Queensland

JUVENILE JUSTICE ACT 1992

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Warning—see last endnote for uncommenced amendments

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Information about this reprint

This Act is reprinted as at 14 November 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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Queensland

JUVENILE JUSTICE ACT 1992

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JUVENILE JUSTICE ACT 1992

[as amended by all amendments that commenced on or before 14 November 2002]

An Act to provide comprehensively for the laws concerning children who commit, or who are alleged to have committed, offences and for related purposes

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Juvenile Justice Act 1992*.

3 Objectives of Act

The principal objectives of this Act are—

(a) to establish the basis for the administration of juvenile justice; and

(b) to establish a code for dealing with children who have, or are alleged to have, committed offences; and

(c) to provide for the jurisdiction and proceedings of courts dealing with children; and

(d) to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and

(e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to—

(i) rehabilitate children who commit offences; and

(ii) reintegrate children who commit offences into the community.

4 Principles of juvenile justice

The general principles underlying the operation of this Act (**"general principles of juvenile justice"**) are that—

(a) the community must be protected from offences; and

(b) because a child tends to be vulnerable in dealings with a person in authority a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child; and

(c) a child—

(i) should be detained in custody for an offence (whether on arrest or sentence) only as a last resort; and

(ii) if detained in custody—should only be held in a facility suitable for children; and

(d) if a child commits an offence—the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started; and

(e) if a proceeding is started against a child for an offence—

(i) the proceeding should be conducted in a fair and just way; and

(ii) the child should be given the opportunity to participate in and understand the proceeding; and

(f) a child who commits an offence should be—

(i) held accountable and encouraged to accept responsibility for the offending behaviour; and

(ii) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and

(iii) dealt with in a way that strengthens the child's family; and

(g) a victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law; and

(h) a parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility; and

(i) a decision affecting a child should, if practicable, be made and implemented within a time frame appropriate to the child's sense of time; and

(j) the age, maturity and, where appropriate, cultural background of a child are relevant considerations in a decision made in relation to the child under this Act.

5 Definitions

In this Act—

"adult" means a person who is not a child.

"approved form" see section 227.

"approved provider", for part 5, division 1B,[1] see section 119J.

"arrest" includes apprehension and taking into custody.

"arrest offence" means—

(a) an offence of a type for which the offender may be arrested without warrant; or

(b) an offence committed in circumstances where the offender may be arrested without warrant.

"attend", for part 5, division 1B, see section 119F.

"attendance notice" means an attendance notice under section 23.[2]

"bail" means bail as prescribed by the *Bail Act 1980*.

"breach of duty" means a breach of duty as defined by the *Justices Act 1886*, section 4.

"caution" see part 1C, division 1.

"child" means—

(a) a person who has not turned 17 years; or

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1 Part 5 (Sentencing), division 1B (Court referred drug assessment and education sessions before sentencing)

2 Section 23 (Attendance notice may be issued for offence)

(b) after a day fixed under section 6[3]—a person who has not turned 18 years.

"Childrens Court judge" includes the Childrens Court when constituted by a Childrens Court judge.

"Childrens Court magistrate" includes the Childrens Court when constituted by a Childrens Court magistrate, stipendiary magistrate or justices.

"committal proceeding" means a proceeding before a justice taking an examination of witnesses in relation to a charge of an indictable offence.

"community conference agreement" see section 18E(3).

"community conference convenor" see section 18B.

"community service" means activities decided to be community service under section 224A.[4]

"community service hours" means the hours of community service that a child is required to perform under a community service order.

"community service order" means an order under section 120(1)(e).[5]

"community visitor" means a community visitor under the *Commission for Children and Young People Act 2000*.

"concurrent jurisdiction" means—

(a) in relation to a Childrens Court judge—the jurisdiction of the judge when constituting the District Court for a proceeding in its criminal jurisdiction; or

(b) in relation to the District Court—the jurisdiction of the judge when constituting the Childrens Court; or

(c) in relation to a Childrens Court magistrate—the jurisdiction of the magistrate or justices when constituting a Magistrates Court for a proceeding under the *Justices Act 1886* or the Criminal Code; or

(d) in relation to a Magistrates Court—the jurisdiction of the magistrate or justices when constituting the Childrens Court.

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3 Section 6 (Child's age regulation)

4 Section 224A (Programs and services for children)

5 Section 120 (Sentence orders—general)

"convenor" means a community conference convenor.

"court" includes a justice taking an examination of witnesses in relation to a charge of an indictable offence.

"detention centre" means a detention centre established under section 201.

"detention order" means an order made under section 120(1)(f) or 121(1)(b).[6]

"disclosable caution" see sections 18N and 18O.[7]

"disclosable community conference agreement" see sections 18N and 18O.[7]

"disqualifying offence", for part 5, division 1B, see section 119I.

"driver licence" means a driver licence under the *Transport Operations (Road Use Management) Act 1995*.

"drug assessment and education session", for part 5, division 1B, see section 119F.

"drug diversion court", for part 5, division 1B, see section 119F.

"eligible child", for part 5, division 1B, see section 119G.

"eligible drug offence", for part 5, division 1B, see section 119H.

"finding of guilt" includes—

(a) a finding of guilt (whether or not a conviction is recorded); and

(b) a finding of guilt on a plea of guilty.

"fixed release order" see section 189.[8]

"general principles of juvenile justice" means the general principles of juvenile justice mentioned in section 4.[9]

"good behaviour order" means an order made under section 120(1)(b).[10]

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6 Section 120 (Sentence orders—general) or 121 (Sentence orders—serious offences)

7 Sections 18N (Disclosable caution and community conference agreement—later childhood offence) and 18O (Disclosable caution and community conference agreement—later adulthood offence)

8 Section 189 (Chief executive's fixed release order)

9 Section 4 (Principles of juvenile justice)

10 Section 120 (Sentence orders—general)

"immediate release order" means an order made under section 176.[11]

"legal practitioner" means—

(a) a person admitted as a barrister of the Supreme Court whose name is currently enrolled on the roll of barristers of the Supreme Court; or

(b) a person admitted as a solicitor of the Supreme Court whose name is currently enrolled on the roll of solicitors of the Supreme Court; or

(c) a person mentioned in section 229(2)[12] acting for a party.

"life offence" means an offence for which a person sentenced as an adult would be liable to life imprisonment.

"loss" of property includes loss, damage or destruction.

"medical treatment" includes a physical, psychiatric, psychological or dental examination or treatment.

"parent" means—

(a) a parent or guardian of a child; or

(b) a person who has lawful custody of a child other than because of the child's detention for an offence or pending a proceeding for an offence; or

(c) a person who has the day-to-day care and control of a child.

"parole" means a parole order under the *Corrective Services Act 2000*.

"personal offence" means an offence relating to the person of another.

"penalty unit" see *Penalties and Sentences Act 1992*, section 5.[13]

"police station" means a police station within the meaning of the *Police Service Administration Act 1990*.

"prison" means a prison within the meaning of the *Corrective Services Act 2000*.

11 Section 176 (Immediate release order)

12 Section 229(2) (Proceeding for offence)

13 *Penalties and Sentences Act 1992*, section 5 (Meaning of penalty unit)

"probation order" means an order made under section 120(1)(d) or 121(1)(a).[14]

"procedural action or order" means an action or order made for, or incidental to, a proceeding that does not constitute a hearing and determination on the merits of the matter to which the proceeding relates, for example—

(a) the charging of a defendant; and

(b) the issue of a warrant; and

(c) the granting of bail or release without bail; and

(d) the remand of a defendant; and

(e) the adjournment of the proceeding.

"proper officer" means—

(a) for the Supreme Court, the District Court or a Childrens Court judge—the registrar or a sheriff, deputy sheriff or under sheriff of the court; and

(b) for a Magistrates Court or a Childrens Court magistrate—the clerk of the court.

"property offence" means an offence relating to property.

"referring court" for an offence referred to a community conference—see section 18C(b).

"referring police officer" for an offence referred to a community conference—see section 18C(a).

"sentence order" means an order made under section 120 or 121,[15] including a reprimand.

"serious offence" means an offence mentioned in section 8.[16]

"seven year offence" means a life offence or an offence of a type, that if committed by an adult, would make the adult liable to imprisonment for 7 years or more.

"simple offence" includes a regulatory offence and a breach of duty.

"State" includes a Territory.

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14 Section 120 (Sentence orders—general) or 121 (Sentence orders—serious offences)

15 Section 120 (Sentence orders—general) or 121 (Sentence orders—serious offences)

16 Section 8 (Meaning of "serious offence")

"supreme court offence" see section 69.

"treatment" includes therapeutic, palliative and preventative treatment.

6 Child's age regulation

(1) The Governor in Council may, by regulation, fix a day after which a person will be a child for the purposes of this Act if the person has not turned 18 years.

(2) A person of 17 years who commits an offence before the commencement of the regulation will not be taken, after the commencement, to have committed the offence as a child in a subsequent proceeding for the offence.

(3) A court that sentences a person to whom subsection (2) applies for the offence mentioned in the subsection must have regard to the sentence that might have been imposed if the person were sentenced as a child.

(4) The court can not order the person—

(a) to serve a term of imprisonment longer than the period of detention that the court could have imposed on the person if sentenced as a child; or

(b) to pay any amount by way of fine, restitution or compensation greater than that which the court could have ordered the person to pay if sentenced as a child.

(5) Subsection (3) applies even though an adult would otherwise be liable to a heavier penalty which by operation of law could not be reduced.

(6) To avoid any doubt, it is declared subsections (2) to (5) only apply to a person mentioned in subsection (1) who is sentenced after the commencement of the regulation mentioned in the subsection.

7 Meaning of police officer "starting a proceeding"

In this Act, mention of a police officer **"starting a proceeding"** against a child for an offence includes—

(a) obtaining a warrant for the arrest of a child on a charge for an offence; and

(b) arresting a child for an offence without a warrant.

8 Meaning of "serious offence"

(1) Subject to subsection (2), in this Act **"serious offence"** means—

(a) a life offence; or

(b) an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more.

(2) An offence is not a serious offence if it is of a type that, if committed by an adult, may be dealt with summarily under—

(a) the Criminal Code, section 552B(1)(a)[17] on a charge of receiving, or the Criminal Code, section 552B(1)(e); or

(b) the *Drugs Misuse Act 1986*, section 13.[18]

(3) For the purpose of this section, the type of an offence includes the circumstances in which it is committed.

9 Meaning of court that made order

(1) In this Act, mention of the court that made a particular order on sentence includes, if the order was made by—

(a) the Supreme Court—any sittings of the Supreme Court in its criminal jurisdiction at any place in Queensland; or

(b) the District Court—any sittings of the District Court in its criminal jurisdiction at any place in Queensland; or

(c) a Childrens Court judge—any sittings of a Childrens Court judge at any place in Queensland; or

(d) a Magistrates Court—any Magistrates Court sitting at any place in Queensland; or

(e) a Childrens Court magistrate—any Childrens Court magistrate sitting at any place in Queensland.

(2) Subsection (1) applies even though the court is not constituted by the same judicial officer who made the order originally.

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17 Criminal Code, section 552B (Charges of indictable offences that may be dealt with summarily)

18 *Drugs Misuse Act 1986*, section 13 (Certain offences may be dealt with summarily)

PART 1B—INVESTIGATION PROVISIONS

Division 1—Conditions on admissibility of child's statement

9E Another person must be present

(1) In a proceeding for an indictable offence, a court must not admit into evidence against the defendant a statement made or given to a police officer by the defendant when a child, unless the court is satisfied that there was present at the time and place the statement was made or given, a person mentioned in subsection (2).

(2) The person required to be present is—

(a) a parent of the child; or

(b) a legal practitioner acting for the child; or

(c) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or

(d) a justice of the peace other than—

(i) a justice of the peace who is a member of the Queensland Police Service; or

(ii) a justice of the peace (commissioner for declarations); or

(e) an adult nominated by the child.

(3) Subsection (1) does not apply if—

(a) the prosecution satisfies the court that there was proper and sufficient reason for the absence of a person mentioned in subsection (2) at the time the statement was made or given; and

(b) the court considers that, in the particular circumstances, the statement should be admitted into evidence.

(4) This section does not require that a police officer permit or cause to be present when a child makes or gives the statement a person whom the police officer suspects on reasonable grounds—

(a) is an accomplice of the child; or

(b) is, or is likely to become, an accessory after the fact;

in relation to the offence or another offence under investigation.

(5) This section does not limit the power of a court to exclude evidence from admission in a proceeding.

Division 2—Fingerprints and palmprints

10 Application by police officer for permission to take child's identifying particular

(1) This section applies if a child has been charged, without being arrested, with an indictable offence or an offence against any of the following Acts that is an arrest offence—

(a) the Criminal Code;

(b) the *Drugs Misuse Act 1986*;

(c) the *Police Service Administration Act 1990*;

(d) the *Regulatory Offences Act 1985*;

(e) the *Vagrants, Gaming and Other Offences Act 1931*;

(f) the *Weapons Act 1990*.

(2) A police officer (the "**applicant"**) may apply to a Childrens Court magistrate (the **"court"**) to have an identifying particular of the child taken.

(3) The applicant must give notice of the application to—

(a) the child; and

(b) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(c) the chief executive.

(4) The court may decide the application in the absence of a person mentioned in subsection (3), if the court is satisfied that subsection (3) has been complied with.

(5) On the application—

(a) the applicant and anyone mentioned in subsection (3) is entitled to be heard and to provide evidence; and

(b) the court may act on statements of information and belief.

(6) The court may order the identifying particular to be taken if it is satisfied, on the balance of probabilities, of all the following facts—

(a) someone has committed the charged offence;

(b) there is evidence of an identifying particular of the offender that is of the same type as the identifying particular the applicant seeks to have taken from the child;

(c) the child is reasonably suspected of being the offender;

(d) the order is necessary for the proper conduct of the investigation of the offence.

(7) The order must state the investigation for which the order is made.

(8) If the child will not be in custody when the particular is taken, the order must require the child to report to a police station as directed under the order to have the identifying particular taken.

(9) A child must not contravene the order.

Maximum penalty—10 penalty units.

(11) If the child will be in custody when the particular is taken, the order must require the particular to be taken at the place the child is held in custody.

(12) A police officer may use reasonable force to take the identifying particular under the order.

(13) This section is subject to section 10A.

(14) In this section—

"charged offence" means the offence with which the child is charged or an offence arising out of the same, or same set of, circumstances.

"identifying particular" means fingerprints or palmprints.

"parent", of a child, includes someone who is apparently a parent of the child.

10A Another person must be present when identifying particular is taken

(1) In a proceeding for an offence, a court must not admit into evidence against a defendant an identifying particular taken from the defendant under section 10 unless the court is satisfied a person mentioned in subsection (2) was present when the identifying particular was given.

(2) The person required to be present is—

(a) a parent of the child; or

(b) a legal practitioner acting for the child; or

(c) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or

(d) a justice of the peace other than—

(i) a justice of the peace who is a member of the Queensland Police Service; or

(ii) a justice of the peace (commissioner for declarations); or

(e) an adult nominated by the child.

(3) Subsection (1) does not apply if—

(a) the prosecution satisfies the court there was proper and sufficient reason for the absence of a person mentioned in subsection (2) when the particular was taken; and

(b) the court considers that, in the particular circumstances, the particular should be admitted into evidence.

(4) This section does not require that a police officer permit or cause to be present when the identifying particular is taken a person whom the police officer suspects on reasonable grounds—

(a) is an accomplice of the child; or

(b) is, or is likely to become, an accessory after the fact;

for the offence or another offence under investigation.

(5) This section does not limit the power of a court to exclude evidence from admission in a proceeding.

10B Destruction of identifying particular taken under court order

(1) An identifying particular taken from a child under an order under section 10[19] must be destroyed if the investigation for which the order was made does not result in a sentence order being made.

(2) For subsection (1), the destruction must happen within 7 days of the following—

19 Section 10 (Application by police officer for permission to take child's identifying particular)

(a) if the investigation is for an offence for which a proceeding had started when the order was made and the proceeding ends without a sentence order being made—the end of the proceeding;

(b) if the investigation is for an offence for which a proceeding is started within 28 days after the order is made and the proceeding ends without a sentence order being made—the end of the proceeding;

(c) if the investigation is for an offence for which a proceeding is not started within 28 days of the order—the end of the period of 28 days.

(3) An applicant who obtains an order to have an identifying particular taken from a child under section 10 must not fail to ensure the particular is destroyed under this section, unless the applicant has a reasonable excuse for failing to do so.

Maximum penalty—100 penalty units.

10C Division does not limit other provisions

This division does not limit another Act under which someone's fingerprints or palmprints may be taken.

PART 1C—CAUTIONS AND COMMUNITY CONFERENCES

Division 1—Cautioning

11 Purpose of caution

The purpose of this division is to set up a way of diverting a child who commits an offence from the courts' criminal justice system by allowing a police officer to administer a caution to the child instead of starting a proceeding for the offence.

12 Police officer may administer a caution

(1) A police officer instead of starting a proceeding against a child for an offence may administer a caution to the child.

(2) The child is then not liable to be prosecuted for the offence.

13 Conditions for administration of police caution

(1) A police officer may administer a caution to a child for an offence only if the child—

(a) admits committing the offence to the police officer; and

(b) consents to being cautioned.

(2) A police officer who administers a caution, or who requests the administration of a caution under section 14, must, if practicable, arrange to be present at the administration of the caution—

(a) a person chosen by the child; or

(b) a parent of the child or a person chosen by a parent of the child.

(3) The commissioner of the police service may authorise a police officer who the commissioner considers has sufficient training or experience (**"authorised officer"**) to administer cautions.

(4) If a police officer administering a caution is not an authorised officer, the caution must be administered in the presence of an authorised officer.

14 Caution administered by respected person of Aboriginal or Torres Strait Islander community

(1) If a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, the caution may be administered by a respected person of the community at the request of an authorised officer mentioned in section 13.

(2) In a proceeding, evidence that a person purported to administer a caution under subsection (1) as a respected person mentioned in the subsection is evidence that the person was a respected person.

15 Caution procedure must involve explanation

(1) A police officer who administers, or requests the administration of, a caution to a child must take steps to ensure that the child and the person

present under section 13(2)[20] understand the purpose, nature and effect of the caution.

(2) The steps that can be taken include, for example—

(a) personally explaining these matters to the child; and

(b) having some person with training or experience in the cautioning of children give the explanation; and

(c) having an interpreter or other person able to communicate effectively with the child give the explanation; and

(d) supplying an explanatory note in English or another language.

16 Caution procedure may involve apology to victim

(1) This section applies only after a police officer decides that a caution should be administered to a child for an offence.

(2) The procedure of administering a caution to a child for an offence may involve the child apologising to a victim of the offence if—

(a) the police officer administering, or requesting the administration of, the caution considers that an apology is an appropriate course of action in the particular circumstances of the case; and

(b) the child is willing to apologise; and

(c) the victim is willing to participate in the procedure.

17 Child must be given a notice of caution

(1) If a caution is administered to a child for an offence, the police officer who—

(a) administered the caution; or

(b) under section 14,[21] requested the administration of the caution;

must give the child a notice in a form approved by the commissioner of the police service.

(2) The notice must state—

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20 Section 13 (Conditions for administration of police caution)

21 Section 14 (Caution administered by respected person of Aboriginal or Torres Strait Islander community)

(a) that a caution was administered to the child; and

(b) the child's name; and

(c) the substance of the offence; and

(d) the police officer's name and rank; and

(e) the place where the caution was issued; and

(f) the names of all persons present when the caution was issued; and

(g) the nature and effect of a caution.

(3) In a proceeding, a document purporting to be a notice or copy of a notice is evidence that the child was administered a caution for the offence in the circumstances stated in the notice.

18 Childrens Court may dismiss charge if caution should have been administered

(1) If a child pleads guilty before a Childrens Court to a charge made against the child by a police officer, the court may dismiss the charge instead of accepting the plea of guilty if—

(a) application is made for the dismissal by or on behalf of the child; and

(b) the court is satisfied that the child should have been cautioned instead of being charged.

(2) In determining the application, the Childrens Court may have regard to any other cautions administered to the child for any offence.

(3) If the court dismisses a charge under subsection (1), the court may—

(a) administer the caution to the child; or

(b) direct that a caution be administered to the child as directed by the court.

Division 2—Community conferences

Subdivision 1—Establishment of process and generally applicable provisions

18A Object of division and explanation

(1) The object of this division is to establish a community conference process for a child who admits committing an offence to a police officer or after a finding of guilt for an offence is made against the child before a court.

(2) The process allows the child, a victim of the offence and the community to consider or deal with the offence in a way benefiting all concerned.

(3) The process involves the following steps—

(a) a police officer or court refers the offence to a community conference;

(b) a community conference convenor convenes a conference between the child and other concerned persons (see section 18D[22]);

(c) at the conference the offence is discussed and an agreement made on what must be done because of the offence.

(4) The benefits intended are—

(a) the child may benefit by—

(i) meeting any victim and taking responsibility for the results of the offence in an appropriate way; and

(ii) having the opportunity to make restitution and pay compensation for the offence; and

(iii) taking responsibility for the way in which the conference deals with the offence; and

(iv) having less involvement with the courts' criminal justice system; and

(b) the victim may benefit by the opportunity—

22 Section 18D (Who may participate in a community conference)

(i) to meet and understand the child and understand why the offence was committed; and

(ii) to express the victim's concerns; and

(iii) to have questions answered; and

(iv) to influence the way in which the conference deals with the offence; and

(v) to encourage the child's sense of responsibility; and

(c) the community may benefit by—

(i) fewer offences being committed because of effective early intervention by the community; and

(ii) less public cost from unnecessary involvement of the courts' criminal justice system; and

(iii) increasing resolution of disputes within the community without government intervention or legal proceedings.

(5) In deciding whether it is appropriate to refer an offence to a community conference, a police officer or court must have regard to—

(a) the offence's nature; and

(b) the harm suffered by anyone because of the offence; and

(c) whether the interests of the community and the child would be served by having the offence considered or dealt with in an informal way.

(6) This subdivision provides for community conferences generally.

(7) Subdivision 2[23] has provisions for a community conference when an offence is referred by a police officer before the start of a proceeding for the offence.

(8) Part 5, division 1A[24] has provisions for a community conference when an offence is referred by a court after a finding of guilt is made against a child for the offence.

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23 Part 1C, division 2, subdivision 2 (Reference by police officer before a proceeding starts)

24 Part 5 (Sentencing), division 1A (Court referred community conferences before sentencing)

18B Approval of community conference convenor

(1) The chief executive may approve a person as a community conference convenor (a **"convenor"**).

(2) Before approving a person as a convenor, the chief executive must be satisfied the person has appropriate experience or training to be a convenor.

(3) The convenor of a particular community conference must be—

(a) a person approved as a community conference convenor by the chief executive; and

(b) independent of the circumstances of the offence.

18C Who may refer an offence to a community conference

An offence may be referred to a community conference by—

(a) a police officer under section 18H[25] (the **"referring police officer"**); or

(b) a court under part 5, division 1A (the **"referring court"**).

