Youth Justice and Other Legislation Amendment Bill 2014

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Youth Justice and Other Legislation Amendment Bill 2014.

Objectives of the Amendments

The policy objectives of the amendments are to:

1. Create a new category of order—a boot camp (vehicle offences) order—and require courts to impose this order when sentencing a recidivist vehicle offender who ordinarily resides in an area prescribed by regulation for a repeat vehicle offence;

2. Prescribe certain details of the process to apply in the administration of the new offence of committing a further offence while on bail;

3. Omit the jurisdiction of a Childrens Court judge to review sentences handed down by Childrens Court magistrates and expand the higher court's appeals jurisdiction;

4. Ensure the new provisions providing for the automatic transfer of young offenders to adult correctional facilities are seamlessly integrated with existing provisions providing for young offenders to be dealt with as adults in certain circumstances;

5. Preserve the Childrens Court's existing discretion to permit a representative of the media to be present in a closed court when hearing a youth justice matter; and

6. Maintain an existing legislative arrangement requiring the Childrens Court to remain open when hearing and determining a charge on indictment involving a child.

Achievement of the Objectives

Boot camp (vehicle offences) order

Further amendments to the *Youth Justice Act 1992* are required to better address the disproportionate level of vehicle-related crime by children in Townsville.

Townsville is currently experiencing very significant rates of repeat unlawful use of motor vehicle (UUMV) offences by children. UUMV offences are offences under section 408A of the Criminal Code, and relate in particular to stealing cars and joyriding. In 2012-13, nearly 90 recidivist offenders were found guilty of committing more than two UUMV offences in Townsville alone.

It is clear that detention alone is not effective in reducing recidivism amongst this group of offenders in Townsville. Of the 129 children found guilty of committing a UUMV offence in Townsville in 2012-13, 83 offenders—more than 64%—had served at least one period in detention under sentence or on remand, with an average period in detention of 145 days per child.

The reforms to the *Youth Justice Act 1992* already contained in the Bill will contribute significantly to addressing this issue by holding recidivist offenders more accountable for their actions and creating real disincentives to young offenders continuing to offend. However, more needs to be done to protect the safety and property of members of the Townsville community by breaking the cycle of repeat UUMV offending by children in that city.

The further amendments will therefore require a court sentencing a recidivist vehicle offender for a further UUMV offence to sentence that child to a sentenced youth boot camp program under a new category of order, a boot camp (vehicle offences) order.

A 'recidivist vehicle offender' will be defined in the YJ Act as an offender who has been found guilty of committing two or more UUMV offences in the previous 12 month period.

This will not prevent the court from imposing additional, more onerous sentences where warranted by the child's behaviour. However, it will ensure that, as part of their sentence, these recidivist offenders are removed from the environments in which they are repeatedly offending and engaged in an intensive and tailored program designed to target the causes of each individual's offending.

Imposition of this sentence will be subject to the child being otherwise eligible to participate in a boot camp program (other than the requirement that they consent) and ordinarily residing in an area prescribed by regulation. For the purposes of this new category of order, Townsville will initially be prescribed in the *Youth Justice Regulation 2003* as the area in which the child must ordinarily reside.

Offence committed while on bail

Continued consultation with the police and courts has identified that greater procedural prescriptiveness is required to ensure the new offence of committing a further offence while on bail can be administered as smoothly as intended. To this end, amendment 6 amends clause 5—which creates the offence by inserting a new section 59A into the *Youth Justice Act 1992*—to insert a new section 59B to prescribe the process intended to be followed in administering the new offence.

As the new offence is intended to be administered in conjunction with proceedings for the substantive offence to which it relates, new section 59B provides that proceedings for the new offence must be started immediately after the finding of guilt giving rise to it and without a complaint and summons having first been issued. Section 42 of the *Youth Justice Act 1992*, which otherwise requires proceedings to be commenced by way of complaint and summons, is also amended to not apply in the case of an offence under section 59A.

To further minimise the impost involved in administration of the new offence and the risk of a young offender having to be remanded while proceedings for the offence are underway, amendment 6 additionally provides that production to the court of a copy of the bail order or undertaking is sufficient to establish the child was on bail at the time of committing the substantive offence to which the new offence relates. The onus then shifts to the child to prove the offence is not made out.

Omission of sentence reviews

The amendments to the Bill deliver on a recommendation by the Legal Affairs and Community Safety Committee to adjust the mechanisms by which Childrens Court judges provide judicial oversight of the sentencing and other decisions of Childrens Court magistrates.

To this end, amendment 9 inserts a new clause 7C into the Bill to omit part 6, division 9, subdivision 4 of the *Youth Justice Act 1992*, which provides that a Childrens Court judge may review a sentence order made by a Childrens Court magistrate. This omission will leave appeals under subdivision 3—which provides for the appeal of magistrates' orders to be heard by a judge under part 9, division 1 of the *Justices Act 1886*—as the single applicable mechanism under which a Childrens Court judge may provide judicial oversight of a magistrate's sentencing and other decisions in relation to a child.

