

Children (Criminal Proceedings) Amendment (Youth Conduct Orders) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Children (Criminal Proceedings) Act 1987* and the *Children (Criminal Proceedings) Regulation 2005* to provide for the establishment of a youth conduct order scheme for dealing with children who have been charged with (or pleaded guilty to or been found guilty of) offences covered by the *Young Offenders Act 1997*, but for whom the diversionary scheme created by the *Young Offenders Act 1997* is not appropriate.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Children (Criminal Proceedings) Act 1987* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Children (Criminal Proceedings) Regulation 2005* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987

Establishment of the youth conduct order scheme

Schedule 1 [1] inserts a Part 4A in the *Children (Criminal Proceedings) Act 1987* (the **Principal Act**) to establish the youth conduct order scheme (**the scheme**). The new Part contains the following provisions:

Division 1 Interpretation

The proposed Division includes the following provisions relating to the interpretation of the new Part:

- (a) a provision setting out the objects of the new Part (proposed section 48A),
- (b) provisions defining terms and expressions used in the new Part (proposed sections 48B–48D).

Proposed section 48B, among other things, defines the term **ASB pilot project** to mean the multi-agency intervention strategy known as the Anti-Social Behaviour Pilot Project that was established by the Government in September 2006. This pilot project is intended to continue to operate when the scheme commences operation.

The scheme operates in relation to relevant offences committed, or alleged to have been committed, by children. Proposed section 48D defines the term **relevant offence** to cover the same kinds of offences by children as are covered by the *Young Offenders Act 1997*.

Proposed section 48E enables the Governor to make regulations concerning eligibility criteria for participation in the scheme. The proposed section also enables the regulations to provide for the continued participation in the scheme of persons who committed relevant offences while they were children, but who have now become adults who are less than 21 years old.

Division 2 Overview of scheme

The proposed Division contains a summary of the operation of the scheme. The scheme will operate as follows:

- (a) Child commits, or is alleged to have committed, a relevant offence

A child is charged with (or has pleaded guilty to or been found guilty of) a relevant offence.

- (b) **Referral of child for suitability assessment**

The Children's Court may make a suitability assessment order under proposed section 48G in relation to such a child if satisfied of certain matters, including that it would not be appropriate for the child to be dealt with instead under the *Young Offenders Act 1997*. The consent of the child will be required if the child has not yet pleaded guilty to or been found guilty of the relevant offence. The order operates to adjourn the criminal proceedings so that a suitability assessment can be carried out in relation to the child in accordance with the regulations.

- (c) **Children's Court makes youth conduct order**

The Children's Court may make an interim youth conduct order or a final youth conduct order in respect of the child under proposed section 48L if satisfied of certain matters, including that the child has been assessed as being suitable for participation in the scheme following a suitability assessment. An *interim youth conduct order* requires the child to participate in the preparation of a final conduct plan to be approved by the Children's Court when it makes a final youth conduct order. Such an order may have effect for a period not exceeding 2 months. While the order is in effect, the child will be required to comply with an interim conduct plan prepared in accordance with the regulations. A *final youth conduct order*, on the other hand, requires the child to comply with the final conduct plan that the child has participated in preparing. Such an order may have effect for a period not exceeding 12 months. A *conduct plan* is a plan that provides for the kinds of conduct that a child must, or must not, engage in while a youth conduct order is in effect with respect to the child. While a youth conduct order (whether interim or final) is in effect, the Children's Court will not be required to make a finding as to a child's guilt (if there has not yet been a finding or a guilty plea) or to consider penalties for the offence (if there has been a finding of guilt or a guilty plea). Also, the Children's Court is taken to have dispensed with the requirement for bail for the relevant offence while the order is in effect.

- (d) **Child to comply with youth conduct order**

A child who is subject to a youth conduct order (whether interim or final) must comply with the order. Proposed Division 6 makes provision for the enforcement of youth conduct orders. A failure to comply with a youth conduct order may result in the child being returned to the Children's Court for the Court to deal with the child. If a child complies with a final youth conduct order, the child's compliance will be taken into account when dealing with the child for the relevant offence concerned.

