Western Australia

Young Offenders Act 1994

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Defined terms

Western Australia

Young Offenders Act 1994

An Act relating to young persons who commit offences against the law, to amend certain Acts [1], and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Young Offenders Act 1994*.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation.

3. Terms used

(1) In this Act, unless the contrary intention appears —

Aboriginal community has the meaning given to that term in section 3 of the *Aboriginal Communities Act 1979*;

attendance conditions means conditions referred to in section 73(1)(a);

body sample means a sample of a person's blood, breath, or urine;

category 1 offender means —

(a) an offender who —

(i) has been charged with, or convicted of, a terrorism offence; or

(ii) is subject to an interim control order or a confirmed control order;

or

(b) an offender who has been subject to an interim control order or a confirmed control order at any time during —

(i) the period of the offender's sentence (the ***current sentence***); or

(ii) the period of 4 years ending on the day on which the offender's current sentence begins or is taken to have begun;

or

(c) an offender for whom an interim control order in respect of the offender is being sought under the Commonwealth Criminal Code section 104.3;

category 2 offender means an offender who has been charged with, or convicted of, an offence against the Commonwealth Criminal Code section 80.2C(1);

chairperson means the person appointed under section 152(1)(a);

chief executive officer means the chief executive officer of the Department;

Commissioner of Police report means a written report referred to in section 150D(1) or (4);

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* (Commonwealth);

community work conditions means conditions referred to in section 73(1)(b);

conditional release order has the meaning given by section 101;

confirmed control order has the meaning given in the Commonwealth Criminal Code section 100.1(1);

court means the Children's Court or other court dealing with a young person for an offence;

custodial officer means —

(a) a superintendent, or other officer with custodial functions, appointed under section 11(1); or

(b) a person who is appointed under section 11(1a)(a) as a custodial officer;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

detainee means a person who is detained in a detention centre;

detention, when referring to a sentence of detention, means detention in a detention centre;

detention centre means a place declared to be a detention centre under section 13;

earliest release day, in relation to a sentence of detention, means the earliest day on which the offender can, in accordance with section 121, be released under a supervised release order from custody under the sentence;

exempt responsible adult, in relation to a young person, means a responsible adult whose responsibility for the young person arises from being —

(a) a person having the custody, care or control of the young person for a period that the court considers to be limited or temporary; or

(b) the CEO as defined in section 3 of the *Children and Community Services Act 2004* who, under that Act, has parental responsibility for the young person; or

(c) an officer as defined in section 3 of the *Children and Community Services Act 2004*; or

(d) in any other capacity prescribed for the purposes of this paragraph by the regulations;

general principles of juvenile justice means the principles described in section 7;

imprisonment means imprisonment in a prison under the *Prisons Act 1981*;

independent young person means a young person who —

(a) has reached the age of 17 years; and

(b) has sufficient maturity to live independently without the guidance or control of a responsible adult, and is doing so;

intensive youth supervision order means an order made under section 98;

interim control order has the meaning given in the Commonwealth Criminal Code section 100.1(1);

lock-up means a lock-up as defined in the *Court Security and Custodial Services Act 1999*;

notice to attend court means a notice to attend court issued to a young person in accordance with section 43;

offender with links to terrorism means —

(a) a category 1 offender; or

(b) a category 2 offender who is subject to a Commissioner of Police report; or

(c) an offender who —

(i) is subject to a Commissioner of Police report; and

(ii) the Supervised Release Review Board as constituted by the chairperson alone is satisfied, having regard to the report, has made statements or carried out activities that support, or advocate support for, terrorist acts;

registrar of the court, in relation to the Children's Court, means the registrar of the Children's Court at the place where the relevant matter was heard;

remove, in relation to an officer or other person appointed under section 11(1), means terminate the employment of the officer or person;

responsible adult, in relation to a young person, means a parent, guardian, or other person having responsibility for the day to day care of the young person but does not include a person who the regulations may provide is not a responsible adult;

Schedule 1 offence means —

(a) an offence that is committed against an enactment referred to in column 1 of Schedule 1 and is —

(i) described in column 2 of Schedule 1 opposite the reference; or

(ii) committed in the circumstances set out in column 2 of Schedule 1 opposite the reference;

or

(b) the offence of counselling or procuring the commission of an offence mentioned in paragraph (a);

Schedule 2 offence means —

(a) an offence that is committed against an enactment referred to in column 1 of Schedule 2 and is —

(i) described in column 2 of Schedule 2 opposite the reference; or

(ii) committed in the circumstances set out in column 2 of Schedule 2 opposite the reference;

or

(b) the offence of counselling or procuring the commission of an offence mentioned in paragraph (a);

special order means an order made under section 126;

superintendent means the person in charge of a detention centre;

supervised release order means an order made under section 132 for a person who is serving a sentence of detention to be released from custody subject to conditions;

supervision conditions means conditions referred to in section 73(1)(c);

terrorism offence means —

(a) an offence against the Commonwealth Criminal Code Division 72 Subdivision A; or

(b) an offence against the Commonwealth Criminal Code Division 80 Subdivision B; or

(c) an offence against the Commonwealth Criminal Code Part 5.3, other than an offence against section 104.22, 104.27, 104.27A, 105.41 or 105.45; or

(d) an offence against the Commonwealth Criminal Code Part 5.5; or

(e) an offence against the following provisions of the *Charter of the United Nations Act 1945* (Commonwealth) —

(i) Part 4;

(ii) Part 5, to the extent that it relates to the *Charter of the United Nations (Sanctions—Al-Qaida) Regulations 2008* (Commonwealth);

or

(f) an offence against the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Commonwealth) (repealed); or

(g) an offence against the *Crimes (Internationally Protected Persons) Act 1976* (Commonwealth) section 8; or

(h) an offence under a written law or a law of the Commonwealth, another State, a Territory or another country, that substantially corresponds to an offence referred to in paragraph (a), (b), (c), (d), (e) or (g); or

(i) an offence of attempting, inciting or conspiring to commit an offence referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h);

terrorist act has the meaning given in the *Terrorism (Commonwealth Powers) Act 2002* section 3;

terrorist intelligence information means information relating to a prohibited act or suspected prohibited act, the disclosure of which could reasonably be expected to —

(a) prejudice national security; or

(b) endanger a person's life or physical safety; or

(c) threaten significant damage to infrastructure or property; or

(d) prejudice a criminal investigation; or

(e) reveal intelligence gathering methodologies, investigative techniques or technologies or covert practices; or

(f) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement;

work includes any form of work, service or activity;

young person means —

(a) a person who has not reached the age of 18 years; or

(b) a person to whom this Act applies because of section 4;

youth community based order means an order made under section 73.

(2) For the purposes of the definition of ***terrorist intelligence information***, a ***prohibited act*** is —

(a) a terrorism offence; or

(b) an offence against the Commonwealth Criminal Code section 80.2C(1); or

(c) a terrorist act (whether in this State or elsewhere).

[Section 3 amended: No. 47 of 1999 s. 40; No. 34 of 2004 s. 251; No. 58 of 2004 s. 4; No. 59 of 2004 s. 141; No. 29 of 2014 s. 11; No. 14 of 2022 s. 30.]

[Section 3. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

4. Young offenders reaching 18

If a person commits or allegedly commits an offence before reaching the age of 18 years, this Act applies to the person as a young person for purposes connected with that offence or any order that was made in dealing with the person for that offence.

5. *Criminal Procedure Act 2004* overridden

To the extent that this Act is inconsistent with the *Criminal Procedure Act 2004* this Act prevails.

[Section 5 amended: No. 59 of 2004 s. 141; No. 84 of 2004 s. 77.]

6A. *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies to this Act.

[Section 6A inserted: No. 20 of 2013 s. 137.]

Part 2 — Objectives and principles

6. Objectives

The main objectives of this Act are —

(a) to provide for the administration of juvenile justice; and

(b) to set out provisions, embodying the general principles of juvenile justice, for dealing with young persons who have, or are alleged to have, committed offences; and

(c) to ensure that the legal rights of young persons involved with the criminal justice system are observed; and

(d) to enhance and reinforce the roles of responsible adults, families, and communities in —

(i) minimising the incidence of juvenile crime; and

(ii) punishing and managing young persons who have committed offences; and

(iii) rehabilitating young persons who have committed offences towards the goal of their becoming responsible citizens;

and

(e) to integrate young persons who have committed offences into the community; and

(f) to ensure that young persons are dealt with in a manner that is culturally appropriate and which recognises and enhances their cultural identity.

7. General principles of juvenile justice

The general principles that are to be observed in performing functions under this Act are that —

(a) there should be special provision to ensure the fair treatment of young persons who have, or are alleged to have, committed offences; and

(b) a young person who commits an offence is to be dealt with, either formally or informally, in a way that encourages the young person to accept responsibility for his or her conduct; and

(c) a young person who commits an offence is not to be treated more severely because of the offence than the person would have been treated if an adult; and

(d) the community must be protected from illegal behaviour; and

(e) victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so; and

(f) responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons, and supported in their efforts to do so; and

(g) consideration should be given, when dealing with a young person for an offence, to the possibility of taking measures other than judicial proceedings for the offence if the circumstances of the case and the background of the alleged offender make it appropriate to dispose of the matter in that way and it would not jeopardise the protection of the community to do so; and

(h) detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary; and

(i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner; and

(j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways; and

(k) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time; and

(l) in dealing with a young person for an offence, the age, maturity, and cultural background of the offender are to be considered; and

(m) a young person who commits an offence is to be dealt with in a way that —

(i) strengthens the family and family group of the young person; and

(ii) fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and

(iii) recognises the right of the young person to belong to a family.

[Section 7 amended: No. 82 of 1994 s. 20; No. 78 of 1995 s. 145; No. 29 of 1998 s. 20.]

8. Responsible adults, role of

While observing the general principles of juvenile justice as required by section 7, a person performing functions under this Act is also to have regard to the principles that —

(a) responsible adults have an important responsibility for the behaviour of young persons under their care; and

(b) responsible adults should be involved in the disposition, by a court or otherwise, of allegations of offences by the young persons under their care and in their punishment or management as a result of having offended; and

(c) a responsible adult should be notified as soon as practicable after a young person is taken into custody or otherwise dealt with under this Act and, if the young person is in custody, should be kept informed as to the whereabouts of the young person; and

(d) in determining the degree of responsibility expected of a responsible adult the age, intellectual and emotional maturity of the young person and the fact that the young person is in employment or is living independently shall be taken into account.

Part 3 — Administration

Division 1 — Chief executive officer

[Heading inserted: No. 29 of 2014 s. 12.]

9. Chief executive officer, functions of

It is the duty of the chief executive officer, under the direction of the Minister, to carry into operation the provisions of this Act so far as the duty is not expressly committed to any other person.

10. Chief executive officer may delegate

The chief executive officer may, by a signed instrument of delegation, delegate to an officer of the Department, either generally or as otherwise provided in the instrument, any power or duty under this Act, other than this power of delegation.

[Section 10. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

Division 2 — Other officers and employees

[Heading inserted: No. 29 of 2014 s. 13.]

11. Officers and employees, appointment of

(1) The chief executive officer may appoint, under and subject to Part 3 of the *Public Sector Management Act 1994*, such officers and other persons as are necessary to implement or administer this Act.

(1a) In addition to persons appointed under subsection (1) and for the purposes of this Act the chief executive officer may appoint —

(a) custodial officers for primarily non-administrative functions; and

(b) officers and employees of particular classes as are prescribed by the regulations,

and may remove those persons in the prescribed circumstances.

(1b) The custodial officers appointed under subsection (1a)(a) —

(a) may be subject to employment conditions set out in an award or industrial agreement; and

(b) may be subject to —

(i) disciplinary proceedings provided for in the regulations; or

(ii) if regulations are made under subsection (1C) — disciplinary proceedings under the *Public Sector Management Act 1994* Part 5.

(1C) The regulations may prescribe custodial officers for the purposes of the *Public Sector Management Act 1994* section 76(1)(b).

(2) The officers and employees appointed under subsection (1a)(b) —

(a) are to have such functions as are given to them under the regulations; and

(b) may be subject to employment conditions set out in an award or industrial agreement; and

(c) in prescribed circumstances, may be subject to such disciplinary procedures as are set out in the regulations.

(3) Appointments under subsection (1a) may be on a paid or honorary basis.

[Section 11 amended: No. 58 of 2004 s. 6(1) and (2); No. 29 of 2014 s. 14.]

*[**11AA.** [1M] Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

11A. Duties of all officers and employees

Every officer, person or employee appointed under section 11 —

(a) must observe all rules made under this Act; and

(b) must make such returns and reports to the chief executive officer as the chief executive officer may from time to time direct; and

(c) must make any records relating to any young offender available, upon request of the chief executive officer, to the chief executive officer or a delegate of the chief executive officer.

[Section 11A inserted: No. 58 of 2004 s. 7.]

[Section 11A. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

11B. Powers and duties of custodial officers

A custodial officer —

(a) has a responsibility to maintain the security of the facility or detention centre where he or she is employed; and

(b) is liable to answer for the escape of a detainee placed in his or her charge or for whom when on duty he or she has a responsibility; and

(c) must obey all lawful orders given to him or her by the officer under whose control or supervision he or she is placed; and

(d) may issue to a detainee such orders as are necessary for the purposes of this Act, including the security, good order, or management of a facility or detention centre, and may use such force as is prescribed under

section 11C as is necessary to ensure that lawful orders given to a detainee are complied with.

[Section 11B inserted: No. 58 of 2004 s. 7; amended: No. 29 of 2014 s. 15.]

Division 3 — Removal of custodial officers due to loss of confidence

[Heading inserted: No. 29 of 2014 s. 16.]

Subdivision 1 — Preliminary

[Heading inserted: No. 29 of 2014 s. 16.]

11CA. Terms used

In this Division, unless the contrary intention appears —

appeal means an appeal under section 11CH;

appellant means a person who institutes an appeal;

Chief Commissioner has the same meaning as in the *Industrial Relations Act 1979*;

decision notice has the meaning given in section 11CD(3)(b);

industrial commissioner means a commissioner as defined in the *Industrial Relations Act 1979* section 7(1);

maintenance payment has the meaning given in section 11CE(1);

maintenance period has the meaning given in section 11CE(1);

new evidence, on an appeal against the removal of a custodial officer, means evidence other than evidence of any of the following —

(a) a document or other material that was examined and taken into account by the chief executive officer in making the removal decision;

(b) the notice given under section 11CD(1);

(c) a written submission made to the chief executive officer by the custodial officer under section 11CD(2);

(d) a decision notice;

(e) a notification of the removal;

removal action, in relation to a custodial officer, means the removal of the custodial officer under section 11CC;

removal decision means a decision of the chief executive officer to take removal action;

suitability to continue as a custodial officer means suitability to continue as a custodial officer having regard to the officer's integrity, honesty, competence, performance or conduct;

WAIRC means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*.

[Section 11CA inserted: No. 29 of 2014 s. 16.]

Subdivision 2 — Removal of custodial officers

[Heading inserted: No. 29 of 2014 s. 16.]

11CB. Application of Subdivision

(1) This Subdivision applies if —

(a) the chief executive officer does not have confidence in a custodial officer's suitability to continue as a custodial officer; and

(b) the chief executive officer —

(i) decides not to take, or continue to take, disciplinary proceedings referred to in section 11(1b)(b) against a custodial officer; and

(ii) decides instead to take removal action in relation to the custodial officer.

(2) If regulations are made under section 11(1C), this Subdivision applies despite the *Public Sector Management Act 1994* section 76(2).

[Section 11CB inserted: No. 29 of 2014 s. 16.]

11CC. Removal action

(1) If the chief executive officer does not have confidence in a custodial officer's suitability to continue as a custodial officer, the chief executive officer may remove the custodial officer.

(2) Subsection (1) applies in addition to, and does not limit the operation of, the *Public Sector Management Act 1994*.

(3) The chief executive officer may conduct any necessary investigation to determine a custodial officer's suitability to continue as a custodial officer.

(4) For the purpose of the investigation the chief executive officer may require the custodial officer to do all or any of the following —

(a) provide the chief executive officer with any information or answer any question that the chief executive officer requires;

(b) produce to the chief executive officer any document in the custody or under the control of the custodial officer.

(5) The custodial officer is not excused from giving information, answering any question or producing a document when required to do so under subsection (4) on the ground that the information, answer or document might —

(a) incriminate the custodial officer; or

(b) render the custodial officer liable to a disciplinary measure under section 11 or removal under this Division.

(6) The information, answer or document is not admissible in evidence against the custodial officer in any criminal

proceedings except in proceedings for an offence under subsection (7).

(7) A custodial officer must not, in response to a requirement under subsection (4) —

(a) fail or refuse to provide the required information or answer or produce the required document; or

(b) give information or an answer that is false or misleading in a material particular; or

(c) produce a document that the custodial officer knows is false or misleading in a material particular —

(i) without indicating that the document is false or misleading and, to the extent the custodial officer can, how the document is false or misleading; and

(ii) if the custodial officer has, or can reasonably obtain, the correct information — without providing the correct information.

Penalty: a fine of $4 000 and imprisonment for 12 months.

[Section 11CC inserted: No. 29 of 2014 s. 16.]

11CD. Notice of loss of confidence

(1) The chief executive officer may give the custodial officer a written notice setting out the grounds on which the chief executive officer does not have confidence in the custodial officer's suitability to continue as a custodial officer.

(2) The custodial officer may make written submissions to the chief executive officer in relation to the notice within the following period (the ***submission period***) —

(a) 21 days after the day on which the notice is given; or

(b) any longer period after that day allowed by the chief executive officer.

(3) After the submission period, the chief executive officer must —

(a) decide whether or not to take removal action against the custodial officer; and

(b) give the custodial officer written notice of the decision (the ***decision notice***).

(4) The chief executive officer must not decide to take removal action against the custodial officer unless the chief executive officer —

(a) has taken into account any written submissions received from the custodial officer during the submission period; and

(b) still does not have confidence in a custodial officer's suitability to continue as a custodial officer.

(5) If the chief executive officer decides to take removal action against the custodial officer, the decision notice must contain the reasons for the decision.

(6) Except as provided in the regulations, the chief executive officer must, within 7 days after giving the decision notice —

(a) give to the custodial officer a copy of any documents that were considered by the chief executive officer in making the decision; and

(b) make available to the custodial officer for inspection any other materials that were considered by the chief executive officer in making the decision.

(7) The removal action may be carried out when the notice is given or at any time after that.

[Section 11CD inserted: No. 29 of 2014 s. 16.]

11CE. Maintenance payment

(1) If a custodial officer is removed as a result of removal action, the custodial officer is entitled to receive a payment (a ***maintenance payment***) for the period of 28 days after the day

on which the custodial officer is removed (the ***maintenance period***).

(2) The Minister may, in exceptional circumstances, direct that a maintenance payment must be paid to the custodial officer for a specified period after the maintenance period.

(3) For the purpose of subsection (2), the specified period is a period not exceeding 6 months specified by the Minister but in any event ending on the day any appeal is determined by the WAIRC.

(4) Any maintenance payment must be determined on the basis of the salary of the custodial officer at the time of the removal.

[Section 11CE inserted: No. 29 of 2014 s. 16.]

11CF. Withdrawal of removal action and revocation of removal

(1) If a custodial officer is removed as a result of removal action, the chief executive officer may, by notice in writing to the custodial officer, revoke the removal.

(2) Subsection (1) applies even if an appeal has been instituted against the removal.

(3) Despite any other enactment, if the removal is revoked under subsection (1), the removal is to be taken to be of no effect and to have never had any effect.

(4) If the chief executive officer revokes the removal of a custodial officer under subsection (1), the custodial officer is not entitled to be paid his or her salary for any period the custodial officer received a maintenance payment.

[Section 11CF inserted: No. 29 of 2014 s. 16.]

11CG. Resignation of custodial officer who has been removed

(1) Even if a custodial officer is removed as a result of removal action, the custodial officer may resign at any time before the end of the maintenance period.

(2) Subsection (1) does not apply if an appeal has been instituted against the removal.

(3) A resignation under subsection (1) takes effect at the end of the maintenance period.

(4) Despite any other enactment, if a custodial officer resigns under subsection (1), the removal of the custodial officer is to be taken to be of no effect and to have never had any effect.

[Section 11CG inserted: No. 29 of 2014 s. 16.]

Subdivision 3 — Appeal against removal of custodial officer

[Heading inserted: No. 29 of 2014 s. 16.]

11CH. Appeal right

(1) If a custodial officer is removed as a result of removal action, the custodial officer may appeal to the WAIRC against the removal decision on the ground that it was harsh, oppressive or unfair.

(2) The custodial officer may institute the appeal by a notice to the chief executive officer stating —

(a) the reasons for the removal decision being harsh, oppressive or unfair; and

(b) the nature of the relief sought.

(3) The appeal cannot be instituted —

(a) after the maintenance period; or

(b) if the custodial officer has resigned under section 11CG(1).

(4) For the purposes of proceedings relating to the appeal, the WAIRC is to be constituted by not less than 3 industrial Commissioners, at least one of whom must be —

(a) the Chief Commissioner; or

(b) the Senior Commissioner within the meaning of that term in the *Industrial Relations Act 1979*.

(5) The only parties to the appeal are the custodial officer and the chief executive officer.

(6) The custodial officer does not have any right of appeal against the removal decision other than under this section.

[Section 11CH inserted: No. 29 of 2014 s. 16.]

11CI. Proceedings on appeal

(1) On the hearing of an appeal, the WAIRC must proceed in the following manner —

(a) first, it must consider the chief executive officer's reasons for the removal decision;

(b) second, it must consider the case presented by the appellant as to why the removal decision was harsh, oppressive or unfair;

(c) third, it must consider the case presented by the chief executive officer in answer to the appellant's case.

(2) The appellant has at all times the burden of establishing that the removal decision was harsh, oppressive or unfair.

(3) Subsection (2) has effect despite any law or practice to the contrary.

(4) Without limiting the matters to which the WAIRC is otherwise required or permitted to have regard in determining the appeal, it must have regard to —

(a) the interests of the appellant; and

(b) the public interest, which is to be taken to include —

(i) the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of custodial officers; and

(ii) the special nature of the relationship between the chief executive officer and custodial officers.

[Section 11CI inserted: No. 29 of 2014 s. 16.]

11CJ. Leave to tender new evidence on appeal

(1) New evidence cannot be tendered to the WAIRC during a hearing of an appeal unless the WAIRC grants leave under subsection (2) or (3).

(2) The WAIRC may grant the chief executive officer leave to tender new evidence if —

(a) the appellant consents; or

(b) it is satisfied that it is in the interests of justice to do so.

(3) The WAIRC may grant the appellant leave to tender new evidence if —

(a) the chief executive officer consents; or

(b) the WAIRC is satisfied that —

(i) the appellant is likely to be able to use the new evidence to show that the chief executive officer has acted upon wrong or mistaken information; or

(ii) the new evidence might materially have affected the chief executive officer's removal decision; or

(iii) it is in the interests of justice to do so.

(4) In the exercise of its discretion under subsection (3), the WAIRC must have regard to —

(a) whether or not the appellant was aware of the substance of the new evidence before the appellant's removal; and

(b) whether or not the substance of the new evidence was contained in a document to which the appellant had reasonable access before the appellant's removal.

[Section 11CJ inserted: No. 29 of 2014 s. 16.]

11CK. Opportunity to consider new evidence

(1) If the chief executive officer is given leave to tender new evidence under section 11CJ(2) —

(a) the WAIRC must give the appellant a reasonable opportunity to consider the new evidence; and

(b) the appellant may, without the leave of the WAIRC, tender new evidence under this section in response to the new evidence tendered by the chief executive officer.

(2) If the appellant is given leave to tender new evidence under section 11CJ(3), the WAIRC must give the chief executive officer a reasonable opportunity to consider the new evidence.

[Section 11CK inserted: No. 29 of 2014 s. 16.]

11CL. Revocation of removal after consideration of new evidence

(1) If, having considered any new evidence, the chief executive officer revokes the removal under section 11CF(1) —

(a) the chief executive officer must give the WAIRC notice of the revocation; and

(b) the hearing of the appeal is discontinued when the WAIRC receives the notice.

(2) If the chief executive officer does not give notice under subsection (1), the hearing of the appeal must continue but the chief executive officer may —

(a) reformulate his or her reasons for not having confidence in the appellant's suitability to continue as a custodial officer; and

(b) without the leave of the WAIRC, tender new evidence under this section in response to the new evidence tendered by the appellant.

(3) Reasons reformulated under subsection (2)(a) may differ from, or be additional to, the reasons given to the appellant in the decision notice.

(4) If the chief executive officer reformulates reasons under subsection (2)(a) —

(a) the chief executive officer must give the WAIRC and the appellant notice in writing of the reasons before the resumption of the hearing of the appeal; and

(b) the WAIRC must consider the reasons as if they had been reasons given to the appellant in the decision notice.

[Section 11CL inserted: No. 29 of 2014 s. 16.]

11CM. Application of *Industrial Relations Act 1979* to appeals

The provisions of the *Industrial Relations Act 1979* listed in the Table apply to, and in relation to, an appeal and its determination, subject to —

(a) any specific modifications set out in the Table; and

(b) all other necessary modifications.

Table

s. 26(1)(a) and (b)	
s. 26(3)	
s. 27(1)(b), (c), (d), (e), (f), (h), (ha), (hb), (l), (m), (n), (o) and (v)	
s. 27(1a)	
s. 28	The section applies only in relation to powers conferred by section 27 listed in this Table.

s. 31(1)	Paragraphs (b) and (c) do not apply but the subsection is to be read as if it contained the following paragraphs — " (b) with the leave of the Commission, by an agent; or (c) by a legal practitioner. ".
s. 31(3)	
s. 31(5)	
s. 32	Section 32(1) is to be read as if a reference to "Where an industrial matter has been referred to the Commission the Commission shall" were a reference to "If the Commission is dealing with an appeal instituted under the *Young Offenders Act 1994* section 11CH, the Commission may recommend that the parties to the appeal". References to "the matter" and "an industrial matter" are to be read as if they were references to "the appeal".
	For the purposes of subsections (2) and (3), ***Commission*** does not include an industrial commissioner constituting the WAIRC to hear the appeal. Subsections (4), (6), (7) and (8) do not apply.

s. 33	A summons must not be issued under section 33(1)(a) to the Governor. A summons may be issued to the chief executive officer or the Minister but only at the direction of a commissioner appointed under the *Industrial Relations Act 1979* if that commissioner is satisfied that there are extraordinary grounds for doing so. A summons may not be issued to any other person except at the direction of a commissioner.
s. 34	A reference in subsection (1) to "an award, order or declaration" is to be read as if it were a reference to "an order". A reference in subsection (4) to "no award, order, declaration, finding, or proceeding" is to be read as if it were a reference to "no decision, order, finding or proceeding".
s. 35	
s. 36	
s. 86	The section does not apply in relation to costs and expenses, other than expenses of witnesses.

s. 90	A reference in subsection (1) to "any decision of the Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session" is to be read as if it were a reference to "a decision of the Commission under the *Young Offenders Act 1994* section 11CP".

