

Youth Justice (Transitional) Regulation 2018

Explanatory notes for SL 2018 No. 3

Made under the

Youth Justice Act 1992

General Outline

Short Title

This regulation may be cited as the *Youth Justice (Transitional) Regulation 2018*

Authorising law

Section 388 of the *Youth Justice Act 1992*

Policy objectives and the reasons for them

The objectives of the *Youth Justice (Transitional) Regulation 2018* (the Regulation) are to provide transitional arrangements for the transfer of 17-year-olds from the adult criminal justice system into the youth justice system on the commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (the Amendment Act).

The Amendment Act increases the upper age of a child in the *Youth Justice Act 1992* (the Act) from 16 years to 17 years and establishes a regulation-making power to provide transitional arrangements for the transfer of 17-year-olds from the adult criminal justice system into the youth justice system.

The policy objective is to provide that, where it is safe and appropriate to do so, 17-year-olds who are, on commencement, in the adult criminal justice system should be transferred to the youth justice system. The Regulation will, therefore, apply to three distinct groups of 17-year-olds who are currently in the adult criminal justice system, namely:

- those alleged to have committed an offence as a 17-year-old, who are subject to current adult court proceedings (whether on bail or remanded in custody);
- those serving a current adult community-based order (e.g. probation or community service); and
- those serving a current sentence of imprisonment.

Achievement of policy objectives

To achieve the policy objectives, the Regulation enables the safe and orderly transfer of 17-year-olds who are in the adult criminal justice system into the youth justice system. The Regulation will set out the circumstances when transition of 17-year-olds already in the adult criminal justice system to the youth justice system will occur, as well as technical and operational detail for their transition.

The Regulation will achieve its objectives by:

- facilitating the transfer of most current proceedings against 17-year-olds to the childrens jurisdiction (mostly to the Childrens Court, but some Supreme Court matters will remain in the Supreme Court);
- allowing an uncompleted adult sentence or order for a 17-year-old to be treated as though it were a corresponding child sentence or order;
- maintaining the integrity of the original adult sentence or order, even though it is treated as a corresponding child order for certain purposes;
- facilitating the transfer of 17-year-olds who are in a corrective services facility to a youth detention centre, provided it is safe and in the best interests of the 17-year-old to do so;
- establishing administrative review for decisions about transfers to youth detention; and
- making provision for a range of other ancillary matters to facilitate the efficient functioning of the justice system during the transition.

Young people who are alleged to have committed an offence as a 17-year-old, who are subject to current adult court proceedings

Part 2 (*Current proceedings for offences by 17-year-olds*) of the Regulation provides for dealing with current proceedings, other than appeals and certain particular proceedings that currently involve a 17-year-old.

From commencement, a police officer, in exercising any power under the *Police Powers and Responsibilities Act 2000*, must exercise that power as if the person were a child and not an adult. Examples of where this makes a difference include questioning, and the taking of DNA samples.

The default position which will apply to the vast majority of current proceedings involving 17-year-olds is that the court dealing with the proceeding must, by order, transfer the proceeding to the Childrens Court at the person's first court appearance after commencement (clause 14). Clause 15 provides for which court the proceeding is to be transferred to.

There are a number of exceptions provided for in part 2.

If the proceeding is currently before the Supreme Court, the Regulation provides that, from commencement, the court must treat the person as a child and the Act and any other Act will apply to the person and the proceeding as if the court were dealing with a child (clause 8).

If a trial is part-heard on commencement, the part provides that the court may:

- if the court considers it is in the interests of justice to do so, stop hearing the proceeding and transfer it to the Childrens Court;
- continue to hear the matter in its concurrent jurisdiction (see the definition of 'concurrent jurisdiction' in the Act); or
- continue to hear and decide the proceeding; and if the court convicts the person, transfer the proceeding to the Childrens Court for sentencing and other actions under

part 7 of the Act (clause 9). This includes, for example, decisions about whether to record a conviction.

Any decision made under the Regulation must be made within the framework of the youth justice principles (section 3 of the Act).

The effect of these provisions is that from commencement, any 17-year-old who is sentenced for an offence will be sentenced under the Act.

If a matter such as a committal hearing or an application under the Criminal Code section 590AA is part-heard at commencement, the proceeding must be transferred when the matter has been concluded (clause 13). This enables the court to continue to hear and decide the matter, thereby avoiding any unnecessary expense, delay or duplication if the matter was automatically transferred on commencement.

Part 2 also provides that if, before commencement, a person was committed for trial or sentence but an indictment has not yet been presented, and the Childrens Court constituted by a magistrate would have had the jurisdiction to deal with the matter, the 17-year-old or the Director of Public Prosecutions may apply to have the matter reopened so that the proceeding can be dealt with by the appropriate Childrens Court (clauses 11 and 12). This provides a 17-year-old who was not able to elect summary jurisdiction as an adult with the opportunity to do so as a child, where available under the Act, and have their matter dealt with more speedily than would be the case on indictment.

As a child cannot be subject to a proceeding relating to a breach of a bail condition, clause 18 provides that, upon commencement, any outstanding charge of breaching a bail condition is withdrawn. This provides that this person will, in relation to this offence, be treated the same as any other 17-year-old will be treated after commencement. Similarly, breaching a community-based order is not an offence for a child. If the proceeding is a proceeding for breaching a community-based order, clause 19 provides that the charge is withdrawn but that the proceeding can continue as if it had been initiated under section 238 (*Chief executive's application on contravention*) of the Act. This preserves the court's ability to deal with a person for the breach.

Clauses 71 and 72, when read in conjunction with Clause 56, provide that if an appeal results in a new custody or community-based order, it will be treated as though it were a corresponding youth justice order.

Young people who are serving a current sentence of imprisonment

Part 3 (*Persons sentenced to terms of imprisonment or subject to parole orders*) of the Regulation deals with persons who, before commencement, had been sentenced to a term of imprisonment or was subject to a parole order.

The part provides that if the term of imprisonment is not a suspended sentence, that is the person is currently being held in a corrective services facility, from commencement, part 7, division 10, subdivision 3 (Release after fixed period of detention) of the Act will apply. The application of part 7, division 10, subdivision 3 will mean that section 227 (*Release of child after service of period of detention*) will apply so that a child sentenced to serve a period of detention will be released from detention after serving 70 per cent of the period of detention.

However, in recognition that a court may have fixed a court-ordered parole date that requires the person to be released on a specified date, the court-ordered parole date is

the date that, under section 227 of the Act, the child must be released from custody, regardless of whether the court order parole date falls before the 70 per cent date (Clause 24). This recognises that the person has already been given a release date by the court and it is not the intention that the Regulation interfere with the court's order or the person's legitimate expectation based on that order.

In addition, to preserve the effect of any order made by the court, clause 25 provides for cases where the court had fixed a parole eligibility date for the person. If the parole eligibility date falls before the 70 per cent date that would have applied under section 227 of the Act, the *Corrective Services Act 2006* will continue to apply to the person. As such, as expected by the court, before a person can be released on parole, there will be the opportunity for the Parole Board Queensland to consider the person's application and suitability for parole. If granted parole, from the date of that grant (as with other 17-year-olds currently on parole), under clauses 29 to 32 of the Regulation, the parole order will apply as if it was a supervised release order made by the chief executive under the section 228 (Chief executive's supervised release order) of the Act.

If the person is subject to a suspended sentence order made before commencement, the Regulation provides that if that person, as a 17-year-old, breaches that order, the court may, in the interest of justice, take no action or require the 17-year-old to serve part or all of the term of imprisonment (Clause 27). The Regulation provides that if the court decides to order that the person serve part or all of the term of imprisonment, the term of imprisonment will apply as if it was an order to serve a period of detention (Clause 28).

