removes the requirement for the CEO to issue a warrant of apprehension when a young person has been sentenced to detention for re-offending while on a Supervised Release Order. The warrant in these circumstances is superfluous and the legislative requirement created administrative problems.

Other amendments to section 149 of the Act clarify the original intent of the legislation that the terms of a Supervised Release Order that is suspended and the sentence to which the order applies continue to run until the expiry date of the sentence or until the order is cancelled.

This clarification was recommended by the State Solicitor's Office.

Clause 32 Section 150 amended

If a young person has turned 18 when a Supervised Release Order is suspended or cancelled they complete their custodial sentence in prison rather than detention. At times there is a delay between when an order is suspended or cancelled and the young offender is apprehended. The amendment to section 150 of the *Young Offenders Act 1994* allows young offenders who have turned 18 prior to being apprehended to complete their sentence in prison.

Clause 33 Section 152 amended

The amendments to section 152 of the *Young Offenders Act 1994* simplify provisions that describe the membership of the Supervised Release Review Board. This also relates to clauses 34 and 36 of the Bill.

Clause 34 Section 153 amended

The amendments to section 153 of the *Young Offenders Act 1994* consolidate provisions regarding the term of office of Supervised Release Review Board Members. These amendments are consistent with the provisions that apply to the Parole Board members under Schedule 1 clause 3 of the *Sentence Administration Act 2003*. This also relates to clause 33 of the Bill.

Clause 35 Section 154 amended

Amendments to section 154 of the *Young Offenders Act 1994* simplify the processes for nominating deputies for the CEO and the police member of the Supervised Release Review Board. These will enable deputies to be nominated at short notice and so prevent delays in the Board's operation.

Clause 36 Section 157 amended

The amendments to section 157 of the *Young Offenders Act 1994* remove the requirement for the quorum of the Supervised Release Review Board to include a female member if the offender being considered is female or an Aboriginal member if an offender being considered is Aboriginal. This requirement has resulted in the need for special meetings of the Board and delays in determining supervised release for young people. This also relates to clause 33 of the Bill.

Clause 37 Section 169A inserted

The new section 169A of the *Young Offenders Act 1994* enables the CEO to authorise an investigation of an incident in a detention centre and to require that staff or others assist with the investigation. Failure to assist is a criminal offence.

At times staff declining to provide information about an incident in a detention centre or failing to declare any conflict of interest has hindered the work of the Department's Internal Investigations Unit. The amendment is modelled on similar provisions in the *Prisons Act 1981*.

Clause 38 Section 170 amended

The amendment to section 170 of the *Young Offenders Act 1994* makes it a detention offence for a detainee to refuse to wear a device for detecting illicit drugs. Refer also to clause 21 of the Bill.

Clause 39 Section 173 amended

The amendment to section 173 of the *Young Offenders Act 1994* enables a detainee to be confined in a designated room within a detention centre as well as the detainee's sleeping quarters when confinement is imposed as a punishment for a detention offence.

At times it is impractical to impose confinement in sleeping quarters and the amendment allows another suitable room to be used.

Clause 40 Section 181 amended

Amendments to section 181 of the *Young Offenders Act 1994* remove the ability of the CEO to make rules authorising a person to require a detainee to have a body sample taken or specifying privileges that may be provided to or withdrawn from detainees.

These functions require greater oversight and have been transferred to section 196 of the *Young Offenders Act 1994* that allows regulations to be made that prescribe how they will be done. This also ensures that they receive Parliamentary oversight. Refer to clause 41 of the Bill.



Clause 41 Section 193A inserted

The new section 193A of the *Young Offenders Act 1994* enables the CEO to issue a warrant to arrest a detainee who is released in error.

This provision is the same as section 116 of the *Sentence Administration Act 2003*.

Clause 42 Section 196 amended

The amendments to section 196 of the *Young Offenders Act 1994* provide for regulations to be made regarding:

- Privileges for detainees
- Authorising the taking of body samples or wearing a detection device for illicit substances
- Authorising confinement in sleeping quarters or a designated room for a period not exceeding 24 hours in order to maintain good government, good order or security
- Searching detainees, visitors and staff and seizing any unauthorised articles or substances and
- The use of trained dogs to assist in searches.

Currently Juvenile Custodial Rules outline how most of these procedures are to be carried out, however, the intrusive nature of these provisions requires Parliamentary oversight.

Clause 43 Section 197 inserted

The new section 197 of the *Young Offenders Act 1994* enables the superintendent of a detention centre to delegate any of his or her powers prescribed in regulations.

Clause 44 Schedule 1 amended

The amendments to Schedule 1 of the *Young Offenders Act 1994* include two additional *Road Traffic Act 1974* offences. These are driving without the appropriate driver's licence and refusing to provide a breath, blood or urine sample for analysis.

Young people who commit these offences will no longer be able to be cautioned or referred to a juvenile justice team.

A young person charged with driving while cancelled, suspended or disqualified has failed to comply with a court order.

A young person who refuses the request to supply a sample risks being convicted in court whereas a person who does not comply may avoid the full consequences of the law for offences associated with driving under the influence of drugs and alcohol.

Including these offences in Schedule 1 recognises the seriousness of this behaviour.

Clause 45 Schedule 2 amended

The amendment to Schedule 2 of the *Young Offenders Act 1994* corrects an error in item 2 in the reference to section 32 of the *Bush Fires Act 1954*.