Queensland

Explanatory Notes for SL 2003 No. 140

Juvenile Justice Act 1992

JUVENILE JUSTICE REGULATION 2003

GENERAL OUTLINE

Short title

Juvenile Justice Regulation 2003

Authorising Law

Section 314 of the *Juvenile Justice Act 1992* (as amended and re-numbered from 1 July 2003)

Objectives of the subordinate legislation

The objective of the regulation is to replace the *Juvenile Justice Regulation 1993* to provide updated subordinated legislation to the *Juvenile Justice Act 1992*, as amended by the *Juvenile Justice Amendment Act 2002*. The regulation is to prescribe matters relating to—

- youth justice conferences;
- the contents of pre-sentence reports;
- reporting requirements for community based orders;
- limits upon the chief executive about community based orders;
- the establishment of detention centres;
- the management of detention centres including:
  - admission procedures;
  - misbehaviour and discipline;

- the use of restraints;
- the separation of children in locked rooms;
- searches;
- children's property in detention;
- the keeping of registers;
- contact with children in detention through visits, correspondence and telephone calls;
- medical services to children in detention;
- the contents of a report of harm to children in detention;
- the keeping of records about the incidence of harm to children in detention; and
- the authorisation of disclosure of confidential information in certain circumstances.

Consistency with the authorising law

The provisions of the regulation are consistent with the authorising law.

Section 314 of the Act authorises the making of regulations. This includes, but is not limited to, making regulations in relation to the matters listed in schedule 2 of the Act. The matters referred to in schedule 2 (as amended) are as follows:

- The form of an attendance notice, all matters relating to the operation of attendance notices in the place of complaints and summons;
- All matters concerning community conferences, including—
  - convening a conference;
  - reports to be given by a conference coordinator or convenor;
  - time for completing a community conference;
  - regulating contents of community conference agreements;
  - keeping of names of persons approved as conference convenors and information about community conferences;
  - functions of coordinators and convenors not otherwise expressed in this Act;

- Matters to be included in pre-sentence reports;
- Forms, conditions, requirements, duties, functions and powers relating to orders made under part 7 (sentencing);
- The standards, management, control and supervision of probation orders, community service orders and intensive supervision orders and conditional release orders;
- Standards, management, control and supervision of detention centres;
- Maintenance of good order and discipline within detention centres;
- Conditions for the release of children from detention centres;
- Medical services to children in detention;
- Searches of children in detention centres and their possessions;
- Matters relating to the breach, revocation or variation of orders made under this Act;
- Penalties for a contravention of a regulation of not more than 20 penalty units.

Reasons for and policy objectives of the subordinate legislation

The *Juvenile Justice Act 1992* (the Act) provides the legislative framework for the administration of the criminal youth justice system in Queensland.

Between 1998 and 2001, the Department of Families undertook a major review of the Act to improve the way in which the youth justice system is administered. The review identified the need to significantly amend the Act to give further effect to established juvenile justice principles, as well as to reform and streamline the Court process. The Act also required amendment to provide a legislative response to the Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry).

As a result of the wide-ranging review of the Act, the *Juvenile Justice Amendment Act 2002* (the Amendment Act) was passed in Parliament on 22 August 2002. The Amendment Act was proclaimed on 12 December 2002 and certain sections dealing with confidentiality and publication of identifying information, commenced on 16 December 2002. The remainder and majority of the provisions are scheduled to commence operation on 1 July 2003.

The *Juvenile Justice Regulation 1993* (the previous regulation) commenced on 1 September 1993. In accordance with section 54 of the *Statutory Instruments Act 1992*, the regulation will automatically expire on 1 September 2003.

It is necessary to remake the regulation to provide appropriate subordinate legislation to the newly amended Act.

The subordinate legislation gives further effect to the policy objectives of the Act by regulating on matters listed in schedule 2 of the Act, in particular, the management of detention centres, for which the chief executive is responsible under Part 8 of the Act.