[Section 11CM inserted: No. 29 of 2014 s. 16; amended: No. 39 of 2018 s. 72.]

11CN. Adjournment of appeal if appellant charged with offence

(1) The chief executive officer or an appellant may apply to the WAIRC for an adjournment of the hearing of an appeal if the appellant has been —

(a) charged with an offence relating to any matter, act or omission that was taken into account by the chief executive officer in deciding that he or she did not have confidence in the appellant's suitability to continue as a custodial officer; and

(b) the charge has not been finally determined by a court or otherwise disposed of.

(2) If an adjournment application is made by the chief executive officer, the WAIRC may adjourn the hearing of the appeal if it considers that it is in the interests of justice to do so.

(3) If an adjournment application is made by the appellant, the WAIRC must adjourn the hearing of the appeal for the period (not exceeding 12 months) requested by the appellant.

(4) Before the end of the period of an adjournment under this section, the chief executive officer or the appellant may apply to the WAIRC for a further adjournment and, if it is in the interests

of justice to do so, the WAIRC may grant a further adjournment for the period specified by it.

(5) Subsections (2) and (4) do not affect any other power of the WAIRC to grant an adjournment.

[Section 11CN inserted: No. 29 of 2014 s. 16.]

11CO. Resumption of appeal before end of adjournment

If the charge is finally determined by a court or otherwise disposed of before the end of the period of an adjournment under section 11CN, the chief executive officer or the appellant may apply to the WAIRC for the hearing of the appeal to be resumed on a date specified by the WAIRC.

[Section 11CO inserted: No. 29 of 2014 s. 16.]

11CP. Decision by WAIRC

(1) This section applies if the WAIRC decides on an appeal that the decision to take removal action relating to the appellant was harsh, oppressive or unfair.

(2) The WAIRC may —

(a) order that the appellant's removal is, and is to be taken to have always been, of no effect; or

(b) if it is impracticable to make an order under paragraph (a), order the chief executive officer to pay the appellant an amount of compensation for loss or injury caused by the removal.

(3) In considering whether or not it is impracticable to make an order under subsection (2)(a), it is relevant to consider —

(a) whether, at the time of the appellant's removal, the position occupied by the appellant is vacant; and

(b) whether there is another suitable vacant position in the Department.

(4) If the WAIRC makes an order under subsection (2)(a), the appellant is not entitled to be paid his or her remuneration as a custodial officer for any period the appellant received a maintenance payment.

(5) An order under this section may require that it be complied with within a specified time.

[Section 11CP inserted: No. 29 of 2014 s. 16.]

11CQ. Determining amount of compensation

(1) An amount of compensation ordered under section 11CP(2)(b) must be determined in accordance with this section.

(2) In determining the amount, the WAIRC must have regard to all of the following —

(a) the efforts, if any, of the chief executive officer and the appellant to mitigate the loss suffered by the appellant as a result of the removal;

(b) any maintenance payment received by the appellant;

(c) any redress the appellant has obtained under another enactment where the evidence necessary to establish that redress is also the evidence necessary to establish on the appeal that the removal was harsh, oppressive or unfair;

(d) any other matter that the WAIRC considers relevant.

(3) In determining the amount, the WAIRC may have regard to the average rate of remuneration as a custodial officer received by the appellant during any relevant period of service.

(4) The amount must not exceed 12 months' remuneration as a custodial officer.

[Section 11CQ inserted: No. 29 of 2014 s. 16.]

11CR. Restriction on publication

(1) If the WAIRC is satisfied that it is in the public interest, it may direct that any evidence given before it, or the contents of any document produced to it, on an appeal —

(a) must not be published; or

(b) must not be published except in a manner, and to persons, specified by the WAIRC.

(2) A person must not contravene a direction given under this section.

Penalty: a fine of $4 000 and imprisonment for 12 months.

[Section 11CR inserted: No. 29 of 2014 s. 16.]

Subdivision 4 — General

[Heading inserted: No. 29 of 2014 s. 16.]

11CS. Effect of charge for, or conviction or acquittal of, offence

The chief executive officer can take removal action in relation to a custodial officer for a particular matter, act or omission even if the matter, act or omission is an element of an offence —

(a) with which the custodial officer has been charged; or

(b) of which the custodial officer has been convicted or acquitted.

[Section 11CS inserted: No. 29 of 2014 s. 16.]

11CT. Failure to comply with procedure

An act or omission of the chief executive officer is not invalid, and cannot be called in question, if —

(a) the act or omission comprises a failure to comply with procedure prescribed for the purposes of this Division; and

(b) the failure is not substantive.

[Section 11CT inserted: No. 29 of 2014 s. 16.]

11CU. Transfer, standing down and leave of custodial officer

(1) This Division does not derogate from the chief executive officer's power to —

(a) transfer a custodial officer; or

(b) stand a custodial officer down from performing that custodial officer's usual duties, with or without pay, until the custodial officer is directed by the chief executive officer to return to those duties; or

(c) allocate duties to a custodial officer other than the custodial officer's usual duties.

(2) If the chief executive officer stands down a custodial officer in relation to whom removal action is being taken, the chief executive officer must review the decision to stand the custodial officer down every 60 days and advise the custodial officer in writing of the result of the review.

(3) The chief executive officer must not direct a custodial officer in relation to whom removal action is being taken to take leave during the removal action unless the leave accrues during any period that the custodial officer is stood down from performing the custodial officer's usual duties.

[Section 11CU inserted: No. 29 of 2014 s. 16.]

11CV. Review of Division

(1) In this section —

commencement day means the day on which the *Custodial Legislation (Officers Discipline) Amendment Act 2014* Part 3 comes into operation.

(2) The Minister must carry out a review of the operation and effectiveness of this Division as soon as is practicable after the

expiry of 24 months after the commencement day and in the course of that review the Minister must consider and have regard to —

(a) the effectiveness of this Division; and

(b) the need for the retention of the Division; and

(c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Division.

(3) Without limiting subsection (2), in carrying out the review, the Minister must consult with and have regard to the views of the Chief Commissioner of the WAIRC, the chief executive officer and any union that has custodial officers as some or all of its members.

(4) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 30 months after the commencement day), cause a copy of it to be laid before each House of Parliament.

[Section 11CV inserted: No. 29 of 2014 s. 16.]

Division 4 — Management, control, security and wellbeing of young offenders

[Heading inserted: No. 29 of 2014 s. 17.]

11C. Use of force

(1) A custodial officer is authorised to use no more than prescribed force in the management, control and security of a facility or detention centre.

(2) A custodial officer must not use force on a young offender unless that force is used in the prescribed circumstances.

[Section 11C inserted: No. 58 of 2004 s. 7; amended: No. 29 of 2014 s. 18.]

11D. Use of restraints

(1) The chief executive officer, or a superintendent, may authorise and direct the restraint of a young offender where in his or her opinion such restraint is necessary —

(a) to prevent the young offender injuring himself or herself, or any other person; or

(b) upon considering advice from a medical practitioner, on medical grounds; or

(c) to prevent the escape of a young offender during his or her movement to or from a facility or detention centre, or during his or her temporary absence from a facility or detention centre.

(2) Restraint involving the use of medication must not be used on medical grounds unless the approval of a medical practitioner is obtained first.

(3) If restraint is used in relation to a young offender for a continuing period of more than 24 hours, the use and the circumstances must be reported as soon as practicable to the chief executive officer by the superintendent who has overall responsibility for the young offender at the time.

[Section 11D inserted: No. 58 of 2004 s. 7.]

11E. Assistance by prison officers

(1) A prison officer may, upon the request of the chief executive officer or a superintendent, assist in the exercise or performance of any power or duty conferred or imposed by this Act.

(2) A prison officer who is assisting —

(a) has the powers; and

(b) is subject to the responsibilities; and

(c) is to receive the protection from liability,

which in like circumstances would be conferred or imposed on a custodial officer, in addition to the powers and duties conferred and imposed on that prison officer by or under any other law.

(3) A prison officer who is assisting may use such force as can be used by a custodial officer and, with the approval of the chief executive officer, may use such control weapons as are necessary in the circumstances.

[Section 11E inserted: No. 58 of 2004 s. 7; amended: No. 29 of 2014 s. 19.]

11F. Assistance by police officers

(1) Subject to the directions of the Commissioner of Police, a police officer may, upon the request of the chief executive officer or a superintendent, assist in the exercise or performance of any power or duty conferred or imposed by this Act.

(2) A police officer who is assisting —

(a) has the powers; and

(b) is subject to the responsibilities; and

(c) is to receive the protection from liability,

which in like circumstances would be conferred or imposed on a custodial officer, in addition to the powers and duties conferred and imposed on that police officer by or under any other law.

[Section 11F inserted: No. 58 of 2004 s. 7; amended: No. 29 of 2014 s. 20.]

12. Departmental and subsidised facilities, establishment of

(1) The Minister may, by order, declare a facility to be a Departmental facility or a subsidised facility.

(1a) A facility that is a Departmental or subsidised facility immediately before the coming into operation of section 75 of

the *Prisons and Sentencing Legislation Amendment Act 2006* continues as a Departmental or subsidised facility as if the Minister had made the order under subsection (1) declaring it to be such a facility.

(2) The Minister may, by order, vary or revoke an order under subsection (1).

(3) An order under this section does not have effect until it is published in the *Gazette*, and may be expressed to have effect from a time that is after its publication in the *Gazette*.

(4) The chief executive officer may, with the approval of the Minister, make rules for the management and control of Departmental facilities and subsidised facilities generally, or any such facility specified, and for the management and control of young persons in them and the management of officers of the Department.

(5) Rules made under subsection (4) may —

(a) confer a discretionary authority on any person or class of persons;

(b) confer authority to require a young person at a facility to submit for the purpose of having a body sample taken or to wear a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the young person.

(6) Section 181(3), (4), and (5) apply with the necessary modifications to rules made under subsection (4).

[Section 12 amended: No. 58 of 2004 s. 8; No. 65 of 2006 s. 75.]

13. Detention centres, establishing

(1) The Minister may, by order, declare a place to be a detention centre.

(2) The Minister may, by order, vary or revoke an order under subsection (1).

(3) An order under this section does not have effect until after it is published in the *Gazette* and the date of effect shall not be earlier than the date of publication and such order shall be a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

14. Records of young offenders, duty to keep

(1) The chief executive officer is to keep records of every young person who is detained or who is dealt with under this Act for an offence.

(2) The records are to include —

(a) such information as is required to identify the young person; and

(b) details of any detention or any way in which the young person has been dealt with for an offence; and

(c) records of every finding by the court that a young person is guilty of an offence and every conviction of a young person of an offence; and

(d) details as to the way in which —

(i) terms specified by a juvenile justice team in dealing with an alleged offender are being, or have been, complied with;

(ii) effect is being, or has been, given to an order that has been made under this Act by the court dealing with a person for an offence;

and

(e) such other information, if any, as is required by the regulations to be kept.

(3) Despite subsections (1) and (2), the regulations may provide for the destruction or disposal of records on the basis of their age or such other criteria as are prescribed.

15. Records of young offenders, access to

(1) Records of every finding by the court that a young person is guilty of an offence are to be made available by the chief executive officer to any court and to any person requiring the information for the purposes of performing a function under this Act or under the *Court Security and Custodial Services Act 1999* in relation to the young person, and to any person who is authorised to exercise a Schedule power as defined in that Act in relation to the young person or who does any high-level security work as defined in that Act in relation to the young person.

(2) The court may order that the chief executive officer make available to any person applying to the court for them, records of every conviction of a young person of an offence if the court considers it appropriate to make them available.

(3) Upon being requested to do so by a person whom the chief executive officer considers to have a proper interest in the matter, the chief executive officer is to —

(a) inform the person whether a particular young person is detained under this Act, giving particulars of any order under which the young person is detained; and

(b) provide the person with other information, where applicable, as to the way in which —

(i) an alleged offender is being, or has been, dealt with by a juvenile justice team; or

(ii) terms specified by a juvenile justice team in dealing with an alleged offender are being, or have been, complied with; or

(iii) effect is being, or has been, given to an order that has been made under this Act by the court dealing with a person for an offence.

[Section 15 amended: No. 47 of 1999 s. 41.]

15A. Disclosure of personal information relating to young offenders

(1) Upon being requested to do so by the CEO (child welfare), the chief executive officer may provide the CEO (child welfare) with information relating to a young person where the provision of that information is necessary —

(a) to protect a young person; or

(b) to assist in the placement of the young person; or

(c) to protect the physical safety of a child, whether or not in the care of the welfare agency; or

(d) to assist in an assessment of the young person by officers of the welfare agency; or

(e) for the purpose of enabling the CEO (child welfare) or a person employed in the welfare agency to investigate an allegation of —

(i) abuse of the young person; or

(ii) abuse by the young person of a child in the care of the Department,

or facilitating such an investigation.

(2) In subsection (1) —

CEO (child welfare) means the chief executive officer of the welfare agency;

welfare agency means the Public Sector agency principally assisting the Minister administering the *Children and Community Services Act 2004* in its administration.

(3) Upon being requested to do so by a member of the Mental Impairment Review Tribunal established under the *Criminal*

Law (Mental Impairment) Act 2023, the chief executive officer is to provide the member with information relating to a person who is, or was, a young offender or detainee, for the purposes of carrying out the member's functions under that Act.

[(3a)-(3c) deleted]

(4) The chief executive officer is to provide a person specified in or under subsection (5)(a) or (b) with information relating to a person who is, or was, a young offender or detainee if required for the purposes set out in subsection (6)(a) and (b) respectively.

(5) The following individuals may be provided with information under subsection (4) —

(a) under the *Prisons Act 1981* — the chief executive officer, a superintendent, an officer, a prison officer, a contract worker (as defined in section 15A of that Act), or a person approved by the chief executive officer for the purpose of this section;

(b) under the *Sentence Administration Act 2003* —

(i) a member of the Prisoners Review Board, the chief executive officer, a manager, a community corrections officer; or

(ii) a person, or a person within a class of persons, approved by the chief executive officer for the purpose of this section.

(6) The purposes for which the individuals set out in subsection (5) be provided with information under subsection (4) are as follows —

(a) a person set out in, or approved under subsection (5)(a) may make a request for information for the purposes of carrying out his or her functions under the *Prisons Act 1981*;

(b) a person set out in, or approved under, subsection (5)(b) may make a request for information for the purposes of

carrying out his or her functions under the *Sentence Administration Act 2003*.

(7) Despite this section, the Minister may, from time to time, approve —

(a) circumstances in which information relating to a young person may be disclosed under this Act, to a person or class of persons in another Commonwealth, State, Territory or overseas government department or agency; and

(b) the purposes for which that information may be used.

(7A) Despite this section, the chief executive officer may provide information relating to a person who is, or was, a young offender or detainee (as the case may be) to 1 or more of the individuals referred to in subsection (5)(a) if —

(a) the person is transferred under section 21(2); or

(b) a direction is made in respect of the person under section 178(3); or

(c) the person is transferred under section 178A(2).

(8) A person who uses information received under this section for any purpose other than a purpose for which he or she is authorised under this section commits an offence.

Penalty: $6 000 and imprisonment for 2 years.

[Section 15A inserted: No. 58 of 2004 s. 9; amended: No. 84 of 2004 s. 82; No. 41 of 2006 s. 86; No. 65 of 2006 s. 76; No. 14 of 2008 s. 44; No. 23 of 2015 s. 22; No. 10 of 2023 s. 409 and 411; No. 15 of 2023 s. 4.]

16. Exchange of information

(1) In this section —

Chief Mental Health Advocate has the meaning given in the *Mental Health Act 2014* section 4;

CLMI identified person has the meaning given in the *Criminal Law (Mental Impairment) Act 2023* section 127;

contractor means —

(a) a contractor as defined in the *Court Security and Custodial Services Act 1999* section 3; or

(b) a contractor as defined in the *Declared Places (Mental Impairment) Act 2015* section 3;

mental health advocate has the meaning given in the *Mental Health Act 2014* section 4;

public authority means —

(a) a department of the Public Service; or

(b) a State agency or instrumentality; or

(c) a court or tribunal to the extent that it is an agency for the purposes of the *Freedom of Information Act 1992*; or

(d) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a written law;

relevant information means information that, in the opinion of the chief executive officer, is, or is likely to be, relevant to the administration of this Act;

research means research to promote the development of juvenile justice services and includes research for the purposes of the project known as "Developmental Pathways Project" conducted by the Telethon Institute for Child Health Research.

(2) The chief executive officer may request a public authority or contractor that holds relevant information to disclose the information to the chief executive officer.

(3) A request under subsection (2) —

(a) may relate to particular information or information of a particular kind; and

(b) may relate to information that may be held from time to time.

(4) A public authority or contractor may disclose information in compliance with a request under subsection (2).

(5) The chief executive officer may disclose information regarding —

(a) young persons who have committed offences; or

(b) detainees or persons who have been detainees,

to a public authority or other body for use in research.

(5A) The chief executive officer may disclose information regarding detainees who are CLMI identified persons to the Chief Mental Health Advocate or a mental health advocate for the purposes of the performance of their respective functions under the *Criminal Law (Mental Impairment) Act 2023*.

(6) A public authority, contractor or other body may disclose information regarding —

(a) young persons who have committed offences; or

(b) detainees or persons who have been detainees,

to the chief executive officer for use in research.

(7) The chief executive officer must establish procedures for the disclosure of information under subsection (5) or (5A).

(8) The regulations may include provisions about —

(a) the receipt and storage of information disclosed under this section; and

(b) the restriction of access to such information.

[Section 16 inserted: No. 65 of 2006 s. 77; amended: No. 26 of 2011 s. 8; No. 4 of 2015 s. 89; No. 10 of 2023 s. 408 and 410.]

16A. Disclosure authorised

(1) Information may be disclosed under section 15 or 16 despite any written law relating to confidentiality or secrecy.

(2) If information is disclosed, in good faith, under section 15 or 16 —

(a) no civil or criminal liability, or liability to be punished for a contempt of court, is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

[Section 16A inserted: No. 65 of 2006 s. 77.]

16B. Protection of Commissioner of Police reports that may be withdrawn

(1) In this section —

Board means the Supervised Release Review Board, established under s 151, as constituted by the chairperson alone.

(2) This section applies if the Board must, under section 150E(2), give the Commissioner of Police an opportunity to withdraw a Commissioner of Police report.

(3) Until the Commissioner of Police is given a reasonable opportunity to withdraw the report, the Board must take all reasonable steps to prohibit the publication of, or a reference to, the report.

[Section 16B inserted: No. 14 of 2022 s. 31.]

16C. Protection of Commissioner of Police reports containing terrorist intelligence information

(1) In this section —

Board means the Supervised Release Review Board, established under s 151, as constituted by the chairperson alone.

(2) The Board must take all reasonable steps to maintain the confidentiality of a Commissioner of Police report that the Board is satisfied contains terrorist intelligence information, including —

(a) receiving the report or hearing argument, or opinion, about the report in private and in the absence of any person other than a person to whose presence the Board consents; and

(b) except as provided in paragraph (a), prohibiting the publication of, or a reference to, the report; and

(c) withholding any or all of the reasons for a decision.

(3) Despite subsection (2), the Board may give the report to —

(a) the Attorney General; or

(b) a court; or

(c) a person to whom the Board authorises disclosure.

(4) Before giving a report under subsection (3)(b) or (c), the Board must, in writing, notify the Commissioner of Police of the Board's intention to give the report.

[Section 16C inserted: No. 14 of 2022 s. 31.]

16D. Protection of terrorist intelligence information in legal proceedings

(1) In this section —

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

disclosure requirement means a requirement under the *Criminal Procedure Act 2004* section 35, 42, 61 or 95 to disclose any information.

(2) In any legal proceedings relating to, or requiring the disclosure of, information included in a Commissioner of Police report that

the court is satisfied is terrorist intelligence information, the court must —

(a) dispense with the disclosure requirements in relation to the information if the court is satisfied that no miscarriage of justice will result; and

(b) ensure that such parts of the proceeding relating to the disclosure of the information are held in private; and

(c) make such orders as to the suppression of evidence given before the court that, in the court's opinion, will ensure that the information is not disclosed; and

(d) make orders prohibiting the publication of the information.

(3) Without limiting the matters that the court may consider for the purpose of determining if the information is terrorist intelligence information, the court must, before it makes the determination, give the Commissioner of Police an opportunity to be heard by, or to make written submissions to, the court.

[Section 16D inserted: No. 14 of 2022 s. 31.]

17. Confidentiality

(1) Except as provided in this section, a person who directly or indirectly divulges any personal information obtained by reason of any function that person has, or at any time had, in the administration of this Act or any provision repealed by this Act commits an offence.

Penalty: $6 000 and imprisonment for 2 years.

(2) Subsection (1) does not apply to the divulging of information —

(a) in the course of performing a function under this Act that requires the information to be divulged; or

(b) under this Act or another law; or

(c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or

(d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information relates; or

(e) with the consent of the person to whom the information relates, or each of them if there be more than one.

(3) If a person proposes to commence a civil action against a young person who is being or has been dealt with in the Children's Court for an offence for compensation for any damage or loss suffered as a result of the offence, the appropriate officer of that Court shall, unless there is good reason not to, divulge to that person —

(a) the name of the young person; and

(b) the last known residential address of the young person.

(4) A person who uses information received under subsection (3) for any purpose other than commencing a civil action against the young person commits an offence.

Penalty: $6 000 and imprisonment for 2 years.

[Section 17 amended: No. 58 of 2004 s. 10.]

Division 5 — Arrangements with councils of Aboriginal communities

[Division 5 heading, formerly Division 2 heading inserted: No. 29 of 2014 s. 21.]

17A. Terms used

In this Division, unless the contrary intention appears —

council has the meaning given to that term in section 3 of the *Aboriginal Communities Act 1979*;

monitor means a person appointed under section 17C;

supervise includes —

(a) monitoring whether or not a young person the subject of an order referred to in section 17B complies with the conditions of that order;

(b) ensuring that the young person is living in safe circumstances and is not at risk of harm;

(c) assisting the young person with advice or support.

[Section 17A inserted: No. 58 of 2004 s. 11.]

[Section 17A. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

17B. Community supervision agreement

The chief executive officer may enter into an agreement with the council of an Aboriginal community for the council, either with or without the assistance of a monitor, to supervise a young person who is the subject of —

(a) a community work order made under section 65A; or

(b) a youth community based order; or

(c) an intensive youth supervision order; or

(d) a conditional release order; or

(e) a supervised release order.

[Section 17B inserted: No. 58 of 2004 s. 11.]

17C. Appointment of monitor

(1) The chief executive officer may appoint as a monitor of a young person who has an aboriginal background, a person who is appointed from a panel of persons nominated under subsection (2).

(2) Whenever an appointment has to be made under subsection (1), the chief executive officer is to invite the council of an Aboriginal community to nominate a panel of persons suitable

for appointment and submit the nominations to the chief executive officer.

(3) The appointment of a person as a monitor may be made on a paid or honorary basis.

(4) The chief executive officer may at any time cancel the appointment of a monitor.

[Section 17C inserted: No. 58 of 2004 s. 11.]

17D. Compensation for injury

If under section 17C a person is appointed on an honorary basis —

(a) the person is, while performing the functions of the position, to be regarded for the purposes of the *Workers Compensation and Injury Management Act 2023* as a worker employed by the State; and

(b) for the purposes of that Act, the person's weekly earnings are to be taken to be the amount that the Minister considers is reasonable in the circumstances.

[Section 17D inserted: No. 58 of 2004 s. 11; amended: No. 21 of 2023 s. 709(2).]

Part 4 — Young persons in custody before being dealt with for an offence

*[**18.** Deleted: No. 50 of 2000 s. 30.]*

19. Detention of young persons apprehended by police

(1) The Commissioner of Police is to make rules, orders, or regulations under section 9 of the *Police Act 1892* in respect of the apprehension of young persons for offences and their detention in custody and a member of the Police Force is to have regard to any such rules, orders, or regulations.

(2) A young person in custody who is under 18 years old and who is not released on bail, whether or not bail has been refused under the *Bail Act 1982*, is, subject to subsection (3) and section 49, to be taken to and placed in a detention centre as soon as practicable after the person's apprehension.

(3) A young person who is under 18 years old may be held in the custody of the police until arrangements can be made for the person to be taken to and placed in a detention centre in accordance with subsection (2).

[Section 19 amended: No. 15 of 2023 s. 5.]

20. Responsible adult to be notified

(1) Before a member of the Police Force asks a young person who has been apprehended for the commission of an offence questions about —

(a) that offence; or

(b) any other offence that has been, or is suspected to have been committed,

the member of the Police Force is to ensure that a responsible adult has received notice of the intention to question the young person.

(2) Subsection (1) does not apply to questions that the member of the Police Force is expressly authorised to ask by any other written law.

(3) When a member of the Police Force charges a young person who has been apprehended for the commission of an offence with the commission of that or any other offence, if a responsible adult has not already been given notice of the intention to lay the charge the member of the Police Force is to ensure that a responsible adult is given notice of the charge as soon as is reasonably practicable.

(4) The notice is to be given orally (either personally or by telephone) or in writing (either personally or by mail sent to the address of the responsible adult), and is to include particulars as to —

(a) the whereabouts of the young person; and

(b) the nature of any offence for which the young person was apprehended, about which the young person is to be questioned, or with which the young person is to be charged; and

(c) where applicable, the process by which the matter is to be brought to court and when and where the court will sit.

(5) The notice is not required to be given if —

(a) after reasonable enquiry, neither the whereabouts nor the address of a responsible adult can be ascertained; or

(b) in the circumstances it would be inappropriate to give a responsible adult notice,

but in either case the chief executive officer is to be advised in writing that the notice was not given and why it was not given.

21. Young person in custody awaiting trial

(1) Subject to the *Bail Act 1982* —

(a) a young person who is under 18 years old may be detained in a detention centre during the period for which the person has been remanded by a court, or during the period of the person's detention on committal for trial in the Supreme Court or the District Court; and

(b) a young person who has reached the age of 18 years must not be detained in a detention centre during either of the periods described in paragraph (a) unless a direction under section 21A(1) or 178B(1) in respect of the young person is in force.

(2) If a young person reaches the age of 18 years while detained in a detention centre as described in subsection (1)(a), the chief executive officer must transfer the young person to a prison under the *Prisons Act 1981* unless a direction under section 21A(1) or 178B(1) in respect of the young person is in force.

(3) A transfer under subsection (2) must be made within 30 days after —

(a) the day on which the young person reaches the age of 18 years; or

(b) if the chief executive officer revokes under section 21A(3) or 178B(3) a direction in respect of the young person — the day on which the direction is revoked.

