

South Australia

# Youth Justice Administration Act 2016

An Act to provide for the establishment and management of training centres and community based supervision services; to make related or consequential amendments to various other Acts; and for other purposes.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Objects and guiding principles
- 4 Interpretation
- 5 Interaction with companion legislation

### Part 2—Administration of youth justice

- 6 Power of Minister and Chief Executive to delegate
- 7 Functions of Chief Executive
- 8 Use of volunteers in administration of Act
- 9 Chief Executive's annual report

### Part 3—Official visitors

- 10 Official visitors
- 11 Training Centre Visitor
- 12 Independence
- 13 Staff and resources
- 14 Training Centre Visitor's functions
- 15 Use and obtaining of information
- 16 Visits to and inspection of training centres
- 17 Requests to contact Training Centre Visitor
- 18 Reporting obligations of Training Centre Visitor
- 19 Other reports
- 20 Confidentiality of information

### Part 4—Training centres

#### Division 1—Establishment of training centres, facilities and programs

- 21 Training centres, facilities and programs

#### Division 2—Charter of Rights for Youths Detained in Training Centres

- 22 Charter of Rights for Youths Detained in Training Centres

**Division 3—Procedures on admission**

23 Initial assessment on admission

**Division 4—Custody of residents of training centres**

24 Minister has custody of youths in detention

25 Chief Executive responsible under Minister for management of training centres

**Division 5—Management of residents of training centres**

26 Chief Executive may make rules relating to management of training centre

27 Education

28 Safe rooms

29 Prohibited treatment of residents

30 Power to search residents

31 Drug testing of residents

32 Use of sniffer dogs

33 Use of force against residents

**Division 6—Leave of absence under authority of Chief Executive**

34 Leave of absence under authority of Chief Executive

**Division 7—Transfer of youths under detention from 1 jurisdiction to another**

35 Interpretation

36 Transfer of young offenders to other States

37 Transfer of young offenders to this State

38 Adaptation of correctional orders to different correctional systems

39 Custody during escort

**Division 8—Release from detention**

40 Release of youth from detention

41 Manner in which former resident's personal property is to be dealt with

42 Certain prohibited items not to be returned to former residents

**Part 5—Community programs and community service**

43 Community programs

44 Restrictions on performance of community service and other work orders

45 Insurance cover for youths performing community service or other work orders

46 Community service or other work orders may only involve certain kinds of work

**Part 6—Miscellaneous**

47 Hindering a person in execution of duty

48 Impersonating an employee of Department

49 Confidentiality

50 Disclosure of health information

51 Information about youth may be given in certain circumstances

52 Information about youth to be given when youth to be imprisoned

53 Minister may acquire land

54 Evidentiary provision

55 Regulations

**Schedule 1—Related amendments and transitional provisions**

Part 1—Preliminary

1 Amendment provisions

Part 2—Amendment of *Children's Protection Act 1993*

2 Amendment of section 52C—The Guardian's functions and powers

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

3 Amendment of section 269A—Interpretation

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

4 Amendment of section 3—Interpretation

5 Amendment of section 3A—Application of Act to youths

6 Amendment of section 23—Offenders incapable of controlling, or unwilling to control, sexual instincts

7 Amendment of section 79A—Rights on arrest

Part 5—Amendment of *Family and Community Services Act 1972*

8 Repeal of section 7

9 Amendment of section 36—Establishment of facilities and programs for children

10 Amendment of section 77—Unlawful communication with children in certain facilities

11 Amendment of section 236—Limitation on tortious liability for acts of certain children

12 Amendment of section 251—Regulations

Part 6—Amendment of *Young Offenders Act 1993*

13 Amendment of section 4—Interpretation

14 Amendment of section 15—How youth is to be dealt with if not granted bail

15 Amendment of section 23—Limitation on power to impose custodial sentence

16 Amendment of section 26—Limitation on Court's power to require bond

17 Amendment of section 36—Detention of youth sentenced as adult

18 Amendment of section 36A—Transfer following imposition of concurrent prison sentence

19 Amendment of section 39—Reviews etc and proceedings of Training Centre Review Board

20 Amendment of section 40A—Leave may be authorised by Board

21 Amendment of heading to Part 5 Division 3 Subdivision 3

22 Amendment of section 41A—Conditional release from detention

23 Amendment of section 41B—Release on condition of home detention

24 Repeal of Part 5 Division 4

25 Repeal of sections 49A to 51

26 Substitution of section 63

63 Transfer of youths in detention to other training centre or prison

27 Amendment of section 63B—Application of *Correctional Services Act 1982* to youth with non-parole period

28 Amendment of section 64—Information about youth may be given in certain circumstances

Part 7—Amendment of *Youth Court Act 1993*

29 Amendment of section 24—Persons who may be present in Court

Legislative history

---

**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Youth Justice Administration Act 2016*.

**2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

**3—Objects and guiding principles**

(1) The objects of this Act are—

- (a) to provide mechanisms for the establishment and proper administration of training centres, community based supervision services and other facilities and services relating to youths who offend against the criminal law; and
- (b) to provide for the safe, humane and secure management of youths held in training centres in the State; and
- (c) to provide for appropriate programs for youths who are in detention or under supervision in the community; and
- (d) to follow, to the extent practicable, international and national requirements or guidelines relating to the detention of youths; and
- (e) to promote the rehabilitation of youths by providing them with the care, correction and guidance necessary for their development into responsible members of the community and the proper realisation of their potential; and
- (f) to have regard to the rights of victims of crime; and
- (g) to have regard to the particular needs and circumstances of youths who are under the guardianship of the Minister, or of whom the Minister has custody, under the *Children's Protection Act 1993* and who are residents of training centres or are required to be supervised in the community; and
- (h) to have regard to the particular needs and circumstances relevant to a youth's cultural identity and linguistic background; and
- (i) to promote, and endeavour to ensure compliance with, the *Charter of Rights for Youths Detained in Training Centres*; and
- (j) to recognise the importance of family and community involvement and participation in administering youth justice; and
- (k) to support the reintegration of youths with the community as part of their rehabilitation; and
- (l) to promote community safety.

- 
- (2) The Minister, the Chief Executive, the Department and other persons and bodies involved in the administration of this Act are to be guided by the following principles in the exercise of their functions:
- (a) in exercising powers under this Act, consideration should at all times be given to promoting the well being and best interests of youths;
  - (b) youths should be made aware of their obligations under the law and of the consequences of any breach of the law;
  - (c) the management of residents of training centres, and youths who are subject to supervision in the community, should be designed to achieve their rehabilitation and development into responsible members of the community and the proper realisation of their potential;
  - (d) the community, and individual members of it, must be adequately protected against violent or wrongful acts;
  - (e) facilities and programs developed for the care, rehabilitation, detention, training, therapeutic treatment or other treatment of youths should—
    - (i) be evidence based; and
    - (ii) be individually designed as much as reasonably practicable—
      - (A) to take account of the youth's age, gender, gender identity, sexuality or sexual identity, cultural identity, developmental and cognitive capacity, ability or disability, and any special needs; and
      - (B) to promote the health of the youth; and
      - (C) to promote the educational and vocational training needs of the youth; and
      - (D) to address offending behaviours; and
    - (iii) be governed by a comprehensive assessment and case plan developed in a multi-disciplinary framework; and
    - (iv) support a focus on connecting and reintegrating with family and community; and
    - (v) take into consideration the different traditions, cultural values and religious beliefs of ethnic or racial groups within the youth's community; and
    - (vi) emphasise individual responsibilities.
- (3) In addition to the principles set out in subsection (2), a person or body exercising a function or power under this Act in relation to an Aboriginal or Torres Strait Islander youth must—
- (a) observe the Aboriginal and Torres Strait Islander Youth Justice Principle; and
  - (b) have regard to the particular needs and circumstances of Aboriginal or Torres Strait Islander youths who are residents of training centres or are under supervision in the community; and
  - (c) recognise the diversity of cultures within Aboriginal and Torres Strait Islander communities.

