

JUVENILE JUSTICE LEGISLATION AMENDMENT BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

There are five areas of emphasis in the legislative changes.

First, the Bill will ensure that courts and police have adequate and appropriate powers.

Second, the principles of juvenile justice will be amended to include a reference to people other than the child. The community, the victim and the family will be expressly recognised.

Third, the Bill will ensure that processes are available to divert a child offender from the criminal justice system.

Fourth, the Bill will contain provisions emphasising the role of parents.

Fifth, there are a number of changes to the *Juvenile Justice Act* to achieve the transfer of responsibility for detention centres to the Queensland Corrective Services Commission (“the Commission”) and to correct some operational difficulties.

Reasons for the Bill

The Bill is the result of community views expressed about the level of crime committed by children; community suggestions that processes for victim-offender conferences could be beneficial for the offender, victim and community; and to correct certain operational difficulties.

Estimated Cost for Government Implementation

The cost of implementation of these changes cannot be estimated with accuracy. The major costs would arise from increased sentences imposed by courts. The actual sentences which will result from the Bill are not

known. Each sentence imposed by a court is a response to the particular facts before it.

Consultation

The changes contained in the Bill were the subject of a document distributed to the public during June 1996. Certain changes have resulted from the suggestions made by those making submissions.

PART 1—PRELIMINARY

Short Title

Clause 1. The short title of the Bill is the *Juvenile Justice Legislation Amendment Act 1996*.

Commencement

Clause 2. This provides that the provisions set out in Schedule 3 will commence on a date to be proclaimed.

PART 2—AMENDMENT OF JUVENILE JUSTICE ACT 1992

Act amended by Part 2 and Schedule 1

Clause 3. This provides for Part 2 and Schedule 1 of the Bill to amend the *Juvenile Justice Act 1992*.

Amendment of section 4 (Principles of juvenile justice)

Clause 4. The provisions of section 4 of the Act are amended in order to establish balance in the principles of juvenile justice, which form the central reference point for the remaining provisions of the Act. The new provisions

insert into section 4 principles relating to the protection of the community from offences, the opportunity for a victim to participate in the juvenile justice process, the worth of encouraging a parent to fulfil their responsibility for care and supervision of a child and the strengthening of the child's family unit.

Amendment of section 5 (Definitions)

Clause 5. Section 5 of the Act is amended to include new definitions, which are required for the operation of the new provisions introduced by the Bill. Obsolete or replaced definitions are deleted.

Amendment of section 8 (Meaning of “serious offence”)

Clause 6. Section 8 of the Act is amended to exclude from the definition of “serious offence” the offence of receiving stolen property which, if committed by an adult, could be dealt with summarily under the provisions of the *Criminal Code*.

Insertion of new Part 1A

Clause 7. A new Part 1A to the Act is inserted, introducing provisions explaining the administration of juvenile justice by Departments and the Queensland Corrective Services Commission (“the Commission”).

PART 1A—ADMINISTRATION

Explanation about Act's administration

Section 9A. The new Section 9A of the Act explains the administration of the Act by Government Departments and the Commission. It provides that the Minister responsible for the administration of Part 1A has an overall responsibility for the development of the legislation. The provision requires the Commission to provide certain information on request.

Delegations

Section 9B. The new Section 9B of the Act allows chief executive officers of Departments to delegate their functions to public service officers or to officers of the Commission.

The Commission is also allowed to delegate a power to a chief executive of a department or an officer of the Commission or public service.

It is made clear that a power delegated to the Commission or a chief executive is able to be sub-delegated.

The powers of delegation are all subject to a written direction of the Minister responsible for the administration of the provision under which the power is conferred.

Because the administration of the Act will be shared among departments and the Commission, a wide power of delegation is conferred. It is not possible to specify the officers to whom the powers will be delegated. The officers are located across Queensland in various posts in the organisations which will be administering the Act.

Appearances by the chief executive and Commission

Section 9C. The new Section 9C of the Act confirms the right of the chief executive, and the Commission, to appear on applications or in proceedings under the Act. They may exercise each other's right of appearance.

Insertion of new Parts 1B and 1C

Clause 8. This inserts a new Part 1B and Part 1C.

PART 1B—INVESTIGATION PROVISIONS***Division 2—Fingerprints and palmprints***

Application by police officer for permission to take child's identifying particular

Section 10. Under Section 10 of the Act, police officers investigating offences against Acts listed in the section may apply to a Children's Court Magistrate to have the fingerprint or palmprint of the child taken. The child must have been charged (but not arrested) for the offence. Notice of the application must be given to the child, a parent, the chief executive and the Commission (if the child is a detainee). The police must satisfy the court on the balance of probabilities that someone has committed the charged offence, there is evidence of an identifying particular, the child is reasonably suspected of being the offender and the order is necessary for the proper investigation of the offence. An offence is created when a child contravenes a court order to attend to have an identifying particular taken.

Often police use the arrest power, rather than another procedure like the complaint and summons, only to obtain the fingerprints or palmprints of the person arrested. The intention of this section is to encourage police to use alternatives to arrest, by giving them the ability to obtain fingerprint or palmprint evidence, where necessary, through a court application. The purpose is to reduce the incidence of arrest.

Another person must be present when identifying particular is taken

Section 10A. A new Section 10A introduces the safeguard that when police take an identifying particular of a child, acting under an order made under Section 10, a parent, legal practitioner for the child, an independent justice of the peace or an adult nominated by the child must be present. In the absence of such a person, any evidence obtained is not admissible unless the prosecution establishes that there is sufficient and proper reason for the absence of the person and the court considers the evidence should be admitted.

Destruction of identifying particular taken under court order

Section 10B. Section 10B provides for the safeguard of destruction of an identifying particular, where the investigation does not lead to a sentence order being made. The destruction must occur within 7 days of certain events, including the end of the proceeding. An offence is created where the applicant for the order fails to ensure that the identifying particular is

destroyed within the specified time. The penalty is 100 penalty units.

