

<p style="text-align: center;">CLAUSE NOTES</p> <p style="text-align: center;"><i>Youth Justice (Miscellaneous Amendments) Bill 2012</i></p>	
<p>Part I</p> <p>Clause 1</p>	<p>Preliminary</p> <p>Short Title</p> <p>Provides that the Bill will be cited as the <i>Youth Justice (Miscellaneous Amendments) Act 2012</i></p>
<p>Clause 2</p>	<p>Commencement</p> <p>Provides for the Bill to commence on a day or days to be proclaimed.</p>
<p>Part 2</p> <p>Clause 3</p>	<p>Principal Act</p> <p>Provides that, in the Bill, the <i>Youth Justice Act 1997</i> is referred to as the Principal Act.</p>
<p>Clause 4</p>	<p>Long title amended</p> <p>The long title of the Principal Act is amended by omitting the word ‘punishment’ and replacing it with ‘sanctioning’. This amendment is for consistency with the amendments to section 5 of the Principal Act by clause 7.</p>
<p>Clause 5</p>	<p>Section 3 amended (Interpretation)</p> <p>This clause amends section 3 of the Principal Act, which contains definitions of terms used in the Principal Act, by inserting the following definitions:</p> <ul style="list-style-type: none"> • ‘Commissioner for Children’ means the Commissioner for Children as appointed under the <i>Children, Young Persons and Their Families Act 1997</i>. • ‘Community service’ means attending or undertaking a community service activity. • ‘Community service activity’ means an activity that is approved under section 6A of the Principal Act. • ‘Controlled substance’ has the same meaning as the <i>Misuse of Drugs Act 2001</i>. • ‘Director, Monetary Penalties Enforcement Service’ is as defined under the <i>Monetary Penalties Enforcement Act 2005</i>. • ‘Government Agency’ is as defined under the <i>Children, Young Persons and Their Families Act 1997</i>. • ‘Information-Sharing Entity’ is as defined under the <i>Children, Young Persons and Their Families Act 1997</i>. • ‘Nominated adult’ provides a definition for the adults a youth may nominate.

	<p>Clause 5 also amends section 3 of the Principal Act by inserting a new subparagraph 3(b) (iia) into the definition of 'prescribed offence' so it is a prescribed offence for a person who is 14 years of age or older to maintain a sexual relationship with a young person under the age of 17 years as defined under section 125A of the <i>Criminal Code 1924</i>. Prescribed offences are the most serious offences a youth can commit and are heard in the Supreme Court.</p> <p>The intent of this amendment is to not punish young people of a similar age who are in a consenting sexual relationship that would not otherwise be criminal; this provision is intended for the most serious offending and will provide greater protections for the youngest and most vulnerable children in our society, by allowing for appropriate sentences on older youths that commit these types of offences.</p> <p>Clause 5 substitutes the definition of 'responsible adult' to mean a nominated adult in relation to the youth; or a justice of the peace if there is no nominated adult.</p>
Clause 6	<p>Section 4 amended (Objectives of Act)</p> <p>Clause 6 amends the Objectives in section 4 of the Principal Act to replace references to 'punishment' with references to 'sanctions'.</p> <p>In the broadest sense a sanction is a penalty for wrongful action. However, unlike punishment, which is only ever punitive, a sanction can be either reparative or punitive. A reparative sanction links the nature of the penalty to the offence to be sanctioned and can encourage the young person to take responsibility for his/her actions. The use of 'sanction' in the Objectives of the Act encourages the use of reparative sanctions.</p> <p>Clause 6 also amends section 4 by inserting a new paragraph (i) to emphasise the Act's reparative justice focus. The new paragraph (i) ensures that a youth who has committed an offence is provided with opportunities to repair any harm caused and to reintegrate him/herself into the community.</p>
Clause 7	<p>Section 5 amended (General principles of youth justice)</p> <p>Clause 7 amends the Principles in section 5 of the Principal Act to replace references to 'punishment' with references to 'sanctioning', consistent with the amendments made under Clause 6.</p> <p>In addition the Principles have been amended by inserting a new paragraph (f) in subsection (2) to encourage more involvement of an Aboriginal youth's cultural community.</p>
Clause 8	<p>Section 6A inserted</p> <p>After section 6 of the Principal Act, the following section is inserted in Part 1:</p> <p>6A. Activities that may be performed as community service</p> <p>Clause 8 inserts a new section 6A in the Principal Act. This clause strengthens the requirements in respect of those activities that can be performed as a community</p>

	<p>service. The proposed new section 6A specifies that:</p> <ul style="list-style-type: none"> • The Secretary is to approve the types of activities that can be undertaken for the purpose of community service, other than for the purposes of section 10; and • The Commissioner of Police is to approve the types of activities that can be undertaken for the purpose of section 10 (Formal Caution) <p>This clause also provides for a non-exhaustive list of the types of activities that may be approved. These include:</p> <ul style="list-style-type: none"> • Education and training programs • Reintegration programs • Health and personal development programs <p>This clause also inserts paragraph 6A (4) which explains that the Secretary or Commissioner for Police may not approve an activity under this section unless he or she is of the opinion that the activity is suitable for youths to perform as community service, and unless the activity is able to be provided to youths and youths won't be paid for performing it.</p>
<p>Clause 9</p>	<p>Section 10 amended (Formal Caution)</p> <p>This clause amends section 10(2) of the Principal Act by substituting a new paragraph (c). This new paragraph differs from the current paragraph (c) by specifying that the minimum age limit relating to youths undertaking community service is 13 years and that an undertaking may include the new types of activities specified in proposed new section 6A(3). This paragraph also provides that the maximum amount of hours that can be entered into as community service after one offence is 35 hours.</p> <p>In addition subsection (2)(a)(ca) is inserted to enable a youth who is less than 13 years of age to be subject to an undertaking to perform a specified period (of not more than 35 hours) of community service programs that consist of training, education, or health and personal development under proposed new section 6A(3)(a) or (c).</p> <p>This clause also inserts a new subsection 10(2A) specifying that the maximum number of hours that can be entered into for multiple offences is 70 hours, if the youth is less than 16 (section 10(2A)(a)) or 210 hours if the youth is 16 years old or more (section 10(2A)(b)).</p> <p>The clause also inserts new subsection (2B) to provide that hours are to be applied cumulatively to every undertaking.</p> <p>The clause also amends subsection (8) and inserts a new subsection (8A). These relate to the operation of new section 12A inserted by clause 11, where a youth who does not substantially fulfil an undertaking, without reasonable excuse, may be subject to further action under the Act.</p>

