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

**JUSTICE (AGE OF CRIMINAL RESPONSIBILITY) LEGISLATION AMENDMENT
BILL 2023**

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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JUSTICE (AGE OF CRIMINAL RESPONSIBILITY) LEGISLATION AMENDMENT BILL 2023

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The policy objective of this Bill is to raise the minimum age of criminal responsibility (MACR) in the ACT from 10 to 14 years, to ensure that children under the age of 14 years, except for those aged 12 and 13 years who commit certain exceptionally serious and intentionally violent offences, cannot be held criminally responsible.

Across Australia, the MACR is 10 years, which is lower than the most common MACR internationally of 14 years.¹ In 2019, the United Nations Committee on the Rights of the Child expressed serious concern regarding the ‘very low’ MACR in Australia.² Australia is a signatory to the *United Nations Convention of the Rights of the Child* which stipulates that prison sentences should be used as a last resort for children and that a minimum age should be established. This has recently been expanded upon, and the United Nations has advised that the MACR should sit at a minimum of 14 years old with 16 years old being the preference.

Medical evidence suggests that children under the age of 14 years are unlikely to understand the gravity of a criminal offence or be able to meaningfully engage in the criminal justice process, supporting the need for a raised MACR.

Children and young people aged between 10 and 13 years who engage in harmful, risky or violent behaviour often do so because of trauma, abuse, neglect, homelessness, or unmet disability or mental health needs.

Raising the MACR provides an opportunity and creates an imperative to provide alternative responses to address the underlying complex needs of children and young people who engage in harmful behaviour, with the aim of fewer children and young people becoming involved in the criminal justice system. This will support improved outcomes for children and young people and the community broadly, as children who have their underlying needs met are less likely to offend or require a criminal justice system response. Raising the MACR aims to reduce recidivism among children and young people by providing a clear alternative to the criminal justice system, in appropriate cases.

Raising the MACR will also bring the ACT into line with other international community standards and ensure the Territory continues to uphold its human rights obligations.

¹ United Nations, Committee on the Rights of the Child, *General Comment No. 24 (2019) Children’s Rights in the Child Justice System*, 18 September 2019, p. 7

² Committee on the Rights of the Child. 2019. [Concluding observations on the combined fifth and sixth periodic reports of Australia \[47\]](#).

The ACT is one of the first jurisdictions in Australia to commit to raising the age, and is the first to raise the MACR to 14 years, as recommended by available evidence and the United Nations.

The Bill will achieve these objectives by:

- raising the MACR in a staged approach and introducing a schedule of offences which will maintain a minimum age of 12 years, once the MACR is further raised to 14 years;
- strengthening the service system by establishing and supporting the operation of a new Therapeutic Support Panel for children and young people, introducing a new Intensive Therapy Order, and establishing minimum standards for intensive therapy places, to be used only where necessary as a last resort;
- providing a strategic response to the therapeutic needs of children and young people who in engage in harmful behaviour;
- introducing a new community-based sentencing option, a Therapeutic Correction Order, for children and young people under 18 years of age;
- ensuring investigatory powers for criminal offences only apply to a child under the MACR where appropriate;
- ensuring any criminal orders in place for children and young people under the MACR will no longer be enforceable once the MACR is raised; and
- extinguishing all convictions committed by children and young people under the MACR, except for:
 - the purposes of the *Working with Vulnerable People (Background Checking) Act 2011*; and
 - those scheduled offences for which a minimum age of 12 years will remain once the MACR is raised to 14 years.

In addition, the Bill also makes associated changes to legislation to:

- ensure people harmed by the actions of a child under the MACR are able to access victim support including counselling, financial and other support;
- provide for victims to give a statement of harm to the new Therapeutic Support Panel for children and young people;
- enable disclosure of information to victims in appropriate circumstances and subject to safeguards; and

- allow for the referral of children and young people from the Therapeutic Support Panel to restorative justice conferencing.

CONSULTATION ON THE PROPOSED APPROACH

The Parliamentary and Governing Agreement of the 10th Legislative Assembly of the Australian Capital Territory agreed to legislative reform to raise the MACR. In February 2021, the ACT Government commissioned an independent review, led by Professor Morag McArthur with Curijo Pty Ltd – an Aboriginal consulting company – and Dr Aino Suomi from the Australian National University, which reviewed the service system and outlined implementation requirements for raising the MACR in the ACT. The review found that raising the MACR would help address the risk factors of children that commit crimes and strongly advocated for a therapeutic response model to further address these risk factors. The report also made note that raising the MACR would also help tackle the overrepresentation of Indigenous children in the criminal justice system.

The ACT Government Discussion Paper outlined the government’s goal to raise the MACR to 14, as a way to respond to young offenders with an evidence-based approach rather than a punitive approach in appropriate cases (pg. 2). The paper aimed at prompting community discussion around several points. Firstly, what should the MACR be raised to, and should there be an exceptions model. Secondly, it sought community feedback on alternative models for dealing with young offenders. Thirdly the paper considered the rights of victims, and lastly it discussed what police powers would be like under new legislation and the transitional arrangement that would be needed. The paper recognised the need for a comprehensive approach so that no child is left unsupported under new legislation (pg. 3).

The Listening Report summarised the responses from the submissions. Overall, 52 submissions were made, with 45 supporting raising the age to 14 and 2 supporting raising the age to 12, 4 making no comment and one being against raising the age. Submissions were broadly supportive of raising the age and raised issues with the need for more support for young people when diverting them from the criminal justice system. The new legislation will endeavour to address these concerns through the introduction of the new therapeutic model as an alternative to a criminal justice response in appropriate cases.

Targeted consultation in October and November 2022 guided the design of an immediate service response to better support ACT Policing frontline officers to respond to children and young people in need. An intensive 6-week sprint with key government and community partners explored the elements necessary for an immediate service response. This included consideration of access to on-call youth workers, access to safe spaces, youth worker follow-up, and emergency accommodation for at-risk children and young people.

This process culminated in the release of a Position Paper in November 2022 by the ACT Government which outlined key policy decisions taken by the Government to date.

The Justice and Community Safety Directorate (JACS) and Community Services Directorate (CSD) have had ongoing consultation with a broad range of stakeholders throughout the development of these reforms. The Minimum Age of Criminal Responsibility Reference Group was established, which included government and community representatives and academics, to provide strategic oversight of the implementation planning of a higher MACR in the ACT and met throughout 2021 and 2022. Stakeholders who have been engaged over the past 2 years include:

- Aboriginal and Torres Strait Islander Elected Body;
- Aboriginal Legal Service (NSW/ACT);
- ACT Bar Association;
- ACT Corrective Services;
- ACT Courts and Tribunal;
- ACT Director of Public Prosecutions;
- ACT Health Directorate;
- ACT Human Rights Commission;
- ACT Law Society;
- ACT Policing;
- ACT Raise the Age Coalition;
- ACT Victims Advisory Board;
- ACT Youth Advisory Council;
- Amnesty International Australia;
- Australian National University;
- Change the Record;
- Chief Minister, Treasury, and Economic Development Directorate;
- Community Services Directorate;
- Discrimination, Health Services, and Disability and Community Services Commissioner;
- Education Directorate;
- Gugan Gulwan Youth Aboriginal Corporation
- Justice Reform Initiative;
- Legal Aid ACT;

- MensLink;
- Public Advocate and Children and Young People Commissioner;
- Relationships Australia;
- Victims of Crime Commissioner;
- Winnunga Nimmityjah Aboriginal Health and Community Services; and
- Youth Coalition of the ACT.

CONSISTENCY WITH HUMAN RIGHTS

Rights Promoted

Broadly, the Bill engages and supports the following HR Act rights:

- Section 11 – protection of the family and children
- Section 18 – right to liberty and security of person
- Section 20 – children in the criminal process
- Section 27B – right to work
- Section 27 – right to cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

Raising the MACR promotes the right to protection of the family (section 11 of the HR Act) as children under the raised MACR (in relation to most offences) will no longer be at risk of a sentence of detention, which separates them from their families.

The Bill also promotes the right to work (section 27B of the HR Act) as it provides that convictions for offences committed by children and young people under 14 (for most offences) will be almost entirely extinguished so that it has minimal impact on a person's employment opportunities.

The Bill will also promote the rights of children (section 11(2) of the HR Act) as children and young people under the raised MACR (for most offences) will no longer be engaged in the criminal justice system as a response to harmful behaviour but rather offered intensive support and therapy to address such behaviour. Evidence shows that early contact with the criminal justice system predicts future offending.

The Bill will also promote the right of members of the community to security of person (section 18 of the HR Act) as reducing the engagement of this cohort of children and young people with the criminal justice system will likely lead to a reduction in recidivism and criminal offending in the ACT.

The amendments support the right of children and young people to the protections they require because of their age. The amendments recognise that a child or young

person is highly vulnerable and does not possess fully developed physical or mental capacity when compared to an adult. Their involvement in the criminal justice system is particularly harmful due to their age, with long term impacts on their health, wellbeing and life outcomes. The alternative framework, outlined in these amendments, will provide the protection children and young people require because of their age. The framework includes the introduction of a new Therapeutic Support Panel which provides an independent multi-disciplinary decision-making forum responding to the therapeutic needs of children and young people who display harmful behaviour. This will ensure a child or young person is diverted from the criminal justice system and provided with services to identify and support their therapeutic needs, to protect the safety of themselves and others, and improve their overall wellbeing.

The amendments support the right to liberty and security of the child or young person (section 18) by establishing a framework that diverts children and young people from the criminal justice system and incarceration, providing alternative services and supports in the first instance. The amendments seek to address the causes and consequences of children's harmful conduct, reduce or mitigate the significant risks they pose to themselves and others, and decrease the likelihood of future interactions with the justice system.

The amendments support and promote the right to culture and other rights of Aboriginal and Torres Strait Islander people and other minorities, by ensuring children and young people are supported to remain connected to community, country and cultural heritage – connections that would otherwise be disrupted by the criminal justice system and incarceration. These amendments mean any child or young person engaging with the panel is provided with referrals and a plan that is culturally appropriate and supports them to maintain their religion, language, and cultural practices.

The Bill further promotes the right to the protection of family and children (section 11 of the HR Act) through the introduction of the Therapeutic Correction Order (TCO) as a sentencing option for young people who are above the MACR or charged with one of the excepted offences which can still apply to 12 and 13 year olds. The term 'family' is intended to have a broad meaning under the HR Act and should include all people who make up a family unit. The term 'family' could also include extended family in some circumstances: for example, where there are kinship ties to extended family, or where someone's culture or ethnicity gives their extended family unit particular significance for them.

The Bill supports the right to the protection of family and children, as the TCO provides wraparound therapeutic interventions designed to enable a family unit to continue living together within the community, and to support the growth and development of the child. The TCO is intended to be an intensive sentence put in

place to divert young offenders from detention, ensuring that their antisocial behaviours do not escalate to the point where incarceration becomes a necessity.

The TCO also promotes the rights of children in the criminal process (section 20 of the HR Act). The HR Act states that ‘A convicted child must be treated in a way that is appropriate for a person of the child’s age who has been convicted’. The Bill supports this right by ensuring that there is an appropriate sentencing option for children and young people with higher therapeutic needs than can be accommodated by a Good Behaviour Order, and whose behaviour may best be dealt with through targeted treatment and support rather than the imposition of a suspended sentence of imprisonment. The nature of the therapeutic interventions will be age-appropriate and targeted at assisting young offenders to escape the cycle of recidivism.

Rights Limited

Broadly, the Bill may engage and limit the following rights:

- Section 8 – recognition and equality before the law
- Section 9 – right to life
- Section 10 – protection from torture and cruel, inhuman or degrading treatment
- Section 11 – protection of the family and children
- Section 12 – privacy and reputation
- Section 13 – freedom of movement
- Section 18 – right to liberty and security of person
- Section 21 – fair trial

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28(2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Detailed human rights discussion

Amendments to the *Children and Young People Act 2008 (CYP Act)*

Provision of medical treatment without consent under the Intensive Therapy Order

The Bill limits several rights of children and young people through the introduction of the Intensive Therapy Order (ITO). The ITO provides involuntary wraparound

therapeutic interventions where voluntary engagement with support services has not been possible or effective and no less restrictive option is available. The ITO is intended to be an order within the special welfare jurisdiction of the Childrens Court put in place to provide treatment for children and young people, ensuring that their harmful conduct does not pose a significant risk of significant harm to themselves or others. Where necessary it will allow a child or young person to be confined for the purposes of assessment and treatment, addressing this risk.

This mechanism replaces the current Therapeutic Protection Order framework, which has never been used due to its complexity and the requirement for a child or young person subject to such an order to be confined.

Right to protection from torture and cruel, inhuman or degrading treatment (s10)

1. Nature of the right and the limitation (s 28(2)(a) and (c))

Section 10(2) of the HR Act protects a person against medical treatment without consent. The expression “medical treatment” has a broad meaning and is able to encompass assessments and treatments which respond to matters including but not limited to medical conditions, psychological conditions or behavioural issues. This right, whether exercisable by the child or young person or by a person with parental responsibility, is limited by the fact that the Childrens Court can order that a child or young person be ordered to undergo assessment and/or treatment, without the relevant consent, pursuant to an ITO.

2. Legitimate purposes (s 28(2)(b)) and rational connection between the limitation and the purpose (s 28(2)(d))

The purpose of giving this power to the Childrens Court is to address the harmful behaviours of a child or young person through assessment and treatment (where possible) to prevent significant harm to themselves or others in the future.

This power (and resulting limitation on the right to protection from torture and cruel, inhuman or degrading treatment) will be effective to achieve this purpose as it means that the Court can authorise the involuntary treatment of a child or young person to prevent harm to themselves or to others. Specifically, where the Court is satisfied that if the order for treatment is not made there will be a significant risk of significant harm to the child or young person or someone else arising from the child or young person’s conduct and the risk is imminent, then the Court can make that order for treatment.

3. Proportionality (s 28(2)(e))

These orders are only made in circumstances where the Childrens Court is satisfied that, without the order, the young person poses a ‘significant risk of significant harm’ (section 549(a)). The Court must be satisfied that the director-general has tried less restrictive measures and these have not been successful, or has considered less restrictive measures and these were not appropriate (section 549(b)) and that there are, in any event, no other less restrictive measures available (section 549(c)). The

Court must have been given, or must in due course be given, a ‘therapy plan’ (section 536) and it must be satisfied that any plan is more likely than not to reduce the likelihood that the child or young person will engage in this harmful conduct (section 549(f)). Finally, it must be satisfied that the making of the order is otherwise in the best interests of the child or young person (section 549(g)).

If the order is to permit confinement, the Childrens Court must be satisfied that it may be necessary as a last resort for the purposes of assessment or treatment (as relevant) (section 549(d)).

While the ITO may result in confinement for up to 2 weeks at a time, in certain circumstances where the length of the order is greater than 2 weeks, the director-general may (if appropriate and necessary and after undertaking a review of the circumstances of the young person) authorise an additional period of confinement (within the limits of the length of the order). This additional period of confinement is subject to review at the expiration of 2 weeks and ensures accountability by requiring any confinement beyond a 2-week period to be reviewed by the director-general, notified to the Public Advocate or the Aboriginal Torres Strait Islander Children and Young People Commissioner and the statement of reasons provided in the register.

Critically, these orders are only made after a hearing before the Childrens Court. The conferral of the power on the Childrens Court means the decision is made by a body that is required to act judicially and that each of the steps in the decision-making process is regulated by the practice and procedure of the Court. The requirement that the application be served on parents, carers, the Public Advocate and (where relevant) the Aboriginal and Torres Strait Islander Children and Young People Commissioner (section 541) also means that those persons with a direct interest in the safety and wellbeing of the young person have notice of the application and may exercise their right to appear before, and be heard, by the Childrens Court.

The limitations on the right to consent to medical treatment are proportionate in the sense that they represent “reasonable limits” that can be “demonstrably justified in a free and democratic society” for the purposes of section 28 of the HR Act.

Confinement at an Intensive Therapy Place – Restriction of liberty of a child or young person

Right to privacy and reputation (s 12)

1. Nature of the right and the limitation (s 28(2)(a) and (c))

Section 12 of the HR Act protects persons from ‘unlawful’ interference with their privacy. Under international law, the right to privacy has been interpreted as applying in a variety of different circumstances. It has been defined widely as ‘the right to be left alone’, and so includes the right to non-interference by government, the right to personal autonomy, and the right to be free from unreasonable search and seizure. It will, plainly, include the right not to have personal information collected, stored, used or disclosed unless it is for legitimate purposes and in accordance with the law.

While the engagement of the child or young person upon referral to the panel is voluntary, the provisions in the ITO scheme that permit the panel obtain and share personal information, require the child or young person to engage in therapy, and allow confinement and restraint in that context, limit the right in section 12.

2. Legitimate purposes (s 28(2)(b)) and rational connection between the limitation and the purpose (s 28(2)(d))

The purpose of the information sharing is to allow the needs of the child or young person to be identified and the supports and services to be designed appropriately. The purposes of the involuntary treatment, and any confinement, is to prevent the child or young person from engaging in harmful conduct that poses a risk to themselves or others, and to ensure the young person undergoes the assessment and any therapeutic treatment deemed necessary as part of the therapy plan.

3. Proportionality (s 28(2)(e))

Where personal information is collected, stored, used or disclosed, the clarity of the purpose, the tight connection between the purpose and the underlying purposes of the ITO and the strict provisions on use and disclosure in Chapter 25 of the CYP Act, serve to ensure that the privacy of the child or young person and others is protected.

Where there is a need to exercise the powers of confinement or restraint, it is likely that a young person will need to be searched in order to find any item or substance that may pose a risk to themselves or others, or otherwise limit the ability of the director-general to maintain the therapeutic value of an intensive therapy place.

As a general principle, reasonable expectations of privacy may be low in some settings compared with others.³ While a person in custody is entitled to enjoy all the rights that are held by ordinary citizens,⁴ and will only lose that entitlement to the extent that is necessary to secure their safe custody, a person who is in lawful custody will have a lower expectation of privacy, particularly in relation to searches.⁵

The nature and limitation of the right to privacy in this respect is attributed to the implementation of the ITO in an intensive therapy place. The searches include all measures that are necessary to protect the young person from harming themselves or any other person.