Division does not limit other provisions

Section 10C. This provides that the provisions of the Division do not limit the power conferred by other legislation to take fingerprints or palmprints.

PART 1C—CAUTIONS AND COMMUNITY CONFERENCES

Division 2—Community Conferences

Subdivision 1—Establishment of process and generally applicable provisions

Object of division and explanation

Section 18A. This Division establishes a new process of community conferences for cases in which a child admits committing an offence to a police officer, or is found guilty of an offence by a court. The police officer or the court can refer a matter to a community conference. In deciding whether to refer an offence to a conference, the court or police officer must consider the nature of the offence, the harm suffered because of the offence and whether the interests of the child and community would be served by having the offence dealt with in an informal way. A convener then convenes a community conference between the child and other concerned persons. A community conference has, as its desired outcome, benefits to the child, the

victim and the community, and these benefits are explained in the section.

Approval of community conference convenor

Section 18B. This provides for the approval of a suitable person as a community conference convenor by the chief executive. The chief executive must be satisfied that those selected possess appropriate experience or training for the task. It is expected that some convenors will have specialist training in victim-offender mediation. Others will have life experience warranting their approval; for example, they may have been teachers or youth workers. A community conference convenor must be independent of the circumstances of the offence.

Who may refer an offence to a community conference

Section 18C. This provides that an offence may be referred to a community conference by a police officer (under section 18H) or a court (under part 5, division 1A).

Who may participate in a community conference

Section 18D. This specifies, as the participants in a community conference, the convenor; the child (and if requested by the child, an adult nominee, a member of the child's family or a legal representative); the victim, a member of the victim's family or the victim's legal representative (in each case only at the request of the victim), a police or prosecution representative (depending on whether the court or police referred the conference) and another person decided by the convenor. The convenor has discretion to include other people in the conference, for example, a friend of the child or a friend of the victim.

Conduct of community conference

Section 18E. This requires that the conference must be convened and conducted by the convenor. The convenor's decisions must be respected by the participants. The conference must be directed towards the making of a community conference agreement. The conference process will be regarded as having ended when such an agreement is made. The convenor may also end the conference if the child fails to attend or the convenor considers that

the offence is unsuitable for conferencing or that an agreement will not be reached within an appropriate time period. The convenor must report the outcome of the conference to the referring court or police officer within 14 days of the end of the conference.

Form of community conference agreement

Section 18F. This states that any community conference agreement must be in the approved form. The agreement must also be signed by the child, the convenor, the victim and either the police or the prosecution representative. It must contain provisions under which the child's compliance with the agreement is to be monitored. The agreement must contain a provision that the child admits the offence. This reflects a primary aim of the conference which is for the child to accept responsibility for the offence. The agreement may also contain provisions concerning restitution, compensation, an apology, the child's future conduct as a child or a program similar to a probation order or a community service order (in which case the chief executive must also sign the agreement), and any other matter which the convenor considers appropriate. The agreement must not be more onerous on the child than a sentence order would have been. A copy of the agreement must be supplied immediately to each of the signatories.

If chief executive signs agreement for program

Section 18G. This provides that when the chief executive signs a community conference agreement which provides for a program similar to one normally found under a community service order or a probation order, then the chief executive may arrange and monitor the program. If the child fails to complete the program, the chief executive may opt to take no action, or may notify the police (in a case initially referred to conferencing by the police) or the court (in a case initially referred to conferencing by the court).

Subdivision 2—Reference by police officer before a proceeding starts

Reference of offence to community conference by police officer

Section 18H. This permits a police officer to refer an offence to a

community conference before a proceeding is started, only if the child admits committing the offence to the police officer, the victim (if any) consents, and the police officer considers that the referral is a more appropriate way of dealing with the offence than criminal proceedings and the officer considers that a caution is inappropriate. A convenor must be available before the referral may be made. The convenor may decline to convene the conference if, in the convenor's opinion, it is an unsuitable case for a conference. This must be done in writing and will be taken to have brought the conference to an end.

If an agreement is made on a referral by a police officer

Section 18I. This states that when a matter is referred to a community conference by a police officer, and the conference results in the making of a community conference agreement, the child may not then be prosecuted for the offence in question.

Powers of police officer if referral is unsuccessful or if child contravenes agreement

Section 18J. This provides that if a child fails to attend a community conference which has been started by a police officer, or the conference ends without an agreement being made, or the child contravenes any agreement, then in considering the next appropriate action, the police officer must have regard to the circumstances of the offence, the child's previous history, the degree of participation in the conference process by the child and anything done by the child under the agreement. In the light of these factors, the police officer may then take no further action, administer a caution, refer the matter to another conference (with or without the same convenor) or commence criminal proceedings against the child for the offence.

Division 3—Confidentiality of cautions, community conference agreements and information from community conferences

Confidentiality of cautions and community conference agreements

Section 18K. This establishes a general rule that a police officer can not, upon pain of a maximum fine of 100 penalty units, give to anyone outside the Queensland Police Service information which is likely to identify a child as a person to whom a caution has been or is to be given, or who entered into a community conference agreement (only where the conference has been initiated by a police officer).

To this general rule there is then applied a list of exceptions, which allow the identity of the child (in either case) to be disclosed to a parent of the child, a complainant for the offence in question, the chief executive, a member of any state or Commonwealth police service dealing with a child offender, a legal practitioner acting for the child, a court or legal practitioner acting for a party in a proceeding in respect of which the giving of the caution or the making of a community conference agreement is admissible in evidence, a person investigating offences under an Act and who is dealing with a child offender, a researcher undertaking research approved by the police commissioner, or any person, for the purpose of this Act.

Confidentiality of information about community conference generally

Section 18L. This section makes clear that information gained by a community conference convenor in the conduct of a community conference is confidential information gained through the administration of the Act, for the purpose of section 226. The section indicates what is a reasonable excuse for the recording, disclosure or use of such information.