Clause 10	<p>Section 11 amended (Caution administered by an Aboriginal Elder or representative)</p> <p>Clause 10 amends section 11 so that a formal caution ‘is to be, if practicable’ provided to an Aboriginal youth by an Aboriginal Elder or representative. This emphasizes that the caution should be administered if practicable by an Aboriginal Elder or representative. Currently the Principal Act only provides the caution ‘may’ be so administered.</p>
Clause 11	<p>Section 12A inserted</p> <p>After section 12 of the Principal Act, the following section is inserted in Division 2:</p> <p>12A. Where undertakings in formal caution not substantially performed</p> <p>Clause 11 inserts a new section 12A. The purpose of this section is to provide an appropriate response for a youth, who is 13 years or older, who fails without reasonable excuse to substantially fulfil an undertaking that he or she was required to enter under section 10. Currently, no further action can be taken. Under the amendments, the authorised police officer;-</p> <ul style="list-style-type: none"> • may decide to take no further action; • after consultation with the Secretary, may deal with the youth again under section 9 of the Principal Act in relation to the offence. For example, the policy officer could issue another formal caution, consider a community conference, or file a complaint before the Court. In this event, the previous undertakings in relation to the offence cease and the failure is disregarded, in favour of the new actions to be taken. <p>Subsections (4) and (5) provide for an extension of time for a complaint for the offence to be filed in the Court. This is because the usual limit is six months from the date of the offence, and a youth’s failure to fulfil an undertaking might occur after that six month period had expired.</p>
Clause 12	<p>Section 14 amended (Convening of community conference)</p> <p>Clause 12 amends section 14(2) (c) (ia) of the Principal Act to ensure that Youth Justice Workers must be invited to a Community Conferences.</p>
Clause 13	<p>Section 16 amended (Powers of community conference)</p> <p>This clause amends section 16(1)(e) of the Principal Act to reflect that a community conference can only require a youth of 13 years or older to enter into community service undertakings.</p> <p>This clause substitutes section 16(3) of the Principal Act specifying that an undertaking must not be required if the effect is that a youth’s total undertakings amount to more than 70 hours if the youth is aged between 13, 14 and 15; or 210 hours if the youth is 16 years old or more.</p> <p>The clause also inserts into section 16 a new subsection (4) to provide that hours are to be applied cumulatively to every undertaking.</p>

<p>Clause 14</p>	<p>Section 19 amended (Procedure after a community conference)</p> <p>Clause 14:</p> <p>(a) omits paragraph (a) from subsection (1) and substituting it with (a) “file with the district registrar each undertaking to pay compensation or make restitution entered into by the youth ; and</p> <p>(b) inserting subsection (1A) after (1) to provide if a undertaking is filed with the District Registrar under (1)(a) the District Registrar must:</p> <ul style="list-style-type: none"> ○ refer the undertaking to the Director of the Monetary Penalties Enforcement Service for collection of the amount of compensation or restitution; and ○ notify the Director of the Monetary Penalties Enforcement Service of the date the undertaking was entered into. <p>(c) amends section 19(2) to provide that the Director of the Monetary Penalties Enforcement Service, rather than the district registrar, must notify the Secretary if a youth does not complete payment of compensation or the making of restitution as required by the undertaking; and</p> <p>(d) amends section 19(3) to provide that the Director of the Monetary Penalties Enforcement Service, rather than the district registrar, must notify the Secretary if a youth does not complete payment of compensation or the making of restitution as required by the undertaking; and</p> <p>(e) amends section 19(6) to legislate that when a youth has fulfilled all undertakings the Secretary must file with the Commissioner of Police, rather than the district registrar, a certificate stating this fact.</p>
<p>Clause 15</p>	<p>Section 22 amended (Confidentiality)</p> <p>Clause 15 provides for the insertion of subsection (4A) into section 22 of the Principal Act. This subsection provides that the confidentiality requirements of subsection (1) do not apply if:</p> <ul style="list-style-type: none"> • the youth consents in writing to their information being used for the purpose of their rehabilitation or other related purposes; or • the information is shared between an information-sharing entity and a Government Agency for the purpose of the rehabilitation of a youth or a related purpose; or • the information is shared between an information-sharing entity and the Commissioner for Children, or a Government Agency and the Commissioner for Children. <p>This clause will provide increased clarity regarding the ability to share information between Information-Sharing entities, Government Agencies and/or the Commissioner for Children; which will assist Government during the policy making process and result in better outcomes for young people.</p>
<p>Clause 16</p>	<p>Part 3: Heading amended</p>