18D Who may participate in a community conference

The participants in a community conference are as follows—

(a) the convenor;

(b) the child and, at the child's request—

(i) a legal practitioner acting for the child; or

(ii) a member of the child's family; or

(iii) an adult nominated by the child;

(c) at the request of any victim of the offence—the victim or a legal practitioner acting for the victim or a member of the victim's family;

(d) a representative of—

(i) if the offence is referred to the conference by a police officer— the commissioner of the police service; or

25 Section 18H (Reference of offence to community conference by police officer)

(ii) if the offence is referred to the conference by a court—the prosecution in the proceeding for the offence;

(e) another person decided by the convenor.

Example of paragraph (e)——

The convenor may decide a representative of the chief executive may participate in a conference if the community conference agreement may provide for the child to be subject to a program similar to one a child is subject to under a community service order or a probation order.

18E Conduct of community conference

(1) A community conference must be convened and conducted by the convenor for the conference.

(2) All decisions made by the convenor necessary for the conduct of the conference must be respected by the participants.

(3) The conference must be directed towards making an agreement about the offence (the **"community conference agreement"**).

(4) The convenor may bring the conference to an end at any time if—

(a) the child fails to attend the conference as required by the referring police officer or court; or

(b) the convenor considers—

(i) the offence unsuitable for a community conference; or

(ii) an agreement will not be made within a time the convenor considers appropriate.

(5) Also, the conference ends if an agreement is made.

(6) The convenor must give the referring police officer or court a report about the outcome of the conference within 14 days of the conference's end.

(7) The report must be in the approved form.

18F Form of community conference agreement

(1) A community conference agreement about an offence must be in the approved form.

(2) The agreement must be agreed to and signed by—

(a) the convenor; and

(b) the child; and

(c) a representative of—

(i) if the offence is referred to the conference by a police officer— the commissioner of the police service; or

(ii) if the offence is referred to the conference by a court—the prosecution in the proceeding for the offence;

(d) if a victim of the offence participates in the conference—the victim.

(3) The agreement must contain provisions under which—

(a) the child admits committing the offence; and

(b) the child's compliance with the agreement is monitored.

(4) The agreement may contain a provision about the following—

(a) the making of restitution or payment of compensation;

(b) an apology that must be made to a victim;

(c) the child's future conduct while a child;

(d) a program mentioned in subsection (5);

(e) another matter the convenor considers appropriate.

(5) An agreement signed by the chief executive may provide for the child to be subject to a program similar to one a child is subject to under a community service order or a probation order.

(6) The agreement may not provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way contravening the sentencing principles in section 109.[26]

(7) A copy of the agreement must be given immediately to each person who signs the agreement under subsection (2).

26 Section 109 (Sentencing principles)

18G If chief executive signs agreement for program

(1) This section applies if the chief executive signs a community conference agreement providing for a program similar to one a child is subject to under a community service order or a probation order.

(2) The chief executive may arrange the program and monitor the child's participation.

(3) If the child fails to comply with the agreement's requirements about the program, the chief executive may take no action or notify—

(a) for an offence referred to the community conference by a police officer—the police officer; or

(b) for an offence referred to the community conference by a court—the court's proper officer.

Subdivision 2—Reference by police officer before a proceeding starts

18H Reference of offence to community conference by police officer

(1) A police officer may refer the offence to a community conference before a proceeding is started for the offence, if—

(a) the child admits committing the offence to the police officer; and

(b) the victim consents, if there was a victim of the offence; and

(c) the police officer considers—

(i) the referral is a more appropriate way of dealing with the offence than starting a proceeding; and

(ii) a caution is inappropriate and a proceeding for the offence would be appropriate if the reference were not made; and

(iii) a community conference convenor will be available for the community conference.

(2) The police officer may require the child to attend the community conference as directed by the police officer.

(3) However, if the convenor for the conference considers the offence unsuitable for a community conference, the convenor may decline to convene the conference by written notice given to the police officer.

(4) The notice must be in the form approved by the chief executive.

(5) The notice is taken to bring the conference to an end.

(6) The police officer must inform the child that the police officer has received the notice.

18I If an agreement is made on a referral by a police officer

If a community conference agreement is made on the referral by the police officer, the child is then not liable to be prosecuted for the offence.

18J Powers of police officer if referral is unsuccessful or if child contravenes agreement

(1) This section applies if—

(a) the child fails to attend the community conference as directed by the police officer; or

(b) the community conference ends without an agreement being made; or

(c) the child contravenes an agreement made at the community conference.

(2) In considering what further action is appropriate, the police officer must consider—

(a) the matters mentioned in section 19(2);[27]

(b) any participation by the child in the community conference; and

(c) if an agreement was made at the conference—anything done by the child under the agreement.

(3) The police officer may—

(a) take no action; or

(b) administer a caution to the child; or

(c) refer the offence to another community conference, with or without the same convenor; or

(d) start a proceeding against the child for the offence.

27 Section 19 (Police officer to consider alternatives to proceeding against child)

Division 3—Confidentiality of cautions, community conference agreements and information from community conferences

18K Confidentiality of cautions and community conference agreements

(1) This section applies if, for an offence committed by a child—

(a) a caution is to be, or has been, administered to the child; or

(b) the child makes a community conference agreement about an offence referred to a community conference by a police officer.

(2) A member of the Queensland Police Service must not give to anyone other than a member of the Queensland Police Service information likely to identify the child as a person to whom a caution is to be, or has been, administered, or who has entered into a community conference agreement.

Maximum penalty—100 penalty units.

(3) Subsection (2) does not prevent the information being given to—

(a) a parent of the child; or

(b) a complainant for the offence; or

(c) the chief executive; or

(d) a member of a police service of the Commonwealth or another State dealing with a child offender; or

(e) a legal practitioner acting for the child; or

(f) a court, or legal practitioner acting for a party in a proceeding in which the administration of the caution or the making of the community conference agreement is admissible in evidence; or

(g) a person who has the function of investigating offences under an Act and who is dealing with a child offender; or

(h) a person who is undertaking research approved by the commissioner of the police service; or

(i) another person, for the purpose of this Act.

18L Confidentiality of information about community conference generally

(1) For section 226,[28] information gained by a community conference convenor in the conduct of a community conference is confidential information gained through the administration of this Act.

(2) The convenor may record, disclose or use the information if the convenor has a reasonable excuse for the recording, disclosure or use.

(3) It is a reasonable excuse if the recording, disclosure or use is—

(a) for a report to a referring police officer or court under section 18E(6);[29] or

(b) with the agreement of all the parties to the community conference; or

(c) for this or another Act; or

(d) for statistical purposes without revealing, or being likely to reveal, the identity of a person to whom the information relates; or

(e) for an inquiry or proceeding about an offence happening in the conduct of a community conference.

(4) In this section—

"conduct of a community conference" includes all steps involved in establishing the conference and dealing with anything from the conference.

Division 4—Use in evidence of cautions, community conference agreements and information about community conferences

18M Admissibility of evidence of caution or community conference agreement

(1) Evidence that a caution has been administered to a child or a community conference agreement has been made by a child is not admissible against the child in a proceeding taken against the child for an offence.

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28 Section 226 (Preservation of confidentiality)

29 Section 18E (Conduct of community conference)

(2) Subsection (1) does not stop evidence of a caution being admitted against the child—

(a) in a proceeding for which the caution is a disclosable caution; or

(b) under section 18(2);[30] or

(c) in a proceeding in which the caution is admissible in evidence under an Act.

(3) Subsection (1) does not stop evidence of a community conference agreement being admitted against the child—

(a) in a proceeding for which the agreement is a disclosable community conference agreement; or

(b) in a proceeding in which the community conference agreement is admissible in evidence under an Act.

18N Disclosable caution and community conference agreement—later childhood offence

(1) This section applies to a person who—

(a) as a child is administered a caution, or makes a community conference agreement, for a seven year offence committed by the child; and

(b) after the caution is administered or the agreement is made, commits an offence as a child (the **"later childhood offence"**).

(2) For a proceeding for the later childhood offence—

(a) the caution is a **"disclosable caution"**; and

(b) the agreement is a **"disclosable community conference agreement"**.

18O Disclosable caution and community conference agreement—later adulthood offence

(1) This section applies to a person who—

30 Section 18 (Childrens Court may dismiss charge if caution should have been administered)

(a) as a child is administered a caution, or makes a community conference agreement, for an offence committed by the person; and

(b) is dealt with as a child for a second or later seven year offence; and

(c) after being dealt with as a child for a second or later seven year offence commits an offence as an adult (the **"later adulthood offence"**).

(2) For a proceeding for the later adulthood offence—

(a) the caution is a **"disclosable caution"**; and

(b) the community conference agreement is a **"disclosable community conference agreement"**.

(3) It is immaterial—

(a) whether the caution or agreement relied on for subsection (1)(a) was administered or made for the second or later seven year offence relied on for subsection (1)(b) or for another offence; and

(b) whether the caution or agreement relied on for subsection (1)(a) was administered or made before or after the second or later seven year offence relied on for subsection (1)(b) was committed or dealt with.

(4) In this section—

"dealt with", for an offence, includes the following—

(a) being administered a caution for the offence;

(b) making a community conference agreement for the offence;

(c) dealt with on a finding of guilt.

"second" seven year offence of a child mentioned in subsection (1)(b) and (c), means a seven year offence the child commits after being dealt with for a seven year offence.

18P Use of information from community conference in evidence

(1) Evidence of anything done or said, or an admission made, in the conduct of a community conference about an offence is inadmissible in any proceeding.

(2) However, evidence that would otherwise be excluded from admission in a proceeding because of subsection (1) is admissible in a proceeding if—

(a) all the parties to the community conference agree to the admission of the evidence; or

(b) the proceeding is under part 5, division 1A;[31] or

(c) the evidence is admissible under this or another Act; or

(d) the proceeding is about an offence happening in the conduct of the community conference.

(3) In this section—

"conduct of a community conference" includes all steps involved in establishing the conference and dealing with anything from the conference.

PART 2—START OF PROCEEDINGS

Division 1—Preliminary considerations

19 Police officer to consider alternatives to proceeding against child

(1) Subject to section 20, a police officer, before starting a proceeding against a child for an offence, must first consider whether in all the circumstances it would be more appropriate—

(a) to take no action; or

(b) to administer a caution to the child; or

(c) to refer the offence to a community conference; or

31 Part 5 (Sentencing), division 1A (Court referred community conferences before sentencing)

(d) to offer the child the opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act 2000*, section 211.[32]

(2) The circumstances to which the police officer must have regard include—

(a) the circumstances of the alleged offence; and

(b) the child's previous history known to the police officer.

(3) If necessary the police officer must delay starting a proceeding in order to consider the matters mentioned in subsection (2).

Division 2—Arrest

20 Arrest and ex officio indictment power preserved

(1) Sections 19 and 21 do not affect—

(a) the power to charge under the *Justices Act 1886*, section 42(1A); or

(b) a power to arrest a child for a serious offence; or

(c) a proceeding on an indictment.

(2) Despite sections 19 and 21, a police officer may arrest a child if the police officer believes on reasonable grounds that arrest is necessary—

(a) to prevent a continuation or a repetition of the offence or the commission of another offence; or

(b) to prevent concealment, loss or destruction of evidence relating to the offence.

(3) Despite section 21, a police officer may arrest a child if the arresting police officer believes on reasonable grounds that the child is unlikely to appear before the Childrens Court in response to a complaint and summons or an attendance notice.

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32 *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

(4) Sections 19, 21 and 22 do not apply to the arrest of a child by a police officer who believes on reasonable grounds that the child is an adult.

(5) In deciding whether the police officer had the reasonable grounds, a court may have regard to the child's apparent age and the circumstances of the arrest.

21 Restriction on arrest of child

Subject to section 20, a proceeding against a child for an offence must be started by way of—

(a) complaint and summons under the *Justices Act 1886*; or

(b) attendance notice.

22 Parent and chief executive must be advised of arrest of child

(1) A person who arrests a child must promptly advise of the arrest and whereabouts of the child—

(a) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(b) the chief executive or a person who holds an office within the department nominated by the chief executive for the purpose.

(2) In this section—

"parent", of a child, includes someone who is apparently a parent of the child.

Division 3—Attendance notice

23 Attendance notice may be issued for offence

(1) The object of this section is to provide an alternative way for a police officer to start a proceeding against a child that does not involve the custody associated with arrest or the delay associated with issuing a complaint and summons under the *Justices Act 1886*.

(2) If a police officer believes on reasonable grounds that a child has committed an offence, the police officer may serve an attendance notice on the child.[33]

(3) An attendance notice must be personally served on a child.

24 Attendance notice form

(1) An attendance notice must—

(a) state the substance of the offence alleged to have been committed; and

(b) state the name of the child alleged to have committed the offence; and

(c) require the child to appear before a Childrens Court magistrate (**"the court"**) in relation to the offence at a specified time and place; and

(d) be signed by the police officer serving the attendance notice.

(2) The place specified in an attendance notice for the child to appear before the court must be a place where the court will be sitting at the time specified.

(3) The time specified in an attendance notice for the child to appear before the court must be a time—

(a) as soon as practicable after service of the attendance notice; and

(b) fixed generally by the proper officer of the court for hearing matters under this Act.

25 Attendance notice must be lodged in court without cost to child

(1) Before the time a child is required by an attendance notice to appear before a Childrens Court magistrate, the attendance notice must be lodged with the clerk of the court at the place where the child is required by the attendance notice to appear.

(2) A child must not be ordered to pay lodgment costs in the proceeding for the offence.

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33 An attendance notice differs from a complaint and summons in requiring the police officer with the beliefs mentioned to also serve the attendance notice.

26 General particulars only are required on an attendance notice

(1) The statement mentioned in section 24(1)(a) need only provide general particulars of the offence, for example—

(a) the type of offence; and

(b) time and place it is alleged to have been committed.

(2) If 2 or more matters are properly joined in 1 attendance notice under the *Justices Act 1886*, section 43(1), then, despite section 43(2) and (3) of that Act—

(a) each matter need not be set out in a separate paragraph; and

(b) objection can not be taken to the attendance notice because each matter is not set out in a separate paragraph.

27 Particulars of attendance notice offence must be given in the proceeding

(1) Section 26 does not affect the duty of the prosecution to provide proper particulars of an offence in the course of prosecution.

(2) When a child on whom an attendance notice has been served appears before the Childrens Court magistrate in response to the notice, the Childrens Court magistrate must ensure that the child is provided promptly with all necessary particulars of the offence and granted any adjournment of the proceeding necessary to consider them.

28 Parent and chief executive must be advised of service of attendance notice on child

(1) A person who has served an attendance notice on a child must promptly advise—

(a) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(b) the chief executive.

(2) In this section—

"parent", of a child, includes someone who is apparently a parent of the child.

29 Attendance notice equivalent to a complaint and summons

(1) A statement under section 24(1)(a)[34] is taken to be a complaint under the *Justices Act 1886*.

(2) A requirement made by a police officer under section 24(1)(c) is taken to be a summons issued by a justice under the *Justices Act 1886*.

(3) Subject to this Act, the *Justices Act 1886* and any other Act applies to an attendance notice in the same way as it applies to a complaint and summons.

30 Court may order immediate arrest of child who fails to appear

(1) Subject to subsection (2) and section 31, if a child fails to appear before a Childrens Court magistrate as required by an attendance notice served on the child, the court may order that a warrant issue for the arrest of the child to be brought before the court to be dealt with according to law.

(2) A court may order that a warrant issue for the arrest of a child under subsection (1) only if it is satisfied—

(a) on oath or by deposition under the *Justices Act 1886*, section 56(3) that the child was served in time for it to be practical for the child to appear before the court; and

(b) on oath that there is evidence substantiating the offence for which the attendance notice was served.

(3) Any justice may issue the warrant.

(4) The bail and custody provisions of part 3 apply to a child arrested on the warrant.

31 Court must strike out attendance notice if service insufficient

(1) If—

(a) a child fails to appear before a Childrens Court magistrate as required by an attendance notice; and

(b) the court is not satisfied that the child was served in time for it to be practical for the child to appear before the court;

the court must strike out the attendance notice.

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34 Section 24 (Attendance notice form)

(2) The striking out of an attendance notice under subsection (1) does not prevent another proceeding being started for the offence for which the attendance notice was served.

Division 4—Complaint and summons

32 Service of complaint and summons if offender a child

(1) A complaint and summons requiring a child to appear before a court to answer a complaint of an offence must be served on the child a reasonable time before the child is required to appear before the court.

(2) The complaint is also to be served on—

(a) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(b) the chief executive.

(3) A person serving a complaint and summons on a child must do so—

(a) as discreetly as practicable; and

(b) not at or in the vicinity of the child's place of employment or school, unless there is no other place where service may be reasonably effected.

(4) Subject to section 28,[35] this section does not apply to an attendance notice.

(5) In this section—

"parent", of a child, includes someone who is apparently a parent of the child.

33 Proof of service of complaint and summons in compliance with this Act

(1) A statement in a deposition made for the purposes of the *Justices Act 1886*, section 56(3)(b) that the complaint and summons was served as required by this Act is evidence of that fact.

(2) The *Justices Act 1886*, section 56(5) applies to the deposition.

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35 Section 28 (Parent and chief executive must be advised of service of attendance notice on child)

34 No costs against child for lodgment of complaint and summons

In a proceeding started against a child by complaint and summons, a court must not order the child to pay the cost of lodging the complaint and summons with the clerk of the court.

35 Proceeding in relation to simple offence in absence of child

(1) Subject to subsection (2), a Childrens Court magistrate may hear and determine a proceeding against a child in relation to a complaint and summons for a simple offence in the absence of the child in the way set out in the *Justices Act 1886*, part 6.[36]

(2) Under subsection (1), the only sentence order a Childrens Court magistrate may make against a child in the child's absence is an order imposing a fine, and then only if the child has indicated in writing to the court that the child has a capacity to pay a fine of a specified amount that is equal to or greater than the fine ordered to be paid.

PART 3—BAIL AND CUSTODY OF CHILDREN

37 Bail Act 1980 applies

(1) Subject to this Act, the *Bail Act 1980* applies in relation to a child charged with an offence.

(2) A review of a sentence order under part 4, division 6 is an appeal for the purposes of the *Bail Act 1980*.

38 Arrested child must be brought promptly before the Childrens Court

A child who is arrested on a charge of an offence must be brought promptly before the Childrens Court to be dealt with according to law.

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36 *Justices Act 1886*, part 6 (Proceedings in case of simple offences and breaches of duty)

39 Child must ordinarily be released from custody on charge

(1) Subject to subsection (2), if—

(a) a child who has been arrested on a charge of an offence is delivered into the custody of a police officer at a place that is a police station, watch-house or lockup; and

(b) it is not practicable to promptly constitute the Childrens Court to deal with the child;

the police officer who is in charge of, or the watch-house keeper of the place, must, unless the *Bail Act 1980* otherwise provides, grant bail to the child and release the child from custody in accordance with section 7 of that Act.

(2) A police officer authorised to grant bail to a child in accordance with the *Bail Act 1980*, section 7 may instead—

(a) release the child into the custody of a parent; or

(b) permit the child to go at large;

without bail.

(3) The release of a child without bail must be subject to a condition that the child surrenders into the custody of the court before which the charge on which the child was arrested is to be brought at the time and place for the time being appointed for the child to do so.

(4) Subsection (2) does not limit the power of a police officer to grant bail.

40 Child must be given release notice

(1) A police officer who releases a child from custody under section 39(2)(a) or (b) must give to the child a notice (**"release notice"**) in a form approved by the commissioner of the police service.

(2) The release notice must set out—

(a) the child's name; and

(b) the offence or the nature of the warrant on which the child was held in custody; and

(c) the name of the police officer who started the proceeding, or justice who issued the warrant, on which the child was held in custody; and

(d) the court into whose custody the child is required to surrender under the conditions of release; and

(e) the time and place the child is required to surrender into the court's custody; and

(f) a warning that a warrant will be issued for the child's arrest if the child fails to surrender into the court's custody.

41 Custody of child pending court appearance

(1) Until brought before a court, a child arrested on a charge of an offence or a warrant issued under this Act who is not released from custody must be held in the custody of—

(a) the commissioner of the police service; or

(b) the chief executive in accordance with arrangements mentioned in subsection (2).

(2) The commissioner of the police service must make arrangements with the chief executive for an arrested child wherever practicable to be placed in a detention centre until brought before a court.

(3) The chief executive must take the action necessary to hold the child in custody in accordance with the arrangements.

42 Court may in all cases release child without bail

(1) If, in a particular case, a court may grant bail to and release a child from custody under the *Bail Act 1980*, the court may instead—

(a) release the child into the custody of a parent; or

(b) permit the child to go at large;

without bail.

(2) The release of a child without bail must be subject to a condition that the child surrenders into the custody of the court before which the child is required to appear at the time and place for the time being appointed for the child to do so.

(3) Subsection (1) does not limit the power of a court to grant bail.

43 Custody of child if not released by court

(1) Except where the child remains the prisoner of the court, a court that remands a child in custody must remand the child into the custody of the chief executive despite the provisions of any other Act to the contrary.

(2) Jurisdiction conferred by an Act on a court—

(a) to commit a person to a place of detention (other than a detention centre) pending appearance before a court; and

(b) to give directions to the person in charge of the place;

is taken, if the person is a child, instead to confer jurisdiction on the court to remand the child into the custody of the chief executive and to give directions to the chief executive.

(3) A court that remands a child into the custody of the chief executive must order the commissioner of the police service to deliver the child as soon as practicable into the custody of the chief executive.

(4) A child held by the commissioner of the police service under an order made under subsection (3) is—

(a) before being delivered to the chief executive—in the custody of the commissioner of the police service; and

(b) after being delivered to the chief executive—in the custody of the chief executive.

(5) Subject to subsection (6), the chief executive may keep a child mentioned in subsection (3) who is in the chief executive's custody in places that the chief executive determines from time to time.

(6) The chief executive can not determine under subsection (5) that a child is to be kept in a prison.

44 Warrant for arrest of child who fails to appear after release without bail

Subject to this Act, the provisions of the *Bail Act 1980* relating to the issue of warrants for the arrest of defendants who fail to surrender into the custody of the court before which they were required to appear after being permitted to go at large without bail apply to a child who fails to appear after being released into the custody of a parent, or permitted to go at large, without bail.

45 Custody of child arrested on court warrant

If, under an Act, a court issues or orders the issue of a warrant for the arrest of a child (other than a warrant for the commitment of a child to a detention centre) it must order the commissioner of the police service to have the child promptly brought before a court to be dealt with according to law.

46 Childrens Court judge may grant bail

(1) Subject to this part, a Childrens Court judge may—

(a) grant bail to a child held in custody on a charge of an offence; or

(b) enlarge, vary or revoke bail granted to a child in, or in connection with, a criminal proceeding within the meaning of the *Bail Act 1980*;

whether or not the child has appeared before the Childrens Court judge in, or in connection with, the offence or criminal proceeding.

(2) Subsection (1)(a) applies even if the child has previously been refused bail by the Childrens Court.

(3) A child charged with an offence mentioned in the *Bail Act 1980*, section 13[37] may be granted bail by a Childrens Court judge, despite the section.

(4) This section does not limit the power a court or person ordinarily has to grant, enlarge, vary or revoke bail.