Division 4—Use in evidence of cautions, community conference agreement and information about community conferences**Admissibility of evidence of caution or community conference agreement**

Section 18M. A general rule is laid down to the effect that evidence of a previous caution or community conference agreement is not admissible against the child in any later proceedings against the child for an offence. Exceptions are then made in the cases of a disclosable caution or a

disclosable community conference agreement, applications under s18(2) and any other proceedings under which the giving of a caution or the making of a community conference agreement may be admissible in evidence under an Act.

Disclosable caution and community conference agreement—later childhood offence

Section 18N. This defines a “disclosable caution” and “disclosable community conference agreement” for the purposes of later proceedings against the child to whom they refer in respect of another offence committed as a child. The intention is to ensure that where a child receives the benefits of a diversionary process for a seven year offence (as defined) then if the child offends again as a child, the fact of the diversionary process can be brought to the court’s attention for sentencing for that later child offence.

An advantage of an informal disposition is that it is an opportunity for the recipient not to offend again. Where the recipient does offend again and ignores this opportunity, then there has to be a balance between the confidence attaching to the informal process and the ability of the court to know the person’s history of offending. The balance has been struck at the revelation of the informal disposition of a seven year offence, where the person is then formally proceeded against for another offence.

Disclosable caution and community conference agreement—later adulthood offence

Section 18O. This defines “disclosable caution” and “disclosable community conference agreement” for the purposes of later proceedings against the child to whom these definitions refer in respect of offences committed as an adult. The intention is that if a child is dealt with by a diversionary process for a seven year offence (a defined term) and as a child is dealt with for another seven year offence (as defined) then if they commit any offence as an adult, the diversionary process for a seven year offence can be disclosed to a court. It is made clear that it does not matter in which sequence the diversionary process and dealing occur. For example, there can be a caution followed by a court order or a court order followed by a caution. In either case, the caution can be disclosed if it is a disclosable caution.

Again, a balance has been struck between the confidence attaching to the informal process and the court having access to the offender's antecedents.

Use of information from community conference in evidence

Section 18P. This renders inadmissible anything said, done or admitted at a community conference, except in the circumstances set out in the Section.

Amendment of Part 2 heading

Clause 9. The words "cautions and" are deleted from the heading of Part 2.

Amendment of section 10 (Police officer to consider alternatives to proceedings against a child).

Clause 10. This amends Section 10 to include, among the options available instead of criminal proceedings against a child, the referral of an offence to community conferencing. This amendment reflects the establishment of the process of community conferencing. Section 10 is renumbered as section 19.

Omission of section 18 (Confidentiality of cautions—admissibility)

Clause 11. Section 18 of the Act, currently providing for the confidentiality of police cautions, is repealed. An amended form of this provision (taking into account community conferences) appears in Section 18M.

Amendment of section 19 (Children's Court may dismiss charge if caution should have been administered)

Clause 12. Section 19 of the Act is amended to allow a court dealing with a child's guilty plea in a case which the court considers should have been dealt with by means of a caution to administer such a caution itself or direct that such a caution be administered.

Amendment of section 20 (Arrest and ex officio indictment power preserved)

Clause 13. Section 20 of the Act is amended to allow a police officer the power of arrest for a serious offence (a defined term).

Section 20 of the Act is amended to allow a court to regard as lawful, the arrest of a child whom a police officer believed, on reasonable grounds, to be an adult. In deciding the matter, the court may have regard to the apparent age of the child, and the circumstances of the arrest. This change is made to protect the actions of police officers acting on a reasonable, mistaken belief that the child is an adult.

Amendment of section 22 (Parent and chief executive must be advised of arrest of child)

Clause 14. Section 22 of the Act is amended to add to the definition of a “parent” of a child, for that section, any person who appears to be a parent of that child.

Amendment of section 23 (Attendance notice may be issued for arrest offence)

Clause 15. Section 23 of the Act is amended to allow the police to proceed by means of the attendance notice process in respect of *any* offence committed by a child. At present the procedure is only available in respect of offences for which the child may be arrested without warrant. The existing requirement for a police officer to act “promptly” has been removed. The amendments are intended to encourage police to use alternatives to arrest more frequently.

Amendment of section 28 (Parent and chief executive must be advised of service of attendance notice on child)

Clause 16. Section 28 of the Act is amended to add to the definition of a “parent” of a child, for the purpose of that section, any person who appears to be a parent of that child.

Amendment of section 32 (Service of complaint and summons if offender a child)

Clause 17. Section 32 of the Act, which deals with proceedings against a child by way of the complaint and summons process, is amended in two respects. First, police need no longer serve a copy of the complaint and summons on the “parent” of the child in circumstances in which a parent cannot be found after reasonable inquiry. Second, the definition of “parent” is expanded to include any person who appears to be a parent of that child.

Amendment of section 41 (Custody of child pending court appearance)

Clause 18. Section 41 of the Act is amended to substitute the Commission for the chief executive. This alteration is necessitated by the transfer of detention centres to the Commission.

Amendment of section 43 (Custody of child if not released by court)

Clause 19. Section 43 of the Act is amended to substitute the Commission for the chief executive. The amendment reflects the transfer to the Commission of administrative responsibility for detention centres.

Amendment of section 48 (Application of part 4 of Mental Health Act 1974)

Clause 20. Section 48 of the Act (which applies the provisions of s4 of the *Mental Health Act 1974* to a child charged with all but simple offences) is amended to provide that mention of the Community Correction Board in Part 4 of the *Mental Health Act 1974* is taken to mean the Commission. The amendment reflects the transfer of responsibility for detention centres to the Commission.

Amendment of section 56 (Presence of parent required generally)

Clause 21. Section 56 of the Act is amended to clarify that its provisions apply to any court dealing with a child.