This will support the smooth and efficient administration of justice by ensuring all sentences handed down in the Magistrates Court are subject to the same appeals process regardless of the jurisdiction in which they were made. It also reduces red tape by removing a superfluous process, with the existing appeals process providing a sufficient means for parties aggrieved by a magistrate's sentencing decision to have that decision tested in a higher court.

To complete this adjustment, amendment 9 further inserts a new clause 7B into the Bill expanding the application of subdivision 3—which applies part 9, division 1 of the *Justices Act 1886* to appeals under the *Youth Justice Act 1992*—to include orders made by a Childrens Court magistrate on finding a child has contravened a community based order. As an order made on a finding of contravention may involve the imposition of further sanctions on the child, it is appropriate that these orders be subject to the same level of judicial oversight as other orders involving the imposition of sanctions.

Transfer of offenders

Amendment 17 expands the scope of new section 276B(b) of the *Youth Justice Act 1992*—which provides for new division 2A (Period of detention to be served as a period of imprisonment) to apply to 17 year olds sentenced to a period of detention—to also apply to adults who are 18 at the time of sentence but were 17 at the time of being found guilty. This has the effect that persons who are 18 at the time of being sentenced to a period of at least six months in detention are taken from the time of sentence to have been sentenced to a period of imprisonment.

This amendment is necessary to address a small gap which has been identified between application of new division 2A and the existing provisions dealing with young offenders who are before the court at or around the age of 18. Where an offender is 18 at the time of being found guilty, they must be sentenced as an adult pursuant to existing section 140 of the *Youth Justice Act 1992*. However, new division 2A as currently drafted will only apply where an offender is both found guilty and sentenced before turning 18. Neither provision deals with young offenders who turns 18 between the time of being found guilty and the time of being sentenced. Amendment 17 therefore expands application of new division 2A to also catch up this small cohort.

Permitting media to attend closed court

Amendment 28 amends clause 31 of the Bill to preserve in all relevant circumstances the existing discretion for the Childrens Court to permit a representative of the media to be present in a closed court. It does this by amending new section 21B(2)—which allows the court to permit an interested person to be present in a proceeding for a non-youth justice matter or youth justice matter in relation to a first-time offender—to provide that, in a proceeding for a youth justice matter in relation to a first-time offender, the court may permit a representative of the media to be present.

The *Childrens Court Act 1992* currently provides for the Childrens Court to permit a representative of the media to be present in a closed court hearing a proceeding in relation to a youth justice matter involving either a first-time or repeat offender. The Bill is not intended to disturb this existing requirement.

To this end, clause 31 of the Bill also inserts new section 21C(6), which preserves the court's existing discretion in proceedings for youth justice matters involving repeat offenders. However, it has been identified that the Bill does not preserve the discretion in proceedings involving first-time offenders. The amendment rectifies this inadvertent omission by realigning the Childrens Court's discretion in relation to proceedings involving first-time offenders with its discretion in relation to proceedings involving repeat offenders.

Open court

Amendment 29 further amends clause 31 to maintain in all relevant circumstances the existing requirement that the Childrens Court remain open when constituted by a judge hearing and determining a charge on indictment. It does this by providing that new subsection 21B(1) of the *Childrens Court Act 1992*—which provides that the court must be closed for all non-youth justice matters and youth justice matters involving first-time offenders—does not apply where the court is constituted by a judge hearing and determining a charge on indictment. This will have the effect of requiring the court to remain open when hearing a youth justice matter involving a first-time offender charged with an indictable offence.

The *Youth Justice Act 1992* currently requires that the Childrens Court must be open when constituted by a judge hearing and determining a charge on indictment. This includes where the charge involves either a first-time or a repeat offender. The Bill is not intended to disturb this existing requirement.

To this end, clause 31 of the Bill inserts new section 21C(7), which provides that new section 21C(2)—which provides for a youth justice matter before the Childrens Court in relation to a repeat offender to be closed to the public in the interests of justice—does not apply when the court is constituted by a judge hearing and determining a charge on

indictment. However, it has been identified that the Bill does not insert a similar limitation in relation to section 21B, which applies where a court is hearing a matter involving a first-time offender.

Amendment 29 rectifies this inadvertent omission by subjecting new section 21B to the same limitation as new section 21C.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the intended policy objectives.

Estimated Cost for Government Implementation

Creation of the new mandatory boot camp (vehicle offences) order will increase the number of participants in the boot camp centre established at Lincoln Springs, west of Ingham. Indicative estimates are that the new category of order will affect up to 90 offenders per year, each of whom will be required to be accommodated at a centre for the one month residential phase of the order.

Government is currently considering options for ensuring sufficient capacity is available to accommodate this increase in participants.

Consistency with Fundamental Legislative Principles

Reversal of onus of proof

The following measures involve justifiable reversals of the onus of proof:

Committing a further offence while on bail

New section 59A of the *Youth Justice Act 1992* provides that a finding of guilt against a child for an offence committed while on bail is itself taken to be an offence against the Act. New section 59B of the *Youth Justice Act 1992*, inserted into the Bill by amendment 6, provides that a copy of either a bail order issued by a court or the child's bail undertaking for the original offence is sufficient proof, unless the contrary is proved, that the child was on bail for the purposes of the new statutory offence.