Where a 17-year-old is serving a term of imprisonment or is currently on remand in a corrective services facility, Part 4 of the Regulation provides for the transfer of 17-year-olds to a detention centre. However, the Regulation provides that a person will not be eligible for transfer where there is four weeks or less until the 17-year-old's release date; or where there is four weeks or less until turning 18; or where the 17-year-old, if transferred to detention, would transfer back to adult custody pursuant to part 8 division 2A (Age-related transfers to corrective service facility) of the Act, which provides that a young person serving a period of detention transfers to adult custody on reaching a certain age (generally 18 to 18½ years of age, depending on the circumstances) (Clause 47). The application of these provisions will mean the least amount of disturbance and interference with the person who would be only required to serve a very limited time in youth detention before being released or transferred back to the corrective services facility.

Where a person is eligible for transfer, the chief executive must decide to transfer the person as soon as practicable after commencement, unless it is not in the person's best interest to do so, or it is not appropriate having regard to the chief executive's responsibility for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres. In making the decision, the chief executive may consider factors, including the views and preferences of the 17-year-old, their family and community; any relevant remarks made by the sentencing court, the availability of a program the 17-year-old is undertaking, proximity to family, the 17-year-olds criminal history, and, if the 17-year-old is an Aboriginal or Torres Strait Islander person, any views of a representative of the community justice group in his or her community (Clause 48). The wide range of factors ensures the chief executive can, when considering whether to transfer, consider all relevant information that relates to the individual person.

Part 7 of the Regulation provides for an internal administrative review of transfer decisions. This review process will be prompt (decision within five days of application) and accessible, with the Chief Executive (Youth Justice) required to assist an aggrieved 17-year-old to access legal assistance.

If the 17-year-old is dissatisfied with the review, he or she may make a complaint to the Ombudsman.

Young people who are serving a current adult community-based order (e.g. probation or community service)

Part 5 (*Persons subject to other uncompleted sentences or orders*) of the Regulation applies to preserve existing adult orders made by courts that are community-based orders so they will remain adult orders, but the orders will be administered by Youth Justice instead of Corrective Services. The part provides that the orders will be administered as if they were child orders, meaning, for example, that decision making will be in accordance with the youth justice principles (as set out in the Act), and youth justice processes and procedures, such as breach proceedings, will apply.

If there is an application to amend or revoke the adult order and a new sentence is imposed, clause 64 provides that if the new sentence includes a period of imprisonment, the Act will apply as if the period were a period of detention.

Other matters

The Regulation also includes provisions to preserve victims' rights, and to ensure that evidence collected lawfully prior to commencement will continue to be admissible in the children's jurisdiction post-commencement, even if it would not be admissible had it been collected from a child.

Consistency with policy objectives of authorising law

The Regulation is consistent with the principal objectives of the Act. Section 2 of the Act provides that the principle objectives are:

- a) to establish the basis for the administration of juvenile justice;
- b) to establish a code for dealing with children who have, or are alleged to have, committed offences;
- c) to provide for the jurisdiction and proceedings of courts dealing with children;
- d) to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and
- e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to—
 - (i) rehabilitate children who commit offences; and
 - (ii) reintegrate children who commit offences into the community.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The Regulation will benefit 17-year-olds in the adult criminal justice system at commencement by ensuring they will benefit from having youth justice principles and practices applied to them to the greatest extent possible for the remainder of any court proceeding or adult sentence or order.

The costs of implementation of the Regulation are marginal in light of the costs of bringing 17-year-olds into the youth justice system in the longer term. From commencement of the Act, all new matters for 17-year-olds will be dealt with in the youth justice system, leading to a steady increase in 17-year-olds in that system, with commensurate resourcing implications. Resourcing for this reform was included in the 2017-18 Budget.

Consistency with fundamental legislative principles

The Regulation potentially departs from fundamental legislative principles (FLPs) established under the *Legislative Standards Act 1992*. Any such departure is justified and is necessary to implement the policy objective to treat 17-year-olds within the criminal justice system as children.

Whether the legislation has sufficient regard to the rights and liberties of individuals: section 4(2)(a) of the Legislative Standards Act 1992

Part 2 (Current proceedings for offences by 17-year-olds) of the Regulation provides that if there is a current proceeding against a person who is 17 years old at the time of commencement and who committed an offence as a 17-year-old before commencement, the proceeding must be transferred to the appropriate Childrens Court as constituted by a judge or magistrate. This part could be seen as potentially adversely affecting the rights and liberties of individuals, section 4(2)(a) of the *Legislative Standards Act 1992*, as, prior to the commencement, the person would have been expecting to be dealt with as an adult.

Part 3 (Persons subject to terms of imprisonment or parole orders) of the Regulation provides that a person who committed an offence as a 17-year-old before commencement, and was sentenced for the offence but has not completed the sentence on commencement, may be dealt with under the Regulation so that the provisions of the Act or another Act will apply as if the adult sentence or order were a corresponding child order. Additionally, Part 5 (Persons subject to other uncompleted sentences or orders) provides that if a person, who was 17 years old at the time, was sentenced to an adult order, an obligation, permission or requirement under that order is taken to be an order, an obligation, permission or requirement under a corresponding child order. These parts could be seen as potentially adversely affecting the rights and liberties of individuals, section 4(2)(a) of the *Legislative Standards Act 1992*, as, prior to the commencement, the person was sentenced as an adult and would have been expecting the sentence or order to be administered as an adult order.

However, any breach of this FLP is considered to be justified as the legal rights of the person are preserved and the person is afforded the same position as all other 17-year-olds post commencement in that the proceeding will now be conducted in the appropriate children's jurisdiction.

Consultation

Detailed consultation was undertaken on the draft Regulation with relevant Youth Justice stakeholders through the Youth Justice Stakeholder Advisory Group (YJSAG); and the Childrens Court Committee.

Members of the YJSAG were consulted on transitional processes for inclusion in the Regulation.

Notes on provisions

Part 1 – Preliminary

Short title

Clause 1 provides the short title of the Regulation may be cited as the *Youth Justice (Transitional) Regulation 2018*.

Clause 2 provides that the Regulation commences immediately after the commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016*, section 5.

Clause 3 provides that this Regulation is a transitional regulation. Under section 388(3) of the Act, the Regulation will expire two years after commencement.

Clause 4 provides that Schedule 1 defines particular words used in the Regulation.

Part 2 – Current proceedings for offences by 17-year-olds

Division 1- Preliminary

Clause 5(1) provides that this part applies in relation to offences committed or alleged to have been committed by a 17-year-old, if there is a current proceeding and where the person is 17 years old at commencement.

Clause 5(2) provides that the part does not apply to a proceeding for a reference under the *Mental Health Act 2016*. Mental Health Court proceedings are the same for adults and children. Part 2 also does not apply to a proceeding under the *Penalties and Sentences Act 1992*, section 122 (Application for amendment or revocation of a community-based order). Those proceedings are dealt with in part 5 division 3.

Clause 6 provides that from commencement a police officer must not exercise a power under the *Police Powers and Responsibilities Act 2000* in relation to the person if the power could not be exercised in relation to the person if the person committed the offence as a child.

Division 2 Current proceedings other than proceedings for appeals and particular offences

Clause 7 provides that division 2 does not apply to appeals, breaches of bail conditions, or contraventions of adult community-based orders.

Clause 8(1) provides that the section applies to a current proceeding in the Supreme Court.