Insertion of new section 56A (Court may order parent to attend)

Clause 22. A new Section 56A of the Act empowers a court dealing with a child to order a parent of the child to attend the proceeding. This may be on the initiative of the court or upon application by the prosecutor. A parent contravening such an order may face a penalty of up to 50 penalty units. The court may recommend that the chief executive provide financial assistance to ensure the parent's attendance. The court will still have the power presently conferred by section 56 of the Act to adjourn the proceeding so that a parent can attend.

Replacement of section 60 (Chief executive's right of audience generally)

Clause 23. Section 60 of the Act is amended to allow a right of audience to the Commission, in those matters specified in the section, in cases in which the child is a detainee. This reflects the fact that under other changes to the Act, the Commission is made responsible for detention centres. The chief executive continues to have a right of audience as before.

Amendment of section 67 (Use of adduced evidence after change of procedure)

Clause 24. This amends section 67 to confirm that already adduced evidence in a proceeding can be used by a court which decides to continue or hear a proceeding in its concurrent jurisdiction.

Replacement of sections 68 and 69

Clause 25. Clause 25 deletes existing ss 68 and 69 and inserts new subdivisions 1 to 3 and clauses 68, 69 and 69A to 69E.

The change made by the Sections is to provide for the Supreme Court to hear all offences, in which a child is charged, which if committed by an adult, could only be heard by the Supreme Court.

Under the existing legislation, a child could elect for these matters to be heard by a Children's Court Judge, sitting without a jury.

It is considered that if offences are of such seriousness that the Parliament considers that they should be heard by the Supreme Court, then

they should be heard by the Supreme Court whether they are alleged to have been committed by a child or adult. The amendments remove the possibility of a child electing for those matters to be heard by a Children's Court Judge sitting without a jury.

Insertion of new subdivision heading

Clause 26. A new subdivision heading is inserted before s 72.

Amendment of section 89 (Application for review)

Clause 27. Section 89 of the Act is amended, by granting to the Commission (where the child is a detainee) the right to apply for a sentence review. This amendment reflects the fact that the Commission is assuming responsibilities for detention centres.

The ability to apply for a sentence review will be extended to the complainant or arresting officer. This is a policy change. It is considered that the prosecution should be allowed to use this process.

The amendment will extend the time period for bringing the application to 28 days.

Amendment of section 94 (Interrelation with other types of appeal)

Clause 28. This contains amendments to section 94, which governs the priority between appeals and sentence reviews. The changes are necessitated because of the extension of the ability to apply for a sentence review to the complainant or prosecution. The general rule is established that a child's appeal takes priority and a Children's Court Judge cannot hear the prosecution's application for the sentence review until the ordinary appeal is finished.

Amendment of section 98 (Correction of error by court making order)

Clause 29. Section 98 of the Act is amended to grant to the Commission a right to apply, in relation to a detainee (a defined term), to a Children's Court Magistrate to correct an error in a proceeding. The change reflects the assumption by the Commission of responsibility for detention centres.

Amendment of section 101 (Lack of jurisdiction discovered after proceeding ends)

Clause 30. Section 101 of the Act is amended to grant to the Commission, in cases in which a child is a detainee, the right to apply to the court to have a finding or an order set aside on the grounds of lack of jurisdiction. This change is needed because of the Commission assuming responsibility for detention centres.

Amendment of section 102 (Extension of Act for detainee offender)

Clause 31. Section 102 of the Act is amended so as to substitute the Commission for the chief executive of the entity entitled to make recommendation to the court that a detainee who has since become an adult continue to be treated as a child in respect of additional offences committed by the person between the ages of 17 and 18 for which proceedings are commenced within a year of the offence.

Amendment of section 105 (Offender treated as adult)

Clause 32. Section 105 of the Act is amended so as to indicate clearly, in its heading, that in the circumstances covered by the section (proceedings against an adult in respect of child offences which are not commenced, or not completed, until after the person's 18th birthday) the offender must be treated as an adult for the purposes of sentencing.

Amendment and relocation of section 106 (Sentencing offender)

Clause 33. Section 106 of the Act is renumbered as Section 107B, and relocated in the Act after Section 107A. The heading is amended in order to indicate that it covers all the situations dealt with in the amended Section 105 and the new Sections 106 and 107A, but otherwise there is no change to the existing law.

Insertion of new section 106 (When offenders may be treated as adult)

Clause 34. A new Section 106 of the Act gives the sentencing court a discretion to deal, as an adult, with an offender who has since become an adult, in respect of offences committed as a child, in circumstances which

are not covered by the mandatory requirement to do so laid down under Section 105. These circumstances arise when the person has, in addition to the child offences which have not yet been completed, been proceeded against or sentenced as an adult in respect of other offences. The new section is intended to give the sentencing court the opportunity to sentence, realistically, an offender who has already crossed the threshold into adult offending, but has outstanding child matters pending.

Amendment of section 107 (Continuing effect on offender of orders made as a child)

Clause 35. This clarifies section 107 by stating that it is intended to operate where a person subject to a child order commits an offence or breaches a requirement of the order, while subject to the order, but after becoming an adult. It also clarifies that a Magistrate can deal with an adult for breach of a child order.

Insertion of new section 107A

Clause 36. A new Section 107A of the Act introduces , for certain cases, an exception to the general rule under Section 107 (which remains unaltered) whereby a sentence order imposed on a child, and any other proceedings or orders (e.g. breach orders) made under the original order continue to apply as if the person were still a child, even though the person has since become an adult. Under the new Section 107A, the offender may be treated as if the sentence order imposed when the person was a child, and any subsequent proceedings or orders arising from it, were adult orders, when either (i) the person has, as an adult, been proceeded against or sentenced as an adult in respect of another offence or other offences, or (ii) the person is now over 18. As with the new Section 106, this new section is intended to provide the court to deal more realistically with an offender who no longer requires to be treated as a child, and as with Section 106, the power is discretionary.