The way in which policy objectives will be achieved by the subordinate legislation

The policy objectives of the Act are to provide a juvenile justice system that holds children and young people accountable for their criminal behaviour, as well as protects their rights and encourages their rehabilitation and reintegration into the community, in accordance with internationally accepted principles of juvenile justice. It is also necessary to provide a safe and supportive environment for children detained under the Act. In furtherance of this principle, the Amendment Act provides a legislative response to the findings and recommendations of the Forde inquiry, through provisions such as the mandatory requirement to report harm to children in detention centres.

The regulation assists in achieving these policy objectives by regulating the management of detention centres, with an emphasis on the protection of children's and young persons rights and well being. The regulation also prescribes the contents of pre-sentence reports, certain reporting requirements under community based orders and the limitations placed upon the chief executive in relation to these orders. The regulation also authorises the disclosure of confidential information in certain circumstances, as provided for by section 289(h) of the Act.

It is reasonable and appropriate that such matters be given the force of law through regulation, as opposed to being dealt with by the internal policy and procedures of the Department of Families.

How the subordinate legislation is consistent with the policy objectives of the authorising law

The regulation is consistent with the policy objectives of the Act by regulating for certain matters referred to in schedule 2 of the Act, in accordance with the underlying principles set forth in the Charter of Juvenile Justice Principles (schedule I to the Act).

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the policy objectives of any other legislation.

Estimated cost of government implementation

There will be no cost involved in the implementation of the regulation, other than the existing costs associated with administering the Act and the management of detention centres.

Fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Under section 4(5) of the *Legislative Standards Act 1992*, the regulation must have sufficient regard to the institution of Parliament. It could be argued that the regulation contains some provisions which may not contain matters appropriate to subordinate legislation, such as provisions dealing with searches and restraints (section 4(5)(c) of the LSA).

However, under section 263 of the Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in a centre. Further, under section 263(2), the chief executive may carry out this responsibility by "using any convenient form of direction, for example, rules, directions, codes, standards and guidelines" in relation to the matters listed in the section. Under section 263(3), the chief executive is also responsible for, amongst other things, maintaining the discipline and good order in the centre and the security and management of the centre. The regulation is therefore within the power of the Act (section 4(5)(a) of the LSA) and is consistent with the policy objectives of the Act (section 4(5)(b) of the LSA).

The regulation contains many safeguards designed to protect the rights and wellbeing of children in detention. The regulation is subject to the Charter of Juvenile Justice Principles in the Act, particularly principles 3, 15, 19 and 20, which deal with the protection of children's rights and wellbeing whilst in detention. Under section 263(5), the chief executive must, as far as is reasonably practicable, ensure that these principles are complied with in relation to each child in a detention centre. The regulation will therefore be subject to the principles and safeguards in the Act relating to children in detention.

CONSULTATION

Consultation has occurred with the following government departments:

- Department of the Premier and Cabinet
- Department of Justice and Attorney-General
- Department of Corrective Services
- Department of Aboriginal and Torres Strait Islander Policy
- Queensland Health
- Queensland Police Service
- Business Regulation Reform Unit
- Office of the Queensland Parliamentary Counsel

In March/April 2003, a Discussion Paper was forwarded to the above government departments (except Queensland Health, BRUU and OQPC) and a number of external stakeholders including:

- Legal Aid Queensland;
- The Youth Advocacy Centre (YAC);
- The Aboriginal and Torres Strait Islander's Corporation (QEA) for Legal Services (ATSILS);
- The Logan Youth Legal Service;
- The Queensland Aboriginal and Torres Strait Islanders Legal Services Secretariat (QAILSS);
- The Commission for Children and Young People;
- The Youth Affairs Network Queensland;
- The Queensland Law Society;

- Sisters Inside;
- Teencare;
- The Council of Brisbane Aboriginal Elders;
- Murri Ministry;
- Loretto Sisters; and
- Victims of Crime Association Queensland.

Written comments on the proposed regulation were requested to be provided by 22 April 2003, but this was extended in some cases to 29 April 2003. Written comments were received from ATSILS, YAC, Logan Youth Legal Service, The Commission for Children and Young People, Victim's of Crime, QAILSS, Murri Ministry and Loretto Sisters (joint comments), DATSIP, the Department of Corrective Services and the Queensland Police Service.