Clause 8(2) provides that on commencement, the 17-year-old is to be treated as a child and, for that purpose, the Act and other Acts apply to the person.

Clause 8(3) provides that the proper officer of the court must give the chief executive written notice about the proceeding.

Clause 8(4) provides that sections 9 to 13 of the Regulation do not apply to a current proceeding in the Supreme Court.

Clause 9(1) provides that the section applies if the current proceeding is a trial for the offence that had started but not ended before commencement.

Clause 9(2) provides that the court dealing with the current proceeding must; if it considers it is in the interest of justice to so, stop hearing the proceeding and transfer it, by order to the Childrens Court under section 15; or if the court would have the necessary concurrent jurisdiction if the person had committed the offence as a child, continue to hear and decide the proceeding in the concurrent jurisdiction; or, otherwise continue to hear and decide the proceeding and if the court convicts the person, transfer the proceeding, by order, to the Childrens Court under section 15 for the purpose of sentencing.

Clause 9(3) provides that if a court decides to act under subsection (2)(a) or (b), on the making of the decision, the person must be treated as a child in relation to the offence and that the Act and any other Act applies to the person.

Clause 9(4) provides that if the court transfers the current proceeding under subsection (2)(c)(ii) on the transfer of the proceeding, the person must be treated as a child in relation to the offence and that for that purpose, part 7 of the Act applies to the person.

Clause 9(5) provides that as soon as practicable after the court decides to act under subsection (2)(a), (b) or (c), the proper officer of the court must give written notice of the decision to the chief executive.

Clause 10(1) provides that the section applies if the person had been committed for trial or sentence for the offence before the commencement; and immediately before the commencement, an indictment for the offence had not been presented to the Supreme Court or the District Court.

Clause 10(2) provides that on the commencement, the person must be treated as a child in relation to the offence and, for that purpose, the Act and other Acts apply to the person.

Clause 10(3) provides that the section does not apply if an application has been made under section 11 or 12 to reopen the committal proceeding.

Clause 11(1) provides that the section applies if the person had been committed for trial for the offence before the commencement; and immediately before the commencement, an indictment for the offence had not been presented to the Supreme Court or the District Court; and the Childrens Court constituted by a magistrate would have had jurisdiction to hear the charge if the person had committed the offence as a child.

Clause 11(2) provides the person or the director of public prosecutions may apply to the court or justice who committed the person for trial (the *committing court*) for the committal proceeding for the offence be reopened under the section.

Clause 11(3) provides that the person or the director of public prosecutions may make an application to have the committal reopened at any time before an indictment for the offence is presented to the Supreme Court or the District Court or the person is still 17 years old.

Clause 11(4) provides that written notice of the application must be given to the person if the application was made by the director of public prosecutions, and to the director of public prosecutions if the application was made by the person.

Clause 11(5) provides that if an application is made under subsection (2), the committing court must reopen the committal proceeding and; that on the reopening of the proceeding the person is to be treated as a child in relation to the offence and, for that purpose, the Act and other Acts apply to the person

Clause 11(6) provides that if the committal proceeding is reopened under the section, the committing court must commit the person to be tried before a court of competent jurisdiction or, with the person's consent, discontinue the committal proceeding and hear and decide the charge summarily in the court's concurrent jurisdiction; or if the court does not have the necessary concurrent jurisdiction, transfer the current proceeding to the Childrens Court constituted by a magistrate to hear and decide the charge summarily.

Clause 11(7) provides that in acting under this section, the committing court may direct the person and any warrant of commitment to be brought before the committing court.

Clause 11(8) provides that section 84 of the Act applies to a proceeding to hear and decide the charge summarily under this section as if a reference in section 84 of the Act to section 83(5) included a reference to this Regulation.

Clause 11(9) provides that if a committal proceeding is reopened under this section, the proper officer of the court must give written notice of the reopening of the proceeding to the parties to the proceeding and the chief executive.

Reopening of committal proceeding if committed for sentence

Clause 12(1) provides that the section applies if (a) the person had been committed for sentence for the offence before the commencement; and (b) immediately before the commencement, an indictment for the offence had not been presented to the Supreme Court or the District Court; and (c) the Childrens Court constituted by a magistrate would have had jurisdiction to hear the charge if the person had committed the offence as a child.

Clause 12(2) provides that the person or the director of public prosecutions may apply to the court or justice who committed the person for sentence for the offence (the *committing court*) for the committal proceeding for the offence to be reopened under this section.

Clause 12(3) provides that the person or the director of public prosecutions may make the application (a) at any time before an indictment for the offence is presented to the Supreme Court or the District Court; and (b) if the person is still 17 years old.

Clause 12(4) provides that written notice of the application must be given to (a) if the person made the application—the director of public prosecutions; or (b) if the director of public prosecutions made the application—the person.

Clause 12(5) provides that if an application is made under subsection (2), the committing court must reopen the committal proceeding, and on the reopening of the proceeding the person must be treated as a child in relation to the offence and, for that purpose, the Act and other Acts apply to the person.

Clause 12(6) provides that if the committal proceeding is reopened under the section, the committing court must commit the person to be sentenced before a court of competent jurisdiction; or with the person's consent, discontinue the committal proceeding and; (i) sentence the person for the offence in the court's concurrent jurisdiction; or (ii) if the court does not have the necessary concurrent jurisdiction, transfer the current proceeding to the Childrens Court constituted by a magistrate to sentence the person for the offence.

Clause 12(7) provides that if the committal proceeding is reopened under this section, the proper officer of the court must give written notice of the reopening of the proceeding to the parties to the proceeding and the chief executive.

Clause 13(1) provides that the section applies to a current proceeding if, immediately before the commencement, a court had started to hear or otherwise consider, but had not finally dealt with the following matters in relation to the offence: a committal proceeding; a direction hearing under the *Justices Act 1886*, section 83A; whether to give a direction or ruling under the Criminal Code, section 590AA, or any other matter of a similar nature.

Clause 13(2) provides that when the court has finally dealt with the matter, the court must, by order, transfer the current proceeding to the Childrens Court under section 15.

Clause 13(3) provides that on the transfer of the current proceeding, the person must be treated as a child in relation to the offence and, for that purpose, the Act, and other Acts apply to the person.

Clause 13(4) provides that the proper officer of the court must give a copy of the order to the parties to the proceeding and the chief executive.

Clause 14(1) provides that the section applies to a current proceeding not otherwise dealt with under the division.

Clause 14(2) provides that the court dealing with the current proceeding must, by order, transfer the proceeding to the Childrens Court under section 15 (*Procedure for transfer of current proceeding to Childrens Court*) at the person's first court appearance for the proceeding after the commencement.

Clause 14(3) provides that, on the transfer of the current proceeding, the person must be treated as a child in relation to the offence and, for that purpose, the Act and other Acts apply to the person.

Clause 14(4) provides that the proper officer of the court must give a copy of the order to the parties to the proceeding and the chief executive.

Clause 15(1) provides that the section applies to a current proceeding transferred to the Childrens Court under this division.

Clause 15(2) provides that for a current proceeding transferred under section 9, 13 or 14, the court dealing with the current proceeding must transfer the proceeding; if the court is the District Court, for an indictable offence that is not a serious offence - to the Childrens Court constituted by a judge or the Childrens Court constituted by a magistrate as the District Court considers appropriate, or otherwise—to the Childrens Court constituted by a judge; or if the court is a Magistrates Court—to the Childrens Court constituted by a magistrate.

