

2008

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**CHILDREN AND YOUNG PEOPLE BILL 2008
GOVERNMENT AMENDMENTS**

SUPPLEMENTARY EXPLANATORY STATEMENT

Circulated by authority of
Katy Gallagher MLA
Minister for Children and Young People

Simon Corbell MLA
Attorney General

Children and Young People Bill 2008 Government Amendments - Explanatory Statement

Outline

The Children and Young People Bill 2008 provides the law that governs the protection, care and wellbeing of children and young people in the Australian Capital Territory. The Bill addresses a range of areas that impact upon the daily lives of children and young people in the Territory, such as children and young people using childcare services, children and young people in employment, children and young people involved in the criminal justice system and children and young people for whom there are care and protection concerns.

It is the Government's intention that this Bill will replace the *Children and Young People Act 1999*.

A number of government amendments address concerns raised by the comments made in the Scrutiny of Bills Committee 53rd report. In particular, the amendments:

- Provide one consistent list of examples of daily care and long-term care responsibility;
- Clarify the operation of clause 8 (Best interests of children and young people paramount consideration) in relation to other provisions in the Bill;
- Update definitions of Aboriginal and Torres Strait Islander people;
- Clarify the intended scope of cultural plans for Aboriginal or Torres Strait Islander children and young people;
- Remove ambiguity about the meaning of an 'adverse finding' in relation to the offence-ongoing duty to update suitability information;
- Clarify the meaning of 'unreasonable discipline' in relation to the offence-unreasonably discipline a child, relating to responsible persons in childcare services; and
- Clarify the meaning of 'light work' in relation to the offence-employment of children and young people under school leaving age.

In relation to the criminal matters chapters, a number of Government Amendments:

- Enable the establishment of an agreement between relevant Chief Executives and the Chief Police Officer for escorting children, young people and young detainees as required under the Bill;
- Remove doubt about who has responsibility for the custody of a young detainee, on transfer to a correctional centre or health facility;
- Allow the Chief Executive to notify all young detainees of prohibited areas at a detention place generally, in contrast to notifying individual young detainees;
- Remove ambiguity in relation to the criteria for the Chief Executive to make a safe room segregation direction for a young detainee;
- Enable the Chief Executive to deal with young detainees who are planning or conspiring to commit a behaviour breach, who are disrespectful or

abusive towards others, or who contravene an interstate leave permit through the discipline/behaviour management framework.

- In relation to scanning, frisk or ordinary searches of anyone working at or visiting a detention place, enable the Chief Executive to conduct routine searches and clarify rules that apply to searches of people other than young detainees.

A number of Government amendments also correct minor and technical errors.

Schedule 1 of the Children and Young People Bill 2008 provides for modern criminal justice laws that apply to children and young people. The amendments focus on rehabilitation, flexibility and consistency in sentencing.

The Bill will bring the ACT's youth justice system into line with the *Human Rights Act 2004*, and Australia's obligations under the relevant civil and political instruments, and instruments on the rights of the child, which Australia has signed.

The majority of the Government's amendments to Schedule 1 of the Bill are of a technical nature. In addition to the technical amendments, the Government amendments also create a new process for dealing with young offenders who refuse to pay court imposed fines.

**Children and Young People Bill 2008
Government Amendments - Explanatory Statement**

Detail

**Government Amendment 1
Proposed new clause 8 (3)
Page 7, line 3**

Clause 8 enshrines the best interests principle as the paramount consideration for persons making decisions or taking action under the Act.

This Government amendment inserts a new clause to remove any doubt that a reference in this Act to the 'best interests' of a child or young person does not limit the application of this section.

This amendment addresses comments made in the Scrutiny of Bills Committee 53rd report that there should be a stronger indication in the Bill that clause 8 operates to qualify every other provision in the Bill.

**Government Amendment 2
Amendment to clause 19 (1), example 2
Page 14, line 20**

This Government amendment clarifies that daily care responsibility includes the authority to decide who the child or young person must not have contact with, by amending the second example at clause 19.

This amendment is intended to allow people with daily-care responsibility to protect the child or young person from harmful, inappropriate or abusive behaviour by another person. For example, if a family friend who had been convicted of a sex offence against children wanted to have contact with the child or young person, the person with daily-care responsibility would have the authority to deny contact with that person.

This authority however is subject to a Court order or care plan relating to the child or young person's contact with others. For example, if a care and protection order with a contact provision or care plan required that a parent or other family member have contact with the child or young person, the authority exercisable by the person with daily care responsibility to limit the child or young person's contact, would be subject to the order or care plan in force.