## 4—Interpretation

- (1) In this Act, unless the contrary intention appears—

**Aboriginal and Torres Strait Islander Youth Justice Principle** means the Aboriginal and Torres Strait Islander Youth Justice Principle as stated in the regulations;

**Aboriginal or Torres Strait Islander youth** means a youth who—

- (a) is of Aboriginal or Torres Strait Islander descent; and
- (b) identifies himself or herself as being of Aboriginal or Torres Strait Islander origin and is accepted as such by the community with which he or she associates;

**alcotest** means a test by means of an apparatus of a kind approved for the conduct of alcotests under the *Road Traffic Act 1961*;

**analyst** has the same meaning as in the *Controlled Substances Act 1984*;

**biological sample** means a sample of urine, saliva or sweat;

**Charter of Rights for Youths Detained in Training Centres**—see Part 4 Division 2;

**Chief Executive** means the Chief Executive of the Department;

**child of compulsory education age** means a person who is 16 years of age;

**child of compulsory school age** means a child of or above the age of 6 years but under the age of 16 years;

**community youth justice officer** means—

- (a) an officer or employee of the Department assigned to the position of a community youth justice officer whose duties include the supervision of youths who are required to carry out community service or be subject to supervision in the community; or
- (b) a person authorised (individually or by class) by the Chief Executive to exercise the powers of a community youth justice officer;

**Department** means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

**detention** means detention in a training centre;

**drug** means—

- (a) alcohol; or
- (b) a substance that is a prescription drug or a controlled drug under the *Controlled Substances Act 1984*;

**drug test** means an alcotest or urinalysis, or a prescribed procedure;

**employee**, in relation to a training centre, means an officer or employee of the Department whose duties include the supervision of youths detained in a training centre;

**exercise**, for a function, includes perform;

**guardian**, in relation to a youth, means—

- (a) a parent of the youth; or

- (b) a person (other than a Minister of the Crown) who is the guardian of the youth or has the immediate custody and control of the youth,

and includes a person who has the custody and control of a youth who is under the guardianship, or in the custody, of the Minister under the *Children's Protection Act 1993*;

***Guardian for Children and Young Persons*** means the Guardian for Children and Young Persons appointed under the *Children's Protection Act 1993*;

***prescribed procedure*** means a procedure, prescribed by regulation, consisting of the taking of a biological sample from a person for analysis for the purpose of ascertaining the presence of a drug in the body of the person from whom the sample was taken;

***resident*** of a training centre means a youth detained in the centre;

***safe room*** means a room (other than a resident's bedroom) in a training centre that is set aside for the safe detention of residents of the centre;

***Training Centre Review Board*** means the Training Centre Review Board established under the Young Offenders Act;

***Visitor*** means the Training Centre Visitor appointed under Part 3;

***Young Offenders Act*** means the *Young Offenders Act 1993*;

***youth*** means a person of or above the age of 10 years but under the age of 18 years and, in relation to proceedings for an offence or detention in a training centre, includes a person who was under the age of 18 years on the date of the alleged offence.

- (2) A reference in this Act or in the Young Offenders Act to an ***officer of the Department*** includes a reference to—
- (a) a person who, immediately before the commencement of this paragraph, holds an appointment as an officer of the Department under the Young Offenders Act; or
  - (b) a person who, immediately before the commencement of this paragraph, is designated as an officer of the Department under section 4A of the Young Offenders Act.

## 5—Interaction with companion legislation

- (1) This Act and the Young Offenders Act are to be read together and construed as if the 2 Acts constituted a single Act.
- (2) Accordingly, terms used in this Act and also in the Young Offenders Act have the same meanings in this Act as they have in that Act (unless the contrary intention appears).

## Part 2—Administration of youth justice

### 6—Power of Minister and Chief Executive to delegate

- (1) The Minister may, from time to time, by instrument in writing, delegate to the Chief Executive any powers, duties or functions under this Act or any other Act.

- (2) The Chief Executive may delegate any of the powers, duties, responsibilities or functions vested in, or delegated to, the Chief Executive under this Act or any other Act—
  - (a) to a specified employee of the Department; or
  - (b) to an employee of the Department of a specified class; or
  - (c) with the approval of the Minister—to any other suitable person.
- (3) A delegation under this section is revocable at will, and does not prevent the exercise of any power, function, duty or responsibility by the Minister or the Chief Executive.
- (4) Any power, function, duty or responsibility vested in, imposed on or delegated to the Chief Executive under this Act may, if the Chief Executive is absent from or otherwise unable to perform the duties of office, be exercised by such other officer or employee of the Department as the Minister may, by instrument in writing, authorise.

## **7—Functions of Chief Executive**

The functions of the Chief Executive include—

- (a) responsibility for ensuring that proper standards of administration are observed in the management of training centres; and
- (b) establishing community youth justice programs for the purposes of youths who are subject to supervision in the community; and
- (c) any other function conferred on the Chief Executive under this Act or any other Act.

## **8—Use of volunteers in administration of Act**

The Minister must promote the use of volunteers in the administration of this Act to such extent as the Minister thinks appropriate.

## **9—Chief Executive's annual report**

- (1) The Chief Executive must, not later than 30 September in each year, submit to the Minister a report on—
  - (a) the operation of this Act and the work of the Department in relation to the administration of this Act for the financial year ending on the preceding 30 June; and
  - (b) any other matter as the Minister may direct.
- (2) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before each House of Parliament.

## **Part 3—Official visitors**

### **10—Official visitors**

Members of Parliament, judges, the Guardian for Children and Young Persons, the Training Centre Visitor and any other person authorised in writing by the Minister are entitled to visit a training centre.

## 11—Training Centre Visitor

- (1) There is to be a Training Centre Visitor.
- (2) The Governor may appoint a person (who may be the Guardian for Children and Young Persons) to be the Visitor.
- (3) If the person appointed to be the Visitor is not the Guardian for Children and Young Persons, the person will be appointed on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (4) Subject to this section, the Guardian for Children and Young Persons will, if he or she is appointed to be the Visitor, hold office as such for so long as he or she holds office as the Guardian.
- (5) The Governor may remove a person from office as the Visitor on the presentation of an address from both Houses of Parliament seeking the person's removal.
- (6) The Governor may suspend a person from the position of Visitor on the ground of incompetence or misbehaviour and, in that event—
  - (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
  - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the person's removal has not been presented to the Governor, the person must be restored to the position.
- (7) The position of Training Centre Visitor becomes vacant if the person appointed to the position—
  - (a) dies; or
  - (b) resigns by written notice given to the Minister; or
  - (c) completes a term of appointment and is not reappointed; or
  - (d) is removed from the position by the Governor under subsection (5); or
  - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
  - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
  - (h) becomes, in the opinion of the Governor, mentally or physically incapable of exercising satisfactorily the functions of the position.
- (8) The Minister may appoint a person to act in the position of Training Centre Visitor—
  - (a) during a vacancy in the position; or
  - (b) when the Visitor is absent or unable to exercise the functions of the position; or
  - (c) if the Visitor is suspended from the position under subsection (6).

## 12—Independence

- (1) In exercising his or her functions and powers under this Act, the Training Centre Visitor must act independently, impartially and in the public interest.
- (2) The Minister cannot control how the Visitor is to exercise the Visitor's statutory functions and powers and cannot give any direction with respect to the content of any report prepared by the Visitor.

**Note—**

This provision does not derogate from any express power of the Minister under this Act.

## 13—Staff and resources

The Minister must provide the Training Centre Visitor with the staff and other resources that the Visitor reasonably needs for exercising the Visitor's functions.

## 14—Training Centre Visitor's functions

- (1) The functions of the Training Centre Visitor include the following:
  - (a) to conduct visits to training centres as required or authorised under this Part;
  - (b) to conduct inspections of training centres as required or authorised under this Part;
  - (c) to promote the best interests of the residents of a training centre;
  - (d) to act as an advocate for the residents of a training centre to promote the proper resolution of issues relating to the care, treatment or control of the residents;
  - (e) to inquire into, and provide advice to, the Minister in relation to any systemic reform necessary to improve—
    - (i) the quality of care, treatment or control of residents of a training centre; or
    - (ii) the management of a training centre;
  - (f) to inquire into and investigate any matter referred to the Visitor by the Minister;
  - (g) any other functions assigned to the Visitor by this or any other Act.
- (2) In exercising functions under this Part, the Visitor—
  - (a) must encourage residents of a training centre to express their own views and give proper weight to those views; and
  - (b) must pay particular attention to the needs and circumstances of residents of a training centre who—
    - (i) are under the guardianship, or in the custody, of the Minister under the *Children's Protection Act 1993*; or
    - (ii) are Aboriginal or Torres Strait Islander youths; or
    - (iii) have a physical, psychological or intellectual disability; and
  - (c) may receive and consider information, reports and materials relevant to exercising the Visitor's statutory functions.

- (3) The Visitor has the powers necessary or expedient for, or incidental to, the exercise of the Visitor's functions.