On 14 April 2003 a public forum was held regarding the proposed regulation and this was attended by representatives of the Department of Families, Legal Aid Queensland, YAC, ATSILS, the Commission for Children and Young People, Murri Ministry and Loretto Sisters. The forum considered the issues raised in the Discussion Paper and a PowerPoint presentation made to the forum.

The Discussion Paper and the PowerPoint presentation to the public forum raised various issues for consideration regarding updating and improving the provisions in the previous regulation, particularly in light of the recent amendments to the Act. Changes were proposed in relation to the contents of pre-sentence reports and the management of detention centres (with an emphasis on the further protection of children's rights whilst in detention). New proposed regulations were also considered in relation to Youth Justice Conferences, as well as the requirement to report harm to children in detention and the requirement to keep records in accordance with amendments made to the Act in response to the Forde Inquiry.

A draft of the regulation was forwarded to stakeholders and further comments were considered.

RESULTS OF CONSULTATION

The response from stakeholders during the consultation process was generally supportive of the policy intent for the regulation. Most stakeholders supported the proposed changes to the section dealing with the contents of pre-sentence reports, the provisions dealing with

community based orders and the provisions dealing with management of children in detention, particularly the proposals to strengthen childrens rights in relation to searches, restraints and property.

The following suggestions by stakeholders have also been included in the regulation:

- the hours of community service that a child could be directed to perform in a week during school and work times has been reduced;
- the recording upon admission to a detention centre of any complaint by a child regarding their treatment since being initially detained/arrested;
- clothed searches involving touching (pat down) to be conducted by person of same sex;
- provisions have been inserted to further protect the dignity of children during searches;
- the use of force has been restricted to only those circumstances where it is reasonable believed that the act or omission can not be dealt with in any other way and the use of force must now be documented;
- a request that children who commit offences in a detention centre not be punished by both the Centre management and the court, has been partially adopted by requiring the Department to advise the court of any punishment given to a child who is being sentenced for the same act or omission;
- a requirement that a child be informed both orally and in writing, about what constitutes 'misbehaviour" in a detention centre;
- a request for minimum weekly telephone calls was partially adopted by a requirement that a child be allowed to make telephone calls at reasonable times;
- children who are separated in a locked room for any reason must be kept under observation in a way complying with directions issued by the chief executive.

It was originally proposed that consideration be given to including the Brisbane Children's Court Cells as a "place" for the purposes of section 201 of the Act. Under this section, a regulation can establish a detention centre or "other place" for the purposes of the Act. It was submitted by certain stakeholders that the BCC cells be included as a

detention centre, so that all of the provisions relating to detention centres in the regulation would extend to the cells. The concern raised related to the length of time that children are kept in cells awaiting court appearances and the lack of outdoor facilities. However, a stakeholder submitted strongly against the inclusion of the BCC cells in the list of detention centres in the regulation, as this would mean, amongst other things, that a child could be held overnight in the cells. It was decided not to include any reference to the BCC cells in the regulation.

It was also suggested that it be a requirement for an Indigenous child to be supervised by a culturally appropriate supervisor under a community based order, and that they participate in a culturally appropriate case management plan. It is considered that it is unnecessary to regulate in relation to these issues due to the operation of principle number 14 of the Charter of Juvenile Justice Principles, which states that any programs and services established under the Act must be culturally appropriate. It has also been expressly stated in the regulation that the chief executive must avoid, where practicable, directing a child to perform an activity under a community based order (except community service which is dealt with in section 197 of the Act), which conflicts with the religious or cultural beliefs of the child or their parents.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the regulation.

Clause 2 provides that the regulation commences on 1 July 2003, the same date that the majority and remainder of the provisions of the Amendment Act commence.

Clause 3 provides that the definitions in the regulation are set out in schedule 2.

PART 2—YOUTH JUSTICE CONFERENCES

Part 2 regulates certain matters relating to youth justice conferences under the Act.

Clause 4 prescribes the minimum amount of reasonable information that a conference convenor must give to a child about how to obtain legal advice, by referring the child to at least one free legal service provider, which could include Legal Aid Queensland. For an Aboriginal or Torres Strait Islander child, the information must include an Aboriginal and Torres Strait Islander Legal Service in the area.