This amendment continues the effect of section 20(1)(d) of the *Children and Young People Act 1999*.

Government Amendment 3
Amendment to clause 19 (1), proposed new examples
Page 14, line 22

Clause 19 sets out the meaning of the term ‘daily care responsibility’. The clause includes examples to indicate the range of matters (subject to a Court order and care plan) that comprise daily care responsibility. The list is not intended to be exhaustive.

This Government amendment adds the following examples of daily care responsibilities for clause 19:

- Everyday decisions, including, for example, about the personal appearance of the child or young person; and
- Daily care decisions about education, training and employment

This amendment addresses comments made in the Scrutiny of Bills Committee 53rd report to provide one consistent list of examples of daily care responsibility. Further it continues the effect of section 20(1)(a) and (e) of the *Children and Young People Act 1999*.

Government Amendment 4
Amendment to clause 20 (1), example 4
Page 16, line 15

Clause 20 sets out the meaning of the term ‘long-term care responsibility’. The clause includes examples to indicate the range of matters (subject to a Court order or care plan) that comprise long-term care responsibility. The list is not intended to be exhaustive.

This Government amendment adds ‘training and employment’ to example 4. This amendment addresses comments made in the Scrutiny of Bills Committee 53rd report to provide one consistent list of examples of long-term care responsibility. This amendment continues the effect of section 21(1)(e) of the *Children and Young People Act 1999*.

Government Amendment 5
Amendment to clause 37, note
Page 27, line 10

Clause 37 sets out the meaning of an entitled child or young person for this part.

This Government amendment removes an unnecessary note for this clause.

Government Amendment 6
Amendment to clause 38 (3) (b), proposed new note
Page 27, line 19

Clause 38 provides for the appointment of an Official Visitor.

This Government amendment adds a cross reference to part 2.4 which deals with suitable entities, as addressing comments by the Scrutiny of Bills Committee in their 53rd report.

Government Amendment 7
Amendment to clause 70 (4) (b)
Page 48, line 18

Clause 70 provides a new offence for failing to disclose suitability information in certain circumstances. Subclause 70(4)(b) provides guidance about what is to be reported to the Chief Executive in order to assess the entity's honesty and integrity. It is intended to encapsulate offences or findings of dishonesty that may affect the Chief Executive's assessment of the entity's reputation and character.

In their 53rd report, the Scrutiny of Bills Committee queried whether the vagueness of the concept of "an adverse finding" in clause 70(4)(b) meant that it is not compatible with the *Human Rights Act 2004*.

To address comments made in the Scrutiny of Bills Committee report, this Government amendment replaces clause 70(4)(b) with a requirement on an entity to disclose:

- A conviction or finding of guilt of an offence involving fraud or dishonesty by a Court; and
- An adverse finding against the entity in relation to honesty and integrity, made by a tribunal or an authority or person with the power to require the production of documents or the answering of questions.

Government Amendment 8
Proposed new clause 102A
Page 74, line 21

Chapter 5 of the Bill sets out a scheme for the escort of children, young people and young detainees between the youth detention centre, courts, health facilities, adult correctional centres, interstate detention centres and facilities, and for leave purposes. The escorting of young detainees to and from police cells, Court, health facilities and correctional centres is currently undertaken by ACT Corrections (Court Transport Unit), Australian Federal Police – ACT Policing and the Department of Disability, Housing and Community Services (Youth Justice).

This Government amendment enables the Chief Executive responsible for this Act to make an arrangement with the Chief Executive responsible for the *Corrections Management Act 2007* and the Chief Police Officer, for escorting children, young people and young detainees as required under this Act.

Government Amendment 9
Amendment to clause 108 (7)
Page 78, line 23

Clause 108 provides for the transfer and secure custody of a young detainee in a health facility. Sub-clause (7) provides for the discharge of the young detainee into the custody of the Chief Executive.

This Government amendment removes sub-clause (7) as custody remains with the Chief Executive following the discharge of the young detainee, unless the authority for detention lapses for the young detainee during their stay at the health facility. As drafted sub-clause (7) could create unnecessary confusion about the custodial authority for a person in this circumstance.