Clause 15(3) provides that the court dealing with the current proceeding may make any other order the court considers appropriate including, for example, an order relating to bail or remanding the person in custody.

Clause 16(1) provides that the section applies if before the commencement, the person pleaded guilty to a charge for the offence made against the person by a police officer; and (b) the person must be treated as a child under this division in relation to the offence.

Clause 16(2) provides that for applying sections 21 or 24A of the Act to the person; a reference in the sections to a child pleading guilty before a Childrens Court is taken to be a reference to the person pleading guilty to the charge before the Supreme Court, District Court or a Magistrates Court; and the court may be satisfied of a matter mentioned in section 21(1)(b) or 24A(1)(b) of the Act in relation to the person despite the person having been treated as an adult in relation to the offence before the commencement.

Clause 17(1) provides that Part 5 (*Bail and Custody of Children*) of the Act applies to the person as if the person had committed the offence as a child.

Clause 17(2) provides that if a court remands the person in custody on or after the commencement in connection with the charge of the offence, the person must be held on remand in a detention centre unless the person was already being held on remand in a corrective services facility at the time of the remand.

Clause 17(3) provides that subsection (2)(a) applies despite subsection (1).

Division 3 Current proceedings for offences against Bail Act 1980 and Penalties and Sentences Act 1992

Clause 18(1) provides that the section applies if the current proceeding is a proceeding for an offence against the *Bail Act 1980*, section 29(1); and on the commencement, the person has not been convicted of the offence.

Clause 18(2) provides that at the person's first court appearance for the current proceeding after the commencement; the charge of the offence is withdrawn; and the proceeding for the offence ends.

Clause 18(3) provides that the court may make any order the court considers appropriate to give effect to subsection (2).

Clause 18(4) provides that subsection (2) does not affect an application under the *Bail Act 1980*, section 30.

Clause 19(1) provides that the section applies if the current proceeding is a proceeding for an offence against the *Penalties and Sentences Act 1992*, section 123(1) in relation to the person's adult order and on the commencement, the person has not been convicted of the offence.

Clause 19(2) provides that at the person's first court appearance for the current proceeding after the commencement; the charge of the offence is withdrawn; and the proceeding is taken to be a proceeding on a complaint and summons made by the chief executive under section 238 of the Act that the person has breached a community-based

order; and the court must, by order, transfer the proceeding to a Childrens Court magistrate.

Clause 19(3) further provides that the court may make any order it considers appropriate to give effect to subsection (2).

Part 3 Persons sentenced to terms of imprisonment or subject to parole orders

Division 1 Preliminary

Clause 20 provides that part 3 applies in relation to a sentence of a person for an offence mentioned in section 389 of the Act.

Division 2 Persons sentenced to terms of imprisonment that are not suspended

Clause 21(1) provides that the division applies, if, immediately before the commencement, the person was serving a term of imprisonment in relation to the offence.

Clause 21(2) provides that the division does not apply if the person is subject to any of the following orders in relation to the offence: an adult probation order; an intensive correction order; or a parole order.

Clause 22(1) provides that from commencement part 7, division 10, subdivision 3 of the Act, and any other provision of the Act necessary for the operation of that subdivision, apply to the person's term of imprisonment as if it were a period of detention; and the *Corrective Services Act 2006*, chapter 5 does not apply in relation to the term of imprisonment; and any other Act applies to the term of imprisonment as if the term of imprisonment were a period of detention.

Clause 22(2) provides that part 7, division 10, subdivision 3 of the Act applies to the person's term of imprisonment as if a reference in the subdivision to a child included a reference to the person; and a reference in the subdivision to being released from detention were a reference to being released from a corrective services facility; and a reference in section 230 of the Act to a period spent in detention included a reference to a period spent in a corrective services facility.

Clause 23(1) provides that the section applies if the court that imposed the sentence was the District Court or a Magistrates Court.

Clause 23(2) provides that for part 7, division 12A of the Act, the original sentencing court for the supervised release order is taken to be; if the court is the District Court—the Childrens Court constituted by a judge; or if the court is a Magistrates Court—the Childrens Court constituted by a magistrate.

Clause 24(1) applies if, immediately before commencement, the person had a date fixed for release on parole under the *Penalties and Sentences Act 1992*, part 9, division 3 (the *court-ordered parole date*), and the date falls before the person serves 70 per cent of the term of imprisonment for the offence.

Clause 24(2) provides that the person is taken to be required under section 227 of the Act to be released from custody or detention on a supervised release order on the court-ordered parole date.

Clause 25(1) applies if, immediately before commencement, the person had a parole eligibility date under the *Corrective Services Act 2006* and the parole eligibility date falls before the person serves 70 per cent of the term of imprisonment for the offence.

Clause 25(2) provides that despite section 22, the *Corrective Services Act 2006*, chapter 5 continues to apply to the person until the person has served 70 per cent of the term of imprisonment for the offence.

Clause 25(3) provides that if, because of subsection (2), the person is granted a parole order when the person is still 17 years old, the parole order provisions apply to the parole order as if a reference in the provisions to the commencement were a reference to the granting of the parole order.

Clause 25(4) provides that, if, because of subsection (2), the person is granted a parole order when the person is 18 years or more, section 22 stops applying to the person.

Clause 25(5) provides that the term *parole order provisions* means section 31, section 32(1)(a) to (f) and (h) and (i) and (3); section 33; and section 34.

Division 3 Persons sentenced to terms of imprisonment that are suspended

Clause 26(1) provides that the division applies if (a) the person's sentence is a term of imprisonment that has been suspended by order under the *Penalties and Sentences Act 1992*, section 144 (*Sentence of imprisonment may be suspended*); and (b) either a court convicts the person of an offence for which imprisonment may be imposed if the person were an adult; or the person is otherwise before a court and the court is satisfied the person was convicted, in or outside Queensland, of an offence for which imprisonment may be imposed if the person were an adult; (c) the person committed the offence as a 17-year-old; and (d) the court is satisfied the offence was committed during the operational period of the order; or an extension of the operational period ordered under the *Penalties and Sentences Act 1992*, section 147(1)(a)(i); or a further stated operational period ordered under the *Penalties and Sentences Act 1992*, section 147(1)(a)(ii)(B).

Clause 26(2) provides that the division applies despite the *Penalties and Sentences Act 1992*, sections 146 (*Consequences of committing offence during operational period*) and 147 (*Power of court mentioned in s 146*) but does not limit the sections.

Clause 26(3) provides that *operational period*, in relation to a term of imprisonment suspended under the *Penalties and Sentences Act 1992*, section 144(1), is defined in section 4 (*Definitions*) of that Act.

Clause 27(1) provides that the *Penalties and Sentences Act 1992*, section 145 (*Effect of suspended imprisonment*) applies to the person in relation to the sentence as if a reference in the section to an order under section 147 (*Power of court mentioned in s 146*) of that Act included a reference to an order under subsection (2)(b) or (c).

Clause 27(2) provides that the court may, in the interests of justice; take no action in relation to the suspended imprisonment; or order the person to serve the whole of the suspended imprisonment; or order the person to serve the part of the suspended imprisonment that the court orders.

Clause 28 provides that if the court orders the person to serve the whole or part of the suspended imprisonment under section 27(2)(b) or (c), the Act applies to the term of imprisonment the person is ordered to serve as if it were a period of detention.

If, at the time the court makes the order, the person is being held on remand, or serving a term of imprisonment, in a corrective services facility, the term of imprisonment must be served in a corrective services facility; otherwise, the term of imprisonment must be served in a detention centre.