37 *Bail Act 1980*, section 13 (When only the Supreme Court may grant bail)

PART 4—JURISDICTION AND PROCEEDINGS

Division 1—General

47 Court jurisdiction generally unaffected

This Act does not affect the jurisdiction a court has apart from this Act in relation to a child charged with an offence, unless this Act otherwise provides.

48 Application of Mental Health Act 2000

The *Mental Health Act 2000* applies to a child charged with an offence as it applies to an adult.

49 Childrens Court judge

A Childrens Court judge has jurisdiction—

(a) to hear and determine under section 72[38] a charge against a child for an offence; and

(b) to delegate sentencing power to a Childrens Court magistrate under section 126;[39] and

(c) to review under section 88[40] a sentence order imposed by a Childrens Court magistrate; and

(d) to hear bail applications under section 46;[41] and

(e) to order the transfer of a person to a prison under section 211;[42] and

38 Section 72 (Jurisdiction of Childrens Court judge over committed child)

39 Section 126 (Judge may delegate sentencing power to magistrate)

40 Section 88 (Sentence review)

41 Section 46 (Childrens Court judge may grant bail)

42 Section 211 (Childrens Court may order transfer to prison)

(f) to perform other functions and exercise other powers conferred on the judge under this Act.

50 District Court jurisdiction in aid

(1) For the purpose of the jurisdiction over persons and matters assigned to a Childrens Court judge under this Act, a Childrens Court judge has the powers and jurisdiction of the District Court in its criminal jurisdiction.

(2) The powers and jurisdiction conferred under subsection (1) are in addition to those otherwise conferred under this Act.

(3) To the extent that another provision of this Act is inconsistent with subsection (1), the other provision prevails.

51 Childrens Court magistrate

(1) All proceedings under the *Justices Act 1886* for the hearing and determination of charges against children for offences, including committal proceedings, must be heard and determined before a Childrens Court magistrate.

(2) A Childrens Court magistrate has jurisdiction to hear and determine the proceedings.

(3) A Magistrates Court and justices conducting committal proceedings do not have that jurisdiction.

52 Magistrates Court jurisdiction in aid

(1) For the purpose of the jurisdiction over persons and matters assigned to a Childrens Court magistrate under this Act, a Childrens Court magistrate has the powers, authorities and jurisdiction of a Magistrates Court under the *Justices Act 1886*.

(2) The powers, authorities and jurisdiction conferred under subsection (1) are in addition to those otherwise conferred under this Act.

(3) To the extent that another provision of this Act is inconsistent with subsection (1), the other provision prevails.

53 Application of usual laws where necessary

(1) Subject to subsections (2) and (3), for the purposes of the powers and jurisdiction of a Childrens Court conferred by this Act, the provisions of the Criminal Code, *Justices Act 1886* and other Acts apply to—

(a) the institution and conduct of a proceeding before a Childrens Court; and

(b) the exercise by a Childrens Court of its powers and jurisdiction; and

(c) the enforcement of an order made by a Childrens Court.

(2) Provisions applied under subsection (1) apply, with all necessary modifications and any prescribed modifications—

(a) in relation to a Childrens Court judge in the way they apply in relation to the District Court; and

(b) in relation to a Childrens Court magistrate in the way they apply in relation to a Magistrates Court.

(3) To the extent that another provision of this Act is inconsistent with a provision applied under subsection (1), the other provision of this Act prevails.

54 Limitation on justices

(1) If the Childrens Court is constituted by 2 justices, the court's jurisdiction in relation to a proceeding against a child for an offence is limited to—

(a) the hearing and determination of a charge of a simple offence in a case where the child pleads guilty; and

(b) taking or making a procedural action or order.

(2) The justices can not make a detention order or immediate release order.

(3) This section does not affect a limitation placed on the power of a justice under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

55 Infringement notices

If, under an Act, an adult may elect to pay a monetary penalty prescribed under the Act in relation to a simple offence instead of being prosecuted on complaint and summons for the offence, a child may also elect to pay the monetary penalty instead of being prosecuted.

56 Presence of parent required generally

(1) If a parent of a child is not present when the child appears before a court charged with an offence, the court, after making inquiries of those present as to—

(a) the whereabouts of the child's parents; and

(b) whether a parent of the child has been informed of the proceedings as required under section 22, 28 and 32;[43]

may adjourn the proceeding to enable a parent to be present at the time and place to which the proceeding is adjourned.

(2) The court may recommend that the chief executive provide financial assistance to a parent of the child to ensure that a parent is present at the proceeding.

56A Court may order parent to attend

(1) A court before which a child appears charged with an offence may order a parent of the child to attend the proceeding as directed by the court.

(2) The order may be made on the prosecution's application or on the court's initiative.

(3) The court may cause the proper officer of the court to give written notice to the parent to attend as directed.

(4) If requested by the proper officer, the commissioner of the police service must help the proper officer to give the notice.

(5) The court may recommend the chief executive provide financial assistance to the parent to ensure the parent's attendance.

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43 Sections 22 (Parent and chief executive must be advised of arrest of child), 28 (Parent and chief executive must be advised of service of attendance notice on child) and 32 (Service of complaint and summons if offender a child)

(6) A person must not contravene a notice given to the person under subsection (3).

Maximum penalty—50 penalty units.

(7) A court that makes an order under subsection (1) may adjourn the proceeding to allow the parent to attend.

57 Consequence of parent's absence

(1) This section applies if a parent of a child against whom a finding or order has been made in a proceeding for an offence satisfies the court on application that—

(a) the child was dealt with when no parent was present; and

(b) the parent making the application was—

(i) not aware of the time and place of the proceeding in sufficient time to allow the parent to be present; or

(ii) unable to attend for sufficient reason.

(2) The court may set aside the finding or order if it considers that it is in the interests of justice to do so, for example if it considers that the child's capacity to make an election or other decision relating to the proceeding was adversely affected.

(3) The matter determined by the finding or order must then be heard and determined afresh.

(4) The application must be made within 28 days of the finding or order.

58 Explanation of proceeding

(1) In a proceeding before a court in which a child is charged with an offence, the court must take steps to ensure, as far as practicable, that the child and any parent of the child present has full opportunity to be heard and participate in the proceeding.

(2) Without limiting subsection (1), the court must ensure that the child and parent understand, as far as practicable—

(a) the nature of the alleged offence, including the matters that must be established before the child can be found guilty; and

(b) the court's procedures; and

(c) the consequences of any order that may be made.

(3) Examples of the steps a court may take are—

(a) directly explaining these matters in court to the child and parent; and

(b) having some appropriate person give the explanation; and

(c) having an interpreter or another person able to communicate effectively with the child and parent give the explanation; and

(d) causing an explanatory note in English or another language to be supplied to the child and parent.

59 Ordinary practice applies to explanations if child is represented

This part does not—

(a) prevent an explanation required to be given to a person, or an inquiry required to be made of a person, from being given to or made of a legal practitioner representing the person; or

(b) prevent the legal practitioner from responding to the explanation or inquiry on behalf of the person.

60 Chief executive's right of audience generally

(1) This section applies to a proceeding before a court in which a child is charged with an offence.

(2) The chief executive is entitled to be heard by the court on matters mentioned in subsection (3), even though the chief executive is not a party to the proceeding.

(3) The matters are—

(a) adjournment of the proceeding; and

(b) matters relating to the custody or release from custody of the child pending completion of the proceeding; and

(c) sentence orders that may be made against the child; and

(d) without limiting paragraphs (a) to (c), matters on which the court considers the chief executive should be heard.

(4) If the chief executive is a party to the proceeding, the chief executive may appear and be represented by an officer of the department.

61 Adjournment power generally

(1) If it appears to the Childrens Court that a proceeding before it in relation to an offence could be more conveniently, economically or fairly heard before the Childrens Court at another place, the court may adjourn the hearing to that other place.

(2) The remand, bail and custody provisions of part 3 apply to the adjournment.

62 Publication prohibited

(1) In this section—

"criminal proceeding" means a proceeding taken in Queensland against a child for an indictable or simple offence.

"identifying matter" means—

(a) the name, address, school, place of employment or any other particular likely to lead to the identification of the child charged in the criminal proceeding; or

(b) any photograph, picture, videotape or other visual representation of the child or of another person that is likely to lead to the identification of the child charged in the criminal proceeding.

"publish" means publish in Queensland or elsewhere to the general public by means of television, newspaper, radio or any other form of communication.

(2) A person must not publish an identifying matter in relation to a criminal proceeding.

Maximum penalty (subject to part 5)—

(a) in the case of a body corporate—200 penalty units;

(b) in the case of an individual—100 penalty units or imprisonment for 6 months.

63 One year limitation inapplicable if indictable offence dealt with summarily

(1) The purpose of this section is to ensure that a child may elect to have an indictable offence dealt with before a Childrens Court magistrate despite delay in prosecution.

(2) A Childrens Court magistrate may exercise jurisdiction under this part in relation to an indictable offence even though more than 1 year has passed since the offence was committed.

64 Court to refrain from inappropriate summary hearing of indictable offence

(1) This section applies if a Childrens Court magistrate (**"the court"**) has jurisdiction to hear and determine summarily a charge against a child of an indictable offence (subject to the consent of the child).

(2) The court must refrain from exercising the jurisdiction unless it is satisfied that the charge can be adequately dealt with summarily by the court.

(3) The court may initially decide to exercise the jurisdiction on submissions made by the parties.

(4) If at any stage of the proceeding the court decides that the charge can not be adequately dealt with summarily by the court, any further proceeding before the court must be conducted as a committal proceeding.

65 Procedural elections under this Act in relation to an indictable offence replace other elections

The rules set out in this part relating to election by a child of procedure in relation to an indictable offence apply despite any right of election that may be conferred on any person under any other Act.

66 Court to check child's legal representation

If a child appears before a court charged with an indictable offence but is not represented by a legal practitioner, the court may proceed with a hearing and determination only if it is satisfied that—

(a) the child has had reasonable opportunity to obtain representation by a legal practitioner; and

(b) has decided not to be represented by a legal practitioner.

67 Use of adduced evidence after change of procedure

(1) This section applies if a proceeding before a court (**"former proceeding"**) changes into another proceeding (**"new proceeding"**) before the court because of—

(a) an election or change of an election under this Act; or

(b) a decision of a court to refrain from exercising summary jurisdiction in relation to an indictable offence; or

(c) a decision of a court to remove the proceeding to its concurrent jurisdiction on discovering a misapprehension affecting the court's treatment of the defendant as a child or adult; or

(d) a decision of a court to continue or hear a proceeding in its concurrent jurisdiction under division 9.[44]

(2) If evidence has been adduced in the course of the former proceeding, the hearing again of the evidence in the new proceeding is at the discretion of the court.

(3) If the court decides against hearing the evidence again in the new proceeding, the evidence is taken to have been adduced by the party who adduced the evidence in the former proceeding.

Division 2—Serious offence procedure

Subdivision 1—Application

68 Application of div 2

This division applies to a proceeding in which a child is charged with a serious offence.

44 Part 4, division 9 (Child offenders who become adults)

Subdivision 2—Procedure if the serious offence is a supreme court offence

69 Meaning of "supreme court offence"

A **"supreme court offence"** is an offence that the District Court does not have jurisdiction to try because of the *District Court Act 1967*, section 61.[45]

69A Application of sdiv 2

This subdivision applies to a proceeding before a Childrens Court magistrate (the **"court"**) in which a child is charged with a supreme court offence.

69B Committal proceeding only option

The proceeding must be conducted as a committal proceeding.

69C Child must be committed for trial or sentence before Supreme Court

If, on consideration of all the evidence adduced at the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for the offence, the court must order the child to be committed—

(a) to be tried before the Supreme Court; or

(b) if the child enters a plea of guilty at the committal proceeding—to be sentenced before the Supreme Court.

45 Now see *District Court of Queensland Act 1967*, sections 61 (Limited criminal jurisdiction if maximum penalty more than 14 years) and 140(2) (Transitional—change of name to District Court of Queensland).

Subdivision 3—Procedure if the serious offence is not a supreme court offence

69D Application of sdiv 3

This subdivision applies to a proceeding before a Childrens Court magistrate (the **"court"**) in which a child is charged with a serious offence other than a supreme court offence.

69E Committal proceeding only option

The proceeding must be conducted as a committal proceeding.

70 Election if trial results

(1) This section only applies if, on consideration of all the evidence adduced on the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for the offence.

(2) If the child is represented by a legal practitioner, then, before ordering the child to be committed to be tried under the *Justices Act 1886*, section 108,[46] the court must explain to the child and any parent of the child who is present the child's right of election mentioned in subsection (3).

(3) The child may elect—

(a) to be committed to a court of competent jurisdiction (other than a Childrens Court judge) for trial before a judge and jury; or

(b) to be committed for trial before a Childrens Court judge sitting without a jury.

(4) After the explanation, the court must then ask the child whether the child consents to being tried before a Childrens Court judge without a jury.

(5) If the child consents, the court must order the child to be committed to be tried by a Childrens Court judge.

(6) If the child—

(a) is not legally represented; or

46 *Justices Act 1886*, section 108 (Procedure upon a consideration of all the evidence)

(b) if legally represented—does not give the consent mentioned in subsection (5);

the court must order the child to be committed to be tried before a court of competent jurisdiction (other than a Childrens Court judge).

(7) This section does not apply if a child enters a plea of guilty at the committal proceeding.

71 Election on plea of guilty

(1) If the child enters a plea of guilty at the committal proceeding, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).

(2) The child may elect—

(a) to be committed for sentence before a court of competent jurisdiction (other than a Childrens Court judge); or

(b) to be committed for sentence before a Childrens Court judge.

(3) The court must ask the child whether the child consents to being sentenced before a Childrens Court judge.

(4) If the child consents, the court must order the child to be committed to be sentenced by a Childrens Court judge.

(5) If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed for sentence before a court of competent jurisdiction (other than a Childrens Court judge).

Subdivision 4—Proceedings before Childrens Court judge

72 Jurisdiction of Childrens Court judge over committed child

(1) In this section—

"committal charge" means a charge on which a child is committed for trial or sentence before a Childrens Court judge, and includes a charge arising out of the same, or same set of, circumstances.

(2) Subject to subsection (4), the judge, sitting alone without a jury, may try the child on the committal charge if—

(a) the child was committed for trial; or

(b) the child was committed for sentence but a plea of not guilty is entered under section 73.

(3) Subject to subsection (4), the judge may sentence the child on the committal charge and any other charge for an indictable offence on which the child consents to being sentenced by the judge.

(4) The child may withdraw the child's election to be tried before the Childrens Court judge without a jury.

(5) The withdrawal of the election must happen before the child enters a plea to the committal charge.

73 Child may change plea of guilty

(1) A child who appears before a Childrens Court judge after being committed for sentence on an indictable offence is in all cases entitled to enter a plea of not guilty when called on to enter a plea under the Criminal Code, section 600.

(2) To the extent that this section is inconsistent with the Criminal Code, section 600, this section prevails.

(3) Evidence that the child previously entered a plea of guilty at the committal proceeding is not admissible in the trial following the change of plea.

74 Removal of proceeding to another jurisdiction

(1) The Crown may apply to a Childrens Court judge for the removal to another court of competent jurisdiction of a proceeding on a charge for an offence committed for trial before the judge on the ground that this would ensure that the child is jointly tried with another person.

(2) If the judge is satisfied that—

(a) the child should be tried with the other person; and

(b) removing the proceeding would ensure that the committal of the proceeding before the judge did not prevent this from happening;

the judge may grant the request and remove the proceeding as requested.

(3) In removing the proceeding, the judge may exercise power as if the proceeding had been brought before the wrong court.

(4) This section does not prevent the Childrens Court judge presiding over the trial of the child in the judge's concurrent jurisdiction.

75 General laws relating to indictable offence apply

Subject to this division, the provisions of the Criminal Code or any other Act relating to the hearing and determination on indictment of an offence apply to a proceeding before a Childrens Court judge under this division.

Division 3—Indictable offence (other than serious offence) procedure when child legally represented

76 Application

This division applies to a proceeding before a Childrens Court magistrate (**"the court"**) in which a child is—

(a) charged with an indictable offence (other than a serious offence); and

(b) represented by a legal practitioner.

77 Explanation and election at start

(1) Subject to section 64,[47] before evidence is adduced at the committal proceeding, the court must explain to the child and any parent of the child who is present the child's right of election mentioned in subsection (2).

(2) The child may elect—

(a) to have the proceeding continue as a committal proceeding; or

(b) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and determination of the charge summarily by the court.

(3) The court must then ask the child whether the child consents to having the charge heard and determined summarily by the court.

(4) If the child consents, the court must proceed to hear and determine the charge summarily.

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47 Section 64 (Court to refrain from inappropriate summary hearing of indictable offence)

(5) If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.

78 Procedure on summary hearing

(1) On proceeding to hear and determine the charge summarily, the court must—

(a) reduce the charge to writing; and

(b) ask the child whether the child is guilty or not guilty.

(2) If the child pleads guilty, the court must act under section 79.

(3) If the child pleads not guilty, the court may proceed in the same way as is provided in the *Justices Act 1886*, section 146.

79 Election on plea of guilty

(1) If the child enters a plea of guilty at the committal proceeding, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).

(2) The child may elect—

(a) to be committed for sentence before a court of competent jurisdiction; or

(b) to be sentenced by the Childrens Court magistrate.

(3) The court must then ask the child whether the child consents to being sentenced by the Childrens Court magistrate.

(4) If the child consents, the Childrens Court magistrate must sentence the child.

(5) If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed for sentence before a court of competent jurisdiction.

Division 4—Indictable offence (other than serious offence) procedure when child not legally represented

80 Application of division

This division applies to a proceeding before a Childrens Court magistrate (**"the court"**) in which a child is—

(a) charged with an indictable offence (other than a serious offence); and

(b) not represented by a legal practitioner.

81 Start as committal proceeding

The proceedings must be conducted as a committal proceeding until all the evidence has been adduced on the part of the prosecution.

82 Explanation of election at end of prosecution case

(1) Subject to section 64,[48] if after all the evidence to be offered on the part of the prosecution has been adduced, the court is of the opinion that the evidence is sufficient to put the child on trial for the offence the court must explain to the child, and any parent present in the court, the child's right of election mentioned in subsection (2).

(2) The child may elect—

(a) to have the proceeding continue as a committal proceeding; or

(b) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and determination of the charge summarily by the court.

(3) The court must then ask the child whether the child consents to having the charge heard and determined summarily by the court.

(4) If the child consents, the court must discontinue the committal proceeding and proceed to hear and determine the charge summarily.

(5) If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.

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48 Section 64 (Court to refrain from inappropriate summary hearing of indictable offence)

83 Procedure on summary hearing

(1) On proceeding to hear and determine the charge summarily, the court must—

(a) reduce the charge to writing; and

(b) ask the child whether the child is guilty or not guilty.

(2) If the child pleads guilty, the court may act under section 84.

(3) If the child pleads not guilty, the court may proceed in the same way as is provided in the *Justices Act 1886*, section 146, subject to section 67.[49]

84 Election on plea of guilty

(1) If the child enters a plea of guilty during the committal proceeding, the court must explain to the child and any parent of the child who is present the child's right of election mentioned in subsection (2).

(2) The child may elect—

(a) to be committed for sentence before a court of competent jurisdiction; or

(b) to be sentenced by the Childrens Court magistrate.

(3) The court must then ask the child whether the child consents to being sentenced by the Childrens Court magistrate.

(4) If the child consents, the Childrens Court magistrate must sentence the child.

(5) If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed for sentence before a court of competent jurisdiction.

Division 5—Rules applying if child and another person are charged

85 Joint committal proceeding in relation to adult and child are allowed

Despite the *Childrens Court Act 1992*, section 21, a magistrate may at the same time conduct a committal proceeding—

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49 Section 67 (Use of adduced evidence after change of procedure)

(a) as a Childrens Court magistrate, in relation to a charge of an indictable offence brought against a child; and

(b) as a justice, in relation to an indictable offence brought against an adult;

if, were the child an adult, a committal proceeding in relation to each offence would have been conducted at the same time against both persons.

86 Prosecution may request a matter proceed as a committal to the Supreme or the District Court in order to ensure joint trial

(1) The purpose of this section is to ensure that the operation of divisions 2 to 4 does not prevent a child from being tried with another offender.

(2) Before a Childrens Court magistrate commits a child for trial before a Childrens Court judge on a charge of a serious offence, the prosecution may request that the child be committed for trial instead to another court of competent jurisdiction on the ground that this would ensure that the child will be tried jointly with another person.

(3) Before a Childrens Court magistrate starts to hear and determine summarily a charge against a child for an indictable offence other than a serious offence, the prosecution may request that the proceeding be conducted or continued as a committal proceeding on the ground that this would ensure that the child will be jointly tried with another person.

(4) If the Childrens Court magistrate is satisfied, after hearing the submissions of the parties—

(a) that the child should be tried jointly with the other person; and

(b) that granting the prosecution's request would ensure that the operation of divisions 2 to 4 did not prevent this from happening;

the magistrate must grant the request and proceed as for the committal of the child for trial on the offence in accordance with the request.

(5) Subsection (4) has effect despite divisions 2 to 4.

Division 6—Appeal and review

87 Appeal rights generally

(1) This part does not affect the right of any person to appeal, or apply for leave to appeal, under the Criminal Code or the *Justices Act 1886* against an order of a court or judicial officer.

(2) In addition to the right to apply for a review of a sentence order under section 88, a child has the same right as an adult to appeal against the order.

(3) The provisions of the Criminal Code, chapter 67, and the *Justices Act 1886*, part 9, relating to appeals or applications for leave to appeal apply, with necessary modifications and any prescribed modifications—

(a) in relation to a finding of guilt or order made in a proceeding against a child for an offence as it applies in relation to a conviction or order made in a proceeding against an adult for an offence; and

(b) in relation to a proceeding before a Childrens Court magistrate as it applies to a proceeding before a Magistrates Court; and

(c) in relation to a proceeding before a Childrens Court judge as it applies in relation to a proceeding before the District Court.

88 Sentence review

A Childrens Court judge on application may review a sentence order made by a Childrens Court magistrate.

89 Application for review

(1) An application may be made by—

(a) a child against whom the sentence order was made; or

(b) the chief executive acting in the child's interests; or

(c) the complainant or arresting officer for the charge for which the sentence order was made.

(2) An application must be made—

(a) in the way allowed by the Childrens Court Rules; and

(b) within 28 days after the sentence order is made or within a later period that may at any time be allowed by the Childrens Court judge.

90 Preliminary procedure

The proper officer of the Childrens Court at the place where the Childrens Court judge is sitting must notify the applicant and all other parties of the place and time for the hearing of the application.

91 Stay of proceeding and suspension of orders

(1) Without affecting—

(a) another power to stay the effect of an order of a court; or

(b) the operation of a law that has that effect;

a Childrens Court judge may order a stay of all or any proceedings under a sentence order that is subject to a review application under this division.

(2) The Childrens Court judge may impose conditions the judge considers appropriate on the stay.

92 Conduct of review

(1) A review of a sentence must be by way of rehearing on the merits.