### **15—Use and obtaining of information**

- (1) A government or non-government organisation that is involved in the provision of services under this Act or the Young Offenders Act must, at the Training Centre Visitor's request, provide the Visitor with information relevant to the exercise of the Visitor's functions.
- (2) If the Visitor has reason to believe that a person is capable of providing information or producing a document that may be relevant to the exercise of the Visitor's functions, the Visitor may, by notice in writing provided to the person, require the person to do 1 or more of the following:
- (a) to provide that information to the Visitor in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
  - (b) to produce that document to the Visitor;
  - (c) to attend before a person specified in the notice and answer relevant questions or produce relevant documents.
- (3) A notice under subsection (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.
- (4) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the Visitor to be reasonable in the circumstances.
- (5) A person must comply with a requirement under subsection (2).  
Maximum penalty: \$5 000.
- (6) If a document is produced in accordance with a requirement under this section, the Visitor may take possession of, make copies of, or take extracts from, the document.

### **16—Visits to and inspection of training centres**

- (1) On a visit to a training centre under this Part, the Training Centre Visitor may—
- (a) so far as practicable, inspect all parts of the centre used for or relevant to the custody of youths; and
  - (b) so far as practicable, make any necessary inquiries about the care, treatment and control of each resident of the centre; and
  - (c) take any other action required to exercise the Visitor's functions.
- (2) Subject to subsection (3), a visit to a training centre may be made by the Visitor, on the Visitor's own initiative or at the request of a resident of the centre, at any reasonable time of the day, and be of such length, as the Visitor thinks appropriate.
- (3) The Visitor must—
- (a) give the manager of a training centre reasonable notice of an impending visit; and
  - (b) take steps to ensure that the safe administration of the centre is not compromised by the visit; and

- (c) obey the reasonable directions of the manager in relation to any genuine security concerns the manager may have in connection with the safe management of the centre.
- (4) Despite subsection (3)(a), if the Visitor intends to conduct a visit to a training centre for reasons that he or she considers to be exceptional, he or she is not required to give notice of the impending visit to the manager of the centre.
- (5) If a manager of a training centre refuses at any time to allow the Visitor to visit the centre because of any genuine concerns the manager may have in connection with the safety of the Visitor (whether related to a security risk, a health related risk or some other reason), the manager must, as soon as reasonably practicable, provide the Visitor with written advice as to why entry to the centre was refused.

### **17—Requests to contact Training Centre Visitor**

- (1) A resident of a training centre, a guardian, relative or carer of a resident of a training centre or any person who is providing support to such a resident may make a request to contact the Training Centre Visitor.
- (2) If such a request is made to the Chief Executive, the Chief Executive must advise the Training Centre Visitor of the request within 2 days after receipt of the request.

### **18—Reporting obligations of Training Centre Visitor**

- (1) The Training Centre Visitor must, on or before 30 September in every year, forward a report to the Minister on the work of the Visitor during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.
- (3) The Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the Visitor's functions.
- (4) The Minister must, within 2 weeks after receiving a special report, have copies of the report laid before both Houses of Parliament.

### **19—Other reports**

- (1) The Training Centre Visitor may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the Visitor's functions under this Act.
- (2) The Minister must—
  - (a) if Parliament is sitting—have copies of a report received under this section laid before both Houses of Parliament within 6 sitting days; or
  - (b) if Parliament is not sitting—deliver copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly so that they may—
    - (i) immediately cause the report to be published; and
    - (ii) lay the report before their respective Houses at the earliest opportunity.

- (3) A report will, when published under subsection (2)(b)(i), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

## **20—Confidentiality of information**

Information about individual cases disclosed to the Training Centre Visitor or a member of the Visitor's staff is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*.

## **Part 4—Training centres**

### **Division 1—Establishment of training centres, facilities and programs**

#### **21—Training centres, facilities and programs**

- (1) The Minister may establish such training centres and other facilities and programs as the Minister thinks necessary or desirable for the care, rehabilitation, detention, training or treatment of youths.
- (2) A training centre (whether established under this section or the *Family and Community Services Act 1972*) will be under the control of the Minister.
- (3) The Chief Executive must ensure that adequate arrangements are in place in a training centre—
- (a) to maintain the physical, psychological and emotional well being of the residents of the centre; and
  - (b) to promote the social, cultural, educational and vocational development of the residents of the centre; and
  - (c) to maintain discipline and order among the residents of the centre; and
  - (d) to ensure, through the implementation of operational procedures, the proper security, control and management of the centre; and
  - (e) for the keeping of proper records relating to the operation and management of the centre; and
  - (f) for the good management of the centre.

### **Division 2—Charter of Rights for Youths Detained in Training Centres**

#### **22—Charter of Rights for Youths Detained in Training Centres**

- (1) There will be a *Charter of Rights for Youths Detained in Training Centres*.
- (2) The Charter has effect if it is approved by the Minister.
- (3) A person exercising functions or powers under a relevant law must, in any dealings with, or in relation to, a youth who is in detention, have regard to, and seek to implement to the fullest extent possible, the terms of the Charter.
- (4) The Charter must be made available on a website maintained by the Department to which the public has access free of charge.

(5) In this section—

*relevant law* means—

- (a) this Act; or
- (b) any law relating to the detention of a youth in a training centre.

### **Division 3—Procedures on admission**

#### **23—Initial assessment on admission**

- (1) The Chief Executive must, as soon as practicable after the initial admission of a youth to a training centre, ensure that—
  - (a) the youth is given a copy of—
    - (i) the rules of the centre that apply to residents of the centre; and
    - (ii) the *Charter of Rights for Youths Detained in Training Centres*; and
  - (b) the youth—
    - (i) is given a written and verbal explanation of the rules of the centre in a language that the youth is able to understand; and
    - (ii) is made aware of the consequences that may follow from any breach of or non-compliance with the rules; and
  - (c) subject to subsection (2), a guardian, relative or carer of the youth is notified that the youth has been admitted to the centre.
- (2) The following provisions apply for the purposes of subsection (1)(c):
  - (a) the person to be notified must be—
    - (i) a guardian, relative or carer of the youth nominated by the youth for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, relative or carer of the youth who appears to have or be assuming responsibility for the care of the youth; or
    - (iii) if that is not practicable or appropriate—any other guardian, relative or carer of the youth whom it is practicable and appropriate to notify;
  - (b) the Chief Executive is not required to notify a person whose whereabouts are not known to or readily ascertainable by the Chief Executive;
  - (c) it is not appropriate for the Chief Executive to notify a particular person if the Chief Executive has reason to believe that it would be contrary to the youth's best interests to do so.
- (3) The Chief Executive must, as soon as practicable after the initial admission to a training centre of a youth, cause the youth to be screened for the purposes of assessing the youth's particular needs and circumstances.
- (4) The Chief Executive must, as soon as practicable after the youth has been screened under subsection (3), cause the youth to be assessed at least once in each prescribed period while resident in the centre.

- 
- (5) In carrying out an assessment under subsection (4), the Chief Executive must—
- (a) endeavour to ensure that the youth and a guardian, relative or carer of the youth participate in the assessment; and
  - (b) have regard to—
    - (i) the age, gender, gender identity, sexuality or sexual identity of the youth; and
    - (ii) the cultural identity, developmental and cognitive capacity, ability or disability, and any special needs, of the youth; and
    - (iii) the social, medical, psychological and educational background and history of the youth; and
    - (iv) the needs of the youth in respect of—
      - (A) education or training; and
      - (B) medical, psychological or psychiatric treatment; and
    - (v) the aptitude or suitability of the youth for any particular form of education, vocational training or work; and
    - (vi) the nature of the offence, or offences, in respect of which the youth is detained and the length of sentence; and
    - (vii) the behaviour of the youth while in the training centre; and
    - (viii) the question of maintaining the youth's family and community connections; and
    - (ix) any responsibilities the youth has as a carer; and
    - (x) where relevant, any proposed plans in respect of the release of the youth and his or her social rehabilitation; and
    - (xi) any representations made by the youth and any other relevant person (including a guardian, relative or carer of the youth); and
    - (xii) such other matters as the Chief Executive thinks relevant.
- (6) After the first assessment of a resident of a training centre has been completed, the Chief Executive must prepare a case plan for the youth and may, after any subsequent assessment, add to or vary that plan.
- (7) A case plan for a youth prepared, added to or varied under subsection (6) must include particulars of each of the following:
- (a) proposals for the education or training of the youth;
  - (b) proposals for medical, psychological or psychiatric treatment of the youth;
  - (c) proposals for the rehabilitation of the youth;
  - (d) proposals relating to the youth's release into, and support in, the community.
- (8) In subsection (4)—
- prescribed period*** means—
- (a) the period prescribed by the regulations for the purposes of this definition; or
  - (b) if no period is prescribed—a period not exceeding 3 months.

## **Division 4—Custody of residents of training centres**

### **24—Minister has custody of youths in detention**

The Minister has the custody of a resident of a training centre, whether the resident is within, or outside, the precincts of a training centre in which he or she is being detained, or is to be detained.