Sections 22 to 25 apply to the term of imprisonment ordered to be served as if the reference in section 22 to the commencement were a reference to the making of the order; and as if the reference in sections 24 and 25 to immediately before the commencement were a reference to on the making of the order.

Clause 28(d) provides that part 4 applies to a person mentioned in (b)(i) (a person in adult custody at the time the order is made) as if the person were an eligible person under section 47(1) and as if the reference in section 47(2) to the commencement were a reference to the making of the order.

Division 4 Persons subject to parole orders

Subdivision 1 Preliminary

Clause 29 states that a person's parole order is subject to an *immediate suspension request* if both, before commencement, the chief executive (corrective services) had asked the parole board to suspend the person's parole order under the *Corrective Services Act 2006*, section 208A, and a prescribed board member had not decided the request under section 208B of that Act.

Subdivision 2 Parole orders that are not suspended

Clause 30(1) provides that the subdivision applies if, immediately before commencement, the person was subject to a parole order.

Clause 30(2) provides that the subdivision does not apply if, immediately before commencement, the person was subject to a parole order that was suspended under the *Corrective Services Act 2006* or was the subject of an immediate suspension request.

Clause 31 states that on commencement, the Act and any other Acts apply to the person as if the person were released from detention under a supervised release order.

Clause 32(1) provides that for section 31, the Act applies to the person as if the person's parole order had been made by the chief executive; and a reference in the Act to a period of detention were a reference to the term of imprisonment to which the parole order relates; and a reference in the Act to a child being released from detention under a supervised release order were a reference to the person being released from a corrective services facility under the parole order; and a reference in the parole order to the chief executive (corrective services) were a reference to the chief executive; and a reference in the parole order to a period of imprisonment were a reference to a period of detention; and a reference in the parole order to the parole period were a reference to the period of the order; and a reference in section 230 of the Act to a period of time for which the person is released from detention under a supervised release order included a reference to a

period of time before the commencement for which the person was released on parole under the parole order under the *Corrective Services Act 2006*; and a condition of the parole order requiring the person to comply with a direction given to the person under the *Corrective Services Act 2006*, section 200A were a condition requiring the person to comply with a reasonable direction of the chief executive; and a condition imposed on the parole order by the parole board under the *Corrective Services Act 2006*, section 200(3) were a condition imposed by the chief executive under section 228(3)(a) of the Act.

Clause 32(2) provides that if a direction or instruction given to, or a requirement made of, the person by the chief executive (corrective services) or a corrective services officer under the parole order was in effect immediately before the commencement; (a) the direction, instruction or requirement continues to have effect under the Act for the parole order; and (b) the direction or instruction is taken to have been given to the person by the chief executive; and (c) the requirement is taken to have been made of the person by the chief executive under the Act.

Clause 32(3) provides that unless another provision of this Regulation expressly provides otherwise, the chief executive may only amend, under section 228(3)(b) of the Act, a condition imposed by the chief executive under section 228(3)(a) of the Act after the commencement.

Clause 33 provides for an additional requirement on a parole order that the person, or a parent of the person, must notify the chief executive of any change of school within 2 business days.

Clause 34(1) applies if the court that imposed the sentence relating to the parole order was the District Court or a Magistrates Court.

Clause 34(2) provides for applying part 7, division 12A of the Act in relation to the person's parole order, the original sentencing court for the parole order is taken to be; if the court was the District Court – the Childrens Court constituted by a judge; or, if the court was a Magistrates Court – the Childrens Court constituted by a magistrate.

Clause 35(1) provides that the section applies if before the commencement, the person's parole order was amended by a written order of the chief executive (corrective services) under the *Corrective Services Act 2006*, and, immediately before commencement, the written order continued to have effect.

Clause 35(2) provides that the written order is taken to be a condition of the parole order imposed by the chief executive under section 228(3)(a) of the Act for the remainder of the period stated in the written order.

Clause 35(3) provides that the chief executive may amend the condition under section 228(3)(b) of the Act.

Clause 36(1) applies if before commencement, the person had been given an information notice under the *Corrective Services Act 2006*, section 205 about a proposed amendment of the person's parole order and, immediately before commencement, the parole board had not finally decided whether to amend the parole order under that section.

Clause 36(2) provides that despite section 31, chapter 5, part 1, division 5, subdivision 2 of the *Corrective Services Act 2006*, continues to apply to the person's parole order until the parole board makes a final decision on the proposed amendment.

Clause 36(3) provides that if the parole board decides to amend, insert or remove a condition of the parole order under the *Corrective Services Act 2006*, section 205; (a) the chief executive is taken to have amended, inserted or removed the condition in relation to the parole order under section 228(3)(a) of the Act; and (b) for an amended or inserted condition—the chief executive may amend the condition under section 228(3)(b) of the Act.

Clause 37(1) provides that the section applies if before the commencement the chief executive (corrective services) or the parole board made a written order under the *Corrective Services Act 2006*, section 212 granting the person leave to travel interstate or section 213 to travel overseas, and immediately before commencement the written order continued to have effect.

Clause 37(2) states that the written order granting the person leave to travel interstate or overseas is taken to be as though it were an approval of the chief executive under section 228(4)(f) of the Act.

Subdivision 3 Existing requests for immediate suspension of parole orders

Clause 38 applies if the person's parole order is subject to an immediate suspension request.

Clause 39(1) provides that the section applies if as a result of the immediate suspension request, a prescribed board member under the *Corrective Services Act 2006* decides not to suspend the parole order, and the person is still 17 years old when the decision is made.

Clause 39(2) provides that subdivision 2 applies to the person's parole order as if a reference in the subdivision to the commencement were a reference to the making of the decision by the prescribed board member under the *Corrective Services Act 2006*.

Clause 40(1) provides that the section applies if, as a result of the immediate suspension request: the person's order is suspended; and the suspension of the parole order ends and the order is not cancelled and, the person is still 17 years old when the suspension ends.

Clause 40(2) also provides that subdivision 2 applies to the person's parole order as if a reference in the subdivision to the commencement were a reference to the ending of the suspension.

Subdivision 4 Suspended parole orders

Clause 41(1) explains the Act's application to suspended parole order. Clause 41 provides that the section applies if immediately before commencement, the person's parole order was suspended under the *Corrective Services Act 2006*, and on or after commencement, the suspension of the parole order ends and the order is not cancelled on or after commencement, and the person is still 17 years old when the suspension ends.

Clause 41(2) provides that subdivision 2 applies to the parole order as if a reference in the subdivision to the commencement were a reference to the ending of the suspension.

Essentially the effect of this is that when the suspension of the person's parole order ends, on or after commencement, and the order is not cancelled, the Act and other Acts will apply to the 17 year old as if they were released from detention under a supervised release order.

Subdivision 5 Reconsidered decisions to cancel parole orders

Clause 42 provides that the subdivision applies if, before commencement, the parole board cancelled the person's parole order relating to an offence mentioned in section 389 (*Uncompleted sentences for offences by 17-year-olds*) of the Act under the *Corrective Services Act 2006*, section 205.

Clause 43 provides that despite section 22, the *Corrective Services Act 2006*, chapter 5, part 1, division 5, subdivision 2 continues to apply in relation to the person.

Clause 44(1) provides that the section applies if, on or after commencement, the parole board changes its decision under the *Corrective Services Act 2006*, section 208 so that the person's parole order is no longer cancelled (the *changed decision*).

Clause 44(2) provides that if the person is subject to a supervised release order in relation to the offence, the supervised release order ends when the changed decision comes into effect.

Clause 45(1) provides that the section applies if as a result of the changed decision, the person's parole order is not suspended, and the person is still 17 years old when the changed decision comes into effect.

