

CLAUSE NOTES

Youth Justice Amendment Bill 2016

- Clause 1 **Short Title**
- This clause provides that the Bill will be cited as the *Youth Justice Amendment Act 2016*.
- Clause 2 **Commencement**
- This clause provides for the Act to commence on the day on which it receives the Royal Assent.
- Clause 3 **Principal Act**
- This clause provides that the Act to which the Bill relates is the *Youth Justice Act 1997*.
- Clause 4 **Section 3 amended (Interpretation)**
- This clause amends section 3 of the Act to modify the way in which certain terms used in the Act are to be understood.
- The clause:
- Amends the meaning of 'earliest release date' to remove references to periods of detention that the youth is released (under a Supervised Release Order).
 - Inserts a new meaning of 'next release date'. This reflects the changes required in section 117, whereby the Court can set a new release date if a Supervised Release Order is cancelled and the youth is sent back to detention for less than their total sentence.
- Clause 5 **Section 83 amended (Commencement of detention)**
- This clause amends section 83 of the Act to reflect the amendments to section 117, which allow the Court to set a next release date when a Supervised Release Order is cancelled.
- This amendment makes clear that the 'next release date' in the order cancelling the Supervised Release Order, is considered the date the sentence starts if the sentence of detention is a cumulative sentence under section 85(1).
- Clause 6 **Section 85 amended (Court may order detention period to be cumulative)**
- This clause amends section 85(1) of the Act to reflect amendments to section 117, where the Court sets a next release date upon cancellation of a Supervised Release Order. Under this section the Court may order that the new sentence starts on the 'next release date' set by the Court under section 117.

- Clause 7 **Section 86 amended (Limitation on cumulative orders)**
- This clause amends section 86(2) of the Act to reflect amendments to section 117, requiring the Court to set a next release date.
- Clause 8 **Section 89 substituted**
- This clause repeals section 89 of the Act in favour of new sections 89 and 89A.
- New Section 89. Period of custody on remand to be treated as detention on sentence**
- New Section 89:
- Requires a Court to take into account any period during which a youth was held in custody on remand in relation to proceedings for an offence or group of offences, when making a detention order, unless:
 - The period has already been taken into account in relation to the making of another detention order, or
 - The period has already been taken into account in relation to the imposition of a term of imprisonment under the *Sentencing Act 1997*, and
 - Requires a Court (that takes a period during which a youth was held in custody on remand into account when making a detention order) to order that the period of detention is to commence on a day earlier than the day on which it is imposed.
- New Section 89A. Detention order to specify earliest release date**
- New Section 89A requires a Court to calculate and specify the earliest release date when making a detention order in respect of a youth.
- Clause 9 **Section 109 amended (Right to be released)**
- This clause amends section 109 of the Act to reflect amendments to section 117, requiring the Court to set a next release date.
- Clause 10 **Sections 117 and 118 substituted**
- This clause repeals sections 117 and 118 in favour of a new section 117.
- New Section 117. Contravention of supervised release order other than by further offence punishable by detention or imprisonment**
- New Section 117 provides for the contravention of Supervised Release Orders other than via the commission of an offence in respect of which a Court has imposed a sentence that includes a detention order or sentence of imprisonment.

New Section 117:

- Enables the Secretary to warn a youth who has contravened a Supervised Release Order that a further contravention may result in the Secretary applying to a Court for a determination that the Supervised Release Order should be continued, amended or cancelled.
- Enables the Secretary to apply to the Court for a determination that the Supervised Release Order should be continued, amended or cancelled if:
 - A youth commits a further relevant contravention of a Supervised Release Order after being issued with a warning, or
 - A youth has contravened a Supervised Release Order through the commission of an offence or prescribed offence.
- Requires the Secretary's warning to be in writing.
- Requires the Secretary to give a copy of any warning that is issued to the youth's guardian, in relevant circumstances.
- Requires a copy of any application to the Court, and notice of the time and place of any hearing, to be served on the youth, and the youth's guardian, in relevant circumstances.
- Enables the Court to issue a warrant to arrest a youth if the Court is satisfied that a youth is unlikely to appear, or if the youth fails to appear, or if reasonable efforts have been made to serve the application on the youth and these have been unsuccessful.
- Identifies the matters that the Court must consider when deciding whether to continue, amend or cancel a Supervised Release Order.
- Requires a Court that cancels a Supervised Release Order to either:
 - Order that the youth be detained for the remainder of his or her sentence of detention, or
 - Specify a next release date.

The mechanisms available under new section 117 apply to general and special conditions and vest responsibility for determining whether a Supervised Release Order has been contravened in a Court, rather than the Secretary.

The new section also clarifies the options available to a Court and makes it clear that these no longer include suspending a Supervised Release Order.

Contravention of Supervised Release Orders through the commission of an offence in respect of which a Court has imposed a sentence (that includes a detention order or term of

imprisonment) will continue to be dealt with through existing section 119 of the Act.

Clause 11 Section 120 amended (Effect of cancellation of supervised release order)

This clause amends section 120 of the Act by removing references to the suspension of a Supervised Release Order. This is necessary given the removal of this option by way of amendments to section 117 of the Act.

Clause 12 Section 121 amended (Effect of cancellation of supervised release order after youth reaches 19 years)

This clause amends section 121 of the Act by removing references to the suspension of a Supervised Release Order. This is necessary given the removal of this option by way of amendments to section 117 of the Act.

Clause 13 Section 135 amended (Refusal of ordinary visitor, &c.)

This clause amends section 135 of the Act to insert a new meaning of “visitor” and to make necessary consequential changes to subclause 1 of section 135.

The amendments make it clear that section 135 applies to visitors other than prescribed officers.

The amendments have been included in response to new section 135A, which regulates access by prescribed officers to detention centres.

Clause 14 Section 135A inserted

This clause inserts a new section 135A to the Act. The new section regulates access by prescribed officers to detention centres.

New Section 135A. Access to detainee by prescribed officer

New section 135A defines the term “prescribed officer” and provides for access by a prescribed officer to a detention centre for the purposes of performing the officer’s statutory functions.

New section 135A:

- Defines a “prescribed officer” as a person or class of persons prescribed by the regulations to be a prescribed officer for the purposes of the section;
- Provides that a prescribed officer is entitled to be allowed access at any reasonable time to a detention centre, and to any detainee at the centre, so that that officer can perform or exercise relevant statutory functions;
- Requires a detention centre manager and detention centre staff to allow a prescribed officer to conduct an interview with a detainee in private;
- Prevents a detention centre manager and detention centre

staff from opening, copying, removing or reading certain correspondence without the detainee's permission, or from reading any document brought to the centre by a prescribed officer without the officer's permission; and

- Identifies when a detention centre manager may refuse to allow a prescribed officer to enter a detention centre and when he or she may require a prescribed officer to leave a detention centre.

Clause 15 Section 140 amended (Dealing with detention offence)

This clause amends section 140 of the Act to reflect amendments to section 117, requiring the Court to set a next release date.

Clause 16 Section 141 amended (Court proceedings for detention offence)

This clause amends section 141 of the Act to reflect amendments to section 117, requiring the Court to set a next release date.

Clause 17 Section 142 amended (Effect of change of earliest release date or next release date)

This clause amends section 142 of the Act to reflect amendments to section 117, whereby the Court sets the next release date when cancelling a supervised release order.

Clause 18 Repeal of Act

This clause provides for the automatic repeal of the *Youth Justice Amendment Bill 2016* within 365 days of that Act's commencement.