Amendment of section 110 (Presentence report)

Clause 37. Section 110 of the Act is amended so as to ensure that the full 15 day period allowed under the existing section for the preparation of a pre-sentence report is available when it is required, due to heavy case load

or limited resources.

Amendment of section 112 (Disclosure of presentence report).

Clause 38. Section 112 of the Act is amended to give the sentencing court a discretion as to whether or not a copy of the pre-sentence report is made available to the child or a parent, in cases in which the child is not legally represented. A further amendment to the section grants the court the right to impose restrictions on its disclosure and the right to order its return.

Amendment of section 113 (Finding of guilt as child may be disclosed as child)

Clause 39. An amendment is made to section 113 of the Act. The relevance of a finding of guilt to a bail decision has now been dealt with in the *Bail Act* by another amendment contained in the Bill. The reference to bail has been deleted from section 113.

Amendment of section 114 (Evidence of childhood finding of guilt not admissible against adult)

Clause 40. Section 114 of the Act is amended to create an exception to the general rule that a finding of guilt as a child which did not result in the recording of a conviction is not admissible against the offender in a criminal proceeding against that person as an adult. Under the new provisions, when a child is cautioned, makes a community conference agreement or is dealt with on a finding of guilt in respect of a seven year offence (a defined term) and then is dealt with for another seven year offence, any finding of guilt as a child, whether a conviction is recorded or not, becomes part of the person's criminal history to which reference may be made when sentencing that child, as an adult, for any offence.

Insertion of new section 114A (Particular cautions and community conference agreements admissible as part of person's criminal history)

Clause 41. A new Section 114A of the Act provides that a caution which, for a proceeding, is a disclosable caution (a defined term) and a

community conference agreement, which for a proceeding, is a disclosable community conference agreement (a defined term) may be considered to be part of a person's criminal history, for the purpose of sentencing.

Amendment of section 119 (Copy of court order to be given to child, parent and chief executive)

Clause 42. Section 119 of the Act is amended to give to the Commission the right to be given a copy of any sentence order made in respect of a child who is a detainee. This change reflects the fact that detention centres will be administered by the Commission.

Insertion of new pt 5, div 1A

Clause 43. This inserts a new Division 1A dealing with the court's power to refer matters to conferences before sentencing.

Division 1A—Court referred community conferences before sentencing

Reference to community conference by court

Section 119A. This provides that a court may refer an offence to a community conference, only if a finding of guilt is made against the child, the victim (if any) consents, and the court considers that a conference referral would be an appropriate disposition without a sentence order or would assist in the making of a sentence order. The court must be satisfied that a convenor will be available. The court may give such directions as it considers appropriate for the conduct of the conference. The court may also adjourn the proceedings pending the outcome of the conference.

If an agreement is made on an indefinite referral by a court

Section 119B. This provides that, in cases referred to a community conference by a court which at the time considers that no additional sentence order need be made, the convenor must give notice to the court that an agreement has been made. This will have the effect of bringing the proceedings to an end, and the child will not be liable to further prosecution for that offence. However, the child will be regarded as having been found

guilty of the offence without a conviction being recorded.

Powers of proper officer if indefinite referral is unsuccessful or if child contravenes agreement made on court's indefinite referral

Section 119C. This section provides the proper officer with the ability to take action where a child does not attend a conference, an agreement is not reached at a conference or an agreement is breached by the child. The proper officer has three courses of action—inaction, referral to another conference or listing before the court for sentencing. Where the proceeding has been brought to an end by an agreement, the section provides for the proceeding to start again.

If an agreement is made on a referral by a court before sentence

Section 119D. This provides that when a community conference referral is made by a court in order to assist it in making an appropriate sentence order, the court must consider the degree of participation by the child in the conference, the terms of the agreement itself and anything done by the child under the agreement. Any sentence imposed by the court may duplicate a requirement of the agreement.

Amendment of section 120 (Sentence orders—general)

Clause 44. Section 120 of the Act is amended so as to increase the maximum orders which may be imposed on a child in respect of an offence other than a serious offence.

In the case of community service orders, (which also apply to serious offences) the maximum order in respect of a child aged between 13 and 15 is raised from 60 hours to 100 hours, while in respect of a child aged between 15 and 17 it is raised from 120 hours to 200 hours.

In respect of detention orders, the maximum period is raised from 6 months to 1 year when the order is imposed by a magistrate, and in the case of an order imposed by a judge it is raised from 2 years to whichever is the shorter of 5 years or one half of the sentence which could be imposed on an adult for the same offence.

Amendment of section 121 (Sentence orders—serious offences)

Clause 45. Section 121 of the Act is amended so as to increase the maximum orders which may be imposed on a child in respect of a serious offence.

Life sentences may in future be imposed on children in respect of offences which carry life sentences when committed by adults, which involve the commission of violence against a person, and which the court considers to have been particularly heinous in all the circumstances.

In respect of “life offences” which do not fall into this category, the maximum sentence will remain at 10 years.

For serious offences other than life offences, the new maximum will be 7 years.

All detention orders may take effect subject to an immediate release order.

Insertion of new sections 121A, 121B and 121C

Clause 46. A new Section 121A (More than 1 type of order may be made for a single offence) allows a court passing sentence on a child to impose more than one type of sentence order in respect of a single offence. This is a change from the current position. It is expressly intended that combinations of orders will be allowed for a single offence. The intention is to provide the court with flexibility to deal with a child.

However, the new Section 121B (Combination of probation order and community service order) provides that if the chosen combination is of a probation order and a community service order, then the court must make separate orders, and may not impose the successful completion of one of the orders as a requirement of the other. Further, if the contravention by the child of a requirement of either order results in a resentence for the original offence, the other order is automatically discharged.