This has the effect that, where the Crown has discharged the evidential onus by producing a copy of the bail order or undertaking, the persuasive onus shifts to the defendant. However, this partial reversal is justified as it does no more than provide a simple and efficient means of evidencing a basic state of affairs—namely, a particular fact of a defendant's involvement in the criminal justice system—without requiring, for example, a person with firsthand knowledge of that state of affairs to give evidence.

The former Scrutiny of Legislation Committee has previously observed that reversals of the onus of proof where legislation provides for a certificate to be evidence of a fact stated in the certificate are unexceptional where the facts evidenced by the certificate are non-contentious and the certificate is given merely evidentiary—rather than conclusive—value.[1]

[1] Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs – reversal of the onus of proof*, 19 June 2013, at paragraph [39].

The current reversal is a reversal of this kind. Whether a child before the court was the subject of a bail order or undertaking at a particular time is an uncontentious question of fact. This provision simply identifies that part of the formal court or police record which contains relevant information about this matter. Further, it remains open to the child to adduce evidence challenging the accuracy or relevance of the copy of the bail order or undertaking.

Boot camp (vehicle offences) order

New section 206A(1) of the *Youth Justice Act 1992*, inserted into the Bill by amendment 11, provides that the court must make a boot camp (vehicle offences) order for a recidivist vehicle offender who ordinarily lives in an area prescribed by regulation. New section 206A(3) provides that advice from the chief executive in a pre-sentence report that the child usually resides in a prescribed area is sufficient proof, unless the contrary is proved, that the child does in fact reside in that area. This has the effect of giving rise to a rebuttable presumption in the Crown's favour that a pre-sentence report correctly shows the child's place of residence, obviating the need for the Crown to adduce further evidence to prove that the child meets the residential requirement under section 206A(1).

This reversal of proof has the potential to have a significant effect on defendants. As a recidivist vehicle offender may be liable to a different sentence depending on where they usually reside, whether in fact an offender lives in a prescribed area becomes a live issue in proceedings for repeat vehicle offences. This reversal therefore has the potential to enliven the concern expressed by the former Scrutiny of Legislation Committee regarding reversals which provide for a certificate to be evidence of a contentious fact stated in the certificate.[2]

However, it is considered that, on balance, the reversal of the onus of proof is justifiable in this instance. It substantially reduces the burden which would otherwise fall on the court by prescribing a simple means by which it can satisfy itself of a factual matter which in most cases is likely to be uncontentious. As well as supporting the swift and efficient administration of justice, this will also benefit offenders by reducing the length of time they may otherwise spend on bail or on remand awaiting sentence.

The pre-sentence report is an appropriate statutory document to bear this probative value. It is produced by officers of the local youth justice service whose close involvement with a child before the youth justice system over sometimes lengthy periods equips them well to be able to advise the court of factual matters about the child. Pre-sentence reports prepared at the courts' request under the *Youth Justice Act 1992* are already regularly relied on by the courts to establish particular facts relevant to the sentencing of children.

Further, this reversal of the onus of proof does not seek to give the information contained in the pre-sentence report conclusive value. Especially in those cases where the offender's usual place of residence is unclear or somehow contentious, it remains open to the child to seek to rebut the presumption by adducing evidence demonstrating they usually reside outside a prescribed area.

<u>Retrospectivity</u>

Legislation may not have sufficient regard for the rights and liberties of individuals if it adversely affects those rights and liberties retrospectively.[3]

[2] Alert Digest No. 5 of 2006, at pages 23 and 24.
[3] *Legislative Standards Act 1992* s 4(3)(g).

Amendment 21 provides that the court may make a boot camp (vehicle offences) order for an eligible recidivist vehicle offender found guilty after commencement, including where the offence was committed or the proceeding started before commencement.

However, it is not considered that this provision affects rights and liberties retrospectively. Any child who pleads guilty prior to commencement and whose plea is accepted by the court must be sentenced according to the *Youth Justice Act 1992* as it applied at the time of the plea. The child's rights and liberties (in this case, the right to plead guilty to an offence and to be sentenced according to the then applicable sentencing regime) are determined by the law in force at the time of their seeking to exercise them, rather than retrospectively.

Consultation

Members of the Townsville and Thuringowa community, including the Member for Thuringowa, have raised significant concerns about the incidence of motor vehicle offences by children in that community.

A consultation draft of the amendments to create the boot camp (vehicle offences) order was supplied to the Legal Affairs and Community Safety Committee, which received a number of submissions on this proposal. Based on its consideration of the proposed amendments and the submissions received, the Committee has recommended that the amendments to create the new order be included in the Bill during its consideration in detail.

Consultation with police, the courts and magistracy has occurred in relation to the process to be applied in administering the new offence of committing a further offence while on bail.

NOTES ON PROVISIONS

Amendment 1 inserts a new clause 3A into the Bill to amend section 42 of the *Youth Justice Act 1992* to include a proceeding for an offence under new section 59A in the list of proceedings which are not required to be started by way of complaint and summons. This is required to support new section 59B, inserted by amendment 6, which prescribes the streamlined process which will apply in administration of the new offence.