(4) A failure to comply with subsection (3) does not invalidate the transfer.

(5) A young person transferred to a prison under subsection (2) is taken to be an adult prisoner on remand.

[Section 21 amended: No. 15 of 2023 s. 6.]

21A. Chief executive officer may direct that mandatory transfer does not apply

(1) The chief executive officer may, in writing, direct that a transfer under section 21(2) does not apply in relation to a particular young person.

(2) In giving a direction under subsection (1), the chief executive officer —

(a) must have regard to —

(i) the interests of the young person; and

(ii) the interests of other persons detained in the detention centre;

and

(b) may have regard to any other matter the chief executive officer considers appropriate.

(3) The chief executive officer may, in writing, revoke a direction given under subsection (1).

(4) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this section by the chief executive officer.

(5) The young person cannot apply for a review of, or an appeal against, a decision under this section.

(6) Subsection (5) does not limit judicial review for jurisdictional error.

[Section 21A inserted: No. 15 of 2023 s. 7.]

Part 5 — Dealing with young offenders without taking court proceedings

Division 1 — Cautioning

22A. Purpose of this Division

The purpose of this Division is to set up a way of diverting a child who commits an offence from the courts' criminal justice system by allowing a police officer to administer a caution to the young person instead of starting a proceeding for the offence.

22B. Police officer to consider alternatives to court proceedings

A police officer, before starting a proceeding against a young person for an offence, must first consider whether in all the circumstances it would be more appropriate —

(a) to take no action; or

(b) administer a caution to the young person.

22. Cautions may be given except for certain offences

(1) Where circumstances arise in which a member of the Police Force could charge a young person with the commission of an offence, the member of the Police Force may, having regard to the circumstances, caution the person instead of laying a charge.

(2) The caution may be given orally or in writing.

(3) Subsection (1) does not allow a member of the Police Force to caution a young person instead of laying a charge if the offence is —

(a) a Schedule 1 offence or a Schedule 2 offence; or

(b) an offence under the *Weapons Act 1999* section 6(1), 6A(1) or (2) or 6B(1) or (2).

(4) If a caution is given any admission made by the person cautioned at or about the time the caution is given is not admissible in civil or other proceedings as evidence of any matter to which the caution refers.

[Section 22 amended: No. 33 of 2024 s. 24.]

23. Cautioning to be preferred in certain cases

(1) A member of the Police Force is to use the power to caution in preference to laying a charge against a young person unless because of the number of previous offences with which the person has been charged or for which the person has been dealt with under this Part it would be inappropriate only to give a caution.

(2) In deciding whether the number of previous offences would make it inappropriate only to give a caution for an offence, the seriousness of the offence and of previous offences is to be taken into account.

23A. Caution certificate to be given

(1) If a caution is administered to a young person for an offence, the police officer who administered the caution must give the young person a certificate in a form approved by the Commissioner.

(2) The certificate must state —

(a) that a caution was administered to the young person; and

(b) the young person's name; and

(c) the substance of the offence; and

(d) the police officer's name and rank; and

(e) the place where the caution was issued; and

(f) the names of all persons present when the caution was issued; and

(g) the nature and effect of a caution; and

(h) a description of any thing seized by the police officer in relation to the offence.

(3) In a proceeding, a document purporting to be a certificate or copy of a certificate is evidence that the young person was administered a caution for the offence in the circumstances stated in the certificate.

[Section 23A amended: No. 47 of 1998 s. 8.]

23B. Police officer may retain a thing relating to an offence

(1) If a police officer —

(a) under a written law, seizes from a young person a thing relating to an offence; and

(b) gives a caution to the young person for the offence,

the police officer may retain the thing or release it to an appropriate person.

(2) A police officer who retains a thing under subsection (1) must, after 48 hours after giving the caution, make the thing available for collection by an appropriate person, unless the thing can be retained under any other law.

(3) In this section —

appropriate person, in relation to a thing seized from a young person, means a person who —

(a) owns the thing, is authorised by the owner to possess it or, if the young person is the owner, is a responsible adult in relation to the young person; and

(b) is not prohibited by law from possessing the thing.

[Section 23B inserted: No. 47 of 1998 s. 9.]

Division 2 — Referral to juvenile justice team

24. Principles

In applying this Division, while observing the general principles of juvenile justice as required by section 7, particular regard is to be had to the principles that —

(a) the treatment of a young person who commits an offence that is not part of a well-established pattern of offending should seek to —

(i) avoid exposing the offender to associations or situations likely to influence the person to further offend; and

(ii) encourage and help the family or other group in which the person normally lives to influence the person to refrain from further offending;

and

(b) the treatment of a young person who commits an offence should be fair, should be in proportion to the seriousness of the offence, and should be consistent with the treatment of other young persons who commit offences; and

(c) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time; and

(d) it is to be made clear to a young person who is dealt with for an offence —

(i) what act or omission constituted the offence; and

(ii) what it is that the person is required to do.

25. Only certain matters may be referred to teams

(1) A matter cannot be referred to a juvenile justice team if the offence is a Schedule 1 offence or a Schedule 2 offence.

(2) If an offence is one for which an infringement notice can be given, the giving of an infringement notice for the offence is to be preferred to referring the matter to a juvenile justice team unless there are circumstances that make the giving of an infringement notice inappropriate.

(3) In subsection (2) —

infringement notice means —

(a) a notice issued under a written law to a person alleging the commission of an offence and offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have the matter dealt with out of court; or

(b) a cannabis intervention requirement given under the *Misuse of Drugs Act 1981* Part IIIA.

(4) A matter can only be referred to a juvenile justice team if the alleged offender accepts responsibility for the act or omission constituting the offence, and agrees to having the matter dealt with by a juvenile justice team rather than by a court, but if the juvenile justice team cannot agree on how to deal with the young offender or for some reason refers the young offender to the court then such acceptance is not to be construed as an admission that the offence was committed or a plea of guilty, or otherwise used in evidence against the offender.

(5) A matter cannot be referred to a juvenile justice team if any one potential participant in the particular proceedings of the team does not agree to having the matter dealt with by a juvenile justice team.

[Section 25 amended: No. 58 of 2004 s. 12; No. 45 of 2010 s. 12.]

26. Release of young person under arrest

(1) If a young person has been arrested for an offence and the matter is referred for consideration by a juvenile justice team, the young person is to be released as soon as is practicable.

(2) A young person who has been arrested for an offence is not to be held in custody by reason only of the need to decide whether or not to refer the matter for consideration by a juvenile justice team but the powers in regard to admission to bail may be exercised from time to time until the decision is made.

27. Referral to team by prosecutor

Where there is sufficient evidence to justify charging a young person with the commission of an offence, a person who could lay the charge may, having regard to the circumstances, refer the matter for consideration by a juvenile justice team instead of laying a charge.

28. Referral to team by court

(1) If a young person has been charged with an offence, the court may refer the matter for consideration by a juvenile justice team —

(a) before dealing with the charge; or

(b) after a plea of guilty has been entered but before the court records a finding that the young person is guilty of the offence; or

(c) after a hearing of the charge but before the court records a finding that the young person is guilty of the offence; or

(d) after a plea of not guilty has been entered and the court has found the charge proved but before the court records a finding that the young person is guilty of the offence.

(2) A consideration under subsection (1) of whether or not it is appropriate to refer a matter for consideration by a juvenile

justice team is to be made without an adjournment for any assessment of the young person concerned.

(3) If under subsection (1) a court refers a matter for consideration by a juvenile justice team, the court is not to make any order against the young person concerned at the time the matter is so referred.

[Section 28 inserted: No. 58 of 2004 s. 13.]

29. First offenders usually should be referred to team

(1) The discretion given by section 27 or 28 is to be exercised in favour of referring the matter to a juvenile justice team if the young person has not previously offended against the law.

(2) A young person is not to be taken to have previously offended against the law merely because he or she —

(a) has been cautioned under section 22; or

(ba) has been given an infringement notice, as defined in section 25(3); or

(b) has accepted responsibility for the act or omission constituting the offence under section 25(4); or

(c) has agreed to comply or has complied with the terms specified by a juvenile justice team for disposing of a matter under section 32.

[Section 29 amended: No. 58 of 2004 s. 14; No. 45 of 2010 s. 13.]

30. Role of responsible adult

(1) Before it deals with a young person for an offence, a juvenile justice team is to give to a responsible adult notice that it proposes to deal with the young person for the offence, and it can only proceed if a responsible adult is present and has indicated agreement with the proposal and a willingness to participate in the proceedings as the team sees fit.

(2) If a responsible adult is present at the proceedings, a matter can only be disposed of by the team in a way to which the responsible adult agrees.

(3) If the team considers the young person to be an independent young person, it may dispense with the requirements of subsection (1).

(4) If the team is satisfied that —

(a) after reasonable enquiry, neither the whereabouts nor the address of a responsible adult can be ascertained; or

(b) in the circumstances it would be inappropriate to give a responsible adult notice,

the team may appoint a person satisfying the requirements of subsection (5) to act in place of a responsible adult and the person is to be regarded as a responsible adult for the purposes of the proceedings.

(5) A person appointed under subsection (4) is required to be an adult who, although not a responsible adult, is the young person's parent, relative, or employer, or any other person who appears to be in a position to both influence the conduct of the young person and provide the young person with support and direction.

31. Role of victim

(1) Unless it is impracticable to do so, the juvenile justice team dealing with a young person for an offence is to give any person it considers to have primarily suffered as a consequence of the offence (a ***victim***) the opportunity to make submissions or otherwise participate in the proceedings as it sees fit.

(2) If a victim is present at the proceedings, a matter can only be disposed of by the team if the victim agrees to —

(a) the matter being disposed of by the team; and

(b) the way in which the team disposes of the matter.

[Section 31 amended: No. 58 of 2004 s. 15.]

32. Powers of juvenile justice team

(1) A juvenile justice team dealing with a young person for an offence may determine the way in which it considers the matter should be disposed of and invite the young person to comply with terms to be specified by the team.

(1a) The juvenile justice team is also to give —

(a) the responsible adult, if any, who was given notice of the matter under section 30; and

(b) a person referred to in section 31(1) as a victim,

notice of the determination of the way in which it considers that the matter should be disposed of by the team.

(2) If the young person is not present at the proceedings and does not have a good reason for not being present or a party withdraws his or her agreement to having the matter dealt with by a juvenile justice team or will not agree to terms specified by the team, the team is to send the matter back —

(a) if the matter was referred by a person, to that person; or

(b) if the matter was referred by the court, to the court,

with a report to that effect.

(3) In this section ***party*** means the young person, a responsible adult who was given notice of the matter under section 30, or the person referred to in section 31 as a victim.

(3a) If a person appointed under section 36 to be a Juvenile Justice Team Coordinator considers that the presence of a party may pose a risk to the safety of another person at the proceedings of a juvenile justice team, the Coordinator may order that the party is not to be present at the proceedings of the team.

(4) If a young person agrees to comply with terms specified by a juvenile justice team but the team is not satisfied that the person has complied or is complying with those terms, the team may —

(a) invite the young person to comply with such further terms as it sees fit to specify; or

(b) send the matter back —

(i) if the matter was referred by a person, to that person; or

(ii) if the matter was referred by the court, to the court,

with a report to that effect.

(5) A juvenile justice team cannot make an order for restitution or compensation but is to make a record of, and may have regard to, an undertaking or agreement as to any such matter.

(6) If a juvenile justice team to which a matter is referred, other than by the court, considers that —

(a) the matter should be dealt with by giving a caution; or

(b) for any reason, the matter should be dealt with in court,

it may send the matter back to the person who referred the matter with a report to that effect.

(7) The powers of a person sitting as a member of a juvenile justice team derive solely from this Part.

[Section 32 amended: No. 58 of 2004 s. 16.]

33. Effect on liability to be dealt with by court

(1) Referral of a matter to a juvenile justice team instead of laying a charge does not prevent a charge from being subsequently laid, and referral of a matter to a juvenile justice team by the court instead of the court itself dealing with the matter does not prevent the court from subsequently dealing with the matter itself.

(2) If a young person has complied with the terms specified by a juvenile justice team dealing with the person for an offence, a court hearing a charge of the offence, upon being satisfied that the person has complied with the terms, must dismiss the charge without determining it.

(3) If a young person has not complied with the terms specified by a juvenile justice team dealing with the person for an offence, a court subsequently dealing with the person for the offence, upon being satisfied that the person has taken steps towards complying with the terms, is to have regard to that, and the extent to which the person did comply, in dealing with the person for the offence.

[Section 33 amended: No. 84 of 2004 s. 80.]

34. Civil liability not affected

Nothing in this Division affects any civil liability incurred in respect of an act or omission that constitutes an offence.

Division 3 — Juvenile justice teams

35. Terms used

In this Division, unless the contrary intention appears —

approved means approved by the chief executive officer;

Coordinator means a person appointed under section 36 to be a Juvenile Justice Team Coordinator.

[Section 35 amended: No. 58 of 2004 s. 17.]

36. Juvenile Justice Team Coordinator, appointment of

(1) The chief executive officer may appoint an officer of the Department to be a Juvenile Justice Team Coordinator and may revoke any such appointment.

(2) The chief executive officer may appoint a member of an approved Aboriginal community to be a Juvenile Justice Team

Coordinator on a paid or honorary basis, and may revoke any such appointment.

[Section 36 amended: No. 58 of 2004 s. 18.]

[Section 36. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

37. Establishing juvenile justice teams

(1) When a matter is referred for consideration by a juvenile justice team, it may be dealt with by a juvenile justice team that includes a Coordinator appointed under section 36(1) and a member of the Police Force appointed by the Coordinator on the nomination of the Commissioner of Police.

(1a) When a matter is referred for consideration by a juvenile justice team and considerations of practicality, distance or cultural sensitivity make it appropriate, the matter may be dealt with by a juvenile justice team that includes —

(a) a Coordinator appointed under section 36(1) or 36(2); and

(b) a police officer, or a warden, elder or other appropriate member of an approved Aboriginal community.

(1b) For the purposes of subsection (1a), a member of an approved Aboriginal community who has been nominated by the community council and approved by both the Commissioner of Police and the chief executive officer is an appropriate member of that community.

(2) If it is practicable, the team is also to include —

(a) a person appointed by the Coordinator who has been nominated by or on behalf of the Minister responsible for administering the *School Education Act 1999*; and

(b) where the person to be dealt with by the team is a member of an ethnic or other minority group, a person

appointed by the Coordinator who has been nominated by members of the minority group.

(3) The team may also include such other persons as the Coordinator appoints.

[Section 37 amended: No. 36 of 1999 s. 247; No. 58 of 2004 s. 19.]

37A. No representation by lawyer or agent

[(1) deleted]

(2) During the consideration of a matter by a juvenile justice team, a participant in the proceedings of the team is not to be represented in those proceedings by a lawyer or other agent.

[Section 37A inserted: No. 58 of 2004 s. 20; amended: No. 21 of 2008 s. 714(2) and (3); No. 9 of 2022 s. 422.]

38. Decisions to be unanimous

(1) The members of the juvenile justice team dealing with a matter are to decide anything arising in that matter by a unanimous decision of all members.

(2) If a unanimous decision cannot be reached, the Coordinator is to send the matter back —

(a) if the matter was referred by a person, to that person; or

(b) if the matter was referred by the court, to the court,

with a report to that effect.

39. Records to be kept

A Coordinator is to keep such records relating to juvenile justice teams as the chief executive officer may direct.

40. No report of proceedings to be published

(1) A person is not to publish in any newspaper or other printed medium, or broadcast or televise, any report of the proceedings of a juvenile justice team or any information likely to identify any young person as a person dealt with by a juvenile justice team.

(2) A person who contravenes subsection (1) commits an offence punishable —

(a) by the Supreme Court as for a contempt; or

(b) after summary conviction, by a fine of $10 000 or imprisonment for 12 months.

(3) Proceedings for a contravention of subsection (1) may be taken by or on behalf of the Attorney General.

Part 6 — Court proceedings

41. Preliminary considerations for police before prosecuting

In dealing with a young person who is reasonably believed to have committed or to have been about to commit an offence, a member of the Police Force is to consider whether, in the circumstances, it is appropriate —

(a) to give the person a caution for the offence in accordance with section 22;

(b) under section 27, to refer the matter for consideration by a juvenile justice team;

(c) to charge the person without taking the person into custody;

(d) to apprehend, charge and —

(i) subject to the *Bail Act 1982* and section 19(2), detain the person in custody pending the person's appearance in court; or

(ii) release the person pending the consideration of the matter by a juvenile justice team.

42. Notice to attend court usually preferable to summons

(1) A person who could lay a charge against a young person and —

(a) cause the person to be issued with a summons to attend court to be dealt with for the offence charged; or

(b) detain the person in custody pending the person's appearance in court to be dealt with for the offence charged,

may instead issue to the young person a notice to attend court.

(2) Unless the issue of a notice to attend court would be inappropriate, it is to be preferred to proceeding by way of —

(a) charging the young person and causing the person to be issued with a summons to attend court to be dealt with for the offence; or

(b) detaining the person in custody pending the person's appearance in court to be dealt with for the offence.

(3) In addition to other requirements for a notice to attend court, a notice to attend court issued under this section is to —

(a) describe shortly the offence alleged to have been committed; and

(b) set out particulars of the alleged offence, including particulars of —

(i) the time and place of its alleged commission; and

(ii) any person alleged to be aggrieved; and

(iii) any property alleged to be involved.

(4) If a copy of a notice to attend court issued to a person under this section is lodged with a court, the notice is to be taken to be a prosecution notice charging the person with the alleged offence described.

[Section 42 amended: No. 84 of 2004 s. 80.]

43. Notices to attend court, general provisions about

(1) A notice to attend court issued under any provision of this Act is to —

(a) be in a form approved by the chief executive officer; and

(b) be signed by the person issuing it; and

(c) name the young person to whom it is directed; and

(d) if the identity of a responsible adult is known, name that responsible adult; and

(e) tell the young person to appear at a specified time and at a specified place before the court; and

(f) state that failure to so appear may result in the arrest of the young person.

(2) A notice to attend court may be issued in respect of more than one allegation.

(3) A notice to attend court is to be served personally on the young person, and the person who serves the notice is to explain orally to the young person, in simple language, the effect of the notice and in particular the consequences of failing to appear as required by the notice.

(4) Failure to give the explanation required by subsection (3) does not invalidate the service of the notice to attend court unless the court believes that the failure to give the explanation may have contributed to the failure of the person to attend court.

(5) A copy of a notice to attend court issued to a young person is to be served personally on or sent by post to the address of a person who is a responsible adult unless, after reasonable enquiry, neither the whereabouts nor the address of such a person can be ascertained.

(6) If a person certifies in writing that —

(a) at a specified time and place, the person served on a young person a notice to attend court; or

(b) at a specified time and place, the person personally served on a person who is a responsible adult a copy of a notice to attend court; or

(c) the person sent by post to the address of a person who is a responsible adult a copy of a notice to attend court; or

(d) after the person has made reasonable enquiry, neither the whereabouts nor the address of a responsible adult could be ascertained,

the certificate is sufficient proof, in the absence of evidence to the contrary, of the matters certified.

(7) If —

(a) a young person who the court is satisfied has been served personally with a notice to attend court fails to appear before the court in accordance with the notice; or

(b) the court is satisfied that despite all reasonable efforts having been made to serve a notice to attend court on a young person it has not been possible to do so,

the court may issue a warrant to apprehend the person and bring the person before the court.

44. Proceedings to be explained to young persons

(1) The court before which proceedings are brought against a young person for an offence is to satisfy itself that the person understands the nature of the proceedings.

(2) If the young person is not represented by a legal practitioner, the court is required to —

(a) explain, or cause to be explained, to the person in language likely to be readily understood by the person —

(i) the nature of the allegations against or concerning the person and the legal implications of those allegations; and

(ii) the elements of the offence;

and

(b) give the person a written statement, in the prescribed form, describing the person's rights in respect of legal representation and how legal advice, representation, or assistance may be obtained.

(3) If a young person is sentenced to a fine or ordered to make any other payment of money, the court must give the young person a

notice stating in simple language the amount the young person must pay and the time and place at which payment is to be, or may be, made.

(4) A judgment or order of the court is not defective on the ground of failure to comply with this section if the court has substantially complied with this section.

45. Responsible adult may be required to attend court

(1) In proceedings against a young person for an offence, the court is to enquire into the reason if a responsible adult is not present and, unless the court considers that —

(a) there is a valid reason to excuse attendance of a responsible adult; or

(b) it is not reasonable to delay proceedings for the attendance of a responsible adult,

the court, by order served personally on or sent by post to the address of a person who is a responsible adult, or any one or more of such persons, is to require the person to attend during all stages of the proceedings, whether or not from time to time adjourned, unless subsequently excused from further attendance by the court.

(2) An order is not to be made under subsection (1) requiring an exempt responsible adult to attend court.

(3) If a person who the court is satisfied has been served in accordance with subsection (1) with an order requiring the person to attend court fails to appear before the court in accordance with the order, the court may issue a warrant to apprehend the person and bring the person before the court.

(4) The court may, if it considers it expedient and just to do so, proceed with the hearing and determination of the matter despite the absence of a responsible adult.

(5) If the court proceeds with the hearing and determination of the matter in the absence of a responsible adult, the court is to do

what it reasonably can to ensure that a responsible adult is given notice in writing —

(a) of the charge, or each charge, laid alleging the commission of an offence; and

(b) of any finding, order or decision made by the court in the proceedings; and

(c) of any other information that the court considers appropriate.

Part 7 — Sentencing and related matters

Division 1 — General

46. Principles and considerations to be applied to young offenders

(1) When dealing with a young person who has been found guilty of an offence, the court, in disposing of the matter, is to apply —

(a) the principles applying generally for disposing of charges of offences, except as those principles are modified by this Act; and

(b) the general principles of juvenile justice.

(2) The court is to consider any information about the offender or the offence that may assist the court to decide how to dispose of the matter, and in particular —

(a) the nature and seriousness of the offence; and

(b) any history of offences previously committed by the offender; and

(c) the cultural background of the offender; and

(da) any responsible parenting agreement entered into in respect of the offender under the *Children and Community Services Act 2004* section 131D; and

(d) any order previously made by a court when disposing of a charge of an offence that still applies to the offender, and any further order that is liable to be imposed if the offender does not comply with the terms of any such order; and

(e) the extent, if any, to which any person was affected as a victim of the offence.

(3) The court is to dispose of the matter in a way that is in proportion to the seriousness of the offence and is consistent with the treatment of other young persons who commit offences.

(4) In deciding how to dispose of the matter, which includes deciding the appropriate degree of severity to be used, the court is to consider how young the offender is as a mitigating factor.

(5) The court is to have regard to the fact that the rehabilitation of an offender is facilitated by —

(a) the participation of the offender's family; and

(b) giving the offender opportunities to engage in educational programmes and in employment,

but the absence of such participation or opportunities is not to result in the offender being dealt with more severely for the offence.

(5a) Subject to the *Road Traffic (Administration) Act 2008* section 121 and sections 5 and 10 of the *Graffiti Vandalism Act 2016* but despite any other enactment, where a written law provides that a mandatory penalty or that a minimum penalty shall be imposed in relation to an offence, the court dealing with a young person for the offence is not obliged to impose such a penalty.

(6) The operation of this section is affected by section 125.

[Section 46 amended: No. 78 of 1995 s. 145; No. 8 of 2012 s. 201; No. 23 of 2015 s. 23; No. 16 of 2016 s. 44.]

46A. Application of *Sentencing Act 1995*

(1) The *Sentencing Act 1995* applies to and in respect of the sentencing of a young person —

(a) in a case to which section 50B applies; or

(b) to the extent that section 50A or 118 provides for it to apply; or

(c) subject to subsection (2), to the extent that this Act does not provide for a matter that is provided for in the *Sentencing Act 1995*.

(2) Part 5 of the *Sentencing Act 1995* does not apply to and in respect of the sentencing of a young person except —

(a) for the purposes of deciding whether a community order can be imposed under section 50A; or

(b) in a case to which section 50B applies.

[Section 46A inserted: No. 78 of 1995 s. 140.]

47. Court may request information

(1) The court dealing with a young person who has committed an offence may request the provision to it of any information that it requires in order to decide how to dispose of the matter.

(2) The court may request the chief executive officer to cause to be prepared and submitted to it such reports concerning the young person as it considers relevant (including a report containing information relevant to the making of a juvenile offender reporting order under the *Community Protection (Offender Reporting) Act 2004* section 14B).

Example for this subsection:

A psychological or psychiatric report.

(3) The chief executive officer is to cause the requested reports to be prepared and submitted to the court.

[Section 47 amended: No. 35 of 2024 s. 100.]

48. Certain reports required

(1) Before making an order dealing with a young person whom it has found guilty of an offence, the court is required to obtain from the chief executive officer a report about any matters on which, under this Part, it has to be satisfied before making the order.

(2) Before exercising powers given to it by section 83 or 114 in respect of a failure to comply with a condition or undertaking upon which a youth community based order or a conditional release order was made, the court is required to obtain from the

chief executive officer a report about matters relevant to the manner in which it should exercise those powers.

(3) The court is to consider the report and, if the court thinks necessary, hear an officer of the Department on the matter.

[Section 48. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

49. Remand for observation

If a young person charged with an offence appears before the court and the court has reason to believe that —

(a) the young person may be suffering from any mental or nervous disorder or handicap; and

(b) should be remanded for observation, assessment and recommendation as to his future treatment,

then, despite any other Act, the court may, after giving a responsible adult, if present, an opportunity of being heard, remand the young person to be placed in some suitable place, for a period not exceeding 21 days, for observation, assessment and the making of a report on the person's condition and a recommendation as to person's future treatment.

50. Offender aged under 17 at time of sentence, options

(1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is under 17 years old (the ***offender***).

(2) The court dealing with the offender must dispose of the matter in one of the ways provided for in this Part.

(3) If the court dealing with the offender is the Children's Court, subsection (2) is subject to section 21 of the *Children's Court of Western Australia Act 1988*.

[Section 50 inserted: No. 78 of 1995 s. 142.]

50A. Offender aged 17 or over but under 18 at time of sentence, options

(1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is at least 17 years old but under 18 years old (the ***offender***).

(2) The court dealing with the offender —

(a) may dispose of the matter in one of the ways provided for in this Part; or

(b) may impose a community order under the *Sentencing Act 1995* on the offender, but only if under Part 5 of that Act it would be lawful to impose a community order in respect of the offence were the offender not a young person.

(3) If the court dealing with the offender is the Children's Court, subsection (2) is subject to section 21 of the *Children's Court of Western Australia Act 1988*.

(4) The court must not impose a community order under the *Sentencing Act 1995* on the offender unless under that Act the court has received a pre-sentence report under that Act about the offender.