In addition, the new section 121C (Combination of detention order and probation order) provides that if a detention order is combined with a probation order, the detention order may only be for a maximum of 6 months, and may not be subject to an immediate release order, and the probation order may only be for a maximum period expiring 1 year after the offender is released from detention. Also, in such a case, the requirements of the probation order only start when the child is released

from detention, that is, when the child is released from custody. It is intended that in these circumstances, the period of detention will still include a period of release on a fixed release order. The requirements of the probation order and fixed release order will overlap for the duration of the fixed release order.

Amendment of section 122 (Other orders)

Clause 47. Section 122 of the Act is amended to allow a sentencing court, in addition to making a sentence order under sections 120 or 121, to make an order for the taking of the fingerprints or palmprints of the child under the new section 194A.

Amendment of s124 (Recording of conviction)

Clause 48. Section 124 of the Act is amended so that a decision by the court not to record a conviction may only be made when no other sentence order is imposed other than a reprimand or a good behaviour order.

Insertion of new section 131A

Clause 49. A new Section 131A of the Act is inserted allowing the proper officer of the court which imposed a fine on a child who subsequently fails to pay it in full, within the time allowed, to apply to the court to have the fine order cancelled and replaced with a community service order.

Prior notice of the application must be given to the child, a parent (unless no parent can be found after reasonable inquiry), and the chief executive.

The court is given a discretion as to whether to reject the application, extend the time for payment, or convert the balance of the unpaid fine into hours of community service, using the conversion formula supplied under the section.

However, the result may not be such as to impose on the child a longer period of community service than the child could have originally have been ordered to perform, or require the child to perform less than 20 hours. Where application of the conversion formula would lead to the performance of less than 20 hours of community service, the fine cannot be converted.

Where the calculated hours exceed the maximum, the maximum number may be imposed.

Amendment of section 134 (Chief executive’s application on breach)

Clause 50. Section 134 of the Act is amended to absolve the chief executive of the obligation to serve on a parent a copy of any breach application under that section, in circumstances in which a parent, or someone who is apparently a parent of the child, cannot be found after reasonable inquiry.

Amendment of section 141 (Variation, discharge and resentence in the interests of justice)

Clause 51. Section 141 of the Act is amended so as to delete subsection (4), which has given difficulty of interpretation in practice, and appears to add nothing to the law in this area.

Amendment of section 149 (Community service to be performed within limited period)

Clause 52. Section 149 of the Act is amended so as to extend, from the current 6 months to a new period of 1 year, the period within which a child offender must perform the hours of community service imposed by a court. This has been extended to take account of the greater number of hours which may be imposed under the amended Section 120.

Amendment of section 153 (Chief executive’s application on breach)

Clause 53. Section 153 of the Act is amended to absolve the chief executive of the obligation to serve on a parent a copy of any breach application under that section, in circumstances in which a parent, or someone who is apparently a parent of the child, cannot be found after reasonable inquiry.

Amendment of section 156 (Specific powers if breach proved)

Clause 54. Section 156 of the Act is amended to allow a court dealing

with a breach of a community service order to extend the period within which the hours of service must be performed beyond the period of 1 year originally granted. This is only one of the options open to the court, and simply reflects the longer performance period contemplated under the amendment to Section 149.

Amendment of section 158 (Variation, discharge and resentence in the interests of justice)

Clause 55. Section 158 of the Act is amended so as to delete subsection (4), which has given difficulty of interpretation in practice, and appears to add nothing to the law in this area.

Amendment of section 167 (Detention to be served in detention centre)

Clause 56. Section 167 of the Act is amended to substitute the Commission for the chief executive. This change reflects the fact that detention centres will be administered by the Commission.

Amendment of section 171 (Limitation on cumulative orders)

Clause 57. Section 171 of the Act is amended to increase the maximum periods of detention which may be imposed on a child under cumulative detention orders. The maximum period which can be imposed by a Childrens Court Magistrate is increased from 6 months to 1 year, and the maximum period which can be imposed by a Childrens Court Judge is increased from 2 years to 7 years.

Insertion of new section 172A (Application for variation of detention order in interests of justice)

Clause 58. A new Section 172A to the Act allows a child (or the Commission acting in the child's interests) to apply to the court which originally passed a sentence order on the child for a declaration that a period spent in custody (whether on remand or under sentence) in another state while the child was an escapee from the original detention order, but in respect of an offence or alleged offence committed interstate, be taken to have been served under the original order. The court has a complete discretion as to whether or not to grant the application.

Amendment of section 173 (Multiple orders of detention and imprisonment against person as adult and child)

Clause 59. Section 173 of the Act is amended to allow the Commission, when an offender is serving concurrent periods of imprisonment and detention, to arrange for all or part of the concurrent period to be served in a detention centre. Under the present legislation this is a matter for arrangement between the Commission and the chief executive. The amendment reflects the transfer of administrative responsibility for detention centres to the Commission.

Insertion of new pt 5, div 7, subdiv 4

Clause 60. This new subdivision (which consists solely of new Sections 191A and 191B) contains new provisions in relation to the granting of parole to a child who is sentenced to life imprisonment

New Section 191A establishes that the subdivision applies to child offenders given a life sentence.

New Section 191B applies the parole provisions of part 4 of the *Corrective Services Act 1988* which relate to a prisoner serving a life sentence to a child serving such a sentence.

Insertion of new pt 5, div 9A

Clause 61. This new Division (which consists solely of a new Section 194A) is established in order to contain new provisions concerning the taking of fingerprints from a child following a finding of guilt of certain offences.

New Section 194A of the Act provides that following a finding of guilt of an indictable offence, or an offence under any of the statutes listed in the section, the court may, in addition to making a sentence order, order that the child be taken into police custody for the specific purpose of recording the child's fingerprints or palmprints. It is an offence for the child to fail to comply with the order.

If the child will be in custody when the identifying particulars are to be taken, they are to be taken at the place where the child is in custody.