Amendment 2 inserts a new clause 4A into the Bill to omit section 47(2), which provides that a review of a sentence order is an appeal for the purposes of the *Bail Act 1980*, from the *Youth Justice Act 1992*. This is consequential to omission from the *Youth Justice Act 1992* of sentence reviews by clause 7C, inserted by amendment 9 below.

Amendment 3 amends clause 5, which creates the new offence of committing a further offence while on bail, by inserting definitions of 'original offence' and 'subsequent offence' for the purposes of the new offence as new section 59AA of the *Youth Justice Act 1992*. Standalone definitions are required as these terms are used in multiple places in new part 5, division 2 as amended.

Amendment 4 further amends clause 5 to omit a definition of 'original offence' from the text of new section 59A, consequential to the insertion of new section 59AA by amendment 3.

Amendment 5 similarly amends clause 5 to omit a definition of 'subsequent offence' from the text of new section 59A, consequential to the insertion of new section 59AA by amendment 3.

Amendment 6 amends clause 5 to insert a new section 59B into the *Youth Justice Act 1992* to prescribe the process to be applied in administration of the new offence under section 59A.

Subsection (1) provides that the new offence may be started without complaint and summons and must be started immediately after the child is found guilty of the substantive offence giving rise to the new statutory offence. This will minimise the impost on the court by ensuring that both the substantive offence and the statutory offence are disposed of as part of an integrated series of proceedings.

Subsection (2) provides that production to the court of a copy of the bail order or undertaking is sufficient proof, unless proven otherwise, that the child was on bail at the time of committing the substantive offence to which the new offence relates. This provides a simple means of establishing a basic fact for the purposes of administration of the new offence, in effect reversing the persuasive onus of proof.

Subsection (3) requires the court, on receipt of the copy of the bail order or undertaking, to require the child to immediately prove why they should not be convicted of an offence under section 59A. This provides an opportunity for the child to adduce evidence disputing the accuracy of the bail or undertaking or some other relevant matter, but minimises any potential delay in the finalisation of the proceeding.

Subsection (4) provides a cross-reference to the definition of 'undertaking' in section 6 of the *Bail Act 1980*.

Amendment 7 amends clause 6—which amends section 62 of the *Youth Justice Act 1992* by omitting subsection (e)—to also omit subsection (c). Subsection (c) provides that a Childrens Court judge has jurisdiction to review a sentence order imposed by a Childrens Court magistrate, and its omission is consequential to the omission from the Act of sentence reviews by amendment 9.

Amendment 8 further amends clause 6 to renumber section 62 of the *Youth Justice Act 1992* consequential to its amendment by that clause and by amendment 7 above.

Amendment 9 inserts the following new clauses into the Bill:

- New clause 7A, which amends the heading to part 6, division 9 of the *Youth Justice Act 1992*—which deals with appeals and reviews—to remove reference to reviews. This is consequential to the omission from the Act of sentence reviews by new clause 7C below.

- New clause 7B, which amends section 117(1) of the *Youth Justice Act 1992* to expand the scope of that provision—which applies part 9, division 1 of the *Justices Act 1886* to appeals under the *Youth Justice Act 1992*—to include orders made by a Childrens Court magistrate on finding a child has contravened a community based order. For the purposes of applying the *Justices Act 1886* to these further orders, subclause 7B(1A) provides that either an order by a magistrate dealing summarily with a child charged with an offence or an order made on a finding of contravention is taken to be an order on a complaint for an offence.

This has the effect of expanding the Childrens Court's appeal jurisdiction, which currently applies to orders by magistrates dealing summarily with children charged with offences, to include orders by magistrates on finding a child subject to a community based order has contravened that order. As an order made on a finding of contravention may involve the imposition of further sanctions on the child, it is appropriate that these orders be subject to the same level of judicial oversight as other orders involving the imposition of sanctions.

- New clause 7C, which omits part 6, division 9, subdivision 4 of the *Youth Justice Act 1992*. This subdivision currently provides that a Childrens Court judge may review a sentence order made by a Childrens Court magistrate. Its omission will leave appeals under subdivision 3—which provides for the appeal of magistrates' orders to be heard by a judge under part 9, division 1 of the *Justices Act 1886*—as the applicable mechanism under which a Childrens Court judge may provide judicial oversight of a magistrate's sentencing decisions in relation to a child.

  This will support the efficient administration of justice by bringing the process for judicial scrutiny of magistrates' decisions in relation to children into line with the existing process for scrutiny of their decisions in relation to adults.

Amendment 10 inserts the following additional clauses into the Bill after clause 9:

- New clause 9A, which inserts a new subsection (3B) into section 151 of the *Youth Justice Act 1992* to prescribe the matters which a pre-sentence ordered by a court under new section 176B(2)(a) must contain. Section 151 of the *Youth Justice Act 1992* permits the court to order the chief executive in certain circumstances to give it a pre-sentence report before sentencing a child found guilty of an offence.