Government Amendment 10
Amendment to clause 110 (6)
Page 80, line 9

Clause 110 provides the Chief Executive (on own initiative or on application by anyone to the Chief Executive) with the power to direct the transfer of adult young detainees to a correctional centre. Sub-clause (5) enables the Chief Executive to direct an escort officer to escort the young detainee to the correctional centre and once there, sub-clause (6) requires the young detainee to be dealt with as a detainee under the *Corrections Management Act 2007*.

This Government amendment substitutes the reference to ‘taken’ in sub-clause 110(6) with a reference to ‘admitted’ to remove doubt that custody for the young detainee shifts to the Chief Executive of the *Corrections Management Act 2007* at the point of the young detainee’s admission to the correctional centre.

Government Amendment 11
Amendment to clause 136, definition of *young remandee*
Page 99, line 15

Clause 136 sets out definitions for terms used in chapter 6.

This Government amendment changes the definition of young remandee to be consistent with the definition of young remandee under the *Crimes (Sentence Administration) Act 2005*.

Government Amendment 12
Amendment to clause 146 (2)
Page 106, line 21

Clause 146 provides for the declaration of prohibited areas in the detention place by the Chief Executive. Sub-clause (2) requires the Chief Executive to ensure that each young detainee at the detention place is told about the prohibited area promptly after the area is declared.

This Government amendment replaces sub-clause (2) with a requirement on the Chief Executive to take reasonable steps to bring each prohibited area to the attention of all young detainees. This amendment will allow the Chief Executive to notify all young detainees of prohibited areas through general communications (for example signs, residents handbooks), in contrast with notifying individual detainees. This amendment is expressed in similar terms to the *Corrections Management Act 2007*, section 85(2).

Government Amendment 13
Proposed new clause 151 (3)
Page 110, line 6

Clause 151 enables the Chief Executive to ask another Chief Executive for assistance in relation to the exercise of functions under the criminal matters chapters.

This Government amendment is necessary to remove doubt that a corrections officer can exercise the functions of a youth detention officer under the criminal matters chapters in accordance with any direction by the Chief Executive responsible for this Act.

Government Amendment 14
Amendment to clause 172 (4)
Page 124, line 23

Clause 172(4) is an obligation on the Chief Executive to ensure the overall treatment does not deprive young detainees generally of all communication with certain listed persons and entities.

This Government amendment adds “unreasonably” to qualify the word “deprive” in subclause 172(4), as suggested in the Scrutiny of Bills Committee 53rd report.

Government Amendment 15
Amendment to clause 184 (2) (n) (v)
Page 137, line 21

Clause 184(2) outlines matters that must be included in the register for young detainees, including persons nominated by detainees aged 18 years and older whom the Chief Executive can give certain notices to.

This Government amendment removes clause 184(2)(n)(v) which is a notice about segregation decisions made by an external reviewer. It is not necessary for this notice to be part of the register, as the onus to give the notice is on the external reviewer, not the Chief Executive.

Government Amendment 16
Amendment to clause 208 (1) (a)
Page 156, line 10

This Government amendment substitutes 'themselves' with 'himself or herself' to provide consistent terminology in this clause.

Government Amendments 17 and 18
Amendment to clause 208 (1) (b) (i)
Page 156, line 12

Amendment to clause 208 (1) (b) (ii)
Page 156, line 15

Clause 208 outlines the criteria for when the Chief Executive may make a safe room segregation direction in relation to a young detainee. Sub-clause (1)(b) requires the Chief Executive to try and consider less restrictive ways to prevent the young detainee from engaging in 'harmful conduct'.

Government amendments 17 and 18 substitute references to 'the young detainee from engaging in harmful conduct' in sub-clauses (1)(b)(i) and (ii) with references to 'an imminent risk of the young detainee harming himself or herself'. The meaning of harmful conduct for this section is potentially ambiguous and amendment is necessary to achieve consistency with the criterion at sub-clause 208(1)(a) which requires the Chief Executive to believe on reasonable grounds that the segregation is necessary to prevent an imminent risk of the young person harming himself or herself.

Government Amendment 19
Amendment to clause 232 (1)
Page 172, line 16

Clause 232 authorises the use of force to remove a person from the detention place, or prevent a person entering the place, following non-compliance with a direction by a youth detention officer.

This Government amendment substitutes the second reference to 'officer' with a reference to 'person', as all persons are required to comply with a direction not to enter a detention place or to leave.

Government Amendment 20
Proposed new clause 244 (3)
Page 185, line 15

Clause 244 provides that any young detainee who is lawfully absent from a detention place is still in the legal custody of the Chief Executive and if under escort, they are also taken to be in the escort officer's custody. Sub-clause (1)(a) provides that this includes a young detainee who is absent from a detention place while subject to a direction by the Chief Executive under section 110 (transfer direction to a correctional centre).