The limitations on the right to privacy are proportionate in the sense that they represent “reasonable limits” that can be “demonstrably justified in a free and democratic society” for the purposes of section 28 of the HR Act.

³ *Hunter v Southam* [1984] 2 SCR 145 at 159; *R v Grayson and Taylor* [1997] 1 NZLR 399.

⁴ *Raymond v Honey* [1983] 1 AC 1; *R v Lobban* (1988) 35 A Crim R 68; *Kuczynski v R* (1994) 72 A Crim R 568; *Solosky v The Queen* [1980] 1 SCR 821; *Hirst v United Kingdom* (2006) 42 EHRR 41 at [69]; *Dickson v United Kingdom* (2008) 46 EHRR 41 at [68].

⁵ *Conway v Canada* [1993] 2 SCR 872; *R v Kennedy* 1996 3 C.R. (5th) 170 and *Fieldhouse v Canada* 1995 40 C.R. (4th) 263.

Right to freedom of movement (s 13)

1. Nature of the right and the limitation (s 28(2)(a) and (c))

Section 13 of the HR Act protects the right to move freely within the limits of the Australian Capital Territory (ACT) and the right to freely enter and leave the ACT.

The power of a Court to order, under an ITO, that the director-general may authorise a child or young person be confined for a period at a stated place limits this right.

2. Legitimate purposes (s 28(2)(b)) and rational connection between the limitation and the purpose (s 28(2)(d))

The purpose of the limitation is, firstly, to ensure that the assessment or treatment can proceed and, secondly, to prevent significant harm to the child or young person or to others (where necessary) during the period of the order.

The grounds for the grant of authority to confine by the Childrens Court, the criteria for the decision to confine by the director-general and the manner and degree of confinement by the director-general and their delegates ensure that there is a rational connection between the limitation and the purpose identified above.

The ITO is only granted where the Childrens Court is satisfied there is a significant risk of significant harm and the authority to confine is only granted to ensure the assessment or treatment in accordance with the order. Moreover, the order, and the authorisation, are only granted where it is satisfied that less restrictive measures have been tried or were in appropriate and that the order is likely to reduce the risk of harmful conduct and the risks posed by the child or young person to themselves or others.

The authority to confine is only exercised where the director-general believes it is necessary in the particular circumstances to implement the therapy plan.

Accordingly, the purpose serves a legitimate objective and there is a rational connection between the limitation on the right and the achievement of that objective.

3. Proportionality (s 28(2)(e))

While the prohibition on medical treatment without consent (section 10(2)) is addressed to a different set of interests than the right to move freely (section 13), the considerations that go to the proportionality of the restrictions on the right to consent to treatment will also go to the proportionality of the restrictions on the right to move freely.

The limitations on the right to privacy are proportionate in the sense that they represent “reasonable limits” that can be “demonstrably justified in a free and democratic society” for the purposes of section 28 of the HR Act.

Right to liberty and security of person (s 18)

1. Nature of the right and the limitation (s 28(2)(a) and (c))

Section 18 of the HR Act protects a person against unlawful or arbitrary arrest or detention (section 18(1)). It provides that no-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law (section 18(2)).

The power of a Court to order, under an ITO, that a child or young person be confined for a period at a stated place, limits this right.

2. Legitimate purpose (s 28(2)(b)) and rational connection between the limitation and the purpose (s 28(2)(d))

The purpose of the limitation is, firstly, to ensure that the assessment or treatment can proceed and, secondly, to prevent significant harm to the child or young person or to others (where necessary) during the period of the order.

For the reasons set out above in relation to freedom of movement, the purpose serves a legitimate objective and there is a rational connection between the limitation on the right and the achievement of that objective.

3. Proportionality (s 28(2)(e))

While the prohibition on medical treatment without consent (section 10(2)) is addressed to a different set of interests than the right to liberty and security of the person (section 18), there is an intimate relationship between the nature and purpose of the limitations in this case and there is therefore an intimate relationship between interests served by those rights in the circumstances. The considerations that go to the proportionality of the restrictions on the right to consent to treatment will also go to the proportionality of the restrictions on the right to move liberty and security of the person.

There are other considerations which apply directly to the right to liberty.

First, the authority for confinement is for a non-punitive purpose. The purpose is only available where it is deemed necessary to address a significant risk of significant harm, the authority is only granted if the Childrens Court considers it necessary in the circumstances to ensure assessment or treatment and the authority is only exercised if the director-general considers it necessary in the administration of the order and the day-to-day management of the intensive therapy place. The grant of authority, and its exercise, is subject to judicial oversight.

Second, where there is confinement, the director-general may determine that a child or young person can be given leave from the intensive therapy place.

As noted, while the Childrens Court might grant an authority to confine, and while the director-general may exercise that authority from time to time, it is subject to limitations. When exercising the authority, the director-general may determine that a

child or young person can be given leave from the intensive therapy place. Moreover, the director-general may only authorise confinement for a period of no more than 2 weeks. The 2-week period is considered appropriate to allow assessment of a young person's needs as required and to commence provision of the services and treatment as identified in a therapy plan.

This time limitation results in a cycle of decision making and accountability. Each additional extension beyond the initial 2-week confinement period involves a decision by the director-general which requires them to review and record reasons in the register and provide notification to the Public Advocate. Each decision and statement of reasons forms part of the intensive therapy history, which must be provided in support of any future application to the Childrens Court. In this way, there is scrutiny by the Public Advocate, the Aboriginal Torres Strait Islander Children and Young People Commissioner and the Childrens Court.

Finally, the ITO under which any power to confine may sit is also subject to ongoing review. There are mandatory provisions in the Bill that require the director-general to undertake initial review within 4 weeks after an ITO has been made (section 555) and ongoing review at least every 4 weeks on the operation of the order (section 556). These review provisions in addition to the above discussed safeguards ensure that the young person is not kept in confinement for any longer than is necessary and justifiable to achieve the purpose of preventing the imminent risk of children and young people from harming themselves or others.

It is noted that none of the measures in this Bill restrict the ability of the director-general to bring an application, and the Supreme Court to make an order, for the purpose of allowing the confinement and restraint of a young person for an extended period where that is necessary to prevent them posing a risk of harm to themselves or others.

The limitations on the right to liberty are proportionate in the sense that they represent "reasonable limits" that can be "demonstrably justified in a free and democratic society" for the purposes of section 28 of the HR Act.

Right to protection of the family and children (s 11)

1. Nature of the right and the limitation (s 28(2)(a) and (c))

Section 11 of the HR Act states:

- (1) The family is the natural and basic group unit of society and is entitled to be protected by society.
- (2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

General Comment 19 (1990) of the United Nations Human Rights Committee, which describes the right to the protection of the family at Article 23 of the *International*

Covenant on Civil and Political Rights, notes that when read with Article 17 (right to privacy), the right in Article 23 establishes a prohibition on unlawful or arbitrary interference with the family unit.

Arbitrariness is interpreted to include elements of inappropriateness, injustice and lack of predictability.

The Bill limits this right by providing that the Childrens Court may, pursuant to an ITO, authorise the director-general to direct the confinement of a child or young person at an intensive therapy place, which may result in the child or young person's temporary separation from their family.

2. *Legitimate purpose (s 28(2)(b)) and rational connection between the limitation and the purpose (s 28(2)(d))*

The Bill provides that under an ITO, the Court can allow the director-general to authorise the confinement or restraint of a child or young person for a period of up to 2 weeks at a time in order to prevent harm to the child or young person themselves or to others, promoting the right to life and the right to security of the person at sections 9 and 18 of the HR Act.

The power of the Court to order authority to restrain or confine (and resulting limitation on the right to the protection of the family unit) is effective to achieve this purpose as it will ensure that the child or young person is physically unable to harm themselves or others.

The grounds for the grant of authority to confine by the Childrens Court, the criteria for the decision to confine by the director-general and the manner and degree of confinement by the director-general and their delegates ensure that there is a rational connection between the limitation and the purpose identified above.

The authority to confine is only granted where the Childrens Court is satisfied there is an immediate and significant risk of significant harm, and that confinement is or may be necessary for the treatment in accordance with the therapy plan. Moreover, it is only granted where the Childrens Court is satisfied that less restrictive measures have been tried and that the plan is likely to reduce the risk of harmful conduct and the risks posed by the child or young person to themselves or others.

The authority to confine is only exercised where the director-general believes that it is necessary in the particular circumstances to implement the therapy plan.

The resulting confinement or restraint is only that which is necessary and reasonable to address the risk of harm or maintain custody at the intensive therapy place.

3. *Proportionality (s 28(2)(e))*

While the prohibition on medical treatment without consent (section 10(2)) is addressed to a different set of interests than the right protection of the family unit (section 11), the considerations that go to the proportionality of the restrictions on the

right to consent to treatment will also go to the proportionality of the restrictions on the right to family.

The limitations on the right to family are proportionate in the sense that they represent “reasonable limits” that can be “demonstrably justified in a free and democratic society” for the purposes of section 28 of the HR Act.

Amendments to the *Criminal Code 2002*

Minimum age of criminal responsibility raised

The amendments to the *Criminal Code 2002* provide that as of 7 days after the legislation has been notified, a child under 12 years old is not criminally responsible for an offence.

The amendments to the *Criminal Code 2002* provide that as of 1 July 2025 a child under 14 years old is not criminally responsible for an offence unless the child is at least 12 years old; engages in conduct that is an offence mentioned in schedule 1; and knows that their conduct is wrong.

The amendments have the effect that children and young people under the age of 12 (initially) and later, under the age of 14, cannot be prosecuted for most offences (except for a small number of offences listed at schedule 1 to Criminal Code as included in the Bill). This amendment may engage and limit the right to life (section 9 of the *Human Rights Act 2004*) and the right to liberty and security of person (section 18 of the HR Act) for victims of harmful conduct.

The amendments also have the effect of limiting the rights of children to protection (section 11(2) of the HR Act) as children and young people aged 12-13 years can still be prosecuted for offences listed at schedule 1 to the Criminal Code. This is discussed in further detail under the following heading, below: ‘Offences for which the MACR of 12 years will remain once the MACR is further raised to 14 years’.

Right to life (s9) and right to security of person (s18)

1. Nature of the right and the limitation (s28(2)(a) and (c))

The amendments to raise the MACR engage the right to life for victims of harmful behaviour by children and young people. The right to life (section 9 of the HR Act) requires public authorities take reasonable steps to protect life, including taking steps to protect someone whose life is at risk from another person, where the authorities know or should know of this risk. This right is engaged by the amendments as a child or young person under the age 14 (initially 12) can no longer be charged, prosecuted and sentenced for most offences in the ACT. However, the amendments do not limit this right as the alternative service response which is provided by the Bill will equally serve this protective function, as outlined below under ‘Proportionality’.

The amendments to raise the MACR may engage and limit the right to security of victims of crime. The right to security of person (section 18 of the HR Act) requires the government to provide reasonable measures to protect a person's physical security, including through the work of the police and emergency services. The right means that victims and witnesses should be provided with information about the outcome of court proceedings as soon as possible. This should include situations where a not guilty verdict is handed down and the other party is released from custody. Currently, many victims' rights are tied to the criminal justice system and its processes. For example, the right of a victim to be informed about the outcome of a trial or appeal, including any sentence imposed on the offender. These rights will no longer be given effect to in the same way because raising the MACR means that the harmful behaviour of children and young people under 12 (then 14) will not be dealt with through the criminal justice system for most offences.

2. Legitimate purposes (28(2)(b)) and rational connection between the limitation and the purpose (s28(2)(d))

Raising the MACR will enable a better response to the complex needs of children and young people who engage in harmful behaviours. This will likely result in fewer children and young people becoming involved in the criminal justice system and improved safety for the community. There is clear evidence that young people's involvement in the criminal justice system can solidify criminogenic behaviour and therefore increase their likelihood of reoffending. Raising the MACR aims to reduce recidivism among children and young people by diverting them from involvement in the criminal justice system.

Raising the MACR also seeks to bring the ACT into line with international human rights standards on having a suitable minimum age. Australia has previously been criticised for having a 'very low' MACR of 10 years, compared to the most common international age of 14 years. Raising the MACR in a staged approach will bring the ACT into line with other international jurisdictions and adheres to recent advice from the United Nations on an appropriate MACR.

3. Proportionality (s28(2)(e))

This limitation on a victims' right to security of person is the least restrictive necessary to achieve the goal of raising the MACR to an appropriate age. The rights of victims in relation to the criminal justice system can no longer be given effect to in the same way because there will no longer be a criminal justice response to the harmful behaviour of children and young people under 14 for most offences. The response to this cohort is so that these children and young people will receive intensive support and therapy to address harmful behaviours, with the aim of reducing such behaviour and ultimately keeping our community safer.

While a criminal justice response will no longer occur, there will still be mechanisms to recognise harm to victims including the right to an effective remedy and the right to security of person under the HR Act. These rights remain protected through the

alternative pathways to respond to harmful behaviour by children and young people under the MACR. This includes the Therapeutic Support Panel for children and young people, which is created by this Bill.

Victims of harmful behaviour are also entitled to make a harm statement to the Therapeutic Support Panel explaining the impact of the harmful behaviour on them. The panel must take any harm statement made by the victim into account when exercising its functions. The Therapeutic Support Panel or the Victims of Crime Commissioner may disclose information about a child or young person responsible for harmful behaviour to the victim of the behaviour where it is appropriate in the circumstances. For example, this could allow a victim to receive certain information about a child and young person's therapy plan.

A victim of a child or young person's harmful behaviour (even where that child and young person is under the age of the raised MACR) will still be able to apply for assistance under the *Victims of Crime (Financial Assistance) Act 2016* for support in relation to the harm they have suffered and access support through the Victim Support Scheme (under the *Victims of Crime Act 1994*).

In addition, a child or young person under the MACR who harms a victim will be eligible for referral to restorative justice conferencing under the *Crimes (Restorative Justice) Act 2004*. While ordinarily restorative justice conferencing would be available as an alternative to criminal justice processes, in appropriate cases restorative justice could provide a supplementary way of encouraging responsibility taking, repairing damaged relationships and supporting those who have been harmed alongside therapeutic interventions. Participation in a restorative justice process would be voluntary and only with the agreement of the child or young person (see proposed section 19(1)(b) of the *Crimes (Restorative Justice) Act 2004*).

Furthermore, police officers will retain all their current powers with respect to intervening in circumstances where there may be a risk of harm to a person, to protect life and security of person, including their powers to arrest and detain a child or young person who is under the revised MACR. Any arrest or detention of such a young person will not result in any criminal justice action. A young person may be returned to their parents or their place of residence where appropriate or otherwise referred to an appropriate service.

In particular, the Bill provides that police officers can refer a child or young person to the Therapeutic Support Panel for children and young people who can make recommendations to the Director-General of the Community Services Directorate about whether to apply for an Intensive Therapy Order (an ITO). Under an ITO, the Childrens Court is empowered to order that the child or young person be subject to conditions the Court considers necessary to prevent the child or young person from engaging in harmful conduct (section 532). The Childrens Court is also empowered to order under an ITO that a child or young person be confined at an Intensive Therapy Place (ITP). The operating entity for an ITP may detain a child or young

person to prevent them from causing harm to themselves or to someone else (section 592).

Offences for which the MACR of 12 years will remain once the MACR is further raised to 14 years

The amendments to the *Criminal Code 2002* provide that once the MACR is further raised to 14 years, a schedule of 4 offences in the *Crimes Act 1900* (murder, intentionally inflicting grievous bodily harm, sexual assault in the first degree and act of indecency in the first degree) will continue to maintain a MACR of 12 years. This means that once these provisions commence, 12- and 13-year-old children will continue to be subject to the criminal justice system if they are alleged to have committed any of these offences. These children will be able to be arrested, charged, sentenced and potentially detained in the youth justice system if found guilty or convicted of these scheduled offences.

Rights of children to protection (s11(2))

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Providing a MACR of 12 years rather than 14 for a small number of very serious, violent and intentional offences against a person engages and limits the rights of children to the protection they need due to being children under section 11(2) of the HR Act. This amendment would provide greater protection for children and young people than is currently the case (by raising the MACR to 12 for these offences) and retains all of the safeguards for young people in the current criminal justice system.

However, it would mean that young people aged 12 or 13 years old will be exposed to a criminal justice response if charged with one of these offences. Given that the United Nations Committee on the Rights of the Child has indicated that a MACR of 14 is appropriate without exception, the inclusion of limited exceptions may be considered to engage and limit the rights of children to protection. As set out below, this is a challenging and contentious area from a human rights perspective, but one where it is considered necessary to place reasonable limits the rights of children in order to protect the right to life and security of person and to ensure public safety.

This legislation is intended to promote the rights of children and young people by adopting therapeutic approaches that focus on rehabilitation. However, it is vital that the community is also properly protected from harm, particularly where the new therapeutic system is being established, and the ability of that system to manage risks associated with extreme cases is not fully tested.

This limitation is considered reasonable and proportionate due to the nature of these very serious offences and the response that may be required to ensure public safety.

2. Legitimate purpose (s 28(2)(b))

Introducing scheduled offences for which a MACR of 12 years will remain when the MACR is further raised to 14 years is considered necessary in order to ensure the community remains properly protected from the significant risks that may be posed by young people who engage in exceptionally serious and intentionally harmful behaviour.

The purpose of this limitation is the protection of public safety, and the right to life and right to security of person (sections 9 and 18 of the HR Act), which are legitimate objectives that are capable of justifying the limitation of rights.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

Traditional criminal justice processes and criminal responsibility have historically been recognised as being rationally connected to (that is, effective to achieve) the purposes of public safety, the right to security of person and the right to life.

While emerging evidence indicates that the criminal justice system is not the most effective response for rehabilitating young people in most cases, in some situations, where a young person has intentionally committed extremely violent and harmful acts, the options provided in the criminal justice system may be necessary to ensure community safety.

Designating a lower MACR for murder, intentionally inflicting grievous bodily harm and sexual assault offences that involve grievous bodily harm, where these offences would have a MACR of 12 rather than 14, is rationally connected to this objective. That is, the continued application of criminal responsibility in these circumstances is rationally connected to the legitimate objectives.

This very narrow group of offences captures exceptionally serious and intentionally violent offences, resulting in the greatest risk of serious physical harm to victims in the community. Although it is rare that such serious offences would be committed by a young person of 12 or 13 years of age, where a young person has demonstrated this extreme behaviour, they may pose an unacceptable risk to the safety of the community, security of person and to the lives of individuals.