(2) The Childrens Court judge may have regard to—

(a) the record of the proceeding before the Childrens Court magistrate; and

(b) any further submissions and evidence by way of affidavit or otherwise.

(3) The review of a sentence order must be conducted expeditiously and with as little formality as possible.

93 Review decision

(1) On reviewing a sentence order, a Childrens Court judge may—

(a) confirm the order; or

(b) vary the order; or

(c) discharge the order and substitute another order within the jurisdiction of a Childrens Court magistrate to make.

(2) The judge may also make any other order a Childrens Court magistrate could have made in connection with the sentence order as confirmed, varied or substituted under subsection (1).

94 Interrelation with other types of appeal

(1) In this section—

"application" by a child for a sentence review, includes an application by the chief executive acting in the child's interests.

"ordinary appeal" means—

(a) an appeal or application for leave to appeal under the Criminal Code, chapter 67; or

(b) an appeal under the *Justices Act 1886*, part 9.

"sentence review" means a review under section 88[50] of a sentence order.

(2) If a child starts a proceeding for an ordinary appeal against a sentence order—

(a) an application by the child for a sentence review of the sentence order can not be started; and

(b) if an application by the child for a sentence review of the sentence order is pending at the start of the proceeding for an ordinary appeal—the application by the child for the sentence review lapses.

(3) If—

(a) a child starts a proceeding for an ordinary appeal against a finding of guilt made against the child in relation to which a sentence order was made; or

(b) a person other than a child against whom a sentence order has been made starts a proceeding for an ordinary appeal against the sentence order;

50 Section 88 (Sentence review)

a Childrens Court judge can not proceed to hear and determine any pending application by the child for a sentence review against the sentence order until the ordinary appeal is finished.

(4) If—

(a) a complainant or arresting officer applies for a sentence review of a sentence order made against a child; and

(b) the child starts a proceeding for an ordinary appeal against the sentence order or the finding of guilt for which it was made;

a Childrens Court judge can not proceed to hear and decide the application for the sentence review until the ordinary appeal is finished.

95 Incidents of review

(1) No costs may be ordered against a party on a sentence review.

(2) The decision of a Childrens Court judge on a sentence review—

(a) takes effect as the decision of the Childrens Court magistrate who made the sentence order reviewed; and

(b) subject to subsection (2), may be enforced or appealed against in the same way as the decision of the Childrens Court magistrate.

(3) Subsection (2) does not authorise—

(a) a further review by a Childrens Court judge of a sentence already reviewed under this division by a Childrens Court judge; or

(b) an appeal to a District Court judge under the *Justices Act 1886*, section 222.

96 Orders at end of reviews

(1) Subject to section 232,[51] if as a result of the decision of the Childrens Court judge on a sentence review, a child is required to serve a period of detention or the unserved part of a period of detention, the judge, as part of the order on the appeal, must direct that a warrant be issued to arrest the child and commit the child to a detention centre.

(2) Any justice may issue the warrant.

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51 Section 232 (Enforcement of sentence by calendar)

Division 7—Mistake in exercise of jurisdiction

97 Meaning of proceeding

In this division—

"proceeding" means a proceeding for the hearing and determination of a charge of an offence.

98 Correction of error by court making order

(1) For the purpose of correcting an error in a proceeding, a Childrens Court magistrate has the same power as a Magistrates Court to reopen the proceeding and correct the error.

(2) For the purpose of applying the *Justices Act 1886*, section 147A—

(a) mention in the section of a conviction includes a finding of guilt; and

(b) if the defendant affected is a child, the persons who may apply under the section include the chief executive acting in the child's interests.

(3) This section does not affect the power of a court under another section of this division.

98A Court may reopen sentencing proceedings

(1) The *Penalties and Sentences Act 1992*, section 188[52] applies to a Childrens Court Judge and a Childrens Court Magistrate.

(2) For the *Penalties and Sentences Act 1992*, section 188(5)(b), a party to the proceeding includes, if the defendant affected is a child, the chief executive acting in the interests of the child.

(3) This section does not affect the power of a court under another section of this division.

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52 *Penalties and Sentences Act 1992*, section 188 (Court may reopen sentencing proceedings)

99 Removal of a proceeding because of lack of jurisdiction

(1) If a court is satisfied that it does not have jurisdiction to hear and determine a proceeding before it because of this Act, it may remove the proceeding to a court of competent jurisdiction.

(2) To remove and deal with the proceeding that remains before it, the court may—

(a) give directions it considers necessary; and

(b) take or make any procedural action or order the court of competent jurisdiction could take or make.

(3) Subsection (2) does not limit any other power the court may have to deal with the proceeding.

100 Lack of jurisdiction discovered in course of a proceeding

(1) This section applies if, in the course of a proceeding, a court finds that it does not have jurisdiction to hear and determine the proceeding because of this Act.

(2) If the court has the necessary jurisdiction in its concurrent jurisdiction, it may continue the proceeding in the concurrent jurisdiction.

(3) If the court does not act under subsection (2), it may deal with the proceeding under section 99.

101 Lack of jurisdiction discovered after proceeding ends

(1) This section applies if a finding or order has been made in a proceeding—

(a) on the assumption that the person charged was a child, when the person was an adult; or

(b) on the assumption that the person charged was an adult, when the person was a child.

(2) Application may be made to the court that made the finding or order to set aside the finding or order.

(3) The application may be made by—

(a) a party to the proceeding; or

(b) if the person charged in the proceeding was a child—the chief executive acting in the child's interests; or

(c) the director of public prosecutions.

(4) The application must be made—

(a) within 28 days after the error is discovered by the applicant; or

(b) by a later day that the court may at any time allow.

(5) On hearing the application, the court may set aside the finding or order and—

(a) make the finding or order the court considers should have been made in the first place, if necessary after deciding what facts the court when differently constituted must have found when making the finding or order set aside; or

(b) take any action or make any order that could have been made by the court if it had discovered the error immediately before making the finding or order.

(6) A court can not set aside an acquittal under this section or an order dismissing a charge or discharging a person.

Division 8—Special sentencing provisions relating to detainee

102 Extension of Act for detainee offender

(1) In this section—

"detainee" means a person serving a period of detention under a sentence order.

(2) If—

(a) a proceeding is started against a detainee for an offence committed within the period of 1 year after the detainee ceased to be a child; and

(b) the proceeding is started within 1 year of the commission of the offence;

the detainee may be treated as a child for the purpose of the proceeding.

(3) A court may treat the detainee as a child if it considers this appropriate, for example because—

(a) treatment of the detainee as an adult would disrupt the application of an existing sentence order; or

(b) the offence was committed in a detention centre in circumstances suggesting that the detainee should be treated as a child in relation to the offence; or

(c) a recommendation made by the chief executive or in a presentence report supports the treatment of the detainee as a child.

(4) A court may act under this section on application by a party to the proceeding or on its own initiative.

Division 9—Child offenders who become adults

103 Definitions for pt 4, div 9

In this division—

"offence" means the offence the offender committed as a child.

"offender" means a person who has—

(a) committed an offence as a child; and

(b) since committing the offence become an adult.

"sentence", in relation to an offender sentenced as an adult, includes orders made instead of sentence.

104 Offender treated as child

Subject to this division, the offender must be treated as a child for the purposes of this Act during any proceeding for the offence.

105 When offender must be treated as an adult

(1) If 1 year has passed after an offender has become an adult—

(a) a proceeding afterwards started against the offender for the offence must be taken as if the offender were an adult at the time of the commission of the offence; and

(b) if found guilty in the proceeding—the offender must be sentenced as an adult.

(2) If—

(a) a proceeding has started against an offender for the offence in the way provided in this Act for a child; but

(b) the proceeding has not been completed to a finding of guilty or not guilty by the time 1 year has passed after the offender becomes an adult;

then—

(c) the proceeding must be finished in the way provided in this Act for a child; but

(d) if found guilty—the offender must be sentenced as an adult.

(3) An offender must not be treated as an adult under this section if the court is satisfied that there was undue delay on the part of the prosecution in starting or completing the proceeding.

106 When offender may be treated as an adult

(1) This section applies if—

(a) a proceeding has started against an offender for an offence in the way provided in this Act for a child (the **"childhood proceeding"**); and

(b) by the time 1 year has passed after the offender becomes an adult—

(i) the childhood proceeding has not been completed to a finding of guilty or not guilty; and

(ii) the offender, for another offence—

(A) is proceeded against as an adult; or

(B) has been sentenced as an adult.

(2) The court hearing the childhood proceeding may decide to continue the proceeding as if the offender were an adult when the offence was committed.

(3) For subsection (2), the Childrens Court may continue the proceeding in its concurrent jurisdiction.

(4) If the offender is found guilty, the offender must be sentenced as an adult.

(5) This section applies despite section 105(2).

107 Continuing effect on offender of orders made when child

(1) An order that may be made under this Act against a child (**"the order"**) may be made even though the person concerned will have ceased to be a child before the order's effect will have ceased under its terms.

(2) If a person against whom the order is made ceases to be a child before the order's effect ceases under its terms—

(a) the order continues to apply as if the person continued to be a child; and

(b) other proceedings and orders arising out of the order that could have been taken or made in relation to the person had the person remained a child must be taken or made as if the person were a child.

(3) For subsection (2), a reference in this Act to a child subject to an order who commits an offence or contravenes a requirement of, or prescribed requirement relating to, the order is declared to include a reference to the child committing the offence or contravening the requirement while subject to the order after becoming an adult.

(4) Subsection (3) does not limit subsection (2).

(5) If—

(a) a proceeding or order mentioned in subsection (2)(b) may be taken before, or made by, a court if a person is found guilty of an offence before the court; and

(b) the person is found guilty before a Magistrates Court of an offence committed as an adult;

the court has concurrent jurisdiction to hear the proceeding or make the order.

(6) For subsection (5), any judicial officer constituting the Magistrates Court may constitute the Childrens Court.

107A When order made as child may be dealt with as adult order

(1) This section applies if—

(a) a sentence order is made against a person as a child (the **"childhood sentence order"**); and

(b) a proceeding arising out of the order is taken before a court after the person becomes an adult.

(2) If the circumstances mentioned in subsection (3) apply, the court may decide to deal with the person as if—

(a) the childhood sentence order were a corresponding adult order made for the offence; and

(b) the offence were committed as an adult.

(3) The circumstances are—

(a) the person, for another offence committed as an adult—

(i) is being proceeded against; or

(ii) has been sentenced; or

(b) more than 1 year has passed after the offender becomes an adult.

(4) The court may declare the childhood sentence order to be a corresponding adult order and make all necessary changes to the childhood sentence order to change it to a corresponding adult order.

(5) The person is then subject to the corresponding sentence order for the proceeding before the court and any further proceedings and orders.

(6) For subsection (2), the Childrens Court may continue the proceeding in its concurrent jurisdiction.

(7) In this section—

"corresponding adult order" to a childhood sentence order, means a type of sentence to which an adult is liable that is similar to the type of the childhood sentence order, for example—

(a) a probation order made under the *Penalties and Sentences Act 1992* is a corresponding adult order to a probation order made under this Act; and

(b) a community service order made under the *Penalties and Sentences Act 1992* is a corresponding adult order to a community service order made under this Act.

107B Sentencing offender as adult

(1) Subject to subsections (2) and (3), a court sentencing an offender as an adult under section 105, 106 or 107A[53] has jurisdiction to sentence the offender in any way that an adult may be sentenced.

(2) The court must have regard to—

(a) the fact that the offender was a child when the offence was committed; and

(b) the sentence that might have been imposed on the offender if sentenced as a child.

(3) The court can not order the offender—

(a) to serve a term of imprisonment longer than the period of detention that the court could have imposed on the offender if sentenced as a child; or

(b) to pay an amount by way of fine, restitution or compensation greater than that which the court could have ordered the offender to pay if sentenced as a child.

(4) Subsection (3) applies even though an adult would otherwise be liable to a heavier penalty which by operation of law could not be reduced.

107C Commission to be notified if offender sentenced as adult

(1) This section applies if, under this division, an order is made by a court sentencing an offender as an adult.

(2) The chief executive must immediately give the chief executive (corrective services) notice of the order.

53 Section 105 (When offender must be treated as an adult), 106 (When offender may be treated as an adult) or 107A (When order made as child may be dealt with as adult order)

PART 5—SENTENCING

Division 1—Sentencing generally

108 Jurisdiction to sentence child exclusive

(1) A court that sentences a child for an offence must sentence the child under this part.

(2) Subsection (1) applies despite any other Act or law.

109 Sentencing principles

(1) In sentencing a child for an offence, a court must have regard to—

(a) subject to this Act, the general principles applying to the sentencing of all persons; and

(b) the general principles of juvenile justice; and

(c) the special considerations stated in subsection (2); and

(d) the nature and seriousness of the offence; and

(e) the child's previous offending history; and

(f) any information about the child, including a presentence report, provided to assist the court in making a determination; and

(g) if the child is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the child's community that are relevant to sentencing the child, including, for example—

(i) the child's relationship to the child's community; or

(ii) any cultural considerations; or

(iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and

(h) any impact of the offence on a victim; and

(i) a sentence imposed on the child that has not been completed; and

(j) a sentence that the child is liable to have imposed because of the revocation of any order under this Act for the breach of conditions by the child; and

(k) the fitting proportion between the sentence and the offence.

(2) Special considerations are that—

(a) a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed; and

(b) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community; and

(c) the rehabilitation of a child found guilty of an offence is greatly assisted by—

(i) the child's family; and

(ii) opportunities to engage in educational programs and employment; and

(d) a child who has no apparent family support, or opportunities to engage in educational programs and employment, should not receive a more severe sentence because of the lack of support or opportunity; and

(e) a detention order should be imposed only as a last resort and for the shortest appropriate period.

(3) In sentencing a child for an offence, a court may receive any information it considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence.

(4) If required by the court for subsection (1)(g), the representative must advise the court whether—

(a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or

(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the child or victim.

(5) In this section—

"child's community" means the child's Aboriginal or Torres Strait Islander community, whether it is—

(a) an urban community; or

(b) a rural community; or

(c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

"community justice group", for a child, means—

(a) the community justice group established under the *Community Services (Aborigines) Act 1984*, part 3A, division 1, or *Community Services (Torres Strait) Act 1984*, part 3A, division 1, for the child's community; or

(b) a group of persons within the child's community, other than a department of government, that is involved in the provision of any of the following—

(i) information to a court about Aboriginal or Torres Strait Islander offenders;

(ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;

(iii) other activities relating to local justice issues; or

(c) a group of persons made up of the elders or other respected persons of the child's community.

110 Presentence report

(1) A court, before it sentences a child found guilty of an offence, may order the chief executive to give to the court a presentence report concerning the child.

(2) The court may request that the report contain specified information, assessments and reports relating to the child or the child's family or other matters.

(3) Pending the giving of a presentence report, the court may adjourn the proceeding and remand the child in custody or exercise the powers conferred by part 3 to grant bail to and release the child from custody.

(4) In releasing the child from custody, the court may impose conditions that it considers necessary to facilitate the preparation of the presentence report.

(5) The chief executive must cause the presentence report to be prepared in documentary form and given to the court promptly.

(6) The report must be given to the court promptly, but need not be given in less than 15 days.

111 Presentence report evidence

(1) The court may request the author of a presentence report, or a person who gave a statement included in the report, to attend before the court in the way indicated by the court for the purpose of giving more information.

(2) The court may ask, and allow parties to the proceeding to ask, questions of a person attending the court under subsection (1).

(3) A court may give as much weight as it considers appropriate to a presentence report or answers given in response to questions under subsection (2).

112 Disclosure of presentence report

(1) If a presentence report is given to a court under section 110, the court must give a copy of the report as soon as practicable—

(a) to the prosecution; and

(b) if the child is represented by a legal practitioner—the legal practitioner.

(2) If the child is not represented by a legal practitioner, the court may give the report to the child or a parent of the child present in the court.

(3) The court may give directions it considers appropriate about a report given to anyone under subsection (1) or (2), including, for example, a direction limiting disclosure and a direction requiring the report's return.

113 Finding of guilt as child may be disclosed while a child

(1) A finding of guilt against a child by a court for an offence, whether or not a conviction has been recorded, is part of the criminal history of the child to which regard may be had by a court that subsequently sentences the child for any offence as a child.

(2) Subsection (1) applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

114 Evidence of childhood finding of guilt not admissible against adult

(1) In a proceeding against an adult for an offence, there must not be admitted against the adult evidence that the adult was found guilty as a child of an offence if a conviction was not recorded.

(2) Subsection (1) applies even though the evidence would otherwise be admissible under the *Evidence Act 1977*, section 15 and the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 5(3)(b).

(3) Subsection (1) does not apply to the finding of guilt for a purpose mentioned in subsection (4) if the adult, as a child, was dealt with for a seven year offence and then committed and was dealt with for a seven year offence.

(4) For an adult mentioned in subsection (3), the finding of guilt is part of the adult's criminal history for a proceeding in which the adult is sentenced for any offence.

(5) Subsections (3) and (4) apply to the finding of guilt despite the *Criminal Law (Rehabilitation of Offenders) Act 1986.*

(6) However, the provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986* applying at the end of a rehabilitation period for a conviction apply as if the finding of guilt were a conviction.

(7) In this section—

"dealt with", for an offence, includes the following—

(a) being administered a caution for the offence;

(b) making a community conference agreement for the offence;

(c) dealt with on a finding of guilt.

(8) This section does not prevent a court that is sentencing an adult from receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court's sentence.

114A Particular cautions and community conference agreements admissible as part of person's criminal history

(1) A caution administered to a person may be considered as part of the person's criminal history in a proceeding in which—

(a) the person is sentenced for an offence; and

(b) the caution is a disclosable caution.

(2) A community conference agreement made by a person for an offence committed by the person may be considered as part of the person's criminal history in a proceeding in which—

(a) the person is sentenced for an offence; and

(b) the agreement is a disclosable community conference agreement.

115 Mandatory sentence provisions inapplicable

A court that sentences a child for an offence—

(a) must disregard a requirement under any other Act that an amount of money or term of imprisonment must be the minimum penalty for the offence; and

(b) must take a requirement under any other Act that an amount of money or term of imprisonment must be the only penalty for the offence as providing instead that the amount or term is the maximum penalty for the offence.

116 Preference to be given to compensation and restitution

If a court sentencing a child for an offence considers—

(a) that it is appropriate to make both of the orders that the child pay—

(i) an amount by way of compensation or restitution; and

(ii) an amount by way of fine; and

(b) that the child has insufficient resources to pay both amounts;

the court must give preference to ordering the child to pay only the compensation or restitution amount.

117 Outstanding charge may be taken into account on sentence

(1) A court sentencing a child for an offence may take into account an outstanding charge against the child in the same way an outstanding charge may be taken into account when an adult is sentenced.

(2) The *Penalties and Sentences Act 1992*, section 189 applies for the purpose of subsection (1).

118 Children entitled to explanation of sentence

(1) When making an order sentencing a child for an offence a court must take steps to ensure that the child understands—

(a) the purpose and effect of the order; and

(b) the consequences (if any) that may follow if the child fails to comply with the requirements of the order.

(2) Examples of the steps a court may take are—

(a) directly explaining these matters in court to the child; or

(b) having some appropriate person give the explanation; or

(c) having an interpreter or other person able to communicate effectively with the child give the explanation; or

(d) causing an explanatory note in English or another language to be supplied to the child.

(3) Subsection (1) does not apply where the child's presence is not required at sentence.

118A Audio visual link or audio link may be used to sentence

(1) The court may allow anything that must or may be done in relation to the sentencing of a child to be done over an audio visual link or audio link, if the prosecutor and the child agree to the use of the link.

(2) The provisions of the *Evidence Act 1977* relating to the use of an audio visual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).

119 Copy of court order to be given to child, parent etc.

(1) A court that makes an order sentencing a child for an offence must cause—

(a) the order to be promptly reduced to writing by the proper officer of the court in the prescribed form; and

(b) a copy of the order to be given to—

(i) the child; and

(ii) a parent of the child; and

(iii) the chief executive.

(2) If a person mentioned in subsection (1)(b) is not present in the court, the subsection—

(a) is sufficiently complied with if the proper officer of the court serves a copy of the sentence order on the person; and

(b) does not apply if the proper officer of the court is unable to ascertain the whereabouts of the person after reasonable inquiries.

(3) Failure to comply with subsection (1) does not affect the validity of the sentence order.

Division 1A—Court referred community conferences before sentencing

119A Reference to community conference by court

(1) This section applies if a finding of guilt for an offence is made against a child before a court.

(2) The court may refer the offence to a community conference, if—

(a) the victim consents, if there was a victim of the offence; and

(b) the court considers—

(i) the offence may be appropriately dealt with by a community conference without the court making a sentence order; or

(ii) referral to a community conference would help the court in making an appropriate sentence order; and

(c) the court considers a community conference convenor will be available for the community conference.

(3) On making the referral the court may—

(a) give directions it considers appropriate to the child, the convenor of the conference and anyone else who may participate in the conference; and

(b) adjourn the proceeding for the offence.

119B If an agreement is made on an indefinite referral by a court

(1) This section applies if a community conference agreement is made on referral by a court that considered the offence may be appropriately

dealt with by a community conference without the court making a sentence order.

(2) The community conference convenor must give notice to the court's proper officer that the agreement was made.

(3) A notice under subsection (2)—

(a) brings the court proceeding for the offence to an end; and

(b) the child is then not liable to be further prosecuted for the offence.

(4) On the giving of the notice, the child is taken to have been found guilty by the court of the offence without a conviction being recorded.

119C Powers of proper officer if indefinite referral is unsuccessful or if child contravenes agreement made on court's indefinite referral

(1) This section applies if—

(a) a court refers an offence to a community conference on considering the offence may be appropriately dealt with by a community conference without the court making a sentence order; and

(b) a circumstance mentioned in subsection (2) happens.

(2) The circumstances are—

(a) the child fails to attend the conference as directed by the court; or

(b) the community conference ends without an agreement being made; or

(c) a community conference agreement is made and the child contravenes the agreement.

(3) The court's proper officer may—

(a) take no action; or

(b) refer the offence to another community conference, with or without the same convenor; or

(c) bring the charge for the offence back on before the court for sentencing.

(4) For subsection (3)(c), the proper officer must give notice to the child and the chief executive that the proceeding for the offence is to be heard by the court on a specified day.

(5) If requested by the proper officer, the commissioner of the police service must help the proper officer give the notice.

(6) If the proceeding for the offence was previously brought to an end by a notice under section 119B(2), a notice under subsection (4)—

(a) restarts the proceeding from when it was brought to an end; and

(b) the child is then liable to be sentenced for the offence.

(7) In making a sentence order for the offence, the court must consider—

(a) any participation by the child in the community conference; and

(b) if an agreement is made—

(i) the agreement; and

(ii) anything done by the child under the agreement.

119D If an agreement is made on a referral by a court before sentence

(1) This section applies if a community conference agreement is made on referral by a court because the court considered referral to a community conference would help the court in making an appropriate sentence order for the offence.

(2) In making a sentence order for the offence, the court must consider—

(a) the child's participation in the community conference; and

(b) the agreement; and

(c) anything done by the child under the agreement; and

(d) a convenor's report under section 18E(6).[54]

(3) A court may impose a requirement on the child under the sentence order or in addition to the sentence order, even if the requirement is also a requirement of the agreement.