### **25—Chief Executive responsible under Minister for management of training centres**

Subject to this Act, the Chief Executive has an absolute discretion—

- (a) to place any particular youth or youth of a particular class in such part of a training centre as the Chief Executive thinks fit; and
- (b) to establish in respect of a particular youth, or youth of a particular class, or in respect of youths placed in any particular part of a training centre, such a regime for education, training, work, recreation, contact with other youths or any other aspect of the day-to-day life of youths in detention; and
- (c) to vary any such regime,

as from time to time seems expedient to the Chief Executive.

## **Division 5—Management of residents of training centres**

### **26—Chief Executive may make rules relating to management of training centre**

- (1) Subject to this Act, the Chief Executive may make rules—
  - (a) relating to the management of a training centre; and
  - (b) regulating the conduct of residents of a training centre.
- (2) The Chief Executive may vary or revoke any rules made under subsection (1).
- (3) The *Subordinate Legislation Act 1978* does not apply to rules made under this section.
- (4) The Chief Executive must cause rules made under this section to be published for the benefit of residents of a training centre in such manner as the Chief Executive thinks fit and, in giving effect to this section, must ensure, as far as is reasonably practicable, that the rules are made known to any resident who is illiterate or whose principal language is not the English language.

### **27—Education**

- (1) The Chief Executive must arrange for such courses of instruction or training as the Chief Executive thinks fit to be made available to residents of training centres.
- (2) In particular, the Chief Executive must, as much as reasonably practicable, encourage a resident of a training centre who is a child of compulsory school age or a child of compulsory education age to continue or otherwise further his or her school education or vocational or other training (as the case requires).

**28—Safe rooms**

- (1) A resident of a training centre may only be detained in a safe room if an employee of the centre believes on reasonable grounds that—
  - (a) the resident is about to harm himself or herself or another person; or
  - (b) the resident is about to cause significant damage to property; or
  - (c) it is necessary to detain the resident in a safe room—
    - (i) to maintain order in the centre; or
    - (ii) to preserve the security of the centre.
- (2) Despite subsection (1), a resident of a training centre who is under the age of 12 years must not be detained in a safe room.
- (3) If a resident is detained in a safe room, the manager of the training centre must be informed of the detention, and the reasons for the detention, as soon as reasonably practicable.
- (4) A resident of a training centre may only be detained in a safe room for so long as is necessary in the circumstances but, in any event—
  - (a) if the resident is aged between 12 and 14 years—for no longer than 24 hours; and
  - (b) if the resident is aged 15 years or over—for no longer than 48 hours.
- (5) The following provisions apply in relation to a resident of a training centre who is being detained in a safe room:
  - (a) the resident must be closely supervised;
  - (b) the resident must be observed at intervals of not longer than 5 minutes;
  - (c) the observations must be recorded in writing and kept together with the record required to be made under subsection (6).
- (6) If a resident of a training centre is detained in a safe room, the manager of the centre must ensure that—
  - (a) a record is made containing the following details:
    - (i) the name and age of the resident;
    - (ii) the date and time the detention began;
    - (iii) the date and time the detention ended;
    - (iv) the reason for the detention;
    - (v) the name of the employee of the centre who ordered the detention;
    - (vi) action taken (if any) in respect of the resident before the resident was so detained;
    - (vii) the management plan established for the resident for the period during which the resident was detained in the safe room;
    - (viii) any issues or concerns relating to the resident's medical or psychological condition; and

- (b) the resident is examined as soon as practicable by an appropriate health professional for the purpose of assessing the resident's health or mental health condition and needs; and
    - (c) if the resident belongs to a cultural or linguistic minority—a cultural advisor is informed of the detention; and
    - (d) an action plan is prepared to manage the resident in the period immediately following the resident's release from the safe room.
  - (7) An account of an incident leading to the detention of a resident in a safe room must be—
    - (a) written, signed and dated by the resident; or
    - (b) if the resident cannot write—
      - (i) written on the instructions of the resident, and signed and dated, by a person nominated for the purpose by the resident; and
      - (ii) signed by the resident,
- (and such account must be kept together with the record required to be made under subsection (6)).
- (8) If the resident refuses to cooperate in the preparation of the account, a written record of the refusal must be made and kept together with the record required to be made under subsection (6).
  - (9) A resident may nominate any of the following persons for the purposes of subsection (7)(b):
    - (a) the resident's case manager or case worker;
    - (b) a lawyer;
    - (c) the Guardian for Children and Young Persons;
    - (d) the Training Centre Visitor;
    - (e) a cultural advisor;
    - (f) a parent, guardian or carer of the resident,

(but any such person nominated may not be an employee of the training centre nor have been present during the relevant incident that led to the resident being detained in the safe room).

## **29—Prohibited treatment of residents**

Subject to this Act, a resident of a training centre must not be subjected to any of the following kinds of treatment:

- (a) corporal punishment of any form (that is, any action that inflicts or is intended to inflict physical pain or discomfort);
- (b) isolation or segregation (other than in a safe room or in prescribed circumstances) from other residents;
- (c) psychological pressure or emotional abuse of any form intended to intimidate or humiliate;

- (d) deprivation of medical attention, basic food or drink, clothing or any other essential item;
- (e) deprivation of sleep;
- (f) restriction of free movement by means of mechanical restraints (other than in prescribed circumstances);
- (g) unjustified deprivation of contact with persons outside the centre;
- (h) any other treatment that is cruel, inhuman or degrading.

### 30—Power to search residents

- (1) The manager of a training centre may cause a resident of the centre or a resident's belongings to be searched in any of the following situations:
  - (a) when the resident is received into the centre or returns after an absence from the centre;
  - (b) if the resident has had a full contact visit with a visitor to the centre;
  - (c) if the manager has reasonable cause to suspect that the resident has in his or her possession in the centre any substance or item—
    - (i) that is prohibited in the centre; or
    - (ii) that may jeopardise the security of the centre.
- (2) The following provisions apply to the search of a resident of a training centre:
  - (a) the resident may not be required to be completely naked at any time during the search;
  - (b) those present at any time during the search when the resident is semi-naked (except a medical practitioner) must be of the same sex or gender identity as the resident;
  - (c) at least 2 persons (apart from the resident) must be present at all times during the search when the resident is semi-naked (with 1 of them conducting the search while the other observes);
  - (d) if a medical practitioner is required for the purposes of the search—the medical practitioner must be in addition to the 2 persons required under paragraph (c);
  - (e) for the purposes of the search—the resident may be required—
    - (i) to open his or her mouth; and
    - (ii) to remove the clothing from his or her upper body or lower body (but not both at the same time); and
    - (iii) to adopt particular postures; and
    - (iv) to do anything else reasonably necessary for the purposes of the search,

and if the resident does not comply with such a requirement, reasonable force may be applied to secure compliance;
  - (f) force must not be applied to open the resident's mouth except by or under the supervision of a medical practitioner;

- (g) nothing may be introduced into an orifice of the resident's body for the purposes of the search except by a medical practitioner;
  - (h) the search must be carried out expeditiously and undue humiliation of the resident must be avoided.
- (3) If a resident of a training centre is searched while the resident is semi-naked, the manager of the centre must ensure that a record is made containing the following details:
  - (a) the name and age of the resident;
  - (b) the date and time of the search;
  - (c) the reason for the search;
  - (d) the name of the employee of the centre who conducted the search.
- (4) Despite subsection (2)(b), if 2 persons (apart from a medical practitioner) of the same sex or gender identity as a resident are not available at the time a search of the resident is to be conducted, the search may be conducted by a person of the same sex or gender identity as the resident in the presence of a person who is not of the same sex or gender identity.
- (5) However—
  - (a) the second person present when the search is conducted must observe the person conducting the search without observing the semi-naked resident; and
  - (b) due regard must be had to the particular needs and circumstances of the resident.

### **31—Drug testing of residents**

- (1) The Chief Executive may require a resident of a training centre to undergo a drug test in any of the following circumstances:
  - (a) on the initial admission of the youth to the centre;
  - (b) on the youth returning to the centre after being absent;
  - (c) if, for the purpose of ascertaining the incidence of unlawful drug use in a training centre, the manager of the centre—
    - (i) proposes that all residents of the centre, or a part of the centre, undergo a drug test; or
    - (ii) causes the random selection of residents from the whole, or a part, of the centre to undergo a drug test and the resident falls within the selection;
  - (d) in any other circumstance that the Chief Executive thinks fit.
- (2) The manager of a training centre may require a resident of the centre to undergo a drug test—
  - (a) if the manager reasonably suspects that the resident has unlawfully used a drug; or
  - (b) in any other circumstance that the Chief Executive thinks fit.

