

#### Explanatory note

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

This Bill is cognate with the Courts and Crimes Legislation Amendment Bill 2008.

#### Overview of Bill

The object of this Bill is to amend the Children (Criminal Proceedings) Act 1987 (the Principal Act) as follows:

- (a) to extend the guiding principles of the Principal Act,
- (b) to impose a general duty on the Children's Court to ensure that criminal proceedings are explained to any child who is the subject of the criminal proceedings,
- (c) to allow a child aged 14 years or over to be accompanied by an interview friend (who is not their parent) when being interviewed by police,
- (d) to make further provision with respect to the detention of adults in juvenile detention centres,
- (e) to make provision for the imposition of good behaviour bonds by the Children's Court more consistent with the Crimes (Sentencing Procedure) Act 1999,

#### Explanatory note page 2

#### Children (Criminal Proceedings) Amendment Bill 2008

#### Explanatory note

- (f) to enable the Children's Court to impose a fine in addition to probation in respect of a person found guilty of an offence,
- (g) to enable the Children's Court to impose both a community service order and a probation order in respect of a person found guilty of an offence,
- (h) to require the Children's Court to take certain matters into consideration before imposing a fine on a child,
- (i) to enable the Children's Court to exercise certain powers under road transport legislation in relation to persons whom it finds guilty of an offence (in the absence of a conviction),
- (j) to increase the maximum amount of compensation that may be ordered by the Children's Court,
- (k) to allow more than 2 consecutive or concurrent control orders to be imposed in respect of a child offender (up to a maximum total detention period of 3 years),
- (l) to repeal an uncommenced provision of the Principal Act relating to bail,
- (m) to confirm that background reports on children and victim impact statements may be utilised in certain proceedings before the Children's Court,
- (n) to remove the requirement that a non-parole period be set at the time that a control order is made, if the control order is suspended,
- (o) to make other minor, consequential and ancillary amendments.

#### The Bill also:

- (a) amends the Children (Community Service Orders) Act 1987 so that participation in an approved personal development, educational or other program may be counted as community service work, and
- (b) amends the Criminal Procedure Act 1986 to extend the powers of a Local Court when dealing with traffic offences committed by children, and
- (c) makes consequential amendments to other legislation.

#### 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 with the exception of clause 6, which commences on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Children (Community Service Orders) Act 1987 and the Criminal Procedure Act 1986 set out in Schedule 2.

Explanatory note page 3

Children (Criminal Proceedings) Amendment Bill 2008

Explanatory note

Clause 5 is a formal provision that gives effect to the consequential amendments to other legislation set out in Schedule 3.

Clause 6 repeals the Crimes Amendment (Detention after Arrest) Act 1997 which contains an uncommenced amendment to section 9 of the Principal Act that is now redundant. The remaining provisions of that Act have commenced.

Clause 7 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

Extension of guiding principles of Principal Act

Schedule 1 [7] requires all persons or bodies exercising functions under the Principal Act (rather than just a court) to have regard to the guiding principles set out in the Act when exercising functions under the Act.

Schedule 1 [8] provides for the following additional principles of the Principal Act:

- (a) that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties,
- (b) that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions,
- (c) that, subject to the other principles of the Act, consideration should be given to the effect of any crime on the victim.

Explanation of proceedings

At present, section 12 of the Principal Act requires the Children's Court to be satisfied that criminal proceedings being brought against a child have been explained to the child, before the proceedings go ahead. Schedule 1 [11] replaces that requirement with a requirement that the Children's Court itself ensure that the child understands the criminal proceedings.

Interview friends

Under section 13 of the Principal Act, a statement made by a child to police is not admissible in evidence in criminal proceedings unless the child was at the time in the company of a person responsible for the child (generally a parent), an adult nominated by that person or a lawyer. Alternatively, a child who is aged 16 years or over may himself or herself nominate any adult to accompany him or her in the interview. Schedule 1 [12] extends this entitlement to children aged 14 years and over. Schedule 1 [13] is a related amendment, to ensure that a police officer who has care of a child cannot be considered to be such an interview friend.

Explanatory note page 4

Children (Criminal Proceedings) Amendment Bill 2008

Explanatory note

Schedule 1 [3] updates the definition of person responsible for a child, so that it includes any person who has parental responsibility for a child. This expression is consistent with the Children and Young Persons (Care and Protection) Act 1998.

