

Youth Justice (Transitional) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 7

Made under the

Youth Justice Act 1992

General Outline

Short Title

This regulation may be cited as the *Youth Justice (Transitional) Amendment Regulation 2018*.

Authorising law

Section 388 of the *Youth Justice Act 1992*.

Policy objectives and the reasons for them

The objective of the *Youth Justice (Transitional) Amendment Regulation 2018* (the Regulation) is to amend the *Youth Justice (Transitional) Regulation 2018* (Transitional Regulation) to ensure that the only pathway into detention for a 17-year-old to whom the Transitional Regulation applies is via the safety and best interests assessment set out in part 4 of the Transitional Regulation.

Currently, part 4 only applies to 17-year-olds in custody at commencement. The amendments ensure that if a 17-year-old is subject to a sentence order or court proceedings for an offence at commencement, and subsequently enters custody in connection with that offence, they will be detained in a corrective services facility unless they are, at the time, already being held in a detention centre.

The amendments omit current provisions that direct 17-year-olds to detention centres in a range of circumstances – for example, when remanded in custody (s.17), on resentencing following revocation of a community-based order (s.64), or when an appeal court substitutes a new sentence (s.72). In these circumstances, the person will first go to a corrective services facility, where an assessment under part 4 will be conducted and the person transferred to a detention centre if it is safe and in the person's best interests to do so.

This will ensure that this transitional cohort will only enter into detention when it is safe and in their best interests to do so through the operation of part 4 of the Transitional Regulation.

Achievement of policy objectives

The Regulation will achieve the policy objective of providing for the sensible and safe management of the transfer of all relevant people from Corrective Services to Youth Justice.

Consistency with policy objectives of authorising law

The Regulation is consistent with the principal objectives of the Act. Section 2 of the Act provides that the principle objectives of are:

- a) to establish the basis for the administration of youth justice;
- b) to establish a code for dealing with children who have, or are alleged to have, committed offences;
- c) to provide for the jurisdiction and proceedings of courts dealing with children;
- d) to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act;
- e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to—
 - (i) rehabilitate children who commit offences; and
 - (ii) reintegrate children who commit offences into the community.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The benefit of the Regulation is that it will achieve the safe management of the transfer of all relevant people from Corrective Services to Youth Justice.

The costs of implementation of the Regulation are marginal in light of the costs of bringing 17-year-olds into the youth justice system in the longer term.

Consistency with fundamental legislative principles

The Regulation potentially departs from fundamental legislative principles (FLPs) established under the *Legislative Standards Act 1992* (LSA). Any such departure is justified and is necessary to implement the policy objective to treat 17-year-olds within the criminal justice system as children.

Whether the legislation has sufficient regard to the rights and liberties of individuals: section 4(2)(a) LSA.

The provision of the Transitional Regulation, part 2 and section 19 currently provide that a person who is ordered to serve a period of detention and who at the time that order is made is on remand or serving a term of imprisonment, would be required to serve that detention in a corrective services facility. Similarly, existing sections 17, 28, 64 and 72 of the Transitional Regulation provide that a 17 year old in the transitional cohort is to be placed back into an adult correctional facility only if at the relevant time, they were already in an adult corrective facility. The Regulation expands this to provide that any 17 year old in the transitional cohort who enters into custody will in the first instance be placed in an adult correctional facility.

These provisions of the Regulation could therefore be seen as potentially adversely affecting the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*) as prior to the commencement, the person would have been expecting to serve a period of detention or otherwise be placed in a detention centre under a custodial order.

However, any inconsistency with this FLP is considered to be justified as the Regulation is limited in application to the transitional cohort of 17-year-olds, who were charged as adults and without the Transitional Regulation would remain entirely in the adult justice system. Any breach needs to be balanced with the imperative to provide for the best interests of the transitional cohort, and the safety of that cohort and of others who may be impacted.

It should also be noted that there will be an opportunity to transfer to youth detention under part 4 of the Transitional Regulation.