- (3) If a resident of a training centre is required to undergo a drug test in circumstances approved by the Chief Executive under subsection (1)(d) or (2)(b), the person who required the resident to undergo the test must make a written record of the reasons for the requirement.

### **32—Use of sniffer dogs**

- (1) The Chief Executive may authorise the use of a sniffer dog by a person who is authorised to use such a dog under the *Police Act 1998* or the *Correctional Services Act 1982* at a training centre to assist in the maintenance of the good order or security of the centre.
- (2) Without limiting subsection (1), a sniffer dog may be used for any of the following purposes:
- (a) to carry out a search at a training centre for any reason;
  - (b) to track a youth who has escaped from custody or who is otherwise unlawfully at large;
  - (c) to patrol a training centre.
- (3) In this section—
- sniffer dog* means—
- (a) a drug detection dog within the meaning of the *Controlled Substances Act 1984*; or
  - (b) a dog that is trained and handled by South Australia Police; or
  - (c) a correctional services dog (within the meaning of the *Correctional Services Act 1982*).

### **33—Use of force against residents**

- (1) An employee of a training centre may only use such force against a resident of the centre as is reasonably necessary in a particular case—
- (a) to prevent the resident from harming himself or herself or another person; or
  - (b) to prevent the resident from causing significant damage to property; or
  - (c) to maintain order in the centre; or
  - (d) to preserve the security of the centre.
- (2) If force is used against a resident of a training centre—
- (a) each employee of the centre involved must ensure that a written report is provided to the manager of the centre containing the following particulars:
    - (i) the name of the resident;
    - (ii) the name of each employee involved in or who witnessed the use of force;
    - (iii) the date, time and location in the centre where the use of force took place;
    - (iv) the nature of the force used and the purpose for which, or circumstances in which, the force was used; and

- (b) the manager of the training centre must ensure that the resident is examined as soon as practicable by an appropriate health professional for the purpose of assessing the resident's health or mental health condition and needs.
- (3) An account of an incident leading to the use of force against a resident must be—
- (a) written, signed and dated by the resident; or
  - (b) if the resident cannot write—
    - (i) written on the instructions of the resident, and signed and dated, by a person nominated for the purpose by the resident; and
    - (ii) signed by the resident,
- (and such account must be kept together with the report required to be made under subsection (2)).
- (4) A resident may nominate any of the following persons for the purposes of subsection (3)(b):
- (a) the resident's case manager or case worker;
  - (b) a lawyer;
  - (c) the Guardian for Children and Young Persons;
  - (d) a Training Centre Visitor;
  - (e) a cultural advisor;
  - (f) a parent, guardian or carer of the resident;
  - (g) any other person approved by the manager of the training centre,
- (but any such person nominated may not be an employee of the training centre nor have been present during the relevant incident that led to the use of force against the resident).

## **Division 6—Leave of absence under authority of Chief Executive**

### **34—Leave of absence under authority of Chief Executive**

- (1) The Chief Executive may, by written order, grant a youth detained in a training centre leave of absence from the centre—
- (a) for the medical or psychiatric examination, assessment or treatment of the youth; or
  - (b) for the attendance of the youth at an educational or training course, a personal development program or a work program, project or camp; or
  - (c) for such compassionate purpose as the Chief Executive thinks fit; or
  - (d) for any purpose related to a criminal investigation; or
  - (e) for the purpose of enabling the youth to perform community service.
- (2) Subsection (1)(a) does not apply if, in an emergency, it is necessary that a youth is removed from a training centre for a medical or psychiatric examination, assessment or treatment and the Chief Executive is advised as soon as practicable of the youth's absence from the training centre and the reason for the absence.

- 
- (3) In determining whether to grant a youth leave of absence under this section, the Chief Executive must have regard to the following:
- (a) the goals of the youth in respect of rehabilitation;
  - (b) the cultural needs and circumstances of the youth;
  - (c) the safety of the community;
  - (d) whether the youth has a history absconding or breaching orders;
  - (e) whether the youth is likely to interfere with a witness;
  - (f) the need that any victim of an offence committed, or alleged to have been committed, by the youth may have, or perceive, for physical protection from the youth.
- (4) Leave of absence under this section may be subject to 1 or more of the following conditions:
- (a) a condition that the youth will be in the custody of and supervised by 1 or more officers or employees of the Department authorised by the Chief Executive for the purpose;
  - (b) a condition that the youth be monitored by use of an electronic device;
  - (c) any other condition as the Chief Executive thinks fit.
- (5) A leave of absence under this section that allows a youth to leave the State may only be granted with the Minister's consent.
- (6) The Chief Executive may, by written order, revoke a leave of absence granted under this section, or vary or revoke any of the conditions to which it is subject.
- (7) A youth who is at large after the revocation or expiry of leave of absence may be apprehended without warrant by a police officer or an officer or employee of the Department authorised by the Chief Executive for the purpose.
- (8) A youth who is still at large after the expiry of leave of absence will be taken to be unlawfully at large.
- (9) A youth is not, while still at large after revocation of leave of absence, serving his or her sentence of detention.

## **Division 7—Transfer of youths under detention from 1 jurisdiction to another**

### **35—Interpretation**

In this Division—

*appropriate authority* of another State means a person who is vested with authority under a corresponding law—

- (a) to authorise or arrange for the transfer of a young offender to this State; or
- (b) to authorise or arrange for the transfer of a young offender from this State to that State;

**correctional order** means an order under a law of this State or any other State for dealing with youths who commit offences, being an order—

- (a) for the detention (other than remand) of such a youth; or
- (b) requiring such a youth to perform community service; or
- (c) providing for the conditional release of such a youth; or
- (d) placing such a youth on probation or parole or under any form of supervision;

**correctional system**, in relation to a State, means the system of law, judicial and administrative authorities, correctional and other institutions under which youths who commit offences are dealt with in that State;

**corresponding law** means a law of another State declared by regulation to be a law corresponding to this Division;

**escort** means a person in whose custody a young offender is placed for the purpose of bringing the young offender into the State, or taking the young offender out of the State, pursuant to arrangements made under this Division;

**State** includes the Australian Capital Territory and the Northern Territory;

**young offender** means a person—

- (a) who has been found guilty of an offence committed while under the age of 18 years; and
- (b) who is subject to a correctional order.

### **36—Transfer of young offenders to other States**

- (1) The Minister may make arrangements with the appropriate authority of another State for the transfer of a young offender to that other State.
- (2) Before entering into arrangements under this section, the Minister must be satisfied—
  - (a) that any rights of appeal against the relevant correctional order have been exhausted or have expired; and
  - (b) that the young offender will be dealt with in the correctional system of the other State in substantially the same way as if he or she had remained in the correctional system of this State; and
  - (c) that the transfer is in the best interests of the young offender; and
  - (d) that—
    - (i) the young offender consents to the transfer; or
    - (ii) there are special reasons justifying the transfer although the young offender does not consent.
- (3) Before entering into arrangements under this section, the Minister must allow the guardians of the youth a reasonable opportunity to make representations on the question whether the transfer is in the best interests of the young offender.
- (4) Before consenting to a transfer, a young offender must be allowed a reasonable opportunity to obtain independent legal advice on the question of whether the transfer is in his or her best interests.

- 
- (5) An arrangement under this section will not be carried into effect unless it has been ratified by the Youth Court.
- (6) If a young offender is transferred to another State pursuant to an arrangement under this section, the Minister will transmit to the appropriate authority of that other State—
- (a) a copy of the relevant correctional order; and
  - (b) a statement of—
    - (i) any period of detention served by the young offender pursuant to the order; and
    - (ii) any community service performed by the young offender pursuant to the order; and
    - (iii) any period for which the young offender has been subject to conditional release; and
    - (iv) any period for which the young offender has been on probation or parole or under supervision; and
    - (v) any remissions of sentence to which the young offender has become entitled; and
  - (c) a report on the young offender.
- (7) If the Minister arranges for the transfer to another State of a young offender who is in detention, the Minister will arrange for the young offender to be taken to the other State in the custody of a suitable escort and delivered into detention in that other State.
- (8) If a young offender goes or is transferred to another State and is accepted into the correctional system of that other State pursuant to arrangements under this section, the relevant correctional order ceases to operate in this State.