This Government amendment adds new sub-clause (3) to remove doubt that a young detainee is in the Chief Executive's custody while being taken to the correctional centre, but they are no longer in the Chief Executive's custody once they are admitted to the correctional centre when custody shifts to the Chief Executive responsible for the *Corrections Management Act 2007*.

Government Amendment 21
Amendment to clause 273 (1)
Page 207, line 4

Clause 273 empowers the Chief Executive to direct a scanning search, frisk search or ordinary search of anyone working at or visiting a detention place.

This Government amendment at sub-clause (1)(a) adds a new provision to enable the Chief Executive to conduct a scanning search, frisk search or ordinary search of people other than young detainees to uphold safety and security at a detention place. This will permit the routine conduct of low-level searches of anyone working at or visiting a detention place. This power is expressed in similar terms in the *Corrections Management Act 2007*, section 111(1) in relation to a corrections officer or anyone else working at or visiting a correctional centre.

Sub-clause (1)(b) of this Government amendment retains the power to conduct a scanning search, frisk search or ordinary search of people other than young detainees, if the Chief Executive suspects the person is carrying a prohibited thing or anything else that is a risk, or likely to create a risk to safety, security or good order at the place.

Government Amendment 22
Amendment to clause 273 (2)
Page 207, line 12

Clause 273 empowers the Chief Executive to direct a scanning search, frisk search or ordinary search of people other than young detainees, including anyone working at or visiting a detention place. Sub-clause (2) provides that directions and requirements for scanning, frisk and ordinary searches outlined at part 7.3 apply to the conduct of a search under this part, with any necessary changes.

Sub-clause (2) is unclear about what changes are necessary to part 7.3 and should appropriately apply to searches of people other than young detainees. To remove doubt, this Government amendment clarifies which provisions are intended to apply.

Accordingly, this Government amendment at sub-clause (2) requires the youth detention officer who conducts a frisk search or ordinary search of a person to tell the person about the search and the reasons for the search and ask for the person's cooperation; and conduct the search in a private area or an area that provides reasonable privacy.

Sub-clauses (2A) and (2B) require that the youth detention officer who conducts a frisk search of a person, is an officer of the same sex as the person; or another person (not a young detainee) of the same sex as the person to be searched is present while the search is conducted. This requirement is expressed in similar terms to the *Corrections Management Act 2007*.

Government Amendment 23
Amendment to clause 273 (3)
Page 207, line 17

This Government amendment removes an unnecessary reference to the word 'however'.

Government Amendment 24
Amendment to clause 286 (1) (i)
Page 218, line 25

Clause 286 (1)(i) establishes a behavioural breach of 'being disrespectful or abusive towards someone in a way that is likely to provoke a person to be violent'.

This clause substitutes clause 286(1)(i) with 'being disrespectful or abusive towards another person'. This will enable the Chief Executive to address young detainee's disrespectful or abusive behaviour towards any person at or in relation to a detention place, regardless of how the person responds to young detainee's behaviour.

Government Amendment 25
Amendment to clause 286 (1) (s)
Page 219, line 13

Clause 286 (1)(s) establishes a behavioural breach of 'contravening a condition of a leave permit under section 240'.

This Government amendment adds a reference to 'an interstate leave permit under section 241'. This amendment is necessary to ensure the conditions of an interstate leave permit are adhered to.

Government Amendment 26
Amendment to clause 286 (1) (v)
Page 219, line 17

Clause 286 lists the behaviour that constitutes a behaviour breach under the discipline chapter for young detainees. Sub-clause (1)(v) establishes a behavioural breach of 'attempting, or assisting anyone else attempting, to commit another behaviour breach'.

This Government amendment substitutes clause 286(1)(v) with 'planning, conspiring, attempting or assisting anyone else planning, conspiring or attempting, to commit a behaviour breach'. This will enable the Chief

Executive to intervene, circumvent and address potentially harmful behaviour at an early stage, in circumstances where intelligence is received of young detainees who are planning or conspiring to commit a behaviour breach.

Government Amendment 27
Amendment to clause 306 (5)
Page 233, line 16

Clause 306 empowers a review officer who has reviewed a charge imposed by an administrator, to impose disciplinary action in response to a behavioural breach by a young detainee. Sub-clause (5) requires the review officer to inform the young detainee in writing of the review officer's decision under this clause, including their right to apply for an external review of the decision.