Clause 5 requires a conference coordinator to ensure that a child who participates in a conference is informed about the consequences of contravening a conference agreement, as soon as practicable after the agreement has been made. This is consistent with the requirement in the Act to warn a child about the consequences of contravening a community-based order.

PART 3—PROCEEDINGS AND COMMUNITY BASED ORDERS

Part 3 regulates matters relating to pre-sentence reports and community based orders.

Clause 6 provides what is to be included in a pre-sentence report under the Act. The reference in the previous regulation to "mitigating circumstances" has been replaced with a reference to an assessment of factors contributing to the child's offending behaviour. The reference to a child's "criminal history" has also been replaced with a reference to details of all community-based orders and detention orders made against the child, including corresponding interstate orders. These changes have been made to more accurately reflect the Department's impartial role in the sentencing process. The clause also requires the inclusion of any consequences that have happened to the child as a result of the child's offending behaviour that are known to the chief executive. This could include discipline by the child's parents or, for indigenous children, any discipline by a member of the child's community.

Clause 7 requires any further material given to the Court under section 151 of the Act in relation to sentencing a child for another offence not covered by an existing pre-sentence report, to include the factors stipulated in the regulation. Section 151 of the Act was inserted in response to a decision of the Court of Appeal which allowed information to be placed before the Court for an offence not included in an existing pre-sentence report for offences that were for sentence on the same day. This obviated the need to order a further pre-sentence report in relation to the new offence.

Clause 8 requires a child under a community based order to notify the chief executive if the child is unable to comply with a reasonable direction of the chief executive because of injury, illness or other circumstance beyond the child's control. The previous regulation only referred to probation and community service orders. The regulation now refers to community based orders generally. A child is now only required to report "as soon as practicable", instead of "promptly" under the previous regulation. A person who is supervising a child under community service or other work must also report any injury sustained by the child to the chief executive. There is also now a requirement for the chief executive to explain to the child their obligations about informing the chief executive under the section. This ensures that the child is fully informed of their obligations under the section.

Clause 9 prescribes limits upon the chief executive to direct a child to perform an activity under a community based order. The previous regulation only referred to community service. The regulation now refers to community based orders generally. The chief executive will not be able to direct a child to perform any activity that is unsafe or likely to harm the child's health. The chief executive must also avoid, where practicable, directing a child to perform an activity (other than community service which is dealt with under section 197 of the Act) that conflicts with the religious or cultural beliefs of the child or the child's parent. The number of hours the chief executive can direct a child to perform community service in a week during school or work periods has now been reduced, to allow a child more time to attend to schooling and employment commitments.

PART 4—DETENTION CENTRES

Part 4 provides for the establishment and management of detention centres.

Clause 10 deals with the establishment of detention centres and names the centres as listed in the schedule. The reference to Sir Leslie Wilson Youth Detention Centre is not included in the schedule as the Centre no longer exists. The detention centres now listed in the schedule are Brisbane Youth Detention Centre, Cleveland Youth Detention Centre and John Oxley Youth Detention Centre.

Clause 11 stipulates that a document in the approved form under the *Police Powers and Responsibilities Act 2000* is sufficient authority to enable the chief executive to admit a child into a detention centre where the

child has been arrested for a breach of a condition of the child's bail, under section 200(3) of that Act.

Clause 12 prescribes that a child should not be admitted to a detention centre if the chief executive considers that the child is ill, injured or intoxicated and the child is in need of medical treatment. The clause also requires a medical certificate to be provided stating that the child is medically fit prior to their admission. This is in accordance with current departmental procedures.

Clause 13 requires certain information to be recorded upon a child being admitted into a centre. The information to be recorded now includes any aliases of the child, whether the child is Indigenous, and a record of any complaint made by the child regarding their treatment since arrest.