The 4 specified offences are:

- Murder (maximum penalty of imprisonment for life);
- Intentionally inflicting grievous bodily harm (maximum penalty of imprisonment for 20 years);
- Sexual assault in the first degree (maximum penalty of 17 years imprisonment; or 20 years in company; or 21 years if aggravated; or 25 years if in company and aggravated); and

- Act of indecency in the first degree (maximum penalty of 15 years imprisonment of 19 years if an aggravated offence).

These offences require proof that a person:

(a) *intentionally* cause either death of, or grievous bodily harm to, another person; or

(b) inflict grievous bodily harm with an *intention* to engage in sexual intercourse or an act of indecency.

Grievous bodily harm, as defined in the *Crimes Act 1900*, includes any permanent or serious disfiguring of a person. At common law the term is given its ordinary meaning: really serious bodily harm (R v Vimahi; R v Grech [2017] ACTSC 97 at [109]-[110]).

For the ACT Government to adequately discharge its responsibility to protect the right to life (section 9 of the HR Act) and the right to security of the person (section 18 of the HR Act) for the community and any individual who may be a victim of this harmful behaviour, it is necessary to ensure that the response adequately reduces this risk as well as effectively rehabilitating the young person.

4. Proportionality (s 28(2)(e))

The criminal justice system has the ability to determine culpability beyond reasonable doubt, and where the offence is proven, to provide for a range of sentencing options, including periods of detention in a secure facility, to protect the community from further harm. This system focuses on addressing the risk of harm as well as providing opportunities for rehabilitation.

The proposed approach includes a range of safeguards, including the presumption of *doli incapax* for young people under 14, which would require that there be evidence adduced by the prosecution regarding the capacity of the young person to understand the criminal nature of their actions.

Consideration has been given to the alternative of having a uniform MACR of 14 for all offences, which would mean that young people who commit these very serious offences would be dealt with by the alternative therapeutic system. For the reasons set out below, it is considered that this approach may not adequately achieve the objective of ensuring community safety and could create other limitations of rights for the young person and others in the alternative system.

The new alternative therapeutic system which is being established to respond to the behaviour of young people who are under the MACR is primarily focused on achieving therapeutic outcomes for individual young people.

While the system will make provisions for short periods of secure care under an Intensive Therapeutic Order, this system is not focused on providing periods of

secure confinement for young people and does not involve a rigorous assessment of the young person's responsibility for a particular offence.

If the alternative therapeutic system were to be re-oriented to provide facilities and levels of security appropriate for longer periods of secure care that might be needed in exceptionally serious circumstances, this could potentially impact on the rights of other young people in the therapeutic system.

There are practical issues in a small jurisdiction, that seeking to provide an alternative therapeutic approach for the very small number of young people who commit such exceptionally serious and physically violent offences could lead to individual young people being confined in isolation from their peers in secure facilities that do not offer the same level of opportunities as a youth justice facility, including opportunities to participate in education and programs with other young people.

There would also be concerns that subjecting young people to longer periods of secure care without conclusively establishing their involvement in such serious criminal activity would unreasonably limit their rights to liberty and security of person.

The exclusion of these 4 offences from the higher MACR of 14, but with an increased MACR of 12, represents a prudent approach to ensure community safety and the right to life and security of person, given that the alternative therapeutic system is being newly established.

The Bill includes provision for a review after a 5-year period, which will allow the ongoing need for exceptions to be further considered and tested once the alternative therapeutic system is fully operational and risks can be more accurately assessed.

Amendments to the *Crimes (Sentencing) Act 2005* Therapeutic Correction Orders

The Bill introduces a new community-based sentencing option, a therapeutic correction order (TCO), without a sentence of imprisonment attached. The TCO is intended to be a more intensive therapeutic order for those young offenders for whom a good behaviour order does not have a strong enough therapeutic benefit.

The Bill and new sentence have been developed within a human rights framework, informed by the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).⁶ The Bill's provisions seek to balance the rights of individual offenders and their families with the rights and interests of victims and the wider community.

⁶ *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)* General Assembly Resolution 45/110 (14 December 1990)
<<https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>>.

The Tokyo Rules “provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment”. These principles support human rights by requiring endeavours to “ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention”.⁷

The introduction of the TCO may engage and limit both the right to freedom of movement (section 13 of the HR Act) and the right to privacy and reputation (section 12 of the HR Act).

The Right to Freedom of Movement (s13) and the right to privacy and reputation (s12)

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Section 13 of the HR Act states that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT. *International Covenant on Civil and Political Rights General Comment 27* states that ‘Liberty of movement is an indispensable condition for the free development of a person’.⁸ This includes the right to move freely within a state, the right to choose a person’s place of residence within a state, and the freedom to leave the country.

This right is engaged and limited by the Bill’s provisions, as conditions imposed as part of the TCO may include restrictions on where a person can live and may include place-restriction conditions. In addition, an offender who is serving their sentence by way of a TCO may not leave the ACT without the approval of the director-general. The right to privacy and reputation is contained in section 12 of the HR Act and states that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Rule 3.1 of the Tokyo Rules also requires respect for an offender’s right to privacy and that of their family in the application of non-custodial measures.

The right to privacy is engaged and limited by the Bill’s provision of supervision as a core condition of the order.

2. Legitimate purpose (s 28(2)(b))

The limitations outlined above are for the purpose of supervising the young offender on a community-based order to ensure that they receive appropriate treatment and

⁷ Ibid Clause 1.4.

⁸ CCPR/C/21/Rev.1/Add.9, General Comment No. 27. (General Comments), [1].

support within the community to stop the cycle of reoffending, which could potentially lead to sentences of imprisonment. The limitations support not only the young offender, but also the safety of the community by attempting to treat the causes of antisocial behaviour at its root.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The limitation on freedom of movement includes both the ability for the director-general to direct the young person where to live, and the ability for a place-restriction condition to be set under the order. Appropriate accommodation and living conditions are highly important elements in assisting young offenders to stabilise their situations and reduce the chances of further criminal behaviours. It is rational for the director-general to be allowed to assess the living situation of the young offender and make appropriate adjustments in their best interests. The restriction on being allowed to travel outside the ACT is required to ensure that the young offender remains within a stable living situation and supervisory environment.

The limitation on the right to privacy and reputation is limited due to the fact that the young offender will have to undertake intensive supervision. In addition, the rights of the family members of the young offender may be limited due to the fact that the Court can order a place or places where the young offender may live. The rationale for these limitations is to ensure that the young offender is complying with the order, to monitor the therapeutic needs of the young offender, and to ensure that the young offender remains in a safe and age-appropriate environment.

4. *Proportionality (s 28(2)(e))*

The Court may only make a place restriction order for a young offender who is subject to a TCO to: prevent the young offender from harassing or endangering the safety or welfare of anyone; prevent the young offender from committing further offences; or to assist the young offender to manage things that may make the offender more likely to commit further offences if not managed.

The restriction imposed on the young offender by a place restriction order and the period of the order, must not be unreasonably disproportionate to the purpose for which the order is made.

Further, a court must not make a place restriction order for a young offender unless satisfied that the order would not: interfere with the young offender's access to appropriate education or training; or disproportionately interfere with the young offender's access to public transport or accommodation.

The limitation on leaving the ACT is alleviated by the ability for the director-general to approve travel outside the ACT. This ensures that the young offender will still be able to leave the ACT where necessary and appropriate in the circumstances.

In relation to the right to privacy and reputation, the specified addresses at which a young offender may live can only be imposed where each adult who is living at the living place or has parental responsibility or guardianship for a person who is living at the place consents to the place being specified. This ensures that appropriate consent is obtained before imposing limitations on the rights of the people who will be impacted.

The Right to Freedom of Association (section 15)

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

The right to freedom of association is the right to associate with others for the purpose of protecting common interests. These interests may be economic, professional, political, cultural or recreational.

The right is limited by the Bill as a Court can order that a young offender who is subject to a TCO also be subject to a non-association order, preventing the young offender from having contact with a certain person or certain people.

2. Legitimate purpose (s 28(2)(b)) and rational connection between limitation and purpose (s28(2)(d))

The Court's ability to order that a young offender be subject to a non-association order will allow the Court to ensure that the young offender has the best chance possible to successfully engage in therapy in order to address underlying needs and/or offending behaviour by preventing the young offender from associating with people who may make the offender more likely to commit further offences.

3. Proportionality (s28(2)(e))

The Court may only order a non-association order for a young offender subject to a TCO to prevent the young offender from harassing or endangering the safety or welfare of anyone; prevent the young offender from committing further offences; or to assist the young offender to manage things that may make the offender more likely to commit further offences if not managed.

The restriction imposed on the young offender by a non-association order and the period of the order, must not be unreasonably disproportionate to the purpose for which the order is made.

Further, a court must not make a non-association order for a young offender unless satisfied that the order would not: interfere with the young offender's access to appropriate education or training; or disproportionately interfere with the young offender's access to public transport or accommodation.

JUSTICE (AGE OF CRIMINAL RESPONSIBILITY) LEGISLATION AMENDMENT BILL
2023

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*.

Clause 2 — Commencement

This clause provides that the Act, other than those provisions specified in subsection (2) will commence on the 7th day after the Act's notification day. This clause also lists a number of provisions which will commence on 1 July 2025.

Clause 3 — Legislation Amended

This clause lists the legislation amended by this Bill. This Bill will amend the:

- *Children and Young People Act 2008*
- *Crimes Act 1900*
- *Crimes (Restorative Justice) Act 2004*
- *Crimes (Sentencing) Act 2005*
- *Criminal Code 2002*
- *Family Violence Act 2016*
- *Personal Violence Act 2016*
- *Spent Convictions Act 2000*
- *Victims of Crime Act 1994*
- *Victims of Crimes (Financial Assistance) Act 2016*

The Bill will make consequential amendments to the:

- *Children and Young People Act 2008*
- Children and Young People Regulation 2009
- *Crimes (Sentencing) Act 2005*

- *Criminal Code 2002*
- *Mental Health Act 2015*
- *Working with Vulnerable People (Background Checking) Act 2011*

Clause 4 — Legislation Repealed

This clause repeals the *Crimes (Restorative Justice) Phase 3 Declaration 2018* because of drafting changes to section 16 of the *Crimes (Restorative Justice) Act 2004*.

Part 2 – Children and Young People Act 2008

Clause 5 – Director-general’s functions

New section 22 (1) (ea) and (eb)

This clause inserts 2 new paragraphs (ea) and (eb) to section 22(1), adding to the formal statement of the functions of the director-general. The new functions enable the director-general to provide services for the safety and wellbeing of children and young people, including those who engage in harmful conduct. The new functions give effect to the therapeutic proposals in the Bill. The therapeutic proposals include those involved in the making of the new orders, the administration of the orders and the immediate service responses that precede or pre-empt the making of the orders.

The formal statement of functions serves to confirm the roles and responsibilities of the director-general in the administration or execution of the Act. It also provides an anchor for the operation of other provisions that are tied to the exercise of functions.

Clause 6 – New section 22(1)(ga) to (gc)

This clause inserts 3 further paragraphs (ga) to (gc) to section 22(1), adding to the formal statement of the functions of the director-general. These new functions relate to the provision of services to children, young people and young adults for youth offences, who are directly involved with law enforcement authorities or otherwise in the criminal justice system. The new functions also enable the director-general to provide supervision, reasonable direction, support or assistance in line with a person’s bail conditions.

Clause 7 – Age—care and protection chapters stop applying if person discovered to be adult

Section 339 (4) (b)

This clause substitutes current section 339(4)(b) to provide for confinements at intensive therapy places under the new intensive therapy orders.

Section 339 deals with the situation in which the director-general, Childrens Court or police have been dealing with a person as a child or young person and they

subsequently discover that the person is in fact an adult, for example because new facts have come to light.

Broadly, in these circumstances, any order or agreement ceases to apply to that person, and the jurisdiction is lost. However, some functions and powers may continue to support the person's transition to adulthood under Part 15.5, and the provision of services for the criminal justice system in relation to a youth offence.

Specifically, this clause replaces the reference to a "therapeutic protection place" in section 339(4)(b), with a reference to an "intensive therapy place" instead. It also replaces a "therapeutic protection order" with a new "intensive therapy order". Accordingly, this clause requires a person to be released from an intensive therapy place, if discovered to be an adult.

Clause 8 – Care and protection chapters stop applying when young person becomes adult

Section 340 (3)

This clause substitutes current section 340(3) to require the immediate release of a young person from their confinement at an intensive therapy place, when they become an adult. It deals with the liberty of a child or young person in confinement if they become an adult. It has same effect as clause 7.

Clause 9 – When are children and young people *in need of emergency therapeutic protection*?

Section 404

This clause is omitted. This is consistent with the removal of the concept of "therapeutic protection order" and in "therapeutic protection".

Clause 10 – New Chapter 14A

Part 14A.1 – Preliminary

Section 501A contains definitions relevant to the operation of Chapter 14A, including a referral and a referring entity.

Part 14A.2 – Therapeutic Support Panel for Children and Young People

The Bill establishes the Therapeutic Support Panel for Children and Young People (panel) under section 501B. This supports the wider service reform for children and young people, which forms part of the surrounding framework of raising the MACR.

Section 501C sets out the functions of the panel. These functions include receiving referrals from referring entities, assessing the therapeutic needs of the referred child or young person, giving advice on appropriate therapeutic treatment and support for referred children and young people, coordinating therapeutic services for the referred person, recommending whether an application for an ITO should be made, assisting in developing therapy plans, and providing advice and assistance to the director-

general. The panel will also have any other functions conferred on it by legislation or regulation.

Finally, section 501C(2) provides that the panel will not be subject to directions about exercising its functions. However, the Minister may make guidelines which are notifiable instruments. If the Minister does this, the panel must comply with the guidelines (sections 501C(3)-(5)).

Section 501D sets out the composition of the panel. In particular, the membership of the panel will include the appointed chair and other appointed members.

Section 501E requires the Minister to appoint at least 10, but not more than 12, members to the panel. The Minister may only appoint someone if satisfied that they have relevant qualifications, experience, expertise, organisation membership or is a nominated police officer, in line with section 501E(2). Appointments must also represent a diversity of experience and expertise from the listed areas. These requirements will ensure that the multidisciplinary panel can provide expertise, overcome barriers to service accessibility, and identify legislative and service gaps to guide future reform.

Additionally, the Minister must appoint at least one person to represent Aboriginal and Torres Strait Islander people, and at least one Aboriginal and Torres Strait Islander person. For all members, the Minister must only appoint individuals as panel members if satisfied of their suitability, after considering mandated suitability information. Section 501E(7) outlines that appointments are for not longer than 4 years.

Section 501F provides the appointment process of the chair of the panel. The Minister is required to appoint a chair in addition to appointments of panel members. In appointing the chair, the Minister must be satisfied of their relevant expertise or experience, and their suitability to be the chair through considering relevant suitability information. The chair's appointment is for not longer than 5 years.

Section 501G outlines the functions of the chair. These functions include managing the panel's matters, presiding at meetings, preparing therapy plans, informing the director-general about the panel's operation, and informing a territory entity about systematic issues that affect children and young people the subject of referrals. Importantly, the chair must also decide which of the appointed members are required to deal with certain matters, depending on their expertise or experience.

Section 501H requires the Minister to appoint a deputy chair of the panel from the appointed members. Pursuant to section 501I, the deputy chair must act as the panel chair if the chair is absent or cannot exercise their functions.

Section 501J enables the panel to conduct its meetings as it considers appropriate, and to be considered present at meetings without being in each other's presence.

Regardless of how the meeting is conducted, the panel is required to keep meeting records or minutes.

Section 501K requires all panel members to take all reasonable steps to avoid a conflict of interest.

Section 501L enables the Minister to end the appointment of panel members, the chair or deputy chair for a number of reasons. Such circumstances include misbehaviour, a conviction for an indictable offence, absence from 3 consecutive meetings (without approved leave), and physical or mental incapacity substantially affecting the exercise of their functions.

Upon request, the Minister may appoint an adviser to the panel only if satisfied of their experience or expertise to act as an adviser, under section 501M. On request from the panel, an appointed adviser must advise the panel about the panel's functions, or otherwise in line with the stated appointment conditions. The Minister is empowered to end an adviser's appointment upon breach of a stated appointment condition.

Section 501N requires the director-general to give administrative support to the panel. The panel is enabled to arrange with the head of service to use the services of a public servant or territory facilities, under section 501O.

Section 501P empowers the panel chair to request information from information sharing entities, when preparing therapy plans. Information sharing entities are mentioned elsewhere in section 859(1) and may be entities prescribed by regulation. The chair may request the information sharing entity to produce documents, health, safety and wellbeing information, or something else about the child or young person. When the information sharing entity receives the chair's request, the entity must promptly comply, or notify the chair of their non-compliance due to not having the information or with a reasonable excuse.

Part 14A.3 – Referrals to Therapeutic Support Panel

Section 501Q allows a referring entity to make a referral to the panel if it believes on reasonable grounds that the child or young person has a genuine need for therapeutic support services and is at a risk of harming themselves or someone else, or has harmed themselves or someone else.

All referrals must be in writing, include the listed particulars, comply with relevant regulations, and be provided to the person with daily care responsibility for the child or young person if practicable and in the child or young person's best interests. In exceptional circumstances, section 501Q(3) allows oral not written referrals, provided the chair is satisfied on reasonable grounds that it is justified. In these exceptional cases, the panel chair is required to make a written record of the oral referral, as soon as practicable.

Section 501R requires the chair to promptly consider all referrals received and to carry out initial assessments to decide whether there is a need for intensive therapy. The chair must also take all reasonable steps to consult and take into account the views of the child or young person, and any person with their daily care responsibility. The chair has discretion to not take particular views into account when they are not in the child or young person's best interests, to take or not take action in relation to the initial assessment, and to take reasonable steps to obtain additional information about the referral.

The chair also has the ability to request a territory entity or ACT education provider to assist, provide facilities or provide services to the child or young person. In these circumstances, an entity or institution must promptly comply, and take reasonable steps to prioritise necessary services to support the physical or emotional wellbeing of the child or young person.

Section 501S requires the panel to take into account an available harm statement about a child or young person's behaviour, when there is a referral. The relevant definition for harm statements is contained in section 15CA(1) of the *Victims of Crimes Act 1994*.