  New section 176B(2), inserted by amendment 10 below, requires the court to obtain and consider a pre-sentence report about a child before sentencing the child to a boot camp (vehicle offences) order. The matters required under new section 151(3B) to be contained in the pre-sentence report are intended to ensure the court has sufficient information available to it to be satisfied before making the order that the child being sentenced:

  - is fit and suitable to participate in a boot camp program;
  - resides in an area prescribed for the purposes of the order;
  - will be able to be accommodated in an appropriate boot camp centre; and
  - has had the effect of the order explained to them in an appropriate way.

  To ensure the pre-sentence report is able to meet this intended purpose, new section 151(3B) requires the report to explicitly address these matters.

- New clause 9B, which inserts new section 176B into the *Youth Justice Act 1992*. New section 176B creates a head of power for the court to make a boot camp (vehicle offences) order and requires the court to make the order on finding a recidivist vehicle offender guilty of a vehicle offence. Before making the order, subsection (2) requires the court to order and consider a pre-sentence report prepared by the chief executive.

New section 176B must be read in conjunction with new section 206A, inserted by amendment 11, which prescribes the circumstances which must be satisfied before a boot camp (vehicle offences) order is to be made.

Subsection (3) provides that the requirement that the court make a boot camp (vehicle offences) order does not limit the court's existing power under section 175 to also make a range of other community based orders or a custodial order in relation to the child the subject of the boot camp (vehicle offences) order. Where warranted by a child's behaviour, the court will have the capacity to impose further custodial or community based orders in addition to the mandatory boot camp (vehicle offences) order.

- New clause 9C, which replaces a reference in section 177 of the *Youth Justice Act 1992* to section 180A of that Act with a reference to section 180B. Section 177 empowers the court to make more than one sentence for a single offence, and provides an inclusive list of provisions qualifying this power. The effect of this amendment is to expand this list to include further qualifying provisions—namely, sections 178B and 180B, which deal with combinations of boot camp (vehicle offences) orders and other orders—inserted by clauses 9D and 9E below.

- New clause 9D, which inserts new section 178B into the *Youth Justice Act 1992* to deal with the circumstance where the court makes a boot camp (vehicle offences) order in combination with another community based order or where another community based order is in effect. In both cases, the boot camp (vehicle offences) order is intended to take precedence, with the other order suspended until the boot camp (vehicle offences) order has been performed or discharged.

- New clause 9E, which inserts new section 180B into the *Youth Justice Act 1992* to deal with the circumstance where the court makes a boot camp (vehicle offences) order in combination with a detention order or it makes a detention order where a boot camp (vehicle offences) order is already in effect. In both cases, the detention order is intended to take precedence, with the boot camp (vehicle offences) order suspended until the child is released from detention under the detention order.

Amendment 11 inserts a new clause 11A into the Bill to insert a new part 7, division 9A (boot camp (vehicle offences) order) into the *Youth Justice Act 1992*. New division 9A consists of the following provisions:

- New section 206A, which prescribes in detail the circumstances in which the court must make a boot camp (vehicle offences) order.

  Subsection (1) provides that a court must make a boot camp (vehicle offences) order when sentencing a recidivist vehicle offender for a vehicle offence if the offender is at least 13 years of age, lives in an area prescribed by regulation and is not an ineligible child. A 'recidivist vehicle offender' is defined by amendment 24 below as a child who has, at the time of being found guilty of an offence or an attempted offence against section 408A of the Criminal Code (Unlawful use or possession of motor vehicles, aircraft or vessels), been found guilty of committing two or more other offences against that provision within the 12 months prior to committing the current offence.

  The requirement that a child must not be an ineligible child is intended to prevent boot camp (vehicle offences) orders being made for children whose behaviour or

offending history renders them unfit to participate in a boot camp program or otherwise means they would pose an unacceptable risk of harm to staff or other participants if required to participate in a program. An 'ineligible child' is therefore defined in subsection (4) as a child who would be ineligible on these grounds for a general boot camp order.

Subsection (2) provides that a boot camp (vehicle offences) order must take immediate effect if an appropriate boot camp centre provider is available at the time the order is made. If a provider is not immediately available, the order must commence at a later date when, according to the chief executive's advice in the pre-sentence report, a provider will be available.

Subsection (3) creates a rebuttable presumption in favour of the Crown that advice from the chief executive in a pre-sentence report that a child usually resides in an area prescribed for the purposes of the boot camp (vehicle offences) order is sufficient proof of that matter.

This presumption is not intended to be conclusive, but rather is intended to allow the court, in the absence of evidence to the contrary, to establish as simply as possible that an offender meets the residential prerequisite of an order. This will support the swift administration of justice and reduce the length of time eligible recidivist vehicle offenders may otherwise spend on bail or on remand awaiting sentence.

Subsection (4) defines two terms for the purposes of section 206A.

- New section 206B, which prescribes the requirements and duration of a boot camp (vehicle offences) order. In effect a boot camp (vehicle offences) order will function as an alternative entry into the existing boot camp program for young offenders, who will be subject to the same program requirements for the same duration as other program participants.

Amendment 12 inserts the following additional clauses into the Bill:

- New clause 12A, which amends section 209 of the *Youth Justice Act 1992* (Court's reasons for detention order to be stated and recorded) to omit a reference to a sentence review. This is consequential to omission of sentence reviews from the Act by clause 7C, inserted by amendment 9 above.