Clause 45(2) provides that subdivision 2 applies to the parole order as if a reference in the provisions to the commencement were a reference to the changed decision having effect.

Clause 46(1) provides that the section applies if the parole board changes its decision and suspends the parole order; the parole order is not cancelled when suspension of the parole order ends and the person is still 17 years old when the suspension ends.

Clause 46(2) provides that subdivision 2 applies to the parole order as if a reference in the provisions to the commencement were a reference to the ending of the suspension.

Part 4 Transfer of 17-year-olds to detention centres

Clause 47(1) provides that a person is an *eligible person* if; before the commencement, the person committed, or was alleged to have committed, an offence as a 17-year-old; and on the commencement, either, there is a current proceeding for the offence for which the person is held on remand in a corrective services facility; or (the person is serving a term of imprisonment in a corrective services facility in relation to the offence; and the person is still 17 years old on the commencement.

Clause 47(2) provides that a person is not an *eligible person* if, on the commencement; (a) the person is liable to be remanded in custody, or serve a term of imprisonment, in a

corrective services facility for 4 weeks or less; or (b) the person will turn 18 years in 4 weeks or less; (c) if the person was detained in a detention centre, the person would be liable to be transferred to a corrective services facility under section 276B of the Act because of the person's remaining period of detention under that section.

Clause 48(1) provides that the chief executive must, as soon as practicable after the commencement, decide; to either transfer an eligible person from a corrective services facility to a detention centre; or to refuse to transfer an eligible person from a corrective services facility to a detention centre.

Clause 48(2) provides that the chief executive must transfer the eligible person from a corrective services facility to a detention centre unless the chief executive is satisfied; it is not in the person's best interests; or it is not appropriate to transfer the person having regard to the chief executive's responsibilities under section 263 of the Act.

Clause 48(3) provides that in making a decision under subsections (1) and (2) for an eligible person, the chief executive may consider the following; (a) the views and preferences of the person, or members of the person's family or community; (b) if the person is participating in a particular program or service—whether the person could continue to participate in the program or service, or a similar program or service, if transferred to a detention centre; (c) the person's proximity to the person's family; (d) if the person is serving a period of imprisonment—any relevant remarks by the sentencing court; (e) the person's criminal history; (f) the time the person has already served in a corrective services facility and the time the person is liable to serve in a corrective services facility; (g) information provided by the chief executive (corrective services) about the person's behaviour in the corrective services facility; (h) if the person is an Aboriginal or Torres Strait Islander—any views of a representative of the community justice group in the person's community, including, for example, about; (i) the person's relationship to the person's community; or (ii) any cultural considerations; (i) whether the person has a history of victimisation in a corrective services facility

Clause 48(4) provides that the chief executive must give the *eligible person* an information notice for the decision.

Clause 48(5) provides that in this section the term, *sentencing court*, for an *eligible person*, means; (a) the court that sentenced the person to the term of imprisonment the person is serving; or (b) if the person is serving more than 1 term of imprisonment—each court that sentenced the person to a term of imprisonment the person is serving.

Clause 49(1) provides that this section applies if the chief executive decides to transfer the eligible person from a corrective services facility to a detention centre under section 48.

Clause 49(2) provides that the chief executive must give a written direction (a *transfer direction*) to the chief executive (corrective services) stating that the person is to be transferred to a stated detention centre on a stated day agreed between the chief executive and the chief executive (corrective services).

Clause 50(1) provides if the chief executive decides to transfer an eligible person from a corrective services facility to a detention centre under section 48, the chief executive must give a copy of the transfer direction to the eligible person, a parent of the eligible person,

and, if the eligible person is being held on remand and is represented by a lawyer – the lawyer.

Clause 50(2) provides that, if asked by the eligible person, the chief executive must also give a copy of the transfer direction to another person.

Clause 50(3) provides that the chief executive is also not required to give a person a copy of the transfer direction under subsection (1)(b) or (c) if the eligible person asks the chief executive not to give a copy of the transfer direction to that person.

Clause 50(4) provides that the chief executive is not required to give a person a copy of the transfer direction under subsection (1)(b) or (2) if the chief executive reasonably believes that to do so may endanger the security of a detention centre, the safe custody or welfare of a child detained in a detention centre, or the safety or welfare of another person.

Clause 51(1) provides that the section applies if an eligible person is transferred to a detention centre under a transfer direction.

Clause 51(2) provides that on the transfer, if the person is subject to a term of imprisonment, the Act and other Acts will apply to the person's term of imprisonment as if it were a period of detention; and any rights, liberties or immunities of the person as a prisoner under the *Corrective Services Act 2006* end and are not preserved, transferred or otherwise applicable for the person as a detainee.

Clause 51(3) further provides that when a person is transferred, the chief executive (corrective services) must pay an amount to the credit of the person in the prisoners trust fund under the *Corrective Services Act 2006* to the chief executive for the person.

Clause 51(4) provides that subsection (2) applies subject to part 3, division 2.

Clause 51(5) provides that subsection (3) applies despite the *Corrective Services Act 2006*, section 311(7).

Clause 52(1) provides that the section applies if an eligible person transferred to a detention centre under a transfer direction is being held on remand in relation to an offence.

Clause 52(2) provides that as soon as practicable after the person is transferred to the detention centre, the chief executive must give the court dealing with the proceeding for the offence written notice that the person has been transferred to a stated detention centre.

Clause 53 provides that for section 266(2)(e) of the Act, a transfer direction is prescribed.

Part 5 Persons subject to other uncompleted sentences or orders

Division 1 Preliminary

Clause 54 provides that this part applies in relation to a sentence of a person for an offence mentioned in section 389 (*Uncompleted sentences for offences by 17-year-olds*) of the Act if, immediately before commencement, the person was subject to an adult order.

Clause 55 provides that an order under the Act mentioned in column 2 is a *corresponding child order* for the adult order mentioned in column 1;

adult order	corresponding child order
adult community service order	community service order
adult graffiti removal order	graffiti removal order
adult probation order	probation order
fine option order	community service order
intensive correction order	conditional release order

Division 2 Application of the Act to adult orders

Clause 56 provides that from commencement the Act applies to the person's adult order as though it were a corresponding child order and except as otherwise provided in this Regulation, the Act under which the adult order was made does not apply in relation to the adult order; and for the purposes of paragraph (a), any other Act applies to the adult order as if it were a corresponding child order.

Clause 57(1) provides that the Act applies to the person's adult order as if a reference in the Act to a child included a reference to the person; and a reference in the adult order to an authorised corrective services officer were a reference to the chief executive; and for an adult order made by the District Court—the adult order were made by a Childrens Court judge; and for an adult order made by a Magistrates Court—the adult order were made by a Childrens Court magistrate; and a requirement contained in the adult order to perform community service under the *Penalties and Sentences Act 1992* were a requirement to perform community service under the Act.

Clause 57(2) provides that a direction or permission given to a person by an authorised corrective services officer under the adult order, that was in effect immediately before commencement, continues to have effect under the Act for the adult order and is taken to have been given to the person by the chief executive.

Clause 57(3) provides that if the adult order requires the person to give notice of every change in the person's place of residence or employment, the person is taken to comply with the requirement if a parent of the person gives the notice.

Clause 57(4) provides that this section, *authorised corrective services officer* is as defined in the *Penalties and Sentences Act 1992*, section 4A.

Clause 58(1) provides that the section applies if the adult order is an adult community service order.

Clause 58(2) provides that the number of hours of community service stated in the adult order continues to apply despite the maximum period under section 175(1)(e)(ii) of the Act.

