

Western Australia

## **Young Offenders Amendment Act 2004**

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As at 22 Nov 2004

No. 58 of 2004

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## Young Offenders Amendment Act 2004

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Western Australia

## Young Offenders Amendment Act 2004

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**No. 58 of 2004**

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**An Act to amend the *Young Offenders Act 1994*.**

[Assented to 22 November 2004]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Young Offenders Amendment Act 2004*.

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**2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

**3. The Act amended**

The amendments in this Act are to the *Young Offenders Act 1994*\*.

[\* *Reprinted as at 8 December 2000.*  
*For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 441 and Acts Nos. 50 of 2003 and 4 of 2004.*]

**4. Section 3 amended**

Section 3 is amended before the definition of “attendance conditions” by inserting the following definition —

“

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

”.

**5. Part 3 Division 1 heading inserted**

Before section 9 the following heading is inserted —

“

**Division 1 — General**

”.



**6. Section 11 amended and transitional**

- (1) Section 11(1) and (2) are repealed and the following subsections are inserted instead —

“

- (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 (“group workers”); and  
(b) officers and employees of particular classes as are prescribed by the regulations,

and may terminate the appointment of 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) in prescribed circumstances, may be subject to such disciplinary procedures as are set out in the regulations.

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

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

”.

- (2) Section 11(3) is amended after “Appointments” by inserting —  
“ under subsection (1a) ”.
- (3) Schedule 1 has effect.

**7. Sections 11A to 11F inserted**

After section 11 the following sections are inserted —

“

**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;
- (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.

**11B. Powers and duties of custodial staff**

A person who is appointed under section 11(1) or (1a) as a custodial officer —

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

- (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.

**11C. Use of force**

- (1) A person who is appointed under section 11(1) or (1a) as 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 person who is appointed under section 11(1) or (1a) as a custodial officer must not use force on a young offender unless that force is used in the prescribed circumstances.

**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;
  - (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.

**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;
  - (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 appointed under section 11(1) or (1a) of this Act, 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 appointed under section 11(1) or (1a) of this Act and, with the approval of the chief executive officer, may use such control weapons as are necessary in the circumstances.

**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;
  - (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 appointed under section 11(1) or (1a) of this Act, in addition to the powers and duties conferred and imposed on that police officer by or under any other law.

”.

**8. Section 12 amended**

Section 12(5)(b) is amended by inserting after “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

”.

**9. Section 15A inserted**

After section 15 the following section is inserted —

“

**15A. Disclosure of personal information relating to young offenders**

- (1) Upon being requested to do so by the Director-General of the Department, the chief executive officer may

provide the Director-General with information relating to a young person where the provision of that information is necessary —

- (a) to protect a young person;
  - (b) to assist in the placement of the young person;
  - (c) to protect the physical safety of a child, whether or not in the care of the Department;
  - (d) to assist in an assessment of the young person by officers of the Department; or
  - (e) for the purpose of enabling the Director-General or a person employed in the Department 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), “**Department**” and “**Director-General**” have the meanings given to those terms, respectively, in section 4(1) of the *Child Welfare Act 1947*.
- (3) Upon being requested to do so by a member of the Mentally Impaired Defendants Review Board established under the *Criminal Law (Mentally Impaired Defendants) Act 1996*, 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.
- (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 Parole Board, the chief executive officer, a supervisor, 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 —

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- (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.
- (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.

”.

**10. Section 17 amended**

After section 17(2) the following subsections are inserted —

“

- (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.

”.



**11. Part 3 Division 2 inserted**

After section 17 the following Division is inserted in Part 3 —

“

**Division 2 — Arrangements with the council of an Aboriginal community**

**17A. Interpretation**

In this Division, unless the contrary intention appears —

“**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;

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

**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;
- (b) a youth community based order;

- (c) an intensive youth supervision order;
- (d) a conditional release order; or
- (e) a supervised release order.

**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.

**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 Rehabilitation Act 1981* 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.

”.

**12. Section 25 amended**

- (1) Section 25(4) is amended after “offence was committed” by inserting —  
“ or a plea of guilty, ”.
- (2) After section 25(4) the following subsection is inserted —  
“
  - (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.”.

**13. Section 28 replaced**

Section 28 is repealed and the following section is inserted instead —

“

**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;
  - (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;
  - (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.