	<p>Clause 16 amends the previous title of Part 3 of the Principal Act by changing the title the title from ‘arrest and custody of suspected offenders’, to ‘arrest, search, bail and custody of youth’.</p>
Clause 17	<p>Section 24 amended (Limit on power of arrest)</p> <p>Section 24 of the Principal Act limits the arrest powers given to police officers, such as arrest powers under other Acts. Section 24 only applies in circumstances where the police officer already has a power to arrest. A police officer can arrest an adult for an offence, for example, in circumstances where section 24 limits the officer’s power to arrest a youth for the same offence.</p> <p>In relation to section 24(a), a police officer may only arrest a youth in relation to an offence if:</p> <ul style="list-style-type: none"> • the arresting officer believes the offence that has been committed is serious enough to warrant an arrest, and • also believes, on reasonable grounds, that the arrest is necessary to prevent the continuation or repetition of the offence. <p>Section 24(a) may appear to limit the arrest to preventing repetition of an offence that is the same as the original offence. Clause 17 amends section 24(a) to clarify the intention that police may arrest an offending youth in relation to an offence if:</p> <ul style="list-style-type: none"> • the arresting officer believes the offence that has been committed is serious enough to warrant an arrest, and • also believes, on reasonable grounds, that the arrest is necessary to prevent the continuation or repetition of the offence, 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 that offence.
Clause 18	<p>Section 24A, 24B and 25C inserted</p> <p>Clause 18 inserts new proposed sections 24A, 24B and 24C into the Principal Act.</p> <p>24A. Duties of arresting police officer</p> <p>Proposed new section 24A explains that if a youth is arrested, the <i>Criminal Law (Detention and Interrogation) Act 1995</i>, which provides for general provisions for detention and interrogation, is modified so that:</p> <ul style="list-style-type: none"> • a reference in that Act to the youth contacting a ‘friend’ means the youth can also contact a responsible adult. • a police officer must as soon as practicable inform the youth they have the right to refuse to answer questions, or participate in investigations, except where required to do so by or under an Act or an Act of the Commonwealth; and ensure if practicable that the youth’s guardian is notified of the arrest. <p>For the avoidance of doubt, proposed new section 24A also stipulates that it does not derogate from any other duties the police officer has under any law of the State relating to investigation, interrogation, arrest, bail, remand and custody.</p>

	<p>24B. Conditions of bail</p> <p>Section 24B provides that a court, justice or police officer who intends to admit a youth to bail must have regard to the principles of the Principle Act so far as they may apply to the youth's circumstances in deciding the conditions, if any, that are to be placed on the bail. This is in addition to the limitations on conditions of bail that apply under other laws.</p>
	<p>24C. Breach of condition of bail</p> <p>Section 24C provides for breaches of conditions of bail. Subsection (1) defines a "relevant contravention" as a contravention by a 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 to appear and surrender to a court as required under sections 5 or 7 of the <i>Bail Act 1994</i>.</p> <p>Subsection 2(a) has the effect that a relevant contravention is not an offence under the Bail Act. However, subsection 2(b) clarifies that a court may take the contravention into account in sentencing the youth for the offence in relation to which the bail was granted. That is, a contravention could be considered an aggravating sentencing factor.</p> <p>While relevant contraventions will not be offences, the powers of arrest under section 5(5A) or 10 of the Bail Act for contraventions of bail continue to apply. A youth may therefore be arrested and have bail reconsidered in the usual way. This is similar to the position in other jurisdictions such as New South Wales. To ensure that bail can be reconsidered in the usual way, certain references to offences in relevant Acts are modified by subsections (3) and (4).</p> <p>Section 24C is designed so that conduct that would not otherwise be criminal (such as breach of curfew conditions and so on) is not criminalised. The current arrangement leads to additional police and court time proving bail offences, and an extended criminal record for youths who contravene bail. The amendments remedy this, while providing the contravening conduct can lead to arrest and reconsideration of bail, and is relevant to sentencing for the original offence.</p>
Clause 19	<p>Section 25A inserted</p> <p>After section 25 of the Principal Act, the following section is inserted in Part 3:</p> <p>25A. Searches of youths</p> <p>Clause 19 inserts section 25A into the Principal Act. Section 25A does not in itself authorise searches, but provides for additional requirements to be prescribed in regulations to apply where section 131 of the Principal Act, or another Act, authorises a search of a youth in custody in custodial premises. For example, the regulations might provide for who may conduct the search, observe the search, detailed requirements for how and where a search is conducted, specific requirements for different kinds of searches (for example, frisk searches, strip searches, body cavity searches) and so on. Regulations may be scrutinised by Parliament in the usual way.</p> <p>Subsection (1) defines terms used in the section (<i>body cavity search, custodial</i></p>