Part 14A.4 – Reporting by Therapeutic Support Panel

Section 501T enables the panel to report to the Minister and other responsible Minister at any time. However, the panel is not permitted to include any information in a report that would disclose the identity of a child or young person, or to allow it to be worked out.

If the panel reports to the Minister, the Minister is required to present the report to the Legislative Assembly within 6 sitting days after the report is given to the Minister.

Any Minister who receives a report from the panel is required to give information to the CYP death review committee about planned or taken action linked to the report. This information must be provided within 3 months after the relevant Minister receives the panel report.

Clause 11 - Pt 15.3 applies to care and protection chapters Section 506 (2) and note

This clause substitutes current section 506(2) and the note section to provide for the new intensive therapy orders and interim intensive therapy orders. Importantly, this clause replaces the present references to "therapeutic protection", "therapeutic protection order[s]" and "therapeutic protection place" in section 506(2), with references to "confinement", "emergency intensive therapy", "intensive therapy order[s]" and "intensive therapy places".

Broadly, Chapter 15 deals with the functions and powers of the director-general when they acquire parental responsibility for a child or young person, because of

emergency action or under the terms of an order by the Childrens Court. It creates the framework for the placement of children and young people in out-of-home care.

Specifically, Part 15.3 contains a duty to notify the Public Advocate in respect of any allegation of abuse or neglect relating to a child or young person for whom the director-general has parental responsibility. Section 506(1) provides that Part 15.3 applies if the director-general has daily care responsibility for a child or young person, under the care and protection chapters. Importantly, section 506(2) provides an exception to this general applicability provision in section 506(1). At present, Part 15.3 does not apply if daily care responsibility for a child or young person is transferred to the director-general under a therapeutic protection order, an interim therapeutic protection order, or because the child was confined at a therapeutic protection place.

Clause 11 replaces these references to therapeutic protection orders and therapeutic protection place, with the new concepts of intensive therapy orders and intensive therapy places. In this way, the clause modifies the terminology of section 506(2) to make it consistent with the new model. The current non-applicability of the duty to notify the Public Advocate in therapeutic protection situations is maintained for circumstance where the director-general acquires daily care responsibility through intensive therapy situations in the new system.

Clause 12 – Chapter 16

Chapter 16 Care and protection – intensive therapy for children and young people

Chapter 16 presently provides for the making of Therapeutic Protection Orders which require a child or young person who has engaged in harmful conduct to be confined at a “therapeutic protection place” to implement a “therapeutic protection plan”.

The Intensive Therapy Orders will replace these orders but will rely on aspects of the existing framework.

Part 16.1 – Preliminary

Section 530 contains definitions relevant to the operation of Chapter 16.

Section 531 sets out the grounds for the director-general only to confine a child or young person at an intensive therapy place under an intensive therapy order or for emergency intensive therapy.

Part 16.2 – Intensive Therapy Orders

The Intensive Therapy Order (ITO) is one of the key reforms of the Bill to reflect the Government’s therapeutic approach over a historically adapted punitive one. This clause provides description of what an ITO may entail as an example, a defined

period of confinement as well as any other condition as the court deems necessary to assist in the therapeutic assessment and intervention of the child or young person.

The ITO will function as a therapeutic order in circumstances where a less restrictive approach has not been successful to prevent a young person from engaging in harmful behaviour (section 549(b)).

Division 16.2.1 – Definitions—Act and ch 16

This Division contains definitions relevant to the operation of intensive therapy orders (sections 532-538).

Division 16.2.2 – Applications for intensive therapy orders

Section 539 enables the director-general to apply to the Childrens Court for an ITO for a child or young person only if the director-general is satisfied that the criteria for making the order are met, including on the advice of the Therapeutic Support Panel.

Section 540 requires that an application for an ITO must include a risk assessment, evidence that less restrictive measures have already been tried in seeking to reduce harmful behaviour and a proposed treatment plan for how the young person's needs will be met. The ITO is to be applied only as a last resort, in circumstances where all other attempts to support and engage with the young person have been unsuccessful.

Section 532 defines the term “intensive therapy order” and it indicates that the Childrens Court can direct a child or young person to undergo assessment of their behaviour and needs and, ultimately, to engage with treatment in accordance with a therapeutic protection plan (section 532(a)).

The ITO will enable the service system to better meet the needs of a child or young person by directing them to engage in a suitable program or service. It is important to note that the ITO is a civil order and non-compliance with its directives cannot result in a criminal consequence for the young person.

Division 16.2.3 Interim intensive therapy orders

Section 543 contains definitions relevant to the operation of interim intensive therapy orders.

Section 544 allows the Childrens Court to make an interim ITO for a child or young person who is at least 10 years old if an application for an ITO has been made, but not yet finally decided, and the Court is satisfied that an interim ITO is necessary to address a significant risk of significant harm to the child or young person or someone else arising from the child or young person's conduct and an interim order is necessary to prevent the harmful conduct.

An interim ITO may direct the child or young person to be confined as a last resort, to prevent the child or young person from engaging in harmful conduct and to

undergo any necessary treatment in accordance with a therapy plan (section 544(b)).

Section 545 sets out the matters which must be included in the direction if the Childrens Court decides that a child or young person must be confined under an interim intensive therapy order, including the period of confinement, the place of confinement and the purpose of the confinement.

There is a time limit for the length of an interim intensive therapy order which must be stated in the order, and which must not be longer than 2 weeks (section 546 (1)), but this is coupled with a power for the court to make a further interim intensive therapy order to commence immediately after the end of a previous interim intensive therapy order (section 547 (1)).

However, the court must not make a further interim intensive therapy order directing the confinement of a child or young person if the total period of confinement the child or young person has been subject to under previous interim intensive therapy orders is 12 weeks (section 547 (2)).

Section 548 creates an offence if the person engages in conduct that contravenes a provision of the order and provides a maximum penalty of 100 penalty units and/or imprisonment for one year.

Division 16.2.4 Making an intensive therapy order

Section 549 provides that the Childrens Court may only make an ITO for a child who is at least 10 years old or young person if satisfied that the order is necessary to address a significant risk of significant harm to the child or young person or someone else, there are no less restrictive ways to prevent their harmful conduct, and it is in the best interests of the child or young person.

If the ITO relates to the treatment of the child or young person, the director-general must provide the court with a therapy plan and if the order relates to the assessment of the child or young person, the director-general must undertake to provide a therapy plan within the period required by the court (section 549 (e)).

An ITO may direct the child or young person to be confined at a specific place in the community for a defined period, to enable assessment and therapeutic treatment (sections 549(d) and 550).

While the length of an ITO must not be longer than 12 weeks (section 551(b)), the Childrens Court may extend an ITO for up to 6 months if it is satisfied that certain criteria are met (section 564).

Section 552 provides that the Childrens Court must record a written statement of reasons for the decision when the court hears and decides an application for an ITO.

Section 553 creates an offence if the person engages in conduct that contravenes a provision of the order and provides a maximum penalty of 100 penalty units and/or imprisonment for one year.

An ITO must also be reviewed (sections 555-559) and may be extended (sections 560-565), amended or revoked (sections 566-574) in line with the needs of the young person and any other relevant considerations.

Division 16.2.5 – Review of intensive therapy orders

Division 16.2.5 substantially reproduces the provisions in existing Division 16.2.5.

Division 16.2.5 imposes an obligation for the director-general to review intensive therapy orders that are in force. This is to ensure that children and young people are only confined for the minimum necessary period to address risks.

Section 554 contains definitions relevant to the review of interim intensive therapy orders.

Section 555 imposes an obligation for the director-general to review the operation of an intensive therapy order within 2 weeks of the order being made if the order authorises a confinement direction - or in any other case, 6 weeks after the order is made or one week before the order expires, whichever happens first. This is called an initial review.

Section 556 imposes an obligation for the director-general to review the operation of an intensive therapy order within 2 weeks of the initial review and each ongoing review if the order authorises a confinement direction - or in any other case, 6 weeks after the initial review and each ongoing review, or one week before the order expires after the initial review or an ongoing review, whichever happens first. This is called an ongoing review.

Section 557 requires that, for each review conducted under sections 555 or 556, the director-general must seek and consider the views of the child or young person, each person who has parental responsibility for the child or young person (other than the director-general) and each person who had daily care responsibility for the child or young person immediately before the order was made, the chair of the Therapeutic Support Panel, each official visitor who has visited the child or young person, the public advocate, and if the child or young person is an Aboriginal or Torres Strait Islander person, the Aboriginal and Torres Strait Islander children and young people commissioner.

The director-general must consider the views of any other person the director-general considers appropriate. This may include, for example, a health professional or other professional involved in the therapeutic support of the child or young person.

Section 558 requires the director-general to prepare a review report about the operation of the intensive therapy order after the initial review and each ongoing

review. The director-general is required to give a copy of the report to the child or young person, each person with parental responsibility (including each person who had daily care responsibility before the order was made), the chair of the Therapeutic Support Panel, each official visitor who has visited the child or young person in therapeutic protection and the public advocate, if the child or young person is an Aboriginal or Torres Strait Islander person, the Aboriginal and Torres Strait Islander children and young people commissioner, and the Childrens Court if the Court has requested a copy of the report.

Section 559 requires the director-general to take certain action in relation to the order after making decisions as a result of the initial review or each ongoing review.

If the director-general decides the order should be extended, amended or revoked this clause requires the director-general to apply to the Court for the relevant extension, amendment or revocation of the order.

Division 16.2.6 – Extending an intensive therapy order

Division 16.2.6 substantially reproduces the provisions in existing Division 16.2.6.

This division addresses extensions of ITOs. It introduces a maximum upper limit of 6 months for extensions of an ITO by the Childrens Court.

Section 560 enables the director-general only to apply to the Childrens Court to extend an ITO if the director-general reasonably believes the criteria for extending the order are met.

Section 561 sets out what must be included in an application for extending an ITO, including the grounds for extension, the intensive therapy history, a further therapy plan, a further risk assessment and a written statement summarising whether the director-general has consulted with the Therapeutic Support Panel and the substance of the advice, how the ITO was implemented and the extent of compliance with the order.

Section 562 provides that the application must be given to each party to the original proceeding, the public advocate and, if the child or young person is an Aboriginal or Torres Strait Islander person, the Aboriginal and Torres Strait Islander children and young people commissioner, at least one working day before the application is to be heard by the Court.

Section 563 provides that the Childrens Court must give initial consideration to an application for extension of an ITO within 2 working days after the day the application is filed. The Childrens Court is required to give directions about the conduct of the proceeding at the time of giving initial consideration to the application. As the effect of an ITO is or may be confinement of a child or young person, it is imperative that the Court gives prompt attention to an application for extension of an ITO with appropriate directions for the timely finalisation of the application.

Subsection (3) provides that any ITO in force on the day of filing continues in force until the application is heard and decided. This applies regardless of whether the application is considered within the prescribed period of 2 working days after filing.

Section 564 outlines the criteria for the Childrens Court to extend an ITO.

The Childrens Court may only extend the order for a further 8 weeks each time and extend the total length of the order (from the date the order was made) up to 6 months. The length of an ITO for a child or young person will be guided by the need to provide adequate time for assessment, and stabilisation through intensive therapy. It is intended that, where necessary, the therapy could continue after the period of an intensive therapy order, either voluntarily or through a care and protection order.

Section 565 requires the Childrens Court to record reasons for its decision following hearing and deciding an application to extend an ITO.

Division 16.2.7 – Amending or revoking an intensive therapy order

Division 16.2.7 substantially reproduces the provisions in existing Division 16.2.7.

This division addresses applications for amendment or revocation of ITOs.

Sections 566 and 567 provide for amendment and revocation of orders. The Childrens Court may, on application or on its own motion, amend an ITO (s 566) or revoke an ITO (s 567).

Section 568 lists the persons who can apply for amendment, or revocation, of an ITO if the person reasonably believes that the criteria for amending, or revoking, the order are met. These persons include the director-general, the child or young person, a person with parental responsibility for the child or young person, a former caregiver, the public advocate, and if the child or young person is an Aboriginal or Torres Strait Islander person, the Aboriginal and Torres Strait Islander children and young people commissioner.

Section 569 and 570 set out the matters which must be included in an application for amendment or revocation.

Section 571 provides that an application for amendment or revocation must be given to each party to the original proceeding, anyone else required to be given a copy of the application, the public advocate, and if the child or young person is an Aboriginal or Torres Strait Islander person, the Aboriginal and Torres Strait Islander children and young people commissioner, at least one working day before the application is to be heard by the Court.

Section 572 provides that the Childrens Court must give initial consideration to an application for amendment or revocation of an ITO no later than 2 working days after filing. The Childrens Court is required to give directions about the conduct of the

proceeding at the time of giving initial consideration to the application. As the effect of an ITO is confinement of a child or young person, it is imperative that the Court gives prompt attention to an application for amendment or revocation of an ITO with appropriate directions for the timely finalisation of the application.

Section 573 provides that the Childrens Court may amend or revoke an ITO only if the court is satisfied that the order or condition of the order is no longer needed to reduce the risk of harm, a less restrictive way is available to prevent harmful conduct, or the order or conditions are no longer in the best interests of the child.

Section 574 requires the Childrens Court to record reasons for its decision following hearing and deciding an application to amend or revoke an intensive therapy order.

Division 16.2.8 – Mental health referral

This Division provides for the referral of a child or young person to the jurisdiction of the ACT Civil and Administrative Tribunal (ACAT) under the *Mental Health Act 2015*.

Section 575 deals with circumstances in which an application is before the Childrens Court for an interim or final ITO and an issue arises as to their psychiatric health, mental health, cognitive function, decision-making ability, etc.

Where the Court is satisfied the child or young person *may* have a mental disorder or mental illness, the Court is *permitted* to order that they submit to the jurisdiction of ACAT under the Mental Health Act (section 575 (1)). Where it is satisfied they *do* have a mental disorder or mental illness, it is *required* to order that they submit to that jurisdiction, unless it is satisfied that making the ITO is the best way to support the child or young person (section 575 (2)).

Part 16.3 Children and young people in intensive therapy

Division 16.3.1 – Preliminary

Section 576 outlines 2 instances where the child or young person can be in *intensive therapy*. These are where the child or young person is subject to an ITO or an Interim ITO.

Division 16.3.2 – Confinement

Section 577 deals with the confinement of a child or young person under an ITO.

The Childrens Court, when making an ITO, may include a ‘confinement direction’ where it is satisfied that confinement of the child or young person may be necessary for their assessment and/or for their treatment under a therapy plan (sections 549(d) & 550). The effect of such a direction is to authorise the director-general to make a direction, or directions from time to time, which deals with confinement.

Section 577 provides that the director-general may issue a ‘confinement direction’ as a last resort in relation to a child or young person which sets the parameters,

including the nature and duration, of any confinement. The direction must state the “nature of the confinement necessary and reasonable” for the assessment or treatment of the child or young person, which will include the character and circumstances of the confinement and any conditions (section 577(1)(a)).

It must state the period of the confinement (section 577(1)(b)) and state whether the child or young person may temporarily leave the intensive therapy place (section 577(1)(l)).

(A direction may not allow leave if that would create a risk of harm (section 577(2)(b))).

There is a time limit for any confinement direction (section 577(2)(a)), but this is coupled with a power to make more than one direction during the life of an ITO (section 577(3)). While the director-general may issue a direction on more than one occasion while an ITO is in force (section 577(3)), s/he may not on any occasion direct the continuous confinement of a child or young person for longer than 14 days (section 577(2)(a)).

Where a direction is issued, the director general must record the direction, and the reasons (section 577(4)(a)), tell the public advocate (section 577(4)(b)), if the child or young person is an Aboriginal or Torres Strait Islander person, tell the Aboriginal and Torres Strait Islander children and young people commissioner (section 577(4)(c)) and record the fact of the confinement in the ‘intensive therapy register’ (section 577(4)(d)).

The combined effect of these provisions is as follows:

- to prevent any *given* direction from being issued which would result in the continuous confinement of a child or young person for more than 14 days;
- to allow a *series* of directions to be made which may result in the continuous confinement of a child or young person for the duration of the ITO; and
- to require that, if an extended period of continuous confinement is to occur, a fresh direction must be made, accompanied by a fresh set of reasons and a fresh notification to the relevant statutory office holders every 14 days.

Section 577(2) provides that the director-general cannot allow a child or young person to temporarily leave an intensive therapy place if the leave would create a risk of harm to the child or young person or anyone else. This provision is to be construed beneficially to allow the director-general to authorise leave where appropriate. This restriction is only intended to apply to substantial or significant risks of harm.

Division 16.3.3 – Visits by accredited people

This division provides an entitlement for children and young people in intensive therapy to have contact with accredited people.

Section 578 lists persons considered to be accredited persons for a child or young person in intensive therapy. This includes the director-general, a representative of an entity providing a service or program to the child or young person at an intensive therapy place, a lawyer, an Official Visitor, the chair of the Therapeutic Support Panel, the public advocate, a commissioner exercising functions under the *Human Rights Commission Act 2005* (for example, the Children and Young People Commissioner), the Ombudsman, and, if the child or young person is an Aboriginal or Torres Strait Islander person, the Aboriginal and Torres Strait Islander children and young people commissioner.

Section 579 requires the operating entity to ensure that children and young people in intensive therapy have reasonable opportunities to receive visits from accredited people, as often as needed, in order to protect their human rights.

Section 580 allows visits by accredited people to occur to a child or young person in intensive therapy.

Division 16.3.4 – Searches and seizure

Searches of children and young people who are confined in an intensive therapy place are necessary to prevent the entry of items that may harm the child or young person or other people within the place.

To ensure that searches of children and young people are proportionate to the necessary aim of the searches, the division introduces a number of obligations on persons conducting or assisting with a search. These obligations are introduced to ensure that children and young people who are searched are treated humanely and with respect for their inherent dignity, and are protected from unlawful or arbitrary interferences with their privacy.

Sections 581 and 582 contain definitions relevant to searches and seizure.

Section 583 provides that the operating entity for an intensive therapy place may direct an intensive therapy person to carry out a scanning search, frisk search or ordinary search of a child or young person if there are reasonable grounds for believing that the child or young person is carrying anything that would present a danger to themselves or another person or could be used to escape the intensive therapy place. The definition of a frisk search, ordinary search and scanning search are provided at (section 583 (5)).

