

Youth Justice and Other Legislation Amendment Bill 2014

Amendments during consideration in detail to be moved by
The Honourable the Attorney-General and Minister for Justice

1 After clause 3

Page 6, after line 13—

insert—

3A Amendment of s 42 (Preferred way of starting proceedings)

Section 42(1), after ‘serious offence’—

insert—

or an offence under section 59A

2 After clause 4

Page 6, after line 17—

insert—

4A Amendment of s 47 (Bail Act 1980 applies)

Section 47(2)—

omit.

3 Clause 5 (Insertion of new pt 5, div 2)

Page 7, after line 3—

insert—

59AA Definitions for div 2

In this division—

original offence means an offence for which a child is charged and is granted bail.

subsequent offence means an offence for which a child is charged after being granted bail for the original offence.

4 Clause 5 (Insertion of new pt 5, div 2)

Page 7, line 7, ‘offence (the *original offence*)’—

omit, insert—

original offence

5 Clause 5 (Insertion of new pt 5, div 2)

Page 7, lines 9 and 10, ‘an offence (the *subsequent offence*)’—

omit, insert—

a subsequent offence

6 Clause 5 (Insertion of new pt 5, div 2)

Page 7, after line 21—

insert—

59B Proceedings for offence against s 59A

- (1) A proceeding for an offence under section 59A—
 - (a) may be started without complaint and summons; and
 - (b) must be started immediately after the child is found guilty of the subsequent offence.
- (2) In a proceeding for the offence, a copy of the bail order issued by a court, or a copy of the child’s undertaking for the original offence, is, unless the contrary is proved, sufficient proof the child was on bail for the original offence from the date of the bail order or undertaking.
- (3) Upon production to the court of the copy of the bail order or copy of the child’s undertaking the court must immediately call on the child to prove why the child should

not be convicted of an offence under section 59A.

(4) In this section—

undertaking see the *Bail Act 1980*, section 6.

7 Clause 6 (Amendment of s 62 (Childrens Court judge))

Page 7, line 23, ‘62(e)’—

omit, insert—

62(c) and (e)

8 Clause 6 (Amendment of s 62 (Childrens Court judge))

Page 7, lines 25 and 26—

omit, insert—

(2) Section 62(d) and (f)—

renumber as section 62(c) and (d).

9 After clause 7

Page 8, after line 8—

insert—

7A Amendment of pt 6, div 9, hdg (Appeal and review)

Part 6, division 9, heading, ‘and review’—

omit.

7B Amendment of s 117 (Appeals under Justices Act 1886, pt 9, div 1)

(1) Section 117(1)—

omit, insert—

- (1) Subject to subsections (3) to (5), the *Justices Act 1886*, part 9, division 1, applies to either of the following—
 - (a) an order made by justices dealing summarily with a child charged with an offence;
 - (b) an action taken by a Childrens Court magistrate under—
 - (i) section 240(2); or
 - (ii) section 240(3)(b).
- (1A) For the *Justices Act 1886*, section 222(1) an order or action mentioned in subsection (1) is taken to be an order on a complaint for an offence.
- (2) Section 117(1A) to (4)—
renumber as section 117(2) to (5).

7C Omission of pt 6, div 9, sdiv 4 (Reviews of sentences by Childrens Court judge)

Part 6, division 9, subdivision 4—

omit.

10 After clause 9

Page 9, after line 5—

insert—

9A Amendment of s 151 (Pre-sentence report)

Section 151—

insert—

- (3B) If a report is ordered under section 176B(2)(a), the report must contain the following—

- (a) an assessment of the child's physical and mental health;
- (b) advice from the chief executive on whether—
 - (i) the child usually resides in an area prescribed for the purposes of a boot camp (vehicle offences) order; and
 - (ii) an appropriate boot camp centre provider is likely to be available;
- (c) the details of the proposed boot camp program;
- (d) an assessment of the suitability of the child participating in a boot camp (vehicle offences) order;
- (e) a statement that the details of the boot camp program have been explained to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand.

9B Insertion of new s 176B

After section 176A—

insert—

176B Sentence orders—recidivist vehicle offences

- (1) This section applies if a child—
 - (a) is found guilty of a vehicle offence before a court; and
 - (b) is a recidivist vehicle offender.
- (2) Before sentencing the child, the court must—
 - (a) order the chief executive to prepare a pre-sentence report; and

- (b) have received and considered the report.
- (3) Without limiting section 175, the court must make a boot camp (vehicle offences) order for the child.