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- (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.

”.

**14. Section 29 amended**

(1) Section 29 is amended by inserting before “The” the subsection designation “(1)”.

(2) At the end of section 29 the following subsection is inserted —

“

- (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;
  - (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.

”.

**15. Section 31 amended**

(1) Section 31(1) is amended by inserting after “of the offence” —  
“ (a “**victim**”) ”.

- (2) Section 31(2) is amended as follows:
- (a) by deleting “person referred to in subsection (1)” and inserting instead —  
“ victim ”;
  - (b) by deleting “that person” and inserting instead —  
“ the victim ”.

**16. Section 32 amended**

- (1) After section 32(1) the following subsection is inserted —

“

- (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) Section 32(2) is amended as follows:

- (a) by inserting after “the proceedings” —

“

and does not have a good reason for not being present

”;

- (b) by deleting “may” and inserting instead —

“ is to ”.

- (3) Section 32(3) is amended as follows:

- (a) by deleting “subsection (2)” and inserting instead —

“ this section ”;

- (b) after “to in section 31” by inserting —

“ as a victim ”.

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(4) After section 32(3) the following subsection is inserted —

“

(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.

”.

**17. Section 35 amended**

Section 35 is amended before the definition of “Coordinator” by inserting the following definition —

“

“**approved**” means approved by the chief executive officer;

”.

**18. Section 36 amended**

(1) Section 36 is amended by inserting before “The” the subsection designation “(1)”.

(2) At the end of section 36 the following subsection is inserted —

“

(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.

”.

**19. Section 37 amended**

(1) Section 37(1) is amended after “a Coordinator” by inserting —

“ appointed under section 36(1) ”.

(2) After section 37(1) the following subsections are inserted —

“

- (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.

”.

**20. Section 37A inserted**

After section 37 the following section is inserted —

“

**37A. No representation by a legal practitioner or an agent**

- (1) In this section —  
“**legal practitioner**” has the meaning given to that term in section 3 of the *Legal Practice Act 2003*.
- (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 legal practitioner or other agent.

”.

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**21. Section 54 amended**

Section 54 is amended after “officer to do so” by inserting —

“

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

”.

**22. Section 103 amended**

(1) Section 103 is amended before “A conditional” by inserting the subsection designation “(1)”.

(2) After section 103(1) the following subsections are inserted —

“

(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.

”.

**23. Section 109A and 109B inserted**

After section 109 the following sections are inserted —

“

**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;
    - (ii) to obtain urgent medical or dental treatment for the offender;
    - (iii) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person;
    - (iv) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere;
    - (v) to attend school, education or vocational training;
    - (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;
  - (b) the period of the authorised absence;
  - (c) when the offender must return;

- (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;
  - (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.

**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.

”.

**24. Section 114 amended**

- (1) Section 114(1) is amended as follows:

- (a) after paragraph (a) by deleting “or”;
- (b) after paragraph (b) by deleting the full stop and inserting instead —

“

; or

- (c) in proceedings for an offence, the court makes a finding under section 115(a) or (b).

”.

- (2) Section 114(2) is amended as follows:

- (a) after paragraph (a) by deleting “or”;

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- (b) after paragraph (b) by deleting the full stop and inserting instead —

“

; 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.

”.

**25. Section 115 amended**

The full stop after section 115 is deleted and the following is inserted —

“

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.

”.

**26. Section 119A inserted**

After section 119 the following section is inserted —

“

**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.

”.

**27. Section 132 amended**

- (1) After section 132(1) the following subsection is inserted —

“

- (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) Section 132(2) is amended by deleting “The order” and inserting —

“ An order for the release of an offender from custody ”.

**28. Sections 136A and 136B inserted**

After section 136 the following sections are inserted —

“

**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;
    - (ii) to obtain urgent medical or dental treatment for the offender;
    - (iii) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person;
    - (iv) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere;
    - (v) to attend school, education or vocational training;
    - (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;
  - (b) the period of the authorised absence;
  - (c) when the offender must return;
  - (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;
  - (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.

**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.

”.

**29. Section 145 amended**

- (1) Section 145(1) is repealed and the following subsection is inserted instead —

“

- (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;
  - (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) Section 145(2) is amended by inserting after “custodial sentence” —

“

on a person in respect of whom a supervised release order is in force

”.