- New clause 12B, which amends section 211 of the *Youth Justice Act 1992* (Commencement of detention period) to omit a reference to an application for a sentence review. This is consequential to omission of sentence reviews from the Act by clause 7C, inserted by amendment 9 above.

- New clause 12C, which amends section 215 of the *Youth Justice Act 1992* (Period of escape, mistaken release or release pending appeal not counted as detention) to omit a reference to an application for a sentence review. This is consequential to omission of sentence reviews from the Act by clause 7C, inserted by amendment 9 above.

- New clause 12D, which amends a reference to a boot camp order in section 226E of the *Youth Justice Act 1992* (Boot camp program) to also refer to a boot camp (vehicle offences) order. This is necessary as an offender sentenced to a boot camp (vehicle offences) order will, under new section 206B, participate in the

same boot camp program (to which section 226E relates) as participants under a general boot camp order.

- New clause 12E, which amends multiple references to a boot camp order in section 226G of the *Youth Justice Act 1992* (Program period) to also refer to a boot camp (vehicle offences) order. Again, this is necessary as a boot camp program to which 226G relates will accommodate participants under both boot camp and boot camp (vehicle offences) orders.

Amendment 13 amends clause 14 of the Bill, which amends section 237 of the *Youth Justice Act 1992* to provide that the chief executive is not required to first warn a child reasonably believed to have contravened a boot camp order by absconding from a boot camp centre before taking further action in relation to the contravention. This clause is amended to also apply where the order contravened by the child's absconding is a boot camp (vehicle offences) order.

Amendment 14 inserts the following new clauses into the Bill:

- New clause 15A, which makes a number of amendments to section 240 of the *Youth Justice Act 1992* (General options available on breach of order).

  Subclause (1) provides that a magistrate's power under section 240(2)(a) to take any action allowed under section 245 in relation to a child's contravention of a community based order made by a magistrate does not apply where that order is a boot camp (vehicle offences) order.

  Subclause (2) inserts a new subsection (ab) into section 240(2) providing that, where satisfied a child has contravened a boot camp (vehicle offences) order made by a magistrate, a magistrate may deal with the child under new section 246AA (inserted by amendment 16 below).

  Subclause (3) renumbers section 240(2) consequential to the insertion of new subsection (ab).

  Subclause (4) provides that a magistrate's power under section 240(3)(b)(i) to take a range of actions allowed under section 245 in relation to a child's contravention of a community based order made by a higher court does not apply where that order is a boot camp (vehicle offences) order.

  Subclause (5) inserts a new subsection (ia) into section 240(3)(b) providing that, where satisfied a child has contravened a boot camp (vehicle offences) order made by a higher court, a magistrate may deal with the child under new section 246AA(1)(b) (inserted by amendment 16 below).

  Subclause (6) renumbers section 240(3)(b) consequential to the insertion of new subsection (ia).

- New clause 15B, which makes a number of amendments to section 241 of the *Youth Justice Act 1992* (General options available to superior court to which child committed for breach).

  Subclause (1) provides that a higher court's power under section 241(2)(a) to take any action allowed under section 245 in relation to a child's contravention of a

community based order made by a higher does not apply where that order is a boot camp (vehicle offences) order.

Subclause (2) inserts a new subsection (ab) into section 241(2) providing that, where satisfied a child has contravened a boot camp (vehicle offences) order made by a higher court, a higher court may deal with the child under new section 246AA (inserted by amendment 16 below).

Subclause (3) renumbers section 241(2) consequential to the insertion of new subsection (ab).

- New clause 15C, which makes a number of amendments to section 242 of the *Youth Justice Act 1992* (General options available to court before which child found guilty of an indictable offence).

  Subclause (1) provides that a court's power under section 242(2)(a) to take any action allowed under section 245 in relation to a child who commits an indictable offence while subject to a community based order made by that court does not apply where that order is a boot camp (vehicle offences) order.

  Subclause (2) inserts a new subsection (ab) into section 242(2) providing that, where satisfied a child has committed an indictable offence while subject to a boot camp (vehicle offences) order made by that court, a court may deal with the child under new section 246AA (inserted by amendment 16 below).

  Subclause (3) renumbers section 242(2) consequential to the insertion of new subsection (ab).

  Subclause (4) provides that a court's power under section 242(3)(b)(i) to take a range of actions allowed under section 245 in relation to a child who commits an indictable offence while subject to a community based order made by another court does not apply where that order is a boot camp (vehicle offences) order.

  Subclause (5) inserts a new subsection (ia) into section 242(3)(b) providing that, where satisfied a child has committed an indictable offence while subject to a boot camp (vehicle offences) order made by another court, the court may deal with the child under new section 246AA(1)(b) (inserted by amendment 16 below).

  Subclause (6) renumbers section 242(3)(b) consequential to the insertion of new subsection (ia).

- New clause 15D, which makes a number of amendments to section 243 of the *Youth Justice Act 1992* (Court may resentence child originally sentenced by lower court).

  Subclause (1) provides that the power of the Supreme Court or a Childrens Court judge under section 243(2)(a) to make a sentence order under section 245(1)(d)(ii) in relation to a child who has committed an indictable offence while subject to a community based order made by a Childrens Court magistrate does not apply where that order is a boot camp (vehicle offences) order.

