

TASMANIA

YOUTH JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2012

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YOUTH JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2012

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
19 March 2013

*(Brought in by the Minister for Children, the Honourable
Michelle Anne O'Byrne)*

A BILL FOR

An Act to amend the *Youth Justice Act 1997*, and, in their application to youths, certain provisions in the *Monetary Penalties Enforcement Act 2005*, the *Police Offences Act 1935* and the *Victims of Crime Compensation Act 1994*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Youth Justice (Miscellaneous Amendments) Act 2012*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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Part 2 – Youth Justice Act 1997 Amended

PART 2 – YOUTH JUSTICE ACT 1997 AMENDED

3. Principal Act

In this Part, the *Youth Justice Act 1997** is referred to as the Principal Act.

4. Long title amended

The long title of the Principal Act is amended by omitting “punishment” and substituting “sanctioning”.

5. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *Chief Magistrate*:

Commissioner for Children means the Commissioner for Children appointed under section 78 of the *Children, Young Persons and Their Families Act 1997*;

- (b) by inserting the following definitions after the definition of *community conference*:

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community service means attending, or undertaking, a community service activity;

community service activity means an activity that is approved under section 6A;

- (c) by inserting the following definition after the definition of *complaint*:

controlled substance has the same meaning as in the *Misuse of Drugs Act 2001*;

- (d) by inserting the following definition after the definition of *detention period*:

Director, Monetary Penalties Enforcement Service has the same meaning as in the *Monetary Penalties Enforcement Act 2005*;

- (e) by inserting the following definition after the definition of *goods*:

Government Agency has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

- (f) by inserting the following definition after the definition of *informal caution*:

information-sharing entity has the same meaning as in the *Children,*

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*Young Persons and Their
Families Act 1997;*

- (g) by inserting the following definition after the definition of *legal representative*:

nominated adult, in relation to a youth, means an adult who –

- (a) has had a close association with the youth or has been counselling, advising or aiding the youth; and
 - (b) has not been charged with the offence in respect of which the youth has been taken into custody or is not suspected, by a police officer on reasonable grounds, of being directly or indirectly involved in the commission of that offence; and
 - (c) has been nominated by the youth;
- (h) by inserting the following subparagraph after subparagraph (iii) in paragraph (b) of the definition of *prescribed offence*:
- (iiia) an offence under section 125A of the *Criminal Code* (maintaining a sexual relationship with a young

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person under the age of 17 years);
and

- (i) by omitting the definition of *responsible adult* and substituting the following definition:

responsible adult, in relation to a youth, means a person who –

- (a) is a nominated adult in relation to the youth; or
- (b) if there is no nominated adult in relation to the youth, a justice of the peace;

6. Section 4 amended (Objectives of Act)

Section 4 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (e) “treatment, punishment and rehabilitation” and substituting “treatment and rehabilitation and, if necessary, is appropriately sanctioned”;
- (b) by omitting from paragraph (f)(ii) “punishing” and substituting “sanctioning”;
- (c) by omitting from paragraph (h) “behaviour.” and substituting “behaviour; and”;

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(d) by inserting the following paragraph after paragraph (h):

(i) to ensure that, wherever practicable, a youth who has committed an offence is provided with appropriate opportunities to repair any harm caused by the commission of the offence to the victim of the offence and the community and to reintegrate himself or herself into the community.

7. Section 5 amended (General principles of youth justice)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(h) “punishment” and substituting “any sanctioning”;
- (b) by omitting from subsection (1)(i) “punishment” and substituting “any sanctioning”;
- (c) by omitting from subsection (1)(j) “punishment” and substituting “any sanctioning”;
- (d) by omitting from subsection (2)(e) “impaired.” and substituting “impaired,”;

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(e) by inserting the following paragraph after paragraph (e) in subsection (2):

(f) an Aboriginal youth should be dealt with in a manner that involves his or her cultural community.

8. Section 6A inserted

After section 6 of the Principal Act, the following section is inserted in Part 1:

6A. Activities that may be performed as community service

- (1) The Secretary is to approve the types of activity that may be undertaken in the performance of community service, other than community service for the purposes of section 10.
- (2) The Commissioner of Police is to approve the types of activity that may be undertaken in the performance of community service for the purposes of section 10.
- (3) Without limiting the generality of subsections (1) and (2), the activities that may be approved under those subsections include attendance at –
 - (a) programs that constitute education or training; or

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- (b) programs run for the purpose of assisting youths who have committed offences to reintegrate into the community; or
 - (c) health and personal development programs.
- (4) The Secretary, or the Commissioner of Police, may not approve a type of activity under subsection (1) or (2) unless –
 - (a) he or she is of the opinion that the type of activity is suitable for the performance of community service by youths; and
 - (b) the type of activity is able to be provided to youths; and
 - (c) youths undertaking the activity will not be paid for doing so.