(5) If the court imposes a community order on the offender under the *Sentencing Act 1995* it is not prevented from making any order under this Division.

(6) If the court imposes a community order on the offender under the *Sentencing Act 1995*, that Act and the *Sentence Administration Act 2003* apply to and in respect of the order imposed.

[Section 50A inserted: No. 78 of 1995 s. 142; amended: No. 50 of 2003 s. 29(3).]

50B. Offender aged 18 or over at time of sentence, options

(1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is 18 years old or older (the ***offender***).

(2) Subject to the *Sentencing Act 1995* the court dealing with the offender must dispose of the matter by sentencing the offender under that Act, and that Act and the *Sentence Administration Act 2003* apply to and in respect of the sentence imposed.

(3) In sentencing the offender under the *Sentencing Act 1995*, the court must make a spent conviction order under that Act if, under section 55 of this Act, it would be required to not record a conviction were it disposing of the matter under this Act.

(4) If the court dealing with the offender is the Children's Court, subsection (2) is subject to section 21 of the *Children's Court of Western Australia Act 1988*.

(5) Despite subsection (2), section 46 applies to the court dealing with an offender.

[Section 50B inserted: No. 78 of 1995 s. 142; amended: No. 50 of 2003 s. 29(3).]

51. Responsible adult to be present for certain orders

(1) The court cannot make a youth community based order or an intensive youth supervision order or impose a custodial sentence unless there is a responsible adult present before the court or it considers that there is sufficient reason for it to make the order even though a responsible adult is not present.

(2) An order is not invalid by reason only that, contrary to subsection (1), it was made without a responsible adult being present.

52. Order requiring consent to be explained

(1) Before making an order that can only be made with the consent of a person, the court is required to explain, or cause to be explained, to the person in language likely to be readily understood by the person —

(a) the purpose and effect of the order; and

(b) the consequences that may follow failure to comply with the order or with any requirement under this Act that may apply as a result of the order being made; and

(c) any right that the person may have to seek the review of the order or appeal against it.

(2) If requested to do so, the person in respect of whom the order is made and any responsible adult who is present when the order is made are required to sign a written acknowledgement, endorsed on a copy of the order, to the effect that the order was made with the required consent and its purpose and effect are understood, but the fact that in a particular case such an acknowledgement may not have been signed does not postpone or otherwise alter the effect of the order.

*[**53.** Deleted: No. 78 of 1995 s. 145.]*

54. Body samples may be required to be provided

An order that the court may, in disposing of a matter, make upon any condition or undertaking may include a condition or undertaking that the offender submit to the taking of a body sample if required by the chief executive officer to do so or wear a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the offender.

[Section 54 amended: No. 58 of 2004 s. 21.]

55. Conviction, when to be recorded

(1) If the court —

(a) finds a young person guilty of a Schedule 1 offence or a Schedule 2 offence; or

(b) finds a young person guilty of any offence and imposes a custodial sentence,

the court is required to record a conviction unless it is prevented from doing so by subsection (5) or it is satisfied that there are exceptional reasons for not doing so.

(2) If the court finds a young person guilty of an offence other than a Schedule 1 offence or a Schedule 2 offence and does not impose a custodial sentence, the court is not to record a conviction unless it is satisfied that there are exceptional reasons for doing so.

(3) Whenever, for exceptional reasons, the court departs from the requirements of subsection (1) or (2), it is to record its reasons for doing so.

(4) Although a conviction is not recorded, the offender is deemed to have been convicted for the purpose of the making, under this Act or any other written law, of any order that may be, or is required to be, made upon convicting a person of such an offence or for the purpose of the operation of any provision of a road law as defined in the *Road Traffic (Administration) Act 2008* section 4 relating to the cancellation of, or disqualification from holding or obtaining, a driver's licence as defined in that section or for the purpose of an appeal under the *Criminal Appeals Act 2004* (but not for any other purpose).

(5) If a young person is found guilty of an offence and, under section 66 or 67, the court refrains from imposing any punishment, the court is not to record a conviction.

(6) The powers in this section may be exercised despite section 147(1) of the *Criminal Procedure Act 2004*.

[Section 55 amended: No. 84 of 2004 s. 74; No. 8 of 2012 s. 202.]

56. Compensation and restitution, orders for

(1) On finding a young person guilty of an offence the court may, subject to this section, on the application of the prosecutor made at the hearing, order that compensation be paid, or restitution be made, in respect of any damage or loss occasioned by the offence to any person who has suffered that damage or loss.

(2) The order may direct the payment of such sum as the court thinks reasonable, either as one payment or by instalments, and in determining the amount to be paid, the court is to have regard to the means of the person against whom the order is made and the person's ability to pay the amount ordered.

(3) Where the court has made an order for the payment of any money under this section, the payment is to be made to the registrar of the court for transmission to the person in whose favour the order was made.

(4) Section 119 of the *Sentencing Act 1995* applies to and in respect of an order made under this section for the payment of any amount as if the order were a compensation order made under that Act.

(5) An order under this section is not a bar to any other proceedings by or on behalf of the person who suffered the damage or loss, but a person is not entitled to recover, in respect of such damage or loss, a total amount that is greater than the amount of the damage or loss that the person suffered.

(6) The powers of the court under this section may be exercised whether or not a conviction is recorded.

[Section 56 amended: No. 59 of 2004 s. 141.]

57. Costs may be ordered to be paid

(1) On finding a young person guilty of an offence, whether or not any punishment is imposed or a conviction is recorded, the court may make an order as to the payment of costs incurred at or in relation to the proceedings.

(2) The order may direct the payment of such sum as the court thinks reasonable, either as one payment or by instalments, and in determining the amount to be paid, the court is to have regard to the means of the person against whom the order is made and the person's ability to pay the amount ordered.

58. Responsible adult may be made liable for fine etc.

(1) In this section ***responsible adult*** does not include an exempt responsible adult.

(2) If a young person is found guilty of an offence and a fine is imposed or the payment of compensation, restitution, or costs is ordered, the court, having regard to the financial circumstances of the young person and any person who is a responsible adult, may order that payment of the fine or other amount be made by the young person, by any person who is a responsible adult, or by any of them in such proportions as the court may determine.

(3) An order for any payment by the young person may be accompanied by an order that, in default of payment by the young person, the payment be made by a person specified in the order who is a responsible adult.

(4) In an order for payment of any sum, the court may direct that such sum be paid by periodical payments.

(5) In any case where a young person is charged with an offence, the court may order a responsible adult to give security for the good behaviour of the young person and such order may be made in addition to any order made in disposing of the matter.

(6) An order under subsection (2) or (5) may be made against more than one responsible adult.

(7) Obligations to pay imposed on 2 or more persons by an order under this section or by a security given as ordered under this section are joint and several.

(8) An order under this section may be made against a responsible adult who, having been required to attend, has failed to do so, but, except in that case, such an order is not to be made without first giving the responsible adult an opportunity of being heard.

(9) The amount of a fine or costs all or any of which has, under this section, been ordered to be paid by a responsible adult may be recovered in the same manner as if the order had been made on the conviction of the responsible adult of the offence with which the young person was charged.

59. Court orders to be provided in writing

(1) The court is to cause an order that it makes after finding a young person guilty of an offence to be reduced to writing and, as soon as practicable after the order is made, is to cause a copy of it to be given —

(a) to the person in respect of whom the order is made; and

(b) if the registrar of the court knows or can by reasonable enquiry ascertain the whereabouts or address of such a person, to a person who is a responsible adult; and

(c) to the chief executive officer.

(2) Subsection (1) extends to any order made by the court that relates to the obligations imposed by, or otherwise affects, an order referred to in that subsection.

(3) If the court imposes a fine on a young person or makes any other order requiring a young person to pay money, it is to cause the person to be given a notice stating in language likely to be readily understood by the person the amount that the person has to pay and the time and place at which payment may be, or is required to be, made.

(4) An order of the court is not defective on the ground of failure to comply with this section.

[Section 59 amended: No. 59 of 2004 s. 141.]

60. Orders etc. under this Part are sentences

For the purposes of an appeal under the *Criminal Appeals Act 2004* each of the following is to be taken to be a sentence —

(a) a decision made under Division 2, 3 or 4 to refrain from imposing any punishment;

(b) a fine imposed under Division 5;

(c) a youth community based order imposed under Division 6;

(d) an intensive youth supervision order or a conditional release order imposed under Division 7;

(e) a custodial sentence imposed under Division 8;

(f) the making or discharge of a special order under Division 9;

(g) a decision by the court, having found a young person guilty of an offence, to record or not to record a conviction of the offence in respect of the person.

[Section 60 inserted: No. 84 of 2004 s. 75.]

*[**61.** Deleted: No. 92 of 1994 s. 44.]*

62. Workers' compensation for compulsory work

If a person who is required by an order made under this Act, or by terms specified by a juvenile justice team, to perform any work is lawfully engaged in remunerative employment, for the purposes of the *Workers Compensation and Injury Management Act 2023* the person is, in respect of the work performed, to be regarded as a worker employed by the Crown and where, for the purposes of calculating the compensation payable under that Act, reference must be made to weekly earnings, the weekly

earnings are to be regarded as being equal to the weekly earnings of the person in the person's lawful employment at the relevant time.

[Section 62 amended: No. 42 of 2004 s. 174; No. 21 of 2023 s. 709(2).]

63. Terms used

In this section and in sections 64 to 65C —

community work order has the meaning given by section 65B;

detention order has the meaning given by section 65C;

fine has the same definition as in Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[Section 63 inserted: No. 92 of 1994 s. 45.]

64. Enforcing payment by young person who has reached 18

(1) If a young person has reached the age of 18 years when —

(a) he or she is fined for committing an offence; or

(b) a bail undertaking entered into by him or her under the *Bail Act 1982* is forfeited; or

(c) a recognisance, entered into by him or her under this Act or any other written law in proceedings for an offence is forfeited,

payment of the amount concerned is to be made and may be enforced under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(2) Without limiting subsection (1) —

(a) the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 32(2) applies to and in relation to a fine to which subsection (1)(a) applies; and

(b) section 59A(2) of that Act applies to and in relation to —

(i) a forfeited bail undertaking to which subsection (1)(b) applies; and

(ii) a forfeited recognisance to which subsection (1)(c) applies.

[Section 64 inserted: No. 92 of 1994 s. 45; amended: No. 20 of 2013 s. 140.]

65. Enforcing payment by young person who has not reached 18

(1) This section applies if a young person has not reached the age of 18 years when —

(a) he or she is fined for committing an offence; or

(b) a bail undertaking entered into by him or her under the *Bail Act 1982* is forfeited; or

(c) a recognisance, entered into by him or her under this Act or any other written law in proceedings for an offence is forfeited.

(2) When fining or forfeiting the undertaking or recognisance of the young person, the court is to either —

(a) specify the time within which the amount concerned is to be paid; or

(b) make an order that the amount concerned is to be paid in instalments.

(3A) The *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 10B applies to fines, forfeited bail undertakings and forfeited recognisances to which subsection (1) applies.

(3) If the young person defaults in the payment of the amount concerned or of any instalment of the amount concerned, the court —

(a) if the young person has reached the age of 18 years, must register the fine or the amount of the forfeited undertaking or recognisance under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, unless a community work order or a detention order has been made under section 65A in respect of the default or unless sufficient cause to the contrary is shown; or

(b) if the young person has not reached the age of 18 years, must issue the young person with a notice to attend court requiring him or her to appear before the court because of the default, unless sufficient cause to the contrary is shown.

(4A) If, under subsection (3)(a), the court must register a fine or the amount of a forfeited undertaking or forfeited recognisance under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, then —

(a) in the case of a fine, section 32(2) of that Act applies to and in relation to the fine; and

(b) in the case of a forfeited undertaking or forfeited recognisance, section 59A(3) of that Act applies to and in relation to the amount forfeited.

(4) If, after a fine or the amount of a forfeited undertaking or recognisance is registered under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the amount concerned or any part of it is paid, the court is to notify the Registry immediately.

(5) After a fine or the amount of a forfeited undertaking or recognisance is registered under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the court cannot make any further order in respect of the payment and the

enforcement of the payment of the fine or the forfeited undertaking or recognisance.

[Section 65 inserted: No. 92 of 1994 s. 45; amended: No. 20 of 2013 s. 141.]

65A. Court's powers to deal with defaulter

(1) If a notice to attend court is issued under section 65(3) to a young person (the ***defaulter***) and the defaulter appears before the court, the court may invite the defaulter to consent to the making of a community work order in respect of the unpaid amount concerned.

(2) If the defaulter consents to the making of a community work order the court may make one.

(3) If the defaulter does not consent to the making of a community work order, the court, unless sufficient cause to the contrary is shown, is required to make a detention order —

(a) to have effect immediately; or

(b) to have effect if the defaulter is still in default at a specified later date.

(4) The chief executive officer or another officer of the Department may be present at, and is entitled to be heard in, the proceedings to show cause why a detention order should not be made.

(5) If under subsection (3) the court declines to make a detention order the defaulter ceases to be liable to be imprisoned in respect of the failure to pay the amount concerned and neither the fine nor the amount of the forfeited undertaking or recognisance can be registered under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[Section 65A inserted: No. 92 of 1994 s. 45.]

[Section 65A. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

65B. Community work order

(1) A community work order is an order having the same effect as a youth community based order imposing community work conditions.

(2) The provisions of this Act with the modifications set out in Schedule 3, apply to a community work order.

(3) If the defaulter fully complies with an order under subsection (1) or if the court discharges such an order, the obligation to pay the amount concerned is satisfied.

[Section 65B inserted: No. 92 of 1994 s. 45.]

65C. Detention order

(1) A detention order is an order that the defaulter be detained in a detention centre for failing to pay the amount concerned.

(2) The period of detention is to be calculated under the regulations by reference to the unpaid amount of the amount concerned.

(3) If the court makes a detention order it is required to issue a warrant of commitment accordingly.

(4) The period of detention under such a warrant of commitment is to be served concurrently with any other term or period of detention or imprisonment that the defaulter is serving or has to serve.

(5) Service of the period of detention under such a warrant of commitment discharges the defaulter from the liability to pay the amount concerned.

[Section 65C inserted: No. 92 of 1994 s. 45.]

[Section 65C. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

Division 2 — No punishment and no conditions

66. Court may refrain from punishing in some cases

(1) Subject to subsection (2), the court may refrain from imposing any punishment.

(2) The court cannot exercise the power given by subsection (1) with respect to more than 2 offences but, for the purpose of this subsection, multiple offences arising from the one incident are to be treated as one offence.

Division 3 — No punishment but conditions

67. Undertakings and informal punishment

(1) The court may refrain from imposing any punishment upon being satisfied that —

(a) such undertakings as the court may approve have been or will be given by the offender or a responsible adult; or

(b) such punishment as the court may approve has been, or on the undertaking of a responsible adult will be, inflicted on the offender.

(2) The power given by subsection (1) is independent of the power given by section 66(1).

68. Adjournment

Instead of forthwith deciding whether it will refrain from itself imposing any punishment, the court may adjourn the proceedings until the punishment is carried out or the undertakings have been given or are fulfilled, as the case requires.

Division 4 — No punishment but security or recognisance

69. Recognisance by offender to be of good behaviour etc.

The court may refrain from imposing any punishment upon the offender entering into a recognisance, with or without sureties, in such amount as the court thinks fit, to keep the peace and be of good behaviour for a term not exceeding one year.

70. Responsible adult may give security for offender's good behaviour etc.

The court may refrain from imposing any punishment upon being satisfied that a responsible adult has given security that the offender keep the peace and be of good behaviour for a term not exceeding one year.

Division 5 — Fine

71. Fine instead of imprisonment

If the offence is punishable by imprisonment, the court may, instead of sentencing the offender to imprisonment, impose a fine not exceeding $2 000.

72. Offender must be able to pay

(1) A fine is not to be imposed under this Division or any other written law on a young person unless the court is satisfied, after making reasonable enquiry, that the person who is ordered to pay the fine, or any of it, has the means to pay either on demand or by instalments related to such means.

(2) The court is to have regard to any order for the payment of compensation or restitution when considering the means of a person to pay a fine.

Division 6 — Youth community based order

73. Youth community based order, nature of

(1) The court may make an order to be known as a youth community based order imposing on the offender —

(a) attendance conditions in accordance with Subdivision 1;

(b) community work conditions in accordance with Subdivision 2;

(c) supervision conditions in accordance with Subdivision 3,

or any number of such conditions.

(2) The order is required to have attached an agenda specifying the conditions that it imposes.

(3) The agenda attached to the order is to be considered to be a part of the order.

74. Offender must be suitable and consent

A youth community based order can only be made if the offender consents to it and the court is satisfied that it would be suitable for the offender in all the circumstances.

75. Proposed agenda required for suitable person

The chief executive officer is to cause a proposed agenda to be submitted to the court whenever submitting to the court a report that attendance conditions, community work conditions, or supervision conditions would be suitable for a person.

76. Duration of order

(1) A youth community based order is satisfied when —

(a) every attendance condition or community work condition, if any, imposed by it is fulfilled; and

(b) the period for which it imposes supervision conditions, if any, has elapsed.

(2) The order remains in force until it is satisfied unless it is sooner discharged or cancelled by the court.

77. Supervising officer

The chief executive officer is to assign an officer of the Department to be the supervising officer in respect of the order and may from time to time assign another officer of the Department in place of the officer previously assigned.

[Section 77. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

78. Conditions implied in order

Every youth community based order is to be taken to include the conditions that, while the order is in force —

(a) the offender is not to commit another offence and is to be of good behaviour; and

(b) the offender is to comply with —

(i) any regulations that regulate the conduct of persons in respect of whom youth community based orders are made; and

(ii) any reasonable direction given by the supervising officer;

and

(c) the offender is to inform the supervising officer of any change in the offender's address.

79. Obligations under order may be suspended

(1) If the chief executive officer is satisfied that it would be appropriate in the circumstances to do so, the chief executive officer may give the offender notice in writing that the

offender's obligations under the order are suspended as specified in the notice.

(2) Subsection (1) does not apply to an obligation under a condition referred to in section 78.

80. Amendment of order, extent of power

(1) A power given to the court to amend a youth community based order includes power to —

(a) fully discharge the order, or cancel it and substitute another youth community based order; or

(b) fully discharge any of its conditions, or cancel them and substitute other conditions; or

(c) amend any of its conditions by cancelling any of their requirements or by inserting any requirement in them, either by way of addition or substitution.

(2) The power to amend a youth community based order is subject to the same qualifications as would apply to the making of an order in the terms of the order as amended.

81. Amendment of order

(1) Subject to subsection (2), the court may at any time, upon the application of the chief executive officer or the offender, by order amend the youth community based order.

(2) Except so far as it diminishes or removes an obligation of the offender, an amendment can only be made under this section with the consent of the offender.

82. Breach of order, CEO may require offender to attend court

(1) If any condition of a youth community based order is not observed, the chief executive officer may issue to the offender a notice to attend court to be dealt with for the failure.

(2) The notice to attend court is to describe the alleged failure and give such particulars as are necessary to identify the nature of the allegation.

83. Breach of order, powers to deal with

(1) This section applies if —

(a) in proceedings for an offence, the court finds that a person who is subject to a youth community based order committed that offence while the order was in force; or

(b) in proceedings resulting from a notice to attend court given under section 82, the court finds that a person who is subject to a youth community based order has failed to comply with any condition of the order.

(2) If this section applies, the court may —

(a) order that no further action be taken because of the failure to comply with a condition upon which the youth community based order was made; or

(b) if it decides that the offender should be further subject to a youth community based order, amend the youth community based order previously made; or

(c) cancel the order and deal with the offender for the offence that resulted in the order being made (in this section called the ***original offence***) in any manner in which it could have done when it found the offender guilty of that offence.

(3) The discretion given by subsection (2)(a) to order that no further action be taken can only be used if the court is satisfied that the failure is of such a trivial nature that no further action is appropriate, and the court making such an order is to record in writing the reasons why it considers that no further action is appropriate.

(4) The court, when considering how to dispose of the matter under subsection (2) or when dealing with the offender for the original offence under that subsection, is to take into account —

(a) that the youth community based order was made; and

(b) the time for which the person has been complying with supervision conditions under the order; and

(c) anything that was done, or that was not done but should have been done, under the order,

and may take into account, either as an aggravating or a mitigating factor, the behaviour of the offender in doing anything under the order.

84. Breach of order by re-offending, new order may be made

If the offender breaches a youth community based order by committing another offence, the court may, in an appropriate case, cancel the order and make one youth community based order for both the offence for which the breached order was made and the other offence.

85. Discharge or fulfillment of order, effect of

(1) If the order is discharged by the court or satisfied in accordance with section 76, the offender ceases to be liable to be further dealt with for the offence for which the order was made.

(2) Upon the offender fulfilling every attendance condition or community work condition, if any, imposed by the order, the supervising officer is to give to the court notice in writing that no attendance condition or community work condition remains to be fulfilled and a copy of the notice is to be given to the person in respect of whom the order was made and a responsible adult.

86. Proof of identity in proceedings for breach of order

(1) A person bringing proceedings for a failure to comply with a youth community based order may aver that the person against whom the proceedings are brought is the person in respect of whom the youth community based order was made.

(2) In proceedings in which an averment is made under subsection (1) the person against whom the proceedings are brought may be asked by the court whether the person was found guilty of the offence in respect of which the youth community based order was made and, if the person admits that fact, no further proof of it is required.

87. Notice of court applications

(1) Where an application to the court is made under this Division by or on behalf of the chief executive officer, the chief executive officer is to issue a notice to attend court that describes the nature of the application and requires the person affected by the application to appear before the court on the hearing of the application.

(2) Where an application to the court is made under this Division by the offender, the court is to cause notice of the application and of the time and place fixed for the hearing to be given to the chief executive officer.

Subdivision 1 — Attendance conditions

88. Requirement to attend courses

(1) Attendance conditions require the offender to attend, as specified in the order, for the purpose of participating in an educational, rehabilitative, or other course.

(2) The court cannot impose attendance conditions requiring the offender —

(a) to attend over a period that is more than 6 months; or

(b) to attend at a place that is more than 30 km from the offender's residential address; or

(c) to attend for any continuous period that is more than 7 days.

Subdivision 2 — Community work conditions

89. Requirement to perform unpaid work

Community work conditions require the offender to perform unpaid work, in accordance with this Subdivision and the regulations, for such number of hours as may be specified in the order.

90. Conditions cannot be imposed on child under 12

The court can impose community work conditions on an offender only if the offender has reached the age of 12 years.

91. Community work, minimum and maximum hours of

The court cannot make an order imposing community work conditions such that, after it is made, the aggregate number of hours of work required to be performed under it, or under it and any other youth community based order, would be —

(a) less than the number prescribed for the purposes of this paragraph, or if no number is so prescribed, 10; or

(b) more than the number prescribed for the purposes of this paragraph, or if no number is so prescribed, 100.

92. Offender to attend before Departmental officer

The conditions are to require the offender to attend before an officer of the Department, at a place specified in the conditions, at or within such time (if any) as is so specified.

[Section 92. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

93. Performing the work

(1) All of the work is required to be performed within the period of 3 months commencing from the date when the conditions are imposed or within such extension of that period as the court may allow.

(2) A person giving directions to the offender under the order is, so far as practicable, to —

(a) avoid conflict with the offender's religious beliefs; and

(b) avoid interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

94. Regulations relating to community work conditions

Without limiting the generality of section 196, regulations relating to community work conditions may —

(a) provide for persons to be designated as overseers to oversee persons when performing work under community work conditions;

(b) regulate the conduct of overseers and persons in respect of whom community work conditions are made, and provide for their health and safety;

(c) prescribe for the purposes of paragraphs (a) and (b), respectively, of section 91, minimum and maximum numbers of hours in lieu of those set out in those paragraphs;

(d) prescribe the maximum number of hours of work that a person may be required to perform under community work conditions on any one day;

(e) provide for travelling and transport arrangements to be made for persons performing work under community work conditions;

(f) prescribe the effect of injury and sickness in relation to community work conditions;

(g) prescribe periods to be taken into account in computing the number of hours of work performed by a person under community work conditions.

Subdivision 3 — Supervision conditions

95. Requirement to be supervised

(1) Supervision conditions require the offender, during such period as is specified in the order, to report, submit to supervision and other contact, and comply with such other requirements, as specified in the order.

(2) The regulations are to prescribe limits on the extent of the requirements that the supervision conditions of the order may impose.

96. Duration of supervision

The court cannot impose supervision conditions for a period exceeding 12 months unless it is constituted so as to consist of or include a judge, in which case the conditions may be imposed for a period not exceeding 2 years.

[Section 96 amended: No. 5 of 2008 s. 132(2).]

97. Changing duration of supervision

(1) The court cannot amend supervision conditions by varying the period for which they are imposed but a power to amend them includes a power to cancel them and substitute for them new supervision conditions.

(2) Supervision conditions substituted for supervision conditions that are cancelled cannot run beyond the latest time that could have been specified, when the cancelled conditions were imposed, as the time when the period of the cancelled conditions would end.

(3) In applying subsection (2) to the case of an order that is for more than one offence, the time beyond which supervision

conditions cannot run is the latest time that could be, or could have been, specified upon making a youth community based order for any of those offences.

Division 7 — Intensive youth supervision order

98. Intensive youth supervision order, nature of

The court may make an order to be known as an intensive youth supervision order imposing on the offender such conditions as it could impose by way of a youth community based order, except that the supervision conditions that may be imposed are not subject to the limits placed by the regulations on supervision conditions when imposed by a youth community based order.

99. Order may be made with or without custodial sentence

(1) An intensive youth supervision order may be made with or without imposing on the offender a sentence of detention.

(2) The order cannot be made with a sentence of detention for a term of more than 12 months.

100. Order without custodial sentence

If the court makes an intensive youth supervision order without imposing a sentence of detention, the provisions of this Act apply as if it were a youth community based order unless it is otherwise provided.

101. Order with custodial sentence (conditional release order)

(1) If an intensive youth supervision order is made and a sentence of detention is imposed, the intensive youth supervision order is referred to in this Act as a conditional release order.

(2) If the court makes a conditional release order, the offender is to be released from detention under the sentence as soon as the sentence would have commenced if there were no conditional release order.

(3) Time during which the offender is released under the order does not count as time for which the offender is serving the term of detention.

(4) The offender only becomes liable to serve the term of detention, or a portion of it, if the order is cancelled.

102. Conditional release order to include agenda of conditions

(1) A conditional release order is required to have attached an agenda specifying the conditions that it imposes.

(2) The agenda attached to the order is to be considered a part of the order.

103. Offender must be suitable and consent

(1) A conditional release order can only be made if the offender consents to it and the court is satisfied that release under the order would be suitable for the offender in all the circumstances.

(2) The court cannot release an offender under this section unless the court has been given and considered a report under section 104.