  Subclause (2) inserts a new subsection (ab) into section 243(2) providing that the Supreme Court or a Childrens Court judge may make a sentence order under

section 246AA(1)(a) (inserted by amendment 16 below) in relation to a child who has committed an indictable offence while subject to a boot camp (vehicle offences) order made by a Childrens Court magistrate.

Subclause (3) renumbers section 243(2) consequential to the insertion of new subsection (ab).

Subclause (4) provides that the power of the Supreme Court or a Childrens Court judge under section 243(4)(a) to make a sentence order under section 245(1)(d)(ii) in relation to a child who has committed an indictable offence while subject to a community based order made by a Childrens Court judge does not apply where that order is a boot camp (vehicle offences) order.

Subclause (5) inserts a new subsection (ab) into section 243(4) providing that the Supreme Court or a Childrens Court judge may make a sentence order under section 246AA(1)(a) (inserted by amendment 16 below) in relation to a child who has committed an indictable offence while subject to a boot camp (vehicle offences) order made by a Childrens Court judge.

Subclause (6) renumbers section 243(4) consequential to the insertion of new subsection (ab).

- New clause 15E, which makes a number of amendments to section 244 of the *Youth Justice Act 1992* (General options available to court to which child committed for breach by indictable offence).

  Subclause (1) provides that the power of a court under section 244(2)(a) to take any action under section 245 in relation to a child returned to that court under section 242(3)(a) for committing an indictable offence while subject to a community based order made by that court does not apply where that order is a boot camp (vehicle offences) order.

  Subclause (2) inserts a new subsection (ab) into section 244(2)(a) providing that a court to which a child is returned under section 242(3)(a) for committing an indictable offence while subject to a boot camp (vehicle offences) order made by that court may take any action under section 246AA (inserted by amendment 16 below).

  Subclause (3) renumbers section 244(2) consequential to the insertion of new subsection (ab).

Amendment 15 amends clause 16, which amends the body of section 245 of the *Youth Justice Act 1992*, to also amend the section body and heading to provide that that provision does not apply to a boot camp (vehicle offences) order. Section 245 prescribes the court's powers to act where a child has contravened one of several community based orders; the court's powers to act where a child has contravened a boot camp (vehicle offences) order are prescribed in new section 246AA, inserted by amendment 16 below.

Amendment 16 inserts a new clause 18A into the Bill to insert a new section 246AA into the *Youth Justice Act 1992* to prescribe the court's powers where a child has contravened a boot camp (vehicle offences) order.

Subsection (1) provides that a court may either revoke the order and resentence the child for the offence for which the order was made or permit the child a further opportunity to

satisfy the requirements of the boot camp (vehicle offences) order. Where the court permits the child a further opportunity to comply with the requirements of the order, it may also vary the order (other than the requirement that the child abstain from violating the law) in a way it considers just. It may be appropriate for the court to exercise this power where it does not consider the child's contravention to have been serious, having regard to the condition contravened and the child's overall level of compliance with the order. Subsection (5) provides that the onus is on the child to satisfy the court that they should be allowed this further opportunity.

Subsection (2) provides that a court which resentences a child is not required to make a new boot camp (vehicle offences) order. While the court will have the discretion to make a fresh boot camp (vehicle offences) order if it sees fit, it is not the intention to require the courts to make a succession of boot camp (vehicle offences) orders in relation to a child who is clearly unfit to participate in a boot camp program.

Subsection (3) provides that court which makes a community based order when resentencing a child for contravening a boot camp (vehicle offences) order must have regard to the period for which the child has complied with the boot camp (vehicle offences) order. This is intended to ensure a child who has complied with the majority of a boot camp (vehicle offences) order is not liable to be double punished by being resentenced to a fresh order for a further substantial period. For similar reasons, subsection (6) requires a court which extends the period of a boot camp (vehicle offences) order to have regard to the period for which the child has complied with the order.

Subsection (4) provides that a court which varies a boot camp (vehicle offences) order may not vary the details of the boot camp program. The details of a boot camp program are carefully developed to meet the particular developmental and behavioural needs of program participants. Obliging the court to consider whether to vary the details of such a program without having the benefit of the chief executive's expert advice in the form of a pre-sentence report would mean asking the court to step outside its sphere of expertise.

Subsection (7) provides that the court may make an order under section 246AA even though the period of the boot camp (vehicle offences) order has ended. This mirrors the court's power in relation to other community based orders where breach proceedings have been commenced but not finalised prior to the order's expiration.

Amendment 16 also inserts a new clause 18B into the Bill to omit a reference to sentence reviews from section 252G of the *Youth Justice Act 1992*. This is consequential to omission from the Act of sentence reviews by clause 7C, inserted by amendment 9 above.

Amendment 17 amends clause 20 of the Bill, which inserts a new section 276B(b) into the *Youth Justice Act 1992* to require a 17 year old sentenced for an offence committed as a child to be automatically transferred to an adult correctional facility if sentenced to a serve a period of detention of six months or more. The amendment expands the application of section 276B(b) to also include an adult who was 17 at the time of being found guilty but is 18 or more at the time of sentence.