Schedule 1 [10] is a similar amendment to the definition of member of the immediate family of a person. Schedule 1 [2] is a related amendment.

Detention of adults in juvenile detention centres

At present, a court (other than the Children's Court) can direct that all or any part of a sentence of imprisonment imposed on a person who is under 21 years of age be

served by that person in a children's detention centre rather than a correctional centre.

Schedule 1 [15] provides that such a direction may not be given in respect of a person who is of or above the age of 18 years, and who is serving (or has previously served) a term of imprisonment in a correctional centre, unless the court is satisfied that there are special circumstances to justify such a direction.

This requirement is in addition to the existing requirement that a person who is of or above the age of 18 years, and who is sentenced to imprisonment for a serious children's indictable offence is not eligible to serve the sentence as a juvenile offender, unless the sentencing court is satisfied that there are special circumstances to justify such a direction.

Schedule 1 [16] makes it clear that special circumstances can only be found on one or more of three grounds, namely, that the offender is vulnerable on account of illness or disability, that the only available educational, vocational training or therapeutic programs for the offender are those offered at detention centres or that there would be an unacceptable risk of the offender suffering harm if he or she were to be committed to a correctional centre. It also requires a court that makes a finding of special circumstances to make a record of its reasons for making that finding in the particular case.

Schedule 1 [22] provides that if an offender is detained under an order of the Children's Court, or a court exercising the functions of the Children's Court, known as a control order, and the offender is of or above the age of 21 years, the offender is to be committed to the control of the Minister for Justice (and therefore accommodated in a correctional centre rather than a children's detention centre).

There is no change to the power to impose a control order in respect of persons under the age of 21 years. Schedule 1 [26] is a consequential amendment that provides that the period for which an offender is committed to the control of the Minister for Justice will be taken to be a sentence of imprisonment.

Penalties for offences

Schedule 1 [18] and [19] make the provisions relating to the imposition of a good behaviour bond by the Children's Court more consistent with the sentencing options for adult offenders under sections 9, 10 and 12 of the Crimes (Sentencing Procedure) Act 1999. Under sections 9, 10 and 12 of the Crimes (Sentencing Procedure) Act 1999 a good behaviour bond may be imposed on a person when an offender is

Explanatory note page 5

Children (Criminal Proceedings) Amendment Bill 2008

Explanatory note

discharged (following a guilty finding when no conviction is entered), or as an alternative to a sentence of imprisonment or if a decision is made to suspend a sentence of imprisonment. The amendments make it clear that the Children's Court has similar powers to impose a good behaviour bond, namely, when it discharges the offender, or as an alternative to a control order or if a decision is made to suspend a control order. Schedule 1 [14], [23], [38], [39], [43], [44] and [46] are consequential amendments.

Schedule 1 [20] enables the Children's Court to impose a fine on a child in addition to making an order releasing the child on probation (at present these are alternative penalties).

Schedule 1 [21] enables the Children's Court to release a person on probation and impose a community service order on the person (at present these are alternative penalties). Schedule 1 [27], [40] and [41] are consequential amendments. Schedule 3.1 [2] includes an amendment to the Children (Criminal Proceedings) Regulation 2005 to allow the probation order to include a condition requiring compliance with the community service order.

Schedule 1 [24] requires the Children's Court, before it makes an order imposing a

fine on a child, to consider the age of the child and the following matters (where information is available in relation to those matters):

(a) the child's ability to pay the fine,

(b) the potential impact of the fine on the rehabilitation of the child.

In relation to contraventions of road transport legislation, the Children's Court has the same power as other courts to impose any licence disqualification on a person whom it has found guilty of an offence. Under road transport legislation, some disqualifications may be imposed only if a person has been convicted of an offence. Schedule 1 [29] will enable the Children's Court to impose any such disqualification on a person whom it has found guilty of an offence (in the absence of a conviction). Schedule 1 [4], [5] and [28] are related amendments.

The amendments will also apply to any court exercising the powers of the Children's Court under the Principal Act.

Maximum amount of compensation that may be awarded

At present, the Principal Act allows the Children's Court to direct an offender to pay compensation to a victim of crime, up to a maximum amount of \$1,000.