Amendment of section 197 (Notice to parent of child offender)

Clause 62. Section 197 of the Act is amended to empower a court which finds a child guilty of an offence against the person or against property to call upon a parent to show cause why he or she should not be ordered to pay compensation to the victim on the grounds that the parent's failure to adequately supervise the child may have contributed to the offence occurring. This represents a change from the existing law, under which it must be shown that "wilful failure" by the parent to exercise proper care of or supervision over the child "was likely to have substantially contributed to the commission of the offence". The section is further amended to clarify that such proceedings are civil in nature and that costs can be ordered.

Amendment of section 198 (Show cause hearing)

Clause 63. Section 198 is amended in order to impose a financial limit of 67 penalty units on any compensation order imposed by the court in the circumstances described in section 197. It is also expressly declared that the Commission cannot be held liable to pay compensation. It is expressly declared that the application is decided on the balance of probabilities.

Amendment of section 199 (Recovery of unpaid compensation amounts)

Clause 64. Section 199 of the Act is amended to make any compensation amount awarded by a court under section 198 a debt owed by the person against whom the order is made to the person named in the order. This is to make sure that these orders, being civil orders, are only subject to civil enforcement methods.

As under the present law, it may then be filed in the magistrates court and enforced under the *Magistrates Courts Act 1921*.

Omission of section 202 (Chief executive to establish programs and services)

Clause 65. Section 202 of the existing Act is repealed.

Amendment of section 203 (Management of detention centres)

Clause 66. The wording of section 203 of the Act is amended in order to facilitate the transfer of the management of detention centres to the Commission.

Amendment of section 205 (Functions, powers and duties of official visitor), Amendment of section 206 (Directions to official visitor on security), Amendment of section 207 (Where children to be detained), Amendment of section 208 (Authority for admission to detention centre), Amendment of section 210 (Leave of absence)

Clauses 67 to 71. Sections 205, 206, 207, 208 and 210 of the Act are amended to substitute the Commission for the chief executive. This change reflects the fact that detention centres will be administered by the Commission.

Amendment of section 211 (Childrens Court may order transfer to prison)

Clause 72. Section 211 of the Act is amended as to allow the Commission to apply to the court for an order that the balance of a child detention order be served as a term of imprisonment.

Amendments are also made to clarify the operation of the section.

The term “remainder of the period of detention” is replaced with the term “unserved part of the period of detention”, so as to leave no doubt that what is being transferred is the balance of the period left to be spent in custody.

At the same time, the opportunity is taken of clarifying the law relating to parole or early release in such circumstances. Under the amended section, the child must be released (but under parole conditions) on the date when the child would have been released had the detention order been served out in a child detention centre (that is, subject to the 50% or 70% fixed release date). The intention is to carry out the original intention of the sentencing court as to the length of actual detention, despite the physical transfer to a prison.

There are two exceptions, namely, earlier release on parole where special circumstances exist and where there is some other reason for the person remaining in custody (for instance, another sentence).

Amendment of section 212 (Chief executive may authorise treatment)

Clause 73. Section 212 of the Act is amended to substitute the Commission for the chief executive. This change reflects the fact that detention centres will be administered by the Commission.

Amendment of section 213 (Ordinary visitor)

Clause 74. Section 213 of the Act is amended to transfer to the Commission the authority to give or withhold consent to the entry of visitors to a detention centre.

At the same time, new provisions strengthen and clarify the right of Commission staff to search such visitors (short of a body search) and give such directions (including a direction to leave the centre) as are considered necessary for the security or good order of the centre.

Amendment of section 215 (Complaints generally), Amendment of section 216 (Official visitor to hear and investigate complaints), Amendment of section 220 (Search warrant), Amendment of section 221 (Warrants may be granted by telephone, facsimile, radio etc) Amendment of section 222 (Offences relating to detention centres), Amendment of section 223 (Child of detainee may be accommodated in detention centre)

Clauses 75 to 80. Sections 215, 216, 220, 221, 222 and 223 of the Act are amended to substitute the Commission for the chief executive. These changes reflect the fact that detention centres will be administered by the Commission.

Insertion of new section 224A (Programs and services for children) and Insertion of new Section 224B (Police may help in keeping child in custody).

Clause 81. This inserts new sections 224A and 224B.

A new Section 224A of the Act imposes on the chief executive responsibility for establishing programs and services necessary to give effect to any order or direction under the Act for children who have committed offences.

A new Section 224B of the Act facilitates the making of agreements between the police service and the Commission concerning responsibility for the holding of a child in custody.

Amendment of section 225 (Parent entitled to know of whereabouts of child in custody)

Clause 82. Section 225 of the Act is amended to impose on the Commission the duty to inform a parent of the whereabouts of a child held in custody, if the child is in the Commission's custody or the Commission knows where the child is located.

Omission of section 227 (Delegation by chief executive)

Clause 83. Section 227 of the Act is deleted and replaced by a new Section 227 dealing with approved forms.

Amendment of section 228 (Evidence)

Clause 84. Section 228 of the Act is amended so as to render unnecessary the proof, in any legal proceeding, of the appointment of a department's chief executive, an officer of the public service, an officer of the commission, an official visitor or anyone else appointed under the Act.

Amendment of section 229 (Proceeding for offence)

Clause 85. Section 229 of the Act is amended so as to allow a police officer, an officer of the public service or an officer of the Commission to appear for the prosecution in any proceeding for an offence against the Act even though the officer may not be either the complainant or the arresting officer. Any reference to a "legal practitioner" anywhere in the Act is taken to include a reference to such a person.

Replacement of section 234 (Transitional provisions)

Clause 86. The previous transitional arrangements contained within Section 234 (which have now been exhausted) are replaced by a new set of transitional arrangements based on *Administrative Arrangements Order (No.2) 1996* and the *Administrative Arrangements Amendment Order (No 1)*, which is dealt with in new section 234.