9. Section 10 amended (Formal caution)

Section 10 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) from subsection (2) and substituting the following paragraphs:
 - (c) if the youth is 13 or more years old when required to enter into the undertaking, an undertaking to perform a specified period (of

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not more than 35 hours) of community service consisting of a community service activity which is for the benefit of the victim of the offence or a purpose specified in section 6A(3);

- (ca) if the youth is less than 13 years old when required to enter into the undertaking, an undertaking to perform a specified period (of not more than 35 hours) of community service consisting of a community service activity which is for a purpose specified in section 6A(3)(a) or (c);
- (b) by inserting the following subsections after subsection (2):
 - (2A) An undertaking must not be required under subsection (2)(c) or (ca) if the effect would be to require the youth to undertake a number of hours of community service that would, when combined with the number of hours of community service the youth still has to perform under all undertakings previously entered into under one of those subsections or section 16(1)(e), total –
 - (a) more than 70 hours, if the youth is less than 16 years

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old when required to enter
into the undertaking; or

- (b) more than 210 hours, if
the youth is 16 or more
years old when required
to enter into the
undertaking.

(2B) An undertaking under
subsection (2)(c) or (ca) operates
cumulatively to every other such
undertaking under that subsection
or section 16(1)(e).

- (c) by inserting in subsection (8) “and
substantially fulfil” after “into”;

- (d) by inserting the following subsection
after subsection (8):

(8A) For the purposes of
subsection (8), a youth who has
failed to substantially fulfil an
undertaking is to be taken to have
substantially fulfilled the
undertaking if the youth has a
reasonable excuse for the failure.

**10. Section 11 amended (Caution administered by
Aboriginal Elder or representative)**

Section 11(1) of the Principal Act is amended by
omitting “may be” and substituting “is to be, if
practicable,”.

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11. Section 12A inserted

After section 12 of the Principal Act, the following section is inserted in Division 2:

12A. Where undertakings in formal caution not substantially fulfilled

- (1) This section applies in relation to a youth in respect of an offence if –
 - (a) a formal caution is, in accordance with section 9(1)(a), administered to the youth under section 10 in relation to an offence; and
 - (b) the youth fails, without reasonable excuse, to substantially fulfil an undertaking that he or she was required, when 13 or more years old, to enter into under section 10 in relation to the offence.
- (2) If this section applies in relation to a youth in respect of an offence, an authorised police officer –
 - (a) may decide to take no further action in relation to the offence; or
 - (b) after consultation with the Secretary, may deal with the youth again under section 9 in relation to the offence.

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- (3) If a youth fails, without reasonable excuse, to substantially fulfil an undertaking (the *previous undertaking*) that he or she was required, when 13 or more years old, to enter into under section 10 in relation to the offence and, in accordance with subsection (2)(b), an authorised police officer deals with the youth again under section 9 in relation to the offence –
- (a) any undertakings, including the previous undertaking, in relation to the offence cease to be in force; and
 - (b) the failure to substantially fulfil the previous undertaking is to be taken, for the purpose of the application of section 10(8) to the offence, not to have occurred.
- (4) If this section applies in relation to a youth in respect of an offence, a complaint may, despite section 26(1)(a) of the *Justices Act 1959*, be filed in accordance with section 9(1)(c) for the offence even though the complaint is filed after the end of the period of 6 months after the time when the matter of complaint arose, but may only be filed before the end of the relevant period in relation to the undertaking, in respect of the offence, that the youth has failed to substantially fulfil.

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(5) For the purposes of subsection (4), the end of the relevant period in relation to an undertaking is –

- (a) if a date or period was specified in the undertaking as the date or period by the expiry of which the undertaking is to be fulfilled, that date or the last day of that period, as the case may be; or
- (b) if paragraph (a) does not apply to the undertaking, within 3 months after the undertaking was entered into.

12. Section 14 amended (Convening of community conference)

Section 14(2)(c) of the Principal Act is amended by inserting after subparagraph (i) the following subparagraph:

- (ia) a youth justice worker;

13. Section 16 amended (Powers of community conference)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(e) “require” and substituting “if the youth is 13 or more years old, require”;

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(b) by omitting subsection (3) and substituting the following subsections:

(3) An undertaking must not be required under subsection (1)(e) if the effect would be to require the youth to undertake a number of hours of community service that would, when combined with the number of hours of community service the youth still has to perform under all undertakings previously entered into under that subsection or section 10(2)(c), total –

(a) more than 70 hours, if the youth is 13, 14 or 15 years old when required to enter into the undertaking; or

(b) more than 210 hours, if the youth is 16 or more years old when required to enter into the undertaking.

(4) An undertaking under subsection (1)(e) operates cumulatively to every other such undertaking under that subsection or section 10(2)(c).

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14. Section 19 amended (Procedure after community conference)

Section 19 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:

- (a) file with the district registrar each undertaking to pay compensation or make restitution entered into by the youth; and

- (b) by inserting the following subsection after subsection (1):

- (1A) If an undertaking to pay compensation or make restitution is filed with the district registrar in accordance with subsection (1)(a), the district registrar must –

- (a) refer the undertaking to the Director, Monetary Penalties Enforcement Service for collection of the amount of compensation or restitution; and
 - (b) notify the Director, Monetary Penalties Enforcement Service of

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the date the undertaking
was entered into.

- (c) by omitting from subsection (2) “district registrar” and substituting “Director, Monetary Penalties Enforcement Service”;
- (d) by omitting from subsection (3) “district registrar” and substituting “Director, Monetary Penalties Enforcement Service”;
- (e) by omitting from subsection (6) “district registrar” and substituting “Commissioner of Police”.