(3) Following its consideration of that report, the court is to indicate whether the offender is a suitable person to have conditions set out in section 109A(1) or 109B(1) included in the agenda submitted under section 104.

[Section 103 amended: No. 58 of 2004 s. 22.]

104. Agenda proposal required for suitable person

The chief executive officer is to cause a proposed agenda to be submitted to the court whenever submitting to the court a report that release under a conditional release order would be suitable for a person.

105. Conditional release order, duration of

A conditional release order runs until the end of the term for which the offender would be liable to be detained if there were no conditional release order and cannot impose any obligation that binds the offender after the end of that term.

106. Conditional release order may relate to several sentences

(1) A conditional release order may relate to more than one sentence of detention, in which case the order runs for as long as the offender would be liable to be detained under either of the sentences if there were no conditional release order.

(2) The sentences may include a sentence of detention previously imposed by the court that has not been discharged and, if the person is released from that detention under a previous conditional release order, the previous order is to be cancelled when the later conditional release order is made.

107. Conditional release not to exceed 12 months

A conditional release order cannot be made so as to result in a person being able to be released under that or any other conditional release order for a continuous period of more than 12 months.

108. Supervising officer

The chief executive officer is to assign an officer of the Department to be the supervising officer in respect of the order and may from time to time assign another officer of the Department in place of the officer previously assigned.

[Section 108. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

109. Conditional release order, implied conditions of

Every conditional release order is to be taken to include the conditions that, while the order is in force —

(a) the offender is not to commit another offence and is to be of good behaviour; and

(b) the offender is to comply with —

(i) any regulations that regulate the conduct of persons in respect of whom conditional release orders are made; and

(ii) any reasonable direction given by the supervising officer;

and

(c) the offender is not to move to a different residential address without the approval of the supervising officer.

109A. Conditional release order: specified places

(1) If the offender's suitability is indicated by the court under section 103(2), the chief executive officer may impose, on a conditional release order, an express condition that, while the order is in force, the offender must remain at a specified place, for specified periods.

(2) A condition under subsection (1) —

(a) cannot be imposed so as to result in the requirement being in force for a continuous period that exceeds 6 months;

(b) cannot require an offender to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day;

(c) is to allow the offender to leave the specified place during a specified period —

(i) to do community work as required under this Act; or

(ii) to obtain urgent medical or dental treatment for the offender; or

(iii) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person; or

(iv) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere; or

(v) to attend school, education or vocational training; or

(vi) for a purpose approved of by the officer supervising the offender; or

(vii) with the permission of the chief executive officer.

(3) If the offender is authorised under subsection (2) to leave a specified place, the officer supervising the offender may give directions as to —

(a) when the offender may leave; and

(b) the period of the authorised absence; and

(c) when the offender must return; and

(d) the method of travel to be used by the offender during the absence; and

(e) the manner in which the offender must report his or her whereabouts.

(4) To ascertain whether or not the offender is complying with a condition under this section, the officer supervising the offender may, at any time —

(a) enter or telephone a specified place; or

(b) enter or telephone the offender's place of employment or any other place where the offender is authorised or required to attend; or

(c) question any person at any place referred to in paragraph (a) or (b).

(5) A person who hinders a person exercising powers under subsection (4) commits an offence.

(6) A person who fails to answer a question put pursuant to subsection (4)(c) or gives an answer that the person knows is false or misleading in a material particular, commits an offence.

[Section 109A inserted: No. 58 of 2004 s. 23.]

109B. Conditional release order: devices

(1) If the offender's suitability is indicated by the court under section 103(2), the chief executive officer may impose, on a conditional release order, either or both of the following express conditions —

(a) that, while the order is in force, the offender must wear a device for monitoring purposes;

(b) that, while the order is in force, the offender must wear a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the offender.

(2) The chief executive officer may give the occupier of a place where a device is located a direction to deliver the device to the chief executive officer within a set period.

(3) A person who contravenes a direction given under subsection (2) commits an offence.

(4) The officer supervising the offender may, at any time, enter a place where a device is located to retrieve the device.

(5) A person who hinders a person exercising the power in subsection (4) commits an offence.

(6) A person who unlawfully interferes with the operation of any device commits an offence.

(7) A person who wilfully and unlawfully destroys or damages a device commits an offence.

[Section 109B inserted: No. 58 of 2004 s. 23.]

110. Obligations under order may be suspended

(1) If the chief executive officer is satisfied that it would be appropriate in the circumstances to do so, the chief executive officer may give the offender notice in writing that the offender's obligations under the order are suspended as specified in the notice.

(2) Subsection (1) does not apply to an obligation under a condition referred to in section 109.

111. Amendment of order, extent of power

(1) A power given to the court to amend a conditional release order includes power to —

(a) cancel the order and substitute another conditional release order; or

(b) cancel any of its conditions and substitute other conditions; or

(c) amend any of its conditions by cancelling any of their requirements or by inserting any requirement in them, either by way of addition or substitution.

(2) The power to amend a conditional release order is subject to the same qualifications as would apply to the making of an order in the terms of the order as amended.

112. Amendment or cancellation of order

(1) Subject to subsection (2), the court may at any time, upon the application of the chief executive officer or the offender, by order cancel the conditional release order or amend it.

(2) A conditional release order can only be cancelled under this section with the consent of the offender and, except so far as it diminishes or removes an obligation of the offender, an amendment can only be made under this section with the consent of the offender.

113. Breach of order, CEO may require offender to attend court

(1) If any condition or undertaking upon which the order was made is not observed, the chief executive officer may issue to the offender a notice to attend court to be dealt with for the failure.

(2) The notice to attend court is to describe the alleged failure and give such particulars as are necessary to identify the nature of the allegation.

114. Breach of order, powers to deal with

(1) This section applies if —

(a) in proceedings for an offence, the court finds that a person who is subject to a conditional release order committed that offence while released under the order; or

(b) in proceedings resulting from a notice to attend court given under section 113, the court finds that a person who is subject to a conditional release order has failed to comply with any condition or undertaking upon which the order was made; or

(c) in proceedings for an offence, the court makes a finding under section 115(a) or (b).

(2) If this section applies the court may —

(a) order that no further action be taken because of the failure to comply with a condition or undertaking upon which the conditional release order was made; or

(b) amend or cancel the conditional release order; or

(c) if the court has made a finding under section 115(a) or (b), order that the conditional release order is to be taken for the purposes of this section not to have run its term but to have been cancelled on the day on which the offence was committed or the day on which the court finds that the person failed to comply with any condition or undertaking upon which the order was made, as the case may be.

(3) The discretion given by subsection (2)(a) to order that no further action be taken can only be used if the court is satisfied that the failure is of such a trivial nature that no further action is appropriate, and the court making such an order is to record in writing the reasons why it considers that no further action is appropriate.

(4) The court, when considering how to dispose of the matter under subsection (2), is to take into account —

(a) the time for which the person has been complying with supervision conditions under the order; and

(b) anything that was done, or that was not done but should have been done, under the order,

and may take into account, either as an aggravating or a mitigating factor, the behaviour of the offender in doing anything under the order.

[Section 114 amended: No. 58 of 2004 s. 24.]

115. Conditional release order, effect of expiry of

If the conditional release order runs its term without being cancelled, the offender ceases to be liable to serve the sentence of detention to which the order relates unless —

(a) proceedings for an offence are commenced within 6 months of the day on which the conditional release order expired and the court finds that the offender

committed that offence while released under the order; or

(b) a notice is issued under section 113 before the conditional release order runs its term and, within 6 months of the day on which the conditional release order expired, the court finds that a person who is the subject of a conditional release order has failed to comply with any condition or undertaking upon which the order was made.

[Section 115 amended: No. 58 of 2004 s. 25.]

116. Cancellation of conditional release order, effect of

(1) When the court cancels a conditional release order without substituting for it another conditional release order, it is to direct that the offender serve so much of the term of detention as it considers appropriate having regard to the matters set out in subsection (2).

(2) The period of detention is to be reduced in proportion to the extent to which the court considers that the offender complied with the conditional release order.

(3) If the order related to more than one sentence of detention, the reduction may be made to each or any of those sentences, as the court considers just in the circumstances.

(4) Cancellation of a conditional release order does not prevent a supervised release order from being subsequently made.

(5) If the offender has reached the age of 18 years when the order is cancelled, the balance of the term of detention is to be served in a prison, and while in a prison the *Prisons Act 1981* applies to and in respect of the offender.

[Section 116 amended: No. 78 of 1995 s. 145.]

117. Notice of court applications

(1) Where an application to the court is made under this Division by or on behalf of the chief executive officer, the chief executive officer is to issue a notice to attend court that describes the nature of the application and requires the person affected by the application to appear before the court on the hearing of the application.

(2) Where an application to the court is made under this Division by the offender, the court is to cause notice of the application and of the time and place fixed for the hearing to be given to the chief executive officer.

Division 8 — Custodial sentence

118. Sentencing for offences punishable by imprisonment

(1) If the statutory penalty for an offence is or includes imprisonment and the court dealing with the offender decides to impose a custodial sentence, the court may —

(a) impose a term of imprisonment under Part 13 of the *Sentencing Act 1995* but may not impose suspended imprisonment under Part 11 of that Act or conditional suspended imprisonment under Part 12 of that Act; or

(b) sentence the offender to a term of detention that is not longer than the term of imprisonment to which the offender would have been liable if the offender were not a young person.

(2) Despite section 86 of the *Sentencing Act 1995* the court sentencing a young person to a term of imprisonment or a term of detention may impose a term of 6 months or less.

(3) If the court sentences an offender to imprisonment it may, subject to Part 14 of the *Sentencing Act 1995*, also sentence the offender to indefinite imprisonment.

(4) If the court sentences an offender to imprisonment it may, if the offender is at least 16 and under 18 years old and having regard to the matters in section 178(4), direct that the offender serve the sentence in a prison under the *Prisons Act 1981*.

(5) If the court sentences the offender to a term of imprisonment, the *Sentencing Act 1995* and the *Sentence Administration Act 2003*, with any necessary changes, apply to and in respect of the sentence imposed.

[Section 118 inserted: No. 78 of 1995 s. 143; amended: No. 29 of 1998 s. 21; No. 50 of 2003 s. 29(3) and 104(2); No. 27 of 2004 s. 17; No. 5 of 2008 s. 132(3); No. 15 of 2023 s. 8.]

118A. Where sentence of imprisonment to be served

(1) Subsection (1A) applies if —

(a) as a result of a sentence imposed by a court a young person is to be imprisoned; and

(b) the young person is under 18 years old at the time when under that sentence the young person is to be imprisoned.

(1A) The young person must serve the sentence in a detention centre and not in a prison unless —

(a) a direction is made in respect of the young person under section 118(4) or 178(3); or

(b) the young person is transferred under section 178A(2).

(2) Subsection (2A) applies if —

(a) as a result of a sentence imposed by a court a young person is to be imprisoned; and

(b) the young person has reached the age of 18 years at the time when under that sentence the young person is to be imprisoned.

(2A) The young person must serve the sentence in a prison.

(3) If it is not practicable to immediately transport a young person to a detention centre in accordance with subsection (1A), the young person may be held in a prison or a lock-up until transport to a detention centre is practicable.

[Section 118A inserted: No. 78 of 1995 s. 143; amended: No. 47 of 1999 s. 43; No. 15 of 2023 s. 9.]

119. Taking time on remand into account

If when the offender is being sentenced to a term of detention for an offence —

(a) he or she has previously spent time in custody in respect of that offence and for no other reason; and

(b) the court decides that that time should be taken into account,

the court may take that time into account —

(c) if it imposes a set term of detention, by reducing that term by an appropriate period; or

(d) by ordering that the term it imposes is to be taken to have begun on a specified day being the day when that custody began or on some later date that is not later than the date of the sentence.

[Section 119 inserted: No. 29 of 1998 s. 22.]

119A. Effect of not being in custody

(1) A term of detention does not elapse while an offender is at large, having escaped lawful custody while serving it.

(2) A term of detention does not elapse while an offender is not in lawful custody unless this Act or another written law provides otherwise.

[Section 119A inserted: No. 58 of 2004 s. 26.]

120. Custodial sentence is sentence of last resort

(1) The court cannot impose any custodial sentence unless it is satisfied that there is no other appropriate way for it to dispose of the matter.

(2) A court that imposes on a young person a custodial sentence is to give written reasons why it considers that there is no other appropriate way for it to dispose of the matter.

(3) In subsection (2) —

written reasons includes reasons that are —

(a) given orally and subsequently transcribed; or

(b) given orally but also recorded electronically in a format that enables them to be subsequently transcribed.

[Section 120 amended: No. 20 of 2013 s. 142.]

121. Minimum period before release from detention

(1) If a court sentences a young person to detention for 12 months or less, the offender is to remain in custody for 50% of the term to which the offender was sentenced before the offender can be released under a supervised release order.

(2) When sentencing an offender to detention for more than 12 months, the court may set a minimum period for which the offender is to remain in custody before the offender can be released under a supervised release order.

(3) The minimum period set by the court cannot be less than the period determined as follows —

$$P = 6 + \frac{T - 12}{3}$$

where

"P" is the period to be determined (in months);

"T" is the term of custody (in months) to which the offender was sentenced.

(4) If the court does not set a different minimum period, the offender is to remain in custody for 50% of the term to which the offender was sentenced before the offender can be released under a supervised release order.

[(5) deleted]

(6) This section does not apply in respect of a sentence imposed by a special order.

[Section 121 amended: No. 29 of 1998 s. 23.]

122. Aggregation of multiple sentences of detention

(1) When, on the same occasion, a court imposes 2 or more sentences of detention that the offender is required to commence serving at different times, the sentences are to be regarded, for the purposes of section 121, as one sentence for a term commencing when the offender is first required to commence serving one of the sentences and ending upon the expiry of the sentence that is last to expire.

(2) Subsection (1) does not apply in respect of a sentence imposed by a special order.

123. Cumulative sentences of detention, service of

(1) This section applies if a sentence of detention imposed on a person (the ***second sentence***) is to be served cumulatively upon another sentence of detention (the ***first sentence***) and section 122 does not provide for one earliest release day for both sentences.

(2) In determining whether a person has been in custody under a sentence for the minimum period required before the offender

can be released, time served in custody after the second sentence is imposed counts —

(a) if the earliest release day for the first sentence has not been reached, as service under that sentence until the earliest release day for that sentence is reached;

(b) after the earliest release day for the first sentence has been or is reached, as service under the second sentence until the earliest release day for the second sentence is reached.

(3) Once the earliest release day has been reached for each sentence for which there is an earliest release day, time served in custody counts as service under the first sentence until that sentence has been served, so far as it is required to be, and after that, as service under the second sentence until that sentence has been served, so far as it is required to be.

Division 9 — Dealing with young person who repeatedly commits serious offences

124. When this Division applies

(1) This Division applies to the sentencing of the offender for a serious offence (the ***current offence***) if —

(a) the offender is a person who has committed and been found guilty of an offence for which a custodial sentence (***sentence 1***) was imposed; and

(b) after being released from custody having served a portion or the whole of sentence 1, the offender committed and was found guilty of another offence for which another custodial sentence (***sentence 2***) was imposed; and

(c) after being released from custody having served a portion or the whole of sentence 2, the offender committed the current offence; and

(d) the court, after taking into account the offender's history of re-offending after release from custody, is satisfied that there is a high probability that the offender would commit further offences of a kind for which custodial sentences could be imposed.

(2) Where the sequence referred to in subsection (1)(b) of release, re-offending and imposition of another custodial sentence has occurred more than once, the reference to sentence 2 in subsection (1)(c) is a reference to the custodial sentence most recently imposed.

(3) In subsection (1) ***serious offence*** means —

(a) a Schedule 2 offence; or

(b) an offence under section 401 of *The Criminal Code*, or the offence of counselling or procuring the commission of an offence under that section, for which the offender was convicted on indictment.

125. Protection of the community paramount

If this Division applies to the offender the court, in disposing of the matter, is to give primary consideration to the protection of the community ahead of all the other principles and matters referred to in section 46.

126. Special order, making of

(1) If this Division applies to the offender and the court imposes a custodial sentence on the offender, the court, when disposing of the matter, may also make a special order in accordance with this Division.

(2) In deciding whether to make a special order the court is to have regard to the periods that have elapsed before the offender has re-offended after being released from previous custodial sentences.

(3) A special order can only be made if the Director of Public Prosecutions, after giving the offender notice that such a submission is proposed, submits to the court that a special order should be made.

(4) If the court makes a special order and the custodial sentence referred to in subsection (1) is a term of imprisonment, the court cannot make a parole eligibility order under Part 13 of the *Sentencing Act 1995* in respect of that term.

(5) Without limiting section 21 of the *Children's Court of Western Australia Act 1988*, the court cannot make a special order if it is constituted by or so as to include a magistrate.

[Section 126 amended: No. 78 of 1995 s. 145.]

127. Special order, time of operation

(1) In this section ***relevant day*** means —

(a) in relation to a custodial sentence being served in a prison, the earliest day on which the offender can be released from prison whether on parole or otherwise;

(b) in relation to a custodial sentence being served in a detention centre, the earliest release day for that sentence.

(2) If there are different relevant days in respect of 2 or more custodial sentences, subsections (3) and (4) refer to the later or last of those days.

(3) Subject to subsection (4), the special order begins to run on the relevant day for any other custodial sentence that the offender is liable to undergo.

(4) If, on the relevant day, the unserved portion of any other custodial sentence or sentences that the offender is liable to undergo is more than 18 months, the special order does not begin to run until that unserved portion is 18 months.

128. Special order, effect of

(1) When the special order begins to run the offender is to remain in custody in prison or a detention centre, as the case may be, and is liable to serve a sentence of 18 months imprisonment or detention under the special order.

(2) After serving 12 months' imprisonment or detention under the special order the offender may be released under a supervised release order.

(3) This section applies despite anything in this Act or any other written law.

(4) Where the offender is released from prison under subsection (2), the completion of the term of the supervised release order has the same effect in relation to the sentence under the special order as it would have under Part 8 if the offender had been released from detention in a detention centre.

129. Special order, application to discharge

(1) In this section the ***sentencing court*** means the court that imposed the special order.

(2) On the application of the offender or the chief executive officer, the sentencing court is to review the special order to decide whether it should be discharged.

(3) An application cannot be made under this section —

(a) less than 6 months after the special order was imposed; or

(b) earlier than 3 months before the special order begins to run; or

(c) less than 3 months after the special order was most recently reviewed under this section.

(4) An application can only be made under this section if the Attorney General consents to the making of it.

(5) In making a review under this section the sentencing court may —

(a) consult or take advice from any person; and

(b) inform itself in such manner as it thinks fit,

and is to give the offender an opportunity to be heard, either personally or through a legal representative, and to present any evidence or material that the court considers to be relevant.

(6) The chief executive officer is to ensure that the sentencing court is provided with such information and assistance as it requires for the purpose of making reviews under this section.

(7) To the extent that it is not prescribed by this Act or rules of court the procedure on review proceedings under this section is to be determined by the sentencing court.

(8) After making a review under this section the sentencing court may, if it thinks fit, discharge the special order.

(9) Nothing in this section affects any right to appeal against the imposition of the special order.

130. Special order, effect of expiry of

If the special order runs its term the offender is taken to have served any other custodial sentence that was imposed when or before the special order was made.

Part 8 — Supervised release orders

Division 1 — Definitions

131. Terms used

In this Part, unless the contrary intention appears —

Board means the Supervised Release Review Board established under section 151;

Secretary means the secretary of the Board.

Division 2 — The order

132. Supervised release order, Board may make

(1) Except as provided in Division 2A, if an offender is serving a sentence of detention the Board may order the release of the offender from custody subject to conditions, in accordance with this Division.

(1a) Instead of ordering the release of the offender from custody, the Board may, if it considers it appropriate to do so —

(a) decide not to order the release of the offender from custody; or

(b) defer its decision about whether or not to order the release of the offender from custody.

(2) An order for the release of an offender from custody is required to have attached an agenda specifying the conditions that it imposes.

(3) The conditions are to be in accordance with a release plan approved by the Board.

(4) The agenda attached to the order is to be considered a part of the order.

(5) If the term of the sentence that was imposed does not exceed 3 months, the order may be made —

(a) by the Board; or

(b) by the Secretary in accordance with criteria fixed by the Board.

[Section 132 amended: No. 58 of 2004 s. 27; No. 14 of 2022 s. 32.]

133. Supervised release order, when can be made

(1) A supervised release order can only be made if —

(a) the offender consents to the making of the order; and

(b) the earliest release day has been reached; and

(ba) the Board has considered any statement received from a victim of the offence in respect of which the detainee is in custody; and

(c) there is a responsible adult present or the Board considers that there is sufficient reason for it to make the order even though a responsible adult is not present; and

(d) the offender is not in custody under any other order or serving any other custodial sentence, or the requirements for releasing the offender from custody under that other order or sentence are satisfied.

(2) If the offender unreasonably fails or refuses to make available information that is requested for the purpose of satisfactorily determining the conditions to be specified in the order, the making of the order may be delayed beyond the time when the order could otherwise be made.

(3) In this section —

victim of an offence, means —

(a) a person who has suffered injury, loss or damage as a direct result of the offence, whether or not that injury,

loss or damage was reasonably foreseeable by the offender; or

(b) where the offence results in a death, any member of the immediate family of the deceased.

[Section 133 amended: No. 41 of 2006 s. 87.]

134. Duration of order

A supervised release order runs until the end of the term for which the offender would be liable to be detained if there were no supervised release order and cannot impose any obligation that binds the offender after the end of that term.

135. Order may relate to more than one sentence

(1) A supervised release order may relate to more than one sentence, in which case the order runs for as long as the offender would be liable to be detained if there were no supervised release order.

(2) The order can only be made if the earliest release day for each sentence to which the order relates has been reached.

136. Conditions implied in order

The order is to be taken to include the conditions that, while the order is in force —

(a) the offender is to be under the supervision of an officer of the Department; and

(b) the offender is not to commit another offence and is to be of good behaviour; and

(c) the offender is to comply with —

(i) any regulations that regulate the conduct of persons released under supervised release orders; and

(ii) any reasonable direction given by the supervising officer;

and

(d) the offender is not to move to a different residential address without the approval of the supervising officer.

[Section 136. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

136A. Express conditions: specified places

(1) A supervised release order may include a condition that, while the order is in force, the offender is to remain at a specified place, for specified periods.

(2) A condition under subsection (1) —

(a) cannot be imposed so as to result in the requirement being in force for a continuous period that exceeds 6 months;

(b) cannot require an offender to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day;

(c) is to allow the offender to leave the specified place during a specified period —

(i) to do community work as required under this Act; or

(ii) to obtain urgent medical or dental treatment for the offender; or

(iii) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person; or

(iv) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere; or

(v) to attend school, education or vocational training; or

(vi) for a purpose approved of by the officer supervising the offender; or

(vii) with the permission of the chief executive officer.

(3) If the offender is authorised under subsection (2) to leave a specified place, the officer supervising the offender may give directions as to —

(a) when the offender may leave; and

(b) the period of the authorised absence; and

(c) when the offender must return; and

(d) the method of travel to be used by the offender during the absence; and

(e) the manner in which the offender must report his or her whereabouts.

(4) To ascertain whether or not the offender is complying with a condition under this section, the officer supervising the offender may, at any time —

(a) enter or telephone a specified place; or

(b) enter or telephone the offender's place of employment or any other place where the offender is authorised or required to attend; or

(c) question any person at any place referred to in paragraph (a) or (b).

(5) A person who hinders a person exercising powers under subsection (4) commits an offence.

(6) A person who fails to answer a question put pursuant to subsection (4)(c), or gives an answer that the person knows is false or misleading in a material particular, commits an offence.

[Section 136A inserted: No. 58 of 2004 s. 28.]

136B. Express conditions: devices

(1) A supervised release order may include a condition that, while the order is in force, the offender is to wear —

(a) a device for monitoring purposes; or

(b) a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the offender.

(2) The chief executive officer may give the occupier of a place where a device is installed a direction to deliver the device to the chief executive officer within a set period.

(3) A person who contravenes a direction given under subsection (2) commits an offence.

(4) The officer supervising the offender may, at any time, enter a place where a device is located to retrieve the device.

(5) A person who hinders a person exercising the power in subsection (4) commits an offence.

(6) A person who unlawfully interferes with the operation of any device commits an offence.

(7) A person who wilfully and unlawfully destroys or damages a device commits an offence.

[Section 136B inserted: No. 58 of 2004 s. 28.]

137. Effect of proposed order to be explained to offender

(1) Before making a supervised release order in respect of a person, the Board is required to explain, or cause to be explained, to the person in language likely to be readily understood by the person —

(a) the purpose and effect of the order; and

(b) the consequences that may follow failure to comply with the order or with any of the prescribed requirements; and

(c) the right of the person to seek the reconsideration of the order.

(2) If requested to do so, the person in respect of whom the order is made and any responsible adult who is present when the order is made are required to sign a written acknowledgement, endorsed on a copy of the order, to the effect that the order was made with the required consent and its purpose and effect are understood, but the fact that in a particular case such an acknowledgement may not have been signed does not postpone or otherwise alter the effect of the order.

138. Order to be provided in writing

(1) The Secretary is to cause the order to be reduced to writing and, as soon as practicable after it is made, is to cause a copy of it to be given —

(a) to the offender; and

(b) if the Secretary knows or can by reasonable enquiry ascertain the whereabouts or address of such a person, to a person who is a responsible adult; and

(c) to the chief executive officer.

(2) Subsection (1) extends to any order amending or cancelling the order.

139. Supervising officer

The chief executive officer is to assign an officer of the Department to be the supervising officer in respect of the order and may from time to time assign another officer of the Department in place of the officer previously assigned.

[Section 139. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

140. Obligations under order may be suspended

(1) If the Secretary is satisfied that the offender would be unable, because of circumstances beyond the offender's control, to comply with obligations under the order for a limited time, the Secretary may give the offender notice in writing that the obligations are suspended for a time specified in the notice.

(2) Subsection (1) does not apply to an obligation under a condition referred to in section 136.

(3) The Secretary is to advise the Board in writing of any notice given by the Secretary under subsection (1).

141. Amendment of order, extent of power

(1) A power given to the Board to amend a supervised release order includes power to —

(a) cancel the order and substitute another supervised release order; or

(b) cancel any of its conditions and substitute other conditions; or

(c) amend any of its conditions by cancelling any of their requirements or by inserting any requirement in them, either by way of addition or substitution.

(2) The power to amend a supervised release order is subject to the same qualifications as would apply to the making of an order in the terms of the order as amended.

142. Amendment or cancellation of order

(1) Subject to subsection (2) and section 142A, the Board may at any time, upon the application of the chief executive officer, by order cancel the supervised release order or amend it.

(2) A supervised release order can only be cancelled under this section with the consent of the offender and, except so far as it diminishes or removes an obligation of the offender, an

amendment can only be made under this section with the consent of the offender.