The operating entity must, as far as practicable, ensure person carrying out the search is the sex as requested by the child or young person, or if no request is made, a person of the same sex as the child or young person (section 583 (2)).

A dangerous thing found on, or in a child or young person's custody or possession may be seized unless the child or young person has the written approval of the

operating entity to possess the thing (section 583 (3)). The intensive therapy person must make a written record of anything seized (section 583 (4)).

Section 584 requires that the search conducted on a child or young person is the least intrusive kind of search, and is conducted in the least intrusive way, that is necessary and reasonable in the circumstances (section 584 (1)). A child or young person must not to be subjected to a strip search (section 584 (2)). A definition of a strip search is provided at section 584 (3).

Section 585 provides that an intensive therapy person may use force, but only as much force as necessary and reasonable to conduct a search or to prevent the loss, destruction or contamination of anything seized, or that may be seized during the search.

Section 586 requires that the operating entity for the intensive therapy place must provide a seizure notice in writing about the seizure to the owner of the thing seized, or the person from whom the thing was seized, as soon as practicable, but not later than 7 days after the day a thing is seized. This seizure notice must state the identity of the thing seized, the grounds for seizure, the grounds and effect of forfeiture of the thing seized, and anything else prescribed by regulation (section 586 (2)).

Section 587 provides the grounds for the forfeiture to the Territory of a thing seized (section 587 (1)) and allows the operating entity to deal with or dispose of the forfeited thing as the operating entity considers appropriate (section 587 (2)), unless subject to any order under the *Crimes Act 1900*, section 249 (section 587 (3)).

Section 588 requires the operating entity for the intensive therapy place to return seized property to its owner at the end of the 6 months after the day the thing was seized, or if a proceeding for an offence involving the thing is started not later than the 6 months—at the end of the proceeding and any appeal from the proceeding (section 588 (1)).

The operating entity must return the thing seized immediately to its owner if it was being kept as evidence of an offence and the operating entity believes on reasonable grounds that keeping the thing as evidence is no longer necessary (section 588 (2)).

Part 16.4 Intensive Therapy – administration

Division 16.4.1 – Intensive therapy places

An ITO will be able to direct a young person to attend a program or service, or to reside at a specific place in the community (e.g., at home, in foster care, or in residential care) to receive therapeutic treatment and services. An intensive therapy place will usually be a secure facility where a child or young person may be confined while under an ITO.

Section 589 allows the director-general to declare a place to be an intensive therapy place. A declared intensive therapy place cannot be a detention place (section

589(2)(a)) and must comply with intensive therapy standards (section 589(2)(b)). These parameters reflect the purpose of an intensive therapy place – to support and enable a young person to receive intensive support to prevent them from harming themselves or others. A declaration by the director-general for the purposes of this section is a notifiable instrument (section 589(3)).

Section 590 allows the director-general to exclude any matter from an intensive therapy place declaration that the director-general believes on reasonable grounds would be likely to disclose the location of the intensive therapy place (section 590 (1)). However, the director-general will be required to disclose the location of an intensive therapy place to a people entitled to access the intensive therapy register (section 590 (2)).

Section 591 provides that the director-general may make intensive therapy place policies and operating procedures to facilitate the management of intensive therapy places. Section 591(2) makes it clear that each intensive therapy place policy or procedure is a notifiable instrument, as well as the amendment or repeal of such a policy or procedure.

Section 592 provides the conditions by which the director-general may authorise an entity to be an operating entity for an intensive therapy place and conditions for the suspension of an entity's authorisation by the director general are provided in section 593.

Section 594 allows that the director-general may revoke an entity's authorisation as an operating entity for an intensive therapy place if the director-general is satisfied that the entity is not a suitable entity or has at any time failed to comply with the intensive therapy standards. If the entity asks the director-general to revoke the authorisation, the director-general may also do so (section 594 (2)). The director-general must give written notice of the intention to revoke the authorisation, including the reasons, tell the entity that they may make a submission in writing about the notice and consider the submission if made (section 594 (3)). The director-general will be required to establish minimum standards for the use of intensive therapy places, exercising the general power in section 877 of the CYP Act. Other oversight arrangements also exist, for example, visits by accredited people (section 579) and notification to the public advocate and, where relevant, the Aboriginal and Torres Strait Islander children and young people commissioner of confinement directions (sections 577(4)(b) and (c)) and therapy plans (sections 595(1) and (2)).

Division 16.4.2 –Therapy plans

Therapy plans form a prerequisite for making an ITO (sections 540(d) and 549I).

The provisions under this division allow a copy of the therapy plan for a child or young person to be shared with the public advocate or an official visitor (section 595 (1)), or where the child or young person identifies as an Aboriginal or from Torres Strait Island background, with the Aboriginal and Torres Strait Islander children and

young people commissioner (section 595 (2)). This is intended to facilitate any consideration, support or advocacy that the public advocate or the Commissioner may provide through their respective functions outlined in the *Human Rights Commission Act 2005* and the *Aboriginal Torres Strait Islander Children and Young People Commissioner Act 2022*.

Division 16.4.3 – Intensive therapy register

This division provides for increased oversight of therapeutic protection through the requirement for the operating entity to maintain a register in relation to the child or young person for whom the Childrens Court makes an interim intensive therapy order or an intensive therapy order and who are confined at an intensive therapy place (section 596(1)). The register must include details for each child or young person the Childrens Court makes an interim or intensive therapy order for, including: name, sex and date of birth, details of the order, the therapy plan for each proposed period of confinement, the intensive therapy history for each period of confinement, details of an searches conducted on the child or young person, details of any force used on the child or young person during the period of confinement, where and with whom the child or young person lived before the period of confinement and anything else prescribed by legislation (section 596 (2)). The register may also contain anything else the operating entity considers relevant (section 596 (3)).

Section 597 provides that the intensive therapy register may be accessed by the following people: the director-general or a person authorised by the director-general, a magistrate, a judge, the ombudsman, an official visitor, the public advocate, a commissioner exercising functions under the *Human Rights Commission Act 2005*, the Aboriginal and Torres Strait Islander children and young people commissioner, and a person prescribed by regulation (section 597(1)). The operating entity must ensure that only the people mentioned in section 597 (1) are able to access the intensive therapy register (section 597 (2)).

Section 598 requires that the intensive therapy register must be inspected by the public advocate at least once every 3 months (section 598).

Clause 13 – Police Assistance

Section 679 (1) (i) and (j) and notes

This clause replaces the references in section 679(1) to “therapeutic protection order[s]” with references to “intensive therapy order[s]”. In particular, the new subsection 679(1)(i) provides for interim intensive therapy orders, and subsection 679(1)(j) deals with intensive therapy orders.

Section 679 enables the director-general to request and imposes a duty on the Chief Police Officer to provide police assistance in carrying out a series of listed actions. Such actions include enforcing a care and protection order or interim care and protection order, enforcing a final protection order or interim protection order,

conducting an appraisal or a care and protection assessment (whether under an appraisal or assessment order or not), and taking emergency action.

This clause retains this facility in the context of intensive therapy orders.

**Clause 14 – Safe custody warrant—criteria
Section 686 (1) (a) (vi) and (vii) and notes**

This clause replaces the references in section 686(1)(a) to “therapeutic protection order[s]” with references to “intensive therapy order[s]”.

Section 686(1) provides authority for a Magistrate to issue a safe custody warrant for a child or young person at stated premises if satisfied that someone has contravened a certain order (appraisal order, interim care and protection order, assessment order, care and protection order, interim protection order or final protection order) the child or young person is in danger as a consequence, and the child or young person is at the premises or may be within 14 days.

This clause retains this facility in the context of intensive therapy orders.

Clause 15 – Section 686 (2)

This clause replaces the references in section 686(2) to “therapeutic protection order[s]” with references to “intensive therapy order[s]”.

Section 686(2) extends the authority of the Magistrate in Section 686(1) to cater for circumstances in which a child or young person is subject to an interim therapeutic protection order or therapeutic protection order and there are reasonable grounds for suspecting that they are absent without lawful authority from a therapeutic protection place.

The clause substituted this reference to therapeutic protection, to intensive therapy instead. Accordingly, the clause now empowers a Magistrate to issue a safe custody warrant if satisfied there is an in-force intensive therapy order or interim intensive therapy order, and there are reasonable grounds for suspecting that the child or young person is absent without lawful authority from the intensive therapy place and the child or young person is at or may be at the premises within 14 days.

This clause retains this facility in the context of intensive therapy orders.

**Clause 16 – Orders—statement of reasons
Section 722 (1) (b) and note**

This clause replaces the references in paragraph 722(1)(b) to “therapeutic protection order[s]” with references to “intensive therapy order[s]”.

Section 722 provides that where a court has decided to make, extend, amend or revoke the order, a party to the proceeding may ask the court in writing to give them a statement of reasons. It also compels the court to give that statement of reasons.

The request must be made within 28 days of the order and the statement of reasons must be given within 28 days of the request.

Clause 17 – Section 841

This clause replaces section 841.

Chapter 25 deals with the protection, and sharing, of “protected information”, being information created or obtained in the administration or execution of the CYP Act.

Section 841 ensures that these arrangements apply to young offenders and young detainees who are adults in the same way as they apply to young offenders and young detainees who are under 18 years old. This is to account for the fact that a person who is charged with or who committed an offence as a young person may be sentenced as a young person, and may be held in custody as a young person, notwithstanding that they may have turned 18 since the offence or the conviction.

This puts beyond doubt the application of information secrecy obligations and sharing powers to the particular circumstances of these young adults and adults.

This clause reframes this rule to clarify its application to children, young people, young adults and adults being dealt with for a youth offence, who are involved in the various stages of the criminal justice system. Its coverage includes relevant people being dealt with by police and under the criminal law system, as well as people in police custody.

Clause 18 – What is *sensitive information*?

Section 845 (1), definition of *sensitive information*, New paragraph (ba)

Clause 18 provides that ‘intensive therapy information’ is classified as ‘sensitive information’. This has the effect that a court who receives such information must not allow it to be given to the parties to a proceeding unless satisfied that (a) the information is materially relevant to the proceeding; and (b) if the information is about a child or young person – the best interests of the child or young person are protected (section 866, *Children and Young People Act 2008*).

Clause 19 – Section 845 (2)

New definition of *intensive therapy information*

Clause 19 defines ‘intensive therapy information’ broadly to capture all aspects of the new therapeutic service system, including information for a meeting of the Therapeutic Support Panel, reports or records about whether a child or young person should receive intensive therapy, information relevant to the implementation of an intensive therapy order (or interim order) and information used to prepare a therapy plan.

The purpose of clauses 18 and 19 is to protect children and young people under the MACR who engage in (or who are referred to) the new therapeutic service system, which includes the Therapeutic Support Panel and intensive therapy orders.

Children and young people under the MACR who take genuine steps to address harmful behaviour by engaging in the new therapeutic service system should be protected from any penalty as a result of such engagement. Clauses 18 and 19 will achieve this by ensuring that information about a child or young person under the MACR that arises because of that child or young person's engagement in the new therapeutic system cannot be provided to parties to a proceeding, unless a court is satisfied that the best interests of the child or young person are protected. This will ensure that this information cannot be used to the child's detriment, thus supporting their full and meaningful engagement with the therapeutic process.

Clause 20 – Who is an *information sharing entity*?

New section 859 (1) (ha)

This clause adds an item to the list of “information sharing entities” in section 859(1).

Division 25.3.2 deals with the sharing of safety and wellbeing information between the director-general and “information sharing entities” and, where a “care team” has been declared, between those “information sharing entities”.

Section 859(1) sets out the list of those entities.

This clause adds the chair of the Therapeutic Support Panel to that list.

Clause 21 – Care teams—sharing safety and wellbeing information

Section 863 (1), example 9

This clause replaces a “therapeutic protection service” with an “intensive therapy service” to the list of examples of the entities that may be included within a “care team” for the purposes of section 863(1).

Clause 22 – New section 871A

This clause inserts new section 871A into the *Children and Young People Act 2008*. It provides that evidence that arises as a result of a child or young person who is under the MACR engaging with (including being referred to) the new therapeutic service system is not admissible in any criminal proceeding. This provision captures evidence that arises because of information brought into existence for the purpose of: a referral to the Therapeutic Support Panel; the exercise of a function of the panel; the preparation of a therapy plan; a child or young person in intensive therapy; and the implementation of an intensive therapy order or interim intensive therapy order.

The purpose of clause 22 is protect children and young people under the MACR who engage in (or who are referred to) the new therapeutic service system.

Children and young people under the MACR who take genuine steps to address harmful behaviour by engaging in the new therapeutic service system should be protected from any penalty as a result of such engagement. Clause 22 will achieve this by ensuring that information relating to a child or young person under the MACR that arises in the context of the child or young person's engagement in the new therapeutic system cannot be used in evidence in a criminal proceeding against the child or young person. This will ensure that this information cannot be used to the child's detriment, thus supporting their full and meaningful engagement with the therapeutic process.

While clauses 18 and 19 protect information about a child or young person that arises as a result of their engagement with the new therapeutic service system in the context of any proceeding, clause 22 provides specific protection in the context of a criminal proceeding to support the underlying policy of the Bill, which is to remove children and young people aged 10-13 from the criminal justice system to enable better outcomes for them and society. It would be contrary to this policy if the child or young person could be more readily punished in a criminal proceeding as a result of their genuine engagement in the alternative therapeutic system. It is important to provide a higher level of protection so that in relation to criminal proceedings such evidence is inadmissible and cannot be used by parties to the proceeding in any circumstances.

Clause 23 – Protection of people giving certain information **New section 874 (2) (ma)**

This clause adds an item to the list in section 874(2)(ma).

Section 874 provides protection to those entities or individuals who make reports or share information as required or authorised under a provision of the CYP Act. If the information is given honestly and without recklessness, the entity or individual does not incur any relevant civil or criminal liability and is not taken to have breached any duty of confidence or professional etiquette, ethics or conduct.

Subsection 874(2) sets out the circumstances in which this “immunity” applies.

This clause adds to that list the sharing of information by an “information sharing entity” at the request of the chair of the Therapeutic Support Panel under section 501P.

Clause 24 – Standard-making power **Section 887 (2) (e) and note**

This clause adds an item to the list of matters in subsection 887(2).

Section 887 permits the Minister to make standards for the CYP Act. Section 887(2) sets out a list of matters to which those standards may be directed.

This clause adds to that list “the operation of intensive therapy places and services”. In doing so, the clause removes references to “the operation of therapeutic protection places and services” in section 887(2) and in the note.

Clause 25 – Dictionary, definition of *accredited person*, paragraph (b)

This clause substitutes an item in the list of matters in the definition of “accredited person”. In particular, this clause replaces “therapeutic protection” with “intensive therapy”.

At present, section 576 empowers an accredited person to visit a child or young person in therapeutic protection.

This clause updates the reference to section 576 in the context of intensive therapy now contained in section 578.

Clause 26 – Dictionary, definition of *body search*

This clause reframes the definition of “body search”.

The definition of “body search” refers to the relevant provisions which relate to the powers of officers in relation to children and young people in detention (section 246) and children and young people in therapeutic protection (section 588).

The provisions dealing with intensive therapy do not address body searches. As a result, this clause removes paragraph (b) about therapeutic protection. Instead, this clause makes the focus of the definition on young detainees.

This clause updates the relevant definition in the context of intensive therapy.

Clause 27 – Dictionary, definition of *frisk search*

This clause reframes the definition of “frisk search”.

The definition of “frisk search” refers to the relevant provisions which relate to the powers of officers in relation to children and young people in detention (section 246) and children and young people in therapeutic protection (section 586).

The provisions dealing with intensive therapy do not address frisk searches. Accordingly, this clause deletes paragraph (b) about children and young people in therapeutic protection. The implication of this removal is that the definition focuses entirely on young people in detention.

This clause updates the relevant definition in the context of intensive therapy.

Clause 28 – Dictionary, new definition of *in intensive therapy*

This clause inserts a new definition, by reference to the relevant provision, of the expression “in intensive therapy”.

Clause 29 – Dictionary, definition of *initial review*

This clause replaces the reference to “therapeutic protection orders” with the new “intensive therapy orders”. The clause also updates the reference to the relevant provision. This updated definition of “initial review” relates to the first step in the review process by the director-general of an ITO.

Clause 30 – Dictionary, definition of *in need of emergency therapeutic protection*

This clause completely removes the definition of the term “in need of emergency therapeutic protection” and its corresponding reference to section 404. This aligns with the removal of the therapeutic protection provisions elsewhere in the legislation.

Clause 31 – Dictionary, new definitions

This clause inserts various definitions, by reference to the relevant provisions, of:

- “intensive therapy history”
- “intensive therapy order”
- “intensive therapy person”
- “intensive therapy place”
- “intensive therapy register”
- “intensive therapy standards”
- “interim intensive therapy order”

Clause 32 – Dictionary, definitions of *interim therapeutic protection order and in therapeutic protection*

This clause omits certain definitions about therapeutic protection. These existing definitions are not relevant to intensive therapy.

Clause 33 – Dictionary, definition of *mental illness*

This clause updates the definition of “mental illness” by reference to the *Mental Health Act 2015*, rather than the present reference to section 530.

Clause 34 – Dictionary, definitions of *non-treating doctor etc*

This clause reframes the definitions of:

- “non-treating doctor”
- “non-treating health practitioner”

- “non-treating nurse”
- “ongoing review”
- “ordinary search”

For each of these concepts, except “ongoing review”, this clause removes the reference to the “therapeutic protection of children and young people”.

In addition, this clause updates the definition of “ongoing review” in the context of intensive therapy. Specifically, the reference to “therapeutic protection orders” is replaced with “intensive therapy orders”. This updated definition relates to the review of an ITO by the director-general.

Clause 35 – Dictionary, definition of *owner*, paragraph (b)

This clause reframes the definition of “owner” in accordance with the reframing of the definitions relating to ordinary, frisk, body, scanning and strip searches. In particular, this clause replaces the reference to “seizing dangerous things” with “searches and seizure”. The clause also updates the corresponding division and section of the Act.

Clause 36 – Dictionary, new definitions

This clause inserts definitions of “referral” and “referring entity” by reference to the relevant provision.

Clause 37 – Dictionary, definition of *risk assessment*

This clause replaces a reference to “therapeutic protection of children and [young people]” in the definition of “risk assessment” with a reference to “intensive therapy for children and [young people]”.