Clause 58(3) provides that the time within which the number of hours stated in the adult order must be performed immediately before the commencement continues to apply despite section 198(a) of the Act.

Clause 58(4) provides that for applying section 202 of the Act in relation to the adult order, section 198(a) of the Act is taken to refer to the time within which the number of hours stated in the adult order must be performed.

Clause 58(5) provides that if, immediately before the commencement, the *Penalties and Sentences Act 1992*, section 108C applied in relation to the number of hours to be performed under the adult order that section continues to apply to the adult order.

Clause 58(6) provides that if, immediately before the commencement, the adult order was suspended under the *Penalties and Sentences Act 1992*, section 108D, that section continues to apply to the adult order.

Clause 59(1) provides that the section applies if the adult order is an adult graffiti removal order.

Clause 59(2) provides the number of hours of graffiti removal service stated in the adult order continues to apply despite the maximum period under section 176A(3)(c) of the Act.

Clause 59(3) provides that the time within which the number of hours stated in the adult order must be performed immediately before the commencement continues to apply despite section 194D(a) of the Act.

Clause 59(4) provides that for applying section 194L of the Act in relation to the adult order, section 194D(a) of the Act is taken to refer to the time within which the number of hours stated in the adult order must be performed.

Clause 59(5) provides that if, immediately before the commencement, the adult order was suspended under the *Penalties and Sentences Act 1992*, section 110C(3), that section continues to apply to the adult order.

Clause 60(1) provides that the section applies if the adult order is an adult probation order.

Clause 60(2) provides that the period stated in the adult order for which the person is placed on probation continues to apply despite section 175(1)(d), 176 or 180 of the Act.

Clause 60(3) provides that the adult order is taken to include a requirement that the person, or a parent of the person, must notify the chief executive within 2 business days of any change of school.

Clause 60(4) provides that if the adult order was made under the *Penalties and Sentences Act 1992*, section 92(1)(b) and the requirements of the order had not started before the commencement, the requirements of the adult order start as mentioned in section 92(4) of that Act.

Clause 60(5) provides that if the person is transferred to a detention centre under part 4, the requirements of the adult order start immediately on the person's release from detention.

Clause 61(1) provides that the section applies if the adult order is a fine option order.

Clause 61(2) provides that the number of hours of community service stated in the adult order continues to apply despite the maximum period under section 175(1)(e)(ii) of the Act.

Clause 61(3) provides that the time within which the number of hours stated in the adult order must be performed immediately before the commencement continues to apply despite section 198(a) of the Act.

Clause 61(4) provides that for applying section 202 of the Act in relation to the adult order, section 198(a) of the Act is taken to refer to the time within which the number of hours stated in the adult order must be performed.

Clause 61(5) provides that the *Penalties and Sentences Act 1992*, sections 72(1), 73, 88(1)(b) to (d) and 89 continue to apply in relation to the adult order and, for that purpose, any hours of community service performed under the Act are to be counted as community service for those sections.

Clause 62(1) provides that the section applies if the adult order is an intensive correction order.

Clause 62(2) provides that the Act applies to the adult order as if the counselling or another program referred to in the adult order were a conditional release program under section 221(1)(a) of the Act.

Clause 62(3) provides that the remaining period of the adult order is taken to be the program period for the adult order.

Clause 62(4) provides that subsection (3) applies despite section 221(1)(a) of the Act.

Clause 62(5) provides that the *Penalties and Sentences Act 1992*, section 113(2) continues to apply to the person in relation to the adult order.

Clause 62(6) provides that the chief executive must not direct the person to participate in a conditional release program under section 221(1)(a) of the Act for more than 12 hours in a week.

Division 3 Amendment or revocation of particular adult orders

Clause 63(1) provides that this section applies if before commencement, an application had been made under the *Penalties and Sentences Act 1992*, section 122, in relation to the adult order; and immediately before the commencement, the application had not been finally dealt with.

Clause 63(2) provides that the *Penalties and Sentences Act 1992*, part 7, division 1 continues to apply in relation to the adult order until the application is finally dealt with.

Clause 64(1) provides the section applies if, on application under section 63, the court revokes the person's adult order and re-sentences the person under the *Penalties and Sentences Act 1992*, and the person is still 17 years old when the new sentence is imposed.

Clause 64(2) provides that if the new sentence order is an adult order, on the imposition of the new sentence, the *adult order provisions* apply to the new sentence as if a reference in the provisions to an adult order were a reference to the new sentence; and a reference in the provisions to the commencement were a reference to the imposition of the new sentence.

Clause 64(3) provides that subsection (4) applies if the new sentence is a term of imprisonment and when sentencing the person the court did not also make an adult probation order or an intensive correction order for the person.

Clause 64(4) provides that on the imposition of the new sentence, the Act applies to the new sentence as if it were a period of detention; and the term of imprisonment must be served— (i) if, at the time the court imposes the new sentence, the person is being held on remand, or serving a term of imprisonment, in a corrective services facility—in a corrective services facility; or (ii) otherwise—in a detention centre; and sections 22 to 25 apply to the new sentence; as if the reference in section 22 to the commencement were a reference to the imposition of the new sentence; and as if the reference in sections 24 and 25 to immediately before the commencement were a reference to on the imposition of the new sentence. The clause also provides that for a person mentioned in paragraph (b)(i), part 4 applies to the person; (i) as if the person were an eligible person under section 47(1); and (ii) as if the reference in section 47(2) to the commencement were a reference to the imposition of the new sentence.

Division 4 Other provisions

Clause 65 provides that as soon as practicable after the Act applies to an adult order as if it were a corresponding child order under this part, the chief executive must explain to the person the purpose and effect of the transfer of the order; what may follow if the person contravenes the requirements of the adult order; and that the adult order may be varied, discharged or revoked on application of the person or the chief executive under section 247 of the Act.

Clause 66(1) provides that the chief executive may ask the chief executive (corrective services) for help in administering an adult order to which this part applies.

Clause 66(2) provides that the chief executive (corrective services) must comply with the request unless it is not reasonably practicable to do so.

Part 6 Current appeals and rights to appeal conviction or sentence

Division 1 Appeals against conviction or sentence

Clause 67(1) provides that the section applies in relation to a sentence of a person for an offence mentioned in section 389 of the Act if, immediately before the commencement, the person was subject to an adult order.

Clause 67(2) provides that section 56 does not apply to the adult order in relation to (a) a proceeding relating to an appeal against the conviction or sentence to which the adult order relates that had started, but not ended, before the commencement; (b) a right to appeal against the conviction or sentence to which the adult order relates that had not ended before the commencement; (c) an appeal against the conviction or sentence to which the adult order relates started after the commencement in relation to a right mentioned in paragraph (b); (d) a right to appeal against the decision on an appeal mentioned in paragraph (a) or (c); (e) an appeal against the decision on an appeal mentioned in paragraph (a) or (c).

Clause 68(1) provides that the section applies in relation to a sentence of a person for an offence mentioned in section 389 of the Act if immediately before the commencement, the person was serving a term of imprisonment in relation to the offence; and the person is not subject to any of the following orders in relation to the offence; an adult probation order; an intensive correction order; a parole order.

Clause 68(2) provides that section 22(1) does not apply to the term of imprisonment in relation to (a) a proceeding relating to an appeal against the conviction or sentence to which the term of imprisonment relates that had started, but not ended, before the commencement; (b) a right to appeal against the conviction or sentence to which the term of imprisonment relates that had not ended before the commencement; (c) an appeal against the conviction or sentence to which the term of imprisonment relates started after the commencement in relation to a right mentioned in paragraph (b); (d) a right to appeal against the decision on an appeal mentioned in paragraph (a) or (c); (e) an appeal against the decision on an appeal mentioned in paragraph (a) or (c).

