

Children, Young Persons, and Their Families Amendment Bill (No 4)

Government Bill

Explanatory note

General policy statement

This Bill amends the Children, Young Persons, and Their Families Act 1989 (the Act) and the Criminal Justice Act 1985.

The Bill is divided into 2 Parts.

Part 1 (amendments to the Act)—

- makes miscellaneous amendments to provisions of the Act relating to—
 - the administration of the Act; or
 - care and protection; and
- amends the Act to—
 - improve the functioning of its youth justice processes; and
 - more closely align its provisions on reparation with those of the Sentencing Act 2002; and
- makes other miscellaneous amendments to provisions of the Act relating to youth justice; and
- re-enacts spent provisions of the Act relating to remanding young persons to penal institutions.

Part 2 (amendment to the Criminal Justice Act 1985) re-enacts spent provisions of the Criminal Justice Act 1985 relating to remanding young persons to penal institutions.

Overview of care and protection amendments

Part 1 includes miscellaneous amendments to provisions of the Act relating to—

- the administration of the Act; or
- care and protection.

Responsibility for administration of principal Act

Part 1 changes the definition of **Department** in section 2(1) of the Act so that, instead of authorising a department to be responsible for the administration of the Act as a whole, the Prime Minister may allocate responsibility for particular provisions of the Act either solely to one department, or to 2 or more departments to help to achieve the different objects of the Act set out in section 4. This change is required to implement decisions made in the Baseline Review of the Department of Child, Youth and Family Services (CYF). Under those decisions, leadership and co-ordination of family support services would be carried out by a family services group established within the Ministry of Social Development. Those decisions also envisaged that CYF will continue to be primarily responsible for the Act's administration.

Functions of Care and Protection Resource Panels

Part 1 also removes the function of Care and Protection Resource Panels to promote the co-ordination of the provision of services by the community to children and young persons in need of care or protection and their families and family groups. The role originally envisaged has been superseded by other community development, education, and service co-ordination mechanisms. However, Panels must provide advice that promotes the co-ordination of services by the community to such persons when performing their function of advising Social Workers and members of the police.

Overview of youth justice amendments

The measures in *Part 1* are also designed to support the more effective and efficient operation of the youth justice system by responding to issues identified by the Ministerial Taskforce on Youth Offending (the **Taskforce**).

The Taskforce found that, overall, the legislative and philosophical underpinnings of the New Zealand youth justice system, as set out in

the Act, were sound. The major areas identified as requiring improvement were sector co-ordination, information gathering and operational practice, especially with regard to young people with serious offending patterns likely to persist into adulthood. The Taskforce also identified a number of issues with certain provisions of the Act that needed further consideration. Government accepted the findings of the Taskforce, and these formed the basis for the Government's Youth Offending Strategy 2002.

The amendments provided for in *Part 1* will enhance achievement of the objects and youth justice principles of the Act. They include adjustments that are designed to clarify the underlying intent of the existing objects and principles. The measures provide for incremental, but not revolutionary, change to the Act.

Summary of key youth justice measures

Implicit object of Act made explicit: reducing re-offending

Part 1 amends the objects of the Act to make the reduction of re-offending an explicit focus of the interventions, programmes, and services delivered to young offenders under the Act. Reducing re-offending is implicit in the existing objects, but not clearly stated.

Principles and victims' rights

Part 1 also amends the Act to—

- better recognise the central role of victims and victim reparation in responding to offending. The aim of amending this principle is to enhance the consideration given to victims' rights and interests and align it with current practice and expectations, and to be more consistent with the Sentencing Act 2002 and Victims' Rights Act 2002:
- give victims and, if they are children or young persons, their parents or guardians, rights to attend Youth Court hearings:
- allow a Youth Court to order reparation for consequential harm, consistent with the rights and limits that apply in the adult jurisdiction under the Sentencing Act 2002, but also taking account of the youth justice principles of the Act and the ability of the young person or his or her family or whanau to pay.

Initial arrest, bail, and remands in custody

Part 1 also amends the Act to—

- allow a member of the police to either—
 - return a child or young person found breaching Youth Court ordered bail conditions to the place where he or she should be to comply with the conditions, or to the child's or young person's parents, or guardians or persons usually caring for him or her; or
 - arrest the child or young person without warrant, if use of the power to return would be inappropriate in the circumstances:
- allow police bail to be granted for indictable and purely indictable offences. Under the provisions of the Bail Act 2000, police bail can only be granted for summary offences. The measure creates a middle option between releasing an arrested child or young person or holding him or her in custody until appearance before a Youth Court:
- extend a Youth Court's powers to order detention in the custody of CYF (or, if no suitable facilities for detention are available to CYF, in the custody of the New Zealand Police) of a young person who, having been released on bail by the Court, has contravened seriously a condition of that bail and the Court is satisfied that the young person is likely again to contravene seriously bail conditions. These amendments are required as the credibility of the youth justice system is undermined by the current inability under the Act to enforce court-ordered bail conditions.

Parts 1 and 2 also re-enact spent provisions in the Act and in the Criminal Justice Act 1985 that permit a Youth Court to remand a young person to a penal institution, under certain circumstances, to prevent long remands in CYF's custody that may prejudice CYF's ability to meet demands to detain other young persons in CYF's residences under similar orders. The re-enacted provisions will expire at the close of **30 June 2008**.

Administration of family group conferences

Part 1 also amends the Act to—

- allow a family group conference (FGC) to be waived where—
 - a young person's 'new' offending falls outside of the 6-week timeframe from the completion of an FGC for other offending and the decisions, recommendations, or plans of the first FGC have not been implemented:
 - previous offending is identified, or a young person offends, after being charged in a Youth Court for unrelated offences:
- simplify the structure and language of the section governing the power to waive FGCs, to the greatest extent possible. Currently, the section is long and confusing:
- provide discretion to exclude certain relatives or caregivers of a child or young person from attending an FGC should their presence endanger the safety of the child or young person, while still requiring that their views be sought and made known to the FGC. A similar discretion is currently available for care and protection FGCs under the Act.

Allowing related charges to be heard together

Part 1 also amends the Act to empower a Youth Court, where a young person is already to have one or more charges heard by a Judge and jury in a District Court or the High Court, to transfer all related charges to a District Court or the High Court for hearing along with the main charge or charges.

In the interests of ensuring equitable treatment in the matter of the lesser charges, *Part 1* will also amend the Act to—

- provide for the privacy of proceedings as if the matter were being considered before a Youth Court:
- provide that where the main charge(s) that required District or High Court consideration is not proven, but some or all of the related charges are, the trial court is required not to automatically enter a conviction, but to develop its sentencing outcome in accordance with the appropriate sections and orders of the Act:

- require the related charges to be transferred back to a Youth Court for hearing if the main charge(s) is not proceeded with before trial.

Other procedural matters

Part 1 also amends the Act to—

- exclude charges of offences of breaching community-based sentences within the meaning of the Sentencing Act 2002 from the jurisdiction of a Youth Court, so that when a young person breaches a community-based sentence, the charge of breach is dealt with in a District Court:
- clarify that preliminary hearings in a Youth Court relating to offences of a sexual nature may be proceeded with in accordance with the special provisions in Part VA of the Summary Proceedings Act 1957:
- enable an information for a summary offence to be laid, charging a young person in a Youth Court outside of the current 6-month timeframe, when the young person fails to reasonably satisfy an FGC plan developed generally at an intention-to-charge FGC. The intention is to eliminate the need for an information to be laid just in case a young person fails to comply with a plan devised by the FGC outside of the current 6 month time limit for laying an information:
- clarify that, when a Youth Court discharges an information, State agencies (notably CYF and the New Zealand Police) can retain the records relating to the investigation of the offence and the prosecution. This amendment results from a recommendation by the former Chief Ombudsman that the issue of record keeping after a discharge be clarified:
- enable young persons, under the age of 15, who have been proven to have committed a purely indictable offence, to be transferred to a District Court for sentencing. The current minimum age of 15 years restriction creates a disincentive for a Youth Court to offer trial in a Youth Court to young people aged less than 15 who are charged with a purely indictable offence. This measure may in fact reduce the number of 14-year-olds being sentenced in a District Court.

Operation and enforcement of Youth Court orders

Part 1 also amends the Act to—

- allow a Youth Court order to continue in force to the later of its maximum length or the attainment of 17 years of age by the young person. This measure will help to ensure the effectiveness of orders a Youth Court imposes on young persons approaching the age of 17 years:
- allow a Youth Court to cancel and replace a supervision or supervision with activity order, because of failure to observe the conditions of the order, after the order has expired—
 - where the application to cancel and replace the order was received before expiry; or
 - where the application to cancel and replace was received within 7 days of expiry and the failure was serious; or
 - to ensure that the orders are enforceable throughout their entire duration:
- allow a Youth Court, on application, to issue a warrant for the arrest of a young person who has failed to comply with an order and is, after all reasonable efforts have been made, unable to be located to have the application for the review of the original order served:
- give the informant (usually the New Zealand Police) the right to appeal a sentence order imposed by a Youth Court, provided the Solicitor-General approves the appeal. At present, the informant can only appeal against an order of a Youth Court on a question of law. Allowing an appeal against sentence and requiring the approval of the Solicitor-General before such an appeal can be lodged ensures that the provision is consistent with practice in the adult jurisdiction, creating procedural equity between parties and across jurisdictions.