	<p><i>premises</i>) and subsection (2) provides the section only applies to those youths held in custody in custodial premises.</p> <p>Subsection (3) provides that a search authorised by section 131 or any other Act to which section 25A applies is only authorised if it is carried out in accordance with the regulations. Subsection (4) clarifies that 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 the Principal Act, or a provision of another Act. Subsection (5) goes further, to specifically provide that neither section 25A or the regulations can authorise a body cavity search, unless the the body cavity search is specifically authorised under the other Act.</p>
Clause 20	<p>Section 31 amended (Restrictions on reporting proceedings)</p> <p>Clause 20 amends section 31 of the Principal Act by inserting subsections (5) and (6). These subsections enable information about youths obtained in legal proceedings to be shared, if:</p> <ul style="list-style-type: none"> • in relation to the restriction in subsection (1), relating to a general restriction on publication, where the youth consents in writing to their information being used for the purpose of their rehabilitation or other related purposes; or • in relation to the restrictions in subsection (1) and (3), relating to Court prohibition of publication: <ul style="list-style-type: none"> ○ the information is only to be shared between an information-sharing entity and a Government Agency for the purpose of the rehabilitation of a youth or a related purpose; or ○ the information is only to be shared between an information-sharing entity and the Commissioner for Children, or a Government Agency and the Commissioner for Children. <p>This clause will provide increased clarity regarding the ability to share information between Information-Sharing entities, Government Agencies and/or the Commissioner for Children; which will assist Government during the policy making process and result in better outcomes for young people.</p>
Clause 21	<p>Section 33AA – Inserted</p> <p>33AA. Court may request oral presentence report</p> <p>Clause 21 inserts section 33AA into the Principal Act to provide Courts with the power to request oral presentence reports provided the Court believes it is appropriate to do so.</p> <p>If such a report is requested the Court may ask the Youth Justice Worker questions, and the following sections of the Principal Act, which apply to written reports, would not apply:</p> <ul style="list-style-type: none"> • Presentence report (Section 33) • Disclosure of presentence report (Section 34) • Presentence report evidence (Section 35)

	<ul style="list-style-type: none"> • Disputed presentence reports (Section 36) <p>If a presentence report is provided orally the youth, his or her legal representative or the prosecutor:</p> <ul style="list-style-type: none"> • may dispute the whole or any part of the report during the hearing; and • may provide evidence on any disputed matters, and if necessary request that the matter be adjourned to enable this to occur; and • may require a person whose opinion is referenced by the Youth Justice Worker to attend Court for the purpose of providing more information, and if necessary the hearing is to be adjourned to enable this to occur; and • may ask the Youth Justice Worker or a person asked to attend questions; and • must be allowed to cross examine the Youth Justice Worker regarding the contents of the report.
<p>Clause 22</p>	<p>Section 36A inserted</p> <p>After section 36 of the Principal Act, the following section is inserted in Division 3:</p> <p>36A. Victim Impact Statements</p> <p>Clause 22 inserts section 36A into the Principal Act and defines terms used in the section (<i>immediate family, indictable offence, victim</i>).</p> <p>Section 36A provides that the victim of an indictable offence will be given an opportunity to provide a written statement, if the youth is found guilty of an offence punishable on indictment or an offence prescribed for this section, and explains that the statement can include:</p> <ul style="list-style-type: none"> • details of any injury, loss or damage suffered as a direct consequence of the offence; and • describes the effects on victim that the offence has caused. <p>This section also allows for another person, other than the victim to provide a written statement, which provides the same details as outlined above, if the Court considers it appropriate.</p> <p>This section stipulates that all statements made under subsections (2) and (3) must comply with and be provided in accordance with the Rules of Court, which is defined under subsection (6) to include the Rules of Court made under section 12 of the Criminal Code and the Rules of Court made under section 144 of the <i>Justices Act 1959</i>.</p> <p>The purpose of this is to ensure that the victim (or their nominated representative) adheres by the rules of the Court when providing their impact statement, and provide clarity as to procedures that are put in place for victim impact statements from time to time.</p> <p>Subsection (5) provides that if a victim impact statement is provided, the Court must allow the victim, the person who wrote the statement or another person who is nominated by either of these parties, to read the statement, if this was</p>

	<p>requested when it was provided to the Court.</p> <p>Courts can consider Victim Impact Statements when determining the appropriate sanctions that should be imposed.</p>
Clause 23	<p>Section 38 amended (Convening of community conference)</p> <p>Clause 23 amends section 38 of the Principal Act by inserting subsection (da), to ensure that Youth Justice Workers must be invited to Community Conferences.</p>
Clause 24	<p>Section 40A inserted</p> <p>After section 40 of the Principal Act, the following section is inserted in Division 4:</p> <p>40A. Additional requirements for court-ordered community conference</p> <p>Clause 24 inserts section 40A into the Principal Act to provide, in subsection (1), that if a Court-ordered community conference does not reach a decision that requires the youth to enter into an undertaking, the facilitator must file a copy of the decision with the district register.</p> <p>It also provides in subsection (2) that the Secretary must file a certificate with the district register as soon as practicable following the completion of all Court-ordered conference undertakings.</p>
Clause 25	<p>Section 41 amended (Dismissal of charge)</p> <p>Clause 25 amends section 41 of the Principal Act so that section 41 integrates with the proposed new section 40A inserted by clause 24.</p>
Clause 26	<p>Section 45 amended (Confidentiality of community conferences)</p> <p>Clause 26 amends section 45 of the Principal Act by inserting subsection (3A). This subsection enable information about youths obtained in community conferences to be shared, if:</p> <ul style="list-style-type: none"> • the youth consents in writing to their information being used for the purpose of their rehabilitation or other related purposes; or • the information is only to be shared between an information-sharing entity and a Government Agency for the purpose of the rehabilitation of a youth or a related purpose; or • the information is only to be shared between an information-sharing entity and the Commissioner for Children, or a Government Agency and the Commissioner for Children. <p>This clause will provide increased clarity regarding the ability to share information between Information-Sharing entities, Government Agencies and/or the Commissioner for Children; which will assist Government during the policy making process and result in better outcomes for young people.</p>
Clause 27	<p>Section 47 amended (Sentences and other orders that may be imposed)</p>