9C Amendment of s 177 (More than 1 type of order may be made for a single offence)

Section 177, '180A'—

omit, insert—

180B

9D Insertion of new s 178B

After section 178A—

insert—

178B Combination of boot camp (vehicle offences) order and other community based order

- (1) This section applies if a court makes—
 - (a) a boot camp (vehicle offences) order and another community based order for—
 - (i) a single vehicle offence; or
 - (ii) multiple offences of which 1 is a vehicle offence; or
 - (b) a boot camp (vehicle offences) order for a child subject to 1 or more existing community based orders.
- (2) If subsection (1)(a) applies, the other community based order is suspended from the day the boot camp (vehicle offences) order takes effect until—

- (a) the child has performed the boot camp (vehicle offences) order; or
 - (b) the boot camp (vehicle offences) order is discharged.
- (3) If subsection (1)(b) applies, the court must suspend the existing community based order from the day the boot camp (vehicle offences) order takes effect until—
- (a) the child has performed the boot camp (vehicle offences) order; or
 - (b) the boot camp (vehicle offences) order is discharged.

9E Insertion of new s 180B

After section 180A—

insert—

180B Combination of detention order and boot camp (vehicle offences) order

- (1) This section applies if a court makes—
- (a) a detention order and a boot camp (vehicle offences) order for—
 - (i) a single vehicle offence; or
 - (ii) multiple offences of which 1 is a vehicle offence; or
 - (b) a detention order for a child subject to 1 or more existing boot camp (vehicle offences) orders.
- (2) The boot camp (vehicle offences) order—
- (a) if subsection (1)(a) applies—starts when the child is released from detention under the detention order; or
 - (b) if subsection (1)(b) applies—is suspended until the child is released

from detention under the detention order.

11 After clause 11

Page 9, after line 15—

insert—

11A Insertion of new pt 7, div 9A

Part 7—

insert—

Division 9A Boot camp (vehicle offences) order

206A Boot camp (vehicle offences) order

- (1) A court must make a boot camp (vehicle offences) order against a child who—
 - (a) is found guilty of a vehicle offence; and
 - (b) is a recidivist vehicle offender; and
 - (c) has attained the age of 13 years at the time of sentence; and
 - (d) usually resides in an area prescribed by regulation; and
 - (e) is not an ineligible child.
- (2) A boot camp (vehicle offences) order must—
 - (a) if the pre-sentence report ordered under section 176B(2)(a) contains advice from the chief executive that an appropriate boot camp centre provider is immediately available—take effect from the day the order is made; or
 - (b) otherwise—state the day the order takes effect.

(3) For this section, advice from the chief executive contained in the pre-sentence report that the child usually resides in an area prescribed for the purposes of a boot camp (vehicle offences) order is, unless the contrary is proved, sufficient proof that the child usually resides in that area.

(4) In this section—

ineligible child means a child who is not an eligible child for a boot camp order under section 226C(3).

vehicle offence means—

(a) an offence, with or without a circumstance of aggravation, against the Criminal Code, section 408A; or

(b) an attempt to commit an offence mentioned in paragraph (a).

206B Boot camp (vehicle offences) order—duration and requirements

(1) A boot camp (vehicle offences) order must—

(a) be for a period of at least 3 months but not more than 6 months; and

(b) contain requirements of the boot camp order.

(2) The requirements of the boot camp order apply to a boot camp (vehicle offences) order as if reference to the boot camp order were a reference to the boot camp (vehicle offences) order.

(3) The BCO program provisions apply to the boot camp (vehicle offences) order.

(4) In this section—

BCO program provisions means sections 226E, 226G and 226H.

requirements of the boot camp order means the requirements of the boot camp order other than section 226D(2)(c)(i).

12 After clause 12

Page 9, after line 19—

insert—

12A Amendment of s 209 (Court's reasons for detention order to be stated and recorded)

Section 209(3), 'or review'—

omit.

12B Amendment of s 211 (Commencement of detention period)

Section 211(3), '(including an application for a sentence review)'—

omit.

12C Amendment of section 215 (Period of escape, mistaken release or release pending appeal not counted as detention)

Section 215(a), '(including an application for a sentence review)'—

omit.

12D Amendment of s 226E (Boot camp program)

Section 226E(4), 'order,'—

omit, insert—

order or boot camp (vehicle offences) order,

12E Amendment of s 226G (Program period)

- (1) Section 226G(1), ‘when the boot camp order’—
omit, insert—
when the boot camp order or boot camp (vehicle offences) order
- (2) Section 226G(1)(a), ‘order’—
omit, insert—
order or boot camp (vehicle offences) order
- (3) Section 226G(2), ‘boot camp order’—
omit, insert—
boot camp order or boot camp (vehicle offences) order
- (4) Section 226G(2)(a), ‘order’—
omit, insert—
order or boot camp (vehicle offences) order

13 Clause 14 (Amendment of s 237 (Chief executive must warn child about contravention))

Page 10, line 11, ‘order’—

omit, insert—

order or boot camp (vehicle offences) order

14 After clause 15

Page 11, after line 2—

insert—

15A Amendment of s 240 (General options available on breach of order)

- (1) Section 240(2)(a), ‘conditional’—
omit, insert—

boot camp (vehicle offences) order,
conditional

(2) Section 240(2)—

insert—

(ab) for a boot camp (vehicle offences)
order—deal with the child under
section 246AA;

(3) Section 240(2)(ab) to (c)—

renumber as section 240(2)(b) to (d).