- (3) Section 145(3) is amended by inserting after “custodial sentence” —

“

on a person in respect of whom a supervised release order is in force

”.

**30. Section 147A inserted**

After section 147 the following section is inserted —

“

**147A. Offending while on supervised release order — automatic cancellation**

**s. 31**

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- (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.

”.

**31. Section 149 amended**

- (1) Section 149(1) is amended by deleting “by the operation of section 145(2) because a custodial sentence is imposed for a further offence” and inserting —

“

under section 147(1)(e) or by the operation of section 147A(1)

”.

- (2) Section 149(3) is repealed and the following subsection is inserted instead —

“

- (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.

”.

- (3) Section 149(4) is amended by deleting “being returned to custody” and inserting instead —

“ the order was cancelled ”.

- (4) Section 149(5) is amended after “section 145(2)” by inserting —

“ or section 147A ”.

**32. Section 150 amended**

- (1) Section 150 is amended by inserting before “If” the subsection designation “(1)”.

- (2) At the end of section 150 the following subsection is inserted —

“

- (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.

”.

**33. Section 152 amended**

- (1) Section 152(1) and (2) are repealed and the following subsection is inserted instead —

“

- (1) There are to be 5 members of the Board comprising —
- (a) a person to be Chairman, appointed by the Governor;
  - (b) 2 persons appointed by the Governor;
  - (c) the chief executive officer, by reason of the office; and

**s. 34**

---

- (d) a police officer nominated by the Commissioner of Police.

”.

- (2) Section 152(3) is amended as follows:

- (a) after paragraph (a) by inserting the word “and”;
- (b) after paragraph (b) by deleting the semicolon and “and” and inserting a full stop;
- (c) by deleting paragraph (c).

**34. Section 153 amended**

After section 153(1) the following subsections are inserted —

“

- (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.

”.

**35. Section 154 amended**

- (1) After section 154(1) the following subsection is inserted —

“

- (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) Section 154(2) is amended after “under subsection (1)” by inserting —
- “ or (1a) ”.
- (3) After section 154(2) the following subsection is inserted —
- “
- (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.

”.

**36. Section 157 amended**

Section 157(2) and (3) are repealed.

**37. Section 169A inserted**

After section 169 the following section is inserted —

“

**169A. Investigation of an alleged incident at a 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 person who is appointed under section 11(1) or (1a) to —
- (a) attend an interview at a time nominated by the authorised person;
  - (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 person who is appointed under section 11(1) or (1a), 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).

”.

**38. Section 170 amended**

After section 170(j) the following paragraph is inserted —

“

- (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;

”.

**39. Section 173 amended**

Section 173(2)(e) is amended after “sleeping quarters” by inserting —

“ , or to a designated room ”.

**40. Section 181 amended**

Section 181(2) is amended as follows:

- (a) by deleting paragraph (b);
- (b) after paragraph (c) by deleting the semicolon and inserting a full stop;
- (c) by deleting paragraph (d).

**41. Section 193A inserted**

After section 193 the following section is inserted —

“

**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.

”.

**42. Section 196 amended**

- (1) Section 196(2) is amended by deleting the full stop after paragraph (b) and inserting —

“

;

- (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;

”.

(2) After section 196(2) the following subsection is inserted —

“

(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;

(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;

(b) providing for items seized and retained following a search to be returned, confiscated or destroyed under particular circumstances;

(c) conferring authority on a superintendent —

- (i) to search a person entering or seeking to enter a detention centre, including a child;
  - (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;
  - (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;
- (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.

”.

**43. Section 197 inserted**

After section 196 the following section is inserted —

“

**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.

”.

**44. Schedule 1 amended**

Schedule 1 item 3 (*Road Traffic Act 1974*) is amended as follows:

- (a) before the subitem commencing “s. 60” by inserting the following subitem —

“

s. 49                      Driving without the appropriate  
   driver’s licence

”;

- (b) after the subitem commencing “s. 64A” by inserting the following subitem —

“

s. 67                      Refusing to provide a breath, blood  
   or urine sample for analysis

”.

**45. Schedule 2 amended**

Schedule 2 item 2 (*Bushfires Act 1954*) is amended by deleting “s. 3” and inserting instead —

“ s. 32 ”.

## 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.