Division 3 Suitability assessments

The proposed Division provides for the referral of a child for an assessment as to the child's capacity and prospects to participate in the scheme (a ***suitability assessment***). Proposed section 48G provides that a child may be referred for a suitability assessment by an order made by the Children's Court (a ***suitability assessment order***). The Court may make such an order in respect of a child if:

- (a) the child has:
 - (i) pleaded guilty to, or been found guilty of, the relevant offence, or
 - (ii) in any other case—consented to the making of the order, and
- (b) the Court is satisfied that the child has been afforded an opportunity to seek advice on the proposed order from an Australian legal practitioner, and
- (c) in the case where the child has not pleaded guilty to, or has not yet been found guilty of, the relevant offence—the Court is satisfied that the child had sufficient information by the time of the hearing to enable the child to make an informed choice about whether to consent to the making of the order, and
- (d) the child has been granted an approval (a ***scheme participation approval***) in accordance with the regulations for the potential participation of the child in the scheme unless the Court considers that it was not possible in the circumstances for the approval to be granted in time for the hearing. Proposed section 48H provides that a suitability assessment is to be conducted in accordance with the regulations.

Proposed section 48I provides that bail may be granted to a child in relation to a relevant offence on condition that the child submit to a suitability assessment.

Division 4 Preparation of conduct plans

Proposed sections 48J and 48K provide for the preparation of interim and final conduct plans in accordance with the regulations for submission to the Children’s Court for its consideration and approval when framing the terms of interim and final youth conduct orders. A conduct plan may contain only the kinds of provisions specified by proposed section 48C.

A youth conduct order cannot be made by the Children’s Court unless an appropriate conduct plan has been submitted for the consideration and approval of the Court. An interim conduct plan needs to be submitted for an interim youth conduct order while a final conduct plan needs to be submitted for a final youth conduct order.

Division 5 Making of youth conduct orders

The proposed Division contains provisions relating to the making of, and reviews of and appeals against, youth conduct orders. Proposed section 48L enables the Children’s Court to make interim and final youth conduct orders, subject to certain preconditions.

Proposed section 48M requires the Children’s Court to explain to a child the child’s obligations under a youth conduct order and the consequences of failing to comply with the obligations. Proposed section 48N enables the Children’s Court to review a youth conduct order. Proposed section 48O enables a child to appeal to the District Court, with the leave of the Court, against a youth conduct order made in respect of the child or against the variation or revocation of such an order.

Division 6 Enforcement of youth conduct orders

The proposed Division provides for the consequences of the revocation of youth conduct orders and of complying (or failing to comply) with such orders. Proposed section 48P enables the Children’s Court to require a child to appear before it if the child fails to comply with a youth conduct order. If satisfied that the child has failed to comply with an order, the Court may:

- (a) administer a warning to the child, or
- (b) decide to take no action with respect to the failure to comply, or
- (c) vary the order, or

- (d) revoke the order.

Proposed section 48Q provides for the consequences of the revocation of a youth conduct order. If the child concerned did not plead guilty to (or had not yet been found guilty of) a relevant offence before the order was made, the Court may proceed to determine whether the child is guilty and, if so, deal with the child under Division 4 of Part 3 of the Principal Act (which provides for the imposition of penalties for offences). If the child pleaded guilty to (or was found guilty of) a relevant offence before the order was made, the Court may deal with the child under Division 4 of Part 3 of the Principal Act. In determining penalties, the Court will have to take into account the extent to which a child complied, or failed to comply, with a revoked youth conduct order.

Proposed section 48R deals with the consequences of a child successfully complying with a final youth conduct order for a relevant offence. If the child did not plead guilty to (or had not yet been found guilty of) a relevant offence before the order was made, the Court may dismiss the charge for the offence. If the child pleaded guilty to (or was found guilty of) a relevant offence before the order was made, the Court may deal with the child under Division 4 of Part 3 of the Principal Act having regard to the child's compliance with the order.