15. Section 22 amended (Confidentiality)

Section 22 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (4A) Subsection (1) does not apply to the provision of information in relation to a youth –
 - (a) if the youth consents in writing to the provision of the information for the purpose of the rehabilitation of the youth or a related purpose; or
 - (b) between an information-sharing entity and a Government Agency for the purpose of the

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rehabilitation of the youth or a related purpose; or

- (c) between an information-sharing entity and the Commissioner for Children, or between a Government Agency and the Commissioner for Children.

16. Part 3: Heading amended

Part 3 of the Principal Act is amended by omitting “**AND CUSTODY OF SUSPECTED OFFENDERS**” from the heading to that Part and substituting “, **SEARCH, BAIL AND CUSTODY OF YOUTH**”.

17. Section 24 amended (Limit on power to arrest)

Section 24(a) of the Principal Act is amended by inserting “or the commission of another offence that, if it were committed by the youth, would be sufficiently serious to warrant the youth being arrested in relation to the commission of that offence” after “offence”.

18. Sections 24A, 24B and 24C inserted

After section 24 of the Principal Act, the following sections are inserted in Part 3:

24A. Duties of police officer where youth arrested

- (1) If a youth is arrested, a reference in the *Criminal Law (Detention and*

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Interrogation) Act 1995 to a friend is to be taken, in relation to the youth, to include a reference to a person who is a responsible adult, within the meaning of this Act, in respect of the youth.

- (2) A police officer who arrests a youth must, as soon as practicable –
 - (a) inform the youth of the youth's right to refuse to answer questions, or to participate in investigations, except where required to do so by or under an Act of the State or of the Commonwealth; and
 - (b) ensure that, if practicable, the youth's guardian is notified of the arrest.
- (3) Subsection (2) does not derogate from any other duties that a police officer who arrests a youth has under any other law of the State relating to investigation, interrogation, arrest, bail, remand or custody.

24B. Conditions of bail

A court or justice, or a police officer, who intends to admit a youth to bail must have regard to the principles set out in section 5, so far as they may apply to the circumstances of the youth, in deciding whether to impose any conditions on the

bail and in determining the conditions that are imposed on the bail.

24C. Breach of condition of bail

(1) In this section –

relevant contravention, in relation to a youth, means a contravention by the youth, without reasonable cause, of any condition of bail that has effect after the release of the youth from custody, other than a contravention consisting of a failure to appear before a justice or a court, as required under section 5 or 7 of the *Bail Act 1994*.

(2) If a relevant contravention by a youth occurs –

(a) sections 5(4) and 9 of the *Bail Act 1994* do not apply in relation to the contravention; and

(b) a court (including the Court) may take the contravention into account in sentencing the youth for the offence in relation to which the bail to which the contravention relates was granted.

(3) If a youth is arrested under section 5(5A) of the *Bail Act 1994* in respect of a relevant contravention, a reference in section 34(1) or 34A of the *Justices Act*

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1959 to a simple offence, or to an offence, respectively, is, in its application to the youth in respect of the arrest, to be taken to include a reference to a relevant contravention.

- (4) If a youth is arrested under section 5(5A) or 10 of the *Bail Act 1994* in respect of a relevant contravention, a reference in section 4 of the *Criminal Law (Detention and Interrogation) Act 1995* to an offence, in its application to the youth in respect of the arrest, is to be taken to be a reference to a relevant contravention.

19. Section 25A inserted

After section 25 of the Principal Act, the following section is inserted in Part 3:

25A. Searches of youths

- (1) In this section –

body cavity search means a search of the rectum or vagina of a youth;

custodial premises means a prison, detention centre, police station or watch-house.

- (2) This section applies only to a search of a youth who is in custody in custodial premises.
- (3) Despite any other provision of this Act or any other Act, if –

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-
- (a) a search of a person is authorised under section 131 or any other Act; and
 - (b) this section applies to the search –

the search is only authorised if it is carried out in accordance with the requirements of the regulations.
- (4) Nothing in this section or the regulations is to be taken to authorise a person to carry out a search if the search is not authorised under section 131 or a provision of another Act.
 - (5) Nothing in this section or the regulations is to be taken to authorise the carrying out of a body cavity search of a youth by a person who may, under section 131 or a provision of another Act, carry out a search of the youth, unless such a search is specifically authorised under the provision of the other Act.

20. Section 31 amended (Restrictions on reporting proceedings)

Section 31 of the Principal Act is amended by inserting after subsection (4) the following subsections:

- (5) Subsection (1) does not apply to the provision of information in relation to a youth if the youth consents in writing to the provision of the information for the

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purpose of the rehabilitation of the youth
or a related purpose.

- (6) Subsections (1) and (3) do not apply to the provision of information in relation to a youth –
 - (a) between an information-sharing entity and a Government Agency for the purpose of the rehabilitation of the youth or a related purpose; or
 - (b) between an information-sharing entity and the Commissioner for Children, or between a Government Agency and the Commissioner for Children.