Clause by clause analysis

Clause 1 is the Title clause. The Bill amends the Children, Young Persons, and Their Families Act 1989. References in this analysis to provisions are references to provisions of that Act unless expressly stated to be references to provisions of another Act.

Clause 2 relates to commencement. The following provisions come into force on the day after Royal assent:

- *clauses 1 to 3 and 34*, the *Part 1* heading, the *Part 2* heading, and the headings before *clauses 3 and 34* (preliminary and purpose provisions); and
- *clause 33* and the heading before *clause 33* (provisions relating to the functions of Care and Protection Resource Panels); and
- *clauses 9, 10(3), 11, and 35* and the headings before *clauses 9, 10, 11, and 35* (provisions relating to remanding young persons to penal institutions).

Clause 4 and the heading before *clause 4* (which relate to the administration of the principal Act) come into force 1 month later.

The rest of the Bill comes into force 6 months later.

Part 1

Amendments to principal Act

Purpose

Clause 3 is a purpose clause.

Responsibility for administration of principal Act

Clause 4(1) inserts *new sections 2A and 2B*. *New section 2A* defines **Department** for the purposes of provisions of the principal Act. *New section 2A* enables the Prime Minister to allocate responsibility for the administration of those provisions—

- to one department of State; or
- to 2 or more departments of State responsible for the administration of the provision to help to achieve (for all purposes or for specified purposes) one or more objects of the principal Act set out in section 4.

New section 2B relates to references in other enactments to the department responsible for the administration of the principal Act. *Clause 4(2)* consequentially amends the definition of **Department** in section 2(1). *Clause 4(3)* effects a consequential repeal.

Reducing re-offending or development of patterns of offending

Clause 5 substitutes a *new section 4(f)(ii)* which re-enacts, but also expands, the object of the principal Act in section 4(f)(ii) (which relates to offending by children or young persons). The expansion relates to reducing re-offending and the development of patterns of offending. *New section 4(f)(ii)(A)* makes it an object of the principal Act to promote the wellbeing of children, young persons, and their families and family groups by ensuring that, where children and young persons commit offences, they are dealt with in a way that reduces the likelihood—

- of those children and young persons re-offending; or
- of those children and young persons developing patterns of offending that are likely to continue into adulthood.

New section 4(f)(ii)(B) re-enacts section 4(f)(ii).

Victims

Clause 6 substitutes a *new section 208(g)*. *New section 208(g)* re-enacts, but also reinforces, the principle stated in section 208(g). The reinforced principle is that measures for dealing with offending by children and young persons should not merely (as currently) have regard to, but should instead *recognise properly*, the interests of any victims of that offending (for example, by including consideration of whether reparation should be made to those victims).

Contravening or failing to comply with conditions of bail

Clause 7 inserts a *new section 214(2A)*. The amendment makes it clear that nothing in section 214(1) prevents a member of the police from arresting a child or young person without warrant under section 35(1)(b) of the Bail Act 2000 (as applied by section 321 and clause 3 of the First Schedule of the principal Act) if that member—

- believes on reasonable grounds that the child or young person has contravened or failed to comply with a condition of bail imposed by or under—
 - section 31 or section 34 of that Act (as so applied); or
 - section 240 of the principal Act; and
- has first considered whether to exercise the powers in *new section 243A* (inserted by *clause 12*) but, after doing so, has

determined that in all the circumstances it would for some reason be inappropriate to exercise those powers.

Police bail for child or young person arrested without warrant

Clause 8 substitutes a new section 234(b). The amendment enables a child or young person arrested without warrant to be released on police bail under section 21 of the Bail Act 2000 even though the offence with which the child or young person has been charged is a purely indictable offence. (Police bail may be granted under the present section 234(b) only if the child or young person has been charged with an offence for which he or she may be proceeded against summarily.)

Remanding young persons to penal institutions

Clauses 9, 10(3), and 11 give a Youth Court, for a limited period (until **1 July 2008**), the power in certain circumstances to remand a young person in a penal institution. The circumstances in which the power may be exercised are stated in new section 239(3A) (added by clause 10(3)).

A similar temporary power was introduced by the Sentencing Act 2002 on 30 June 2002, but will expire on 1 July 2004.

Note that clause 35 in Part 2 amends the Criminal Justice Act 1985 to restore with effect for a limited period (until **1 July 2008**) a similar earlier temporary power in that Act.

Detention in custody if bail conditions contravened seriously

A Youth Court may (under section 238(1)(d) or (e), and in the circumstances specified in section 239(1) or (2), respectively) order that a young person who appears before it be detained—

- in the custody of the chief executive, an Iwi Social Service, or a Cultural Social Service; or
- if suitable facilities for the detention in safe custody of the young person are not available to the chief executive, in police custody.

Clause 10(1) and (2) amends section 239(1) and (2). The amendments allow the Court to order the detention of a child or young person under section 238(1)(d) or (e) if it appears that pending the determination of the charge the child or young person is, given that

he or she has been released on bail under section 238(1)(b) and has already contravened seriously a condition of that bail, likely again to contravene seriously a condition of that bail.

Contravening or failing to comply with conditions of bail

Clause 12 inserts a new section 243A. New section 243A relates to a member of the police who believes on reasonable grounds that a child or young person has contravened or failed to comply with a condition of bail imposed by or under—

- section 31 or section 34 of the Bail Act 2000 (as applied by section 321 and clause 3 of the First Schedule of the principal Act); or
- section 240 of the principal Act.

New section 243A empowers that member of the police, using such force as may reasonably be necessary for the purpose, to take the child or young person and to return him or her—

- to the place where he or she should be to comply with the condition; or
- if the condition is one imposed under section 240 of the principal Act, to the parent or guardian or other persons having the care of the child or young person.

Waiver of family group conferences

Clause 13 substitutes new sections 248 to 248B, which relate to waiver of family group conferences. The new sections replace and make clearer section 248, which is changed in 2 respects only.

New section 248 provides for waiver of a family group conference required by specified sections to be held in relation to an offence alleged or proved to have been committed by a young person. It re-enacts, but also extends slightly, section 248(1) and (3).

Under new section 248(1), the conference need not be held in respect of the offence if a Youth Justice Co-ordinator—

- is satisfied of the matters specified in new section 248(2)(a) or (b) or (c) or (d); and
- is, after complying with new section 248A(1), of the view that the holding of a family group conference would serve no useful purpose; and

- is satisfied that the following agree with that view:
 - the family or whanau or family group of the young person; and
 - the persons who, under any of paragraphs (d) to (n) of section 251(1), would be entitled to attend the conference (if held).

New section 248(1)(a) ensures that the conference cannot be waived unless the Youth Justice Co-ordinator is satisfied that—

- the young person has been convicted or sentenced, or a Youth Court has made an order under section 283, for another, later and more serious offence (*new section 248(2)(a)*), which re-enacts section 248(1)(a)); or
- the young person is subject to an existing sentence or order (*new section 248(2)(b)*), which re-enacts section 248(1)(b)); or
- an earlier family group conference had the opportunity to consider how an earlier offence should be dealt with: *new section 248(2)(c)*, which re-enacts section 248(3) with 1 change, which is that the holding of the conference may be waived if the requirement for it arose either—
 - (as currently) within 6 weeks of the completion of the earlier family group conference; or
 - (under the proposed change) before substantial effect has been given under sections 267 and 268 to its decisions, recommendations, or plans; or
- the young person is already before a Youth Court on an unrelated charge (*new section 248(2)(d)*, which is new).

New section 248A(1) requires a Youth Justice Co-ordinator to perform 3 duties (to consult certain persons, and have regard to or consider certain matters) before forming a view under *new section 248(1)(b)* about whether the holding of a family group conference would serve a useful purpose. It re-enacts section 248(4) and (5).

New section 248B provides for waiver of a family group conference required by section 247 if an existing family group conference can consider how the offence concerned should be dealt with. It re-enacts section 248(2).

Persons not entitled to attend family group conference

Clause 14(1) inserts a *new section 251(1A)*. Section 251(1)(b) applies to the following persons, and ensures that each of them is entitled to attend a family group conference convened under Part IV in respect of a child or young person:

- a parent or guardian of, or a person having the care of, the child or young person; and
- a member of the family, whanau, or family group of that child or young person.

However, *new section 251(1A)* provides that a person to whom section 251(1)(b) applies is not entitled to attend a family group conference if the Youth Justice Co-ordinator convening it—

- is of the opinion, after considering the principles in sections 5 and 208 (and, in particular, the one in **section 208(g)**), that the attendance of that person at the conference would present a risk to the safety of the child or young person and therefore be likely to inhibit the proceedings of the conference; and
- advises that person, at or before the conference, that he or she is for that reason not entitled to attend it.

Clause 14(2) makes a consequential amendment to section 251(1).

Clause 15 substitutes a *new section 254*. *New section 254* re-enacts section 254 in a more modern form, but also extends it so that it requires a Youth Justice Co-ordinator who convenes a family group conference to—

- ascertain the views of every person who in accordance with *new section 251(1A)* (inserted by *clause 14(1)*) is not entitled to attend the conference; and
- ensure that those views are made known at the conference.

Offences relating to breach of community-based sentences to be dealt with in District Courts

Clause 16 inserts in section 272(3) a *new paragraph (ba)*. The amendment creates a further exception to the requirement to bring a young person charged with an offence before a Youth Court to be dealt with. A young person charged with any of the following offences (which relate to community-based sentences under the Sentencing Act 2002) will instead be dealt with in a District Court:

- an offence related to breach of conditions of supervision:
- an offence relating to breach of a sentence of community work.