### **37—Transfer of young offenders to this State**

- (1) The Minister may make arrangements with the appropriate authority of another State for the transfer of a young offender from that other State to this State.
- (2) Before entering into arrangements under this section, the Minister must be satisfied—
  - (a) that the young offender is over the age of 10 years; and
  - (b) that there is in force in this State a law that substantially corresponds to the law against which the young offender offended; and
  - (c) that the young offender is not liable to detention for an indeterminate period; and
  - (d) that the young offender will be dealt with in the correctional system of this State in substantially the same way as if he or she had remained in the correctional system of the other State.
- (3) Before entering into arrangements under this section, the Minister must allow the guardians of the youth a reasonable opportunity to make representations on the question whether the transfer is in the best interests of the young offender.

- (4) If a young offender is transferred to this State pursuant to arrangements under this section—
- (a) a copy of the correctional order must be filed in the Youth Court; and
  - (b) the young offender will be dealt with under the law of this State as if—
    - (i) the correctional order had been made under the law of this State; and
    - (ii) any period of detention, community service, conditional release, probation, parole or supervision served by the young offender pursuant to the order had been served in this State; and
    - (iii) any entitlement to remission of sentence that had accrued prior to the transfer had accrued under the law of this State.

### **38—Adaptation of correctional orders to different correctional systems**

- (1) An arrangement made under this Division for the transfer of a young offender may provide that the correctional order will operate with such modifications as are necessary to ensure its effective operation in the correctional system of the State to which the young offender is to be transferred.
- (2) Any such modifications relating to a correctional order made under the law of another State must be endorsed on the order on its filing under this Act and the Young Offenders Act.

### **39—Custody during escort**

- (1) An escort in whose custody a young offender has been placed for the purpose of bringing the young offender into, or taking the young offender out of, the State has, while in the State, lawful custody of the young offender.
- (2) If a young offender escapes from the custody of an escort, the young offender may be arrested without warrant for the purpose of being returned to lawful custody.

## **Division 8—Release from detention**

### **40—Release of youth from detention**

- (1) Subject to this Act and the Young Offenders Act, a youth will be released from the training centre in which the youth is being detained on the day on which the youth's sentence of detention expires, unless released earlier under Part 5 of the Young Offenders Act or any other Act or law.
- (2) A youth must be released from the training centre in which the youth is being detained as near as practicable to 10 am on the day of the youth's release.
- (3) If a youth is released from detention on home detention or conditional release, or on the expiration or extinguishment of his or her sentence of detention, the Chief Executive must, as soon as reasonably practicable, hand over to the youth any personal property held on his or her behalf.

**41—Manner in which former resident's personal property is to be dealt with**

- (1) If a former resident of a training centre has left any personal property in a training centre in which he or she was at some time detained, the Chief Executive must give a written notice to the former resident, sent by post to his or her last known address, setting out particulars of the personal property and of the place at which it may be collected.
- (2) If the former resident fails to collect the personal property within 1 month of being given a notice under subsection (1), the Chief Executive must deal with the property in the following manner:
  - (a) if the property consists solely of items that would, in the opinion of the Chief Executive, be of negligible monetary value and of no sentimental value to the former resident, the Chief Executive may dispose of the property in such manner as the Chief Executive thinks fit; or
  - (b) in any other case—
    - (i) if the whereabouts of the former resident are known to the Chief Executive, the Chief Executive must cause the property to be delivered to the former resident except where it is not practicable to do so, in which case the Chief Executive may dispose of the property in such manner as the Chief Executive thinks fit;
    - (ii) if the whereabouts of the former resident are, after reasonable inquiries, unknown to the Chief Executive, the Chief Executive may dispose of the property in such manner as the Chief Executive thinks fit.
- (3) Money received from the sale of any personal property under this section will be paid into the Consolidated Account.

**42—Certain prohibited items not to be returned to former residents**

Nothing in this Division requires the delivery or return to a person of any item of personal property the possession of which by that person is prohibited by law.

**Part 5—Community programs and community service****43—Community programs**

- (1) The Minister may establish such programs as the Minister thinks necessary or desirable for the care, rehabilitation, training or treatment of a youth who is required to be under supervision in the community.
- (2) The Chief Executive must ensure that adequate arrangements are in place in any such program to ensure—
  - (a) that the youth is supervised by a community youth justice officer; and
  - (b) through the implementation of assessment and case planning, that the program is suitable for the particular youth.
- (3) In carrying out an assessment of a particular youth, the Chief Executive must—
  - (a) endeavour to ascertain the views of the youth in relation to any proposed program; and

- (b) in the case of an assessment of a youth who is under the guardianship of the Minister, or of whom the Minister has custody, under the *Children's Protection Act 1993*—ensure that the Department (within the meaning of that Act) is consulted in relation to the assessment; and
- (c) have regard to—
  - (i) the age, gender, gender identity, sexuality or sexual identity of the youth; and
  - (ii) the cultural identity, developmental and cognitive capacity, ability or disability, and any special needs, of the youth; and
  - (iii) the social, medical, psychological and educational background and history of the youth; and
  - (iv) the needs of the youth in respect of—
    - (A) education or training; and
    - (B) medical, psychological or psychiatric treatment; and
  - (v) the aptitude or suitability of the youth for any particular form of education, vocational training or work; and
  - (vi) the nature of the offence, or offences, in respect of which the youth has been sentenced and the length of sentence; and
  - (vii) the behaviour of the youth while under supervision; and
  - (viii) any representations made by the youth, the community youth justice officer supervising the youth, and any other relevant person (including a guardian, relative or carer of the youth); and
  - (ix) such other matters as the Chief Executive thinks relevant.
- (4) The Chief Executive must, before commencing an assessment, notify the youth and, if practicable in the circumstances, a guardian, relative or carer of the youth.
- (5) The youth and a guardian, relative or carer of the youth may make written representations to the Chief Executive in respect of the youth's assessment.
- (6) After an assessment of a youth has been completed under this section, the Chief Executive must prepare a case plan for the youth that contains particulars of any proposals for the education or training, medical, psychological or psychiatric treatment, and rehabilitation, of the youth, and may, after any subsequent assessment, add to or vary that plan.

#### **44—Restrictions on performance of community service and other work orders**

If a youth is required to perform community service or to carry out work pursuant to an order or undertaking under this Act or the Young Offenders Act, the following provisions apply:

- (a) the youth cannot be required to attend at a place for the purpose of performing community service or work at a time that would—
  - (i) interfere with the youth's paid employment or with a course of training or instruction relating to, or likely to assist him or her in obtaining, paid employment; or

- (ii) cause unreasonable disruption of the youth's commitments in caring for his or her dependants; or
  - (iii) cause the youth to offend against a rule of a religion that he or she practises;
- (b) the youth cannot be required to perform community service or work—
- (i) for less than 4 hours in a week; or
  - (ii) for more than 8 hours in any 1 day,
- except in circumstances approved by the Minister;
- (c) if on any day a period of community service or work is to exceed 4 continuous hours, the next hour must be a meal break;
- (d) the youth will not be paid for the performance of the community service or work.

#### **45—Insurance cover for youths performing community service or other work orders**

A youth who is required to perform community service or other work pursuant to an order or undertaking under this Act or the Young Offenders Act must be insured against death or bodily injury arising out of, or occurring in the course of, performance by the youth of that community service or work.

#### **46—Community service or other work orders may only involve certain kinds of work**

- (1) The work selected for the performance of community service or other work pursuant to an order or undertaking under this Act or the Young Offenders Act must be for the benefit of—
- (a) the victim of the offence; or
  - (b) persons who are disadvantaged through age, illness, incapacity or any other adversity; or
  - (c) an organisation that does not seek to secure a pecuniary profit for its members; or
  - (d) a Public Service administrative unit, an agency or instrumentality of the Crown or a local government authority.
- (2) The attendance by a youth at an educational or training course approved by the Minister for the purposes of this section will be taken to be the performance of community service.

### **Part 6—Miscellaneous**

#### **47—Hindering a person in execution of duty**

A person who hinders the Chief Executive, a community youth justice officer, a home detention officer or any other person in the execution, performance or discharge of a power, function or duty under this Act is guilty of an offence.

Maximum penalty: \$2 500.

#### 48—Impersonating an employee of Department

A person who falsely represents himself or herself by word or conduct to be an officer or employee of the Department and to be authorised by or pursuant to this Act or any other Act to exercise certain powers is guilty of an offence.

Maximum penalty: \$2 500.

#### 49—Confidentiality

A person must not disclose information relating to a youth or resident of a training centre, being information obtained (whether by the person or some other person) in the administration or enforcement of this Act, except—

- (a) as required or authorised by this Act or any other Act or law; or
- (b) as reasonably required in connection with the administration or enforcement of this Act or any other prescribed Act; or
- (c) if, in the opinion of the Chief Executive, it is necessary to disclose the information in order to avert a serious risk to public safety; or
- (d) for the purposes of legal proceedings arising out of the administration or enforcement of this Act; or
- (e) to a government agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purposes of the proper performance of its functions; or
- (f) with the consent of the youth or resident to whom the information relates.