21. Section 33AA inserted

After section 33 of the Principal Act, the
following section is inserted in Division 3:

33AA. Court may request oral presentence report

- (1) The Court may order a youth justice worker to provide to the Court a presentence report orally during a hearing of the Court, if the Court is of the opinion that it is appropriate to do so.
- (2) If a presentence report is provided orally by a youth justice worker in accordance with an order under subsection (1) –

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-
- (a) the Court may ask the youth justice worker questions; and
 - (b) sections 33, 34, 35 and 36 do not apply in relation to the report.
- (3) If a presentence report is provided orally by a youth justice worker in accordance with an order under subsection (1), the youth, his or her legal representative or the prosecutor –
- (a) may dispute the whole or any part of the presentence report during the hearing; and
 - (b) may lead evidence on the disputed matters and, if necessary, the hearing is to be adjourned to enable this to occur; and
 - (c) may require a person whose opinion is adverted to in the report by the youth justice worker to attend before the Court in the manner indicated by the Court for the purpose of giving more information and, if necessary, the hearing is to be adjourned to enable this to occur; and
 - (d) may ask questions of the youth justice worker or a person required to attend under paragraph (c); and

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- (e) must be given the opportunity to cross-examine on the contents of the report of the youth justice worker.

22. Section 36A inserted

After section 36 of the Principal Act, the following section is inserted in Division 3:

36A. Victim impact statements

- (1) In this section –

immediate family, in respect of a deceased victim, includes –

- (a) the spouse or partner, within the meaning of the *Relationships Act 2003*, of the deceased victim; and
- (b) a parent, guardian or step-parent of the deceased victim; and
- (c) a child or stepchild of the deceased victim; and
- (d) a brother, sister, stepbrother or stepsister of the deceased victim;

indictable offence means –

- (a) an offence that is punishable on indictment

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even though in some instances it may be dealt with summarily; or

- (b) any other offence that is prescribed for the purposes of this definition;

victim, in respect of an offence, means –

- (a) a person who has suffered injury, loss or damage as a direct consequence of the offence; and
 - (b) a member of the immediate family of a deceased victim of the offence.
- (2) If the Court finds a youth guilty of an indictable offence, a victim of that offence may provide to the Court a written statement that –
- (a) gives particulars of any injury, loss or damage suffered by the victim as a direct consequence of the offence; and
 - (b) describes the effects on the victim of the commission of the offence.
- (3) If the Court finds a youth guilty of an indictable offence, the Court may, if it

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considers it appropriate to do so, allow a person, other than the victim of that offence, to provide to the Court, in the place of a statement under subsection (2), a written statement that –

- (a) gives particulars of the injury, loss or damage suffered by the victim as a direct consequence of the offence; and
 - (b) describes the effects on the victim of the commission of the offence.
- (4) A statement referred to in subsection (2) or (3) must comply with, and be provided in accordance with, applicable Rules of Court or rules made under subsection (6).
- (5) If the Court finds a youth guilty of an indictable offence, the Court must allow –
 - (a) the victim; or
 - (b) a person who has provided a statement under subsection (3); or
 - (c) another person nominated by the victim or a person referred to in paragraph (b) –

to read the victim's statement to the Court, if the victim or the person referred to in paragraph (b) has asked to do so at the time of providing the statement to the Court.

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(6) For the purposes of this section –

- (a) Rules of Court may be made under section 12 of the *Criminal Code Act 1924*; and
- (b) rules of court may be made under section 144 of the *Justices Act 1959*.

23. Section 38 amended (Convening of community conference)

Section 38(2) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) a youth justice worker;

24. Section 40A inserted

After section 40 of the Principal Act, the following section is inserted in Division 4:

40A. Additional requirements for court-ordered community conference

- (1) If a community conference convened on the order of the Court reaches a decision that did not require the youth to enter into an undertaking, the facilitator must file with the district registrar a copy of the decision.
- (2) If a youth fulfils all undertakings entered into at a community conference

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convened on the order of the Court, the Secretary, as soon as practicable, must file with the district registrar a certificate stating that fact.

25. Section 41 amended (Dismissal of charge)

Section 41(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “section 19(1)(a)” and substituting “section 40A(1)”;
- (b) by omitting from paragraph (a) “, if the decision did not require the youth to enter into an undertaking”;
- (c) by omitting from paragraph (b) “section 19(6)” and substituting “section 40A(2)”.

26. Section 45 amended (Confidentiality of community conference)

Section 45 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) Subsection (1) does not apply to the provision of information in relation to a youth –
 - (a) if the youth consents in writing to the provision of the information for the purpose of the

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rehabilitation of the youth or a related purpose; or

- (b) between an information-sharing entity and a Government Agency for the purpose of the rehabilitation of the youth or a related purpose; or
- (c) between an information-sharing entity and the Commissioner for Children, or between a Government Agency and the Commissioner for Children.

27. Section 47 amended (Sentences and other orders that may be imposed)

Section 47 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (h) in subsection (1):
 - (ha) make an order it is permitted to make in accordance with section 161A;
- (b) by omitting from subsection (1)(i) “program order.” and substituting “program order;”;
- (c) by inserting the following paragraph after paragraph (i) in subsection (1):
 - (j) adjourn the proceedings, grant bail to the youth under the *Bail*

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Act 1994 and defer, in accordance with Division 7A, sentencing the youth until a date specified in the order.

(d) by inserting the following subsections after subsection (1):

(1A) Proceedings in relation to an offence may not be adjourned under subsection (1)(j) for a period of more than 12 months from the date of the finding of guilt in respect of the offence.

(1B) Subsection (1)(j) does not limit the power of the Court to adjourn proceedings, grant bail in relation to a period of adjournment or defer sentencing a youth otherwise than under subsection (1)(j).