*Transfer of related charges to District Court or High Court
for hearing*

Clause 17 inserts in section 273 a *new paragraph (ab)*. The amendment creates a new exception to the rule that a Youth Court hears and determines the information if a young person is charged with a summary offence or an indictable offence (other than a purely indictable offence). The new exception is for cases where—

- the offence arose out of the same event or series of events as another offence (being either a purely indictable offence or an offence for which the young person has elected jury trial) with which the young person is also charged; and
- a Youth Court determines, in accordance with *new section 280A* (inserted by *clause 20*), that the charges for those offences be heard together.

*Special provisions relating to preliminary hearings in cases of
sexual nature*

Clause 18 substitutes a *new section 274(2)(a)*. The amendment ensures preliminary hearings in cases of a sexual nature are dealt with in Youth Courts under the special provisions in Part VA of the Summary Proceedings Act 1957. In general terms, those special provisions—

- require the preliminary hearing of certain offences to be presided over by a Youth Court Judge or District Court Judge (rather than by 2 or more Justices or by one or more Community Magistrates):
- control (1) the extent to which the complainant must give evidence orally, (2) examination or cross-examination of the complainant on his or her evidence, and (3) who may be present when the complainant gives oral evidence:
- permit a child complainant's evidence to be given in the form of a videotape:
- empower the Court to prohibit publication of certain details.

Laying of information

Clause 19 inserts a *new section 279A*. *New section 279A* permits an information to be laid against a young person within 6 months from the completion of a family group conference convened under section 247(b) if—

- the offence described in the information was dealt with by that family group conference; and
- an enforcement officer or other informant considers that the laying of the information is required because the young person has, without reasonable excuse, failed in a significant way to comply with the requirements of the package of decisions, recommendations, or plans of—
 - that family group conference; or
 - a reconvened family group conference under section 270.

*Transfer of related charges to District Court or High Court
for hearing*

Clause 20 inserts a new heading and *new sections 280A to 280G*, which relate to the transfer of related charges to a District Court or to the High Court for hearing.

New section 280A empowers a Youth Court to commit a young person to the High Court or to a District Court for trial on an offence (the **related offence**) that is related to an offence to which section 274 applies (the **main offence**). (If section 274 applies to an offence, the preliminary hearing takes place in a Youth Court and, if the evidence is sufficient, the young person is committed to a District Court or to the High Court for trial.)

New section 280B specifies what happens if a Youth Court commits the young person for trial on the related offence, under *new section 280A(2)(b)*. The consequences are as follows:

- the proceedings continue as if the related offence were a purely indictable offence; and
- the court to which the young person is committed for trial must try the main offence and the related offence together; and
- that court must make an order under section 140 of the Criminal Justice Act 1985 prohibiting publication of the young

person's name, address, or occupation (and of any other particulars likely to lead to the young person's identification) pending the completion of the trial and sentencing of the young person and of any related appeals.

New section 280C specifies the procedure to be followed—

- if the main offence is not prosecuted; or
- if the young person is discharged in respect of that offence.

New section 280D specifies the procedure to be followed if the young person is discharged in respect of the related offence.

New section 280E relates to sentencing for the related offence if the young person pleads guilty to, or is found guilty of, both the main offence and the related offence.

New section 280F relates to sentencing or otherwise dealing with the young person for the related offence if he or she is acquitted of the main offence.

New section 280G contains provisions about appeals where the young person is sentenced or otherwise dealt with for the related offence under *new section 280F*.

Waiver of family group conferences

Clause 21 amends section 281 by repealing subsection (1) and substituting *new subsections (1) and (1A)*. The new subsections—

- replace and make clearer section 281(1); and
- update cross-references.

Clause 22 substitutes a *new section 281A*. The new section—

- replaces and makes clearer section 281A; and
- updates cross-references.

Record keeping after discharge of information

Clause 23 adds to section 282 *new subsections (4) and (5)*. *New subsection (4)* makes it clear that, even though an information has been discharged, records relating to any or all of the following may be retained:

- the investigation or prosecution of the offence;
- any consultation that took place as to the offence;
- any family group conference concerning the offence.

New subsection (5) provides that *new subsection (4)* is for the avoidance of doubt and does not authorise the retention by the New Zealand Police of a record (not being a record of particulars obtained under section 57 of the Police Act 1958) required by law to be destroyed on an acquittal.

Reparation and transfer to District Court for sentencing

Clause 24(1) substitutes a *new section 283(f)*. *New section 283(f)* re-enacts, but also extends, the power in section 283(f) to order a person to pay a sum by way of reparation. The extension is that reparation may be ordered for loss or damage consequential on any or all of emotional harm, physical harm, or loss of or damage to property, suffered through or by means of the offence.

Clause 24(2) amends section 283(o). Under section 283(o), where a charge against a young person is proved before a Youth Court, the Court may, subject to certain restrictions, enter a conviction and transfer the young person to a District Court for sentence or decision. However, currently a Youth Court may take those actions only in respect of a young person who is of or over the age of 15 years. The amendment enables a Youth Court also to take those actions in respect of a young person—

- who is of or over the age of 14 years; and
- against whom the charge proved is a purely indictable offence.

Transfer to District Court for sentencing

Clause 25 substitutes a *new section 285(6)*. *New subsection 285(6)* re-enacts section 285(6) but also amends it so that it empowers the Court, if specified conditions are met, to make an order under section 283(o) (that the young person be brought before a District Court for sentence or decision) not only in respect of a young person of or over the age of 15 years, but also in respect of a young person—

- who is of or over the age of 14 years; and
- against whom the charge proved is a purely indictable offence.

Reparation

Clause 26 amends the principal Act by repealing section 287 and substituting *new sections 287 to 287D*.

New section 287 specifies prerequisites to making an order to pay reparation.

New section 287A relates to orders to pay reparation.

New section 287B requires the Court to have regard to the capacity of a person to pay reparation.

New section 287C requires the Court to determine conditions (in respect of specified matters) of an order to pay reparation.

New section 287D specifies how payments are to be applied if a person fined under section 283(d) is also ordered to pay a sum by way of reparation under *new section 283(f)* (substituted by *clause 24(1)*).

Expiry of Youth Court orders

Clause 27 substitutes a *new section 296*. *New section 296(2)* ensures specified orders made after the commencement of *clause 27* do not expire prematurely, and so are fully effective. Currently, under section 296, the specified orders expire 6 months after the young person concerned attains the age of 17. (This situation is exacerbated by the fact that, under section 2(2), the age of a young person for the purposes of proceedings under the principal Act is fixed as at the date of the offence, and so is not the young person's actual age. Consequently, a young person may already be aged 17 when a Youth Court makes one of the specified orders.)

Cancelling and replacing supervision orders and supervision with activity orders

Clause 28 amends section 309, which relates to applications for a declaration that a young person has failed, without reasonable excuse, to observe conditions of a supervision order or a supervision with activity order, and for the order to be cancelled and replaced. *New subsections (1A) and (1B)* are inserted. They—

- make it clear that the applications must be made before the time at which the order expires under *new section 296* (substituted by *clause 27*); but also

- enable the Court to make the declaration, or to cancel or replace the order, on an application made within 7 days after the expiry of the order, if—
 - the failure to comply with the condition of the order was a serious failure; and
 - there is a good reason (for example, that information about the failure came to notice too late to apply) why the application could not reasonably have been made before the time at which the order expired.

Warrant to arrest young person for purpose of having him or her brought before Court dealing with specified application

Clause 29 inserts a new heading and new sections 320A and 320B.

*New section 320A(1) defines a **specified application** as any of the following applications, lodged in a Court by the chief executive, a Social Worker, or the person or organisation supervising, or specified in, the order to which that application relates, or under whose supervision the young person is placed:*

- an application under section 299(1) to have a community work order under section 298 cancelled on the grounds that the young person has failed to comply with the order:
- an application under section 309(1) to have a supervision order under section 283(k) or a supervision with activity order under section 307 cancelled on the grounds that the young person has failed to comply with a condition of the order:
- an application under section 310(3) to have a supervision order under section 283(k), or a supervision with activity order under section 307, or a condition of such an order, cancelled, suspended, imposed, or varied:
- an application under section 316(1) to have a supervision with residence order under section 311 cancelled on the grounds that the young person has absconded from the custody of the chief executive.

New section 320A(2) empowers a Youth Court in which a specified application has been lodged to issue, on an application by a Social Worker or member of the police, a warrant to arrest a young person for the purpose of having him or her brought before the Court that is dealing with the specified application.

Under *new section 320A(3)*, the Youth Court must not issue the warrant unless satisfied that—

- all reasonable efforts have been made to locate, and to serve the application on, the young person; and
- those efforts have failed.

New section 320B relates to execution of a warrant under *new section 320A* (the **warrant**). The warrant may be executed only by a member of the police (*new section 320B(1)*), and must be directed to a member of the police by name or generally to every member of the police (*new section 320B(2)*). *New section 320B(3)* empowers a member of the police executing the warrant to enter on to any premises, by force if necessary, if he or she has reasonable grounds to believe that the young person against whom it is issued is on the premises. *New section 320B(4)* states duties of a member of the police executing the warrant.

Clause 30 makes to sections 299, 309, and 316 amendments consequential on the enactment of *clause 29*.