A young detainee would only apply for an external review of the decision if they were adversely affected by a decision to take disciplinary action under sub-clause (2). Therefore this Government amendment requires that notice be given to the young detainee only in relation to a decision under sub-clause (2), not all of clause 306.

Government Amendment 28
Amendment to clause 309 (1)
Page 234, line 22

Clause 309 provides an entitlement for an accused detainee to contact a support person or persons to assist them to apply for an external review of a decision by a review officer under clause 306.

A young detainee would only apply for an external review of the decision if they were adversely affected by a decision to take disciplinary action under sub-clause (2). This Government amendment substitutes the reference to clause 306, with a reference to 306(2).

Government Amendment 29
Amendment to clause 473, definition of *parental responsibility provision*, paragraph (b) (i), note
Page 359, line 14

Clause 473 contains the meaning of a parental responsibility provision in a care and protection order.

This Government amendment replaces the note under section 473(i) in relation to daily care responsibility, with a note to clause 19. This amendment addresses comments made in the Scrutiny of Bills Committee 53rd report to provide one consistent list of examples of daily care responsibility for the Bill.

Government Amendment 30
**Amendment to clause 473 definition of *parental responsibility provision*,
 paragraph (b) (iv), examples**
Page 360, line 12

This Government amendment removes the examples under 473 (b)(iv) in relation to long-term care responsibility and replaces this with a note to clause 20 which sets out examples of long-term care responsibilities.

This addresses comments made in the Scrutiny of Bills Committee 53rd report to provide one consistent list of examples of long-term care responsibility, as set out by clause 20.

Government Amendment 31
Amendment to clause 504, note
Page 384, line 6

Clause 504 provides that if the Chief Executive has responsibility for long-term care for a child or young person, the Chief Executive must consider the views and wishes of any person who previously had responsibility for long-term care, as far as practicable.

This Government amendment removes the examples under 504 in relation to long-term care responsibility and replaces this with a note to clause 20 which sets out examples of long term care responsibilities.

This amendment addresses comments made in the Scrutiny of Bills Committee 53rd report.

Government Amendment 32
Amendment to clause 512 (3), *definition of Aboriginal or Torres Strait Islander cultural plan*
Page 391, line 6

Clause 512 sets out a hierarchy for placements of Aboriginal and Torres Strait Islander children and young people with out-of-home carers in accordance with cultural traditions and practices. It requires that that placement of an Aboriginal or Torres Strait Islander child or young person is in accordance with an Aboriginal or Torres Strait Islander cultural plan in existence.

The meaning of a cultural plan in sub-clause (3) is a care plan developed by the Chief Executive that includes proposals for the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person under clause 454.

In their 53rd report, the Scrutiny of Bills Committee queried whether the cultural plan which refers only to enhancing the identity of the child or young person should specifically relate to enhancing their identity as an Aboriginal or Torres Strait Islander child or young person.

To address this comment made in the Scrutiny of Bills Committee report, this Government amendment adds reference to ‘as an Aboriginal or Torres Strait Islander person’.

Government Amendment 33

Amendment to clause 525, definition of *personal information*, paragraph (a), proposed new note

Page 402, line 25

Clause 525 sets out the meaning of personal information for this division.

This Government amendment inserts a cross reference to section 843 which provides the meaning of protected information, addressing a comment raised by the Scrutiny of Bills Committee.

Government Amendment 34

Amendment to clause 587, proposed new note

Page 442, line 14

Clause 587 sets out the meaning of a body search for this part.

This Government amendment inserts a cross reference to sub-division 16.3.5.5 which sets out the rules and requirements for dealing with body searches, addressing a comment raised by the Scrutiny of Bills Committee.

Government Amendment 35

Amendment to clause 588, proposed new note

Page 442, line 26

Clause 588 sets out the meaning of a strip search for this part.

This Government amendment inserts a cross reference to sub-division 16.3.5.4 which sets out the rules and requirements for dealing with strip searches, addressing a comment raised by the Scrutiny of Bills Committee.

Government Amendments 36 and 37

Amendment to Part 19.3 heading

Page 518, line 1

Amendment to clause 710 heading

Page 518, line 2

Government amendments 36 and 37 amend the heading of part 19.3 and clause 710 to read ‘standard of proof’.

This amendment more accurately reflects the content of this section and addresses an anomaly identified in the Scrutiny of Bills Committee 53rd report.