(e) by inserting the following subsection after subsection (3):

(3A) In weighing up the matters to be taken into account in determining which orders to make under subsections (1) and (2) in relation to a youth, the Court must ensure that the matter of the rehabilitation of the youth is given more weight than is given to any other individual matter.

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(f) by omitting paragraph (c) from subsection (4) and substituting the following paragraph:

(c) the impact any orders made will have on the youth's chances of finding or retaining employment or attending education and training.

28. Section 49 amended (Recording conviction)

Section 49 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “paragraph (e), (f), (g), (h) or (i) of that subsection” and substituting “section 47(1)(e), (f), (g), (h), (ha) or (i)”;

(b) by omitting from subsection (2) “section 47(1)(e), (f), (g) or (i)” and substituting “section 47(1)(e), (f), (g), (h), (ha) or (i)”;

(c) by inserting the following subsection after subsection (4):

(4A) In determining whether or not to record a conviction, the Court must ensure that the matter of the rehabilitation of the youth is given more weight than is given to any other individual matter.

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29. Section 54A inserted

After section 54 of the Principal Act, the following section is inserted in Division 7:

54A. Discharge of release and adjournment order

A youth is discharged from a release and adjournment order in relation to an offence when the period of adjournment under the order expires, unless –

- (a) the Court revokes the order; or
- (b) after the youth is released, the Court makes another order under section 47 in relation to the offence.

30. Section 56 amended (Contravention of release and adjournment order)

Section 56 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (2):
 - (2A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –
 - (a) subsection (2) does not apply in relation to the application; and

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- (b) the Court may issue a warrant to arrest the youth.

(2B) If the youth is before the Court –

- (a) an application to the Court may be made orally under subsection (1); and
- (b) subsection (2) does not apply in relation to the application.

- (b) by inserting the following subsection after subsection (6):

(6A) Even though an application made under subsection (1) in relation to a release and adjournment order is not heard or determined before the order expires, the Court may –

- (a) hear and determine the application; and
- (b) if it is satisfied that the youth has contravened the release and adjournment order or a special condition to which the release and adjournment order is subject, make an order under subsection (4) –

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as if the release and adjournment
order were in force.

31. Part 4, Division 7A inserted

After section 56 of the Principal Act, the
following Division is inserted in Part 4:

Division 7A – Deferral of sentencing

**56A. When sentence may be deferred under
section 47(1)(j)**

- (1) The Court may adjourn proceedings in relation to a youth under section 47(1)(j) so as to defer, in accordance with this Division, sentencing the youth.
- (2) The Court may defer, in accordance with this Division, sentencing a youth –
 - (a) for the purpose of assessing the youth's capacity, and prospects, for rehabilitation; or
 - (b) for the purpose of allowing the youth to demonstrate that rehabilitation has taken place; or
 - (c) for the purpose of assessing the youth's capacity, and prospects, for participating in an intervention plan; or

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- (d) for the purpose of allowing the youth to participate in an intervention plan; or
 - (e) for any other purpose that the Court thinks appropriate in the circumstances.
 - (3) The Court may only defer, in accordance with this Division, sentencing a youth for an offence if –
 - (a) the youth is not serving a term of detention or imprisonment for another offence; and
 - (b) the Court is satisfied it may admit the youth to bail; and
 - (c) the Court defers sentencing the youth for all the offences for which the Court may sentence the youth, whether or not the offences are punishable by detention or imprisonment.
 - (4) For the purposes of this Division, an ***intervention plan*** is a plan that specifies the activities or programs that a youth is to be expected to undertake while on bail granted to the youth for the purposes of section 47(1)(j).
 - (5) The sentencing of a youth may be deferred in accordance with this Division whether or not the Court considers that

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the seriousness of the offence justifies a sentence of detention or imprisonment.

56B. Grant of bail and review

- (1) Bail granted to a youth for the purposes of section 47(1)(j) in relation to an offence has effect for the period for which the sentence in relation to the offence is deferred, unless the bail is revoked earlier.
- (2) Without limiting the conditions that may be imposed in accordance with section 7 of the *Bail Act 1994* on the grant of bail to a youth, the conditions on which bail is granted to a youth for the purposes of section 47(1)(j) –
 - (a) may include conditions requiring the youth to comply with an intervention plan referred to in section 56A; and
 - (b) may include a condition that the youth appear before the Court on a date or dates, specified in the conditions of bail, that are earlier than the date to which the sentencing has been deferred, so as to enable the Court to consider the extent to which the youth is complying with any conditions of the bail; and

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- (c) may include any other conditions that the Court considers appropriate for a purpose referred to in section 56A(2).
- (3) If a youth to whom bail has been granted for the purposes of section 47(1)(j) appears before the Court, the Court may amend the conditions of the bail by varying, adding to or substituting any of the conditions.
- (4) In determining whether, under this section, to amend a condition of bail, the Court must consider –
 - (a) any report on the youth prepared by the Secretary; and
 - (b) the extent to which, and the manner in which, the youth has complied with the conditions of the bail granted to the youth in respect of the offence.