Maximum penalty: \$10 000.

#### 50—Disclosure of health information

- (1) The—
  - (a) Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Health Care Act 2008*; and
  - (b) Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Mental Health Act 2009*,

must disclose to the Chief Executive such personal information about a youth detained in a training centre or released on home detention as is reasonably required for the treatment, care or rehabilitation of the youth, or the safe management of the youth in the centre or in the community (as the case may be).

- (2) Protocols or guidelines may be established for the purposes of this section.
- (3) In this section—

**personal information** means information or an opinion, whether true or not, relating to a youth whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

### **51—Information about youth may be given in certain circumstances**

- (1) If a youth is sentenced to detention or imprisonment for an offence, an eligible person may apply in writing to the Chief Executive for the release to him or her of any of the following information relating to the youth:
  - (a) the name and address of the place in which the youth is for the time being held in custody;
  - (b) details of any transfer of the youth from 1 place in which the youth is being held in custody to another;
  - (c) details of the sentence or sentences that the youth is liable to serve;
  - (d) the date on which and circumstances under which the youth was, is to be, or is likely to be, released from custody for any reason;
  - (e) details of any escape from custody by the youth.
- (2) The Chief Executive has an absolute discretion to grant or refuse an application for release of information to an eligible person.
- (3) A decision of the Chief Executive as to whether a person is an eligible person or to grant or refuse an application under this section is final and is not reviewable by a court.
- (4) The Chief Executive must not release information relating to a youth's conditional release from detention by the Training Centre Review Board without the consent of the Board (but the Board may waive this requirement in such circumstances as it thinks fit).
- (5) For the purposes of this section, a person is an *eligible person* in relation to a youth who is sentenced to detention or imprisonment for an offence if he or she is—
  - (a) a registered victim in relation to the offence; or
  - (b) a member of the youth's family or a close associate of the youth; or
  - (c) a legal practitioner who represents the youth; or
  - (d) any other person who the Chief Executive thinks has a proper interest in the release of such information.

### **52—Information about youth to be given when youth to be imprisoned**

If a youth is transferred to a prison from a training centre, the Chief Executive must provide the Department (within the meaning of the *Correctional Services Act 1982*) with information held by the Chief Executive that is required by that Department in order to ensure—

- (a) the safety and security of the youth while he or she is detained in the prison;  
or
- (b) the safety and security of other persons at the prison; or
- (c) that the rehabilitation needs of the youth will be met while he or she is detained in the prison.

### 53—Minister may acquire land

The Minister may, for the purposes of this Act, acquire land in accordance with the *Land Acquisition Act 1969*.

### 54—Evidentiary provision

In any proceedings, an apparently genuine document purporting to be a certificate signed by the Chief Executive (or a delegate of the Chief Executive), and certifying that a dog used during a specified period for a specified purpose under section 32 within a specified area, or at a training centre, was a sniffer dog constitutes proof, in the absence of proof to the contrary, of the matters so certified.

### 55—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made—
  - (a) regulating the administration and management of training centres; and
  - (b) prescribing the procedures to be observed in relation to the detention of a youth prior to being dealt with by a court, or while a youth is being conveyed to or from any court, or while a youth is in attendance at any court; and
  - (c) regulating the conduct of residents, or of residents of a particular class, of a training centre; and
  - (d) relating to visitors to training centres; and
  - (e) setting out rights of residents of training centres; and
  - (f) prohibiting, restricting or regulating the supply or administration to residents of drugs (including prescription drugs under the *Controlled Substances Act 1984*); and
  - (g) for the purposes of section 31, including regulations—
    - (i) prescribing procedures for drug testing; and
    - (ii) regulating the collection of biological samples from residents for the purposes of drug testing; and
    - (iii) prescribing the directions that can be given to a resident for the purpose of conducting an alcotest or collecting and authenticating a biological sample; and
  - (h) prescribing the duties of employees of training centres; and
  - (i) regulating the times at which and procedure by which youths may be admitted to training centres for detention; and
  - (j) regulating the administration of community service orders; and
  - (k) prescribing directions that community youth justice officers may give to persons under their supervision; and
  - (l) prescribing fines, not exceeding \$1 250 in each case, for breach of the regulations.

- (3) The regulations may include evidentiary provisions to facilitate proof of breaches of the regulations for the purposes of proceedings for offences against this Act or the regulations.
- (4) Regulations under this Act may—
  - (a) be of general application or limited application; and
  - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Chief Executive; and
  - (d) include evidentiary provisions to facilitate proof of contraventions of the regulations for the purposes of proceedings for offences.

## **Schedule 1—Related amendments and transitional provisions**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Children's Protection Act 1993***

#### **2—Amendment of section 52C—The Guardian's functions and powers**

Section 52C(1)—after paragraph (f) insert:

- (g) to carry out any other function relating to children and the welfare of children assigned to the Guardian under this Act or the *Youth Justice Administration Act 2016*.

### **Part 3—Amendment of *Criminal Law Consolidation Act 1935***

#### **3—Amendment of section 269A—Interpretation**

- (1) Section 269A(1)—after the definition of *supervision order* insert:

*training centre* means a training centre established for the detention of youths;
- (2) Section 269A(1)—after the definition of *victim* insert:

*youth* has the same meaning as in the *Young Offenders Act 1993*.
- (3) Section 269A—after subsection (2) insert:
  - (3) In applying a provision of this Part to a youth who is being or has been dealt with as a youth (and not as an adult)—
    - (a) a reference to custody in a prison is to be read as detention in a training centre; and
    - (b) a reference to the *Parole Board* is to be read as a reference to the *Training Centre Review Board*.

## **Part 4—Amendment of *Criminal Law (Sentencing) Act 1988***

### **4—Amendment of section 3—Interpretation**

- (1) Section 3(1), definition of *CEO*—delete ", under a Minister,"
- (2) Section 3(1), definition of *CEO*—after "responsible for" insert:  
assisting a Minister in
- (3) Section 3(1), definition of *community corrections officer*—delete ", under a Minister,"
- (4) Section 3(1), definition of *community corrections officer*—after "responsible for" insert:  
assisting a Minister in
- (5) Section 3(1), definition of *Minister for Family and Community Services*—delete the definition and substitute:  
*Minister for Youth Justice* means the Minister responsible for the administration of the *Youth Justice Administration Act 2016*;

### **5—Amendment of section 3A—Application of Act to youths**

- (1) Section 3A(3)(d)—delete ", under a Minister, responsible for the administration of the *Family and Community Services Act 1972*" and substitute:  
responsible for assisting a Minister in the administration of the *Youth Justice Administration Act 2016*
- (2) Section 3A(3)(e)—delete "person authorised (individually or by class) by the Minister for Family and Community Services to exercise the powers of a community corrections officer in relation to youths" and substitute:  
community youth justice officer under the *Youth Justice Administration Act 2016*
- (3) Section 3A(3)—after paragraph (g) insert:
  - (h) a reference to the Minister for Correctional Services is to be read as a reference to the Minister for Youth Justice.

### **6—Amendment of section 23—Offenders incapable of controlling, or unwilling to control, sexual instincts**

- (1) Section 23(8)(a)—delete "Minister for Family and Community Services" and substitute:  
Minister for Youth Justice
- (2) Section 23(10)(a)—delete "Minister for Family and Community Services" and substitute:  
Minister for Youth Justice

## **7—Amendment of section 79A—Rights on arrest**

Section 79A(1a)(c)—delete "a person nominated by the Chief Executive Officer within the meaning of the *Family and Community Services Act 1972*" and substitute:

a person, or a person of a class, nominated by the Chief Executive within the meaning of the *Youth Justice Administration Act 2016*

## **Part 5—Amendment of *Family and Community Services Act 1972***

### **8—Repeal of section 7**

Section 7—delete the section

### **9—Amendment of section 36—Establishment of facilities and programs for children**

- (1) Section 36(1)(a)—delete paragraph (a)
- (2) Section 36(2)—delete "training centre,"
- (3) Section 36(3)—delete "training centre,"

### **10—Amendment of section 77—Unlawful communication with children in certain facilities**

- (1) Section 77(a)—delete "training centre,"
- (2) Section 77(b)—delete "who is being detained in or"

### **11—Amendment of section 236—Limitation on tortious liability for acts of certain children**

Section 236—delete ", or a person who is being detained in a training centre or any other place pursuant to the *Young Offenders Act 1993* (whether or not the person is on the premises of the training centre or other place at the time he or she committed the tort)"

### **12—Amendment of section 251—Regulations**

- (1) Section 251(c)—delete "training centres,"
- (2) Section 251(e1)—delete paragraph (e1)

## **Part 6—Amendment of *Young Offenders Act 1993***

### **13—Amendment of section 4—Interpretation**

- (1) Section 4(1)—after the definition of *Chief Executive* insert:

*community youth justice officer* has the same meaning as in the Youth Justice Administration Act;
- (2) Section 4(1), definition of *Department*—delete the definition and substitute:

*Department* means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Youth Justice Administration Act 2016*;

- (3) Section 4(1), definition of *training centre*—delete the definition and substitute:

*training centre* means a facility for the reception, detention, correction and training of youths who offend against the criminal law established under the *Family and Community Services Act 1972* or the Youth Justice Administration Act;

- (4) Section 4(1)—after the definition of *youth* insert:

*Youth Justice Administration Act* means the *Youth Justice Administration Act 2016*;

#### **14—Amendment of section 15—How youth is to be dealt with if not granted bail**

Section 15(1a)—delete subsection (1a) and substitute:

- (1a) Subsection (1) does not apply in relation to—

- (a) a youth who is already, or has previously been, in custody in a prison; or
- (b) a person who, at the time bail is not granted, is aged 21 years or more (regardless of the alleged age of the person at the time of the relevant alleged offence).