[Section 142 amended: No. 14 of 2022 s. 33.]

142A. Cancellation automatic in case of offender with links to terrorism

(1) In this section, a reference to the ***Board*** is a reference to the Board as constituted by the chairperson alone.

(2) The Board must cancel a supervised release order in respect of any of the following offenders —

(a) an offender who, during the period the offender is subject to the supervised release order —

(i) is charged with, or convicted of, a terrorism offence; or

(ii) is charged with, or convicted of, an offence against the Commonwealth Criminal Code section 80.2C(1); or

(iii) becomes subject to an interim control order or confirmed control order; or

(iv) becomes subject to a Commissioner of Police report and who the Board is satisfied has made statements or carried out activities that support, or advocate support for, terrorist acts;

(b) an offender for whom, during the period the offender is subject to the supervised release order, an interim control order is being sought under the Commonwealth Criminal Code section 104.3(1);

(c) an offender who the Board is satisfied —

(i) at the time that the supervised release order in respect of the offender was made, was a category 1 offender or a category 2 offender; and

(ii) in respect of whom, this fact was not known by the person who made the order at the time that the order was made.

[Section 142A inserted: No. 14 of 2022 s. 34.]

142B. Supervised release order, when cancellation under s. 142A takes effect

(1) If a supervised release order in respect of an offender is cancelled under section 142A, the supervised release order is taken to be cancelled —

(a) if the cancellation results from a charge or conviction — on the day when the offence that resulted in the charge or conviction was committed; or

(b) if the cancellation results from an offender becoming subject to an interim control order or confirmed control order — on the day when the offender became subject to the order; or

(c) if the cancellation results from an interim control order or confirmed control order being sought in respect of an offender— on the day when the order was sought; or

(d) if the cancellation results from a decision by the Board — the day when the decision was made.

(2) If the day when an offence was committed cannot be ascertained — the day is taken, for the purposes of subsection (1)(a), to be the latest day on which that offence could have been committed, as determined by the chief executive officer.

[Section 142B inserted: No. 14 of 2022 s. 34; amended: No. 15 of 2023 s. 10.]

143. Cancellation of certain obligations after 6 months' release

(1) If the offender has been the subject of a supervised release order for at least 6 months and the Board is satisfied that it would be

appropriate to do so, it may amend the order by cancelling all or any of the offender's obligations under the supervised release order (other than the obligation to refrain from committing another offence) for the balance of the term of the order.

(2) Cancellation under subsection (1) of all or any of the offender's obligations does not prevent the Board, acting under section 147, from inserting in the order conditions that again impose obligations on the offender.

144. Breach of order other than by re-offending, report to CEO

(1) If, other than through the offender committing another offence, the offender fails to comply with a supervised release order or with any prescribed requirement, the supervising officer is to make to the chief executive officer a report in writing of the failure.

(2) Upon receiving the report the chief executive officer may —

(a) order that no further action be taken because of the failure; or

(b) postpone the decision as to what action, if any, is to be taken because of the failure; or

(c) refer the matter to the Board with or without suspending the supervised release order.

145. Courts to notify Board and CEO of re-offending

(1) If a court finds a person guilty of an offence and —

(a) a supervised release order is in force in respect of the person; or

(b) at any time within the period of 6 months before the finding is made —

(i) a supervised release order was in force in respect of the person; and

(ii) the offence took place during that supervised release order; and

(iii) the court imposes a custodial sentence in respect of that offence,

the court is to give the Board and the chief executive officer notice of the finding and of the way in which the matter has been disposed of by the court.

(2) If the court imposes a custodial sentence on a person in respect of whom a supervised release order is in force, the imposition of the sentence cancels the supervised release order.

(3) If the court does not impose a custodial sentence on a person in respect of whom a supervised release order is in force, the chief executive officer is to refer the matter to the Board with or without suspending the supervised release order.

[Section 145 amended: No. 58 of 2004 s. 29.]

146. Report to be provided when referring matter to Board

The chief executive officer is required, when referring a matter to the Board under section 144 or 145, to provide the Board with a report giving details of —

(a) how the offender failed to comply with the supervised release order; and

(b) why the matter is referred to the Board; and

(c) where applicable, why the supervised release order was suspended; and

(d) recommendations as to how to dispose of the matter.

147. Breach of order, how Board may deal with

(1) The Board may consider the matter of a failure to comply with a supervised release order or with any prescribed requirement that is referred to it by the chief executive officer and —

(a) order that no further action be taken because of the failure; or

(b) postpone the decision as to what action, if any, is to be taken because of the failure; or

(c) if the supervised release order has been suspended, confirm, vary, or remove the suspension; or

(d) if the supervised release order has not been suspended, suspend it; or

(e) amend or cancel the supervised release order.

(2) The Secretary is to cause the Board's decision to be reduced to writing and, as soon as practicable after the decision is made, is to cause a copy of it to be given —

(a) to the person in respect of whom it is made; and

(b) if the Secretary knows or can by reasonable enquiry ascertain the whereabouts or address of such a person, to a person who is a responsible adult; and

(c) to the chief executive officer.

147A. Offending while on supervised release order: automatic cancellation

(1) If a young person, while subject to a supervised release order, commits an offence in this State or elsewhere and a custodial sentence for that offence is imposed within 6 months after the order has run its term, the supervised release order applicable to the young person when the offence was committed is to be taken for the purpose of this Division not to have run its term but to have been cancelled on the day on which the offence was committed.

(2) If the day on which the offence was committed is not known, the latest day on which that offence could have been committed, as determined by the chief executive officer, is to be taken for the purposes of subsection (1) to be the day on which it was committed.

[Section 147A inserted: No. 58 of 2004 s. 30.]

148. Compliance with order, effect of

If the supervised release order runs its term without being cancelled, the offender is to be taken to have served the sentence to which the order relates.

149. Suspension or cancellation of order, effect of

(1) If the chief executive officer suspends the supervised release order or if it is cancelled under section 147(1)(e) or by the operation of section 142A(2) or 147A, the chief executive officer is to issue a warrant for the offender to be apprehended and returned to the custody from which the offender was released under the order.

(2) If the Board suspends or cancels the supervised release order, the Secretary is to issue a warrant for the offender to be apprehended and returned to the custody from which the offender was released under the order.

(3) The terms of a supervised release order that has been suspended continue to run until the expiry date of that sentence or until the order is cancelled, and the sentence to which that order relates continues to run despite the suspension of the order.

(4) Subject to subsection (5) the time during which the offender was released under the order before the order was cancelled is to be taken to be time that the offender served in custody under any sentence that the offender would have been serving if not released.

(5) If the offender is found guilty of another offence and the supervised release order is cancelled by operation of section 145(2) or section 147A, the time between the commission of that offence and the return of the offender to custody does not count for the purposes of subsection (4).

(6) If, after the order has been suspended, the Board removes the suspension, the offender is again to be released from custody subject to the conditions of the order.

(7) Cancellation of a supervised release order does not prevent another supervised release order from being subsequently made.

[Section 149 amended: No. 58 of 2004 s. 31; No. 14 of 2022 s. 35.]

150. Cancellation of order after offender reaches 18

(1) If the offender has reached the age of 18 years when the order is suspended or cancelled, the custody into which the offender is to be placed upon the suspension or cancellation of the order is to be a prison, and while in a prison the *Prisons Act 1981* applies to and in respect of the offender.

(2) If the offender has not reached the age of 18 years when the order is suspended or cancelled but has reached the age of 18 years when he or she is apprehended, the custody into which the offender is to be placed upon apprehension is to be a prison, and while in a prison the *Prisons Act 1981* applies to and in respect of the offender.

[Section 150 inserted: No. 78 of 1995 s. 145; amended: No. 58 of 2004 s. 32.]

Division 2A — Offenders with links to terrorism or subject to Commissioner of Police reports

[Heading inserted: No. 14 of 2022 s. 36.]

Subdivision 1 — Preliminary

[Heading inserted: No. 14 of 2022 s. 36.]

150A. Release considerations

In this Division, a reference to the ***release considerations*** relating to an offender is a reference to the following considerations —

(a) if the offender has made statements or carried out activities that support, or advocate support for, terrorist

acts — the nature and seriousness of the statements made or activities carried out;

(b) if the offender is sentenced for a terrorism offence — any remarks made by the court that sentenced the offender that are relevant to paragraph (a);

(c) if the offender is, or was, subject to an interim control order or confirmed control order relating to a terrorism offence —

(i) any remarks made by the court that made the order that are relevant to paragraph (a); and

(ii) the behaviour of the offender while subject to the order;

(d) the behaviour of the offender when in custody to the extent that it may be relevant to paragraph (a);

(e) whether the offender has participated in any programme or activity that addresses the offender's risk of committing a terrorism offence and the offender's performance in the programme or activity;

(f) whether the offender is, or was, associated with 1 or more persons who have made statements or carried out activities that support, or advocate support for, terrorist acts, and the nature of the association.

[Section 150A inserted: No. 14 of 2022 s. 36.]

Subdivision 2 — Supervised release orders in cases of offenders with links to terrorism

[Heading inserted: No. 14 of 2022 s. 36.]

150B. References to Board

In this Subdivision, a reference to the ***Board*** is a reference to the Board as constituted by the chairperson alone.

[Section 150B inserted: No. 14 of 2022 s. 36.]

150C. Making supervised release orders

(1) The Board must not order the release of an offender with links to terrorism unless the Board is satisfied that there are exceptional reasons why the offender should be released.

(2) The Board must, in making any decision for the purposes of subsection (1) —

(a) regard the personal safety of people in the community or of any individual in the community as the paramount consideration; and

(b) apply the general principles of juvenile justice in section 7, other than the principles referred to in paragraphs (h) and (k); and

(c) have regard to all of the following —

(i) the release considerations relating to the offender;

(ii) the Commissioner of Police report about the offender;

(iii) any other information about the offender brought to the attention of the Board.

(3) Subsection (2) does not limit the matters that the Board may have regard to in making a decision for the purposes of subsection (1).

(4) Despite subsections (2) and (3), the Board must not have regard to a Commissioner of Police report about the offender if the report has been withdrawn under section 150E(2).

[Section 150C inserted: No. 14 of 2022 s. 36.]

150D. Commissioner of Police reports

(1) If the Board is required to consider whether to order the release of a category 1 offender from custody, the Board must make a written request to the Commissioner of Police for a written report about the offender.

(2) The report must deal with the release considerations relating to the offender to the extent that the information is within the knowledge of the Commissioner of Police and may —

(a) include any other information that the Commissioner of Police considers is, or may be, relevant to whether the offender should be released; and

(b) declare that some or all of the information in the report is, in the opinion of the Commissioner of Police, terrorist intelligence information.

(3) The Commissioner of Police must give to the Board the report within a reasonable period after receiving the request.

(4) The Commissioner of Police may give to the Board a written report dealing with the matters referred to in subsection (2) in relation to any other offender.

[Section 150D inserted: No. 14 of 2022 s. 36.]

150E. Withdrawing Commissioner of Police reports

(1) This section applies if the Board, as constituted by the chairperson alone —

(a) is satisfied that an offender subject to a Commissioner of Police report is not an offender with links to terrorism; or

(b) after consulting with the Commissioner of Police, is satisfied that a Commissioner of Police report about an offender does not include terrorist intelligence information.

(2) Before the Board decides whether to order the release of the offender, the Board, as constituted by the chairperson alone, must give the Commissioner of Police an opportunity to withdraw the report.

(3) If the report is withdrawn under subsection (2), the Board —

(a) must not have regard to the report for the purposes of deciding whether to order the release of the offender; and

(b) must prohibit the publication of, or a reference to, the report.

[Section 150E inserted: No. 14 of 2022 s. 36.]

Subdivision 3 — Supervised release orders for other offenders subject to Commissioner of Police reports

[Heading inserted: No. 14 of 2022 s. 36.]

150F. Releasing offender subject to Commissioner of Police report under supervised release order

(1) In this section —

offender does not include an offender with links to terrorism.

(2) This section applies if —

(a) the Board is deciding whether to order the release of an offender under section 132(1); and

(b) the offender is subject to a Commissioner of Police report that the Board, as constituted by the chairperson alone, is satisfied includes terrorist intelligence information.

(3) The Board, as constituted by the chairperson alone, must decide whether to order the release of the offender in accordance with Division 2.

[Section 150F inserted: No. 14 of 2022 s. 36.]

Subdivision 4 — Review

[Heading inserted: No. 14 of 2022 s. 36.]

150G. Review of Division

(1) The Minister must review the operation and effectiveness of this Division, and prepare a report based on the review —

(a) as soon as practicable after the 5th anniversary of the day on which the *Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2022* section 36 comes into operation; and

(b) after that, at intervals of not more than 5 years.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.

[Section 150G inserted: No. 14 of 2022 s. 36.]

Division 3 — The Supervised Release Review Board

151. Board established

(1) A board called the Supervised Release Review Board is to be established.

(2) The Board is to have a seal.

(3) A person is to be appointed as the secretary of the Board.

(4) The secretary and any other staff of the Board are to be appointed under Part 3 of the *Public Sector Management Act 1994*.

[Section 151 amended: No. 65 of 2006 s. 78.]

152. Board members

(1) There are to be 6 members of the Board comprising —

(a) a person to be chairperson, appointed by the Governor; and

(b) 2 persons appointed by the Governor under subsection (3)(a) and (b); and

(ba) one person with an understanding of victims' interests and concerns appointed by the Governor; and

(c) the chief executive officer, by reason of the office; and

(d) a police officer nominated by the Commissioner of Police.

[(2) deleted]

(3) The membership of the Board is to include —

(a) at least one person who has an aboriginal background and is appointed from a panel of persons nominated by aboriginal community organisations that have been invited by the Minister to submit nominations; and

(b) at least one person appointed from a panel of persons nominated by community organisations that have been invited by the Minister to submit nominations.

(4) The membership of the Board is to include at least one male and one female.

(5) The chairperson is to be —

(a) a person who is or has been a judge of the Supreme Court or the District Court; or

(b) a person who is, and has for at least 8 years been, a lawyer.

(6) The members appointed under subsection (3)(a) and (b) are to have such skills and experience with young persons as the Minister considers appropriate.

[Section 152 amended: No. 65 of 2003 s. 73; No. 58 of 2004 s. 33; No. 41 of 2006 s. 88; No. 21 of 2008 s. 714(4); No. 9 of 2022 s. 423; No. 14 of 2022 s. 40.]

153. Term of office

(1) Subject to this section, a person appointed to be a member of the Board holds office for such term, not longer than 3 years, as is specified in the instrument of appointment and, upon the expiration of the term, is eligible for reappointment.

(1a) A person who is a member of the Board by reason of being the chief executive officer ceases to be a member when he or she ceases to be the chief executive officer.

(1b) A person who is a member of the Board by reason of being a police officer ceases to be a member when he or she resigns as a member or ceases to be a police officer or when another police officer is nominated by the Commissioner of Police.

(2) The Governor may remove an appointed member from office on the grounds of —

(a) mental or physical incapacity to carry out the duties of a member in a satisfactory manner; or

(b) neglect of duty; or

(c) misconduct; or

(d) the person ceasing to meet the requirements on the basis of which the person was appointed as a member.

(3) An appointed member may at any time resign from office by notice in writing delivered to the Minister.

(4) Where, before an appointed member's term of office expires, the member is removed from office or resigns the office becomes vacant.

(5) This section does not exclude the application of section 52 of the *Interpretation Act 1984*, other than subsection (1)(a) of that section.

[Section 153 amended: No. 58 of 2004 s. 34.]

154. Alternate members

(1) The chief executive officer may nominate a person who is an officer of the Department to act in the chief executive officer's place as a member of the Board, and while so acting according to the tenor of the appointment the nominated officer is to be taken to be the member.

(1a) The chief executive officer may nominate a further person who is an officer of the Department to act in the place of the person nominated under subsection (1) as a member of the Board, and while so acting according to the tenor of the appointment this further nominated officer is to be taken to be the member.

(2) The chief executive officer may, at any time, cancel a nomination made under subsection (1) or (1a).

(2a) The member who is a police officer may nominate another police officer to act in place of the police officer as a member of the Board, and while so acting according to the tenor of the appointment the further nominated police officer is to be taken to be the member.

(3) In the case of an appointed member of the Board, other than the chairperson, the Minister may nominate another person to act in the member's place as a member of the Board, and while so acting according to the tenor of the appointment the nominated person is to be taken to be the member.

(4) A person can only be nominated under subsection (3) to act in a member's place if the person would be eligible to be appointed to the office of that member were it to be vacated.

(5) The Minister may, at any time, cancel a nomination made under subsection (3).

[Section 154 amended: No. 58 of 2004 s. 35; No. 14 of 2022 s. 40.]

155. Remuneration and allowances

(1) Members of the Board, other than a person who is a judge of the Supreme Court or the District Court, are entitled to such remuneration and allowances in respect of the performance of their functions under this Act as the Minister from time to time determines.

(2) The payment under subsection (1) of any remuneration or allowances to a member who is a retired judge of the Supreme Court or District Court does not affect any entitlement of that person under the *Judges' Salaries and Pensions Act 1950*.

156. Meetings

Meetings of the Board are to be convened at such times and places as the chairperson determines, but at least once a month.

[Section 156 amended: No. 14 of 2022 s. 40.]

157. Quorum

(1) At a meeting of the Board 3 members are required to be present to constitute a quorum.

(2) This section does not apply in relation to a meeting of the Board held for the purposes of section 16B, 16C or 142A or Part 8 Division 2A.

[Section 157 amended: No. 58 of 2004 s. 36; No. 14 of 2022 s. 37.]

158. Presiding at meetings

(1) At a meeting of the Board the chairperson is to preside if present and otherwise the longest-serving appointed member of the Board who is present is to preside.

(2) If more than one member is eligible to preside in the absence of the chairperson, the members present at the meeting are to appoint one of the eligible members to preside.

[Section 158 amended: No. 14 of 2022 s. 40.]

159. Board may request reports

(1) The Board may request the chief executive officer to cause to be prepared and submitted to it such reports for the purpose of assisting it to carry out its functions as it considers relevant.

(2) The chief executive officer is to cause the requested reports to be prepared and submitted to the Board.

160. Determination of questions

(1) At a meeting of the Board the person presiding is to determine any question as to the admissibility of evidence and any question of law or procedure.

(2) If the chairperson is not presiding, a question referred to in subsection (1) is not to be determined unless one of the members present is a legal practitioner.

(3) Subject to subsections (1) and (2), a question arising at a meeting is decided by the votes of a majority of the members present and voting except that, if the votes are equal, the question may be decided by a casting vote exercised by the person presiding.

[Section 160 amended: No. 14 of 2022 s. 40.]

161. Procedure

(1) The Board may, when dealing with a matter, require the person involved in the matter or a responsible adult to attend before it but may proceed without requiring such attendance or in the absence of any person who has been required to attend.

(2) The Board may inform itself on any matter in such manner as it thinks fit.

(3) The Board may, subject to this Act, determine its own procedure.

[Section 161. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

162. Board may reconsider its decision

(1) The person in respect of whom the Board makes a decision or a responsible adult may make submissions to the Board seeking the reconsideration of the decision.

(2) If the Board considers it appropriate to do so, it may reconsider its decision.

(3) If the Board is satisfied, upon reconsideration, that there is a better way in which it could have decided the matter, it may make such order as it sees fit to give effect to that decision.

163. Rules of natural justice excluded

The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter, or thing under this Act by the Board or the Secretary.

164. Judicial notice of Board's documents

(1) Judicial notice is to be taken of the signature of every person who is or was a member of the Board or the Secretary when it is

on a document purporting to be signed in the capacity of member, and until the contrary is proved, the document is to be presumed to have been properly signed.

(2) A certificate signed by the Secretary purporting to record a decision of the Board is evidence of the making of that decision by the Board.

165. Annual report

Before 1 October in each year, the Board is to make a written report to the Minister as to —

(a) the operations of the Board under this Act up to the last preceding 30 June; and

(b) the number of persons released under supervised release orders during the year ending on the last preceding 30 June, and the number returned to custody upon cancellations of such orders during that year; and

(c) the operation of this Act so far as it relates to the release of offenders under supervised release orders and the activities under this Part of officers generally during that year.

165A. Information to be excluded from annual reports

(1) In this section —

protected information means information the disclosure of which would contravene a written law or an order of a court;

sensitive information means information the disclosure of which could reasonably be expected to —

(a) prejudice national security; or

(b) endanger a person's life or physical safety; or

(c) threaten significant damage to infrastructure or property; or

(d) prejudice a criminal investigation; or

(e) reveal intelligence gathering methodologies, investigative techniques or technologies or covert practices; or

(f) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement.

(2) This section applies if, during the year ending on the last preceding 30 June, the chairperson decides —

(a) to make a supervised release order under Part 8 Division 2A; or

(b) to refuse to make a supervised release order under Part 8 Division 2A; or

(c) to cancel a supervised release order under section 142A.

(3) Before giving an annual report for the financial year, the chairperson must notify the Commissioner of Police and the Minister of the number of decisions referred to in subsection (2) that are made during the year ending on the last preceding 30 June (***notifiable information***).

(4) The Commissioner of Police must advise the Minister whether, in the Commissioner's opinion, some or all of the notifiable information is, or is likely to be, sensitive information.

(5) If the Minister is satisfied that some or all of the notifiable information is protected information or, on advice given under subsection (4), is satisfied that some or all of the notifiable information is sensitive information, the Minister must direct the chairperson to —

(a) exclude the information from the annual report; and

(b) insert a statement in the annual report to the effect that the information is excluded from the annual report under this section.

(6) The chairperson must comply with a direction given under subsection (5).

(7) The Minister may obtain legal advice as to the matters in subsection (5).

(8) If the Minister does not give a direction under subsection (5), the Board must include the notifiable information in the annual report.

[Section 165A inserted: No. 14 of 2022 s. 38.]

Part 9 — Detention centres

166. Appointment of visiting justices

(1) The Minister may, for every detention centre, appoint visitors to be known as visiting justices.

(2) A visiting justice cannot carry out the duties of an independent detention centre visitor appointed under section 41 of the *Inspector of Custodial Services Act 2003*.

(3) Visiting justices are to be appointed from persons who are magistrates of the Children's Court or justices of the peace.

(4) Appointments under this section are to be for a term of 2 years, but a visiting justice may resign at any time by notice in writing delivered to the Minister.

[Section 166 inserted: No. 75 of 2003 s. 56(1); amended: No. 59 of 2004 s. 141.]

*[**167.** Deleted: No. 75 of 2003 s. 56(1).]*

168. Visiting justices, functions of

(1) A visiting justice is to attend the detention centre for which the visiting justice is appointed as soon as practicable after a charge of a detention offence is referred to the visiting justice by the superintendent, and exercise such of the powers given by this Part in respect of the offence as the visiting justice considers appropriate.

(2) A visiting justice is to endeavour to complete the performance of the duties imposed by this section within 7 days of being given notice in a particular case that a charge of a detention offence has been laid.

(3) Where a charge of a detention offence is laid against a detainee but before the hearing of that charge begins the detainee is removed to another detention centre, a visiting justice for that

other detention centre has the powers and duties in relation to that detainee and that charge as if the charge had been laid at that other detention centre.

169. Right of certain persons to enter detention centre

A person who is —

(a) an independent detention centre visitor appointed under section 41 of the *Inspector of Custodial Services Act 2003*; or

(b) a judge or magistrate of the Children's Court; or

(c) a justice of the peace authorised by a judge or magistrate of the Children's Court,

may, upon providing satisfactory proof of the person's identity to the superintendent, enter and examine a detention centre at any time.

[Section 169 amended: No. 75 of 2003 s. 56(1); No. 59 of 2004 s. 141.]

169A. Investigation of alleged incident at detention centre

(1) The chief executive officer may authorise an internal investigation into an alleged incident in a detention centre.

(2) The chief executive officer may specify that an internal investigation may be carried out by a particular person, or a person who occupies a particular position or a position within a class of positions in the Department.

(3) An alleged incident may relate to a non-detainee as well as to a detainee.

(4) An authorised person may require a custodial officer to —

(a) attend an interview at a time nominated by the authorised person; and

(b) provide all information known by that person that relates to the alleged incident; and

(c) declare any direct or indirect interest related to the alleged incident that the person has or acquires, that conflicts or may conflict with the person's duties.

(5) A custodial officer who does not comply with a requirement under subsection (4) commits an offence.

Penalty: $500.

(6) Despite subsection (5), a person is not required, under the authority of this section, to provide any information or declare any interest that might tend to incriminate the person, and before any person is questioned under this section the authorised person must advise the person accordingly.

(7) In this section —

authorised person means a person authorised to conduct an internal investigation into an alleged incident in a detention centre under subsection (2).

[Section 169A inserted: No. 58 of 2004 s. 37; amended: No. 29 of 2014 s. 22.]

170. Detention offences

A detainee who —

(a) disobeys a rule of the detention centre or an order of a person having authority to give the order; or

(b) uses insulting or threatening language or behaves in an insulting or threatening manner; or

(c) prefers a false or frivolous complaint; or

(d) does any act or omission of insubordination or misconduct subversive of the order and good government of the detention centre; or

(e) breaches a condition or restriction of any leave of absence from a detention centre; or

(f) assaults a person; or

(g) escapes or prepares or attempts to escape from lawful custody; or

(h) is in possession of or under the influence of drugs not lawfully issued to the detainee or not taken as prescribed; or

(i) is, without the permission of the superintendent, in possession of glue containing toluene or another intoxicant; or

(j) does not submit for the purpose of having a body sample taken when required under this Act to do so; or

(ja) refuses or fails to wear when required under this Act to do so a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the detainee; or

(k) is in possession of a weapon or a facsimile of a weapon; or

(l) wilfully breaks, damages or destroys property; or

(m) behaves in a disorderly or riotous manner,

commits a detention offence.

[Section 170 amended: No. 58 of 2004 s. 38.]

171. Detention offence charge, procedure on

(1) A charge of a detention offence alleged to have been committed by a detainee may be made by any officer or a person who is authorised to exercise a power set out in clause 15 of Schedule 2 to the *Court Security and Custodial Services Act 1999* and is to be brought immediately to the attention of the superintendent.

(2) The superintendent is to confer, where practicable, with the detainee, a responsible adult and any other person whose participation is likely to be of benefit in considering how to deal with the allegation.

(3) After conferring, where practicable, in accordance with subsection (2), the superintendent, having regard to the nature of the alleged offence and to the alleged circumstances, is to —

(a) suspend further action with respect to the charge on the detainee's undertaking to be of good behaviour for a stated period not exceeding 2 months, at the end of which period the charge is to be withdrawn if the undertaking has been observed; or

(b) direct that the charge be withdrawn or that a further or different charge be laid; or

(c) hear and determine the charge; or

(d) refer the charge to a visiting justice for hearing and determination.