Government Amendment 38
Proposed new clause 740 (2)
Page 538, line 18

Clause 740 requires responsible persons (defined in clause 737) to not subject a child being cared for by a childcare service to unreasonable discipline. It re-enacts the offence at section 366(4) of the Children and Young People Act 1999.

In their 53rd report, the Scrutiny of Bills Committee queried whether the vagueness of the concept of “unreasonable discipline” in clause 740 meant that it is not compatible with the *Human Rights Act 2004*.

To address comments made in the Scrutiny of Bills Committee report, this Government amendment creates a non-exhaustive definition of unreasonable discipline. It includes using any form of physical punishment and any form of behaviour management strategy likely to cause emotional or physical harm to the child. Examples are included of behaviours considered to be within the meaning of unreasonable discipline.

Government Amendment 39
Amendment to clause 773 (5), proposed new note
Page 565, line 10

Clause 773 (5) enables the Chief Executive to ask a licensed proprietor for information about a childcare service in order to carry out an assessment of the service’s compliance with standards.

This Government amendment adds a cross reference to sections 170 and 171 of the *Legislation Act 2001*, which deal with the application of privilege against self incrimination and client legal privilege. This addresses a comment made by the Scrutiny of Bills Committee.

Government Amendment 40
Amendment to clause 792
Page 580, line 8

Clause 792 sets out the meaning of light work. Under clause 794, it is an offence to employ a child or young person under school leaving age, subject to certain exceptions including employment in light work.

In their 53rd report, the Scrutiny of Bills Committee queried whether the vagueness of the concept of “light work” in subclause 792(1), which is a critical element of the offence provision in subclause 794(1), means that the offence is not compatible with the *Human Rights Act 2004*.

To address comments made in the Scrutiny of Bills Committee report, this Government amendment defines light work at clause 792(1) to mean work that is not contrary to the best interests of a child or young person and is declared by regulation. This clause also removes examples from the Bill.

This amendment has the effect of giving the Executive the responsibility and flexibility to define light work by regulation.

Government Amendments 41 and 42

Amendment to clause 834 (1)

Page 612, line 12

Amendment to clause 834 (1)

Page 612, line 13

Clause 834 limits the appellate jurisdiction of the Supreme Court to those decisions made by the Childrens Court under the care and protection chapters. Government amendment 41 omits 'must not' and replaces this term with 'may'. Government amendment 42 omits the word 'except'.

These amendments address comments made in the Scrutiny of Bills Committee 53rd report that paragraph 834(1)(a) appeared unnecessary in that a person cannot appeal to the Supreme Court unless a statute makes specific provision for the right to appeal.

Government Amendment 43

Amendment to clause 868 (1), proposed new note

Page 640, line 24

Clause 868 provides that confidential reports made under clause 875 about alleged contraventions of the Act are not admissible as evidence in any proceeding in any Court or Tribunal.

This Government amendment adds a cross reference to section 875, addressing a comment made by the Scrutiny of Bills Committee.

Government Amendment 44

Schedule 1, Part 1.4

Proposed new amendment 1.20A

Page 686, line 4

This amendment inserts a new note into section 18 of the *Crimes (Sentence Administration) Act 2005*. The note refers to the provision in new section 320DA dealing with young remandees.

Government Amendment 45

Schedule 1, Amendment 1.26

Page 687, line 1

Clause 1.26 of the Bill amends the definition of "registered victim" in section 213 of the *Crimes (Sentence Administration) Act 2005*. The new definition clarifies that there will be two separate victims registers; one for adult offenders and one for young offenders.

This Government amendment fixes a technical problem in the formatting of the clause.

Government Amendment 46
Schedule 1, Amendment 1.29
Proposed new section 320C
Page 692, line 19

Section 320C of the Bill provides that a reference in the *Crimes (Sentence Administration) Act 2005* to a correction centre is, in relation to a sentence of imprisonment for a young offender, a reference to a detention place. This means that provisions in the Act applying to the administration and management of sentences also apply to young offenders unless Chapter 14A provides otherwise.

This Government amendment clarifies that section 320C will apply in relation to young offenders as well as young remandees. A young remandee is a remandee aged under 21 years who is on remand in relation to an offence allegedly committed when they were under 18 years of age.