In addition, this clause also removes the references to “children and young people in therapeutic protection” in the definitions of “scanning search” and “strip search”.

Clause 38 – Dictionary

This clause omits certain definitions which are not relevant to intensive therapy. In particular, this clause omits the definitions of:

- “therapeutic protection history”
- “therapeutic protection order”
- “therapeutic protection person”
- “therapeutic protection place”
- “therapeutic protection plan”
- “therapeutic protection register”

- “therapeutic protection standards”
- “therapeutic protection transition plan”

Clause 39 – Dictionary, new definitions

This clause inserts new definitions of “Therapeutic Support Panel”, “therapy plan”, and “therapy transition plan” by reference to the relevant provision.

Part 3 – Crimes Act 1900

Clause 40 – Rules for conduct of strip search

Section 228 (1) (e)

Section 228 of the *Crimes Act 1900* sets out the rules for how a strip search must be conducted by the police following an arrest. At present, subsection (1)(e) provides that a strip search shall not be conducted on a person under 10. In line with the increase in the MACR, this amendment ensures that children under the age of criminal responsibility are not subject to strip searches by the police.

Clause 41 – Section 228 (1) (f)

Section 228(1)(f) puts in place additional rules which must be followed by the police when strip searching children and young people above the MACR. The amendments to subsection (1)(f) ensure that these protections will continue to apply to children and young people above the MACR, regardless of what that age is set at.

Clause 42 – Identification parades for suspects under 18 etc

Section 234 (1)

Section 234(1) currently provides that an identification parade held by the police shall not be held for a suspect who is under 10. This amendment ensures that this protection will continue to apply to children and young people below the MACR, regardless of what that age is set at.

Clause 43 – Section 234 (3) (a)

Section 234(3) puts in place additional rules which must be followed by the police when conducting an identification parade on children and young people above the MACR. The amendments to subsection (3)(a) ensure that these protections will continue to apply to children and young people above the MACR, regardless of what that age is set at.

Clause 44 – Subdivision 10.7.1 heading

This amendment changes the heading of the subdivision by referring to children under the MACR, instead of specifying a set age.

Clause 45 – Section 252A heading

This amendment changes the heading of the section by referring to children under the MACR, instead of specifying a set age.

Clause 46 – Section 252A (1)

Section 252A allows for the arrest of a child or young person under the MACR by warrant. This amendment ensures that this section will continue to apply to children and young people under the MACR, regardless of what that age is set at.

Clause 47 – Section 252B heading

This amendment changes the heading of the section by referring to children under the MACR, instead of specifying a set age.

Clause 48 – Section 252B (1)

Section 252B allows for the arrest of a child or young person under the MACR without a warrant. This amendment ensures that this section will continue to apply to children and young people under the MACR, regardless of what that age is set at.

Clause 49 – Section 252C heading

This amendment changes the heading of the section by referring to children under the MACR, instead of specifying a set age.

Clause 50 – Section 252C (1)

Section 252C sets out what police should do with a child or young person arrested under sections 252A or 252B. This amendment ensures that this section will continue to apply to children and young people under the MACR, regardless of what that age is set at.

Clause 51 – Section 252J heading

For the purposes of subdivision 10.7.2, 'child' is defined in section 252D by reference to the definition in section 11 of the *Children and Young People Act 2008*. Section 11 of that Act sets out that a 'child' is a person who is under 12 years old. Following the increase in the MACR, it should no longer be an option that police can summons people under the age of 12. Therefore, this amendment removes the reference to 'child' in the heading.

Clause 52 – Section 252J

This amendment removes the word 'child' from the provisions requiring police to summons a young person unless ineffective, as people under the age of 12 (who are defined as a 'child' under the *Children and Young People Act 2008*) would no longer

be able to be held criminally responsible for an offence and therefore would not be able to be summonsed.

Clause 53 – Section 252K heading

For the purposes of subdivision 10.7.2, ‘child’ is defined in section 252D by reference to the definition in section 11 of the *Children and Young People Act 2008*. Section 11 of that Act sets out that a ‘child’ is a person who is under 12 years old. Following the increase in the MACR, it should no longer be an option that police can charge people under the age of 12. Therefore, this amendment removes the reference to ‘child’ in the heading.

Clause 54 – Section 252K

This amendment removes the word ‘child’ from the provisions requiring police to inform specific people if a young person is charged, as people under the age of 12 (who are defined as a ‘child’ under the *Children and Young People Act 2008*) would no longer be able to be criminally responsible for an offence and therefore would not be able to be charged.

Clause 55 – New section 442A

This clause inserts new section 442A into the *Crimes Act 1900*. New section 442A provides that a record that discloses certain information about a person must not be disclosed to a court in a proceeding involving the person unless the information has been omitted. The information includes (in relation to a youth offence): a conviction or finding of guilt against the person; any action carried out by a police officer in relation to the person; a failure by the person to comply with police directions or a court order; a direction or order made by a court in relation to a criminal proceeding, that identifies the person; a finding that the person was not guilty; and a withdrawal of charges against the person.

A youth offence means an offence committed or allegedly committed by the person when they were under 12 years old.

Clause 56 – Record of youth offence particulars not to be disclosed in court proceedings Section 442A(2)

This clause commences on 1 July 2025 and provides that a record disclosing information under subsection (1) of new section 442A may be disclosed if the youth offence to which the information relates was a schedule offence committed when the person was at least 12 years old but under 14 years old.

A youth offence means an offence committed or allegedly committed by the person when they were under 14 years old.

Clause 57 – New part 33

This clause provides transitional provisions for the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*.

New section 623 of the *Crimes Act 1900* provides for transitional regulations.

New section 624 of the *Crimes Act 1900* provides that part 33 expires after 5 years.

New section 625 of the *Crimes Act 1900* provides that new Division 33.2 (Ending action etc for youth offences) applies to a person who is: in police custody in relation to a youth offence; subject to a criminal proceeding for a youth offence; or subject to a sentencing order for a youth offence.

New section 626 of the *Crimes Act 1900* provides that law enforcement action carried out by a police officer in relation to a person for a youth offence (before the commencement day) ends on the commencement day. If the law enforcement action is arrest or police custody, the chief police officer must ensure that reasonable steps are taken to ensure the safety of the person on their release.

Law enforcement action means: execution of a warrant; arrest; police custody; beginning a criminal proceeding; and administration of police bail.

New section 627 of the *Crimes Act 1900* provides that on the commencement day:

- A summons issued for a youth offence is withdrawn and ceases to have effect;
- A warrant issued for a youth offence is revoked and ceases to have effect;
- a decision of a police officer to grant or refuse to grant bail to a person for a youth offence ends and the person is entitled to be at liberty;
- a decision of a court to grant or refuse to grant bail to a person, or otherwise remand a person, in a criminal proceeding for a youth offence ceases to have effect and the person is entitled to be at liberty;
- a criminal proceeding against a person for a youth offence is discontinued; and
- a sentence imposed on a person for a youth offence ends.

New section 628 of the *Crimes Act 1900* provides that any: identification material; forensic material; any information obtained from forensic material; or any record of identification material, forensic material or a forensic procedure carried out on the person (where the material was collected or procedure carried out before the commencement date) be destroyed.

The chief police officer must also ensure that any information about these materials or records entered into a database or recorded by a police officer be removed from the database or record.

New section 629 of the *Crimes Act 1900* provides that if the director-general responsible for the *Crimes (Sentence Administration) Act 2005* is required under new part 33 of the *Crimes Act 1900* to release a person from custody who committed or is alleged to have committed a youth offence, the director-general must ensure reasonable steps are taken to ensure the safety of the person on their release.

New section 630 of the *Crimes Act 1900* provides that criminal justice action for a youth offence includes a broad range of actions such as investigating, apprehending or arresting a person, adjudicating a charge, convicting or sentencing a person and administering a sentence.

New section 631 of the *Crimes Act 1900* provides that the commencement of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* does not affect the validity of such criminal justice action which occurred before the commencement day.

New section 632 of the *Crimes Act 1900* provides that a person is not personally liable for any criminal justice action done honestly before the commencement day.

New section 633 of the *Crimes Act 1900* provides that a person who committed a youth offence before the commencement day is not, because of the enactment of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* entitled to compensation or damages as a result of any criminal justice action for the offence.

Clause 58 – New part 34

This clause doesn't commence until 1 July 2025. At that date, the clause will insert new part 34 of the *Crimes Act 1900* which largely replicates new part 33, but with different definitions to reflect the fact that the MACR will be raised to 14 at this time.

New section 634 of the *Crimes Act 1900* provides that 'commencement day' means 1 July 2025. It also provides that a 'schedule offence' – means an offence mentioned in the Criminal Code, schedule 1, column 2, as the consequences of raising the MACR to 14 will not apply to offences which are listed in this schedule.

New section 634 also provides that 'youth offence' means an offence, other than a schedule offence, committed or alleged to have been committed by a person who was at least 12 years old but under 14 years old when the offence happened.

New sections 637 to 645 largely replicate the transitional provisions at new part 33, but apply different or new definitions of: commencement day; schedule offence; and youth offence in order to reflect that the MACR will be raised to 14 at a later date.

Clause 59 – Dictionary, new definition of *under the age of criminal responsibility*

This clause inserts a new definition of *under the age of criminal responsibility* into the *Crimes Act 1900* so that for the purposes of that Act, a person is under the age of criminal responsibility for an offence if the person is not criminally responsible under the Criminal Code, section 25 for the offence.

Part 4 – *Crimes Restorative Justice Act 2004*

**Clause 60 – Objects of Act
Section 6 (e), except note**

This clause amends the objects of the *Crimes (Restorative Justice) Act 2004* to reflect that children under the MACR who commit acts that would be offences were they older, are within the scope of the Act and can be referred to restorative justice by entities which are outside the criminal justice system.

Clause 61 – Section 6, new note

This clause inserts a new note into section 6 of the *Crimes (Restorative Justice) Act 2004* to clarify that an offender (which includes a person who is alleged to have committed an offence) includes a person who has committed the physical elements of an offence but cannot be held criminally responsible because of their age.

**Clause 62 – Application of restorative justice
Section 7 (1), note**

This clause amends the note to section 7 of the *Crimes (Restorative Justice) Act 2004* to clarify the entities that may make referrals for the purposes of restorative justice.

**Clause 63 – Definitions—*child victim, parent and victim*
Section 11, definition of *victim*, paragraph (a)**

This clause updates a cross-reference in section 11 of the *Crimes (Restorative Justice) Act 2004* to the definition of ‘victim’ in section 6 the *Victims of Crime Act 1994*.

**Clause 64 – Definitions—offences and offenders
Section 12, new definition of *child offender***

This clause updates definitions in section 12 of the *Crimes (Restorative Justice) Act 2004* to include a new definition of child offender to reflect the raising of the MACR. A child offender is a child that has committed the physical elements of an offence which has harmed a victim, but who cannot be held criminally responsible as they are under the MACR.

Clause 65 – Section 12, definition of *young offender*

This clause updates the definition of young offender in section 12 of the *Crimes (Restorative Justice) Act 2004* to exclude those under the MACR (“child offenders”).

Clause 66 – New section 12 (2)

This clause inserts a new definition of ‘under the age of criminal responsibility’ into section 12 of the *Crimes (Restorative Justice) Act 2004* to reflect the change brought about by this Bill.

Clause 67 – Application of Act—less serious offence Section 14

This clause amends section 14 of the *Crimes (Restorative Justice) Act 2004* to include child offenders (those under the MACR who have committed an act that would be offence if they were older) within the scope of the application of the Act.

Clause 68 – Sections 15 and 16

This clause amends sections 15 and 16 of the *Crimes (Restorative Justice) Act 2004* relating to the application of the Act to serious, family violence and sexual offences to account for the introduction of ‘child offender’ into the Act. In some circumstances, due to the operation of the exceptions for certain offences, there may be child offenders aged 12 or 13 who are charged with or plead/are found guilty of an offence so that these sections will reflect the possibility that in some cases a child may still be prosecuted for certain offences. The amendments to section 16 also replace existing section 16(4) with new section 16(5). This provision clarifies that the Act can apply to offences committed before the commencement of the section. It is not intended to make any substantive change to the existing application of the Act. As a result of this amendment, the declaration in The Crimes (Restorative Justice) Phase 3 Declaration 2018 is no longer required and is repealed (see clause 4).

Clause 69 – Eligible offenders Section 19 (1) (b)

This clause amends section 19 of the *Crimes (Restorative Justice) Act 2004* to include eligibility criteria for child offenders. For any child offender to be eligible to participate in restorative justice conferencing they must not deny responsibility for having committed the act that harmed the victim.

Clause 70 – Accepting or not denying responsibility for offences Section 20 (1)

This clause amends section 20 of the *Crimes (Restorative Justice) Act 2004* to account for drafting changes to section 19 as set out in clause 69, above.

Clause 71 – Section 20 (2)

This clause amends section 20 of the *Crimes (Restorative Justice) Act 2004* to account for drafting changes to section 19 as set out in clause 82, above.

Clause 72 – Section 20 (2)

This clause amends section 20 of the *Crimes (Restorative Justice) Act 2004* to account for drafting changes to section 19 as set out in clause 69, above.

Clause 73 – Section 20, notes 1 and 2

This clause updates the notes to section 20 of the *Crimes (Restorative Justice) Act 2004* to account for the addition of “child offender” to the Act.

Clause 74 – Referring entities Section 22 (1)

This clause amends section 22 of the *Crimes (Restorative Justice) Act 2004* to reflect that referrals of children who are not subject to a criminal justice process may be referred to restorative justice, in particular by the Therapeutic Support Panel.

Clause 75 – Section 22 (2), new definition of *Therapeutic Support Panel*

This clause inserts a new definition of ‘Therapeutic Support Panel for Children and Young People’ into section 22 of the *Crimes (Restorative Justice) Act 2004*.

Clause 76 – Table 22, column 3 heading

This clause amends Table 22 of the *Crimes (Restorative Justice) Act 2004* to reflect that referrals of children who are not subject to a criminal justice process may be referred to restorative justice.

Clause 77 – Table 22, item 6

This clause amends the regulation making power in Table 22 of the *Crimes (Restorative Justice) Act 2004* to allow for additional referring entities to be prescribed by regulation. This will ensure that once service delivery arrangements for children under the MACR are settled, additional referrers can be added if necessary and appropriate.

Clause 78 – Suitability—general considerations Section 33 (1) (c)

This clause amends section 33 of the *Crimes (Restorative Justice) Act 2004* to reflect that referrals for restorative justice may come from non-criminal justice processes where a child offender is involved.

Clause 79 – Dictionary
New definition of *child offender*

This clause updates the Dictionary to the *Crimes (Restorative Justice) Act 2004* with a reference to the new definition of ‘child offender’ in section 12.

Part 4 – *Crimes (Sentencing) Act 2005*

This Bill introduces a new sentencing option, which will apply to all young offenders above the MACR – the Therapeutic Corrections Order (TCO). The TCO is intended to use intensive supervision methods and a therapeutic, problem-solving court environment to reduce and avoid harmful behaviour by taking into account the individualised needs of children and young people, particularly where that individual has high or complex needs, and to prevent the detention of children and young people. The TCO has been designed using aspects of the Intensive Corrections Order and the Drug and Alcohol Treatment Order, both of which are available in the ACT to adults, but not to young offenders.

The Community Services Directorate will provide continuity of case management where a child or young person is subject to an Intensive Therapeutic Order and is later sentenced to a TCO to ensure consistency of support and management of the child or young person’s needs.

Clause 80 – Imposition of penalties
Section 9 (2), note 1, new dot point

This amendment adds the new Therapeutic Corrections Order (TCO) to the list of sentencing options that can be imposed by the court.

Clause 81 – Application – pt 3.4
New section 22(d)

This amendment provides that if a court makes a TCO they may also make a non-association order or a place restriction order alongside the TCO, subject to Part 3.4 of the *Crimes (Sentencing) Act 2005*.

Clause 82 – Non-association and place restriction orders – maximum period
Section 24(1)(a)(i)

This amendment provides that where a non-association or place restriction order is made with a TCO the maximum period that the non-association or place restriction order can run for is 24 months.

Clause 83 – Core conditions
Section 80Y (3), definition of *positive*

This amendment rectifies the current legislation for the Drug and Alcohol Treatment Orders by moving the definition of a ‘positive’ test sample from the section dealing with core conditions to the section dealing with treatment program conditions.

Clause 84 – Treatment program conditions
New section 80Z (3)

This amendment rectifies the current legislation for the Drug and Alcohol Treatment Orders by moving the definition of a ‘positive’ test sample from the section dealing with core conditions to the section dealing with treatment program conditions.

Clause 85 – Young offenders – notice of orders to parent etc
New section 133J (1) (l) to (n)

Section 133J provides that for specific sections, notice needs to be given to the parent of the young offender or anyone else who has parental responsibility for the young offender under the *Children and Young People Act 2008*. The amendments list the relevant TCO provisions for which notice must be given.

Clause 86 – New part 8A.2A

This Bill introduces a new sentencing option, which will apply to all young offenders above the MACR – the Therapeutic Corrections Order (TCO). The TCO is intended to use intensive supervision methods and a therapeutic, problem-solving court environment to reduce and avoid harmful behaviour by taking into account the individualised needs of children and young people, particularly where that individual has high or complex needs, and to prevent the detention of children and young people. The TCO has been designed using aspects of the Intensive Corrections Order and the Drug and Alcohol Treatment Order, both of which are available in the ACT to adults, but not to young offenders.

Division 8A.2A.1 – Preliminary

New Section 133XA sets out a list of definitions for the new TCO.

Division 8A.2A.2 – General

New Section 133XB allows for the court to make a TCO. The TCO can only be made where a young offender has been convicted or found guilty of an offence and cannot be made if the young offender is already subject to a ‘sentencing order’ as defined in subsection (8). This prevents the concurrent ordering of a TCO with a sentence which may result in a period of detention for the young offender.

New Section 133XC sets out the maximum time for which a TCO may be imposed.

New Section 133XD sets out what obligations an offender must comply with when subject to a TCO. Core conditions of the order are baseline conditions which must be met by all offenders subject to a TCO. Therapeutic correction conditions are specific conditions to the offender which are put in place following the assessment of the needs of the young offender. Given the intended therapeutic and problem-solving nature of the court environment, the section also allows the court discretion to make any other obligation a part of the order to ensure that the sentence can be tailored to meet the specific needs of the individual and their circumstances.