Victims

Clause 31 inserts in section 329(1) *new paragraphs (ca) and (cb)*. The amendment expands the list of persons entitled to be present at a hearing in a Youth Court of proceedings relating to a child or young person. Under *new paragraphs (ca) and (cb)*, the following persons may, unless the Court directs otherwise, be present:

- a victim of the offence or alleged offence, or a representative of that victim; and
- if a victim is a child or young person, a parent or guardian of that child or young person, unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.

Informant's right of appeal against order of Youth Court

Clause 32(1) inserts a *new section 353A*, which gives an informant, if the Solicitor-General gives his or her written consent to the appeal, a right of appeal to the High Court against an order made by a Youth Court under section 283.

Clause 32(2) makes a consequential amendment.

Functions of Care and Protection Resource Panels

Clause 33 amends section 429, which specifies functions of the advisory committees called Care and Protection Resource Panels. Currently, under section 429(c), the Panels must promote the co-ordination of the provision of services by the community to—

- children and young persons in need of care or protection; and
- their families and their family groups.

That promotion function has been superseded by other developments and initiatives. It is therefore discontinued. Instead, the Panels must, in advising Social Workers, Care and Protection Coordinators, and members of the police on the exercise or performance of those persons' functions, powers, and duties under Part II or Part III, provide advice that the Panel considers is likely to promote that co-ordination.

Part 2**Amendment to Criminal Justice Act 1985***Purpose*

Clause 34 is a purpose clause.

Remanding young persons to penal institutions

Clause 35 inserts in the Criminal Justice Act 1985 *new sections 142AC and 142AD* which provide, with effect for a limited period (until **1 July 2008**), that a District Court or the High Court may, in certain circumstances, remand a 15-year-old to a penal institution pending the hearing or trial, or pending sentence, in relation to a purely indictable offence.

A similar temporary power was introduced by the Sentencing Act 2002 on 30 June 2002, but will expire on 1 July 2004.

Note that *clauses 9, 10(3), and 11* amend the principal Act to restore with effect for a limited period (until **1 July 2008**) a similar earlier temporary power in that Act.

Hon Steve Maharey

Children, Young Persons, and Their Families Amendment Bill (No 4)

Government Bill

Contents

1	Title	
2	Commencement	
	Part 1	
	Amendments to principal Act	
	<i>Purpose</i>	
3	Purpose of this Part	
	<i>Responsibility for administration of principal Act</i>	
4	New sections 2A and 2B inserted	
	2A Department defined	
	2B References to department in other enactments	
	<i>Reducing re-offending or development of patterns of offending</i>	
5	Objects	
	<i>Victims</i>	
6	Principles	
	<i>Contravening or failing to comply with conditions of bail</i>	
7	Arrest of child or young person without warrant	
	<i>Police bail for child or young person arrested without warrant</i>	
8	Custody of child or young person following arrest	
	<i>Remanding young persons to penal institutions</i>	
9	Custody of child or young person pending hearing	
	<i>Detention in custody if bail conditions contravened seriously and remanding young persons to penal institutions</i>	
10	Restrictions on power of Court to order child or young person to be detained in custody	
	<i>Remanding young persons to penal institutions</i>	
11	New section 239B inserted	
	239B Expiry of sections 238(1D) to (1F) and 239(3A)	
	<i>Contravening or failing to comply with conditions of bail</i>	
12	New section 243A inserted	
	243A Powers in respect of children and young persons who contravene or fail to comply with bail conditions	
	<i>Waiver of family group conferences</i>	
13	New sections 248 to 248B substituted	
	248 Waiver of requirement to hold family group conference	
	248A Duties to be performed under section 248(1)(b)	
	248B Family group conference required by section 247 need not be held if existing conference can consider offence	
	<i>Persons not entitled to attend family group conference</i>	
14	Persons entitled to attend family group conference	
15	New section 254 substituted	
	254 Youth Justice Co-ordinator to ascertain views of persons not to attend family group conference	
	<i>Offences relating to breach of community-based sentences to be dealt with in District Courts</i>	
16	Jurisdiction of Youth Court	

**Children, Young Persons, and Their
Families Amendment Bill (No 4)**

<p style="text-align: center;"><i>Transfer of related charges to District Court or High Court for hearing</i></p> <p>17 Manner of dealing with summary offences and indictable offences (other than purely indictable offences)</p> <p style="text-align: center;"><i>Special provisions relating to preliminary hearings in cases of sexual nature</i></p> <p>18 Manner of dealing with purely indictable offences or where person elects jury trial</p> <p style="text-align: center;"><i>Laying of information</i></p> <p>19 Laying of information where family group conference completed 279A Laying of information where family group conference completed</p> <p style="text-align: center;"><i>Transfer of related charges to District Court or High Court for hearing</i></p> <p>20 New heading and sections 280A to 280G inserted</p> <p style="text-align: center;"><i>Transfer of related charges to District Court or High Court for hearing</i></p> <p>280A Youth Court may commit young person to High Court or District Court for trial on offence related to offence to which section 274 applies</p> <p>280B Effect of Youth Court acting under section 280A(2)(b)</p> <p>280C Procedure if main offence not prosecuted or if young person discharged in respect of main offence</p> <p>280D Procedure if young person discharged in respect of related offence</p> <p>280E Sentencing for related offence if young person pleads guilty to, or found guilty of, both main offence and related offence</p> <p>280F Sentencing or otherwise dealing with young person for related offence if he or she is acquitted of main offence</p> <p>280G Appeals where young person sentenced or otherwise dealt with for related offence under section 280F</p>	<p style="text-align: center;"><i>Waiver of family group conferences</i></p> <p>21 Court not to make orders unless family group conference held</p> <p>22 New section 281A substituted 281A Court to consider whether family group conference should be held</p> <p style="text-align: center;"><i>Record keeping after discharge of information</i></p> <p>23 Power of Court to discharge information</p> <p style="text-align: center;"><i>Reparation and transfer to District Court for sentencing</i></p> <p>24 Orders of the Court</p> <p style="text-align: center;"><i>Transfer to District Court for sentencing</i></p> <p>25 Restrictions on power of Court to make certain orders under section 283</p> <p style="text-align: center;"><i>Reparation</i></p> <p>26 New sections 287 to 287D substituted 287 Prerequisites to making order to pay reparation 287A Order to pay reparation 287B Court to have regard to capacity to pay reparation 287C Conditions of order to pay reparation 287D How payments to be applied if fine and reparation</p> <p style="text-align: center;"><i>Expiry of Youth Court orders</i></p> <p>27 New section 296 substituted 296 Expiry of orders</p> <p style="text-align: center;"><i>Cancelling and replacing supervision orders and supervision with activity orders</i></p> <p>28 Failure to observe conditions of supervision order or supervision with activity order</p> <p style="text-align: center;"><i>Warrant to arrest young person for purpose of having him or her brought before Court dealing with specified application</i></p> <p>29 New heading and sections 320A and 320B inserted</p> <p style="text-align: center;"><i>Warrant to arrest young person for purpose of having him or her brought before Court dealing with specified application</i></p>
--	---

<p>320A Court may issue warrant on application by Social Worker or member of police</p> <p>320B Execution of warrant under section 320A</p> <p>30 Amendments consequential on enactment of section 29</p> <p style="text-align: center;"><i>Victims</i></p> <p>31 Persons entitled to be present at hearing</p> <p><i>Informant's right of appeal against order of Youth Court</i></p> <p>32 New section 353A inserted</p> <p>353A Informant's right of appeal against order of Youth Court</p>	<p>33</p> <p>34</p> <p>35</p>	<p><i>Functions of Care and Protection Resource Panels</i></p> <p>Functions of Care and Protection Resource Panels</p> <p style="text-align: center;">Part 2</p> <p>Amendment to Criminal Justice Act 1985</p> <p style="text-align: center;"><i>Purpose</i></p> <p>Purpose of this Part</p> <p><i>Remanding young persons to penal institutions</i></p> <p>New sections 142AC and 142AD inserted</p> <p>142AC Special provisions until 1 July 2008 as to young persons remanded or committed for trial or sentence</p> <p>142AD Expiry of section 142AC</p>
---	-------------------------------	--

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Children, Young Persons, and Their Families Amendment Act (No 4) **2004**.
- (2) In this Act, the Children, Young Persons, and Their Families Act 1989¹ is called "the principal Act".