Clause 14 deals with information that must be given to a child as soon as practicable after their admission to a detention centre, under section 267 of the Act. The clause requires the information given to an Indigenous child to be explained by an Indigenous staff member, if this is reasonably practicable. If the child cannot understand English, then an interpreter or other person able to communicate with the child must, where practicable, explain the information. This further ensures that the child's rights and responsibilities whilst in detention will be explained in a culturally appropriate manner or in a language that the child understands.

Clause 15 prescribes how a child's property must be dealt with upon their admission to a centre. The chief executive must make a record of the property and the chief executive has certain options regarding how the child's property is to be dealt with. The chief executive is now required to give written notice under clause 39 to the child if the chief executive decides to destroy the child's property, unless the property poses an immediate risk to persons in the centre. The notice allows the child seven days in which to consult a lawyer and make any representations to the chief executive as to why the property should not be destroyed. This provision was inserted after submissions by stakeholders that natural justice required a child to be given an opportunity to state why their property should not be destroyed.

Clause 16 prescribes that the chief executive is required to inform a child admitted to a centre about the types of behaviour for which the child is likely to be disciplined. This information must be given to the child in writing and orally explained to the child in a way and to an extent that is necessary, having regard to the child's age and ability to understand.

Clause 17 prescribes how the chief executive is to manage the misbehaviour of children in detention. The chief executive must ensure that a child's misbehaviour is managed in a way that respects the child's dignity and cultural background or beliefs. Certain forms of discipline are prohibited, such as corporal punishment. It is now stipulated that the chief executive must not use (as a way of disciplining a child), the withholding of letters or access to telephone or other means of communication, or the exclusion of a child from cultural programs. A detention centre employee may only use reasonable force if it is reasonably believed that other children or property can not be protected in another way. This discourages the use of force by placing an obligation on the employee to consider alternatives to the use of force. There is also a requirement to document the use of reasonable force in disciplining a child. These provisions have been included to further protect the child's health and well being whilst in detention.

Clause 18 requires the chief executive to inform a Court about any discipline of a child for misbehaviour when the Court is sentencing the child for an offence related to the same act or omission. This provision was inserted in response to concerns raised by stakeholders who wished to prevent the possibility of "double punishment" occurring.

Clause 19 provides that the chief executive can approve the types of restraints that can be used by a staff member to restrain a child in the chief executive's custody.

Clause 20 requires that only those types of restraints approved by the chief executive can be used to restrain a child. New provisions have been inserted to protect the dignity of a child who is being restrained, and to ensure that restraints are used no longer than is reasonably necessary. There is no requirement for the chief executive to have reasonable grounds to restrain a child about to leave or who is outside the centre, unlike the case when a child is inside the centre. At all other times the chief executive may only restrain a child in a detention centre in certain circumstances when there are reasonable grounds to do so, and when it is reasonably believed that there is no other way to deal with the situation. However, nothing requires the use of restraints when a child is under escort outside a detention centre or about to leave a detention centre.

Clause 21 requires the chief executive to keep a register of the use of restraints on a child.

Clause 22 prescribes the circumstances when a child can be separated in a locked room. A child who is separated in a locked room for a "prescribed purpose" (ie: for the child's protection or for the protection of other persons

or property or to restore order in the centre) can only be separated for up to two hours (including two hours longer than the centre's normal hours of overnight confinement) with the detention centre manager's approval. If the separation is for longer than 12 hours, the chief executive must be informed, and if longer than 24 hours, the chief executive must approve the separation. The term "separation" is now defined to mean separation of the child "from all other children in the detention centre". A child who is separated in a locked room for any purpose must now also be kept under observation in accordance with approved procedures. Further, a child who is separated at their own request must be let out promptly if the child asks to leave the locked room.

Clause 23 stipulates that details regarding separation of a child for a prescribed purpose must also be entered in a register.

Clause 24 provides that the chief executive may authorise a detention centre employee to search at any time that the chief executive considers, on reasonable grounds, that the child should be searched.

Clause 25 prescribes that, subject to clause 26, a search of a child must not involve the removal of the child's clothes. A clothed search can be conducted whenever the chief executive considers, on reasonable grounds, that a child should be searched. It is now a requirement that a clothed search that involves touching the child be conducted by a person of the same sex as the child, as is the case with unclothed searches. A child must also be informed that a search will be conducted and be given a reasonable opportunity to cooperate. A detention centre employee may now only use reasonable force if it is reasonably believed that the search cannot be carried out in another way. This discourages the use of force by placing an obligation on the employee to consider alternatives to the use of force.