[Section 171 amended: No. 47 of 1999 s. 44.]

172. Visiting justice may deal with referred charges

(1) A visiting justice may hear and determine any charge of a detention offence that is referred to the visiting justice by the superintendent.

(2) Without limiting the power of the superintendent to refer matters to a visiting justice, the superintendent is to so refer a matter if the detainee elects to have the matter dealt with by a visiting justice.

173. Detention offences, dealing with

(1) When hearing and determining a charge that a detainee has committed a detention offence, the superintendent or a visiting justice may, if the detainee admits the charge or the charge is found to be proved, deal with the matter in any of the ways provided for in subsection (2).

(2) The ways in which a detention offence may be dealt with are —

(a) by giving the detainee a caution; or

(b) by reprimanding the detainee; or

(c) by ordering that the earliest release day for the sentence that the detainee is serving or, if the person is serving more than one sentence, the earliest release day for any of those sentences, is altered within the limits imposed by subsection (3); or

(d) by ordering that the detainee's gratuities are cancelled —

(i) for a period not exceeding 3 days if the order is made by the superintendent; or

(ii) for a period not exceeding 7 days if the order is made by a visiting justice;

or

(e) by ordering that the detainee be confined to the detainee's sleeping quarters, or to a designated room —

(i) for a period not exceeding 24 hours if the order is made by the superintendent; or

(ii) for a period not exceeding 48 hours if the order is made by a visiting justice;

or

(f) by making orders under more than one of paragraphs (c), (d) and (e).

(3) The earliest release day for a sentence cannot be altered under subsection (2)(c) so as to make it later than it would otherwise have been by more than —

(a) 3 days if the order is made by the superintendent; or

(b) 14 days if the order is made by a visiting justice,

but this subsection does not prevent the earliest release day as altered from being again altered upon a charge of another detention offence.

(4) The superintendent or a visiting justice may suspend an order made by that superintendent or visiting justice under subsection (2) on the detainee's undertaking to be of good

behaviour for a stated period not exceeding 2 months, at the end of which period the order is to be of no further effect if the undertaking has been observed.

[Section 173 amended: No. 58 of 2004 s. 39.]

174. Detention offence charges, hearing of

(1) The hearing and determination of a charge of a detention offence under this Part is to be in the presence of the detainee charged and in accordance with the procedure prescribed in the regulations.

(2) The person hearing the charge is not bound by the rules of evidence but may admit any evidence considered to be relevant to the charge and may decline to admit repetitious material.

(3) A detainee is not to be represented by a legal practitioner in the proceedings.

175. Visiting justice may direct prosecution for detention offence

If a charge of a detention offence is referred to a visiting justice and the visiting justice thinks it appropriate having regard to the nature and particulars of the alleged offence and the extent of the powers given by section 173, the visiting justice may decline to deal with the matter and direct the superintendent to commence a prosecution in a court of summary jurisdiction for the detention offence.

[Section 175 amended: No. 84 of 2004 s. 80.]

176. Early discharge from detention

The superintendent in charge of the detention centre in which a person is serving a sentence of detention may authorise the discharge of the person from detention at any time during the period of 3 days immediately before the day when the person would be due to be released upon the expiry of the sentence.

*[**177.** Deleted: No. 78 of 1995 s. 145.]*

178. Transfer of offender who is 16 or 17 years old from detention centre to prison

(1A) This section applies to an offender who has reached the age of 16 years but is under 18 years old.

(1) If the offender is in a detention centre serving a sentence of detention or a sentence of imprisonment, the chief executive officer may apply to the Children's Court, constituted so as to consist of or include a judge, for a direction under subsection (3).

[(2) deleted]

(3) On an application under subsection (1), the Court may direct that the offender be transferred to a prison under the *Prisons Act 1981* to serve the unserved portion of the sentence.

(4) A direction under subsection (3) can be made only if the Court is satisfied that the offender should be transferred to a prison because —

(a) the offender's behaviour in the detention centre (including when serving a previous sentence) is or has been a significant risk to the safety or welfare of other people in custody in, or of the staff of, the centre; or

(b) of the offender's antecedents; or

(c) of any other reason the Court thinks is relevant.

(5) If a direction is made under subsection (3) in respect of an offender serving a sentence of detention —

(a) the *Prisons Act 1981* applies to and in respect of the offender while in prison; and

(b) Part 7 Division 8 and Part 8 continue to apply to the sentence of detention.

(6) If the Court decides to make or refuse to make a direction under subsection (3), the offender or the chief executive officer may appeal against the decision under and subject to Part 3 of the

Criminal Appeals Act 2004 which, with any necessary changes, applies as if the direction were an order that might be made as a result of a conviction.

[Section 178 inserted: No. 78 of 1995 s. 144; amended: No. 84 of 2004 s. 76; amended: No. 15 of 2023 s. 11.]

[Section 178. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

178A. Transfer of offender who has reached age of 18 years from detention centre to prison

(1) This section applies to an offender who has reached the age of 18 years.

(2) If the offender is in a detention centre serving a sentence of detention or a sentence of imprisonment, the chief executive officer must transfer the offender to a prison under the *Prisons Act 1981* to serve the unserved portion of the sentence unless a direction under section 178B(1) in respect of the offender is in force.

(3) A transfer under subsection (2) must be made within 30 days after —

(a) the day on which the offender reaches the age of 18 years; or

(b) if the chief executive officer revokes under section 178B(3) a direction in respect of the offender — the day on which the direction is revoked.

(4) A failure to comply with subsection (3) does not invalidate the transfer.

(5) If the chief executive officer transfers under subsection (2) an offender who is serving a sentence of detention —

(a) the *Prisons Act 1981* applies to and in respect of the offender while in prison; and

(b) Part 7 Division 8 and Part 8 continue to apply to the sentence of detention.

[Section 178A inserted: No. 15 of 2023 s. 12.]

178B. Chief executive officer may direct that mandatory transfer does not apply

(1) The chief executive officer may, in writing, direct that a transfer under section 178A(2) does not apply in relation to a particular offender.

(2) In giving a direction under subsection (1), the chief executive officer —

(a) must have regard to —

(i) the interests of the offender; and

(ii) the interests of other persons detained in the detention centre;

and

(b) may have regard to any other matter the chief executive officer considers appropriate.

(3) The chief executive officer may, in writing, revoke a direction given under subsection (1).

(4) The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this section by the chief executive officer.

(5) The offender cannot apply for a review of, or an appeal against, a decision under this section.

(6) Subsection (5) does not limit judicial review for jurisdictional error.

[Section 178B inserted: No. 15 of 2023 s. 12.]

179. Medical treatment, removal for

(1) In this section —

medical officer means an officer of the Department who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

medical treatment includes psychiatric treatment, which is treatment as defined in the *Mental Health Act 2014* section 4.

(2) If the superintendent of a detention centre is advised by a medical officer, or is for any other reason of the opinion, that a detainee at the detention centre requires medical treatment that cannot, by reason of impracticality or urgency, be administered within the detention centre, the superintendent is to order that the detainee be removed from the detention centre for the purpose of receiving the treatment and, unless the detainee has ceased to be in lawful custody, returned to the detention centre after treatment.

(3) If a detainee is to be removed to a hospital under the authority of the order —

(a) before making the order the superintendent is to ensure that the person in charge of the hospital agrees to the removal of the detainee to the hospital; and

(b) upon making the order the superintendent is to inform the person in charge of the hospital of the date when the detainee is entitled to be discharged from lawful custody.

(4) When the detainee is fit to be discharged from hospital, the person in charge of the hospital is to give the superintendent notice accordingly and, unless the detainee has ceased to be in lawful custody, the superintendent is to arrange for the return of the detainee to the detention centre.

(5) The superintendent may appoint an officer under the superintendent's control or a person who is authorised to exercise a power set out in clause 2 of Schedule 2 to the *Court*

Security and Custodial Services Act 1999 to take charge of the detainee while absent from the detention centre under an order made under subsection (2) and is required to do so —

(a) if the superintendent considers that the security of the hospital or other place of treatment might otherwise be jeopardised or the detainee might otherwise escape; or

(b) unless the chief executive officer, with the consent of the Minister, otherwise orders, if the detainee is a person referred to in subsection (6).

(6) If the detainee is a person —

(a) who is undergoing a sentence of imprisonment for life; or

(b) whose release is to be determined by the Governor,

the superintendent is to give the chief executive officer notice when the detainee is removed from or returned to a detention centre under an order made under this section.

(7) While a person is absent from a detention centre under an order made under subsection (2) the person is to be regarded as being detained in custody at the detention centre, and —

(a) if the person escapes or attempts to escape from the place where the order authorises the person to be it is to be regarded as escaping or attempting to escape from custody at a detention centre, as the case requires; and

(b) the person in charge of the place where the detainee is for the time being does not have the authority to release the detainee from custody.

[Section 179 amended: No. 69 of 1996 s. 94; No. 47 of 1999 s. 45; No. 22 of 2008 Sch. 3 cl. 55; No. 29 of 2008 s. 41(2); No. 35 of 2010 s. 166; No. 25 of 2014 s. 90.]

180. Death of detainee, coroner to investigate

(1) The superintendent is to give the chief executive officer notice of the death of a detainee and the chief executive officer is to cause notice of the death to be given to a coroner.

(2) If a coroner is informed under subsection (1) of the death of a detainee the coroner is to investigate the death.

[Section 180 amended: No. 2 of 1996 s. 61.]

181. Rules for detention centres, CEO may make

(1) The chief executive officer may, with the approval of the Minister, make rules for the management, control, and security of detention centres generally or a specified detention centre and for the management, control, and security of detainees and the management of officers of the Department.

(2) Rules made under this section may —

(a) confer a discretionary authority on any person or class of persons;

[(b) deleted]

(c) confer on persons who are prison officers under the *Prisons Act 1981*, or such of those persons as are specified in the rules, such functions under this Act as are specified in the rules.

(3) The chief executive officer is to publish rules made under this section in such manner as is appropriate to bring relevant rules to the attention of persons affected by them.

(4) The chief executive officer is to take reasonable steps to have rules made under this section, so far as they affect detainees, made known —

(a) to every detainee who is illiterate; and

(b) in a language that the detainee understands, to every detainee who does not understand English.

(5) If there is any inconsistency between a rule made under this section and a regulation, the rule has effect, to the extent of the inconsistency, subject to the regulation.

[Section 181 amended: No. 58 of 2004 s. 40.]

Part 10 — Miscellaneous

182. Protection from legal liability

(1) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

(2) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

(3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(4) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

(5) For the purposes of this section, anything that a person who has any function under this Act does in good faith and for reasonable or probable cause in promoting the effective rehabilitation of a young person is to be regarded as having been done in the performance of a function under this Act.

(6) A person who on reasonable grounds and in good faith for the purposes of facilitating the enforcement of the provisions of this Act makes a report with respect to the circumstances of a person is not liable to any action for damage or any other legal proceeding in respect of that report.

183. Order to be defence to actions

In an action for anything done in obedience to an order it is sufficient for the defendant to justify under the order only, without setting forth the previous proceedings, and the production of the order or a duplicate or certified copy of it is sufficient evidence that the order was made.

184. CEO may give consent in relation to detainee

(1) In any case where the consent of a responsible adult is required or is customarily sought, the chief executive officer may, in writing signed by the chief executive officer, give that consent in relation to any detainee.

(2) Without limiting the generality of the power conferred by subsection (1), the chief executive officer may sign consents to surgical operations or anaesthesia.

185. Minister may make certain payments

The Minister may make payments towards the cost of administering any order that has been made under this Act in dealing with an offence committed by a young person.

186. Officer of Department may conduct cases

(1) All cases under this Act heard on a prosecution notice or on a notice to attend court or an application by or on behalf of the chief executive officer or any other officer of the Department may be conducted by any person appointed by the Minister in that behalf.

(2) The production of an appointment, in writing, signed by the Minister, is sufficient evidence that the person therein named was authorised to commence the prosecution, issue the notice, or make the application, as the case requires and has been duly appointed to conduct the case.

[Section 186 amended: No. 84 of 2004 s. 80.]

187. Certificate of superintendent to be evidence

A certificate endorsed upon or annexed to an order for the detention of a person and signed by the superintendent of a detention centre stating that the person named in the order was

received at the detention centre and, at the time the certificate was signed —

(a) was detained in the detention centre; or

(b) had been otherwise dealt with under this Act,

is, in any proceedings, sufficient proof, in the absence of evidence to the contrary, of the facts stated in the certificate and of the identity of the person who was detained or had been otherwise dealt with.

188. Person having charge of detainee has legal custody

(1) In this section, ***detainee*** means a person detained, in a detention centre or otherwise, under this Act or section 666 of *The Criminal Code*[3], whether on remand or otherwise.

(2) If a person has charge for the time being of a detainee as authorised by this Act, by a court, or by an officer of the Department or if a person who is authorised to exercise a power set out in clause 2 of Schedule 2 to the *Court Security and Custodial Services Act 1999* has charge for the time being of a detainee —

(a) the person has, while engaged in any duty to which this Act relates, all such powers, authorities, protection, and privileges for the purpose of the execution of the duty as a police officer has by common law or statute; and

(b) the detainee is to be regarded as being in legal custody.

(3) Without prejudice to the generality of subsection (2), a detainee is to be regarded as being in legal custody —

(a) whilst attending, or travelling to or from a court; or

(b) whilst attending or travelling, to or from a medical or dental practitioner or a hospital; or

(c) in the case of a detainee sentenced to be detained in a detention centre, whilst participating outside the detention centre in a programme approved by the Minister for detainees; or

(d) whilst attending, or travelling directly to or from, any activity organised or supervised by officers of the Department employed at a detention centre at which the detainee is detained; or

(e) whilst absent from a detention centre pursuant to a written authorisation of the chief executive officer given in accordance with subsection (4).

(4) The chief executive officer may, in writing, authorise a detainee to be absent from a detention centre for a period not exceeding 72 hours, and the written authorisation is to specify the time, the period, and the purpose, of the authorised absence.

[Section 188 amended: No. 47 of 1999 s. 46.]

189. Certain offenders to be regarded as not convicted

(1) This section does not apply to, or in relation to, a person convicted of murder, attempt to murder or manslaughter.

(2) If a young person is convicted of an offence and a period of 2 years has expired since —

(a) the discharge of any sentence imposed as a result of the conviction, or every sentence if more than one sentence was imposed; or

(b) the date of conviction, if no sentence that required to be discharged was imposed as a result of the conviction,

the conviction is not to be regarded as a conviction for any purpose, except as provided in this section.

(3) On the application of the person concerned the court, if it thinks that special circumstances exist, may declare that subsection (2) applies in relation to a conviction of a young person even though the period of 2 years mentioned in that subsection has not expired.

(4) In subsection (2), the reference to a sentence imposed as a result of a conviction includes a reference to an order made as a result

of the conviction, and when the order has been fully complied with the sentence is to be regarded as having been discharged.

(5) If a young person is convicted of an offence and a youth community based order is made as a result of the conviction, unless the person has been subsequently dealt with for that offence the conviction is not to be regarded as a conviction for any purpose, except as provided in this section.

(6) The reference in subsection (5) to a youth community based order includes a reference to a probation order or community service order made under the *Child Welfare Act 1947*[4] before the commencement of section 198.

(7) This section does not prevent —

(a) a person in respect of whom a youth community based order has been made upon the person's conviction of an offence from being subsequently dealt with for the offence as a person so convicted if a condition of the order is not observed; or

(b) any subsequent proceedings that may be taken against the offender under this Act or on indictment in relation to the offence to which this section applies or for a subsequent offence; or

(c) a court having regard to a conviction for the purposes of the *High Risk Serious Offenders Act 2020* section 7(3); or

(d) the making of a record of anything that paragraph (a), (b) or (c) allows.

(8) This section does not affect —

(a) the right of a person to appeal against a conviction or to rely on a conviction in bar of any subsequent proceedings for the same offence; or

(b) the revesting or restoration of any property in consequence of the conviction; or

(c) the right of a court to disqualify a person from holding or obtaining a driver's licence as that term is defined in the *Road Traffic (Administration) Act 2008* section 4; or

(d) any cancellation or disqualification that occurs by operation of any written law.

(9) Part 3 of the *Spent Convictions Act 1988* has effect in relation to a conviction that, under this section, is not to be regarded as a conviction as if it were a spent conviction under that Act.

[Section 189 amended: No. 29 of 2008 s. 41(3); No. 8 of 2012 s. 203; No. 17 of 2016 s. 57; No. 29 of 2020 s. 121.]

190. Disclosure of certain convictions

(1) If section 189 provides that a conviction of an offence is not to be regarded as a conviction, evidence of that conviction is not admissible in any proceedings, other than proceedings under this Act or on indictment for the offence or for a subsequent offence.

(2A) This section does not prevent evidence of a conviction being received in proceedings under the *High Risk Serious Offenders Act 2020*.

(2) A person, not being the person convicted, who discloses the fact of a conviction that, under section 189, is not to be regarded as a conviction commits an offence except if the disclosure is for the purposes of this Act or of any court of law.

[Section 190 amended: No. 17 of 2016 s. 58; No. 29 of 2020 s. 121.]

191. Unlawfully communicating with detainee

A person who holds or attempts to hold any communication with a detainee when not authorised by the chief executive officer or the person in charge of the detention centre to do so commits an offence.

192. Unlawfully remaining in detention centre

A person who enters a detention centre or Departmental facility and does not depart when required to do so by a person having authority to require such departure commits an offence.

193. Escape from custody

(1) A person who has responsibility for the custody of a detainee and negligently or knowingly permits the detainee to escape from custody commits an offence.

(2) A person who assists a detainee to escape from custody commits an offence.

Penalty: $5 000 or imprisonment for 12 months, or both.

193A. Arrest warrant may be issued if warrant of commitment in force

(1) If a warrant of commitment has been issued in respect of a young offender that requires the offender to be detained for a period, then at any time before the offender has served the period the chief executive officer may issue a warrant to have the offender arrested and taken to a detention centre to serve or to continue to serve the period.

(2) A warrant must not be issued under subsection (1) if the offender has been released pursuant to an order made in accordance with this Act or another written law in respect of the sentence or made in the exercise of the Royal Prerogative of Mercy.

(3) Without limiting subsection (1) or affecting subsection (2), a warrant may be issued under subsection (1) if in error a young offender is released before having served the period of detention specified in the warrant of commitment.

(4) Subsection (1) does not limit any power to arrest a young offender who has escaped lawful custody.

[Section 193A inserted: No. 58 of 2004 s. 41.]

194. Personating an officer

A person, not being an officer of the Department, who takes the name, designation, or description of an officer of the Department or otherwise pretends to be an officer of the Department commits an offence.

[Section 194. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Dec 2009. See endnote 1M.]

195. General penalty

A person found guilty of an offence against this Act is liable, except as otherwise expressly provided, to a fine of $3 000 or imprisonment for 9 months.

196. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may be made —

(a) amending Schedule 1 or Schedule 2;

(b) prescribing the gratuities that may be credited to detainees and the conditions upon which they may be credited;

(c) specifying and regulating the privileges which may be extended to detainees and providing for the withdrawal of such privileges;

(d) conferring authority to require a detainee to submit for the purpose of having a body sample taken or to wear, when required by this Act to do so, a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the detainee;

(e) conferring authority on a superintendent to order that a detainee be confined to the detainee's sleeping quarters, or to a designated room, for a period not exceeding 24 hours in order to maintain good government, good order or security in a detention centre.

(3) Without limiting this section, regulations may be made for the management, control, and security of detention centres generally or a specified detention centre and for the management, control, and security of detainees —

(a) conferring authority on a superintendent to search a detainee and take from him or her any thing found on his or her person —

(i) which apparently was not issued to the detainee with the approval of the superintendent; or

(ii) which has been retained by the detainee without the approval of the superintendent; or

(iii) which, although issued or retained with the approval of the superintendent, appears to the superintendent to constitute a threat to or breach of the security or good order of the detention centre,

and to use such force as is reasonably necessary for the purpose of performing that search or seizure; and

(b) providing for items seized and retained following a search to be returned, confiscated or destroyed under particular circumstances; and

(c) conferring authority on a superintendent —

(i) to search a person entering or seeking to enter a detention centre, including a child; and

(ii) to search a person or vehicle outside but near a detention centre, where in the opinion of the superintendent that search is necessary for the

purpose of the security or good order of the detention centre; and

(iii) to search a person leaving or having just left a detention centre, including a child; and

(iv) to examine any article or vehicle in the possession or under the control of that person;

and

(d) conferring authority on a superintendent to use a trained dog to assist in carrying out a prescribed search; and

(e) limiting the liability for injury or damage caused by the use of a trained dog when under the control of an authorised person in carrying out a search, and when the search was carried out in prescribed circumstances.

[Section 196 amended: No. 58 of 2004 s. 42.]

197. Delegation of prescribed functions

(1) The superintendent of a detention centre may delegate to an officer, by instrument in writing signed by the superintendent, all or any of the superintendent's powers prescribed in section 196.

(2) For the purposes of this Act, the exercise of a power by a delegate under this section is deemed to be the exercise of the power by the superintendent.

[Section 197 inserted: No. 58 of 2004 s. 43.]

197A. Delegation by Commissioner of Police

(1) The Commissioner of Police may, in writing signed by the Commissioner, delegate any of the Commissioner's powers or duties under this Act to a police officer of or above the rank of Commander.

(2) For the purposes of this Act, the exercise of a power or duty by a delegate under this section is taken to be the exercise of the power or duty by the Commissioner of Police.

(3) A police officer to whom a power or duty is delegated under this section cannot delegate that power or duty to any other person.

[Section 197A inserted: No. 14 of 2022 s. 39.]

Part 11 — Amendment of certain other Acts and transitional provisions

[Divisions 1 (s. 198-222) and 2 (s. 223-230) omitted under the Reprints Act 1984 s. 7(4)(e).]

Division 3 — Transitional provisions

[Heading inserted: No. 15 of 2023 s. 13.]

Subdivision 1 — General

[Heading inserted: No. 15 of 2023 s. 13.]

231. *Interpretation Act 1984* applies

(1) This Division does not limit the operation of the *Interpretation Act 1984*.

(2) Unless the context otherwise requires, a reference in a written law to an enactment repealed by this Act includes a reference to the corresponding provision, if any, of this Act.

(3) A reference in a written law to a facility under the *Child Welfare Act 1947* [4] may, where the context so requires, be read as including or being a reference to a facility of a corresponding kind, if any, under this Act.

232. Orders for past matters

(1) An order can be made under this Act by the court in dealing with an offence even though —

(a) the offence for which the person is before the court may have been committed; or

(b) the default in payment may have occurred; or

(c) the sentence to which the order relates may have been imposed,

as the case requires, before the commencement of the provision of this Act under which the order is made.

233. Orders under former provisions

This Act applies to an order made under a provision repealed by this Act that is still in force when that provision is repealed as if the order were made under the provision of this Act that most nearly corresponds to the repealed provision.

234. Detention centres under *Child Welfare Act 1947*

(1) In this section —

former provisions means the provisions of the *Child Welfare Act 1947* [4] as in force immediately before the commencement of section 13.

(2) The declaration of a detention centre under the former provisions is to be taken to have been made under this Act.

(3) The appointment of a person as a visiting justice for a detention centre under the former provisions is taken to have been an appointment under this Act.

235. Proceedings pending before children's panels

(1) In this section —

former provisions means the provisions of the *Child Welfare Act 1947* [4] as in force immediately before the commencement of section 32.

(2) If proceedings for a matter are pending before a children's panel under the former provisions when section 32 commences, the matter is to be taken to have been referred under this Act to a juvenile justice team.

Subdivision 2 — Transitional provisions for *Young Offenders Amendment Act 2023*

[Heading inserted: No. 15 of 2023 s. 14.]

235A. Term used: commencement day

In this Division —

commencement day means the day on which the *Young Offenders Amendment Act 2023* section 4 comes into operation.

[Section 235A inserted: No. 15 of 2023 s. 14.]

235B. Young persons in detention on commencement day who have reached age of 18 years

(1) This section applies to a young person who —

(a) has reached the age of 18 years before commencement day; and

(b) is, on commencement day, detained in a detention centre under section 21(1) as in force immediately before commencement day.

(2) Section 21 applies to the young person as if they reached the age of 18 years on commencement day.

[Section 235B inserted: No. 15 of 2023 s. 14.]

235C. Offenders in detention on commencement day who have reached age of 18 years

(1) This section applies to an offender who —

(a) has reached the age of 18 years before commencement day; and

(b) is, on commencement day, in a detention centre serving a sentence of detention or a sentence of imprisonment.

(2) Section 178A applies to the offender as if they reached the age of 18 years on commencement day.

[Section 235C inserted: No. 15 of 2023 s. 14.]

235D. Applications not yet determined taken to be withdrawn

(1) An application under section 21(2) as in force immediately before commencement day that is made but not determined before commencement day is, on and from commencement day, taken to be withdrawn.

(2) An application under section 178(1) as in force immediately before commencement day in relation to an offender who has reached the age of 18 years that is made but not determined before commencement day is, on and from commencement day, taken to be withdrawn.

[Section 235D inserted: No. 15 of 2023 s. 14.]

Division 4 — Miscellaneous

*[**236.** Omitted under the Reprints Act 1984 s. 7(4)(e).]*

237. Review of Act

(1) As soon as is practicable after the expiration of the period of 5 years following the coming into operation of this Act the Minister responsible for its administration shall cause an investigation and review to be conducted, and a report to be prepared as to the operation of this Act.

(2) The Minister shall cause a copy of the report prepared for the purposes of subsection (1) to be laid before each House of Parliament as soon as is practicable after it is completed.

Schedule 1 — Schedule 1 offences

[s. 3, 22, 25 and 55]

[Heading amended: No. 19 of 2010 s. 4.]