5

¹ 1989 No 24

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent:
 - (a) **sections 1 to 3 and 34**, the **Part 1** heading, the **Part 2** heading, and the headings before **sections 3 and 34** (preliminary and purpose provisions); and 10
 - (b) **section 33** and the heading before **section 33** (provisions relating to the functions of Care and Protection Resource Panels); and
 - (c) **sections 9, 10(3), 11, and 35** and the headings before **sections 9, 10, 11, and 35** (provisions relating to remanding young persons to penal institutions). 15
- (2) **Section 4** and the heading before **section 4** (which relate to responsibility for the administration of the principal Act) come into force on the day that is 1 month after the date on which this Act receives the Royal assent. 20

- (3) The rest of this Act comes into force on the day that is 6 months after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act

Purpose 5

3 Purpose of this Part

The purpose of this Part is to—

- (a) make miscellaneous amendments to provisions of the principal Act relating to—
 - (i) the administration of that Act; or 10
 - (ii) care and protection; and
- (b) amend the principal Act to—
 - (i) improve the functioning of its youth justice processes; and
 - (ii) more closely align its provisions on reparation with those of the Sentencing Act 2002; and 15
- (c) make other miscellaneous amendments to provisions of the principal Act relating to youth justice; and
- (d) re-enact spent provisions of the principal Act relating to remanding young persons to penal institutions. 20

Responsibility for administration of principal Act

4 New sections 2A and 2B inserted

- (1) The principal Act is amended by inserting, after section 2, the following sections:

“2A Department defined 25

- “(1) **Department**, for the purposes of a provision of this Act, or for the purposes of a reference in a provision of this Act to the chief executive (as defined in section 2(1)), means,—

- “(a) the department of State that, with the authority of the Prime Minister, is for the time being solely responsible for the administration of the provision; or 30
- “(b) if the provision is one to which **subsection (2)** applies, the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the provision to help to achieve (for all purposes or for the relevant purpose) the relevant object of this Act set out in section 4. 35

- “(2) This subsection applies to a provision if, with the authority of the Prime Minister, 2 or more departments of State are for the time being responsible for the administration of the provision to help to achieve (for all purposes or purposes specified by the Prime Minister under **subsection (3)**) one or more objects of this Act set out in section 4. 5
- “(3) For the purposes of **subsection (2)**, the Prime Minister may make a department of State responsible for the administration of a provision to help to achieve (for all purposes or for specified purposes) one or more objects of this Act set out in section 4. 10
- “2B **References to department in other enactments**
- “(1) This subsection applies to every reference in an enactment other than this Act to the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989. 15
- “(2) The Prime Minister must, for the purposes of the references to which **subsection (1)** applies, ensure a department of State is, with his or her authority, responsible for the administration of this Act.” 20
- (2) Section 2(1) of the principal Act is consequentially amended by repealing the definition of **Department**, and substituting the following definition:
“**Department** has the meaning given to it by **section 2A**”.
- (3) The Department of Child, Youth and Family Services Act 1999 is consequentially amended by repealing so much of Part 1 of the Schedule as relates to the definition of **Department** in section 2(1) of the principal Act. 25

*Reducing re-offending or development of patterns
of offending* 30

5 **Objects**

Section 4(f) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) they are dealt with in a way— 35

- “(A) that reduces the likelihood of their re-offending or developing patterns of offending that are likely to continue into adulthood; and
- “(B) that otherwise acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways:”.

Victims

- 6 Principles** 10
- Section 208 of the principal Act is amended by repealing paragraph (g), and substituting the following paragraph:
- “(g) the principle that any measures for dealing with offending by children and young persons should recognise properly the interests of any victims of that offending (for example, by including consideration of whether reparation should be made to those victims):”.

Contravening or failing to comply with conditions of bail

- 7 Arrest of child or young person without warrant** 20
- Section 214 of the principal Act is amended by inserting, after subsection (2), the following subsection:
- “(2A) Nothing in subsection (1) prevents a member of the police from arresting a child or young person without warrant under section 35(1)(b) of the Bail Act 2000 if that member—
- “(a) believes on reasonable grounds that the child or young person has contravened or failed to comply with a condition of bail imposed by or under—
- “(i) section 31 or section 34 of that Act; or
- “(ii) section 240; and
- “(b) has first considered whether to exercise the powers in **section 243A** but, after doing so, has determined that in all the circumstances it would for some reason be inappropriate to exercise those powers.”

*Police bail for child or young person arrested
without warrant*

8 Custody of child or young person following arrest

Section 234 of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) release the child or young person on bail under section 21 of the Bail Act 2000 (and that section applies for the purposes of this paragraph even if the offence with which the child or young person is charged is a purely indictable offence); or”.

Remanding young persons to penal institutions

9 Custody of child or young person pending hearing

Section 238 of the principal Act is amended by inserting, before subsection (2), the following subsections:

“(1D) Subsection (1) is subject to **subsection (1E)**.”

“(1E) Subject to **section 239(3A)**, if a young person appears before a Youth Court the Court may, instead of dealing with the young person in any of the ways described in subsection (1), order that the young person be remanded to a penal institution.

“(1F) If the Court makes an order under **subsection (1E)**, section 171(1) of the Summary Proceedings Act 1957 applies as if the Youth Court were a District Court.”

*Detention in custody if bail conditions contravened seriously
and remanding young persons to penal institutions*

10 Restrictions on power of Court to order child or young person to be detained in custody

(1) Section 239(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(ba) the child or young person is, given that he or she has been released on bail under section 238(1)(b) and has already contravened seriously a condition of bail, likely again to contravene seriously a condition of bail; or”.

(2) Section 239(2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) that the child or young person—
“(i) is likely to abscond; or

- “(ii) is likely to be violent; or
“(iii) is, given that he or she has been released on bail under section 238(1)(b) and has already contravened seriously a condition of bail, likely again to contravene seriously a condition of bail; and”.
- (3) Section 239 of the principal Act is amended by adding the following subsection:
- “(3A) The Court must not make an order under **section 238(1E)** remanding a young person to a penal institution unless—
- “(a) the young person is at least 15 years of age; and
“(b) the young person is charged with or has been convicted of a purely indictable offence (within the meaning of section 18 of the Sentencing Act 2002); and
“(c) the young person is being remanded to a District Court or the High Court for trial or sentencing in respect of that offence; and
“(d) if the remand is pending trial, the Court is satisfied that the period that the young person is likely to be on remand pending trial will not be less than 2 months; and
“(e) the chief executive, or an officer of the department authorised in that behalf by the chief executive, has furnished to the Court a certificate stating that detention of the young person in the custody of the chief executive under an order under section 238(1)(d) for the likely period of remand would be likely to prejudice the ability of the department to meet demands to detain other young persons in the department’s residences under similar orders; and
“(f) the Court is satisfied that remand to a penal institution is in all the circumstances appropriate.”

Remanding young persons to penal institutions

11 New section 239B inserted

The principal Act is amended by inserting, before section 240, the following section:

- “**239B Expiry of sections 238(1D) to (1F) and 239(3A)**
Sections 238(1D) to (1F) and 239(3A) expire at the close of 30 June 2008.”

Contravening or failing to comply with conditions of bail

12 New section 243A inserted

The principal Act is amended by inserting, after section 243, the following section:

- “243A **Powers in respect of children and young persons who contravene or fail to comply with bail conditions** 5
- “(1) This section applies to a condition imposed by or under—
- “(a) section 31 or section 34 of the Bail Act 2000; or
- “(b) section 240.
- “(2) A member of the police who believes on reasonable grounds 10
that a child or young person has contravened or failed to comply with the condition may, using such force as may reasonably be necessary for the purpose, take the child or young person and return him or her—
- “(a) to the place where he or she should be to comply with 15
 the condition; or
- “(b) if the condition is one imposed under section 240, to the parent or guardian or other persons having the care of the child or young person.
- “(3) Nothing in this section limits section 48 or the power of arrest 20
without warrant referred to in **section 214(2A)**.”

Waiver of family group conferences

13 New sections 248 to 248B substituted

The principal Act is amended by repealing section 248, and substituting the following sections: 25

- “248 **Waiver of requirement to hold family group conference**
- “(1) A family group conference (the **conference**) required by any 30
of sections 245(1)(c), 246(b), 247(b), (d), and (e), and 281 (a **specified section**) to be held in respect of an offence (**offence A**) alleged or proved to have been committed by a young person need not be held if a Youth Justice Co-ordinator—
- “(a) is satisfied of the matters specified in **subsection (2)(a) or 35
 (b) or (c) or (d)**; and
- “(b) is, after complying with **section 248A(1)**, of the view that the holding of a family group conference would serve no useful purpose; and
- “(c) is satisfied that the following agree with that view:

- “(i) the family or whanau or family group of the young person; and
- “(ii) the persons who, under any of paragraphs (d) to (n) of section 251(1), would be entitled to attend the conference (if held). 5
- “(2) The matters referred to in **subsection (1)(a)** are that—
- “(a) the young person has been convicted or sentenced in the High Court or a District Court, or a Youth Court has made an order under section 283, for another offence (**offence B**)— 10
- “(i) committed after offence A; and
- “(ii) for which the maximum penalty is greater than the maximum penalty for offence A; or
- “(b) the young person is subject to— 15
- “(i) a sentence of imprisonment (as defined in section 4(1) of the Sentencing Act 2002); or
- “(ii) a community-based sentence (as so defined); or
- “(iii) an order made under any of paragraphs (k) to (o) of section 283; or
- “(c) another family group conference (the **earlier conference**) has already been convened under this Part in respect of another offence (**offence C**) alleged or proved to have been committed by the young person, the earlier conference had the opportunity to consider how offence C should be dealt with, and the requirement to hold the conference in respect of offence A arose under the specified section— 25
- “(i) within 6 weeks of the completion of the earlier conference; or
- “(ii) before substantial effect has been given under sections 267 and 268 to its decisions, recommendations, or plans; or 30
- “(d) a charge that the young person has committed an unrelated offence (**offence D**) is before a Youth Court, and offence A is alleged or proved to have been committed— 35
- “(i) before offence D was committed; or
- “(ii) after proceedings for offence D were commenced.