54 Section 18E (Conduct of community conference)

Division 1B—Court referred drug assessment and education sessions before sentencing

Subdivision 1—Interpretation

119F Definitions for div 1B

In this division—

"approved provider" see section 119J.

"attend", for a drug assessment and education session, means attend all of the session.

"disqualifying offence" see section 119I.

"drug assessment and education session", for a child, means a single one-on-one session provided by an approved provider involving assessment of the child's drug use, drug education and identification of any appropriate treatment options for the child.

"drug diversion court" means a court prescribed under a regulation for the Penalties and Sentences Act 1992, section 15B[55] to be a drug diversion court.

"eligible child" see section 119G.

"eligible drug offence" see section 119H.

119G Meaning of "eligible child"

(1) An **"eligible child"** is a child charged with an eligible drug offence who has pleaded guilty to the offence.

(2) The child is not an **"eligible child"** if—

(a) a charge against the child for a disqualifying offence is pending in a court; or

(b) the child has, at any time, been convicted of a disqualifying offence; or

(c) 2 diversion alternatives have previously been given to the child.

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55 *Penalties and Sentences Act 1992*, section 15B (Definitions for div 1)

(3) For subsection (2)(b), a conviction of a disqualifying offence does not include a conviction in relation to which the rehabilitation period has expired, and not been revived, under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

(4) For subsection (2)(c)—

(a) a diversion alternative has been given to the child if—

(i) a court has referred the child to a drug assessment and education session under section 119K;[56] or

(ii) the child has, at any time, agreed under the *Police Powers and Responsibilities Act 2000*, section 211[57] to attend a drug diversion assessment program; or

(iii) the child has been given a prescribed diversion alternative under a law of another State or the Commonwealth; and

(b) for counting the number of diversion alternatives given to the child, a diversion alternative—

(i) is counted even if it was given for an offence committed before the diversion alternative counted as the first diversion alternative was given; and

(ii) is not counted if it was given on the same day as the diversion alternative counted as the first diversion alternative was given.

(5) In this section—

"conviction" see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.[58]

"prescribed diversion alternative" means circumstances prescribed under a regulation for this definition that are similar to the circumstances mentioned in subsection (4)(a)(i) or (ii).

"rehabilitation period" see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

"revived" see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

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56 Section 119K (Reference to drug assessment and education session by court)

57 *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

58 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3 (Interpretation)

119H Meaning of "eligible drug offence"

(1) An **"eligible drug offence"** is—

(a) an offence by a child against the *Drugs Misuse Act 1986*, section 9[59] of unlawfully having possession of a dangerous drug if—

(i) each dangerous drug mentioned in the charge for the offence is a prescribed dangerous drug; and

(ii) for each dangerous drug mentioned in the charge, the total quantity of the substances, preparations, solutions and admixtures in the child's possession containing the dangerous drug is not more than the prescribed quantity in relation to the dangerous drug; and

Example—

Assume the charge mentioned prescribed drugs X and Y. The prescribed quantity in relation to X is 1.0 g and the prescribed quantity in relation to Y is 0.2 g. The child had—

- 0.2 g of a preparation containing X and Y; and
- 0.7 g of a preparation containing X; and
- 0.1 g of an admixture containing Y.

The total quantity of the preparations in the child's possession containing X is 0.9 g (0.2 + 0.7) which is not more than the prescribed quantity in relation to X (1.0 g).

The total quantity of the preparation and admixture in the child's possession containing Y is 0.3 g (0.2 + 0.1) which is more than the prescribed quantity in relation to Y (0.2 g).

Subsection (1)(a)(ii) is not satisfied.

(iii) the court considers each dangerous drug mentioned in the charge was for the child's personal use; or

(b) an offence against the *Drugs Misuse Act 1986*, section 10(2).[60]

(2) In this section—

"dangerous drug" see the *Drugs Misuse Act 1986*, section 4.[61]

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59 *Drugs Misuse Act 1986*, section 9 (Possessing dangerous drugs)

60 *Drugs Misuse Act 1986*, section10 (Possessing things)

61 *Drugs Misuse Act 1986*, section 4 (Definitions)

"prescribed dangerous drug" means a dangerous drug prescribed under a regulation for the *Penalties and Sentences Act 1992*, section 15D.[62]

"prescribed quantity" means a quantity prescribed under a regulation for the *Penalties and Sentences Act 1992*, section 15D.

119I Meaning of "disqualifying offence"

(1) A **"disqualifying offence"** is—

(a) an offence of a sexual nature; or

(b) an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9,[63] other than an offence dealt with, or to be dealt with, summarily; or

(c) an indictable offence involving violence against another person,[64] other than an offence charged under any of the following provisions of the Criminal Code—

- section 335
- section 340(a), but only if the offence is the assault of another with intent to resist or prevent the lawful arrest or detention of the child or of any other person
- section 340(b).[65]

(2) A reference to a provision in subsection (1) or (4) includes a reference to a law of another State or the Commonwealth that corresponds to the provision.

(3) A reference in subsection (1)(c) to an indictable offence includes a reference to an indictable offence dealt with summarily.

(4) In this section—

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62 *Penalties and Sentences Act 1992*, section 15D (Meaning of "eligible drug offence")

63 *Drugs Misuse Act 1986*, section 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs) or 9 (Possessing dangerous drugs)

64 *Acts Interpretation Act 1954*, section 36—

"indictable offence" includes an act or omission committed outside Queensland that would be an indictable offence if it were committed in Queensland.

65 Criminal Code, sections 335 (Common assault) and 340 (Serious assaults)

"offence of a sexual nature" means an offence defined in the Criminal Code, section 208, 209, 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 228, 229B, 323A, 323B, 363A or chapter 32.[66]

119J Meaning of "approved provider"

(1) An **"approved provider"** is an entity approved by the chief executive (health) by gazette notice to provide drug assessment and education sessions.

(2) In this section—

"chief executive (health)" means the chief executive of the department within which the *Health Act 1937* is administered.

Subdivision 2—Reference and consequences

119K Reference to drug assessment and education session by court

(1) This section applies if a finding of guilt for an eligible drug offence is made against an eligible child before a drug diversion court.

(2) The court may refer the child to a drug assessment and education session if the child consents to attend the session.

(3) On making the referral, the court must—

(a) direct the child attend a drug assessment and education session by a stated date; and

(b) adjourn the proceeding for the offence.

66 Criminal Code, section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16 years), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 217 (Procuring young person etc. for carnal knowledge), 218 (Procuring sexual acts by coercion etc.), 219 (Taking child for immoral purposes), 221 (Conspiracy to defile), 222 (Incest), 227 (Indecent acts), 228 (Obscene publications and exhibitions), 229B (Maintaining a sexual relationship with a child), 323A (Female genital mutilation), 323B (Removal of child from State for female genital mutilation), 363A (Abduction of child under 16) or chapter 32 (Rape and sexual assaults)

119L If child attends drug assessment and education session

(1) This section applies if—

(a) a court refers a child to a drug assessment and education session and directs the child attend the session by a stated date; and

(b) the child attends the session by the stated date.

(2) The approved provider for the drug assessment and education session must give notice to the court's proper officer that the child attended the session by the stated date.

(3) A notice under subsection (2)—

(a) brings the court proceeding for the offence to an end; and

(b) the child is then not liable to be further prosecuted for the offence.

(4) On the day the notice is received by the court, the child is taken to have been found guilty by the court of the offence without a conviction being recorded.

119M If child fails to attend drug assessment and education session

(1) This section applies if—

(a) a court refers a child to a drug assessment and education session and directs the child attend the session by a stated date; and

(b) the child fails to attend the session by the stated date.

(2) The approved provider for the drug assessment and education session must give notice to the court's proper officer that the child failed to attend the session by the stated date.

(3) The court's proper officer may—

(a) take no action; or

(b) bring the charge for the offence back on before the court for sentencing.

(4) For subsection (3)(b), the proper officer must give notice to the child and the chief executive that the proceeding for the offence is to be heard by the court on a stated day.

Division 2—Orders on children found guilty of offences

120 Sentence orders—general

(1) When a child is found guilty of an offence before a court, the court may—

(a) reprimand the child; or

(b) order the child to be of good behaviour for a period not longer than 1 year; or

(c) order the child to pay a fine of an amount prescribed under an Act in relation to the offence; or

(d) subject to subsection (3), order the child to be placed on probation for a period not longer than—

(i) if the court is not constituted by a judge—1 year; or

(ii) if the court is constituted by a judge and section 121 does not apply—2 years; or

(e) subject to subsection (3), if the child has attained the age of 13 years—order the child to perform unpaid community service for a period not longer than—

(i) if the child has not attained the age of 15 years at the time of sentence—100 hours; or

(ii) if the child has attained the age of 15 years at the time of sentence—200 hours; or

(f) order that the child be detained for a period not more than—

(i) if the court is not constituted by a judge—1 year; or

(ii) if the court is constituted by a judge and section 121 does not apply—the shorter period of the following—

(A) half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve;

(B) 5 years.

(2) A court may make an order for a child's detention under subsection (1)(f) with or without an immediate release order under section 176.[67]

(3) A probation order under subsection (1)(d) or a community service order may only be made against a child found guilty of an offence of a type that, if committed by an adult, would make the adult liable to imprisonment.

(4) This section has effect subject to the *Childrens Court Act 1992*.

121 Sentence orders—serious offences

(1) If a child is found guilty of a serious offence before a court presided over by a judge (**"the court"**), the court, may—

(a) order the child to be placed on probation for a period not longer than 3 years; or

(b) make a detention order against the child under subsection (2) or (3).

(2) For a serious offence other than a life offence, the court may order the child to be detained for a period not more than 7 years.

(3) In relation to a serious offence that is a life offence, the court may order that the child be detained for—

(a) a period not more than 10 years; or

(b) a period up to and including the maximum of life, if—

(i) the offence involves the commission of violence against a person; and

(ii) the court considers the offence to be a particularly heinous offence having regard to all the circumstances.

(4) A court may make an order for a child's detention under subsection (2) or (3) with or without an immediate release order under section 176.

(5) This section does not limit a court's power to make an order under section 120.

67 Section 176 (Immediate release order)

121A More than 1 type of order may be made for a single offence

A court may make more than 1 type of sentence order for a single offence, subject to sections 121B and 121C.

121B Combination of probation order and community service order

(1) If a court makes both a probation order and a community service order against a child for a single offence (the **"original offence"**), the court—

(a) must make separate orders; and

(b) must not impose one of the orders as a requirement of the other order.

(2) If the child contravenes a requirement of either the probation order or the community service order after the orders are made and is resentenced for the original offence, the other order is discharged.

121C Combination of detention order and probation order

(1) This section applies if a court makes both a detention order and a probation order against a child for a single offence.

(2) The court may make the detention order only for a maximum period of 6 months and may not make an immediate release order.

(3) The probation order may only be for a maximum period ending 1 year after release from detention under the detention order.

(4) The requirements of the probation order only start when the child is released from detention.

122 Other orders

A court that makes a sentence order against a child for an offence under section 120 or 121, in addition to the order, may make 1 or more of the following orders—

(a) an order allowed by division 8[68] requiring the child—

(i) to make restitution of property; or

68 Part 5, division 8 (Restitution and compensation)

(ii) to pay compensation of not more than an amount equal to 20 penalty units for loss to property; or

(iii) to pay compensation for injury suffered by another person;

(b) an order allowed by division 9;[69]

(c) an order allowed by division 9A.[70]

123 Orders may be combined in 1 form

(1) This section applies if a court makes more than 1 sentence order against a child charged before it with more than 1 offence.

(2) The court may combine more than 1 of the sentence orders in 1 order form if each sentence order that the form deals with is—

(a) of the same type; and

(b) subject to similar conditions.

(3) The order form must contain, or have attached, a list of each offence for which the order form is made.

(4) In a proceeding, it is taken that a separate sentence order was made for each offence.

124 Recording of conviction

(1) Other than under this section, a conviction is not to be recorded against a child who is found guilty of an offence.

(2) If a court makes an order only under section 120(1)(a) or (b),[71] a conviction is not to be recorded.

(3) If a court makes an order under section 120(1)(c) to (f), the court may order that a conviction be recorded.

(4) If a court makes an order under section 121,[72] and the order is not allowed under section 120, a conviction is taken to be recorded.

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69 Part 5, division 9 (Application of Transport Operations (Road Use Management) Act 1995)

70 Part 5, division 9A (Order for identifying particulars to be taken)

71 Section 120 (Sentence orders—general)

72 Section 121 (Sentence orders—serious offences)

125 Considerations whether or not to record conviction

(1) In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including—

(a) the nature of the offence; and

(b) the child's age and any previous convictions; and

(c) the impact the recording of a conviction will have on the child's chances of—

(i) rehabilitation generally; or

(ii) finding or retaining employment.

(2) Except as otherwise provided by this or another Act, a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose.

(3) A finding of guilt against a child for an offence without the recording of a conviction stops a subsequent proceeding against the child for the same offence as if a conviction had been recorded.

126 Judge may delegate sentencing power to magistrate

(1) This section applies if—

(a) a proceeding in which a child may be sentenced for an offence is before a Childrens Court magistrate; and

(b) the Childrens Court magistrate considers that an appropriate sentence would be beyond the jurisdiction of the Childrens Court magistrate because of the limit to the jurisdiction set out in section 120(1)(d) or (f).

(2) The magistrate may request a Childrens Court judge to delegate to the magistrate the power to impose a sentence that, under section 120(1), may only be made if a judge constitutes the sentencing court.

(3) The Childrens Court judge has jurisdiction to delegate the power.

(4) The delegation must be made before any evidence is heard, plea entered or election made, unless the child—

(a) is represented by a legal practitioner; and

(b) consents to a delegation happening at a later time.

(5) The request and delegation may be made informally, including by any form of distance communication.

(6) The magistrate must inform the child of the delegation.

127 Reference of case to Childrens Court judge for sentence

(1) If, in a proceeding for the sentencing of a child for an offence, a Childrens Court magistrate considers that the circumstances require the making of a sentence order—

(a) beyond the jurisdiction of a Childrens Court magistrate; but

(b) within the jurisdiction of a Childrens Court judge;

the magistrate may commit the child for sentence before a Childrens Court judge.

(2) In relation to a committal under subsection (1), the Childrens Court magistrate may make all orders and directions as if it were a committal following a committal proceeding.

(3) The Childrens Court judge may exercise sentencing powers to the extent mentioned in section 120.[73]

Division 3—Good behaviour orders

128 Good behaviour order

A court that makes a good behaviour order against a child must impose a condition that the child abstains from violation of the law for the period of the order.

129 Breach of conditions

(1) If a person against whom a good behaviour order has been made commits an offence during the period of the order, a court that deals with the person on a charge for the offence may have regard to the breach of the good behaviour order when determining its sentence for the offence.

(2) Otherwise a court must not take any action in relation to a breach of a good behaviour order.

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73 Section 120 (Sentence orders—general)

Division 4—Fines

130 Child's capacity to pay fine to be considered

A court may make an order requiring a child to pay an amount by way of fine only if it is satisfied that the child has the capacity to pay the amount.

131 Requirements of fine order

An order made by a court requiring a child to pay a fine must direct that—

(a) the fine be paid by a specified time or by specified instalments; and

(b) the fine must be paid in the first instance to the proper officer of the court.

131A Proper officer's application on breach

(1) This section applies if a child who is ordered to pay a fine for an offence fails to pay all the fine within the time allowed for payment.

(2) The proper officer may apply to the court to cancel the fine order and make a community service order against the child.

(3) The proper officer must give notice of the application to—

(a) the child; and

(b) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(c) the chief executive.

(4) If the court is satisfied that the child has not paid an amount of the fine within the time allowed, the court may—

(a) take no action; or

(b) extend the time for paying the amount; or

(c) cancel the fine order and resentence the child by making a community service order against the child.

(5) The community service hours under the community service order must be calculated using the following formula—

$$\frac{\text{unpaid amount of fine} \times 8}{\text{1 penalty unit}}.$$

(6) However, the community service hours calculated using the formula must not be more than that permitted under section 120(1)(e) or 151.[74]

(7) If the hours calculated under the formula are less than that permitted by section 151, the court may not make an order under subsection (4)(c).

(8) If the hours calculated under the formula are more than that permitted by section 120(1)(e) or 151, the court may only make an order for the maximum hours permitted.

(9) The community service order is a community service order under section 120(1)(e).

(10) In this section—

"parent", of a child, includes someone who is apparently a parent of the child.

Division 5—Probation orders

132 Probation orders—requirements

(1) A probation order made against a child must require—

(a) that the child must report in person to the chief executive within 1 business day after the order is made or any longer period that may be specified in the order; and

(b) that, during the probation order—

(i) the child must abstain from violation of the law; and

(ii) the child must carry out the lawful instructions of the chief executive; and

(iii) the child must report and receive visits as directed by the chief executive; and

(iv) the child or a parent of the child must notify the chief executive within 2 business days of any change of address, employment or school; and

74 Section 120 (Sentence orders—general) or 151 (Limitation on number of hours of community service)

(v) the child must not leave, or stay out of, Queensland during the probation period, without the prior approval of the chief executive.

(2) A probation order made against a child may contain requirements that the child must comply during the whole or a part of the probation period with conditions that the court considers necessary or desirable for preventing—

(a) a repetition by the child of the offence in relation to which the order was made; or

(b) the commission by the child of other offences.

(3) A requirement imposed by a court under subsection (2)—

(a) must relate to the offence for which the probation is made; and

(b) must be supported by the court's written reasons.

133 Child must be willing to comply

A court may make a probation order against a child only if the child indicates willingness to comply with the requirements of the order.

134 Chief executive's application on breach

(1) If, in the chief executive's opinion, a child against whom a probation order has been made has contravened a requirement of the order or any other prescribed requirement relating to the order, the chief executive must warn the child of the consequences of further contravention, including the making of an application under this section.

(2) Subsection (1) does not apply if the child's whereabouts—

(a) are unknown to the chief executive; and

(b) can not be reasonably ascertained.

(3) If, in the chief executive's opinion, a child against whom a probation order has been made—

(a) has contravened a requirement of the order or a prescribed requirement relating to the order; and

(b) if warned under subsection (1)—has continued to contravene the requirement after being warned under subsection (1);

the chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court magistrate for a finding that a breach of the probation order has happened.

(4) The application may only be started during the period of the probation order.

(5) A copy of the complaint must be served on a parent of the child, unless a parent can not be found after reasonable inquiry.

(6) If—

(a) complaint is made before a justice that a child has breached a probation order; and

(b) information is given on oath before the justice substantiating—

(i) the matter of the complaint; and

(ii) that either the whereabouts of the child can not reasonably be ascertained or there are reasonable grounds for believing that the child would not appear in answer to a complaint and summons;

the justice, instead of issuing a complaint and summons, may issue in the first instance a warrant to arrest the child and to cause the child to be brought before a Childrens Court magistrate to be further dealt with according to law.

(7) A child arrested under the warrant must be treated, for the purpose of part 3, as if arrested on a charge of an offence.

(8) In this section—

"parent", of a child, includes someone who is apparently a parent of the child.

135 General options available to Childrens Court magistrate on breach application

(1) A Childrens Court magistrate (**"the court"**), on application made under section 134, if satisfied beyond reasonable doubt that the contravention alleged in the application has happened, may exercise the powers mentioned in subsections (2) to (5).

(2) If the probation order was made by the court, the court may take any action allowed under section 140.[75]

(3) If—

(a) the probation order was made by the Supreme Court, the District Court or a Childrens Court judge; and

(b) the court considers that the circumstances of the contravention do not make it desirable that the order should be discharged and the child dealt with for the offence in respect of which the order was made;

the court may take any action under section 140 other than under section 140(1)(c).

(4) If—

(a) the probation order was made by the Supreme Court, the District Court or a Childrens Court judge; and

(b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may order the child to appear before the court that made the order.

(5) On ordering a child to appear before another court under subsection (4), the court may commit the child to custody or release the child as provided by part 3 to be brought or to appear before that other court.

136 General options available to superior court to which child committed for breach

(1) The Supreme Court, District Court or Childrens Court judge before which a child appears under an order under section 135, if satisfied beyond reasonable doubt of the matter alleged against the child in the application made by the chief executive under section 134,[76] may take any action allowed by section 140.

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75 Section 140 (Specific powers if breach proved)

76 Section 134 (Chief executive's application on breach)

(2) The proceeding before the Supreme Court, District Court or Childrens Court judge must be heard and determined by a judge sitting without a jury.

137 General options available to court before which child found guilty of an indictable offence

(1) If a child who is subject to a probation order is found guilty of an indictable offence, the court before which the child is found guilty (**"the court"**) may exercise the powers mentioned in subsections (2) to (5).

(2) If the probation order was made by the court, the court may take any action allowed by section 140.

(3) If—

(a) the probation order was not made by the court; and

(b) the court considers that the circumstances of the indictable offence do not make it desirable that the probation order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may take any action under section 140 other than under section 140(1)(c).

(4) If—

(a) the probation order was not made by the court; and

(b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may—

(c) order the child to appear before the court that made the order; or

(d) if the court may act under section 138—act under the section.

(5) On ordering a child to appear before another court under subsection (4), the court may commit the child to custody or release the child as provided by part 3 to be brought or to appear before the other court.

138 Court may resentence child originally sentenced by lower court

(1) If—

(a) the court mentioned in section 137(1) is the Supreme Court, the District Court or a Childrens Court judge; and

(b) the probation order was made by a Childrens Court magistrate; and

(c) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may act under section 140(1)(c) to make any sentence order a Childrens Court magistrate could make in the same circumstances.

(2) A sentence order made under subsection (1)—

(a) for the purposes of an appeal is taken to be a sentence order made on indictment; but

(b) for all other purposes is taken to be a sentence order made by a Childrens Court magistrate.

(3) If—

(a) the court is the Supreme Court; and

(b) the probation order was made by the District Court or a Childrens Court judge (the **"lower court"**); and

(c) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may act under section 140(1)(c) to make any sentence order the lower court could make in the same circumstances.

(4) A sentence order made under subsection (3) is taken to be a sentence order made by the lower court mentioned in the subsection.

139 General options available to court to which child committed for breach by indictable offence

(1) The court before which a child appears under an order under section 137(4)(c)[77] may take any action allowed by section 140.

(2) If the proceeding is before the Supreme Court, District Court or Childrens Court judge, the proceeding must be heard and determined by a judge sitting without a jury.

140 Specific powers if breach proved

(1) A court that acts under this section may—

(a) vary any of the requirements of the probation order (other than the requirement that the child abstain from violation of the law); or

(b) extend the period of the probation order but not so that it is longer than the period allowed by section 120(1)(d) and section 121(1)(a)[78] in relation to the offence for which the order was made; or

(c) discharge the probation order and resentence the child for the offence for which the order was made, as if the child had just been found guilty before the court of that offence; or

(d) on the undertaking of the child to comply in all respects with the requirements of the probation order and all prescribed requirements applicable to the child because of the order, take no further action.

(2) A court may act under subsection (1)(a) only if the child expresses a willingness to comply with the requirements of the probation order as varied.