	<p>Clause 27 amends section 47 of the Principal Act by inserting:</p> <ul style="list-style-type: none"> • subsection (1)(ha), to allow the Court to impose an order under the inserted section 161A in clause 47 relating to certain sentences under the <i>Sentencing Act 1997</i>. • subsection (1)(j), to allow the Court to adjourn proceedings and grant bail under the <i>Bail Act 1994</i>, and defer sentence in accordance with the inserted Division 7A in clause 31; • subsection (1A), so that proceedings can not be adjourned for more than 12 months from the date of the finding of guilt; and • subsection (1B), which clarifies that section 47 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 <p>This clause also emphasises rehabilitation in sentencing, by inserting subsection (3A). This subsection requires the Court to ensure that the matter of rehabilitation of the youth is given more weight than any other individual matter.</p> <p>In addition, subsection (4) (c) of section 47 is substituted so that "sentence" is replaced with "order". This will mean that the Court must, in determining the orders to make under the section, have regard to the effect the order (not just the sentence) will have on a youth's chances of finding and retaining employment.</p>
Clause 28	<p>Section 49 amended (Recording conviction)</p> <p>Clause 28 amends section 49(1) and (2) of the Principal Act by including references to the new section 47(1)(ha) inserted by clause 27.</p> <p>Clause 28 also inserts new section 49(4A), which provides that in determining whether to record a conviction, the Court must ensure that the matter of rehabilitation is given more weight than any other individual matter.</p>
Clause 29	<p>Section 54A inserted</p> <p>After section 54 of the Principal Act, the following section is inserted in Division 7:</p> <p>54A. Discharge of release and adjournment order</p> <p>Clause 29 inserts section 54A into the Principal Act. The section provides that a youth is discharged from a release and adjournment order when the period of the order expires, unless</p> <ul style="list-style-type: none"> • the Court revokes the order; or • after the youth is released, the Court makes another order under section 47 of the Principal Act in relation to the offence.
Clause 30	<p>Section 56 amended (Contravention of release and adjournment order)</p> <p>Clause 30 amends section 56 of the Principal Act by inserting subsections (2A) and (2B). Subsection (2) of that section requires a copy of the application and notice of the time and place of the hearing to be given to a youth.</p> <p>Proposed subsection (2A) states that if the Court is satisfied that a youth is unlikely</p>

	<p>to appear at the hearing of the application, subsection (2) does not apply, and that the Court may issue a warrant to arrest the youth.</p> <p>Subsection (2B) states that if the youth is before the Court the application can be made orally under subsection (1) and, that, in this case, subsection (2) will also not apply.</p> <p>This clause also inserts subsection (6A) to ensure that in the event that an application made under subsection (1) is not heard or determined before the order expires, the Court may:</p> <ul style="list-style-type: none"> • hear and determine the application; and • if satisfied the youth has contravened the order or a special condition to which the order was subject make an order under subsection (4), as if the release and adjournment order was in force.
Clause 31	<p>Part 4, Division 7A inserted</p> <p>Clause 31 inserts a new Division 7A – Deferral of Sentencing in Part 4 comprising new sections 56A, 56B, 56C and 56D. The new Division provides for the adjournment of proceedings in order to defer sentencing a youth.</p> <p>56A. When a sentence may be deferred under section 47(1)(j))</p> <p>New section 56A provides the circumstances in which the Court can adjourn proceedings under s 47 and defer sentence under this Division. Subsection (2) provides the Court may defer sentencing a youth for the following purposes:</p> <ul style="list-style-type: none"> • to assess the youth’s capacity, and prospects for rehabilitation; or • allowing the youth to demonstrate that rehabilitation has taken place; or • assessing the youth’s capacity, and prospects, for participating in an intervention plan; or • allowing the youth to participate in an intervention plan; or • any other purpose that the Court thinks is appropriate in the circumstances. <p>Subsection (3) provides for the circumstances when sentences may be deferred.</p> <p>Subsection (4) defines an intervention plan.</p> <p>Subsection (5) provides a sentence may be deferred whether or not the Court considers the seriousness of the offence justifies a sentence of detention or imprisonment.</p>
	<p>56B. Grant of bail and review</p> <p>New section 56B provides that the bail granted to a youth as part of the deferring of the sentencing of the youth will be for the same period as the period for which the sentencing of the youth is deferred.</p> <p>This section also explains what conditions may be imposed on the youth, including those imposed under section 7 of the <i>Bail Act 1994</i> and includes a statement as to when additional conditions can be added or current conditions varied or</p>