#### **15—Amendment of section 23—Limitation on power to impose custodial sentence**

- (1) Section 23(2)(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) home detention for a period not exceeding 12 months, or for periods not exceeding 12 months in aggregate over 2 years or less; or
- (c) detention in a training centre for a period not exceeding 2 years to be followed by home detention for a period not exceeding 12 months.

- (2) Section 23(6)—delete "the sentence—" and substitute:

the sentence, the following provisions apply:

- (3) Section 23(6)(a)—delete "or"

- (4) Section 23(6)(b)—delete "may" and substitute:

must, unless satisfied that there are exceptional circumstances for not doing so,

- (5) Section 23(6)—after paragraph (b) insert:

- (c) where the sentence of detention will extend past the youth's 21st birthday, the Court must, unless satisfied that there are exceptional circumstances for not doing so, direct that any period of the detention that is to be served by the youth after he or she reaches 21 years of age is to be served in a prison rather than in a training centre.

## **16—Amendment of section 26—Limitation on Court's power to require bond**

Section 26—after subsection (4) insert:

(5) If an order has been made under this section imposing an obligation that a person be supervised for a period that will extend past the person's 21st birthday, the Court may, on application by the person or the Chief Executive, direct that, after the person reaches 21 years of age, the person be supervised by a community corrections officer rather than by a community youth justice officer.

(6) In subsection (5)—

*community corrections officer* means a community corrections officer under the *Correctional Services Act 1982*.

## **17—Amendment of section 36—Detention of youth sentenced as adult**

(1) Section 36(2)—delete subsection (2) and substitute:

(2) If a youth is serving a sentence of imprisonment in a training centre, and the sentence of imprisonment will extend past the youth's 18th birthday, the following must occur before the youth reaches 18 years of age:

- (a) a report on the youth's progress in detention must be provided by the Chief Executive to the sentencing court;
- (b) the sentencing court must review the detention and, having regard to the report and any other matter the court thinks fit, direct that the imprisonment in a training centre continue or the youth be transferred to a prison.

(2) Section 36(4)(b)(iv)—delete subparagraph (iv) and substitute:

(iv) a reference to a community corrections officer will be taken to be a reference to a community youth justice officer under the Youth Justice Administration Act.

## **18—Amendment of section 36A—Transfer following imposition of concurrent prison sentence**

Section 36A(1)—delete "the youth must, unless the sentencing court directs otherwise, be transferred to, and will serve those sentences in, a prison" and substitute:

the sentencing court must, unless satisfied that there are exceptional circumstances as to why such a direction should not be made, direct that the youth be transferred to a prison to serve those sentences

## **19—Amendment of section 39—Reviews etc and proceedings of Training Centre Review Board**

(1) Section 39(6)—after "that birthday," insert:

, and at each periodical review thereafter,

(2) Section 39(6)—delete "on or after his or her birthday"

## **20—Amendment of section 40A—Leave may be authorised by Board**

Section 40A—after subsection (1) insert:

- (1a) Leave granted to a youth under this section may be subject to a condition that the youth be monitored by use of an electronic device.

## **21—Amendment of heading to Part 5 Division 3 Subdivision 3**

Heading to Part 5 Division 3 Subdivision 3—delete "from detention" and substitute:  
and home detention

## **22—Amendment of section 41A—Conditional release from detention**

- (1) Section 41A(2)—delete "The provisions" and substitute:  
Subject to subsection (3a), the provisions
- (2) Section 41A(3)—delete "The provisions" and substitute:  
Subject to subsection (3a), the provisions
- (3) Section 41A—after subsection (3) insert:
  - (3a) The following subsections do not apply in relation to release by the Board of a youth on home detention under section 41B:
    - (a) subsection (2)(a);
    - (b) subsection (2)(ab);
    - (c) subsection (3)(a);
    - (d) subsection (3)(ab).

## **23—Amendment of section 41B—Release on condition of home detention**

Section 41B(1)—after "The Training Centre Review Board may" insert:  
, on the application of the Chief Executive or on its own initiative,

## **24—Repeal of Part 5 Division 4**

Part 5 Division 4—delete Division 4

## **25—Repeal of sections 49A to 51**

Sections 49A to 51 (inclusive)—delete the sections

## **26—Substitution of section 63**

Section 63—delete the section and substitute:

### **63—Transfer of youths in detention to other training centre or prison**

- (1) If a youth has been detained in, or remanded to, a training centre pursuant to an order of a court, the Chief Executive may, in such circumstances as the Chief Executive thinks fit, direct that the youth be removed and placed in some other training centre.

- (2) If a person who is of or above the age of 18 years is detained in, or remanded to, a training centre or another place pursuant to an order of a court, the person or the Chief Executive may apply to the Youth Court for an order that the person be transferred to a prison for the remainder of the period of detention or remand.
- (3) The Youth Court may not make an order under subsection (2) unless satisfied that, in the circumstances, a prison would be an appropriate place for the person to be held for the remainder of the period of detention or remand.
- (4) If a person who is of or above the age of 17 years has been remanded to, or is being detained in, a training centre or another place pursuant to an order of a court, the Chief Executive may apply to the Youth Court for an order that the person be transferred to a prison for the remainder of the period of remand or detention.
- (5) The Youth Court may not make an order under subsection (4) unless satisfied that—
  - (a) the person—
    - (i) cannot be properly controlled in that training centre or other place; or
    - (ii) has, within the period of 14 days preceding the date of the application, been found guilty of assaulting a person employed, or detained, in that training centre or other place; or
    - (iii) has persistently incited others in the training centre or other place to cause a disturbance; or
    - (iv) has escaped or attempted to escape from the training centre; or
  - (b) the person's needs for rehabilitation, care, correction and guidance cannot be met in that training centre or other place and it is in the best interests of the person for him or her to be transferred to a prison.
- (6) If the Youth Court is satisfied, on an application under subsection (4), that the person is likely to be a danger to others, the Court may order that the person be held in custody in a prison until the Court has determined the application.
- (7) The Youth Court may, on the application of the Chief Executive, the person or a guardian of the person, revoke an order made under subsection (4).
- (8) If a person is held in custody in a prison by order under this section, the *Correctional Services Act 1982* applies to and in relation to that person.
- (9) For the purposes of determining an application under this section, the Youth Court must be constituted of a Judge of the Court or a magistrate.

**27—Amendment of section 63B—Application of *Correctional Services Act 1982* to youth with non-parole period**

Section 63B(b)—delete paragraph (b) and substitute:

- (b) a reference to a community corrections officer will be taken to be a reference to a community youth justice officer under the Youth Justice Administration Act.

**28—Amendment of section 64—Information about youth may be given in certain circumstances**

Section 64(2) to (6)—delete subsections (2) to (6) (inclusive)

**Part 7—Amendment of *Youth Court Act 1993***

**29—Amendment of section 24—Persons who may be present in Court**

Section 24(1)—after paragraph (a) insert:

- (ab) officers or employees of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Youth Justice Administration Act 2016*;

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2016	<b>6</b>	<b><i>Youth Justice Administration Act 2016</i></b>	17.3.2016	1.12.2016 ( <i>Gazette 8.9.2016 p3677</i> )
2017	64	<i>Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017</i>	12.12.2017	Pt 23 (ss 149(1), 150)—26.2.2018 except ss 148, 149(2), 151 to 153—22.10.2018 ( <i>Gazette 19.12.2017 p5119</i> )