New Section 133XE allows the court to make an order that the court considers appropriate to achieve the objects of the TCO. This is a broad provision intended to allow the court the powers necessary to create individualised orders which meet the criminogenic and therapeutic needs of the young offender.

Division 8A.2A.3 – Therapeutic correction orders - suitability

New Section 133XF requires the sentencing court to consider a therapeutic corrections assessment for the offender, and to approve a therapeutic correction plan for the offender, before making a TCO. The therapeutic corrections assessment considers whether a TCO is an appropriate sentence for the young offender in the circumstances and gives the court the relevant information required to make a decision concerning sentencing. The therapeutic corrections plan looks at the medical, psychiatric and psychological needs of the young offender and is intended to propose a course of action aimed at ensuring the young offender's rehabilitation.

New Section 133XG gives the sentencing court the power to order a therapeutic correction assessment for the young offender. The assessment is then prepared by a suitable person appointed by the CYP director-general. This section provides that an assessment must consider the list of assessment matters set out in section 133XH.

New Section 133XH sets out the matters required to be considered by the assessor when preparing the therapeutic correction assessment and lists circumstances where those matters might indicate that a TCO is not a suitable sentencing option for the young offender. Given the intention is that the TCO will sit between a Good Behaviour Order and a Suspended Sentence Order in the sentencing hierarchy, the targeted cohort for the TCO is young offenders who require additional support and resources to address multiple or complex needs. The criteria for unsuitability have been drafted broadly to ensure that the option of a TCO is available to as many young people as possible, while ensuring that the young offender can physically complete the order and that they are not being set up for failure.

New section 133XI provides the person preparing the therapeutic correction assessment with powers to investigate any matter the assessor considers appropriate, and to request information from entities. It is intended that the assessor will undertake a holistic overview of the needs and circumstances of the young

offender. Subsection (3) protects entities providing information under this section by allowing them to provide information necessary to the assessment without being concerned that the provision of the information would be a breach of confidence or professional ethics.

New section 133XJ gives the assessor the power to create a therapeutic correction plan for the young offender. The plan must address the medical, psychological or psychiatric needs of the young offender. It is intended that this plan would set out a course of action aimed at ensuring the young offender's rehabilitation, including potentially courses or programs which may be completed by the young offender, or any appropriate medical treatment.

New section 133XK states that a therapeutic correction assessment may be given to the court orally or in writing.

New section 133XL allows for the cross-examination of the assessor responsible for the therapeutic correction assessment.

Division 8A.2A.4 – Therapeutic correction orders - content

New section 133XM sets out the content that should be included in a TCO. In addition to the requirement for the order to set out the core and therapeutic correction conditions, the TCO also broadly requires the young offender to submit to the supervision of, and to comply with the directions of, the CYP director-general. This is to ensure that the young offender is adequately supervised while remaining in the community, and that the CYP director-general is able to give directions to the young offender which address circumstances which may arise over time following the imposition of the order.

New section 133XN specifies the core conditions of the TCO. These conditions are intended to be generally applicable to all offenders, and are intended to ensure that the young offender both stays within the supervisory jurisdiction of the ACT (unless allowed otherwise), and provides important information updates necessary for the order to be effective.

New section 133XO specifies the therapeutic correction conditions of the TCO. These conditions are intended to be chosen by the court to tailor the order to the young offender's therapeutic needs as set out in the therapeutic correction plan.

Division 8A.2A.5 – Therapeutic correction orders - supervision

New section 133XP requires the CYP director-general to report to the court if they have a belief on reasonable grounds that the young offender has breached any of the young offender's therapeutic correction obligations. This differs from the position taken with Good Behaviour Orders where a breach of an order may be, but is not required to be, reported. This is due to the underlying nature of the TCO as being an

intensive supervision order where the court has a therapeutic and problem-solving role post-sentencing. Ensuring that all breaches are brought before the sentencing court allows the court to evaluate the progress and compliance of the offender, and (where appropriate) make necessary adjustments.

New section 133XQ allows a sentencing court to issue a summons directing the young offender to appear before the court where there is information alleging the offender has breached any of their therapeutic correction obligations.

New section 133XR allows for a police officer to arrest a young offender without a warrant where the police officer believes on reasonable grounds that the young offender has breached any of their therapeutic correction obligations. 'Therapeutic correction obligations' are set out in section 133XD.

New section 133XS provides that a judge or magistrate may issue a warrant for a young offender where there are reasonable grounds for suspecting the young offender has breached their therapeutic correction obligations. 'Therapeutic correction obligations' are set out in section 133XD.

Division 8A.2A.6 – Therapeutic correction orders - breach

New section 133XT sets out the powers of the court in the event of a breach of the TCO by the young offender. Given the holistic and individualised nature of the order, the options are broad to allow for the court to take into account the context of the breach and act accordingly.

Division 8A.2A.7 – Therapeutic correction orders – review by court

New section 133XU provides that this division applies to the review of a therapeutic corrections order.

New section 133XV allows for the court to review a TCO at any time and for any reason if satisfied the review is in the interests of justice. As mentioned, the intent of the TCO is to be an order which requires intensive supervision by both the CYP director-general and the sentencing court. It is intended that these entities will work together in a problem-solving and therapeutic environment to address issues relevant to the young offender in a dynamic manner. When the court has reviewed the TCO, it may either confirm or amend the order as the court considers appropriate.

New section 133XW provides that the CYP director-general must apply for a review of a young offender's therapeutic correction order if the director-general believes that a change in the offender's circumstances is likely to substantially affect the offender's ability to comply with the order.

New section 133XX sets out the notice requirements for a proposed review of the TCO.

Division 8A.2A.8 – Therapeutic correction orders - miscellaneous

New section 133XY allows for evidentiary certificates to be provided to the court as evidence that must be accepted by the court if there is no evidence to the contrary. This new section also empowers the CYP director-general to appoint analysts. Section 133XY(4) makes it clear that such appointment is a notifiable instrument.

New section 133XZ sets out when a member of the therapeutic correction team may provide information to another member of the team. The ‘therapeutic correction team’ is defined in section 133XA as including the CYP director-general, the court, and any other entity prescribed by regulation. The intent of the TCO is to allow the court and the CYP director-general to work together closely to address the therapeutic needs of the young offender, and this purpose requires the free flow of necessary information between the parties in order to ensure that informed decisions regarding the young offender’s treatment and supervision are being made.

Clause 87 – Dictionary, definition of *assessor*, new paragraph (d)

Given that the new TCO provisions make allowance for an assessor to produce a therapeutic correction assessment prior to sentencing, the Dictionary has been amended to include the new definition of assessor.

Clause 88 – Dictionary, definition of *core conditions*

Both the Drug and Alcohol Treatment Order and the TCO include core conditions which are contained in the *Crimes (Sentencing) Act 2005*. This amendment updates the definition of ‘core conditions’ to include the TCO core conditions section.

Clause 89 – Dictionary, definition of *sentencing court*

Both Deferred Sentence Orders and the TCO refer to the sentencing court which made the relevant order. This amendment updates the definition of ‘sentencing court’ to include the TCO sentencing court section.

Clause 90 – Dictionary, new definitions

This amendment includes the new definitions relevant to the TCO into the Dictionary.

Part 6 – *Criminal Code 2002*

Clause 91 – Sections 25 and 26

Section 25 outlines the age at which a child can be held criminal responsible. The amendment to section 25 provides that the MACR is 12 years. This will ensure a child under the age of 12 cannot be held criminal responsible.

Section 26 provides the safeguard of *doli incapax* which provides that a child above the age of criminal responsibility, yet under 14 years of age, can only be held

criminally responsible for an offence if they know their conduct is wrong. This is a question of fact, and the burden of proof is placed on the prosecution. The amendment to section 26 reflects the new age of minimum responsibility and ensures the safeguard of *doli incapax* continues to apply to children above the MACR of 12 years, yet who are under the age of 14.

Clause 92 – Sections 25 and 26

This clause will amend section 25 to further raise the MACR to 14 years at a later commencement date. New section 25(2) provides that the MACR of 12 years will be retained when the age is raised to 14 years for those offences listed in the new schedule 1 of the Criminal Code.

This clause will also amend section 26 to ensure the safeguard of *doli incapax* is retained and will continue to apply for any person aged 12 or 13 years old who may be charged with one of the offences in new schedule 1 of the Criminal Code for which the MACR of 12 years is retained. Section 26 provides that a child can only be held criminally responsible if they know their conduct is wrong. This is a question of fact and the burden of proof is placed on the prosecution.

Clause 93 – New section 801

This clause inserts new section 801 into the Criminal Code to provide that the Minister must undertake a statutory review of the operation and effectiveness of all provisions of the Acts made by the Bill. This review is to commence after the end of 5 years after this section commences and requires the Minister to present a report of the review to the legislative Assembly before the end of 6 years after this section commences.

Clause 94 – New schedule 1

This clause inserts new schedule 1 into the Criminal Code. This schedule lists certain offences in the *Crimes Act 1900* and the *Criminal Code 2002* for which a minimum age of criminal responsibility of 12 years will be retained when the MACR is raised to 14 years old. This will mean that young people aged 12 or 13 years will be able to be charged for these offences.

Part 7 – Family Violence Act 2016

Clause 95 – Who may apply for protection order?

Section 16 (1), note 2

This clause amends a note to section 16(1) to reflect the change in the MACR. This notes that a child under 12 years cannot be a respondent to an application for a protection order.

Clause 96 – Section 16 (1), note 2

This clause amends a note to section 16(1) to reflect the further change in the MACR once the age is further raised to 14 years old. This notes that a child under 14 years cannot be a respondent to an application for a protection order.

Clause 97 – Section 75

Section 75 provides the age at which a child may be a respondent to an application for a family violence order. It also provides that a respondent who is under the age of 14 years is taken to have impaired decision-making ability for a proceeding for a family violence order, aligning with the principles of *doli incapax*.

This amendment provides that a child under the new MACR of 12 years cannot be a respondent to an application for a family violence order. It further provides that a child above the age of 12 years, but under 14 years of age, is taken to have impaired decision-making ability for a proceeding for a family violence order, keeping with the principles of *doli incapax*.

Clause 98 – Section 75

Section 75 provides the age at which a child may be a respondent to an application for a family violence order. It also provides that a respondent who is under the age of 14 years is taken to have impaired decision-making ability for a proceeding for a family violence order, aligning with the principles of *doli incapax*.

This clause amends section 75 to provide that a child under the age of 14 years cannot be a respondent to an application for a family violence order, once the MACR is further raised to 14 years. This amendment removes section 75(2) as no respondent will be under the age of 14 years, which is the age at which the principles of *doli incapax* no longer apply.

Clause 99 – Representation – party with impaired decision-making ability Section 76 (3), note

This clause amends a note to section 76(3) to reflect the change in the MACR. This notes that a child under 12 years cannot be a respondent to an application for a protection order.

Clause 100 – Section 76 (3), note

This clause amends a note to section 76(3) to reflect the change in the MACR. This notes that a child under 14 years cannot be a respondent to an application for a protection order.

Clause 101 – Police officer may apply for after-hours order

Section 99, note

This clause amends a note to section 99 to reflect the change in the MACR. This notes that a child under 12 years cannot be a respondent to an application for a protection order.

Clause 102 – Section 99, note

This clause amends a note to section 99 to reflect the change in the MACR. This notes that a child under 14 years cannot be a respondent to an application for a protection order.

Clause 103 – New part 23

This clause provides transitional provisions for the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*.

New section 212 of the *Family Violence Act 2016* provides for transitional regulations.

New section 213 of the *Family Violence Act 2016* provides that part 23 expires after 5 years.

New section 214 of the *Family Violence Act 2016* provides that new Division 23.2 (Ending action etc for family violence orders) applies to a child respondent.

New section 215 of the *Family Violence Act 2016* provides that enforcement action carried out by a police officer in relation to a proceeding for a family violence order (before the commencement day) ends on the commencement day. If the law enforcement action is arrest or police custody, the chief police officer must ensure that reasonable steps are taken to ensure the safety of the person on their release.

Enforcement action means: execution of a warrant; arrest; and police custody.

New section 216 of the *Family Violence Act 2016* provides that on the commencement day, applications made under the following sections of the Act in relation to a child respondent are discontinued and cease to have effect: sections 15, 83, 87, 89, 91, 101, 133, 134A and 147.

Section 216 also provides that a warrant issued under section 64 in relation to a child respondent is revoked and ceases to have effect on the commencement day.

Section 216 provides that if a child respondent is detained under section 105 the section ceases to apply and the child respondent is entitled to be at liberty on the commencement day.

Section 216 provides that any proceeding for a protection order against a child respondent or proceeding for an appeal against an appealable decision involving a child respondent is discontinued on the commencement day.

Section 216 provides that a recognised Family Violence Order made against a child respondent is revoked on the commencement day.

New section 218 of the *Family Violence Act 2016* provides that the commencement of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* does not affect the validity of family violence order action which occurred before the commencement day. Section 217 defines ‘family violence order action’ to include: making an application mentioned in section 216(1); arresting or detaining the respondent under the Act; making, amending or revoking a family violence order against the respondent; administering or enforcing a family violence order against the respondent; and making or enforcing a requirement for a person to pay costs in relation to a proceeding for a family violence order against the respondent.

New section 219 of the *Family Violence Act 2016* provides that a person is not personally liable for any family violence order action done honestly before the commencement day.

New section 220 of the *Family Violence Act 2016* provides that a child respondent to a proceeding for a family violence order begun before the commencement day is not, because of the enactment of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* entitled to compensation or damages as a result of any family violence order action in the proceeding.

Clause 104 – New part 24

This clause doesn’t commence until 1 July 2025. At that date, the clause will insert new part 24 of the *Family Violence Act 2016* which largely replicates new part 23, but with a different definition of ‘commencement day’ to reflect the fact that the MACR will be raised to 14 at this time.

New section 221 provides that ‘commencement day’ means 1 July 2025.

Part 8 – Personal Violence Act 2016

Clause 105 – Who may apply for personal protection order?

Section 12 (1), note

This clause amends a note to section 12(1) to reflect the change in MACR. This notes that a child under 12 years cannot be a respondent to an application for a personal protection order.

Clause 106– Section 12 (1), note

This clause amends a note to section 12(1) to reflect the further change in the MACR once the age is further raised to 14 years old. This notes that a child under 14 years cannot be a respondent to an application for a personal protection order.

Clause 107 – Section 69

Section 69 provides the age at which a child may be a respondent to an application for a protection order. It also provides that a respondent who is under the age of 14 years is taken to have impaired decision-making ability for a proceeding for a protection order, aligning with the principles of *doli incapax*.

This amendment provides that a child under the new MACR of 12 years cannot be a respondent to an application for a protection order. It further provides that a child above the age of 12 years, but under 14 years of age, is taken to have impaired decision-making ability for a proceeding for a protection order, keeping with the principles of *doli incapax*.

Clause 1084 – Section 69

Section 69 provides the age at which a child may be a respondent to an application for a protection order. It also provides that a respondent who is under the age of 14 years is taken to have impaired decision-making ability for a proceeding for a protection order, aligning with the principles of *doli incapax*.

This clause amends section 69 to provide that a child under the age of 14 years cannot be a respondent to an application for a family violence order, once the MACR is further raised to 14 years. This amendment removes section 69(2) as no respondent will be under the age of 14 years, which is the age at which the principles of *doli incapax* no longer apply.

Clause 109 – Representation – party with impaired decision-making ability Section 70 (3), note

This clause amends a note to section 70(3) to reflect the change in the MACR. This notes that a child under 12 years cannot be a respondent to an application for a protection order.

Clause 110 – Section 70 (3), note

This clause amends a note to section 70(3) to reflect the change in the MACR. This notes that a child under 14 years cannot be a respondent to an application for a protection order.

Clause 111 – New part 23

This clause provides transitional provisions for the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*.

New section 211 of the *Personal Violence Act 2016* provides for transitional regulations.

New section 212 of the *Personal Violence Act 2016* provides that part 23 expires after 5 years.

New section 213 of the *Personal Violence Act 2016* provides that new Division 23.2 (Ending action etc for personal protection orders) applies to a child respondent.

New section 214 of the *Personal Violence Act 2016* provides that law enforcement action carried out by a police officer in a proceeding for a protection order against a child respondent ends on the commencement day. If the law enforcement action is arrest or police custody, the chief police officer must ensure that reasonable steps are taken to ensure the safety of the person on their release.

Law enforcement action means: execution of a warrant; arrest; police custody; beginning a criminal proceeding; and administration of police bail.

New section 215 of the *Personal Violence Act 2016* provides that on the commencement day, applications made under the following sections of the Act in relation to a child respondent are discontinued and cease to have effect: sections 12, 13, 76, 81, 83, 91 and 93(b).

Section 215 also provides that a warrant issued under section 49 in relation to a child respondent is revoked and ceases to have effect on the commencement day.

Section 215 provides that any proceeding for a protection order against a child respondent or proceeding for an appeal against an appealable decision involving a child respondent is discontinued on the commencement day.

Section 215 provides that a registered order made against a child respondent is revoked on the commencement day.

New section 217 of the *Personal Violence Act 2016* provides that the commencement of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* does not affect the validity of protection order action which occurred before the commencement day. Section 216 defines 'protection order action' to include: making an application mentioned in section 215(1); arresting or detaining the respondent under the Act; making, amending or revoking a protection order against the respondent; administering or enforcing a protection order against the respondent; and making or enforcing a requirement for a person to pay costs in relation to a proceeding for a protection order against the respondent.

New section 218 of the *Personal Violence Act 2016* provides that a person is not personally liable for any protection order action done honestly before the commencement day.

New section 219 of the *Personal Violence Act 2016* provides that a child respondent to a proceeding for a protection order begun before the commencement day is not, because of the enactment of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* entitled to compensation or damages as a result of any protection order action in the proceeding.

Clause 112 – New part 24

This clause doesn't commence until 1 July 2025. At that date, the clause will insert new part 24 of the *Personal Violence Act 2016* which largely replicates new part 23, but with a different definition of 'commencement day' to reflect the fact that the MACR will be raised to 14 at this time.