56C. Amendment of date of order deferring sentencing of youth

- (1) The Court may amend an order made under section 47(1)(j) in relation to a youth by altering the date to which the sentencing of the youth for the offence is deferred.
- (2) The date, referred to in subsection (1), that is specified in an order under

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section 47(1)(j) in relation to a youth
may be altered under subsection (1) –

- (a) to an earlier date than the date
specified in the order; or
 - (b) to a later date than the date
specified in the order.
- (3) A later date to which an order may be
altered must not extend the period of the
order so that the total period of the order
continues for more than 12 months from
the date of the finding of guilt in respect
of which the order was made.
- (4) In determining whether, under this
section, to amend the date of an order,
the Court must consider –
- (a) any report on the youth prepared
by the Secretary; and
 - (b) the extent to which, and the
manner in which, the youth has
complied with the conditions of
the bail granted to the youth in
respect of the offence.
- (5) The Court must not, under this section,
amend an order in relation to a youth
unless the youth is before the Court.

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56D. When order deferring sentence may be revoked

- (1) The Court may revoke an order made under section 47(1)(j) in relation to a youth in respect of an offence and proceed to sentence the youth under section 47 in respect of the offence only if –
 - (a) the Court is of the opinion that the purposes, specified in section 56A(2), for which the sentencing of the youth was deferred are unlikely to be fulfilled; or
 - (b) the youth requests the revocation of the order.
- (2) The Court must not, under this section, revoke an order in relation to a youth unless the youth is before the Court.

32. Section 65 amended (Probation order)

Section 65(4) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (e) “illegal drugs” and substituting “controlled substances”;
- (b) by inserting the following paragraph after paragraph (e):

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- (ea) the youth must, as directed by the Secretary, submit to testing for controlled substances or alcohol;

33. Section 68 amended (Contravention of probation order)

Section 68 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (2):

(2A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

- (a) subsection (2) does not apply in relation to the application; and

- (b) the Court may issue a warrant to arrest the youth.

(2B) If the youth is before the Court –

- (a) an application to the Court may be made orally under subsection (1); and

- (b) subsection (2) does not apply in relation to the application.

- (b) by inserting the following subsection after subsection (5):

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(5A) Even though an application made under subsection (1) in relation to a probation order is not heard or determined before the order expires, the Court may –

(a) hear and determine the application; and

(b) if it is satisfied that a youth has contravened the probation order or a special condition to which the probation order is subject, make an order under subsection (4) –

as if the order were in force.

34. Section 69 amended (Community service order)

Section 69 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(b) “community service” and substituting “community service activity”;

(b) by omitting from subsection (1)(c) “community service” and substituting “a community service activity”;

(c) by omitting from subsection (1)(e) “attend educational, health, personal and other programs” and substituting “perform community service activities”;

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(d) by omitting subsection (2) and substituting the following subsections:

(2) A community service order is subject to the special conditions that are reasonable in the circumstances and are specified in the order.

(3) A special condition may apply during the whole or any part of the period for which the order is to be in force.

(4) Without limiting the special conditions that may be specified in the order, special conditions may include one or more of the following conditions:

(a) the youth must attend school;

(b) the youth must attend educational, personal, health and other programs specified in the order;

(c) the youth must attend educational, personal, health, and other, programs as directed by the assigned youth justice worker;

(d) the youth must abstain from drinking alcohol;

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- (e) the youth must abstain from using controlled substances;
- (f) the youth must, as directed by the Secretary, submit to testing for controlled substances or alcohol;
- (g) the youth must reside at a specified address;
- (h) the youth must not leave his or her place of residence between specified hours on specified days;
- (i) the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as specified in the order;
- (j) the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as directed by the assigned youth justice worker.

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35. Section 70 amended (Preconditions for making community service order)

Section 70 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “; and” and substituting “and that there are appropriate community service activities available in which the youth could participate.”;
- (b) by omitting paragraph (d).

36. Section 74 repealed

Section 74 of the Principal Act is repealed.

37. Section 76 amended (Review of community service order, &c.)

Section 76 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (d) in subsection (4):
 - (da) amend the special conditions to which the community service order is subject;
- (b) by inserting in subsection (7)(b) “special” after “order and the”.

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38. Section 77 amended (Contravention of community service order)

Section 77 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (3):

(3A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

- (a) subsection (3) does not apply in relation to the application; and
- (b) the Court may issue a warrant to arrest the youth.

(3B) If the youth is before the Court –

- (a) an application to the Court may be made orally under subsection (1); and
- (b) subsection (3) does not apply in relation to the application.

- (b) by inserting the following paragraph after paragraph (c) in subsection (5):

- (ca) amend the special conditions to which the community service order is subject;

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39. Section 90 amended (Suspended detention order)

Section 90 of the Principal Act is amended as follows:

(a) by omitting subsection (3) and substituting the following subsection:

(3) A suspended detention order is subject to the following conditions:

- (a) during the period specified in the order, the youth must not commit another offence which if committed by an adult could be punishable by imprisonment;
- (b) during the period of suspension the youth must report to the assigned youth justice worker as required by the youth justice worker;
- (c) during the period of suspension the youth must receive visits from the assigned youth justice worker as required by the youth justice worker;
- (d) the youth must notify the assigned youth justice worker of any change

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during the period of suspension of residence, employment or school, or other educational or training establishment, before, or within 2 working days after, the change;

- (e) during the period of suspension the youth must obey the reasonable and lawful instructions of the assigned youth justice worker;
- (f) the youth must attend educational, personal, health and other programs as directed by the assigned youth justice worker;
- (g) the youth must, as directed by the Secretary, submit to testing for controlled substances or alcohol;
- (h) the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as directed by the assigned youth justice worker.