	substituted. The section provides for bail to be amended, following consideration of any report on the youth prepared by the Secretary and the extent of the youth's compliance with bail.
	<p>56C. Amendment of date of order deferring sentencing of a youth</p> <p>New section 56C provides for when the Court can amend to an earlier or later date the date to which the sentencing of a youth is deferred under an order made under this Division. An order deferring sentencing may not continue for more than 12 months. In deciding whether to amend the date of an order in relation to a youth, the Court must consider any report prepared in relation to the youth by the Secretary and the degree of compliance by the youth with the conditions of the bail of the youth in relation to the offence. The Court must not amend an order in relation to a youth unless the youth is before the Court.</p>
	<p>56D. When order deferring sentence may be revoked</p> <p>New section 56D provides for when the Court can revoke an order deferring sentence made under this Division. The order can be revoked at the request of the youth or if the Court is of the opinion that the purposes for which the sentencing of the youth has been deferred are unlikely to be fulfilled. The Court must not revoke an order in relation to a youth unless the youth is before the Court.</p>
Clause 32	<p>Section 65 amended (Probation order)</p> <p>Clause 32 amends section 65 (4) of the Principal Act by substituting the reference to 'illegal drugs' with 'controlled substances' which is defined under the amendments to section 3 of the Act inserted by clause 5.</p> <p>Clause 32 also inserts new section 65(4)(ea), so that a special condition on a probation order may require a youth to submit to alcohol or controlled substances testing at the direction of the Secretary.</p>
Clause 33	<p>Section 68 amended (Contravention of probation order)</p> <p>Clause 33 amends section 68 of the Principal Act by inserting subsections (2A) and (2B). Subsection (2) of that section requires a copy of the application and notice of the time and place of the hearing to be given to a youth. Proposed subsection (2A) states that if the Court is satisfied that a youth is unlikely to appear at the hearing of the application, subsection (2) does not apply, and that the Court may issue a warrant to arrest the youth.</p> <p>Subsection (2B) states that if the youth is before the Court the application can be made orally under subsection (1) and, that, in this case, subsection (2) will also not apply.</p> <p>This clause also inserts subsection (5A) to ensure that in the event that an application made under subsection (1) is not heard or determined before the order expires, the Court may:</p> <ul style="list-style-type: none"> • hear and determine the application; and • if satisfied the youth has contravened the order or a special condition to which the order was subject make an order under subsection (4), as if the

	release and adjournment order was in force.
Clause 34	<p>Section 69 amended (Community service order)</p> <p>Clause 34 amends section 69 of the Principal Act to replace references to ‘community service’ with ‘community service activity’, consistent with the new section 6A inserted by clause 8. Given the expanded provisions for community service activities, a reference to educational, health, personal and other programs is substituted with community service activities.</p> <p>This clause also amends section 69 to ensure that a community service order may be made subject to reasonable special conditions that are specified in the order, and may be applied during the whole or any part of the order that is in force.</p> <p>The proposed new section 69(4) lists the following as the types of condition that may be imposed, but does not limit the conditions to those included in the list:</p> <ul style="list-style-type: none"> • the youth must attend school; • the youth must attend educational, personal and other programs as specified; • the youth abstain from drinking alcohol and taking controlled substances; • the youth must reside at a specified address; • the youth may be subject to curfews; • the youth must undergo medical, psychiatric, psychological and drug counselling as specified; • the youth undergo medical, psychiatric, psychological and drug counselling as directed by the youth justice worker.
Clause 35	<p>Section 70 amended (Preconditions for making community service order)</p> <p>Clause 35 amends section 70 (c) of the Principal Act to ensure that the Court may only make a community service order if a presentence report states that there are appropriate community service activities available in which the youth could participate. This clause also omits paragraph (d) of section 70 which limited the provision of community service to schemes provided or participated in by the Crown.</p>
Clause 36	<p>Section 74 repealed</p> <p>Clause 36 repeals section 74 of the Principal Act, as the matters to which it relates are dealt with more broadly in new section 6A instead, including references to community service activities which help youths reintegrate into the community.</p>
Clause 37	<p>Section 76 amended (Review of community service order, & c)</p> <p>Clause 37 amends section 76 of the Principal Act by inserting (da) in subsection (4). This paragraph has been inserted to allow for the Court, at the hearing of the application, to amend the special conditions to which the community service order is subject.</p>

<p>Clause 38</p>	<p>Section 77 amended (Contravention of community service order)</p> <p>Clause 38 amends section 77 of the Principal Act by inserting subsections (3A) and (3B). Subsection (3) of that section requires a copy of the application and notice of the time and place of the hearing to be given to a youth. Proposed subsection (3A) states that if the Court is satisfied that a youth is unlikely to appear at the hearing of the application, subsection (3) does not apply, and that the Court may issue a warrant to arrest the youth.</p> <p>Subsection (3B) states that if the youth is before the Court the application can be made orally under subsection (1) and, that, in this case, subsection (3) will also not apply.</p> <p>Paragraph (ca) is also inserted under subsection (5) to ensure that the Court can amend the special conditions to which the community service order is subject, if the Court is satisfied that the youth has contravened the order.</p>
<p>Clause 39</p>	<p>Section 90 amended (Suspended detention order)</p> <p>Clause 39 substitutes section 90 (3) of the Principal Act with a new section 90 (3) so that a suspended detention order is automatically subject to various conditions, some of which were previously, under section 90(6), optional conditions that could, but were not automatically, imposed on such an order. Consequential amendments are made to section 90(6) to omit conditions that will now be automatic. The conditions specified as being automatically imposed include a condition that:</p> <ul style="list-style-type: none"> • 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; • during the period of suspension the youth must report to the assigned youth justice worker as required by the youth justice worker; • during the period of suspension the youth must receive visits from the assigned youth justice worker as required by the youth justice worker; • the youth must notify the assigned youth justice worker of any change 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; • during the period of suspension the youth must obey the reasonable and lawful instructions of the assigned youth justice worker; • the youth must attend educational, personal, health and other programs as directed by the assigned youth justice worker; • the youth must, as directed by the Secretary, submit to testing for controlled substances or alcohol; or • the youth must undergo medical, psychiatric, psychological and drug counselling and treatment as directed by the assigned youth justice worker. <p>The clause also changes references to "illegal drugs" to "controlled substances" to align the provision with the new definition of "controlled substances".</p>