Offences —

- **for which a caution cannot be given, and**
- **which cannot be referred to a juvenile justice team, and**
- **for which a conviction will normally be recorded**

	Enactment	Description of offence
1.	***The Criminal Code***	
	s. 125	Perjury — if the offender commits the crime in order to procure the conviction of another person for a crime punishable with imprisonment for life
	s. 134	Conspiracy to bring false accusation — if the offence is such that a person convicted of it is liable to be sentenced to imprisonment for life
	s. 144	Forcibly freeing certain offenders from custody
	s. 186	Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge — if the person is under the age of 13 years
	s. 288	Aiding suicide
	s. 290	Killing unborn child
	s. 293	Stupefying in order to commit indictable offence
	s. 295	Preventing escape from wreck
	s. 304(2)	Acts or omissions, with intent to harm, causing bodily harm or danger
	s. 305	Setting dangerous things for people, if injury to a person is actually caused
	s. 317A(c)	Assault with intent to resist or prevent arrest or detention

Enactment	Description of offence
s. 320(2)	Sexually penetrating a child under 13
s. 320(3)	Procuring etc. a child under 13 to engage in sexual behaviour
s. 321(2)	Sexually penetrating a child of or over 13 and under 16, where the child is under the care, supervision, or authority of the offender
s. 321(3)	Procuring etc. a child of or over 13 and under 16 to engage in sexual behaviour, where the child is under the care, supervision, or authority of the offender
s. 329(2)	Sexually penetrating a child relative or a de facto child, where the child is under 16
s. 329(3)	Procuring etc. a child relative or a de facto child to engage in sexual behaviour, where the child is under 16
s. 330(2)	Sexually penetrating an incapable person, where the incapable person is under the care, supervision, or authority of the offender
s. 330(3)	Procuring etc. an incapable person to engage in sexual behaviour, where the incapable person is under the care, supervision, or authority of the offender
s. 331B	Sexual servitude
s. 331C	Conducting business involving sexual servitude
s. 331D	Deceptive recruiting for commercial sexual services
s. 343	Child stealing
s. 390B [5]	Unauthorised use of aircraft — if the offender is liable to imprisonment for 20 years
s. 398	Attempts at extortion by threats — if the offender is liable to imprisonment for 20 years
s. 449	Casting away ships
s. 451	Obstructing and injuring railways
s. 451A	Endangering the safe use of an aircraft

	Enactment	Description of offence
	s. 454	Causing explosion likely to do serious injury to property
	s. 511	Personation of owner of shares
2.	***Misuse of Drugs Act 1981***	
	s. 6(1)(a)	Having in possession drug with intent to sell or supply it to another
	s. 6(1)(c)	Selling or supplying, or offering to sell or supply, drug to another
	s. 7(1)(a)	Having in possession or cultivating prohibited plant with intent to sell or supply it, or drug obtainable therefrom, to another
	s. 7(1)(b)	Selling or supplying, or offering to sell or supply, prohibited plant to another
	s. 33(1)	Attempting to commit an offence under section 6 or 7 referred to above
	s. 33(2)	Conspiring with another to commit an offence under section 6 or 7 referred to above
	s. 33(3)	Inciting another to commit, or becoming an accessory after the fact to, an offence under section 6 or 7 referred to above
3.	***Road Traffic Act 1974***	
	s. 49	Driving without the appropriate driver's licence
	s. 60	Driving in reckless manner
	s. 60A	Driving at reckless speed
	s. 61	Dangerous driving
	s. 62	Careless driving
	s. 62A	Causing excessive noise or smoke from vehicle's tyres
	s. 63	Driving under the influence of alcohol, drugs, or alcohol and drugs
	s. 64AB	Driving while impaired by drugs
	s. 64AC	Driving with prescribed illicit drug in oral fluid or blood
	s. 64	Driving with 0.08g/100ml blood alcohol content

Enactment	Description of offence
s. 64AA	Driving with 0.05g/100ml blood alcohol content
s. 64A	Driving with 0.02g/100ml blood alcohol content
s. 64B	Driving with blood alcohol content of or above 0.05g/100ml with prescribed illicit drug in oral fluid or blood
s. 64C	Certain persons driving with any blood alcohol content with prescribed illicit drug in oral fluid or blood
s. 67	Failure to comply with s. 66 requirement to provide sample, allow sample to be taken or to accompany police officer
s. 67AA	Failing to undergo a driver assessment, allow taking of a blood sample or provide a urine sample
s. 67AB	Failing to provide a sample of oral fluid or allow taking of a blood sample
s. 67AC	Failure to comply with drug test requirement for certain persons with any blood alcohol content
s. 67AD	Failure to comply with drug test requirement for persons with blood alcohol content of or above 0.05g/100ml
s. 67A	Failure to comply with other requirements made under s. 66 to 66E
4. ***Western Australian Marine Act 1982***	
s. 75BD(1)	Reckless navigation of vessel
s. 75BE(1)	Dangerous navigation of vessel
s. 75BF	Careless navigation of vessel
s. 75C(1)	Navigation or attempted operation of vessel while under influence of alcohol or drugs
s. 75CA(1)	Navigation or attempted operation of vessel while under influence of alcohol and drugs
s. 75CD(1)	Navigation or attempted operation of vessel while impaired by drug

Enactment	Description of offence
s. 75D(1)	Navigation or attempted operation of vessel while BAC is 0.05 or above
s. 75DA(1)	Navigation or attempted operation of vessel while BAC is 0.08 or above
s. 75DB(1)	Navigation of vessel while prescribed illicit drug present in body
s. 75DC(1)	Navigation of vessel while BAC is 0.05 or above and prescribed illicit drug is present in body
s. 75DD(1)	Navigation of vessel while BAC is 0.08 or above and prescribed illicit drug is present in body
s. 75H(1)	Failure to comply with requirement relating to preliminary breath test, preliminary oral fluid test or boarding or moving vessel
s. 75HB(1)	Failure to comply with requirement relating to breath analysis, blood sample or stop vessel or navigate to specified place
s. 75HC(1)	Failure to comply with requirement relating to incident occasioning death, grievous bodily harm or bodily harm
s. 75HD(1)	Failure to comply with requirement relating to oral fluid sample for drug testing or blood sample for analysis
s. 75HE(1)	Failure to comply with requirements relating to assessment of drug impairment
s. 75HG(1)	Failure to comply with drug testing requirement when BAC of 0.05 or above
s. 75HH(1)	Failure to comply with drug testing requirement when BAC of 0.08 or above
s. 75HI(1)	Failure to comply with drug testing requirement when BAC of 0.15 or above

[Schedule 1 amended: No. 82 of 1994 s. 13(6); No. 4 of 2004 s. 24 and 26; No. 58 of 2004 s. 44; No. 62 of 2004 s. 9(4); No. 6 of 2007 s. 23; No. 39 of 2007 s. 42; No. 29 of 2008 s. 41(4); No. 25 of 2016 s. 21(2); No. 51 of 2016 s. 56; No. 27 of 2020 s. 52; No. 31 of 2023 s. 39(2).]

Schedule 2 — Schedule 2 offences

[s. 3, 22, 25, 55 and 124]

[Heading amended: No. 19 of 2010 s. 4.]

Offences —

- **for which a caution cannot be given, and**
- **which cannot be referred to a juvenile justice team, and**
- **for which a conviction will normally be recorded, and**
- **which may lead to the application of the provisions relating to offenders who repeatedly commit offences resulting in detention**

	Enactment	Description of offence
1.	***The Criminal Code***	
	s. 221E(1)	Participating in activities of criminal organisation
	s. 221F(1)	Instructing commission of offence for benefit of criminal organisation
	s. 279	Murder
	s. 280	Manslaughter
	s. 281	Unlawful assault causing death
	s. 283	Attempt to murder
	s. 292	Disabling in order to commit indictable offence
	s. 294	Acts intended to cause grievous bodily harm or to resist or prevent arrest
	s. 297	Grievous bodily harm
	s. 301	Wounding and similar acts
	s. 304(2)	Acts or omissions, with intent to harm, causing bodily harm or danger
	s. 317	Assault occasioning bodily harm

Enactment	Description of offence
s. 317A(a)	Assault with intent to commit or facilitate a crime
s. 317A(b)	Assault with intent to do grievous bodily harm
s. 318	Serious assaults
s. 318B	Assault on retail workers
s. 323	Indecent assault
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent
s. 326	Aggravated sexual penetration without consent
s. 331B	Sexual servitude
s. 331C	Conducting business involving sexual servitude
s. 331D	Deceptive recruiting for commercial sexual services
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 378(2)	Stealing a motor vehicle, aggravated by reckless or dangerous driving
s. 392	Robbery
s. 393	Assault with intent to rob
s. 444	Criminal damage
2. ***Bush Fires Act 1954***	
s. 32	Wilfully lighting a fire or causing a fire to be lit under such circumstances as to be likely to injure or damage a person or property

Enactment	Description of offence
2AA. ***Criminal Organisations Control Act 2012***	
s. 99(1)	Association by controlled person with another controlled person
s. 99(3)	Association by controlled person with another controlled person on 3 or more occasions within 3 month period
s. 102	Offence for controlled person to get funds to, from or for declared criminal organisation
s. 103	Other contravention of interim control order or control order
s. 106	Recruiting members for declared criminal organisation
s. 107(2)	Permitting premises to be habitually used as place of resort by members of declared criminal organisation
s. 107(3)	Being knowingly concerned in the management of premises habitually used as place of resort by members of declared criminal organisation
2A. ***Prostitution Act 2000***	
s. 7	Seeking to induce person to act as prostitute
s. 16	Causing, permitting, or seeking to induce child to act as prostitute
s. 17	Obtaining payment for prostitution by a child
s. 18	Agreement for prostitution by a child
3. ***Road Traffic Act 1974***	
s. 54	Driver in incident occasioning bodily harm to stop, ensure assistance and give information

Enactment	Description of offence
s. 59	Dangerous driving causing death or grievous bodily harm
s. 59A	Dangerous driving causing bodily harm
s. 59BA(1)	Careless driving causing death, grievous bodily harm or bodily harm
4. *Western Australian Marine Act 1982*	
s. 64A(2)	Failure of master to comply with render assistance duties in relation to marine incident occasioning death, grievous bodily harm or bodily harm
s. 75B(1)	Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug
s. 75B(2)	Dangerous navigation of vessel occasioning death
s. 75BA(1)	Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug
s. 75BA(2)	Dangerous navigation of vessel occasioning grievous bodily harm
s. 75BB(1)	Navigation of vessel occasioning bodily harm while under influence of alcohol, a drug or alcohol and a drug
s. 75BB(3)	Dangerous navigation of vessel occasioning bodily harm
s. 75BC(1)	Careless navigation of vessel occasioning death, grievous bodily harm or bodily harm

[Schedule 2 amended: No. 82 of 1994 s. 13(6); No. 17 of 2000 s. 64; No. 23 of 2001 s. 10(4); No. 4 of 2004 s. 24 and 26; No. 58 of 2004 s. 45; No. 29 of 2008 s. 41(5); No. 49 of 2012 s. 182; No. 25 of 2016 s. 21(3) and 29; No. 31 of 2023 s. 39(3); No. 16 of 2024 s. 9.]

Schedule 3 — Adaptations for community work in default of payment

[s. 61]

[Heading amended: No. 19 of 2010 s. 4.]

1. References to offender

A reference to "offender" is to be read as a reference to the person in respect of whom the order is made.

2. Conditions

The order cannot impose attendance conditions or supervision conditions.

3. Duration of order

The order remains in force until —

(a) every condition imposed by it is fulfilled; or

(b) it is discharged or cancelled by the court; or

(c) the obligation to make the payment in respect of which the order was made is otherwise satisfied.

4. Powers of court in dealing with breach

If the court decides to cancel the order, it can only make a detention order under section 65C in respect of the defaulter and issue a warrant of commitment accordingly.

5. Effect of partially performing work ordered in default of payment

(1) If the defaulter satisfactorily performs work under the order for a number of hours less than that required under the order, the amount required to be paid in full satisfaction of the obligation to make the payment is reduced by the percentage described in subclause (2).

(2) The percentage reduction is the percentage that the number of whole hours of work satisfactorily performed represents of the number of hours of work required by the order.

[Clause 5 amended: No. 92 of 1994 s. 46.]

6. Proof of identity

(1) A person bringing proceedings for a failure to comply with the order may aver that the person against whom the proceedings are brought is the person in respect of whom the order was made.

(2) In proceedings in which an averment is made under subclause (1) the person against whom the proceedings are brought may be asked by the court whether the person became liable to make the payment in respect of which the order was made and whether the person defaulted in making the payment and, if the person admits any fact about which the court asks, no further proof of the fact admitted is required.

[Schedule 4 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

This is a compilation of the *Young Offenders Act 1994* and includes amendments made by other written laws [1M, 6, 7, 8]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Young Offenders Act 1994	104 of 1994	11 Jan 1995	s. 1 and 2: 11 Jan 1995; Act other than s. 1 and 2: 13 Mar 1995 (see s. 2 and *Gazette* 10 Mar 1995 p. 895)
Criminal Law Amendment Act 1994 s. 13(6) and 20	82 of 1994	23 Dec 1994	s. 13(6): 20 Jan 1995 (see s. 2(3)); s. 20: 13 Mar 1995 (see s. 2(4) and *Gazette* 10 Mar 1995 p. 895)
Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 22	92 of 1994	23 Dec 1994	11 Jan 1995 (see s. 2(2))
Sentencing (Consequential Provisions) Act 1995 Pt. 86	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)
Coroners Act 1996 s. 61	2 of 1996	24 May 1996	7 Apr 1997 (see s. 2 and *Gazette* 18 Mar 1997 p. 1529)
Mental Health (Consequential Provisions) Act 1996 Pt. 22	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the *Young Offenders Act 1994* as at 26 Nov 1996 (includes amendments listed above except those in the *Coroners Act 1996* and the *Mental Health (Consequential Provisions) Act 1996*)			
Criminal Law Amendment Act (No. 2) 1998 Pt. 7	29 of 1998	6 Jul 1998	3 Aug 1998
Police Amendment Act 1998 Pt. 3	47 of 1998	19 Nov 1998	5 Dec 1998 (see s. 2 and *Gazette* 4 Dec 1998 p. 6447)
School Education Act 1999 s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7904)

Short title	Number and year	Assent	Commencement
Court Security and Custodial Services (Consequential Provisions) Act 1999 Pt. 12	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and *Gazette* 17 Dec 1999 p. 6175-6)
Prostitution Act 2000 s. 64	17 of 2000	22 Jun 2000	29 Jul 2000 (see s. 2 and *Gazette* 28 Jul 2000 p. 3987)
Protective Custody Act 2000 s. 30	50 of 2000	28 Nov 2000	1 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7903)
Reprint of the *Young Offenders Act 1994* as at 8 Dec 2000 (includes amendments listed above except those in the *School Education Act 1999* and the *Protective Custody Act 2000*)			
Criminal Law Amendment Act 2001 s. 10(4)	23 of 2001	26 Nov 2001	24 Dec 2001
Sentencing Legislation Amendment and Repeal Act 2003 s. 29(3) and 104	50 of 2003	9 Jul 2003	s. 29(3): 31 Aug 2003 (see s. 2 and *Gazette* 29 Aug 2003 p. 3833); s. 104: 15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 73	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722)
Inspector of Custodial Services Act 2003 s. 56(1)[9]	75 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Criminal Code Amendment Act 2004 s. 24 and 26	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
Sentencing Legislation Amendment Act 2004 s. 17	27 of 2004	14 Oct 2004	31 May 2006 (see s. 2 and *Gazette* 30 May 2006 p. 1965)
Children and Community Services Act 2004 s. 251	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695)
Workers' Compensation Reform Act 2004 s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7131)
Young Offenders Amendment Act 2004[10]	58 of 2004	22 Nov 2004	s. 1 and 2: 22 Nov 2004; Act other than s. 1, 2, 6, 7 and 40 and Sch. 1: 1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7132); s. 6, 7 and 40 and Sch. 1: 1 Jul 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7132)

Short title	Number and year	Assent	Commencement
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Misuse of Drugs Amendment Act 2004 s. 9(4)	62 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 10 Dec 2004 p. 5965)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 Pt. 15, s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Reprint 3: The *Young Offenders Act 1994* as at 15 Jul 2005 (includes amendments listed above except those in the *Sentencing Legislation Amendment Act 2004* and the *Children and Community Services Act 2004*)			
Parole and Sentencing Legislation Amendment Act 2006 Pt. 5	41 of 2006	22 Sep 2006	28 Jan 2007 (see s. 2 and *Gazette* 29 Dec 2006 p. 5867)
Prisons and Sentencing Legislation Amendment Act 2006 Pt. 13	65 of 2006	8 Dec 2006	4 Apr 2007 (see s. 2 and *Gazette* 3 Apr 2007 p. 1491)
Road Traffic Amendment (Drugs) Act 2007 Pt. 3	6 of 2007	23 May 2007	12 Oct 2007 (see s. 2 and *Gazette* 11 Oct 2007 p. 5475)
Road Traffic Amendment Act (No. 2) 2007 Pt. 3	39 of 2007	21 Dec 2007	15 Mar 2008 (see s. 2(k) and *Gazette* 14 Mar 2008 p. 829)
Acts Amendment (Justice) Act 2008 s. 132	5 of 2008	31 Mar 2008	31 Jul 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253)
Parental Support and Responsibility Act 2008 Pt. 7 Div. 2	14 of 2008	15 Apr 2008	28 Mar 2009 (see s. 2 and *Gazette* 27 Mar 2009 p. 917)
Legal Profession Act 2008 s. 714	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Medical Practitioners Act 2008 Sch. 3 cl. 55	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989)
Criminal Law Amendment (Homicide) Act 2008 s. 41	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and *Gazette* 22 Jul 2008 p. 3353)
Reprint 4: The *Young Offenders Act 1994* as at 2 Jan 2009 (includes amendments listed above except those in the *Legal Profession Act 2008* and the *Parental Support and Responsibility Act 2008*)			

Short title	Number and year	Assent	Commencement
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 51	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and *Gazette* 1 Oct 2010 p. 5075-6)
Cannabis Law Reform Act 2010 Pt. 5	45 of 2010	28 Oct 2010	1 Aug 2011 (see s. 2(b) and *Gazette* 29 Jul 2011 p. 3127)
Young Offenders Legislation Amendment (Research Information) Act 2011 Pt. 3	26 of 2011	11 Jul 2011	12 Jul 2011 (see s. 2(b))
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 54	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371)
Reprint 5: The *Young Offenders Act 1994* as at 10 Aug 2012 (includes amendments listed above except those in the *Road Traffic Legislation Amendment Act 2012*)			
Criminal Organisations Control Act 2012 s. 182	49 of 2012	29 Nov 2012	2 Nov 2013 (see s. 2(b) and *Gazette* 1 Nov 2013 p. 4891)
Courts and Tribunals (Electronic Processes Facilitation) Act 2013 Pt. 3 Div. 21 (other than s. 138 and 139)	20 of 2013	4 Nov 2013	25 Nov 2013 (see s. 2(b) and *Gazette* 22 Nov 2013 p. 5391)
Mental Health Legislation Amendment Act 2014 Pt. 4 Div. 4 Subdiv. 24	25 of 2014	3 Nov 2014	30 Nov 2015 (see s. 2(b) and *Gazette* 13 Nov 2015 p. 4632)
Custodial Legislation (Officers Discipline) Amendment Act 2014 Pt. 3	29 of 2014	3 Dec 2014	24 Aug 2015 (see s. 2(b) and *Gazette* 21 Aug 2015 p. 3310)
Declared Places (Mentally Impaired Accused) Act 2015 s. 89	4 of 2015	3 Mar 2015	17 Jun 2015 (see s. 2(b) and *Gazette* 16 Jun 2015 p. 2071)
Children and Community Services Legislation Amendment and Repeal Act 2015 Pt. 2 Div. 3 Subdiv. 3	23 of 2015	17 Sep 2015	1 Jan 2016 (see s. 2(b) and *Gazette* 15 Dec 2015 p. 5027)

Short title	Number and year	Assent	Commencement
Reprint 6: The *Young Offenders Act 1994* as at 9 Oct 2015 (includes amendments listed above except those in the *Mental Health Legislation Amendment Act 2014* and the *Children and Community Services Legislation Amendment and Repeal Act 2015*)			
Graffiti Vandalism Act 2016 Pt. 6 Div. 3	16 of 2016	11 Jul 2016	12 Oct 2016(see s. 2(b) and *Gazette* 11 Oct 2016 p. 4531)
Dangerous Sexual Offenders Legislation Amendment Act 2016 Pt. 8	17 of 2016	11 Jul 2016	10 Sep 2016 (see s. 2(b) and *Gazette* 9 Sep 2016 p. 3871)
Road Traffic Legislation Amendment Act 2016 s. 21 and Pt. 3 Div. 1 Subdiv. 2)	25 of 2016	21 Sep 2016	s. 21: 22 Sep 2016 (see s. 2(b)); Pt. 3 Div. 1 Subdiv. 2: 28 Nov 2016 (see s. 2(c) and *Gazette* 25 Nov 2016 p. 5279)
Road Traffic Amendment (Impounding and Confiscation of Vehicles) Act 2016 Pt. 3 Div. 4	51 of 2016	28 Nov 2016	14 Jan 2017 (see s. 2(1)(b) and (2) and *Gazette* 13 Jan 2017 p. 338)
Reprint 7: The *Young Offenders Act 1994* as at 1 Jun 2018 (includes amendments listed above)			
Industrial Relations Amendment Act 2018 s. 72	39 of 2018	12 Dec 2018	19 Dec 2018 (see s. 2(b) and *Gazette* 18 Dec 2018 p. 4835)
Road Traffic Amendment (Impaired Driving and Penalties) Act 2020 Pt. 3 Div. 4	27 of 2020	9 Jul 2020	1 Jul 2021 (see s. 2(1)(b) and SL 2021/54 cl. 2(d))
High Risk Serious Offenders Act 2020 s. 121	29 of 2020	9 Jul 2020	26 Aug 2020 (see s. 2(1)(c) and SL 2020/131 cl. 2)
Legal Profession Uniform Law Application Act 2022 Pt. 17 Div. 23	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2022 Pt. 3	14 of 2022	18 May 2022	11 Nov 2022 (see s. 2(b) and SL 2022/182 cl. 2)
Criminal Law (Mental Impairment) Act 2023 Pt. 15 Div. 29 and s. 409-411	10 of 2023	13 Apr 2023	1 Sep 2024 (see s. 2(b) and SL 2024/175 cl. 2)

Short title	Number and year	Assent	Commencement
Young Offenders Amendment Act 2023	15 of 2023	26 Jun 2023	s. 1 and 2: 26 Jun 2023 (see s. 2(a)); Act other than s. 1 and 2: 27 Jun 2023 (see s. 2(b))
Workers Compensation and Injury Management Act 2023 s. 709	21 of 2023	24 Oct 2023	1 Jul 2024 (see s. 2(d) and SL 2024/34 cl. 2)
Western Australian Marine Amendment Act 2023 s. 39	31 of 2023	11 Dec 2023	21 Dec 2023 (see s. 2(c) and SL 2023/202 cl. 2(a))
Criminal Code Amendment Act 2024 s. 9	16 of 2024	14 May 2024	1 Jul 2024 (see s. 2(b) and SL 2024/125 cl. 2)
Police Legislation Amendment Act 2024 Pt. 4	33 of 2024	26 Sep 2024	20 Dec 2024 (see s. 2(1)(b) and SL 2024/277 cl. 2)
Community Protection (Offender Reporting) Amendment Act 2024 Pt. 3 Div. 2 Subdiv. 4	35 of 2024	22 Oct 2024	31 Dec 2025 (see s. 2(b) and SL 2025/201 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Prostitution Amendment Act 2008 s. 36	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))
Courts and Tribunals (Electronic Processes Facilitation) Act 2013 s. 138 and 139	20 of 2013	4 Nov 2013	To be proclaimed (see s. 2(b))
Liquor Legislation Amendment Act 2015 Pt. 3	35 of 2015	2 Nov 2015	To be proclaimed (see s. 2(b))
Young Offenders and Prisons Legislation Amendment Act 2024 Pt. 3	48 of 2024	6 Dec 2024	To be proclaimed (see s. 2(b))

Other notes

[1M] Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 22 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

[1] The provisions in this Act amending those Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).

[2] Footnote no longer applicable.

[3] *The Criminal Code* s. 666 was repealed by the *Sentencing (Consequential Provisions) Act 1995* s. 26.

[4] The *Child Welfare Act 1947* was repealed by the *Children and Community Services Act 2004* s. 250(1)(a).

[5] *The Criminal Code* s. 390B was repealed by the *Criminal Law Amendment (Simple Offences) Act 2004* s. 26.

[6] The *Criminal Law Amendment Act 1996* Pt. 6 did not come into operation and was repealed by the *Criminal Law Amendment Act (No. 2) 1998* s. 7.

[7] The *Sentencing Legislation Amendment and Repeal Act 1999* s. 26 did not come into operation and was repealed by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 31.

[8] The *Sentencing Amendment Act 2000* Pt. 2 Div. 2 did not come into operation and was repealed by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 32.

[9] The *Inspector of Custodial Services Act 2003* s. 56(1), which gives effect to Sch. 2, reads as follows:

> **56. Consequential amendments to other Acts and regulations**
>
> (1) Schedule 2 has effect.

Schedule 2 cl. 7(3) reads as follows:

Schedule 2 — Consequential amendments to Acts and regulations

[s. 56]

(3) A person who, immediately before the commencement of this Act, was a person who had been appointed by the Governor, under the *Young Offenders Act 1994* section 166, to be a visiting justice is to be regarded, on and from the commencement, as a person who is appointed by the Minister, under the *Young Offenders Act 1994* section 166, as a visiting justice on the same terms and conditions as applied to the person's appointment by the Governor.

[10] The *Young Offenders Amendment Act 2004* s. 6(3), which gives effect to Sch. 1, reads as follows:

6. Section 11 amended and transitional

(3) Schedule 1 has effect.

Schedule 1 reads as follows:

Schedule 1 — Transitional

[s. 6(3)]

1. Interpretation

In this Schedule —

commencement means the day fixed as the day on which section 6 of this Act comes into operation;

principal Act means the *Young Offenders Act 1994*.

2. Conditions of employment of "group workers" on commencement to continue

(1) A person who was paid by the Department as a custodial officer with primarily non-administrative functions (***group worker***) immediately before commencement is, on commencement, to be taken to be appointed by the chief executive officer under section 11(1a)(a) of the principal Act (as amended by this Act), on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before commencement.

(2) A person to whom subclause (1) applies retains all existing and accruing rights and benefits as if the person's employment, for the purposes of the principal Act, were a continuation of the person's employment immediately before commencement.

3. Conditions of employment of other employees and officers on commencement to continue

(1) A person who was appointed by the Minister under the Act as an overseer, or as an officer or employee without custodial functions, before commencement, and who is still employed immediately before commencement, is to be regarded, on commencement, as having been appointed by the chief executive officer under section 11(1a)(b) of the principal Act (as amended by this Act), on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before commencement.

(2) A person to whom subclause (1) applies retains all existing and accruing rights and benefits as if the person's employment, for the purposes of the principal Act, were a continuation of the person's employment immediately before commencement.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
Aboriginal community	3(1)
appeal	11CA
appellant	11CA
appropriate person	23B(3)
approved	35
attendance conditions	3(1)
authorised person	169A(7)
Board	16B(1), 16C(1), 131, 142A(1), 150B
body sample	3(1)
category 1 offender	3(1)
category 2 offender	3(1)
CEO (child welfare)	15A(2)
chairperson	3(1)
Chief Commissioner	11CA
chief executive officer	3(1)
Chief Mental Health Advocate	16(1)
CLMI identified person	16(1)
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