

Youth Justice Amendment Regulation 2020

Explanatory notes for SL 2020 No 187

made under the

Youth Justice Act 1992

General Outline

Short Title

Youth Justice Amendment Regulation 2020

Authorising law

Sections 262 and 314 of the *Youth Justice Act 1992*.

Policy objectives and the reasons for them

The objectives of this regulation are to establish a new youth detention centre, and to allow a detention centre executive director to delegate the power to approve a separation of a child for more than two hours.

The inclusion of West Moreton Youth Detention Centre and its address in schedule 1 of the *Youth Justice Regulation 2016* (the YJ Regulation) establishes that place as a detention centre for the purposes of the *Youth Justice Act 1992* and provides staff from the Department of Youth Justice with the powers and obligations necessary to perform their functions.

The separation of a child in a locked room at a youth detention centre for a purpose specified in section 21(1)(d) or (e) of the YJ Regulation for longer than two hours requires the approval of the executive director of the youth detention centre. There is currently no provision for the delegation of this function.

A decision to maintain a separation for longer than two hours must be made within a short window of time. Detention centre executive directors are on call 24 hours a day, seven days a week, but there are times when they are uncontactable, for example due to lack of mobile phone reception or for personal reasons. The incidence of executive directors being uncontactable is low, but there is a risk of adverse outcomes if a separation is ended before it is safe to do so.

Achievement of the Objectives

The Youth Justice Amendment Regulation 2020 (the Amendment Regulation) will:

- Establish the West Moreton Youth Detention Centre; and
- allow a detention centre executive director to delegate the executive director's separation approval function to an appropriately qualified public service employee.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the *Youth Justice Act 1992*.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Benefits and costs of implementation

The benefits of implementation are the operationalisation of a new youth detention centre, and the assurance that decisions can be made in a timely way to protect the best interests of children and staff at youth detention centres.

There are no additional costs for government associated with implementing the Regulation. The construction and operation of West Moreton Youth Detention Centre are already funded.

Consistency with Fundamental Legislative Principles

The Amendment Regulation may raise a fundamental legislative principle consideration under section 4(3)(c) of the *Legislative Standards Act 1992* in relation to whether it allows the delegation of administrative power only in appropriate cases and to appropriate persons.

The power is significant, as it affects the rights and liberties of children. The Amendment Regulation therefore requires the delegate to be appropriately qualified. It is also noted that the *Acts Interpretation Act 1954* section 27A(10A) provides that the delegation of a function or power does not relieve the delegator of the delegator's obligation to ensure that the function or power is properly performed or exercised.

The Amendment Regulation does not raise any other fundamental legislative principle issues and is considered consistent with fundamental legislative principles.

Consultation

Consultation was undertaken with the Queensland Law Society (QLS), Legal Aid Queensland, the Aboriginal and Torres Strait Islander Legal Service, Youth Advocacy Centre, YFS Legal, the Office of the Public Guardian, the Queensland Family and Child Commission, the Crime and Corruption Commission Queensland, Together Queensland and the Australian Workers' Union. All except the QLS supported the proposals, subject to reservations about separation approval decisions being made by anyone less senior than an executive director. Stakeholders were assured that departmental policy will be clear that a delegate may only exercise the power if the executive director genuinely cannot be contacted, and that the delegation will not extend to a Manager.

The QLS did not support any delegation of the separation approval power, stating that the decision should remain with the executive director.

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the Amendment Regulation. The Department of Youth Justice applied a self-assessed exclusion from further regulatory impact analysis on the basis that the Amendment Regulation relates to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services (self-assessed exclusion category j).