(3) An order under subsection (1)(b) may be made in conjunction with an order under subsection (1)(a).

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77 Section 137 (General options available to court before which child found guilty of an indictable offence)

78 Sections 120 (Sentence orders—general) and 121 (Sentence orders—serious offences)

(4) An order may be made under this section even though, at the time it is made, the probation order in relation to which the order is made is no longer in force because the period of the probation order has ended.

(5) For the purpose of subsection (4), the probation order is taken to continue in force until a proceeding under this section is heard and determined.

141 Variation, discharge and resentence in the interests of justice

(1) If a probation order is in force in relation to a child, on application made by or on behalf of the child or by the chief executive, the court that made the probation order may—

(a) vary the requirements of the probation order (other than the requirement that the child abstain from violations of the law); or

(b) discharge the probation order; or

(c) discharge the order and resentence the child for the offence in respect of which the probation order was made as if the child had just been found guilty before the court of the offence;

if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the probation order was made.

(2) Notification of the making of an application under subsection (1) must be given—

(a) if the application is made by or on behalf of the child—by the applicant to the chief executive; or

(b) if the application is made by the chief executive—by the chief executive to the child.

(3) An application can not be made on the grounds that the child has contravened a requirement of the probation order or a prescribed requirement applicable to the child because of the probation order.

142 Compliance with existing order relevant to further order

A court that resentences a child for an offence after discharging a probation order under section 140(1)(c) (Specific powers if breach proved) or section 141(1)(c) must have regard to—

(a) the making of the probation order; and

(b) anything done by the child in compliance with the order.

143 Affidavits may be used in certain proceedings

(1) In a proceeding before a court under section 134, 135, 136, 139 or 141,[79] evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.

(2) The proceeding may be determined on evidence by affidavit alone, unless the court orders, in the interests of justice, that a person who has made an affidavit be called to give evidence in the proceeding.

(3) The court may make an order under subsection (2) of its own initiative or on the application of a party to the proceedings.

144 Notice of discharge etc. of probation order

If a court in the exercise of jurisdiction under sections 134 to 141 affects the terms or operation of a probation order made against a child, it must cause written notice of the exercise of the jurisdiction to be given to—

(a) the child; and

(b) the chief executive; and

(c) if that court is not the court that made the probation order to which the application for exercise of the jurisdiction applied—to the court that made the order.

145 Variations by consent

(1) Despite any other provision of this division, the proper officer of a court by which a probation order has been made against a child, on application, may make an order amending the requirements of the order, other than the requirement that the child abstain from violations of the law.

(2) An application—

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79 Section 134 (Chief executive's application on breach), 135 (General options available to Childrens Court magistrate on breach application), 136 (General options available to superior court to which child committed for breach), 139 (General options available to court to which child committed for breach by indictable offence) or 141 (Variation, discharge and resentence in the interests of justice)

(a) may be made—

(i) by or on behalf of the child; or

(ii) by the chief executive; and

(b) must be supported by affidavit filed in the office of the proper officer deposing to the fact that the chief executive and the child consent to the making of the order to vary the requirements of the probation order.

(3) The proper officer of the court must note the amendment of the requirements of the probation order on the court's record of the probation order.

(4) The period of a probation order can not be amended under an application.

Division 6—Community service orders

146 Preconditions to making of community service order

A court may make a community service order against a child only if—

(a) the child indicates willingness to comply with the requirements of the order; and

(b) the court is satisfied that the child is a suitable person to perform community service; and

(c) the court is satisfied on consideration of a report by the chief executive that community service of a suitable nature can be provided for the child.

147 Requirements to be set out in community service order

A community service order must contain requirements—

(a) that the child report in person to the chief executive within 1 business day after the order is made or any longer period that is specified in the order; and

(b) that the child perform in a satisfactory way for the number of hours specified in the order the community service that the chief executive directs the child to perform; and

(c) that the child, while performing community service, comply with every reasonable direction of the chief executive; and

(d) that the child inform the chief executive of every change in the child's place of residence within 2 business days of the change.

148 Obligation of chief executive

The chief executive, in giving directions to a child in relation to the child's performance of community service, is—

(a) to avoid, if practicable, conflicts with the religious and cultural beliefs and practices of the child or the child's parent; and

(b) to avoid, if practicable, interference with the child's attendance at a place of employment or a school or other educational or training establishment; and

(c) to take all steps necessary to ensure that the child, if practicable, is kept apart from any adult under sentence for an offence.

149 Community service to be performed within limited period

A child against whom a community service order is made must perform the number of hours of community service specified in the order—

(a) within the period of 1 year starting on the date of the order; or

(b) within any extended period that a court may order under section 156, 157 or 158;[80] or

(c) any extended period allowed by order of the proper officer of the court under section 163.[81]

150 Multiple or successive community service orders

A court—

(a) may make 2 or more community service orders against a child in respect of 2 or more offences; and

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80 Section 156 (Specific powers if breach proved), 157 (Extension of time to perform community service) or 158 (Variation, discharge or resentence in the interests of justice)

81 Section 163 (Variations by consent)

(b) may make a community service order against a child who is already subject to an existing community service order.

151 Limitation on number of hours of community service

(1) Subject to subsections (2) and (3), the community service hours specified in a community service order must not be less than 20.

(2) If—

(a) a court makes 2 or more community service orders against a child found guilty of 2 or more offences; and

(b) the child is not subject to an existing community service order;

the total of the community service hours specified in the orders must not be less than 20 or more than the maximum appropriate to the child allowed by section 120(1)(e)[82] for 1 offence.

(3) If—

(a) a court makes 1 or more community service orders against a child; and

(b) the child is subject to 1 or more existing community service orders;

the total of the community service hours specified in all the orders, less the number of hours for which the child has performed community service under the existing order or orders, must not be not less than 20 or more than the maximum appropriate to the child allowed by section 120(1)(e) for 1 offence.

(4) To the extent that the total exceeds the maximum allowed, the order or orders made by the court is or are of no effect.

(5) Every community service order made against a child operates cumulatively to every other community service order made against the child, unless the court that makes a community service order directs otherwise.

82 Section 120 (Sentence orders—general)

152 Ending of community service order

A community service order made against a child remains in effect until—

(a) the child has performed community service in accordance with the requirements specified under section 147(b) and (c)[83] for the number of hours specified in the order; or

(b) the order is discharged under section 156 or 158;[84] or

(c) the expiry of the period within which the community service is required to be performed under section 149;[85]

whichever first happens.

153 Chief executive's application on breach

(1) If the chief executive is of the opinion that a child against whom a community service order has been made has contravened a requirement of the order or a prescribed requirement relating to the order, the chief executive must warn the child of the consequences of further contravention including the making of an application under this section.

(2) Subsection (1) does not apply if the child's whereabouts—

(a) are unknown to the chief executive; and

(b) can not reasonably be ascertained.

(3) If, in the chief executive's opinion, a child against whom a community service order has been made—

(a) has contravened a requirement of the order or a prescribed requirement relating to the order; and

(b) if warned under subsection (1)—has continued to contravene a requirement of the order after being warned;

the chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court magistrate for a finding that the child has breached the order.

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83 Section 147 (Requirements to be set out in community service order)

84 Section 156 (Specific powers if breach proved) or 158 (Variation, discharge or resentence in the interests of justice)

85 Section 149 (Community service to be performed within limited period)

(4) A copy of the complaint must be served on a parent of the child, unless a parent can not be found after reasonable inquiry.

(5) If—

(a) a complaint is made before a justice that a child has breached a community service order; and

(b) information is given on oath before the justice substantiating—

(i) the matter of the complaint; and

(ii) that either the whereabouts of the child can not reasonably be ascertained or there are reasonable grounds for believing that the child would not comply with a summons;

the justice, instead of issuing a summons, may issue in the first instance a warrant to arrest the child and to cause the child to be brought before a Childrens Court magistrate to be further dealt with according to law.

(6) A child arrested under the warrant for the purposes of part 3 must be treated as if arrested on a charge of an offence.

(7) In this section—

"parent", of a child, includes someone who is apparently a parent of the child.

154 General options available to Childrens Court magistrate on breach application

(1) A Childrens Court magistrate (**"the court"**), on application made under section 153, if satisfied beyond reasonable doubt that the contravention alleged in the application has happened, may exercise the powers mentioned in subsections (2) to (5).

(2) If the community service order was made by the court, the court may take any action allowed under section 156.

(3) If—

(a) the community service order was made by the Supreme Court, the District Court, or a Childrens Court judge; and

(b) the court considers that the circumstances of the contravention do not make it desirable that the order should be discharged and the

child resentenced for the offence in respect of which the order was made;

the court may take any action under section 156 other than under section 156(1)(c).

(4) If—

(a) the community service order was made by the Supreme Court, the District Court or Childrens Court judge; and

(b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may order the child to appear before the court that made the order.

(5) On ordering a child to appear before another court under subsection (4), the court may commit the child to custody or release the child as provided by part 3 to be brought or appear before that other court.

155 General options available to superior court to which child committed for breach

(1) The Supreme Court, the District Court or a Childrens Court judge before which a child appears under an order under section 154(4), if satisfied beyond reasonable doubt of the matter alleged against the child in the application made by the chief executive under section 153, may take any action allowed by section 156.

(2) The proceeding before the Supreme Court, District Court or Childrens Court judge must be heard and determined by a judge sitting without a jury.

156 Specific powers if breach proved

(1) A court that acts under this section may—

(a) increase the number of hours for which the child is required to perform community service; or

(b) extend the period within which the community service is required to be performed under the community service order beyond the period of 1 year starting on the date of the order; or

(c) discharge the community service order and resentence the child as if the child had just been found guilty before the court of the offence; or

(d) on the undertaking of the child to comply in all respects with the requirements of the community service order and all prescribed requirements applicable to the child because of the order, take no further action.

(2) A court may act under subsection (1)(a) only if the child expresses a willingness to comply with the requirements of the community service order as varied.

(3) An order under subsection (1)(b) may be made in conjunction with an order under subsection (1)(a).

(4) An order may be made under this section even though, at the time it is made, the community service order is no longer in force because the period within which the community service was required to be performed, has ended.

(5) For the purpose of subsection (4), the community service order is taken to continue in force until the proceeding under this section is heard and determined.

157 Extension of time to perform community service

(1) If a community service order is in force in relation to a child, on application made by or on behalf of the child or by the chief executive, a Childrens Court magistrate may extend the period in which the community service is required to be performed under the order under section 149[86] if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

(2) Notification of the making of an application under subsection (1) must be given by—

(a) if the application is made by or on behalf of the child—the applicant to the chief executive; or

86 Section 149 (Community service to be performed within limited period)

(b) if the application is made by the chief executive—the chief executive to the child.

158 Variation, discharge or resentence in the interests of justice

(1) If a community service order is in force in relation to a child, on application made by or on behalf of the child or the chief executive, the court that made the order may—

(a) extend the period in which the community service is required to be performed under the order under section 149; or

(b) reduce (without restriction) the number of hours for which the child is required to perform community service under the order; or

(c) discharge the order; or

(d) discharge the order and resentence the child for the offence in respect of which the order was made as if the child had just been found guilty before the court of the offence;

if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

(2) Notification of the making of an application under subsection (1) must be given by—

(a) if the application is made by or on behalf of the child—the applicant to the chief executive; or

(b) if the application is made by the chief executive—the chief executive to the child.

(3) An application can not be made on the ground that the child has contravened a requirement of the order or a prescribed requirement applicable to the child because of the community service order.

159 Compliance with existing order relevant to further order

A court that resentences a child for an offence after discharging a community service order under section 156(1)(c) or 158(1)(d)[87] must have regard to—

(a) the making of the community service order; and

(b) anything done by the child in compliance with the community service order.

160 Affidavits may be used in certain proceedings

(1) In a proceeding before any court under section 154, 155, 157 or 158,[88] evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.

(2) The proceeding may be determined on evidence by affidavit alone, unless the court orders, in the interests of justice, that a person who has made an affidavit be called to give evidence in the proceeding.

(3) The court may make an order under subsection (2) on its own initiative or on the application of a party to the proceeding.

161 Notice of discharge etc. of community service order

If a court in the exercise of jurisdiction under section 156, 157 or 158 affects the terms or operation of a community service order made against a child, the court must cause written notice of the exercise of the jurisdiction to be given to—

(a) the child; and

(b) the chief executive; and

(c) if the court is not the court that originally made the community service order—the court that made the order.

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87 Section 156 (Specific powers if breach proved) or 158 (Variation, discharge or resentence in the interests of justice)

88 Section 154 (General options available to Childrens Court magistrate on breach application), 155 (General options available to superior court to which child committed for breach), 157 (Extension of time to perform community service) or 158 (Variation, discharge or resentence in the interests of justice)

163 Variations by consent

(1) Despite any other provision of this division, the proper officer of a court by which a community service order has been made against a child, on application, may make an order varying the requirements of the order by—

(a) reducing the number of hours of community service required to be performed; or

(b) extending the period within which the community service is required to be performed.

(2) An application—

(a) may be made—

(i) by or on behalf of the child; or

(ii) by the chief executive; and

(b) must be supported by affidavit filed in the office of the proper officer deposing to the fact that the chief executive and the child consent to the making of the order to vary the requirements of the community service order.

(3) The proper officer of the court must note the variation of the requirements of the community service order on the court's record of the order.

Division 7—Detention order

Subdivision 1—Initial order

164 Presentence report must be obtained before detention order sentence

A court may make a detention order against a child only if it has first—

(a) ordered the chief executive to prepare a presentence report; and

(b) received and considered the report.

165 Detention must be only appropriate sentence

A court may make a detention order against a child only if the court, after—

(a) considering all other available sentences; and

(b) taking into account the desirability of not holding a child in detention;

is satisfied that no other sentence is appropriate in the circumstances of the case.

166 Court's reasons for detention order to be stated and recorded

(1) A court that makes a detention order against a child must—

(a) state its reasons in court; and

(b) cause the reasons to be reduced to writing and kept by the proper officer of the court with the documents relating to the proceeding.

(2) Subject to subsection (3), a court's failure to comply with subsection (1) does not affect the sentence order.

(3) A court considering the sentence order on appeal or review must take into account a failure to comply with subsection (1)(a) and give the failure the weight it considers appropriate.

167 Detention to be served in detention centre

(1) Subject to this Act, a child who is sentenced to serve a period of detention must serve the period of detention in a detention centre.

(2) Subject to section 232,[89] on making a detention order against a child, a court must issue its warrant in the prescribed form (if any) directing the commissioner of the police service to take the child into custody and deliver the child to a detention centre decided by the chief executive.

(3) Subsection (2) does not apply if the court makes an immediate release order under section 176.[90]

89 Section 232 (Enforcement of sentence by calendar)

90 Section 176 (Immediate release order)

168 Commencement of detention period

(1) A period of detention under a detention order takes effect from the day the court makes the detention order.

(2) Subsection (1) has effect subject to section 170, section 174[91] and subsection (3).

(3) If a child is required to serve a period of detention or the unserved part of a period of detention as a result of an appeal against a sentence order (including an application for a sentence review), the period or unserved part takes effect from the start of the child's custody on sentence for the offence in question after the appeal.

169 Detention orders ordinarily concurrent

If, at the time a court makes a detention order against a child for an offence, the child—

(a) is serving; or

(b) has been sentenced to serve;

a period of detention for another offence, the period of detention under the court's detention order must be served concurrently with the other period of detention, unless other provision is made under section 170 or another Act.

170 Court may order detention period to be cumulative

(1) If, at the time a court makes a detention order against a child for an offence, the child—

(a) is serving; or

(b) has been sentenced to serve;

a period of detention for another offence, the court may order the period of detention under the court's detention order to take effect from the end of the other period of detention.

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91 Sections 170 (Court may order detention period to be cumulative) and 174 (Period of custody on remand to be treated as detention on sentence)

(2) Subsection (1) applies even if the other period of detention has to be served concurrently or cumulatively with a period of detention for an offence other than the one for which the court makes the detention order.

171 Limitation on cumulative orders

(1) A court making more than 1 detention order under section 120[92] against a child on the same day or in the same proceedings is not to direct that a detention order be served cumulatively with another of the detention orders if the total period of the detention orders would exceed—

(a) when made by a Childrens Court magistrate—1 year; or

(b) when made by another court—7 years.

(2) To the extent that the total exceeds the maximum allowed the orders are of no effect.

172 Period of escape or release pending appeal not counted as detention

If a child serving a period of detention under a detention order—

(a) is released from custody under part 3 pending an appeal against the detention order (including an application for a sentence review); or

(b) escapes from custody;

the period for which the child is absent from custody pending the appeal or escape, as the case may be, must not be counted as part of the period of detention.

172A Application for variation of detention order in interests of justice

(1) This section applies to a child who—

(a) escapes from detention under a detention order for an offence (the **"original"** order and offence); and

(b) is held in custody in another State for another offence committed in the other State or on a charge of an offence allegedly committed in the other State (the **"interstate custody"**).

92 Section 120 (Sentence orders—general)

(2) An application may be made at any time to the court that made the original order to change the original order in the interests of justice.

(3) The application may be made by the child or the chief executive, acting in the interests of the child.

(4) If the application is not made by the chief executive, notice of the application must be given to the chief executive.

(5) On the application the court may—

(a) take no action; or

(b) order all or part of the period of interstate custody to be a period of detention taken to have been served under the original order.

(6) An order under subsection (5)(b) has effect even if the period of interstate custody is required to be served, concurrently or cumulatively, with a period of custody imposed because of an offence, other than the original offence, committed in Queensland or elsewhere.

173 Multiple orders of detention and imprisonment against person as adult and child

(1) Sections 169 and 170[93] extend to a case where—

(a) at the time a court makes a detention order against a person as a child, the person is serving or has been sentenced to serve a term of imprisonment as an adult; or

(b) at the time a court makes an order sentencing a person to a term of imprisonment as an adult, the person is serving or has been sentenced to serve a period of detention as a child;

as if a reference in the sections to a period of detention included a reference to the term of imprisonment mentioned in paragraph (a) or (b).

(2) Subject to subsection (4), if a person is liable to serve a term of imprisonment as an adult concurrently with a period of detention as a child, the period must be served as a term of imprisonment.

(3) The period of deprivation of liberty because of the term of imprisonment must be counted as part of the period of detention.

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93 Sections 169 (Detention orders ordinarily concurrent) and 170 (Court may order detention period to be cumulative)

(4) The chief executive may arrange with the chief executive (corrective services) for the person to serve all or part of the term of imprisonment in a detention centre.

(5) The period of deprivation of liberty in the detention centre—

(a) is a period of detention served; and

(b) must be counted as part of the term of imprisonment.

174 Period of custody on remand to be treated as detention on sentence

(1) If a child is sentenced to a period of detention for an offence, any period of time for which the child was held in custody pending the proceeding for the offence must be counted as part of the period of detention that is served in a detention centre.

(2) A period of time for which a child is also held in custody on sentence for another offence is not to be counted for the purposes of subsection (1).

(3) Any period of custody of less than 1 day is not to be counted under subsection (1).

Subdivision 2—Immediate release order

175 Purpose of immediate release order

The purpose of this subdivision is to provide for a final option instead of the detention of a child by allowing a court to immediately release the child into a structured program with strict conditions.

176 Immediate release order

(1) A court that makes a detention order against a child may immediately suspend the order and make an order (**"immediate release order"**) that the child be immediately released from detention.

(2) The child must be released from detention in accordance with the immediate release order.

177 Immediate release order—requirements

(1) An immediate release order must require—

(a) that the child participate as directed by the chief executive in a program for a period not longer than 3 months (**"program period"**) that is recommended in the presentence report mentioned in section 179 and specified in the order; and

(b) that during the program period the child abstain from violations of the law.

(2) An immediate release order made in relation to a child may contain requirements that the child comply during the whole or a part of the program period with conditions that the court considers necessary for preventing a repetition by the child of the offence in relation to which the detention order was made or the commission by the child of other offences.

(3) A requirement imposed by a court under subsection (2)—

(a) must relate to the offence for which the detention order was made; and

(b) must be supported by the court's written reasons.

178 Child must be willing to comply

A court may make an immediate release order in relation to a child only if the child expresses willingness to comply with the requirements of the order.

179 Presentence report must support immediate release order

A court may make an immediate release order in relation to a child only if the presentence report considered by it before making the detention order in question indicates that—

(a) the child is suitable for release from detention under an immediate release order; and

(b) an appropriate program in which the child may participate is available on the child's release under the order.

180 Effect of program period ending

Subject to section 183, at the end of the program period the child is no longer liable to serve a period of detention under the detention order.

182 Suspension of program period

(1) If, during the program period, a child for good reason is unable to participate in the program mentioned in section 177(1)(a),[94] the chief executive may, by written notice given to the child, suspend the program period for a specified period.

(2) The period for which the program period is suspended is not to be counted as part of the program period.

183 Failure to comply with conditions of immediate release order

(1) If, at any time while a condition imposed on a child under an immediate release order has effect, the chief executive is satisfied that the child has failed to comply with the condition, the chief executive may obtain a warrant for the arrest of the child under subsection (2).

(2) If a justice is satisfied on complaint under oath by the chief executive that a child has failed to comply with a condition imposed by an immediate release order, the justice may issue a warrant directed to all police officers for the arrest of the child and for the child to be brought before the court that made the order to be further dealt with according to law.

(3) Part 3 applies to a child arrested on the warrant as if—

(a) the child were arrested for an offence; and

(b) references to the Childrens Court in the part were references to the court before which the child is required by the warrant to be brought.

(4) A court before which a child is brought on the warrant has jurisdiction to hear and determine the complaint.

(5) If the court is the Supreme Court, the District Court or a Childrens Court judge, the complaint must be heard and determined by a judge sitting without a jury.

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94 Section 177 (Immediate release order—requirements)

184 Court's decision on complaint

(1) If the court is satisfied of the matters specified in the complaint, it may take the action mentioned in subsection (2) or (3).

(2) The court may—

(a) revoke the immediate release order; and

(b) subject to section 187,[95] order the child to serve the sentence of detention for which the immediate release order was made.

(3) Instead of revoking the immediate release order, the court may permit the child a further opportunity to satisfy the conditions of the order and if it thinks fit vary the conditions.

(4) The onus is on the child to satisfy the court it should permit the child this further opportunity.

185 Options available to court before which a child subject to an immediate release order is found guilty of an indictable offence

(1) In this section—

"lower court" means—

(a) in relation to the Supreme Court—the District Court or the Childrens Court; or

(b) in relation to the District Court or Childrens Court judge—a Childrens Court magistrate.

"the court" means the court mentioned in subsection (2).

(2) If a child who is subject to an immediate release order is found guilty of an indictable offence, the court before which the child is found guilty may exercise the powers mentioned in subsections (3) to (6) in relation to the immediate release order.

(3) If the court considers that the child should be given a further opportunity to satisfy the conditions of the immediate release order, the court need take no further action.

(4) If—

(a) the immediate release order was made by the court or a lower court; and

95 Section 187 (Detention reduced to the extent just)

(b) the court considers that the immediate release order should be revoked;

the court may—

(c) revoke the immediate release order; and

(d) subject to section 187, order the child to serve the sentence of detention for which the immediate release order was made.