<p>Clause 40</p>	<p>Section 93 amended (Review of suspended detention order)</p> <p>Clause 40 amends section 93 of the Principal Act by inserting subsection (5A), to ensure that in the event that an application made under subsection (1) is not heard or determined before the order expires, the Court may:</p> <ul style="list-style-type: none"> • hear and determine the application; and • if satisfied the youth has contravened the order or a special condition to which the order was subject, make an order under subsection 4, as if the suspended detention order were in force.
<p>Clause 41</p>	<p>Section 94 amended (Contravention of suspended detention order)</p> <p>Clause 41 amends section 94 of the Principal Act by inserting subsections (2A) and (2B). Subsection (2) of that section requires a copy of the application and notice of the time and place of the hearing to be given to a youth. Proposed subsection (2A) states that if the Court is satisfied that a youth is unlikely to appear at the hearing of the application, subsection (2) does not apply, and that the Court may issue a warrant to arrest the youth.</p> <p>Subsection (2B) states that if the youth is before the Court the application can be made orally under subsection (1) and, that, in this case, subsection (2) will also not apply.</p>
<p>Clause 42</p>	<p>Section 99A amended (Contravention of rehabilitation program order)</p> <p>Clause 42 amends section 99A of the Principal Act by inserting subsections (2A) and (2B). Subsection (2) of that section requires a copy of the application and notice of the time and place of the hearing to be given to a youth. Proposed subsection (2A) states that if the Court is satisfied that a youth is unlikely to appear at the hearing of the application, subsection (2) does not apply, and that the Court may issue a warrant to arrest the youth.</p> <p>Subsection (2B) states that if the youth is before the Court the application can be made orally under subsection (1) and, that, in this case, subsection (2) will also not apply.</p>
<p>Clause 43</p>	<p>Section 101A inserted</p> <p>After section 101 of the Principal Act, the following section is inserted in Division 15:</p> <p>101A. Workers rehabilitation provisions apply to youth performing community service</p> <p>Clause 43 inserts section 101A into the Principal Act. This section provides that a youth performing community service is to be taken to be a worker under the <i>Workers Rehabilitation and Compensation Act 1988</i> who is employed by the Crown and who is being paid at the greater of the following rates:</p> <ul style="list-style-type: none"> • a rate equal to the basic salary within the meaning of that Act;

	<ul style="list-style-type: none"> the rate of the youth's normal weekly earnings, if any, within the meaning of section 69 of that Act. <p>Subsection (2) provides that for the circumstances in which a youth is performing a community service, including making a 'required journey'.</p> <p>Subsection (3) stipulates when a youth is taken to be performing a required activity and subsections (4) and (5) stipulate how a required journey is defined.</p>
Clause 44	<p>Section 105 amended (Adjournment to determine mental health or disability of youth)</p> <p>Clause 44 amends section 105 subsection (8) to insert a cross-reference to clarify that the report referred to in that subsection is the report required under subsection (6).</p> <p>Subsections (10) (11) (12) and (13) have been amended so that references to reports provided by the Chief Forensic Psychiatrist will be replaced with references to reports provided by persons under subsection (3). The change has been made to clarify the intended operation of the section, which is intended to refer principally to the report provided under subsection (3).</p>
Clause 45	<p>Section 111 amended (Supervised release order subject to conditions)</p> <p>Clause 45 amends section 111 of the Principal Act so that a supervised release order is automatically subject to various conditions, some of which were previously, under section 111(3), optional conditions that could, but were not automatically, imposed on such an order. The conditions specified as being automatically imposed include a condition that the youth:</p> <ul style="list-style-type: none"> must report to the assigned youth justice worker as required by the youth justice worker; must comply with any reasonable direction given by the youth justice worker; and must not move to a different residential address without the approval of the youth justice worker. <p>Subsection (3) is amended to remove optional conditions that will be automatically applied, and substitutes paragraph (c) consequent to those changes.</p>
Clause 46	<p>Section 129 amended (Rights of detainee)</p> <p>Clause 46 amends section 129 (1)(b) of the Principal Act to clarify that a person acting on behalf of the Aboriginal Legal Service, is included in the list of persons from whom an Aboriginal detainee is entitled to receive visits.</p>
Clause 47	<p>Section 161A inserted</p> <p>After section 161 of the Principal Act, the following section is inserted in Part 8:</p> <p>161A. Court may impose certain sentences under Sentencing Act 1997</p> <p>Clause 47 inserts section 161A into the Principal Act. The intention of this section</p>

	<p>is to provide increased flexibility when sentencing an offender who is 18 years old or more. This provides the Court with the ability to exercise the powers of a court of petty sessions under the <i>Sentencing Act 1997</i> in addition to or instead of any powers under this Act.</p> <p>Subsection (2) requires the court exercising those powers to take into consideration the age of the youth when the youth committed the offence.</p> <p>Subsection (3) requires the Court to specify in an order made in accordance with this section that the order is made in accordance with this section. However subsection (4) states that a failure to do this will not impact on the validity of the order under this section that the order is made</p> <p>Subsection (5) specifies that if an order is made in accordance with relevant sections, the responsible department in relation to the <i>Sentencing Act 1997</i> is responsible for all matters relating to the administration of the order;</p> <p>Subsection (6) specifies that if a youth contravenes any contraventions of an order in accordance with this clause or conditions to which an order is subject the youth must be brought before the Court (that is, rather than the court of petty sessions)</p> <p>Subsection (7) specifies that if a contravention in subsection (6) is brought before the Court, the Court may:</p> <ul style="list-style-type: none"> ○ exercise the powers of a court of petty sessions under the <i>Sentencing Act 1997</i> in relation to the contravention of an order or the conditions of an order; or ○ revoke the contravened order and impose any sentence under this Act that it could have made if it had not made the contravened order. <p>Subsection (8) specifies that this section applies despite section 103 of the Principal Act. Section 103 provides that proceedings against youths who commit offences under 18 which are heard after they are 18 or older are still commenced in the Court and sentenced under this Act.</p> <p>This clause provides for more flexible sentencing of youths who are 18 years old or more, in respect of offences they committed as youths, and clarifies that a sentence made using the powers of the <i>Sentencing Act 1997</i> are administered by the Department responsible for that Act. This ensures adults that have committed crimes when they were juveniles, are supervised by the appropriate correctional staff, not Youth Justice staff.</p>
Clause 48	<p>Section 165 amended (Delegation)</p> <p>Clause 48 amends section 165 of the Principal Act to provide the Commissioner of Police with the power to delegate his or her powers under section 6A(2) of the Principal Act, which is the power to approve the types of activities that may be undertaken in the performance of community service.</p>
Clause 49	<p>Section 167A inserted</p> <p>After section 167 of the Principal Act, the following section is inserted in Part 9:</p> <p>167A. Protection against prosecution in relation to certain disclosures of</p>