Clause 26 prescribes the circumstance when an unclothed search of a child can be conducted. An unclothed search can only be conducted if the chief executive considers on reasonable grounds that the search is necessary for the security of detention centre employees or children in detention. Prior to conducting an unclothed search, a child must be given an explanation of why it is necessary to remove the child's clothing and be given an opportunity to co-operate. Unclothed searches must also be conducted in a manner that has regard to the dignity of the child and conducted in reasonable privacy and as quickly as reasonably practicable. A detention centre employee may now only use reasonable force if it is reasonably believed that the search cannot be carried out in another way. This discourages the use of force by placing an obligation on the employee to consider alternatives to the use of force.

Clause 27 prescribes the circumstances when a body search can be conducted upon a child. A body search is now defined to mean a search of the child's body and includes an examination of an orifice or cavity of the child's body. The chief executive can only authorise a medical practitioner to conduct a body search if the chief executive considers, on reasonable grounds, that the child may be in possession of a thing that would threaten the security of the centre or endanger a child or another person. Similar safeguards that apply to unclothed searches also apply to body searches. A medical practitioner may also ask a detention centre employee of the same sex as the child to assist in carrying out the search. A medical practitioner, or a detention centre employee assisting the practitioner, may now only use reasonable force if it is reasonably believed that the search cannot be carried out in another way. This discourages the use of force by placing an obligation on the medical practitioner and any employee assisting the practitioner to consider alternatives to the use of force.

Clause 28 provides for a register of searches. A clothed search where reasonable force has been used must be documented. The register of searches must also contain certain information regarding unclothed and body searches. These safeguards have been included to protect the welfare of children during a search and to give further effect to recommendation 7 of the Forde Inquiry.

Clause 29 deals with articles found during a search of a child. A person who locates an article during a search must give the article to the chief executive. The chief executive has certain options regarding how the article is to be dealt with. The chief executive is now required to give written notice to the child under clause 39 if the chief executive decides to destroy the child's property, unless the property poses an immediate risk to persons in the centre. The notice allows the child seven days in which to consult a lawyer and make any representations to the chief executive as to why the property should not be destroyed. This provision was inserted after submissions by stakeholders that natural justice required a child to be given an opportunity to state why their property should not be destroyed.

Clause 30 prescribes matters concerning a child's right to make and receive telephone calls whilst in detention. The clause now stipulates that a child can make or receive a telephone call at reasonable times. The child is entitled to make a telephone call outside the hearing of any other person. The chief executive can require a detention centre employee to listen to a telephone call in certain circumstances but must first advise the child and the other person that the call will be monitored. However, the chief executive cannot monitor a telephone call between the child and his or her

lawyer, the community visitor, or the Commissioner for Children and Young People.

Clause 31 states that a child in detention has a right to send and receive correspondence. The chief executive can also examine correspondence in certain circumstances and can withhold correspondence, delete information from correspondence or return correspondence to the sender. However, the chief executive is no longer allowed to destroy correspondence. The chief executive cannot examine correspondence between a child and their lawyer, the community visitor, or the Commissioner for Children and Young People.

Clause 32 deals with property brought into a detention centre or made by the child whilst in the centre. The clause allows the chief executive to examine the property and after examination, the chief executive has certain options regarding how to deal with the property. However, the chief executive is now required to give written notice to the child under clause 39 if the chief executive decides to destroy the child's property, unless the property poses an immediate risk to persons in the centre. The notice allows the child seven days in which to consult a lawyer and make any representations to the chief executive as to why the property should not be destroyed. This provision was inserted after submissions by stakeholders that natural justice required a child to be given an opportunity to state why their property should not be destroyed.

Clause 33 stipulates that the child has a right to health and medical services. The chief executive must now ensure that a child is asked whether they wish to be examined by a medical practitioner of the same sex as the child and take reasonable steps to ensure the child's request is complied with. The chief executive must also ensure that the child is informed about who is entitled to inspect their medical records.