Division 2 Application of the Act to new sentence or order on appeal

Clause 69 provides that the division applies if; (a) on an appeal to which division 1 applies, another sentence is passed, or another order is made, for the person the subject of the appeal; and (b) the other sentence or order is for a new trial; or an adult order; or a term of imprisonment; and (c) when the sentence is passed or order is made, the person is still 17 years old.

Clause 70 provides that if the other order is for a new trial, on the making of the other order the person is to be treated as a child in relation to the offence and, for that purpose, the Act and other Acts apply to the person.

Clause 71 provides that if the other sentence passed or order made is an adult order, on the passing of the other sentence or making of the other order the adult order provisions apply to the other sentence or order as if (a) a reference in the provisions to an adult order were a reference to the other sentence or order; and (b) a reference in the provisions to the commencement were a reference to the passing of the other sentence or making of the other order.

Clause 72(1) provides that section applies if the other sentence passed or order made is a term of imprisonment; and when passing the other sentence or making the other order the court did not also make an adult probation order or an intensive correction order for the person.

Clause 72(2) provides that on the passing of the other sentence or making of the other order; the Act applies to the other sentence or order as if it were a period of detention; and the term of imprisonment must be served— (i) if, at the time the court imposes the new sentence, the person is being held on remand, or serving a term of imprisonment, in a corrective services facility—in a corrective services facility; or (ii) otherwise—in a detention centre; and sections 22 to 25 apply to the new sentence or order; as if a reference in section 22 to the commencement were a reference to the passing of the other sentence or the making of the other order; and as if the reference in sections 24 and 25 to immediately before the commencement were a reference to on the passing of other sentence or the making of the other order. The clause also provides that for a person mentioned in paragraph (b)(i), part 4 applies to the person; (i) as if the person were an eligible person under section 47(1); and (ii) as if the reference in section 47(2) to the

commencement were a reference to the passing of the other sentence or the making of the other order.

Part 7 Review of decisions

Division 1 Preliminary

Clause 73 provides the definitions for *affected person*, *original decision* and *review*, for use in the part.

Division 2 Review

Clause 74(1) provides that a person (an *affected person*) who has been given, or is entitled to be given, an information notice for a decision under section 48 (an *original decision*) may apply to the chief executive for a review of the decision under this division (*review*).

Clause 74(2) provides that if the affected person has not been given an information notice for the original decision, the affected person may ask the chief executive for an information notice for the decision.

Clause 74(3) provides that a failure by the chief executive to give the affected person an information notice for the original decision does not limit or otherwise affect the person's right to apply for a review of the decision.

Clause 75(1) provides that an affected person's application for review of an original decision must be written; and if the person has been given an information notice for the decision—include enough information to enable the chief executive to decide the application; and be made to the chief executive within the application period for the review.

Clause 75(2) provides that the chief executive may, at any time, extend the period within which the application may be made.

Clause 75(3) provides that an application for review of an original decision stays the operation of the decision.

Clause 75(4) provides that the stay operates until the chief executive decides the application for review of the original decision.

Clause 75(5) provides that in the section the term, *application period*, for a review of an original decision, means; (a) for a person who has been given an information notice for the decision— (i) if the person asks the chief executive for help under section 76—28 days after the day the person is given the help; or (ii) otherwise—28 days after the day the person is given the notice; or (b) for a person who has not been, but is entitled to be, given an information notice for the decision— (i) if the person asks the chief executive for help under section 76—28 days after the day the person is given the help; or (ii) otherwise—28 days after the day the person becomes aware of the decision.

Clause 76(1) provides that an affected person may ask the chief executive for help in gaining access to a lawyer; (a) if the person has been given an information notice for the decision—within 28 days after receiving the notice; or (b) otherwise—within 28 days after the day the person becomes aware of the decision.

Clause 76(2) provides that the chief executive must ensure that the affected person is given the help that is reasonable in the circumstances within 10 business days after the request is made.

Clause 77(1) provides that within 5 business days after receiving an application for review of an original decision from an affected person, the chief executive must review the original decision; and decide to either; confirm the original decision; or substitute another decision for the original decision; and give the affected person a written notice stating the chief executive's decision under paragraph (b) and the reasons for the decision.

Clause 77(2) provides that the application must not be dealt with by— (a) the person who made the original decision; or (b) a person in a less senior office than the person who made the original decision.

Clause 77(3) provides that if the chief executive does not give the affected person a notice under subsection (1), the chief executive is taken to confirm the original decision.

Part 8 General

*Clause 78(1) provides that the section applies if; (a) under a transfer direction, a person is transferred from a corrective services facility to a detention centre (the transferee); and (b) a person is included on the eligible persons register under the *Corrective Services Act 2006* as an eligible person under that Act in relation to the transferee.*

*Clause 78(2) provides that on the transfer of the transferee to the detention centre, the chief executive (corrective services) must give the chief executive the person's details from the eligible persons register under the *Corrective Services Act 2006*.*

Clause 78(3) provides that the chief executive (corrective services) may only act under subsection (2) with the person's consent.

Clause 78(4) provides that if the person's details are given under subsection (2), the chief executive must register the person as an eligible person under the Act in relation to the transferee.

*Clause 78(5) provides that the chief executive (corrective services) must, immediately after the transfer of the transferee to the detention centre, remove the person's details from the eligible persons register under the *Corrective Services Act 2006* in relation to the transferee.*

*Clause 79(1) provides that the section applies if (a) under a transfer direction, a person is transferred from a corrective services facility to a detention centre (the transferee); and (b) before the transferee is transferred, a person had applied under the *Corrective Services Act 2006*, section 320, to be registered as an eligible person under that Act in relation to the transferee; and (c) immediately before the transferee is transferred, the application had not been decided.*

Clause 79(2) provides that on the transfer of the transferee to the detention centre, the chief executive (corrective services) must give the chief executive the application.

Clause 79(3) provides that the chief executive (corrective services) may only act under subsection (2) with the person's consent.

Clause 79(4) provides that if the application is given under subsection (2), the chief executive must decide the application as if it were an application made by the person under section 282A of the Act in relation to the transferee.

Clause 80(1) provides that the section applies to confidential information about a person mentioned in section 389 (*uncompleted sentences for offences by 17-year-olds*) or 390 (*Current proceedings for offences by 17-year-olds*) of the Act who is dealt with under this regulation.

Clause 80(2) provides that the chief executive (corrective services) may disclose the confidential information to the chief executive for dealing with the person under this Regulation.

Clause 80(3) provides that for the section *confidential information*; (a) includes information— (i) about a person's affairs; or (ii) about a person's security classification under the *Corrective Services Act 2006*; but (b) does not include— (i) information already disclosed to the general public, unless further disclosure of the information is prohibited by law; or (ii) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

Clause 81(1) provides that this section applies to a person who, as a 17-year-old, committed, or was alleged to have committed, an offence before commencement, and under this regulation, must be treated as a child in relation to the offence.

Clause 81(2) provides that a provision of the Act or another Act that would otherwise provide that a matter is inadmissible in a proceeding for the offence because the person is a child does not apply to the person in relation to the offence.

Clause 81(3) provides that this section does not limit the exercise of a court's discretion under the common law to exclude evidence in a criminal proceeding.

Schedule 1 Dictionary

Schedule 1 inserts definitions for key terms used in the Regulation