Division 7 Miscellaneous

The proposed Division contains the following provisions:

- (a) a provision that limits the use of certain evidence obtained as a consequence of participation in or assessment for the scheme or the ASB pilot project (proposed section 48S),
- (b) a provision that limits the disclosure of information obtained in connection with the scheme or the ASB pilot project (proposed section 48T),
- (c) a provision that enables information to be shared and exchanged between scheme administrators and other relevant agencies (proposed section 48U),
- (d) a provision that requires the destruction of photographs, finger-prints, palm-prints and other records relating to a child charged with a relevant offence where that charge is dismissed following the child's successful participation in the scheme (proposed section 48V),
- (e) a provision conferring a general regulation-making power in relation to the scheme (proposed section 48W),
- (f) a provision setting out the relationship between the new Part and other legislation and matters (proposed section 48X),
- (g) a provision that provides for the new Part to cease to have effect after the scheme has been in operation for 26 months or by such later day as may be prescribed by the regulations (proposed section 48Y).

Consequential amendment

Schedule 1 [2] makes a consequential amendment to section 50 of the Principal Act.

Savings and transitional provisions

Schedule 1 [3] amends clause 1 of Schedule 2 to the Principal Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [4] inserts a Part 15 in Schedule 2 to the Principal Act to provide that Part 4A (as inserted by the proposed Act) extends to relevant offences committed, or alleged to have been committed, by a child before the commencement of the Part, but only if the child is charged with the offence after that commencement.

Schedule 2 Amendment of Children (Criminal Proceedings) Regulation 2005

Schedule 2 [2] inserts a Part 2 in the *Children (Criminal Proceedings) Regulation 2005* (the *Principal Regulation*). The new Part contains the following provisions relating to the administration of the scheme:

- (a) interpretative provisions (clause 4),
- (b) prescribed eligibility criteria for participation in the scheme (clause 5),
- (c) the appointment of authorised scheme officers (clause 6),
- (d) provisions relating to the granting of scheme participation approvals (clause 7),
- (e) provisions relating to the referral of children for, and the conduct of, suitability assessments (clauses 8–10),
- (f) provisions relating to the preparation of interim and final conduct plans (clauses 11 and 12),
- (g) provisions relating to the making of applications in connection with youth conduct orders (clauses 13–17),
- (h) provisions relating to the preparation of compliance reports and scheme operation reports (clauses 18 and 19),
- (i) provisions for the establishment and functions of Case Coordination Senior Officers' Groups to conduct suitability assessments and administer the scheme (clauses 20–24),
- (j) a provision for the issue of scheme directions by the Director-General of the Department of Premier and Cabinet (clause 25),
- (k) a provision for the delegation of functions by the Director-General (clause 26),
- (l) provisions prescribing matters for the purposes of proposed sections 48O, 48T and 48U to be inserted in the *Children (Criminal Proceedings) Act 1987* by Schedule 1 [1] to the proposed Act (clauses 27 and 28).

The areas of operation of the scheme will be limited, at least initially, to the Campbelltown, Mount Druitt and New England Local Area Commands for the NSW Police Force. The eligibility criteria to be prescribed by clause 5 provide that one of the criteria is that a child permanently or temporarily resides in, or is an habitual visitor to, the area of one of these Commands. A police officer of or above the rank of Superintendent will be required to consent before a child can be granted a scheme participation approval.

The eligibility criteria prescribed by clause 5 also provide that a child must be aged 14 years or over but less than 18 years old at the time that the offence or alleged offence occurred, but less than 19 years old when it is first proposed to make a youth conduct order with respect to the child. Clause 5 also provides for the continued participation in the scheme of persons who are 18 years old or older (but less than 21 years old) in relation to relevant offences committed (or alleged to have been committed) by such persons while they were aged 14 years old or older (but less than 18 years old). A child will not be able to be admitted to the scheme after the scheme has been in operation for 12 months.

Schedule 2 [1] and [3] insert Part headings in the Principal Regulation consequent on the insertion of the new Part. **Schedule 2 [4]** rennumbers certain existing clauses of the Principal Regulation consequent on the insertion of the new Part.