(5) If—

(a) the immediate release order was not made by the court or a lower court; and

(b) the court considers that the immediate release order should be revoked;

the court may order the child to appear before the court that made the order.

(6) On ordering a child to appear before another court under subsection (5), the court may commit the child to custody or release the child as provided by part 3 to be brought or appear before the other court.

(7) A court before which a child appears under an order made under subsection (6) may—

(a) if it considers that the child should be given a further opportunity to satisfy the conditions of the immediate release order—take no further action; or

(b) if it considers that the immediate release order should be revoked—revoke the immediate release order.

(8) If a court revokes an immediate release order under this section, the court must—

(a) order the child to serve the sentence of detention in relation to which the immediate release order was made; and

(b) issue the warrant mentioned in section 167.[96]

96 Section 167 (Detention to be served in detention centre)

186 Variation and revocation in the interests of justice

(1) If an immediate release order is in force in relation to a child, on application by or on behalf of the child or the chief executive, the court that made the immediate release order may—

(a) vary the requirements of the order; or

(b) revoke the immediate release order;

if it appears to the court that it is in the interests of justice to do so, having regard to circumstances that have arisen or become known since the immediate release order was made.

(2) Notification of the making of an application under subsection (1) must be given by—

(a) if the application is made by or on behalf of the child—the applicant to the chief executive; or

(b) if the application is made by the chief executive—the chief executive to the child.

(3) An application can not be made on the grounds that the child has contravened a requirement of the immediate release order.

(4) If a court revokes an immediate release order under this section the court must order the child to serve the sentence of detention in relation to which the immediate release order was made.

187 Detention reduced to the extent just

A court that revokes an immediate release order and orders a child to serve the period of detention for which the immediate release order was made must reduce the period of detention by any period the court considers just having regard to everything done by the child to conform with the immediate release order.

Subdivision 3—Release after fixed period of detention

188 Release of child after service of period of detention

(1) Unless a court makes an order under subsection (2), a child sentenced to serve a period of detention must be released from detention after serving 70% of the period of detention.

(2) A court may order a child to be released from detention after serving 50% or more, and less than 70%, of a period of detention if it considers that there are special circumstances, for example to ensure parity of sentence with that imposed on a person involved in the same or related offence.

(3) If the child is entitled under section 174[97] to have a period of custody pending the proceeding (the **"custody period"**) treated as detention on sentence, the period before the child is released under this section must be reduced by the custody period.

Example—

C is sentenced to 10 weeks detention. C spent 2 weeks on remand before sentence. C must be released after 5 weeks, which is 70% of 10 weeks with a further reduction of 2 weeks.

189 Chief executive's fixed release order

(1) At the end of the period after which a child is required to be released under section 188, the chief executive must make an order (**"fixed release order"**) releasing the child from detention.

(2) The chief executive may—

(a) impose conditions that the chief executive considers appropriate on the fixed release order; and

(b) amend the conditions at any time by written notice served on the child.

190 Release period counts as part of detention period

A period of time for which a child is released from detention under a fixed release order must be counted as part of the period that the child spent in detention for the purpose of calculating the end of the child's period of detention.

191 Cancellation of release order

(1) If the chief executive is of the opinion, on reasonable grounds, that a child released from detention under a fixed release order has contravened a

97 Section 174 (Period of custody on remand to be treated as detention on sentence)

condition imposed by the chief executive on the order, the chief executive may revoke the order by instrument.

(2) If the chief executive revokes a release order the chief executive may make application to a magistrate for a warrant to arrest the child and return the child to a detention centre for the unexpired portion of the child's sentence.

(3) If, on application under subsection (2), the magistrate is satisfied on the chief executive's complaint on oath that the child named in the warrant has failed to comply with the conditions of the child's fixed release order, the magistrate may issue a warrant authorising all police officers to arrest the child and return the child to a detention centre.

(4) A warrant issued under subsection (3) must specify the grounds on which the warrant was issued.

(5) The commissioner of the police service on being requested by the chief executive to do so must withdraw a warrant issued under this section.

(6) The period spent by the child out of custody after the issue of a warrant is not to be counted as part of the time spent by the child in detention for the purpose of calculating the end of the period of detention from which the child was released, unless the chief executive determines otherwise at any time.

Subdivision 4—Release for life sentences

191A Application of sdiv 4

This subdivision applies to a child who is sentenced to detention for life.

191B Application of post-prison community based release provisions

(1) The *Corrective Services Act 2000*, chapter 5, part 1,[98] applies to the child.

(2) For subsection (1), a reference in the part to a prisoner serving a term of imprisonment for life is taken to include the child.

98 *Corrective Services Act 2000*, chapter 5 (Post-prison community based release), part 1 (Orders)

Division 8—Restitution and compensation

192 Restitution, compensation

(1) In this section—

"offence affected property" includes—

(a) property in relation to which the offence was committed; or

(b) property affected in the course of, or in connection with, the commission of the offence, for example, property of a victim of an offence committed against the victim's person.

(2) If a child is found guilty before a court of an offence relating to property or against the person of another, the court may in addition to making a sentence order against the child, make 1 or more of the following orders—

(a) an order that the child make restitution of offence affected property;

(b) an order that the child pay compensation (not more than an amount equal to 20 penalty units) for loss caused to offence affected property;

(c) an order that the child pay compensation for injury suffered by another person (whether the victim against whose person the offence was committed or another) because of the commission of the offence.

(3) An order made under subsection (1) requiring a child to pay an amount by way of compensation or making restitution must direct—

(a) that the amount must be paid by a time specified in the order or by instalments specified in the order; and

(b) that the amount must be paid in the first instance to the proper officer of the court.

(4) An order under this section may include a direction the court considers necessary or convenient for the order, for example the way in which restitution of property is to be carried out.

(5) A court may make an order requiring a child to pay an amount under this section only if the court is satisfied that the child has the capacity to pay the amount.

Division 9—Application of Transport Operations (Road Use Management) Act 1995

193 Application of Transport Operations (Road Use Management) Act 1995 generally

(1) Subject to this Act, the provisions of the *Transport Operations (Road Use Management) Act 1995* apply in relation to a child as they apply in relation to an adult.

(2) For this purpose—

(a) a reference in the *Transport Operations (Road Use Management) Act 1995* to a Magistrates Court or justice is taken to include a reference to a Childrens Court magistrate; and

(b) a reference in the *Transport Operations (Road Use Management) Act 1995* to a clerk of a Magistrates Court is taken to be a reference to a clerk of a Childrens Court.

194 Disqualification

(1) In this section—

"disqualified" means disqualified from holding or obtaining a driver's licence.

(2) If—

(a) a child is found guilty of an offence under the Criminal Code, *Transport Operations (Road Use Management) Act 1995* or another Act; and

(b) were the child convicted of the offence as an adult the child would be liable to be disqualified on the conviction whether under the Criminal Code, *Transport Operations (Road Use Management) Act 1995* or another Act;

the child is also liable to be disqualified to the same extent.

(3) If—

(a) a child is found guilty of an offence under the Criminal Code, *Transport Operations (Road Use Management) Act 1995* or another Act; and

(b) a conviction is recorded; and

(c) were the child convicted of the offence as an adult, the child would be disqualified by the conviction by operation of law;

the child is also disqualified to the same extent.

(4) Subject to subsection (6), the *Transport Operations (Road Use Management) Act 1995*, section 82 applies in relation to a child found guilty of an offence mentioned in paragraph (a) or (b) of the section and, for this purpose, a mention in the section of a conviction includes a finding of guilt.

(5) Subject to subsection (6), the *Transport Operations (Road Use Management) Act 1995*, sections 89 and 90 apply in relation to a child acquitted of a charge of an offence.

(6) Subsections (4) and (5) apply only if the child is of an age when persons generally are eligible to obtain a driver's licence.

Division 9A—Order for identifying particulars to be taken

194A Court may order sentenced child's identifying particulars to be taken

(1) This section applies if a child is found guilty before a court of an indictable offence or an offence against any of the following Acts that is an arrest offence—

(a) the Criminal Code;

(b) the *Drugs Misuse Act 1986*;

(c) the *Police Service Administration Act 1990*;

(d) the *Regulatory Offences Act 1985*;

(e) the *Vagrants, Gaming and Other Offences Act 1931*;

(f) the *Weapons Act 1990*.

(2) The court, in addition to making a sentence order against the child, may make an order that the child's identifying particulars be taken.

(3) If the child will not be in custody when the particulars are to be taken, the order must require the child to report to a police station as directed under the order to have them taken.

(4) A child must not contravene the order.

Maximum penalty—10 penalty units

(6) If the child will be in custody when the particulars are to be taken, the order must require them to be taken at the place the child is held in custody.

(7) A police officer may use reasonable force to take the particulars under the order.

(8) In this section—

"identifying particulars" means fingerprints and palmprints.

Division 10—Application of Criminal Offence Victims Act 1995

195 Civil compensation orders

To remove doubt, it is declared the *Criminal Offence Victims Act 1995*, applies to an offence committed by a child, unless the contrary intention appears.

Division 11—Orders against parent

196 Interpretation

In this division—

"parent" means a guardian of the child, other than the chief executive.

"show cause hearing" means the hearing and determination of the issue of whether a parent should be ordered to pay compensation under section 198(5).

197 Notice to parent of child offender

(1) This section applies if it appears to a court, on the evidence or submissions in a case against a child found guilty of a personal or property offence, that—

(a) compensation for the offence should be paid to anyone; and

(b) a parent of the child may have contributed to the fact the offence happened by not adequately supervising the child; and

(c) it is reasonable that the parent should be ordered to pay compensation for the offence.

(2) The court may decide to call on a parent of the child to show cause, as directed by the court, why the parent should not pay the compensation.

(3) The court may act under subsection (2) on its own initiative or on the prosecution's application.

(4) If the parent is present in court when the court decides to call on the parent to show cause, the court may call on the parent to show cause by announcing its decision in court.

(5) If a court calls on a parent under subsection (2), the court must—

(a) reduce its grounds to writing; and

(b) give a copy to the parent.

(6) The court in all cases, instead of acting under subsection (2), may cause the proper officer of the court to give written notice to the parent calling on the parent to show cause as directed by the notice why the parent should not pay the compensation.

(7) If a parent is called on under subsection (4)—

(a) the court must reduce its grounds to writing; and

(b) a copy of the grounds must be given, in accordance with the courts directions (if any), to the parent a reasonable time before the show cause hearing.

(8) A proceeding under this section or section 198 is a civil proceeding and a court may make an order for the costs of the proceeding.

(9) In this section—

"compensation" for the offence means compensation for—

(a) loss caused to a person's property whether the loss was an element of the offence charged or happened in the course of the commission of the offence; or

(b) injury suffered by a person, whether as the victim of the offence or otherwise, because of the commission of the offence.

198 Show cause hearing

(1) At the show cause hearing—

(a) evidence and submissions in the case against the child are to be treated as evidence and submissions in the show cause hearing; and

(b) further evidence may be given and submissions made; and

(c) the parent may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and

(d) the parent may require any fact stated in submissions mentioned in paragraph (a) to be proved.

(2) Subject to subsection (1)—

(a) the determination of the issues on the show cause hearing must be by way of a fresh hearing on the merits; and

(b) the court is not bound by a determination made by it under section 197.

(3) If the parent was called on to show cause on the prosecution's application, the prosecution is a party to the show cause hearing.

(4) If the parent was called on to show cause by the court's own initiative the prosecution, which in this case always includes the director of public prosecutions, may at the show cause hearing—

(a) appear and give the court the assistance it may require; or

(b) intervene as a party with the court's permission.

(5) If, on consideration of the evidence and submissions mentioned in subsection (1)(a) and (b), a court is satisfied of the matters mentioned in section 197(1)(a), (b) and (c), the court may make an order requiring the parent to pay compensation.

(6) The court is to make its decision on the basis of proof beyond a reasonable doubt.

(7) The maximum amount of compensation payable under an order is 67 penalty units.

(8) The order must direct that—

(a) the amount must be paid by a time specified in the order or by instalments specified in the order; and

(b) the amount must be paid in the first instance to the proper officer of the court.

(9) In determining the amount to be paid by a parent by way of compensation, the court must have regard to the parent's capacity to pay the amount, which must include an assessment of the effect any order would have on the parent's capacity to provide for dependants.

(10) A court may proceed under this section in the absence of the parent if the court is satisfied that the parent has been given notice of the show cause hearing under section 197.

(11) A show cause hearing may be heard before the court as constituted when calling on the parent to show cause, or as otherwise constituted.

(12) To remove doubt, it is declared that the chief executive can not be ordered to pay compensation under subsection (5).

199 Recovery of unpaid compensations amount

(1) An amount of compensation ordered to be paid under section 198, and any amount of costs ordered to be paid, is a debt owed by the parent to the person in whose favour the order is made.

(2) The order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*.

(3) If the order is filed in the registry of a Magistrates Court, the order is taken to be an order made by the court and may be enforced as an order of the court.

PART 6—DETENTION ADMINISTRATION

Division 1—Administration

200 Application of Corrective Services Act 2000

The *Corrective Services Act 2000* does not apply to a child, unless this Act expressly applies that Act to a child in particular circumstances.

201 Establishment of detention centres and other places

The Governor in Council may, by regulation—

(a) establish detention centres and other places for the purposes of this Act; and

(b) determine the purpose for which a place (other than a detention centre) may be used; and

(c) name a detention centre or other place.

203 Management of detention centres

(1) Subject to this Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

(2) The chief executive may carry out the responsibilities mentioned in subsection (1) by using any convenient form of direction, for example, rules, directions, codes, standards and guidelines relating to—

(a) detention centre organisation; or

(b) functions, conduct and responsibilities of detention centre officers; or

(c) types of programs for children detained in a detention centre; or

(d) contact between children detained in the detention centre and members of the public; or

(e) arrangements for educational, recreational and social activities of children detained in detention centres.

(3) In relation to each detention centre, the chief executive is responsible for—

(a) providing services that promote the health and wellbeing of children detained at the centre; and

(b) promoting the social, cultural and educational development of children detained at the centre; and

(c) maintaining discipline and good order in the centre; and

(d) maintaining the security and management of the centre.

203A Authorisations for Mental Health Act 2000

(1) The chief executive may, by signed writing, authorise a member of staff of a detention centre to exercise powers of a detention centre officer under the *Mental Health Act 2000*.

(2) However, the chief executive may authorise a staff member only if, in the chief executive's opinion, the staff member has the necessary expertise or experience to exercise the powers.

Division 2—Children in detention centres

207 Where children to be detained

(1) The chief executive must decide the detention centre at which a child ordered to be detained or remanded in custody is to be detained.

(2) The chief executive may direct that a child detained in a detention centre be transferred to another detention centre.

208 Authority for admission to detention centre

(1) The chief executive must not—

(a) admit a child to a detention centre; or

(b) detain a child in a detention centre;

unless the chief executive is given a document mentioned in subsection (2).

(2) The documents are—

(a) a warrant authorising the detention of the child; or

(b) if the child has been refused bail by a police officer in relation to a charge of an offence—a copy of the bench charge sheet for the offence; or

(c) a court verdict and judgment records containing the name of the child and particulars of the judgment pronounced on the child; or

(d) a document in the prescribed form that contains the relevant details of an existing document mentioned in paragraph (c); or

(e) a document prescribed by regulation.

209 Child must be given an explanation on entry to detention centre

As soon as practicable after being admitted to a detention centre, a child must be given an explanation of the child's rights and responsibilities as a resident of the detention centre.

210 Leave of absence

(1) Subject to this Act, the chief executive may, by written notice given to a child detained in a detention centre, and subject to conditions that the chief executive determines, grant the child leave of absence.

(2) The leave may only be granted—

(a) for a specified period; and

(b) for a specified purpose set out in subsection (3); and

(c) subject to specified conditions.

(3) The purposes for which leave may be granted are—

(a) to seek or engage in paid or unpaid employment; and

(b) to attend any place for educational or training purposes; and

(c) to visit the child's family, relatives or friends; and

(d) to take part in sport, recreation or entertainment in the community; and

(e) to attend any place for medical examination or treatment; and

(f) to attend a funeral; and

(g) any other purpose that the chief executive considers will assist in the child's reintegration into the community.

(4) If a child is granted leave of absence—

(a) the child is taken to be in lawful custody during the period of leave; and

(b) the period of leave counts as part of the child's period of detention.

(5) If the child contravenes a condition imposed in relation to a grant of leave of absence (other than a condition with respect to returning to a detention centre) the chief executive may, in writing—

(a) vary the conditions of the grant; or

(b) cancel the leave of absence.

211 Childrens Court may order transfer to prison

(1) Subject to subsection (2), a person serving a period of detention under a detention order, or the chief executive, may apply to a Childrens Court judge for an order that the unserved part of the period of detention be served as a term of imprisonment.

(2) Subsection (1) only applies if—

(a) the person is 18 or more; or

(b) the person is 17 or more and—

(i) has previously been held in custody in a prison on sentence, remand or otherwise; or

(ii) has been sentenced to serve a term of imprisonment.

(3) The court may grant or refuse to grant the order.

(4) An order made under subsection (1)—

(a) must specify the day on which the order will take effect; and

(b) is taken for all purposes to be a sentence of imprisonment for a period equal to the length of the unserved part of the period of detention.

(4A) The chief executive must immediately give the chief executive (corrective services) notice of the order.

(5) The *Corrective Services Act 2000* applies to a person imprisoned under the order.

(6) However, the person may only, and must, be released on parole on the day the person would have been released under a fixed release order if the order under subsection (1) had not been made, unless the person—

(a) is released under an exceptional circumstances parole order under the *Corrective Services Act 2000*; *or*

(b) is required to be held in custody for another reason.

(7) In this section—

"period of detention", for a person who is liable to serve a further period of detention cumulatively with a period of detention being served, includes the further period of detention.

212 Chief executive may authorise treatment

Despite any other Act or law, the chief executive is authorised to give consent to any medical treatment of a child in the chief executive's custody if—

(a) the medical treatment requires the consent of a guardian of the child; and

(b) the chief executive is unable to ascertain the whereabouts of a guardian of the child despite reasonable inquiries; and

(c) it would be detrimental to the child's health to delay the medical treatment until the guardian's consent can be obtained.

213 Ordinary visitor

(1) This section does not apply to a community visitor.

(2) The chief executive may approve the entry of visitors to a detention centre either generally or in a particular case.

(3) The chief executive may refuse entry to a detention centre to a person if—

(a) in the chief executive's opinion, the person's presence in the detention centre would prejudice the security or good order of the detention centre; or

(b) the person does not, on request, give the person's name, address or proof of identity; or

(c) the person refuses to comply with a request made under subsection (5).

(4) Subject to section 214, the chief executive may require a visit to a detention centre to take place in the presence, or under the supervision, of a member of the staff of the detention centre.

(5) The chief executive may, on reasonable grounds, ask a visitor to a detention centre—

(a) to submit to an external physical search by a member of the staff of the detention centre; or

(b) to submit anything in the visitor's possession to a search by a member of the staff of the detention centre.

(6) The chief executive may give a visitor who has entered a detention centre a direction it considers necessary for the security or good order of the centre.

(7) If a visitor refuses to submit to a search requested under subsection (5) or fails to comply with a direction under subsection (6), the chief executive may ask the visitor to leave the centre immediately.

(8) A police officer or a member of the staff of a detention centre may, using force that is reasonable and necessary, remove from the centre a visitor who refuses to leave the centre immediately when requested to leave.

214 Protection of legal practitioner representing child

(1) A legal practitioner representing a child held in a detention centre is entitled to access to the child at all reasonable times.

(2) A member of the staff at a detention centre—

(a) must allow the legal practitioner to conduct an interview with the child out of the hearing of any other person; and

(b) must not open, copy, remove or read any correspondence—

(i) from the child to the legal practitioner; or

(ii) from the legal practitioner to the child.

Division 3—Complaints

215 Complaints generally

(1) A child or parent of a child detained in a detention centre may complain about a matter that affects the child.

(2) The chief executive must issue written instructions on how a complaint may be made and dealt with, which may include the direction of the complaint to a community visitor or other appropriate authority.

(3) Despite subsection (2), a child is entitled to complain directly to a community visitor.

(4) The chief executive need not deal with a complaint that the chief executive reasonably believes to be trivial or made only to cause annoyance.

(5) The chief executive must tell the child how the complaint will be dealt with.

(6) This section does not limit the powers of a community visitor.

Division 4—Offences

219 Escape

(1) A person who is lawfully detained under this Act must not—

(a) escape from detention; or

(b) attempt to escape from detention; or

(c) be absent from a detention centre without lawful authority; or

(d) escape or attempt to escape from the custody of a police officer or an officer of the department into which the person was placed under this Act.

Maximum penalty (subject to part 5[99])—40 penalty units or imprisonment for 1 year.

(2) A police officer may arrest, without warrant, a person who commits an offence against subsection (1).

220 Search warrant

(1) The chief executive or a police officer may apply to a magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that a person who has escaped from detention is, or may be within the next 7 days, in any place.

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99 Part 5 (Sentencing)

(3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the police officer or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

(4) The warrant must—

(a) authorise any police officer, with specified assistance and by specified force that is necessary and reasonable—

(i) to enter the place; and

(ii) search for, and if found, arrest the person named in the warrant; and

(b) state whether the entry is authorised to be made at any reasonable time of the day or night or only during specified reasonable hours of the day or night; and

(c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and

(d) state the purpose for which the warrant is issued.

221 Warrants may be granted by telephone, facsimile, radio etc.

(1) If the chief executive or a police officer (**"applicant"**) considers it necessary to do so because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the applicant's remote location;

the applicant may apply by telephone, facsimile, radio or another form of communication for a warrant under section 220.

(2) Before applying for the warrant, the applicant must prepare an information on oath of the kind mentioned in section 220(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, the applicant may apply for the warrant before the information has been sworn.

(4) If the magistrate is satisfied—

(a) after having considered the terms of the information; and

(b) after having received such further information (if any) that the magistrate may have required concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may, under section 220, complete and sign the warrant that the magistrate would issue under the section if the application had been made under the section.

(5) If the magistrate completes and signs the warrant, the magistrate must promptly send a copy of the warrant to the applicant by facsimile or, if it is not reasonably practicable to do so—

(a) the magistrate must—

(i) tell the applicant what the terms of the warrant are; and

(ii) tell the applicant the day and time when the warrant was signed; and

(iii) record on the warrant the reasons for granting the warrant; and

(b) the applicant must—

(i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and

(ii) write on the form of warrant the name of the magistrate and the day and time when the magistrate signed the warrant.

(6) The applicant must also—

(a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or

(b) if it is not practicable to comply with paragraph (a)—as soon as practicable after the day mentioned in the paragraph;

send to the magistrate—

(c) the information mentioned in subsection (2), which must have been properly sworn; and

(d) if a form of warrant was completed by the police officer under subsection (5)(b)—the completed form of warrant.

(7) When the magistrate receives the documents mentioned in subsection (6), the magistrate must—

(a) attach them to the warrant that the magistrate completed and signed; and

(b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 220.

(8) A facsimile copy of a warrant, or a form of warrant properly completed by the applicant under subsection (5)(b), is authority for an entry, search, arrest or other exercise of a power that the warrant signed by the magistrate authorises.