- “248A Duties to be performed under section 248(1)(b)**
- “(1) Before forming a view under **section 248(1)(b)** about whether the holding of a family group conference would serve a useful purpose, the Youth Justice Co-ordinator must perform the 3 duties specified in this section. 5
- “(2) The first duty is to consult with the following persons:
- “(a) the family, whanau, or family group of the young person; and
- “(b) the persons who, under any of paragraphs (d) to (n) of section 251(1), would be entitled to attend the conference (if held). 10
- “(3) The second duty is to have regard to the following matters:
- “(a) the seriousness and extent of the offence referred to in **section 248** as offence A; and
- “(b) in the case only of a young person referred to in **section 248(2)(c)**, the response of the young person to any decisions, recommendations, or plans made or formulated by the conference referred to in **section 248(2)(c)** as the earlier conference. 15
- “(4) The third duty is to consider whether a family group conference is necessary for the purpose of considering whether the young person should be required to make reparation for the offence referred to in **section 248** as offence A. 20
- “248B Family group conference required by section 247 need not be held if existing conference can consider offence 25**
- “(1) This section applies to the following situation:
- “(a) a family group conference has been convened under section 247 in relation to an offence (**offence A**) alleged or proved to have been committed by a child or young person; and 30
- “(b) before the family group conference has made any decision, recommendation, or plan under section 260 in relation to offence A, that child or young person is alleged or proved to have committed another offence (**offence B**); and 35
- “(c) offence B is one in respect of which a family group conference is required to be held under section 247.

- “(2) In that situation,—
- “(a) the family group conference may make in respect of offence B any decision, recommendation, or plan that it is empowered to make under section 260; and
- “(b) it is not necessary for a separate family group conference to be held in relation to offence B.” 5

Persons not entitled to attend family group conference

14 Persons entitled to attend family group conference

- (1) Section 251 of the principal Act is amended by inserting, after subsection (1), the following subsection: 10
- “(1A) However, a person to whom subsection (1)(b) applies is not entitled to attend the conference if the Youth Justice Co-ordinator convening it—
- “(a) is of the opinion, after considering the principles in sections 5 and 208 (and in particular the one in **section 208(g)**), that the attendance of that person at the conference would present a risk to the safety of the child or young person and therefore be likely to inhibit the proceedings of the conference; and 15
- “(b) advises that person, at or before the conference, that he or she is for that reason not entitled to attend it.” 20
- (2) Section 251(1) of the principal Act is consequentially amended by omitting the words “subsection (2) of this section” and substituting the words “subsections **(1A)** and **(2)**”. 25

15 New section 254 substituted

The principal Act is amended by repealing section 254, and substituting the following section:

- “**254 Youth Justice Co-ordinator to ascertain views of persons not to attend family group conference** 30
- “(1) Every Youth Justice Co-ordinator who convenes a family group conference must for the purposes of that conference take all reasonable steps to ascertain the views of the following persons:
- “(a) every person who is entitled to attend the conference but is unable, for any reason, to do so and has notified the Youth Justice Co-ordinator of that fact: 35

“(b) every person who in accordance with **section 251(1A)** is not entitled to attend the conference.

“(2) A Youth Justice Co-ordinator who ascertains views under **subsection (1)** for the purposes of a conference must ensure that they are made known at that conference.” 5

Offences relating to breach of community-based sentences to be dealt with in District Courts

16 Jurisdiction of Youth Court

Section 272(3) of the principal Act is amended by inserting, after paragraph (b), the following paragraph: 10

“(ba) an offence against section 70 or section 71(1) of the Sentencing Act 2002; or”.

Transfer of related charges to District Court or High Court for hearing

17 Manner of dealing with summary offences and indictable offences (other than purely indictable offences) 15

Section 273 of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(ab) the offence arose out of the same event or series of events as another offence (being either a purely indictable offence or an offence for which the young person has elected jury trial) with which the young person is also charged, and the Youth Court determines, in accordance with **section 280A**, that the charges for those offences be heard together; or” 20
25

Special provisions relating to preliminary hearings in cases of sexual nature

18 Manner of dealing with purely indictable offences or where person elects jury trial 30

Section 274(2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) the preliminary hearing must take place in accordance with Parts V and VA of the Summary Proceedings Act 1957, except that— 35

- “(i) the hearing must take place in a Youth Court, which for that purpose has all the powers of a District Court and must be presided over by a Youth Court Judge or, in the absence of a Youth Court Judge, by a District Court Judge or (for hearings to which section 185B of that Act does not apply) by 2 or more Justices or by one or more Community Magistrates; and 5
- “(ii) the reference in section 185E of that Act to section 138 of the Criminal Justice Act 1985 must be read as a reference to sections 329 and 438 of this Act; and”. 10

Laying of information

- 19 Laying of information where family group conference completed** 15
- The principal Act is amended by inserting, after section 279, the following section:
- “279A Laying of information where family group conference completed**
- “(1) An information may be laid against a young person within 6 months from the completion of a family group conference convened under section 247(b) if— 20
- “(a) the offence described in the information was dealt with by that family group conference; and
- “(b) an enforcement officer or other informant considers that the laying of the information is required because the young person has, without reasonable excuse, failed in a significant way to comply with the requirements of the package of decisions, recommendations, or plans of— 25
- “(i) that family group conference; or 30
- “(ii) a reconvened family group conference under section 270.
- “(2) This section is an exception to the period of limitation in section 14 of the Summary Proceedings Act 1957 (as applied by section 321 and clause 2 of the First Schedule).” 35

*Transfer of related charges to District Court or High Court
for hearing*

20 New heading and sections 280A to 280G inserted

The principal Act is amended by inserting, after section 280,
the following heading and sections:

5

*“Transfer of related charges to District Court or High Court
for hearing*

**“280A Youth Court may commit young person to High Court
or District Court for trial on offence related to offence
to which section 274 applies**

10

“(1) This section applies to the following situation:

“(a) a young person is charged with—

“(i) a purely indictable offence or an offence in
respect of which the young person has elected
trial by jury under section 66 of the Summary
Proceedings Act 1957 (the **main offence**); and

15

“(ii) another offence (not being a purely indictable
offence) the information for which would, but for
section 273(ab) and this section, be required to be
heard and determined by a Youth Court
(a **related offence**); and

20

“(b) both offences arise out of the same event or series of
events; and

“(c) a Youth Court Judge considers that—

“(i) it is desirable that the charges be heard together;
and

25

“(ii) the charges can conveniently be heard together.

“(2) In that situation, the Youth Court—

“(a) may conduct a preliminary hearing (as provided in
section 274(2)(a)) into the charge of the related offence
as if it were a purely indictable offence (which may be
the same preliminary hearing as that conducted into the
charge for the main offence); and

30

“(b) may commit the young person to the High Court or a
District Court for trial on the related offence if the
Youth Court—

35

“(i) is of the opinion that the evidence adduced by the
informant is sufficient to put the young person on
trial for the related offence; and

“(ii) has committed the young person to that court for trial on the main offence.

“280B Effect of Youth Court acting under section 280A(2)(b)

If the Youth Court commits the young person for trial on the related offence, under **section 280A(2)(b)**,—

“(a) the proceedings continue as if the related offence were a purely indictable offence; and

“(b) the court to which the young person is committed for trial must try the main offence and the related offence together; and

“(c) that court must make an order under section 140 of the Criminal Justice Act 1985 prohibiting publication of the following pending the completion of the trial and sentencing of the young person and any appeal in respect of that trial or any sentence imposed on the young person:

“(i) the young person’s name, address, or occupation; and

“(ii) any particulars likely to lead to the young person’s identification.

“280C Procedure if main offence not prosecuted or if young person discharged in respect of main offence

“(1) If the Youth Court commits the young person for trial on the related offence, under **section 280A(2)(b)**, and no indictment is filed for the main offence or the young person is, before trial, discharged in respect of the main offence under section 347 of the Crimes Act 1961, the court to which the young person is committed for trial—

“(a) must refer the information for the related offence to the Youth Court for hearing and determination; and

“(b) may in that connection order that the young person be brought before the Youth Court to be dealt with.

“(2) If the Youth Court commits the young person for trial on the related offence, under **section 280A(2)(b)**, and the young person is, during trial or after verdict, discharged in respect of the main offence under section 347 of the Crimes Act 1961, the court to which the young person is committed for trial may sentence or otherwise deal with the young person in accordance with **section 280F**.

“280D Procedure if young person discharged in respect of related offence

If the Youth Court commits the young person for trial on the related offence, under **section 280A(2)(b)**, and the court to which the young person is committed discharges the young person under section 347 of the Crimes Act 1961 in respect of the related offence, section 282(3) of this Act applies instead of section 347(5) of the Crimes Act 1961.

5

“280E Sentencing for related offence if young person pleads guilty to, or found guilty of, both main offence and related offence

10

“(1) This section applies to the following situation:

“(a) the Youth Court commits the young person for trial on the related offence, under **section 280A(2)(b)**; and

“(b) the young person pleads guilty to, or is found guilty of, both the main offence and the related offence.

15

“(2) In that situation, the court to which the young person is committed must, when sentencing for the related offence under the Sentencing Act 2002, ensure that the sentence imposed is no more onerous than the order or orders that would have been made by a Youth Court if the charge of the related offence had been proved before a Youth Court.

20

“280F Sentencing or otherwise dealing with young person for related offence if he or she is acquitted of main offence

“(1) This section applies to the following situation:

25

“(a) the Youth Court commits the young person for trial on the related offence, under **section 280A(2)(b)**; and

“(b) the young person—

“(i) is acquitted of the main offence; but

“(ii) pleads guilty to, or is found guilty of, the related offence.