Government Amendment 47
Schedule 1, Amendment 1.29
Proposed new section 320D
Page 693, line 4

Section 320D provides that where the *Crimes (Sentence Administration) Act 2005* provides that a decision is to be made, or a function is to be exercised by the Chief Executive, if the decision or function is to be exercised in relation to a young offender, then a reference to the Chief Executive is to be taken as a reference to the Chief Executive that administers the Children and Young People Act 2008.

This Government amendment clarifies that section 320D will apply in relation to young offenders as well as young remandees. A young remandee is a remandee aged under 21 years who is on remand in relation to an offence allegedly committed when they were under 18 years of age.

Government Amendment 48
Schedule 1, Amendment 1.29
Proposed new section 320DA
Page 693, line 8

This Government amendment creates a new section 320DA in the *Crimes (Sentence Administration) Act 2005* which will provide that a person who is aged under 21 years and is denied bail in relation to an offence they allegedly committed when they were under 18 years of age is to be detained in a youth detention centre.

As is the case with a young offender, it will be open to the Chief Executive responsible for the youth detention centre to use their power under section 110 of the *Child and Young People Act 2008* to order that the remandee be transferred to an adult correctional centre if it is in the best interests of the remandee, or the other detainees at the youth detention centre.

Government Amendment 49
Schedule 1, Amendment 1.29
Proposed new section 320E heading
Page 693, line 9

This Government amendment is technical in nature, and changes the heading to new section 320E of the *Crimes (Sentence Administration) Act 2005* to read “Young offenders—administration of sentences other than imprisonment”.

Government Amendment 50
Schedule 1, Amendment 1.29
Proposed new section 320E (1)
Page 693, line 12

Section 320E of the Bill specifies which government agency is to administer a community-based sentence imposed on a young offender after they have turned 18. The section provides that the Chief Executive responsible for administering the *Crimes (Sentence Administration) Act 2005* and the Chief Executive responsible for administering the *Children and Young People Act 2008* must work out between them who is going to administer the sentence.

This Government amendment clarifies that an agreement under section 320E must be made in respect to any sentence imposed upon a young offender, other than a sentence of imprisonment.

Government Amendment 51
Schedule 1
Proposed new amendment 133A
Page 696, line 18

This amendment inserts a new definition of young remandee that mirrors the definition of young offender. A young remandee is a person under 18 who is on remand, or a person who is over 18 but under 21 and is in remand for an alleged offence committed when they were under 18.

Government Amendment 52
Schedule 1
Proposed new amendment 1.83A
Page 723, line 3

This clause amends section 152 of the *Magistrates Court Act 1930*. Section 152 enables the Registrar of the Magistrates Court to make an arrangement with a fine defaulter for the payment of an outstanding fine. Consistent with the provisions in respect of adult fine defaulters, this amendment provides that

a young fine defaulter cannot apply to enter into such an arrangement whilst imprisoned under new section 154E for refusing to pay a fine.

Government Amendment 53
Schedule 1
Proposed new amendment 1.83B
Page 723, line 3

This amendment is to section 153 of the *Magistrates Court Act 1930*. Section 153 requires the Registrar of the Magistrates Court to notify the Road Transport Authority of the details of a person who defaults on the payment of a court imposed fine after a reminder notice has been served. This amendment requires the Registrar to notify the Road Transport Authority if a young fine defaulter in relation to whom a notice has been sent has discharged the fine by serving a term of imprisonment.

Government Amendment 54
Schedule 1
Proposed new amendment 1.83C
Page 723, line 3

This amendment is to section 154D of the *Magistrates Court Act 1930*. Section 154D sets out a procedure for imprisoning fine defaulters. This amendment provides that section 154D will not apply to a person who has defaulted on a fine imposed in relation to an offence they committed as a juvenile. New sections 154E and 154F establish a separate procedure for dealing with people who default on a fine imposed in relation to an offence they committed as a juvenile.

Government Amendment 55
Schedule 1
Proposed new amendment 1.83D
Page 723, line 3

This amendment creates new sections 154E and 154F to the *Magistrates Court Act 1930* which will create a new procedure for dealing with people who refuse to pay a fine imposed in relation to an offence they committed as a juvenile. The sections will build on amendments the Government made earlier this year to ensure that young people are not imprisoned because they cannot afford to pay a court ordered fine.