(4) Section 240(3)(b)(i), ‘conditional’—

omit, insert—

boot camp (vehicle offences) order,
conditional

(5) Section 240(3)(b)—

insert—

(ia) for a boot camp (vehicle offences)
order—deal with the child under
section 246AA(1)(b); or

(6) Section 240(3)(b)(ia) to (iii)—

renumber as section 240(3)(b)(ii) to (iv).

**15B Amendment of s 241 (General options
available to superior court to which child
committed for breach)**

(1) Section 241(2)(a), ‘conditional’—

omit, insert—

boot camp (vehicle offences) order,
conditional

(2) Section 241(2)—

insert—

- (ab) for a boot camp (vehicle offences) order—deal with the child under section 246AA;
- (3) Section 241(2)(ab) to (c)—
renumber as section 241(2)(b) to (d).

15C Amendment of s 242 (General options available to court before which child found guilty of an indictable offence)

- (1) Section 242(2)(a), ‘conditional’—
omit, insert—
boot camp (vehicle offences) order,
conditional
- (2) Section 242(2)—
insert—
(ab) for a boot camp (vehicle offences) order—deal with the child under section 246AA;
- (3) Section 242(2)(ab) to (c)—
renumber as section 242(2)(b) to (d).
- (4) Section 242(3)(b)(i), ‘conditional’—
omit, insert—
boot camp (vehicle offences) order,
conditional
- (5) Section 242(3)(b)—
insert—
(ia) for a boot camp (vehicle offences) order—deal with the child under section 246AA(1)(b); or
- (6) Section 242(3)(b)(ia) to (iii)—
renumber as section 242(3)(b)(ii) to (iv).

15D Amendment of s 243 (Court may resentence child originally sentenced by lower court)

- (1) Section 243(2)(a), ‘conditional’—
omit, insert—
boot camp (vehicle offences) order,
conditional
- (2) Section 243(2)—
insert—
(ab) for a boot camp (vehicle offences)
order—section 246AA(1)(a);
- (3) Section 243(2)(ab) to (c)—
renumber as section 243(2)(b) to (d).
- (4) Section 243(4)(a), ‘conditional’—
omit, insert—
boot camp (vehicle offences) order,
conditional
- (5) Section 243(4)—
insert—
(ab) for a boot camp (vehicle offences)
order—section 246AA(1)(a);
- (6) Section 243(4)(ab) to (c)—
renumber as section 243(4)(b) to (d).

15E Amendment of s 244 (General options available to court to which child committed for breach by indictable offence)

- (1) Section 244(2)(a), ‘conditional’—
omit, insert—
boot camp (vehicle offences) order,
conditional
- (2) Section 244(2)—

insert—

(ab) for a boot camp (vehicle offences) order—deal with the child under section 246AA;

(3) Section 244(2)(ab) to (c)—

renumber as section 244(2)(b) to (d).

15 Clause 16 (Amendment of s 245 (Court’s power on breach of a community based order other than a conditional release order or boot camp order))

Page 11, lines 6 to 9—

omit, insert—

(1) Section 245, heading, ‘conditional’—

omit, insert—

boot camp (vehicle offences) order, conditional

(2) Section 245(1)(d), ‘conditional’—

omit, insert—

boot camp (vehicle offences) order, conditional

(3) Section 245(6)—

omit.

(4) Section 245(7)—

renumber as section 245(6).

16 After clause 18

Page 11, after line 17—

insert—

18A Insertion of new s 246AA

After section 246—

insert—

246AA Court's power on breach of boot camp (vehicle offences) order

- (1) A court that acts under this section may—
 - (a) revoke the order and resentence the child for the offence for which the order was made as if the child had just been found guilty before the court of that offence; or
 - (b) permit the child a further opportunity to satisfy the requirements of the boot camp (vehicle offences) order and, for that purpose, vary the order, other than the requirement that the child abstain from violation of the law, in a way the court considers just.

Example—

The court may vary a curfew requirement.

- (2) If the court revokes the boot camp (vehicle offences) order under subsection (1)(a), the court need not, when resentencing the child for the vehicle offence for which the order was made, make another boot camp (vehicle offences) order.
- (3) If the court makes a community based order for the child under subsection (1)(a), the court must have regard to the period for which the child has complied with the boot camp (vehicle offences) order.
- (4) If the court varies a boot camp (vehicle offences) order under subsection (1)(b), the court can not vary the details of the boot camp program.

Example—

The court can not order the child to again participate in the residential phase of the boot camp program if the child has already completed that phase.