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- (b) by omitting paragraphs (b) and (c) from subsection (6);
- (c) by omitting paragraphs (e) and (f) from subsection (6);
- (d) by omitting paragraph (i) from subsection (6);
- (e) by omitting from subsection (6)(k) “illegal drugs” and substituting “controlled substances”;
- (f) by omitting from subsection (6)(m) “days;” and substituting “days.”;
- (g) by omitting paragraphs (n) and (o) from subsection (6).

40. Section 93 amended (Review of suspended detention order)

Section 93 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (5A) Even though an application made under subsection (1) in relation to a suspended detention order is not heard or determined before the order expires, the Court may –
 - (a) hear and determine the application; and
 - (b) if it is satisfied that a youth has contravened the suspended

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detention order or a special condition to which the suspended detention order is subject, make an order under subsection (4) –

as if the suspended detention order were in force.

41. Section 94 amended (Contravention of suspended detention order)

Section 94 of the Principal Act is amended by inserting after subsection (2) the following subsections:

(2A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

- (a) subsection (2) does not apply in relation to the application; and
- (b) the Court may issue a warrant to arrest the youth.

(2B) If the youth is before the Court –

- (a) an application to the Court may be made orally under subsection (1); and
- (b) subsection (2) does not apply in relation to the application.

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42. Section 99A amended (Contravention of rehabilitation program order)

Section 99A of the Principal Act is amended by inserting after subsection (2) the following subsections:

(2A) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –

- (a) subsection (2) does not apply in relation to the application; and
- (b) the Court may issue a warrant to arrest the youth.

(2B) If the youth is before the Court –

- (a) an application to the Court may be made orally under subsection (1); and
- (b) subsection (2) does not apply in relation to the application.

43. Section 101A inserted

After section 101 of the Principal Act, the following section is inserted in Division 15:

101A. Workers rehabilitation provisions apply to youth performing community service

- (1) A youth performing community service is, for the purposes of the *Workers Rehabilitation and Compensation Act*

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1988, taken to be a worker who is employed by the Crown and who is being paid at the greater of the following rates:

- (a) a rate equal to the basic salary within the meaning of that Act;
 - (b) the rate of the youth's normal weekly earnings, if any, within the meaning of section 69 of that Act.
- (2) For the purposes of this section, a youth is performing community service if he or she is –
 - (a) performing a required activity for the purposes of –
 - (i) an undertaking entered into by the youth under section 10(2)(c) or section 16(1)(e); or
 - (ii) a community service order; or
 - (b) making a required journey.
- (3) For subsection (2)(a), a youth is taken to be performing a required activity for the purposes of an undertaking or order referred to in that paragraph if he or she is –

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- (a) reporting to his or her youth justice worker for the purposes of the undertaking or order; or
 - (b) performing community service in accordance with the undertaking or order; or
 - (c) doing something else at the request or direction of, or with the express or implied authority of, the youth's youth justice worker.
- (4) For subsection (2)(b), a required journey is a journey made for the purposes of, or in connection with, a required activity.
- (5) Despite subsection (4), a journey is not taken to be a required journey for subsection (2)(b) by reason only of the fact that it is for the purpose of enabling a youth to travel –
 - (a) from his or her place of residence to the place at which he or she is required to perform a required activity; or
 - (b) from the place at which he or she is required to perform a required activity to his or her place of residence.

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44. Section 105 amended (Adjournment to determine mental health or disability of youth)

Section 105 of the Principal Act is amended as follows:

- (a) by inserting in subsection (8) “under subsection (6)” after “Psychiatrist”;
- (b) by omitting from subsection (10) “of the Chief Forensic Psychiatrist” and substituting “provided by a person in accordance with an order under subsection (3)”;
- (c) by omitting from subsection (11) “the Chief Forensic Psychiatrist” and substituting “a person who prepares a report in accordance with an order under subsection (3)”;
- (d) by omitting from subsection (12) “the report of the Chief Forensic Psychiatrist” and substituting “a report provided in accordance with an order under subsection (3)”;
- (e) by omitting from subsection (13) “of the Chief Forensic Psychiatrist” and substituting “provided in accordance with an order under subsection (3)”;
- (f) by omitting from subsection (13)(b) “the Chief Forensic Psychiatrist or, if the Chief Forensic Psychiatrist has delegated his or her function of writing the report,”.

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45. Section 111 amended (Supervised release order subject to conditions)

Section 111 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) A supervised release order is also subject to the conditions that during the period of the order the youth –

- (a) must report to the assigned youth justice worker as required by the youth justice worker; and
 - (b) must comply with any reasonable direction given by the youth justice worker; and
 - (c) must not move to a different residential address without the approval of the youth justice worker.
- (b) by omitting paragraph (a) from subsection (3);
- (c) by omitting paragraphs (c) and (d) from subsection (3) and substituting the following paragraph:

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- (c) the youth must comply with any regulations that regulate the conduct of persons released under supervised release orders.