A new section 235 (Transitional orders and decisions saved by *Juvenile Justice Legislation Amendment act 1996*), validates any decisions or orders which would be invalid because it mentions a transitional department (a defined term) incorrectly.

A new Section 236 of the Act provides that the Act as amended will be taken to apply to any offence committed, or proceedings commenced, before the commencement of the Act, but that (i) an offender may not be sentenced to any greater sentence for an offence committed before the commencement of the Act than the offender would have received under the old Act, (ii) a caution administered before the commencement of the new caution provisions may not be disclosed to a court if it could not have been beforehand, and (iii) a parent may not be required to pay compensation under section 198 in respect of any offence committed by the child before the commencement of the Act if the parent could not have been so required prior to that commencement.

Amendment of sch 1 (Regulation making power)

Clause 87. Schedule 1 of the Act is amended so as to allow Regulations to be passed dealing with the community conference matters referred to in the new item 2.

Omission of schedule 2 (Transitional)

Clause 88. Schedule 2 of the Act (which contained transitional provisions relating to the commencement of the original Act) is deleted, as being no longer relevant.

SERVICES (ADMINISTRATION) ACT 1988

Act amended in pt 3

Clause 89. This provision confirms that the sections of the Act referred to are to be amended.

Replacement of section 6 (Interpretation)

Clause 90. Section 6 of the Act is amended so as to convert the Definitions section into a dictionary to be found in a new Schedule to the Act. It also contains new definitions needed because of the transfer of detention centres to the Commission.

Amendment of section 18 (Functions of commission)

Clause 91. Section 18 of the Act is amended so as to add to the functions of the Commission under the Act responsibility for the administration of detention centres under the *Juvenile Justice Act 1992*.

Amendment of section 19 (Powers of commission)

Clause 92. Section 19 of the Act is amended so as to add to the powers of the Commission under the Act powers relating to the administration of detention centres under the *Juvenile Justice Act 1992*.

Amendment of section 20 (Rules)

Clause 93. Section 20 of the Act is amended so as to clarify that the only powers which the Commission possesses relating to the making of rules or regulations relating to the administration of detention centres are those found under the *Juvenile Justice Act 1992*.

Amendment of section 30 (Custody of seal; authentication of documents)

Clause 94. Section 30 of the Act is amended so as to allow the authentication of documents made or issued by the Commission under the *Juvenile Justice Act 1992* to be by means of the signature of a

Commissioner or the secretary.

Amendment of section 32 (Disclosure of interest)

Clause 95. Section 32 of the Act is amended so as to add detainees under the *Juvenile Justice Act 1992* to the list of persons with whom a commissioner must declare any association in a private capacity.

Replacement of sections 34 to 38

Clause 96. The provisions of sections 34 to 38 of the Act are replaced by a new set of provisions contained with new Sections 34 and 35, which prescribe in general terms the provisions relating to the employment of staff by the Commission.

Amendment of section 43 (Discipline)

Clause 97. Section 43 of the Act is amended so as to add to the matters which may give rise to disciplinary proceedings against an officer or employee of the Commission the contravention of a code of conduct, rule, direction etc. issued under the *Juvenile Justice Act 1992*.

Amendment of section 45 (Suspension)

Clause 98. Section 45 of the Act is amended so as to authorise the suspension of an officer or employee of the Commission when the officer's alleged misbehaviour may be prejudicial to the security or good order of a detention centre.

Replacement of sections 51 to 60

Clause 99. Sections 51 to 60 of the Act are replaced by a simplified new section 51 which requires the Commission to maintain separate trust accounts for the receipt and distribution of money held on behalf of prisoners and detainees.

Amendment of section 61 (Secrecy)

Clause 100. Section 61 of the Act is amended so as to add documents and information under the *Juvenile Justice Act 1992* to the list of items which may not be disclosed otherwise than for the purposes of the legislation itself.

Amendment of section 63 (Commission deemed to be owner of property)

Clause 101. Section 63 of the Act is amended so as to add to those items of property which are deemed to belong to the Commission the physical fabric of detention centres, and items used by detainees in connection with community-based orders or programs.

Amendment of section 70 (Annual report)

Clause 102. Section 70 of the Act is amended so as to add the operation of the Commission's functions under the *Juvenile Justice Act 1992* to those matters which the Commission must include within its annual report.

Insertion of new pt 6

Clause 103. This inserts after section 72, a new part 6.

PART 6—TRANSITIONAL**Insertion of new Section 73 (Definitions)**

A new Section 73 of the Act defines the date upon which responsibility for the running of detention centres transfers to the Commission.

Insertion of new Section 74 (Transfer of staff to commission)

A new section 74 of the Act details the arrangements for the transfer from the public service to the Commission of staff employed in the operation of detention centres.

SCHEDULE

A new Schedule contains the Dictionary referred to in the new Section 6.

PART 4—AMENDMENT OF THE BAIL ACT 1980

Clause 104. This provides that this part amends the *Bail Act 1980*.

Insertion of new section 19A

Clause 105. This inserts in the *Bail Act* a new section 19A, which provides for consideration of findings of guilt, cautions and community conference agreements as a child in decisions about release from custody. They can be considered on a decision as to bail if they could be considered for the purposes of sentencing.

PART 5—AMENDMENT OF CHILDREN’S COURT ACT 1992

Act amended by pt 5

Clause 106. This provides that this Part amends the *Childrens Court Act 1992*.

Amendment of section 20 (Who may be present at a proceeding)

Clause 107. Section 20 of the Act is amended so as to grant to the Childrens Court the discretionary right to permit members of the media to be present during court proceedings.

PART 6—OTHER AMENDMENTS

Amendments in Schedule 2

Clause 108. This provides that Schedule 2 amends the *Corrective Services Act 1988*.

SCHEDULES 1 AND 2

The following provisions of the Bill make the minor and consequential amendments indicated to the Acts mentioned.

SCHEDULE 3

This lists the provisions which are to commence by proclamation.