Under the new procedure, the court will only have the discretion to order the imprisonment of a fine defaulter in a youth detention centre if the court finds that the young person has the ability to pay the fine, but deliberately chooses not to pay the fine. The Court can only order the imprisonment of a young offender that refuses to pay a fine after the following steps have been taken:

- The young offender is served notice of the fine, but does not pay within the required period; and
- The young offender has had their capacity to pay the fine assessed by the court and the court finds that they have a capacity to pay; and

- The young offender is given an opportunity to make alternative arrangements for the payment of the fine, for example, to pay the fine in instalments, and the young offender refuses to enter into such an arrangement; and
- The young offender's drivers licence is suspended (if they have one), and they continue to refuse to pay the fine.

If a young offender is imprisoned for refusing to pay a fine, the fine will be discharged at an amount of \$300 per day of imprisonment, up to a maximum of 7 days imprisonment. The imprisonment can only occur at a youth facility if the person is still under 18.

The Executive has authority under Part 13.2 of the *Crimes (Sentence Administration) Act 2005* to remit all or part of a fine, or sentence for imprisonment imposed under this new section.

Government Amendment 56

Schedule 1

Proposed new amendment 1.83E

Page 723, line 3

This amendment is to section 157 of the *Magistrates Court Act 1930*. Section 157 provides that if a person is imprisoned for defaulting or refusing to pay a court imposed fine, and the outstanding amount is paid to either the registrar of the Magistrates Court or the Chief Executive, the person must be immediately released from custody.

This amendment clarifies that a young fine defaulter imprisoned under section 154E must be immediately released from custody if the outstanding amount is paid to either the Registrar of the Magistrates Court or the Chief Executive responsible for the young fine defaulter's imprisonment.

Government Amendment 57

Schedule 1

Proposed new amendment 1.83F

Page 723, line 3

This amendment creates a new section 158A to the *Magistrates Court Act 1930*. New section 158A provides that if a young fine defaulter is imprisoned under section 154E for refusing to pay a court imposed fine, they can only be imprisoned for a maximum of seven days, and they will discharge their outstanding fine at a rate of \$300 per day. If the young fine defaulter is imprisoned for seven days, then the entire fine is discharged, irrespective of the outstanding amount.

Government Amendment 58

Amendment to dictionary, definition of *Aboriginal*, paragraph (b)

Page 732, line 23

The dictionary sets out the meaning of Aboriginal person.

This clause amends the definition of Aboriginal at sub-clause (b) to mean a person who regards himself or herself as an Aboriginal or, if the person is a child, is regarded as an Aboriginal by himself or herself, a parent or other family member. This establishes a presumption that young people aged 12 to 18 would be able to identify themselves as Aboriginal. Children aged under 12, have the option of self identification (which may be appropriate for older children) or identification by a parent or family member (which may be appropriate for younger children who do not have the capacity to self identify). In circumstances where identification by a parent or family member is different identification to the child, it is intended that the child's choice would prevail where they have sufficient developmental capacity to make that choice.

In their 53rd report, the Scrutiny of Bills Committee raised concern that the definition of Aboriginal or Torres Strait Islander does not include recognition of the person by an Aboriginal or Torres Strait Islander community as being part of that community, thus making it difficult to apply some provisions of the scheme. To address comments made in the Scrutiny of Bills Committee report, this Government amendment amends the definition of Aboriginal at sub-clause (c) to also mean a person who is accepted as an Aboriginal person by an Aboriginal community.

Government Amendment 59

Amendment to dictionary, definition of *Torres Strait Islander*, paragraph (b)

Page 750, line 10

The dictionary sets out the meaning of Torres Strait Islander person.

This clause amends the definition of Torres Strait Islander at sub-clause (b) to mean a person who regards himself or herself as a Torres Strait Islander or, if the person is a child, is regarded as a Torres Strait Islander by himself or herself, a parent or other family member. This establishes a presumption that young people aged 12 to 18 would be able to identify themselves as Torres Strait Islander. Children aged under 12, have the option of self identification (which may be appropriate for older children) or identification by a parent/family member (which may be appropriate for younger children who do not have the capacity to self identify). In circumstances where identification by a parent or family member is different to identification by the child, it is intended that the child's choice would prevail where they have sufficient developmental capacity to make that choice.

In their 53rd report, the Scrutiny of Bills Committee raised concern that the definition of Aboriginal or Torres Strait Islander does not include recognition of the person by an Aboriginal or Torres Strait Islander community as being part of that community, thus making it difficult to apply some provisions of the scheme. To address comments made in the Scrutiny of Bills Committee report, this Government amendment defines of Torres Strait Islander at sub-clause (c) to also mean a person who is accepted as a Torres Strait Islander by a Torres Strait Islander community.