Clause 34 deals with reports of medical examinations and the keeping of medical records of children in detention. The clause allows the chief executive to ask a medical practitioner who examined the child for a medical report. The chief executive must ensure that medical records are kept confidential and separate from the centre's administrative records. The persons who are entitled to inspect the record include the child or, with the child's consent, the child's parent, lawyer, the community visitor, or the Commissioner for Children and Young People. The chief executive or another person authorised by the chief executive can also inspect the records. It is possible that in the future, Queensland Health will be responsible for the delivery of health services to children in detention. This would allow the chief executive to enter into arrangements with

Queensland Health regarding which persons would be entitled to inspect a child's medical records.

Clause 35 prescribes the particulars that a report of harm or suspected harm to a child under section 268(3) of the Act must include. Under section 268, a detention centre employee must report harm or suspected harm to a child in detention. The provision was included in response to a recommendation of the Forde Inquiry.

Clause 36 prescribes what information the chief executive must keep and record under section 303 of the Act, which was inserted into the Act in response to certain recommendations of the Forde Inquiry. The clause stipulates that the chief executive must keep information about reports of harm to children in detention centres, and information regarding a breach of any of the juvenile justice principles relating to children in detention. The information must be kept in a way which enables analysis of trends about the safety of children in detention. The information must also be kept for a period of 70 years from the date of birth of the child to whom the information relates.

Clause 37 requires the chief executive to provide information about reports of harm or breaches of juvenile justice principles to the Commissioner for Children and Young People on a regular basis, or when requested in writing by the Commissioner. This allows for independent scrutiny and analysis of the information by the Commission for Children and Young People.

Clause 38 stipulates that if the chief executive destroys any property (other than perishable property) of a child in detention, then the chief executive must, as soon as practicable, inform the child of the destruction and the reasons for it and make a record of such destruction in the property register.

Cause 39 sets out the procedure when the chief executive decides to destroy property (other than perishable property) taken from a child in a detention centre. The chief executive is required to give written notice to the child, unless the property poses an immediate risk to persons in the centre. The notice allows the child seven days in which to consult a lawyer and make any representations to the chief executive as to why the property should not be destroyed. The chief executive must consider the representations made by the child prior to destroying the property. This provision was inserted after submissions by stakeholders that natural justice required a child to be given an opportunity to state why their property should not be destroyed.

Clause 40 prescribes that upon the death of a child in the centre, the chief executive must immediately notify a police officer, the child's parents, the coroner, a community visitor, the Commissioner for Children and Young People and, if the child is Indigenous, the closest Aboriginal and Torres Strait Islander legal service.

Clause 41 allows the chief executive to approve the holding of a religious service in the centre.

Clause 42 prescribes that the chief executive must record the name and address of every visitor to a detention centre in a visitor's book.

PART 5—CONFIDENTIAL INFORMATION

Clause 43 deals with the authorisation of disclosure of confidential information in certain circumstances under section 289(h) of the Act. Many of the provisions authorising disclosure of confidential information have been inserted into the Act by the Amendment Act and the relevant provisions have therefore been deleted from the regulation. The remaining provision authorises disclosure of confidential information where the chief executive is satisfied that disclosure is essential to the wellbeing of the person to whom the information relates. The definition of confidential information in section 284 of the Act now includes a record or transcription of a court proceeding relating to the child. It is necessary that disclosure of these transcripts occur for use as precedent in other proceedings. It is arguable that such disclosure would be for the purposes of the Act and therefore would be authorised. But to put the matter beyond doubt, clause 43(2) now makes it clear that disclosure of confidential information by a judicial officer or other court officer is authorised where the disclosure is for administration of justice or a court. An example is given that a court officer can disclose a transcript of reasons for judgement for use as precedent. The section does not authorise publication of identifying information which is prohibited by section 301 of the Act. The term "confidential information" has the same meaning as that stated in section 284 of the Act.

PART 6—REPEAL

Clause 44 provides that the *Juvenile Justice Regulation 1993* is repealed.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Families.