Schedule 1 [42] increases this maximum to 10 penalty units (currently \$1,100) in the case of an offender who is under the age of 16 years at the time the compensation is ordered or 20 penalty units (currently \$2,200) in any other case.

Consecutive and concurrent control orders

At present, the Children's Court can make an order requiring a person who commits an offence to be detained for a period of up to 2 years. If the person subject to the control order commits an offence while in custody, the Children's Court may make another control order (which is either partly concurrent or is consecutive), as long as Explanatory note page 6

Children (Criminal Proceedings) Amendment Bill 2008

Explanatory note

the total period of detention does not exceed 3 years. However, no more than 2 control orders can be made with respect to the person at any one time.

Schedule 1 [30]–[34] remove this restriction, so that any number of consecutive or concurrent control orders can be made, provided that the total period for which the person is detained under those orders does not exceed 3 years.

Schedule 1 [35] is a related amendment to make it clear that the provisions that apply Parts 3 and 4 of the Crimes (Sentencing Procedure) Act 1999 to the Children's Court are subject to anything to the contrary in the Principal Act. For instance, the maximum detention period in respect of concurrent or consecutive control orders in respect of juvenile offenders is 3 years, which is a departure from the 5 year limitation provided for by section 58 of the Crimes (Sentencing Procedure) Act 1999.

Other amendments

At present, if a child is taken into custody in connection with criminal proceedings, and has not been released on bail, the Principal Act requires the child to be brought before the Children's Court or an authorised justice for the making of a bail determination by the next working day. Schedule 1 [9] repeals this requirement, which is uncommenced. However, a more general requirement, that the child must be brought before the Children's Court as soon as practicable, will be commenced by the amendments (see Schedule 1 [1]).

Schedule 1 [17] enables the Children's Court to have regard to a background report in relation to a person before making a decision as to whether proceedings should be dealt with on indictment rather than summarily.

Schedule 1 [25] removes the requirement that the Children's Court set a non-parole period at the time of imposing a control order, if the control order is suspended on condition that the person enter into a good behaviour bond. Instead, the Children's Court will be required to set a non-parole period if the person later contravenes the good behaviour bond and the Court decides to revoke the good behaviour bond (see

Schedule 1 [45]). These changes are consistent with changes made to the Crimes (Sentencing Procedure) Act 1999 by the Crimes and Courts Legislation Amendment Act 2006. Schedule 1 [36] is a consequential amendment.

Schedule 1 [37] makes it clear that the provisions of the Crimes (Sentencing Procedure) Act 1999 relating to the use of victim impact statements apply to the Children's Court (in the same way as they apply to similar offences when dealt with by a Local Court).

Schedule 1 [6] updates the definition of traffic offence in the Principal Act, so that it includes offences under the Motor Accidents Compensation Act 1999 and so that reference to a repealed Act is removed.

Schedule 1 [47] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [48] provides for the application of the amendments.

Explanatory note page 7

Children (Criminal Proceedings) Amendment Bill 2008

Explanatory note

Schedule 2 Amendment of other Acts

Community service orders

Schedule 2.1 amends the Children (Community Service Orders) Act 1987 so that participation in any personal development, educational or other program approved, or of a class or description approved, by the Minister may be counted as community service work for the purposes of compliance with a community service order. A court that makes a community service order may recommend that the community service work include participation in any such development, educational or other program.

Penalties for traffic offences

Schedule 2.2 amends the Criminal Procedure Act 1986 to enable a Local Court to impose any penalty that the Children's Court could impose in respect of a child found guilty of an offence against the Motor Accidents Compensation Act 1999.

Schedule 3 Consequential amendments to other legislation

Schedule 3.1, 3.2 and 3.4 amend the following legislation as a consequence of the changes made by Schedule 1 in relation to the types of penalties that may be ordered by the Children's Court:

- (a) Children (Criminal Proceedings) Regulation 2005,
- (b) Children (Interstate Transfer of Offenders) Act 1988,
- (c) Victims Support and Rehabilitation Act 1996.

The amendments principally update cross-references to the Principal Act.

Schedule 3.3 amends the Crimes (Administration of Sentences) Act 1999 as a consequence of the amendments proposed to be made by Schedule 1 [22] under which offenders of or above the age of 21 years on whom control orders are imposed by the Children's Court, or by any other court exercising the jurisdiction of the Children's Court, are to be detained in correctional centres rather than children's detention centres.