Amendment 18 further amends clause 20 to renumber a subsection reference consequential to the amendment of section 276B(b) by amendment 17.

Amendment 19 further amends clause 20 to renumber a further subsection reference consequential to the amendment of section 276B(b) by amendment 17.

Amendment 20 amends clause 24 of the Bill—which inserts a number of transitional provisions into the *Youth Justice Act 1992*—to insert a further transitional section 358A dealing with uncommenced applications for review of a magistrate's sentence order. Where a person has accrued a right under part 6, division 9, subdivision 4 of the *Youth Justice Act 1992* to apply for the review of a sentence order but has not yet exercised that right, they will continue to enjoy that right for the period allowed under the Act despite the omission of subdivision 4 by amendment 9 above. Where a person exercises this right after the legislation's commencement, the review must be conducted as if subdivision 4 were still in force.

Of note, section 20(2)(e) of the *Acts Interpretation Act 1954* provides that the amendment of an Act does not affect proceedings in relation to right acquired under the Act before its amendment. This means that sentence reviews which have already commenced under current part 6, division 9, subdivision 4 of the *Youth Justice Act 1992* will continue to be heard and decided according to the Act as in force prior to commencement of the amendments.

Amendment 21 further amends clause 24 of the Bill to insert a further transitional section 367 into the *Youth Justice Act 1992* dealing with application of the new boot camp (vehicle offences) order. The court will be required to make a boot camp (vehicle offences) order when sentencing a recidivist vehicle offender found guilty of a relevant vehicle offence after commencement, including where the offence was committed or the proceeding for the offence started before commencement.

Amendment 22 inserts a new clause 25A into the Bill to amend schedule 2 of the *Youth Justice Act 1992*, which sets out those matters in relation to which the Governor in Council may make a regulation under section 314(2) of the Act.

Subclause (1) adds a reference to the standards, management, control and supervision of boot camp (vehicle offences) orders to the list of matters in item 5 about which the Governor in Council may make a regulation.

Subclause (2) adds a new item 14 (Areas to be prescribed for the purpose of a boot camp (vehicle offences) order) to the list of matters about which the Governor in Council may make a regulation. This will enable an area to be prescribed for the purposes new section 206A(1)(d), inserted by amendment 11 above.

Amendment 23 amends clause 26, which amends the dictionary in schedule 4 of the *Youth Justice Act 1992*, to insert a definition of a 'boot camp (vehicle offences) order' as an order made under section 206A, inserted by amendment 11 above.

Amendment 24 further amends clause 26 to insert a cross-reference to the definition of 'original offence' in new section 59AA of the *Youth Justice Act 1992* into the dictionary in schedule 4.

Amendment 25 further amends clause 26 to insert a definition of 'recidivist vehicle offender' into the dictionary in schedule 4 of the *Youth Justice Act 1992*. A 'recidivist vehicle offender' is defined as a child who has, at the time of being found guilty of an offence or an attempted offence against section 408A of the Criminal Code (Unlawful use or possession of motor vehicles, aircraft or vessels), been found guilty of committing two or more other offences against that provision within the 12 months prior to committing the current offence.

This definition is called up by new section 206A, inserted by amendment 11 above, which requires a court sentencing a recidivist vehicle offender who usually resides in an area prescribed by regulation to make a boot camp (vehicle offences) order in relation to that offender.

Amendment 26 further amends clause 26 to insert a cross-reference to the definition of 'subsequent offence' in new section 59AA of the *Youth Justice Act 1992* into the dictionary in schedule 4.

Amendment 27 further amends clause 26 to amend the dictionary in schedule 4 of the *Youth Justice Act 1992* to:

- Insert a cross-reference to the definition of 'vehicle offence' in section 206A(4) of the *Youth Justice Act 1992*;

- Expand the definition of 'community based order' to include a boot camp (vehicle offences) order; and

- Provide that a reference to a 'program period' for a boot camp (vehicle offences) order is a reference to a program period as defined in section 226G of the Act.

Amendment 28 further amends clause 26 to amend the dictionary in schedule 4 of the *Youth Justice Act 1992* to provide that a reference to a sentence order includes a boot camp (vehicle offences) order under section 206A.

Amendment 29 amends clause 31 of the Bill—which inserts a new part 4, division 2 into the *Childrens Court Act 1992* to prescribe when the Childrens Court must or may be open or closed—to include a representative of the media and a person with a proper interest in the proceeding in the list of parties who may be permitted under new section 21B to be present in a closed court which is hearing a youth justice matter in relation to a first-time offender. This mirrors the court's power to permit these parties to be present in a closed court which is hearing a youth justice matter in relation to a repeat offender.

Amendment 30 further amends clause 31 of the Bill to provide that new section 21B(1) of the *Childrens Court Act 1992*, which requires the Childrens Court to be closed for a youth justice matter in relation to a first-time offender, does not apply when the court is constituted by a judge exercising jurisdiction to hear and determine a charge on indictment. This maintains the existing relevant provisions of the Act and mirrors the equivalent provisions where the court is dealing with repeat offenders.