New section 220 provides that 'commencement day' means 1 July 2025.

Part 9 – *Spent Convictions Act 2000*

Clause 113 – Overview of Act

Section 3 (3) (b)

This clause substitutes current section 3(3)(b) of the *Spent Convictions Act 2000* to reflect the fact that youth offence convictions are to be extinguished.

Clause 114 – Meaning of *extinguished* conviction

Section 7A (1)

This clause substitutes current section 7A(1) of the *Spent Convictions Act 2000* to provide that for youth offence convictions, section 19GB extinguishes the conviction.

Clause 115 – Which convictions can become spent?

New section 11 (2) (a)

This clause provides new wording for section 11(2)(a) of the *Spent Convictions Act 2000* to clarify that a conviction for an offence committed by an offender who was at least 12 years old when the offence was committed and for which a sentence of imprisonment of longer than 6 months was imposed cannot become spent.

Clause 116 – Section 11 (2) (a)

This clause provides new wording for section 11(2)(a) of the *Spent Convictions Act 2000* on 1 July 2025 to clarify that from this date a conviction for an offence committed by an offender who was at least 14 years old when the offence was committed and for which a sentence of imprisonment of longer than 6 months was imposed cannot become spent.

Clause 117 – Meaning of *youth sexual offence conviction* – pt 2
Section 14A, definition of *youth sexual offence conviction*, paragraph (a)

This clause provides new wording for section 14A(a) of the *Spent Convictions Act 2000* so that a youth sexual offence conviction means a conviction for a sexual offence committed by a person who was at least 12 years old when the offence was committed.

Clause 118 – Section 14A, definition of *youth sexual offence conviction*, paragraph (a)

This clause provides new wording for section 14A(a) of the *Spent Convictions Act 2000* so that a youth sexual offence conviction means a conviction for a sexual offence committed by a person who was at least 14 years old when the offence was committed. This clause commences on 1 July 2025. This reflects the raising of the MACR to 14 at that date.

Clause 119 – New part 3AA

This clause provides that a youth offence conviction (a conviction for an offence committed by a person who was under 12 years old when the offence was committed) is extinguished.

The clause provides at new section 19GB(2) that a youth offence conviction that is spent before the commencement of section 19GB is also extinguished.

Clause 120 – Sections 19GA and 19GB

This clause commences on 1 July 2025. This clause replaces new sections 19GA and 19GB of the Act and provides that a youth offence conviction means a conviction for an offence committed by a person who was under 14 years old when the offence was committed. The clause also provides that a youth offence conviction is extinguished except where the offence for which the conviction was imposed is an offence mentioned in the table at 19GB; and was committed by a person who was at least 12 years old, but under 14 years old, when the offence was committed.

These provisions reflect the fact that the MACR will be raised to 14 on 1 July 2025 and that the consequences of raising the MACR to 14 will not apply to offences which are listed in the table at 19GB.

Clause 121 – Consequences of conviction becoming extinguished
Section 19H (1A)

This clause inserts new section 19H(1A) to provide that, in addition to the consequences of a conviction becoming extinguished which already exist at section 19H of the *Spent Convictions Act*, the following consequences also apply to a person whose youth offence conviction has been extinguished:

- in applying an Act to the person, they are taken never to have committed or to have been charged, convicted, or sentenced for the offence the subject of the extinguished conviction; and
- it is lawful for the person to state in a proceeding before a court or tribunal that the person has not been charged or convicted of the offence.

Clause 122 – New section 19H(3)

This clause provides that where a youth offence conviction becomes extinguished, the consequences of that extinguishment apply, as per section 19H of the *Spent Convictions Act* but not in relation to an application by a person for registration under the *Working with Vulnerable People (Background Checking) Act 2011* (the WWVP Act) so that disclosure of extinguished youth offence convictions must still occur in accordance with the WWVP Act.

Clause 123 – Dictionary, new definition of *schedule offence*

This clause inserts a new definition of ‘schedule offence’ into the Dictionary of the *Spent Convictions Act 2000* so that the term means an offence mentioned in the Criminal Code, schedule 1, column 2. This clause commences on 1 July 2025.

Part 10 – *Victims of Crime Act 1994*

Clause 124 – Long title

This clause amends the long title of the *Victims of Crime Act 1994* to reflect that it will include provisions relating to harm that is not criminal, as a result of the raising of the age of criminal responsibility.

Clause 125– Objects of Act Section 3AA (b) and (c)

This clause amends the objects of the *Victims of Crime Act 1994* to reflect that it extends to non-criminal harm to victims as a result of the changes introduced by this bill.

Clause 126 – Who is a *victim*? Section 6 (1)

This clause amends the definition of ‘victim’ in section 6 of the *Victims of Crime Act 1994* to exclude new division 3A.3A from the scope of the definition in section 6.

Clause 127 – Victims may request referral of offences to restorative justice New section 15B (1A)

This clause amends section 15B of the *Victims of Crime Act 1994* to provide for the ability of a victim of a harmful act by a child under the MACR to request a referral to restorative justice.

Clause 128 – Section 15B (2), new definition of *under the age of criminal responsibility*

This clause amends section 15B(2) of the *Victims of Crime Act 1994* to insert a new definition of ‘under the age of criminal responsibility’.

Clause 129 – New division 3A.3A

This clause inserts new division 3A.3A into the *Victims of Crime Act 1994*. These amendments apply in relation to children under the age of 12 (see new section 15CA) until the certain provisions of this bill commence on 1 July 2025. At this time, the relevant age for new division 3A.3A is raised to 14.

Harm statements

Division 3A.3A establishes new rights and processes for a ‘harm statement’ that victims of harmful behaviour by children under the MACR will be able to provide to the Therapeutic Support Panel for its consideration.

Victims who are entitled to make a harm statement include those directly affected by the harmful behaviour, those with parental responsibility for the victim and close family members and carers.

A harm statement may be provided in writing or orally to the Therapeutic Support Panel, or in any other form that the Therapeutic Support Panel considers appropriate.

The statement will set out the impact of the harm on the victim, and the Therapeutic Support Panel must take it into account in exercising its functions.

The harm statement is intended to provide victims with a right to explain the impact of a child’s harmful behaviour on them to the Therapeutic Support Panel and to assist the panel in understanding the nature of a child’s behaviour and possible needs in determining an appropriate therapeutic response.

A harm statement is unlike a victim impact statement, which is provided after an offence has already been proved or a defendant has pleaded guilty. A harm statement is not intended to be proof of any of the circumstances that are set out by the victim, but rather becomes part of the factual matrix that the panel uses to develop a therapeutic response. As such, there is no opportunity to question a victim on the content of their statement in recognition of the fact that the panel is not a court and the panel is not establishing the culpability of or a criminal response to the child’s behaviour.

In appropriate circumstances the panel may provide the harm statement to the child, but only if it considers that this is in the best interests of the child and the victim agrees.

The amendments include a requirement that victims are advised about their ability to provide a harm statement to the panel as early as practicable.

Information disclosure

Division 3A.3A also provides for the disclosure of information to victims of information about the child that harmed the victim. The intention is that victims may be provided information that will help provide assurance that the child's needs are being met appropriately and to help manage matters such as safety concerns that a victim might have. In determining whether to release information, all relevant circumstances must be considered, including the age of the child, the nature of the harmful behaviour and the effect of that behaviour on the victim.

No personal or personal health information may be disclosed, so identifying information or specifics of treatment would not be provided to victims. These limits would operate as safeguards on the privacy of children, while still permitting relevant information to be provided to victims.

Clause 130 – Definitions—div 3A.3A Section 15CA (1), definition of *child*

This clause amends the definition of 'child' in new division 3A.3A to provide that a child means a person under 14 years old to reflect that the MACR will be raised to 14 on that date.

Clause 131 Section 15CB

This clause amends section 15CB, effective from 1 July 2025, to provide that the division does not apply if a child is the subject of criminal proceedings to reflect that some offences may still be the subject of prosecution where the offence is subject to an exception.

Clause 132 – Victim services scheme – eligibility Section 20

This clause amends section 20 of the *Victims of Crime Act 1994* to clarify that victims of harmful behaviour by children under the MACR are eligible for the victim support scheme.

Clause 133 – Dictionary, new definitions

This clause inserts additional terms into the Dictionary to the *Victims of Crime Act 1994* as a result of the insertion of division 3A.3A.

Clause 134 - Dictionary, definition of *victim*

This clause amends the definition of victim in the Dictionary to the *Victims of Crime Act 1994* to account for the addition of division 3A.3A.

Part 11 – *Victims of Crime (Financial Assistance) Act 2016*

Clause 135 - Meaning of *homicide* New section 10 (2)

This clause amends the definition of ‘homicide’ in section 10 of the *Victims of Crime (Financial Assistance) Act 2016* to ensure that witnesses to a homicide where the homicide was committed by a child who was under the MACR are eligible for financial support.

Clause 136 – Application to commissioner New section 31 (2A)

This clause amends section 31 of the *Victims of Crime (Financial Assistance) Act 2016* to modify application requirements for victims of an act of violence committed by a child under the MACR.

Clause 137 – Section 31 (5), new definition of *under the age of criminal responsibility*

This clause inserts a new definition of ‘under the age of criminal responsibility’ into the *Victims of Crime (Financial Assistance) Act 2016*.

Schedule 1 – Consequential amendments

Part 1.1 – *Children and Young People Act 2008*

[1.1] – Section 37, definitions of *entitled person* and *visitable place*

This clause omits ‘a therapeutic protection place’ and substitutes ‘an intensive therapy place’ at section 37 of the *Children and Young People Act 2008*.

[1.2] – Section 336, definition of *care and protection chapters*, paragraph (d)

This clause substitutes the definition of care and protection chapters, paragraph (d) at section 336 of the *Children and Young People Act 2008* for ‘Chapter 13 (Care and protection—emergency situations).

[1.3] – Section 336, definition of *care and protection chapter*, new paragraph (ea)

This clause inserts a new definition of ‘care and protection – intensive therapy for children and young people’ at section 336 of the *Children and Young People Act 2008*.

[1.4] – Section 336, definition of *care and protection chapters*, paragraph (g)

This clause substitutes the definition of care and protection chapter for ‘Chapter 16 (Care and Protection – intensive therapy for children and young people)’ at section 336 of the *Children and Young People Act 2008*.

[1.5] – Section 339 (4) (b), except note

This clause substitutes section 339 (4) (b) of the *Children’s and Young People Act 2008* with ‘is being confined at an intensive therapy place under an intensive therapy order—the person must be released’.

[1.6] – Section 340 (3)

This clause substitutes section 340 (3) of the *Children’s and Young People Act 2008* for ‘A young person confined at an intensive therapy place under an intensive therapy order must be released immediately the young person becomes an adult.’

[1.7] – Chapter 13, heading

This clause substitutes the Chapter 13 heading of the *Children and Young People Act 2008* for ‘Chapter 13 Care and Protection – emergency situations’.

[1.8] – Section 406 (1)

This clause omits ‘emergency therapeutic protection’ and substitutes ‘emergency intensive therapy’ at section 406 (1) of the *Children and Young People Act 2008*.

[1.9] – Section 413 (1) (b) (iv)

This clause substitutes section 413 (1) (b) (iv) of the *Children and Young People Act 2008* with ‘an intensive therapy order’.

[1.10] – Section 413 (2) (d)

This clause substitutes section 413 (2) (d) of the *Children and Young People Act 2008* with ‘section 541 (Intensive therapy orders—who must be given application).’

[1.11] – Section 415 (1) (a) (iv) and (v)

This clause substitutes sections 413 (1) (a) (iv) with ‘an interim intensive therapy order’ and (v) with ‘an intensive therapy order; and’ within the *Children and Young People Act 2008*.

[1.12] – Section 419, note

This clause substitutes the note at section 419 of the *Children and Young People Act 2008* to state that ‘If the director-general applies for an appraisal order, a care and protection order, an assessment order or an intensive therapy order for the child or young person, the director-general need only give a copy of the application to people before the application is heard by the court (see section 413).’

[1.13] – Section 420

This clause omits ‘emergency therapeutic protection’ and substitutes ‘emergency intensive therapy’ at section 420 of the *Children and Young People Act 2008*.

[1.14] – Section 502, new definition of *in intensive therapy*

This clause inserts ‘in intensive therapy – see section 576.’ At section 502 of the *Children and Young Peoples Act 2008*.

[1.15] – Section 502, definition of *in therapeutic protection*

This clause omits the definition of ‘in intensive therapeutic protection’ at section 502 of the *Children and Young People Act 2008*.

[1.16] – Section 694 (2) (e)

This clause substitutes section 694 (2) (e) to replace ‘a therapeutic protection’ with ‘an intensive therapy’.

[1.17] – Section 701 (1), note, paragraph (d)

This clause substitutes ‘section 541 (Intensive therapy orders—who must be given application).’ At section 701 (1), note, paragraph (d) of the *Children and Young People Act 2008*.

[1.18] – Section 806 (1) (d)

This clause substitutes section 806 (1) (d) of the *Children and Young People Act 2008* to state ‘the researcher conducting the research project at a place of care, a detention place or an intensive therapy place.’

[1.19] – Section 814, heading

This clause substitutes section 814 heading of the *Children and Young People Act 2008* to state ‘814 Power to enter premises—ch 13 (Care and protection and intensive therapy—emergency situations)’.

[1.20] – Section 814 (1) (a) and notes

This clause substitutes section 814(1)(a) of the *Children and Young People Act 2008* and inserts 2 new notes regarding definitions for new section 814(1)(a) to state ‘(a) the authorised person or police officer believes on reasonable grounds that a child or young person at the premises is in need of emergency care and protection; and

Note 1 In need of emergency care and protection is defined in s 403.

[1.21] – Section 816, heading

This clause substitutes section 816 heading of the *Children and Young People Act 2008* to state ‘816 Power to enter premises—ch 16 (Care and protection— intensive therapy for children and young people)’.

[1.22] – Section 816 (1)

This clause omits ‘a therapeutic protection place’ and substitutes ‘an intensive therapy place’ at section 816 (1) of the *Children and Young People Act 2008*.

[1.23] – Section 816 (2) (a) (i)

This clause substitutes ‘is deciding whether to declare the place as an intensive therapy place under section 589; and’ at section 816 (2) (a) (i) of the *Children and Young Act 2008*.

[1.24] – Section 816 (3)

This clause omits ‘therapeutic protection place’ and substitutes ‘intensive therapy place’ at section 816 (3) of the *Children and Young People Act 2008*.

[1.25] – Dictionary, definition of *operating entity*

This clause omits ‘therapeutic protection place’ and substitutes ‘intensive therapy place’ at the dictionary for the definition of operating entity in the *Children and Young People Act 2008*.

Part 1.2 – *Children and Young People Regulation 2009*

[1.26] – Section 3AC, heading

This clause replaces the heading at section 3AC of the *Children and Young People Regulation 2009* for ‘3AC Intensive therapy register—who may have access—Act, section 597 (1) (i)’.

Part 1.3 – *Crimes (Sentencing) Act 2005*

[1.27] – Section 33 (1) (y)

This clause replaces section 33(1)(y) of the *Crimes (Sentencing) Act 2005* for ‘if the *Crimes (Restorative Justice) Act 2004*, section 19 (1) (b) applies to the offender—that fact;’.

Part 1.4 – *Criminal Code 2002*

[1.28] – Section 712A (5), definition of *childrens proceeding*, paragraph (b) (iv) and (v)

This clause substitutes paragraph (b)(iv) and (v) for ‘(iv) an intensive therapy order; or (v) an interim intensive therapy order; or’.

Part 1.5 – Food Act 2001

[1.29] – Section 9 (1), definition of *sell* paragraph (o) (i)

This clause omits ‘therapeutic protection place’ and inserts ‘intensive therapy place’ at section 9 (1) of the *Food Act 2001*.

Part 1.6 – Human Rights Commission Act 2005

[1.30] – Section 8A, note 3

This clause omits ‘therapeutic protection place’ and substitutes ‘intensive therapy place’ at section 8A, note 3 of the *Human Rights Commission Act 2005*.

Part 1.7 – Juries Regulation 2018

[1.31] – Schedule 1, table 1.3, item 17, column 2

This clause substitutes schedule 1, table 1.3, item 17, column 2 of the Juries Regulation 2018 for ‘an employee at any of the following places: (a) a place declared to be a detention place under the *Children and Young People Act 2008*, section 142; (b) a place approved as a place of care under the *Children and Young People Act 2008*, section 525; (c) a place declared to be an intensive therapy place under the *Children and Young People Act 2008*, section 589’.

Part 1.8 – Mental Health Act 2015

[1.32] – Section 37 (1) (c)

This clause substitutes section 37(1)(c) of the *Mental Health Act 2015* for ‘the person is required to submit to the jurisdiction of the ACAT under an ACAT mental health provision in a care and protection order or interim care and protection order’.

[1.33] – Section 178 (1)

This clause omits ‘interim therapeutic protection order’ and substitutes ‘interim intensive therapy order’ at section 178(1) of the *Mental Health Act 2015*. Section 78 deals with recommendations about people with mental disorder or mental illness.

[1.34] – Dictionary, new definition of *interim intensive therapy order*

This clause inserts a new definition of ‘interim intensive therapy order’ into the Dictionary of the *Mental Health Act 2015* so that it states ‘interim intensive therapy order—see the *Children and Young People Act 2008*, section 543.’.

[1.35] – Dictionary, definition of *interim therapeutic protection order*

This clause omits the definition of ‘interim therapeutic protection order’ from the Dictionary of the *Mental Health Act 2015*.

Part 1.9 – Working with Vulnerable People (Background Checking) Act 2011

[1.36] – Schedule 1, section 1.1 (2) (b)

This clause substitutes section 1.1(2)(b) for ‘under an intensive therapy order’.

[1.37] – Schedule 1, section 1.1 (2), note

This clause omits the reference to pt 16.2 (Therapeutic protection orders) and substitutes it with ‘pt 16.2 (Intensive therapy orders);’ in the note at Schedule 1, section 1.1(2) of the *Working with Vulnerable People (Background Checking) Act 2011*.

[1.38] – Schedule 1, section 1.1 (3)

This clause inserts a new definition for *intensive therapy order* in schedule 1, new section 1.1(3) so that it states, ‘In this section: *intensive therapy order*, for a child or young person—see the Children and Young People Act 2008, section 532.’