30

“(2) In that situation, the court to which the young person is committed—

“(a) must not enter a conviction for the related offence, or sentence the young person for the related offence under the Sentencing Act 2002, unless, under **paragraph (b)(ii)** of this subsection, it makes an order under section 283(o);

35

“(b) may, as if it were a Youth Court,—

- “(i) discharge the indictment for the related offence under section 282 (which applies as if the indictment were an information); or
- “(ii) make any order in respect of the young person that could be made under section 283 if the charge of the related offence had been proved before a Youth Court. 5
- “(3) For the purposes of **subsection (2)(b)(ii)**, section 283(o) applies as if the words “and order that the young person be brought before a District Court for sentence or decision” were omitted. 10
- “(4) If a conviction is entered under **subsection (2)(a)**, the young person must be regarded as having been convicted on indictment of the related offence for the purposes of the following provisions of the Crimes Act 1961: 15
- “(a) sections 341 and 357 to 360 (which relate to previous convictions, special pleas, etc); and
- “(b) Part XIII (which relates to appeals).
- “280G Appeals where young person sentenced or otherwise dealt with for related offence under section 280F 20**
- “(1) This section applies to the following situation:
- “(a) the Youth Court commits the young person for trial on the related offence, under **section 280A(2)(b)**; and
- “(b) the court to which the young person is committed sentences or otherwise deals with the young person for the related offence under **section 280F**. 25
- “(2) In that situation,—
- “(a) Part XIII of the Crimes Act 1961 applies to the young person and to the prosecutor instead of sections 351, **353A**, and 354 of this Act: 30
- “(b) sections 352, 354, 355, and 359, insofar as they relate to the parent or guardian or person having the care of the young person, apply to an order made by the High Court or a District Court on the related offence as if—
- “(i) references to a Youth Court were references to the court that made the order: 35
- “(ii) references to a Youth Court Judge were references to a Judge of the court that made the order:

	“(iii) references to the High Court were references to the Court of Appeal:	
“(c)	section 355(2) does not apply to any appeal under section 352 or section 354 by a parent or guardian or person having the care of the young person and, in the application of the provisions of Part IV of the Summary Proceedings Act 1957 (in accordance with section 355 of this Act) for the purposes of such an appeal, those provisions must be read as if—	5
“(i)	references to a District Court were references to the court that made the order on the related offence under section 280F :	10
“(ii)	references to a District Court Judge or Justice or Justices or Community Magistrate or Community Magistrates were references to a Judge exercising jurisdiction in the court that made the order on the related offence under section 280F :	15
“(iii)	references to the High Court were references to the Court of Appeal.”	
	<i>Waiver of family group conferences</i>	20
21	Court not to make orders unless family group conference held	
	Section 281 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:	
“(1)	Where a charge against a young person is proved before a Youth Court, the Court must not make an order under section 282 or section 283 unless a family group conference has had an opportunity to consider ways in which the Court might deal with the young person in relation to the charge.	25
“(1A)	Subsection (1) does not apply if the holding of a family group conference has been waived under section 248 in relation to the offence that is the subject of the charge.”	30
22	New section 281A substituted	
	The principal Act is amended by repealing section 281A, and substituting the following section:	35

“281A Court to consider whether family group conference should be held

If the holding of a family group conference has been waived under **section 248** in respect of an offence, the Court must consider whether a family group conference should nevertheless be held in relation to the matter— 5

“(a) if the waived requirement to hold a family group conference arose under section 281(1) or (2), before making an order or exercising a power in proceedings relating to or arising out of the offence: 10

“(b) in every other case, before hearing the information for the offence.”

*Record keeping after discharge of information***23 Power of Court to discharge information**

Section 282 of the principal Act is amended by adding the following subsections: 15

“(4) Even though an information has been discharged, records relating to any or all of the following may be retained:

“(a) the investigation or prosecution of the offence:

“(b) any consultation that took place as to the offence: 20

“(c) any family group conference concerning the offence.

“(5) **Subsection (4)** is for the avoidance of doubt, and does not authorise the retention by the New Zealand Police of a record (not being a record of particulars obtained under section 57 of the Police Act 1958) required by law to be destroyed on an acquittal.” 25

*Reparation and transfer to District Court for sentencing***24 Orders of the Court**

(1) Section 283 is amended by repealing paragraph (f), and substituting the following paragraph: 30

“(f) order the young person or, in the case of a young person who is under the age of 16 years, a parent or guardian of the young person, to pay to a person (other than the young person) a sum it thinks fit by way of reparation for any or all of the following that the person has suffered through or by means of the offence: 35

“(i) emotional harm:

- “(ii) loss of or damage to property:
“(iii) loss or damage consequential on any or all of
emotional harm, physical harm, or loss of or
damage to property:”.
- (2) Section 283(o) of the principal Act is amended by inserting, 5
after the word “years,”, the following words “or in the case of
a young person who is of or over the age of 14 years and
against whom the charge proved is a purely indictable
offence,”.

Transfer to District Court for sentencing 10

**25 Restrictions on power of Court to make certain orders
under section 283**

Section 285 of the principal Act is amended by repealing
subsection (6), and substituting the following subsection:

- “(6) The Court may make an order under section 283(o) (that the 15
young person be brought before a District Court for sentence
or decision) despite section 290 if—
- “(a) but for subsection (5)(b) or (c) of this section, the Court
would have made an order under any of the following: 20
- “(i) section 283(l) (community work order under
section 298):
- “(ii) section 283(m) (supervision with activity order
under section 307):
- “(iii) section 283(n) (supervision with residence order 25
under section 311); and
- “(b) the Court considers that it would not be appropriate to
make an order under any of paragraphs (a) to (k) of
section 283 as an alternative to such an order; and
- “(c) the order is made in respect of a young person—
- “(i) of or over the age of 15 years; or 30
- “(ii) of or over the age of 14 years and against whom
the charge proved is a purely indictable offence.”

Reparation

26 New sections 287 to 287D substituted

The principal Act is amended by repealing section 287, and 35
substituting the following sections:

- “287 Prerequisites to making order to pay reparation**
- “(1) Nothing in this section limits the provisions of section 284 (for example, section 284(1)(e) or (f)) or **section 287A**.
- “(2) In determining whether an order under **section 283(f)** is appropriate or the sum to be paid by way of reparation for consequential loss or damage described in **section 283(f)(iii)**, the Court must take into account whether there is or may be, under law, a right available to the person who suffered the loss or damage to bring proceedings or to make an application in relation to that loss or damage. 5 10
- “(3) **Subsection (2)** applies whether or not the right to bring proceedings or make the application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired.
- “(4) Despite **subsection (2)** and **section 283(f)**, the Court must not order a sum to be paid by way of reparation for consequential loss or damage described in **section 283(f)(iii)** for which the Court believes that a person has entitlements under the Injury Prevention, Rehabilitation, and Compensation Act 2001. 15
- “(5) Section 320 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (Corporation to be heard) does not apply where a charge against a young person is proved before a Youth Court. 20
- “287A Order to pay reparation**
- “(1) A sum ordered to be paid under **section 283(f)(i)** in respect of emotional harm must be limited to reparation for that emotional harm, and must not include an amount for loss or damage of a consequential nature. 25
- “(2) A sum ordered to be paid under **section 283(f)(ii)** in respect of loss of or damage to property must be limited to the cost of replacement or (as the case may require) the cost of repair, and must not include an amount for loss or damage of a consequential nature. 30
- “(3) No sum may be ordered to be paid to a person under **section 283(f)** for emotional harm, or loss or damage consequential on emotional harm, or both, unless that person has suffered through or by means of the offence physical damage, or loss of or damage to property, or both. 35

“(4) No order under **section 283(f)** can impose an obligation on a person to perform work or service for the person who suffered the harm, loss, or damage.

“287B **Court to have regard to capacity to pay reparation**

If a person against whom an order may be made under **section 283(f)** has insufficient means to pay the total value of the loss, damage, or harm, the Court may order that person to do either or both of the following:

“(a) pay a sum by way of reparation for an amount less than the value of the loss, damage, or harm:

“(b) pay a sum by instalments in respect of the loss, damage, or harm.

“287C **Conditions of order to pay reparation**

“(1) If the Court orders a person to pay a sum by way of reparation under **section 283(f)**, it must determine the conditions of the order in respect of the following matters:

“(a) the total amount to be paid by the person by way of reparation:

“(b) whether the amount is to be paid in 1 lump sum or in instalments:

“(c) if the amount is to be paid in 1 lump sum, whether it is to be paid immediately or at some specified future date:

“(d) if the amount is to be paid in instalments, the frequency and amounts of the instalments.

“(2) The Court may not impose a condition that an amount to be paid in 1 lump sum must be paid immediately unless the Court is satisfied that the person has sufficient means to pay it immediately.

“287D **How payments to be applied if fine and reparation**

If a person fined under section 283(d) is also ordered to pay a sum by way of reparation under **section 283(f)**, payments received from the person must be applied first in satisfaction of the amount due by way of reparation under the order under **section 283(f)**.”

*Expiry of Youth Court orders***27 New section 296 substituted**

The principal Act is amended by repealing section 296, and substituting the following section:

“296 Expiry of orders 5

“(1) In this section,—

“**relevant time** means the commencement of **section 27** of the **Children, Young Persons, and Their Families Amendment Act (No 4) 2004**

“**specified order** means— 10

“(a) an order under section 283(c) (to come before the Court, if called upon within 12 months, so that the Court may take further action under section 283); or

“(b) an order under section 283(k) (placing the young person under the supervision of the chief executive or a specified person or organisation); or 15

“(c) an order under section 283(l) (a community work order under section 298); or

“(d) an order under section 283(m) (a supervision with activity order under section 307); or 20

“(e) an order under section 283(n) (a supervision with residence order under section 311).