	<p>information</p> <p>Clause 49 inserts section 167A into the Principal Act. The section provides increased protection for people including relevant staff making authorised disclosures of information relating to the rehabilitation of a youth or for a related purpose, by ensuring that such persons:</p> <ul style="list-style-type: none"> • will not incur any criminal, civil or administrative liability for disclosure; and • are not, by reason of that disclosure – <ul style="list-style-type: none"> ○ taken to have breached any rule of law or practice that would have otherwise prohibited the person from disclosing the information; or ○ 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 or condemn the person for, disclosing the information; or ○ liable to condemnation or disciplinary action by any professional body of person. <p>Proposed subsection (2) states that this section has effect despite the <i>Personal Information Protection Act 2004</i> or any other law relating to the confidentiality or privacy of information.</p>
<p>Part 3</p> <p>Clause 50</p>	<p>Part 3 amends the <i>Monetary Penalties Enforcement Act 2005</i>.</p> <p>Principal Act</p> <p>Clause 50 provides that, in Part 3 of the Bill, the <i>Monetary Penalties Enforcement Act 2005</i> is referred to as the Principal Act.</p>
<p>Clause 51</p>	<p>Section 4 amended (Application of Act)</p> <p>Clause 51 amends section 4 (1) of the Principal Act by inserting ‘or payment in accordance with an undertaking to pay compensation under section 16(1)(b) or (c) of the <i>Youth Justice Act 1997</i>’, after ‘penalty’.</p> <p>New section 4(3) provides that despite section 4(1) nothing derogates from the obligations imposed on the Director under section 19 of the <i>Youth Justice Act 1997</i> in relation to payments of compensation.</p> <p>These amendments are required due to the amendments to section 19 of the <i>Youth Justice Act 1997</i> in clause 14, which provide for transferring of responsibility from the Court’s District Registrar to the Director of the Monetary Penalties Enforcement Service for collection of payments made under community conference undertakings, and notifications to the Secretary. As is currently the case for court ordered penalties, the Director can accept payments, but can only enforce payments which are both court-ordered and remain outstanding when a youth turns 18.</p>
<p>Part 4</p> <p>Clause 52</p>	<p>Part 4 amends the <i>Police Offences Act 1953</i>.</p> <p>Principal Act</p> <p>Clause 52 provides that, in Part 4 of the Bill, the <i>Police Offences Act 1953</i> is referred</p>

	to as the Principal Act.
Clause 53	<p>Section 37 Amended (Disqualification from driving)</p> <p>Clause 53 amends section 37F of the Principal Act, by omitting from subsection (3) ‘expires not earlier than 12 months’ and substitutes with ‘begins’.</p> <p>The clause also inserts subsections (6), (7) and (8) after subsection (5) of the Principal Act. These subsections provide that a Court can revoke the disqualification under section 37F(2) if the youth makes an application to the Court, and there is sufficient evidence of rehabilitation of the applicant.</p> <p>The Court may consider that sufficient evidence of rehabilitation may consist of a youth not committing an offence during the period of disqualification.</p> <p>The effect of this clause is that a youth convicted of relevant charges is disqualified from driving for a period determined by the Court rather than the current minimum period, and a youth disqualified before the youth has actually obtained a driver’s licence may apply for the disqualification to be revoked, and the Court may grant this application in the specified circumstances. This strengthens restorative justice principles.</p>
Clause 54	<p>Section 55 amended (Arrest)</p> <p>Clause 54 amends section 55 (3A) of the Principal Act to include section 24A of the <i>Youth Justice Act 1997</i>, as the new section 24A inserted by the Bill provides for duties of the arresting police officer.</p>
Part 5 Clause 55	<p>Part 5 amends the <i>Victims of Crime Compensation Act 1994</i>.</p> <p>Principal Act</p> <p>Clause 55 provides that, in Part 5 of the Bill, the <i>Victims of Crime Compensation Act 1994</i> is referred to as the Principal Act.</p>
Clause 56	<p>Section 5 amended (Liability of convicted persons to pay compensation levy)</p> <p>Clause 56 amends section 5(2) of the Principal Act. This section addresses an anomalous situation where people convicted of serious offences in the Magistrates Court (Youth Justice Division) are not required to pay a compensation levy, but people convicted by the Supreme Court for offences committed when they were youths are required to do so.</p>
Clause 57	<p>Repeal of Act</p> <p>This clause repeals the Act on the three hundred and sixty fifth day from the day on which all of the provisions commence.</p>