- (5) The onus is on the child to satisfy the court it should permit the child this further opportunity.
- (6) If the court decides to extend the period of the boot camp (vehicle offences) order, the court must have regard to the period for which the child has complied with the order.
- (7) An order may be made under this section even though, at the time it is made, the boot camp (vehicle offences) order in relation to which the order is made is no longer in force because the period of the boot camp (vehicle offences) order has ended.

18B Amendment of s 252G (Matters relevant to making further order)

Section 252G(2), ‘or review’—

omit.

17 Clause 20 (Replacement of pt 8, div 2A)

Page 13, lines 4 to 7—

omit, insert—

- (b) an adult who—
 - (i) either—
 - (A) is 17 years and is sentenced for an offence committed by the adult as a child; or
 - (B) was 17 years at the time the adult was found guilty of an offence committed as a child and is 18 years or more at the time the adult is sentenced for the offence; and

18 Clause 20 (Replacement of pt 8, div 2A)

Page 13, line 8, '(iii)'—

omit, insert—

(ii)

19 Clause 20 (Replacement of pt 8, div 2A)

Page 13, line 12, '(iv)'—

omit, insert—

(iii)

20 Clause 24 (Insertion of new pt 11, div 11)

Page 18, after line 28—

insert—

358A Uncommenced applications for review of sentence orders

- (1) This section applies to a person if—
 - (a) before the commencement, the person could make an application for a review to the Childrens Court under the pre-amended Act, section 118, in relation to a sentence order; but
 - (b) the person had not made an application before the commencement.
- (2) Despite the repeal of part 6, division 9, subdivision 4 by the amending Act—
 - (a) the person may apply for a review of the sentence order under the pre-amended Act; and
 - (b) the pre-amended Act, part 6, division 9, subdivision 4 applies in relation to the review.

21 Clause 24 (Insertion of new pt 11, div 11)

Page 21, after line 11—

insert—

367 Application of provisions about boot camp (vehicle offences) order

- (1) A court may make a boot camp (vehicle offences) order for a recidivist vehicle offender found guilty of a vehicle offence after the commencement.
- (2) Subsection (1) applies even if 1 or both of the following happened before the commencement—
 - (a) the commission of the vehicle offence;
 - (b) the start of the proceeding for the offence.

22 After clause 25

Page 21, after line 16—

insert—

25A Amendment of sch 2 (Regulation-making power)

- (1) Schedule 2, item 5, ‘conditional’—

omit, insert—

boot camp (vehicle offences) orders,
conditional
- (2) Schedule 2—

insert—

14 Areas to be prescribed for the purpose of a boot camp (vehicle offences) order.

23 Clause 26 (Amendment of sch 4 (Dictionary))

Page 21, after line 19—

insert—

boot camp (vehicle offences) order means an order made under section 206A.

24 Clause 26 (Amendment of sch 4 (Dictionary))

Page 21, after line 22—

insert—

original offence see section 59AA.

25 Clause 26 (Amendment of sch 4 (Dictionary))

Page 21, after line 28—

insert—

recidivist vehicle offender means a child who—

- (a) is found guilty of a vehicle offence (the *relevant vehicle offence*); and
- (b) has, on or before the day the child is found guilty of the relevant vehicle offence, been found guilty of 2 or more other vehicle offences; and
- (c) committed the other vehicle offences within 1 year before or on the day the relevant vehicle offence was committed.

26 Clause 26 (Amendment of sch 4 (Dictionary))

Page 22, after line 2—

insert—

subsequent offence see section 59AA.

27 Clause 26 (Amendment of sch 4 (Dictionary))

Page 22, after line 8—

insert—

vehicle offence see section 206A(4).

- (1A) Schedule 4, definition *community based order*, ‘conditional’—

omit, insert—

boot camp (vehicle offences) order,
conditional

- (1B) Schedule 4, definition *program period*, paragraph (c), ‘order’—

omit, insert—

(vehicle offences) order or boot camp order

28 Clause 26 (Amendment of sch 4 (Dictionary))

Page 22, after line 11—

insert—

- (3) Schedule 4, definition *sentence order*, paragraph (e)—

omit, insert—

(e) a boot camp (vehicle offences) order under section 206A;

(f) a boot camp order under section 226B.

29 Clause 31 (Insertion of new pt 4, div 2)

Page 26, after line 7—

insert—

- (2A) Also, for a youth justice matter in relation to a child who is a first-time offender, the court may permit to be present—

(a) a representative of the media; or

- (b) a person if, in the court's opinion—
 - (i) the person has a proper interest in the proceeding; and
 - (ii) the person's presence would not be prejudicial to the interests of the child.

30 Clause 31 (Insertion of new pt 4, div 2)

Page 26, after line 22—

insert—

- (6) Subsection (1) does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment.

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