46. Section 117 amended (Contravention of supervised release order other than by further offence punishable by detention or imprisonment)

Section 117 of the Principal Act is amended as follows:

- (a) by inserting in subsection (3) “take reasonable steps to” after “the Secretary must”;
- (b) by inserting in subsection (5) “take reasonable steps to” after “the Secretary must”.

47. Section 129 amended (Rights of detainee)

Section 129(1)(b) of the Principal Act is amended by inserting “, including, in the case of a detainee who is an Aboriginal person, persons acting on behalf of the entity known as the Aboriginal Legal Service” after “persons”.

48. Section 161A inserted

After section 161 of the Principal Act, the following section is inserted in Part 8:

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**161A. Court may impose certain sentences under
*Sentencing Act 1997***

- (1) The Court, in sentencing for an offence a youth who is 18 years old or more, may exercise the powers of a court of petty sessions under the *Sentencing Act 1997* in addition to, or instead of, any other power it may exercise under this Act.
- (2) In determining the sentence to impose in accordance with subsection (1) on a youth for an offence, the Court must take into account the age of the youth when he or she committed the offence.
- (3) The Court must specify in an order made in accordance with subsection (1) that the order is made in accordance with this section.
- (4) A failure to comply with subsection (3) does not affect the validity of the order.
- (5) If an order specifies that it is made in accordance with this section, the responsible Department in relation to the *Sentencing Act 1997* is to be responsible for all or any matters relating to the administration of the order.
- (6) Proceedings in respect of the contravention of an order made in accordance with subsection (1), or the conditions to which such an order is subject, are to be brought in the Court.

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(7) In proceedings referred to in subsection (6), the Court may –

(a) exercise all the powers of a court of petty sessions under the *Sentencing Act 1997* in relation to a contravention of an order, or of the conditions of an order, made under that Act; or

(b) revoke the contravened order and impose any sentence under this Act that it could have made if it had not made the contravened order.

(8) This section applies despite section 103.

49. Section 165 amended (Delegation)

Section 165 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) The Commissioner of Police may delegate his or her power under section 6A(2).

50. Section 167A inserted

After section 167 of the Principal Act, the following section is inserted in Part 9:

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167A. Protection against prosecution in relation to certain disclosures of information

- (1) A person who discloses, on behalf of an information-sharing entity or a Government Agency, information to another information-sharing entity or Government Agency for the purpose of the rehabilitation of a youth or a related purpose –
- (a) does not, by reason of that disclosure, incur any criminal, civil or administrative liability; and
 - (b) is not, by reason of that disclosure –
 - (i) taken to have breached any rule of law or practice that would otherwise prohibit the person from disclosing the information; or
 - (ii) taken to have broken any professional or other oath, or breached any professional or other code, standard or guideline of ethics or etiquette that might otherwise bar the person from, or condemn the

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person for, disclosing the
information; or

(iii) liable to condemnation or
disciplinary action by any
professional body or other
person.

(2) Subsection (1) has effect despite the
Personal Information Protection Act
2004 or any other law relating to the
confidentiality or privacy of information.

**PART 3 – MONETARY PENALTIES ENFORCEMENT
ACT 2005 AMENDED**

51. Principal Act

In this Part, the *Monetary Penalties Enforcement Act 2005** is referred to as the Principal Act.

52. Section 4 amended (Application of Act)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or payment in accordance with an undertaking to pay compensation under section 16(1)(b) or (c) of the *Youth Justice Act 1997*,” after “penalty,”;
- (b) by inserting the following subsection after subsection (2):
 - (3) Nothing in subsection (1) derogates from the obligations imposed on the Director under section 19 of the *Youth Justice Act 1997* in relation to payments of compensation.

*No. 57 of 2005

PART 4 – POLICE OFFENCES ACT 1935 AMENDED

53. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

54. Section 37F amended (Disqualification from driving)

Section 37F of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “expires not earlier than 12 months” and substituting “begins”;
- (b) by inserting the following subsections after subsection (5):
 - (6) A court may, on the application of a person who is disqualified from driving under subsection (2) for a period beginning before he or she has obtained a driver’s licence, revoke the disqualification.
 - (7) The court may, under subsection (6), only revoke a disqualification if it is of the opinion that there is sufficient evidence of the rehabilitation of the applicant.

*No. 44 of 1935

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Part 4 – Police Offences Act 1935 Amended

- (8) Without limiting subsection (7), a court may consider that there is sufficient evidence of the rehabilitation of the applicant if the applicant has not committed an offence during the period of the disqualification.

55. Section 55 amended (Arrest)

Section 55(3A) of the Principal Act is amended by omitting “section 24 of the *Youth Justice Act 1997*.” and substituting “sections 24 and 24A of the *Youth Justice Act 1997*.”.

**PART 5 – VICTIMS OF CRIME COMPENSATION ACT
1994 AMENDED**

56. Principal Act

In this Part, the *Victims of Crime Compensation Act 1994** is referred to as the Principal Act.

57. Section 5 amended (Liability of convicted persons to pay compensation levy)

Section 5(2) of the Principal Act is amended by inserting “or is convicted by the Supreme Court of an offence committed before the person attained the age of 18 years” after “Division”).

*No. 89 of 1994

Youth Justice (Miscellaneous Amendments) Act 2012
Act No. of

s. 58

Part 6 – Repeal of Act

PART 6 – REPEAL OF ACT

58. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all its provisions commence.