“(2) If it does not expire sooner, a specified order made at or after the relevant time expires at the latest of the times specified in whichever of the following paragraphs apply to the order: 25

“(a) if it is an order under section 283(c), 12 months after it is made; and

“(b) if it is an order under section 283(l), when the period specified under section 298(2)(a) (and within which the community work must be performed) expires; and 30

“(c) if it is an order under section 283(n), when the period specified in the order required by section 311(2) expires; and

“(d) if it is a specified order of any kind, 6 months after whichever of the following events occurs last: 35

“(i) the order is made;

“(ii) the young person in respect of whom it is made attains the age of 17 years.

“(3) If it does not expire sooner, a specified order made before the relevant time expires 6 months after the young person in respect of whom it is made attains the age of 17 years.”

Cancelling and replacing supervision orders and supervision with activity orders 5

28 Failure to observe conditions of supervision order or supervision with activity order

Section 309 of the principal Act is amended by inserting, after subsection (1), the following subsections:

“(1A) An application under subsection (1) must be made before the time at which the order expires under **section 296**. 10

“(1B) However, the Court may accept an application under subsection (1) made within 7 days after the time referred to in **subsection (1A)**, and may respond to that application in accordance with subsection (2), if satisfied that— 15

“(a) the failure to comply with the condition of the order was a serious failure; and

“(b) there is a good reason (for example, that information about the failure came to notice too late to apply) why the application could not reasonably have been made before the time at which the order expired.” 20

Warrant to arrest young person for purpose of having him or her brought before Court dealing with specified application

29 New heading and sections 320A and 320B inserted 25
The principal Act is amended by inserting, after section 320, the following heading and sections:

“Warrant to arrest young person for purpose of having him or her brought before Court dealing with specified application” 30

“320A Court may issue warrant on application by Social Worker or member of police

“(1) In this section, **specified application** means any of the following applications, lodged in a Court by the chief executive, a Social Worker, or the person or organisation supervising, or specified in, the order to which that application relates, or under whose supervision the young person is placed: 35

- “(a) an application under section 299(1) to have a community work order under section 298 cancelled on the grounds that the young person has failed to comply with the order:
- “(b) an application under section 309(1) to have a supervision order under section 283(k) or a supervision with activity order under section 307 cancelled on the grounds that the young person has failed to comply with a condition of the order: 5
- “(c) an application under section 310(3) to have a supervision order under section 283(k), or a supervision with activity order under section 307, or a condition of such an order, cancelled, suspended, imposed, or varied: 10
- “(d) an application under section 316(1) to have a supervision with residence order under section 311 cancelled on the grounds that the young person has absconded from the custody of the chief executive. 15
- “(2) For the purpose of having the young person brought before the Court dealing with the specified application, a Social Worker or member of the police may (whether or not a summons has been issued) apply to a Court in which a specified application has been lodged for the issue of a warrant to arrest the young person. 20
- “(3) The Court must not issue a warrant under this section unless satisfied that— 25
- “(a) all reasonable efforts have been made to locate or, as the case requires, to serve the specified application on, the young person; and
- “(b) those efforts have failed. 30
- Compare: 2002 No 9 s 72(3) 30

“320B Execution of warrant under section 320A

- “(1) A warrant under **section 320A** (the **warrant**) may be executed only by a member of the police.
- “(2) The warrant must be directed to a member of the police by name or generally to every member of the police, but in either case may be executed by any member of the police. 35
- “(3) For the purpose of executing the warrant, the member of the police executing it may at any time enter on to any premises, by force if necessary, if he or she has reasonable grounds to

believe that the young person against whom it is issued is on those premises.

- “(4) The member of the police executing the warrant must—
- “(a) have the warrant with him or her; and
 - “(b) produce it on initial entry and, if requested, later; and 5
 - “(c) if he or she is not in uniform, produce evidence that he or she is a member of the police.

Compare: 2000 No 38 s 36(2)–(4); 2002 No 9 s 72(4)”.

30 Amendments consequential on enactment of section 29

- (1) Section 299 of the principal Act is consequentially amended 10 by adding the following subsections:
- “(3) An application under subsection (1) must be served on the young person to whom the order relates and on any parent or guardian or other person having the care of the young person.
- “(4) Nothing in **subsection (3)** requires an application under sub- 15 section (1) to be served on a young person who is arrested under a warrant under **section 320A.**”
- (2) Sections 309 and 316 of the principal Act are consequentially amended by adding the following subsection:
- “(4) Nothing in subsection (3) requires an application under sub- 20 section (1) to be served on a young person who is arrested under a warrant under **section 320A.**”

Victims

31 Persons entitled to be present at hearing

- Section 329(1) of the principal Act is amended by inserting, 25 after paragraph (c), the following paragraphs:
- “(ca) a victim of the offence or alleged offence, or a representative of that victim:
- “(cb) if a victim is a child or young person, a parent or 30 guardian of that child or young person, unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.”.

*Informant's right of appeal against order of Youth Court***32 New section 353A inserted**

- (1) The principal Act is amended by inserting, after section 353, the following section:

“353A Informant’s right of appeal against order of Youth Court 5

- “(1) If a Youth Court, on determining an information, finds that a young person has committed an offence and makes in respect of the young person an order under section 283, the informant may appeal against the order to the High Court. 10

- “(2) However, an appeal under this section may be brought only if the Solicitor-General’s written consent to the appeal has been obtained and is lodged with the notice of appeal.

- “(3) A document evidencing that written consent may be signed on behalf of the Solicitor-General by a person who is or purports to be a Crown Counsel. 15

- “(4) An appeal under this section lapses on the date specified in **paragraph (b)** and must be deemed to have been dismissed by the High Court for non-prosecution if— 20
- “(a) the appeal is brought against an order under section 283(n) (that is, a supervision with residence order under section 311); and

- “(b) the hearing of the appeal has not started by the date on which the young person concerned is released from the chief executive’s custody under that order. 25

- “(5) For the purposes of **subsection (4)(b)**, the manager of a residence from which the young person has been released must, if that manager knows of the appeal under this section, notify the Registrar of the High Court that the young person has been released.” 30

- (2) Section 355(1)(a) of the principal Act is consequentially amended by inserting, after the expression “section 353”, the words “or **section 353A**”.

*Functions of Care and Protection Resource Panels***33 Functions of Care and Protection Resource Panels** 35

- (1) Section 429(c) of the principal Act is repealed.
- (2) Section 429 of the principal Act is amended by adding, as subsection (2), the following subsection:

- “(2) In performing the function in subsection (1)(a), a Care and Protection Resource Panel must provide advice that the Panel considers is likely to promote co-ordination of the provision of services by the community to—
- “(a) children and young persons in need of care or protection; and
 - “(b) the families and family groups of those children and young persons.”

Part 2

Amendment to Criminal Justice Act 1985

Purpose

34 Purpose of this Part

The purpose of this Part is to re-enact spent provisions of the Criminal Justice Act 1985 relating to remanding young persons to penal institutions.

Remanding young persons to penal institutions

35 New sections 142AC and 142AD inserted

The Criminal Justice Act 1985 is amended by inserting, before section 142A, the following sections:

“142AC Special provisions until 1 July 2008 as to young persons remanded or committed for trial or sentence

“(1) On and from the commencement of **section 35** of the **Children, Young Persons, and Their Families Amendment Act (No 4) 2004** and until the close of **30 June 2008**, **subsections (2) to (6)** of this section apply instead of subsections (1) to (3) of section 142.

“(2) Despite anything in any other enactment,—

“(a) no person under the age of 15 years may be remanded to a penal institution pending the hearing or trial of any charge or pending sentence:

“(b) no person who has attained the age of 15 years but has not attained the age of 17 years may be remanded to a penal institution pending the hearing or trial of any charge or pending sentence, except where the person is charged with or has been convicted of a purely indictable offence (within the meaning of section 18 of the Sentencing Act 2002).

- “(3) No person who has attained the age of 15 years but has not attained the age of 16 years may be remanded to a penal institution pending trial or sentencing unless,—
- “(a) in the case of a remand pending trial, the court is satisfied that the period that the person is likely to be on remand pending trial will not be less than 2 months; and 5
- “(b) the chief executive, or an officer of the department authorised in that behalf by the chief executive, has furnished to the court a certificate stating that detention of the young person in the custody of the chief executive under an order under this section for the likely period of remand would be likely to prejudice the ability of the department to meet demands to detain other young persons in the department’s residences under similar orders; and 10
- “(c) the court is satisfied that remand to a penal institution is in all the circumstances appropriate. 15
- “(4) In **subsections (2) and (3)** of this section, a reference to a penal institution does not include a police jail. 20
- “(5) For the purposes of **subsection (3)** of this section,—
- “**chief executive** means the chief executive of the department
- “**department** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989. 25
- “(6) Subject to **subsections (2) and (3)** of this section and to the Children, Young Persons, and Their Families Act 1989, the provisions of subsections (4), (4A), (4B), and (5) of section 142 apply in respect of every person who is under the age of 17 years and who is charged with or convicted of any offence in a District Court or the High Court. 30

“142AD Expiry of section 142AC

Section 142AC expires at the close of **30 June 2008.**”