(9) If—

(a) it is material for a court to be satisfied that an entry, search, arrest or other exercise of power was authorised by this section; and

(b) the warrant completed and signed by the magistrate authorising the exercise of power is not produced in evidence;

the court must assume that the exercise of power was not authorised by this section unless the contrary is proved.

222 Offences relating to detention centres

(1) A person must not—

(a) without lawful authority enter or attempt to enter a detention centre; or

(b) remain in or in the vicinity of a detention centre after having been directed to leave by—

(i) the chief executive; or

(ii) a police officer; or

(c) in contravention of a direction from the chief executive, communicate or attempt to communicate with a person detained at the detention centre; or

(d) without lawful authority—

(i) convey or deliver, or allow another person to convey or deliver, to a person detained in the centre any liquor, drugs, money, letter, document or other article; or

(ii) convey, or allow another person to convey, from the detention centre any liquor, drugs, money, letter, document, clothing or other article; or

(iii) leave, or allow to be left, at the centre any liquor, drugs, money, letter, document, clothing or other article with the intention that it come into the possession of a person detained in the centre.

Maximum penalty (subject to part 5[100])—40 penalty units or imprisonment for 1 year.

(2) A police officer may arrest without warrant any person found committing an offence against subsection (1).

Division 5—Child of detainee

223 Child of detainee may be accommodated in detention centre

The chief executive may allow a child of a person detained in a detention centre to be accommodated in the detention centre subject to conditions the chief executive considers appropriate.

224 Registration of birth of child of detainee

(1) In this section—

"document" means a certificate or other document made or issued under the *Registration of Births, Deaths and Marriages Act 1962* in relation to the birth of a child or an alteration or addition to the name of a child.

(2) If a document is made or issued in relation to a child whose mother or father is, or was when the child was born, detained in a detention centre or otherwise detained under this Act—

(a) the document must not state that fact or contain information from which that fact can reasonably be inferred; and

(b) an address—

100 Part 5 (Sentencing)

(i) that is required by the *Registration of Births, Deaths, and Marriages Act 1962* to be shown in the document; and

(ii) that can not be shown in the document because of paragraph (a);

must instead be shown as the city or town in which or nearest to which the address is situated.

Division 6—Trust fund

224AA Detainees trust fund to be kept

(1) The chief executive must keep a detainees trust fund.

(2) All amounts received by the chief executive, or anyone else under an arrangement with the chief executive, for a detainee must be paid into the detainees trust fund.

(3) Amounts in the detainees trust fund to the credit of a detainee—

(a) may be spent by the detainee, with the chief executive's consent; and

(b) must be paid by the chief executive to the public trustee, if the public trustee is managing the detainee's estate and the public trustee requests the payment; and

(c) must be paid by the chief executive to the detainee on being discharged or being released on parole or under a fixed release order under this Act; and

(d) must be paid by the chief executive to the chief executive (corrective services) if the detainee is transferred from the chief executive's custody to the custody of the chief executive (corrective services).

(4) In this section—

"detainee" means a person in the custody of the chief executive under this Act.

PART 7—GENERAL

224A Programs and services for children

(1) The chief executive must establish—

(a) programs and services necessary to give effect to any order or direction under this Act; and

(b) programs and services to support, help, and reintegrate into the community children who have committed offences.

(2) Without limiting subsection (1), the chief executive must decide the activities that are to comprise community service for every community service order.

(3) The chief executive may establish any other programs and services for children who have committed offences.

224B Police may help in keeping child in custody

Nothing in this Act stops the commissioner of the police service entering into arrangements with the chief executive under which the commissioner holds a child in custody for the chief executive.

225 Parent entitled to know of whereabouts of child in custody

(1) A parent of a child who is being held in custody on being arrested for an offence, or on an order made under this Act, may request the chief executive to inform the parent of the whereabouts of the child.

(2) The chief executive on request must give the information to the parent if the child is in the chief executive's custody, or the chief executive knows where the child is.

226 Preservation of confidentiality

(1) A person must not record, disclose or use confidential information gained by the person through involvement in the administration of this Act, unless the person does so—

(a) for the purpose of this Act; or

(b) for the purpose of the *Police Powers and Responsibilities Act 2000*, section 211;[101] or

(c) when expressly authorised under an Act; or

(d) when authorised under the regulations.

Maximum penalty (subject to part 5)—40 penalty units.

(2) A person is not required—

(a) to disclose confidential information to a court or tribunal; or

(b) to produce a record containing confidential information to a court or tribunal;

unless—

(c) it is necessary to do so for the purpose of this Act; or

(d) the court considers that it is necessary in the interests of justice to do so.

(3) A person gains information through involvement in the administration of this Act if the person gains the information—

(a) in the course of the involvement; or

(b) because of opportunity provided by the involvement.

(4) The following persons are taken to be involved in the administration of this Act—

(a) an officer of the department; and

(b) a person investigating a matter under this Act; and

(c) any other person who performs a function under or for the purposes of this Act.

(5) In this section—

"child" means a child dealt with under this Act.

"confidential information" includes—

(a) the name, address, school, place of employment or any other particular likely to lead to the identification of a child; and

101 *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

(b) any photograph, picture, videotape or other visual representation of a person that is likely to lead to the identification of the child; and

(c) a report made for the purposes of a proceeding in relation to a child; and

(d) a report about a child made for the department or another Government department; and

(e) a report about a child given to an agency for the purpose of carrying out the objects of this Act.

227 Approved forms

The chief executive may approve forms for use under this Act.

228 Evidence

(1) This section applies to any proceeding.

(2) It is unnecessary to prove the appointment of a department's chief executive, a public service officer, a community visitor or anyone appointed under this Act.

(3) It is not necessary to prove the authority of any person to take any action under this Act.

(4) Subsection (2) or (3) does not apply if a party to the proceeding, by reasonable notice, requires the appointment or authority to be proved.

(5) This section does not affect a person's right to adduce evidence to disprove the appointment or authority.

229 Proceeding for offence

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) In a proceeding for an offence against this Act, a police officer or a public service officer may appear for the prosecution even though not a complainant or arresting officer.

(3) A reference in this Act to a legal practitioner acting for a party includes anyone appearing for the prosecution under subsection (2).

230 Extension of time for payment of amounts

The proper officer of a court by which a person is ordered to pay an amount under this Act by way of fine, restitution or compensation on application in writing made by any party to the proceeding in which the order was made may extend the period in which the person is required to pay the amount subject to conditions if any that the proper officer considers just.

231 Enforcement of child payments

If an order is made by a court under this Act requiring a child to pay to the State or to any person an amount of money by way of fine, restitution or compensation—

(a) the amount ordered to be paid constitutes a debt owing to the State or other person by the child; and

(b) the order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*; and

(c) on being so filed, the order is taken to be an order properly made by the Magistrates Court under that Act and may be enforced as an order so made.

232 Enforcement of sentence by calendar

Despite a provision of this Act requiring a court to issue or order the issue of a warrant to have a child taken into custody and delivered to a detention centre to serve a period of detention, the court need not act under the provision if a calendar or other document of the registrar or other official of the court has the same effect.

232A Delegation

(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified public service officer.

(2) In this section—

"appropriately qualified" includes having the qualifications, experience or standing appropriate to exercise the power.

Example of 'standing'—

The officer's seniority level in the public service.

232B Delegation of powers by proper officer

(1) A proper officer may delegate the proper officer's powers under this Act to a public service officer mentioned in subsection (2) if the public service officer is a justice.

(2) If the proper officer is—

(a) the registrar, sheriff, deputy sheriff or under sheriff—the powers may be delegated to a public service officer employed in the registry of the court concerned; or

(b) the clerk of the court—the powers may be delegated to a public service officer employed in the registry of the court concerned.

233 Regulations

(1) The Governor in Council may make regulations for the purpose of this Act.

(2) Without limiting the power conferred by subsection (1), the Governor in Council may make regulations in relation to the matters set out in the schedule.

PART 8—TRANSITIONAL PROVISIONS

Division 1—Transitional provision for Juvenile Justice Legislation Amendment Act 1996

236 Application of Act to matters before Juvenile Justice Legislation Amendment Act 1996

(1) This Act as amended by a provision of the amendment Act applies to an offence committed, and proceeding started, before the commencement of the provision.

(2) However—

(a) a person can not be sentenced more severely for an offence committed before the commencement of a provision of the amendment Act than would have been the case if the provision had not been enacted; and

(b) a caution administered before the commencement of section 18N or 18O[102] can not be disclosed to a court or anyone after the commencement of the section if the disclosure could not have been made if the section had not been enacted.

(c) a parent of a child can not be ordered under section 198[103] to pay compensation for an offence committed by the child before the commencement of section 63 of the amendment Act that the parent could not have been ordered to pay before the commencement.

(3) Subsection (2)(a) is about punishment level and does not stop a court making orders against anyone of a type or number only available because of the amendment Act.

(4) In this section—

"amendment Act" means the *Juvenile Justice Legislation Amendment Act 1996*.

Division 2—Transitional provisions for Juvenile Justice Legislation Amendment Act 1998

237 Transfer of staff

(1) The purpose of this section is to transfer officers and employees of Queensland Corrections to the public service because of the change to the chief executive's functions under the *Juvenile Justice Legislation Amendment Act 1998*.

(2) On the commencement of this section, the following persons become public service employees employed in the department—

(a) persons who, immediately before the commencement, were officers or employees of Queensland Corrections employed as members of the staff of detention centres;

102 Section 18N (Disclosable caution and community conference agreement—later childhood offence) or 18O (Disclosable caution and community conference agreement—later adulthood offence)

103 Section 198 (Show cause hearing)

(b) persons decided by the Governor in Council who, immediately before the commencement, were employed by Queensland Corrections.

(3) Appointments for subsection (2) are to be made under the *Public Service Act 1996*.

(4) The remuneration under the *Public Service Act 1996* of a person under an appointment under subsection (3) must not be less than the remuneration to which the person would have been entitled if the person's employment as an officer or employee of Queensland Corrections had continued.

(5) The person may claim against the department all entitlements accrued as an officer or employee of Queensland Corrections.

(6) The person's leave entitlements are to be calculated as if previous service as an officer of the public service and service as an officer or employee of the Queensland Corrective Services Commission or Queensland Corrections and service as a public service employee were continuous service as a public service employee.

(7) To remove any doubt, it is declared that for this section an officer or employee of Queensland Corrections includes a person appointed under a fixed-term contract of employment.

(8) In this section—

"remuneration" means total remuneration including entitlements.

238 Disciplinary proceedings

(1) This section applies to a person who becomes a public service employee under section 237(2).

(2) Disciplinary proceedings may be taken against the person after the commencement of this section for a disciplinary matter that happened while the person was an officer or employee of Queensland Corrections as if the person were a public service employee at the time the matter happened.

239 Transfer of amounts held on trust for detainees

(1) This section applies to all amounts that, immediately before the commencement of this section, were credited to the detainees trust fund

kept by the Queensland Corrective Services Commission under the *Corrective Services (Administration) Act 1988*, section 51.

(2) The commission must, on the commencement of this section, transfer the amounts to the detainees trust fund kept by the chief executive under this Act.

240 Termination of contracts

(1) The detention centre contracts are terminated.

(2) The State does not incur liability because of the termination.

(3) In this section—

"detention centre contracts" means the following contracts entered into between the Queensland Corrective Services Commission and Queensland Corrections—

(a) a contract dated 29 August 1997 for the operation and management of the John Oxley Youth Detention Centre;

(b) a contract dated 29 August 1997 for the operation and management of the Sir Leslie Wilson Youth Detention Centre;

(c) a contract dated 29 August 1997 for the operation and management of the Cleveland Youth Detention Centre.

SCHEDULE

REGULATION MAKING POWER

section 233(2) of this Act

1. The form of an attendance notice, all matters relating to the operation of attendance notices in the place of complaints and summons.

2. All matters concerning community conferences, including—

(a) convening and conduct of a community conference; and

(b) reports to be given by a community conference convenor; and

(c) time for completing a community conference; and

(d) regulating contents of community conference agreements; and

(e) keeping of names of persons approved as community conference convenors and information about community conferences.

3. Matters to be included in presentence reports.

4. Forms, conditions, requirements, duties, functions and powers relating to orders made under part 5.

5. The standards, management, control and supervision of probation orders, community service orders and immediate release orders.

6. Standards, management, control and supervision of detention centres.

7. Maintenance of good order and discipline within detention centres.

8. Conditions for the release of children from detention centres.

9. Medical services to children in detention.

10. Searches of children in detention centres and their possessions.

12. Matters relating to the breach, revocation or variation of orders made under this Act.

13. Penalties for a contravention of a regulation of not more than 20 penalty units.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 November 2002. Future amendments of the Juvenile Justice Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key		Explanation	Key		Explanation
AIA	=	**Acts Interpretation Act 1954**	**(prev)**	=	**previously**
amd	=	**amended**	**proc**	=	**proclamation**
amdt	=	**amendment**	**prov**	=	**provision**
ch	=	**chapter**	**pt**	=	**part**
def	=	**definition**	**pubd**	=	**published**
div	=	**division**	**R[X]**	=	**Reprint No.[X]**
exp	=	**expires/expired**	**RA**	=	**Reprints Act 1992**
gaz	=	**gazette**	**reloc**	=	**relocated**
hdg	=	**heading**	**renum**	=	**renumbered**
ins	=	**inserted**	**rep**	=	**repealed**
lap	=	**lapsed**	**(retro)**	=	**retrospectively**
notfd	=	**notified**	**s**	=	**section**
o in c	=	**order in council**	**sch**	=	**schedule**
om	=	**omitted**	**sdiv**	=	**subdivision**
orig	=	**original**	**SIA**	=	**Statutory Instruments Act 1992**
p	=	**page**	**SIR**	=	**Statutory Instruments Regulation 2002**
para	=	**paragraph**	**SL**	=	**subordinate legislation**
prec	=	**preceding**	**sub**	=	**substituted**
pres	=	**present**	**unnum**	=	**unnumbered**
prev	=	**previous**			

4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to Act No. 32 of 1993	1 September 1993	26 August 1993
2	to Act No. 76 of 1993	14 December 1993	18 January 1994
3	to Act No. 87 of 1994	1 December 1994	20 January 1995
3A	to Act No. 22 of 1996	15 August 1996	26 August 1996
3B	to Act No. 22 of 1996	18 November 1996	20 January 1997
3C	to Act No. 75 of 1996	1 February 1997	10 February 1997
4	to Act No. 3 of 1997	2 April 1997	4 April 1997
4A	to Act No. 9 of 1997	1 August 1997	15 August 1997
4B	to Act No. 82 of 1997	20 February 1998	11 March 1998
5	to Act No. 82 of 1997	20 February 1998	26 June 1998
5A	to Act No. 39 of 1998	7 December 1998	7 December 1998
5B	to Act No. 42 of 1999	1 May 1999	8 September 1999
5C	to Act No. 42 of 1999	1 December 1999	1 December 1999
5D	to Act No. 70 of 1999	1 March 2000	14 March 2000
5E	to Act No. 22 of 2000	1 July 2000	14 July 2000

Reprint No.	Amendments included	Effective	Reprint date
5F	to Act No. 46 of 2000	27 October 2000	8 November 2000
5G	to Act No. 63 of 2000	27 November 2000	8 December 2000
5H	to Act No. 63 of 2000	2 February 2001	2 February 2001
5I	to Act No. 63 of 2000	1 July 2001	13 July 2001
6	to Act No. 63 of 2000	1 July 2001	7 September 2001
6A	to Act No. 63 of 2000	28 February 2002	7 March 2002
6B	to Act No. 46 of 2002	24 September 2002	

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

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6 List of legislation

Juvenile Justice Act 1992 No. 44
date of assent 19 August 1992
ss 1–2 commenced on date of assent
remaining provisions commenced 1 September 1993 (1993 SL No. 313)

amending legislation—

Penalties and Sentences Act 1992 No. 48 s 207 sch
date of assent 24 November 1992
commenced 27 November 1992 (1992 SL No. 377)

Statute Law (Miscellaneous Provisions) Act 1993 No. 32 s 3 sch 1
date of assent 3 June 1993
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 sch 1
date of assent 14 December 1993
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 1
date of assent 1 December 1994
commenced on date of assent

Criminal Code No. 37 of 1995 ss 1–2, 458 sch 2 pt 2
date of assent 16 June 1995
ss 1–2 commenced on date of assent
remaining provisions never proclaimed into force and rep 1997 No. 3 s 121

Criminal Offence Victims Act 1995 No. 54 ss 1–2, 45 sch 2
date of assent 22 November 1995
ss 1–2 commenced on date of assent
remaining provisions commenced 18 December 1995 (1995 SL No. 383)

Juvenile Justice Legislation Amendment Act 1996 No. 22 pts 1–2, schs 1, 3
date of assent 15 August 1996
ss 6, 12(1), 13(2)–(3), 22, 25–26, 27(1) (so far as it ins new s 89(1)(c)), 27(2), 28(3), 33–39, 44–46, 48–49, 51–52, 54–55, 57–58, 60, 62–64 and 72 commenced 18 November 1996 (1996 SL No. 324)
ss 5(1)–(2) so far as it om/ins certain definitions, 8 so far as it ins new pt 1C divs 2–4, 9–11, 12(2), 13(1), (4)–(5), 40–41, 43, sch 1 amdts 3–4 commenced 2 April 1997 (1997 SL No. 69)
remaining provisions commenced on date of assent

WorkCover Queensland Act 1996 No. 75 ss 1–2, 535 sch 2 (this Act is amended, see amending legislation below)
date of assent 12 December 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 1997 (see 1997 No. 9 s 4 sch 2 (exp 21 June 1997 (see s 4(2) and 1997 SL No. 155)))

amending legislation—

Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(3) pt 27 (amends 1996 No. 75 above)
date of assent 15 May 1997
commenced 2 April 1997 (see s 2(3))

Criminal Law Amendment Act 1997 No. 3 ss 1, 2(2), 122 sch 2 (this Act is amended, see amending legislation below)
date of assent 3 April 1997
ss 1–2 commenced on date of assent
sch 2 amdt 2 commenced 1 August 1997 (1997 SL No. 236)
remaining provisions commenced 1 July 1997 (1997 SL No. 152)

amending legislation—

Courts Reform Amendment Act 1997 No. 38 ss 1–2 pt 14 (amends 1997 No. 3 above)
date of assent 18 July 1997
commenced 1 August 1997 (1997 SL No. 235)

Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(1), (3) pt 14
date of assent 15 May 1997
ss 1–2, 42, 44 commenced on date of assent
remaining provisions commenced 2 April 1997 (see s 2(3))

Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1, 2(2) pt 15
date of assent 5 December 1997
ss 1–2 commenced on date of assent
remaining provisions commenced 20 February 1998 (1998 SL No. 13)

Juvenile Justice Legislation Amendment Act 1998 No. 39 pts 1, 3
date of assent 27 November 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 7 December 1998 (1998 SL No. 325)

Corrective Services Legislation Amendment Act 1999 No. 9 pt 1 sch
date of assent 30 March 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 1 May 1999 (1999 SL No. 72)

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch
date of assent 30 April 1999
commenced on date of assent

Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3
date of assent 2 September 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 1 December 1999 (see s 2(1))

Audio Visual and Audio Links Amendment Act 1999 No. 65 pts 1, 4
date of assent 6 December 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 1 March 2000 (2000 SL No. 14)

State Penalties Enforcement Act 1999 No. 70 ss 1–2, 166 sch 1
date of assent 6 December 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 27 November 2000 (2000 SL No. 274)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3
date of assent 23 March 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2
date of assent 8 June 2000
ss 1–2, 590 commenced on date of assent (see s 2(1))
remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

Police Powers and Responsibilities and Other Acts Amendment Act 2000 No. 22 pts 1, 5
date of assent 23 June 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (see s 2)

Penalties and Sentences and Other Acts Amendment Act 2000 No. 42 pts 1, 3
date of assent 13 October 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 27 October 2000 (2000 SL No. 272)

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch
date of assent 25 October 2000
commenced on date of assent

Commission for Children and Young People Act 2000 No. 60 ss 1–2, 175 sch 3
date of assent 24 November 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 2 February 2001 (2001 SL No. 1)

Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2
date of assent 24 November 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2001 (2001 SL No. 88) (remaining provisions were to commence 2 April 2001 but the commencing proclamation (2000 SL No. 335) was repealed (2001 SL No. 23))

Juvenile Justice Amendment Act 2002 No. 39 pts 1–2
date of assent 29 August 2002
ss 1–2 commenced on date of assent
remaining provisions not yet proclaimed into force (see s 2)

Community Services Legislation Amendment Act 2002 No. 46 ss 1, 40 sch
date of assent 24 September 2002
commenced on date of assent

Drug Diversion Amendment Act 2002 No. 59 pts 1–2
date of assent 14 November 2002
commenced on date of assent

7 List of annotations

PART 1—PRELIMINARY
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Principles of juvenile justice
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sub 2002 No. 39 s 4

Definitions
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def **"approved form"** ins 1996 No. 22 s 5(2)
reloc to sch 4 2002 No. 39 s 5(5)
def **"approved provider"** ins 2002 No. 59 s 3
def **"arrest"** reloc to sch 4 2002 No. 39 s 5(5)
def **"arrest offence"** reloc to sch 4 2002 No. 39 s 5(5)
def **"attend"** ins 2002 No. 59 s 3
def **"attendance notice"** om 2002 No. 39 s 5(2)
def **"bail"** reloc to sch 4 2002 No. 39 s 5(5)
def **"breach of duty"** om 2002 No. 39 s 5(2)

def **"caution"** sub 1996 No. 22 s 5(1)–(2)
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def **"chief executive"** om R3 (see RA s 39)
def **"child"** reloc to sch 4 2002 No. 39 s 5(5)
def **"Childrens Court judge"** sub 2002 No. 39 s 5(2)–(3)
reloc to sch 4 2002 No. 39 s 5(5)
def **"Childrens Court magistrate"** reloc to sch 4 2002 No. 39 s 5(5)
def **"commission"** ins 1996 No. 22 s 5(2)
om 1999 No. 9 s 3 sch
def **"Commissioner"** om 1996 No. 22 s 5(1)
def **"committal proceeding"** reloc to sch 4 2002 No. 39 s 5(5)
def **"community based order"** ins 2002 No. 39 s 5(3)
reloc to sch 4 2002 No. 39 s 5(5)
def **"community conference agreement"** ins 1996 No. 22 s 5(2)
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s 107C ins 1998 No. 39 s 35
amd 1999 No. 9 s 3 sch

Division 10—Some provisions about admissibility of childhood offences
div 10 (s 107E) ins 2002 No. 39 s 48

PART 5—SENTENCING
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s 108 amd 1996 No. 22 s 3 sch 1

Sentencing principles
s 109 amd 2000 No. 42 s 6; 2002 No. 46 s 40 sch; 2002 No. 39 s 49

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s 110 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 37; 2002 No. 39 s 50

Disclosure of presentence report
s 112 amd 1996 No. 22 s 38

Finding of guilt as child may be disclosed while a child
s 113 amd 1996 No. 22 s 39

Evidence of childhood finding of guilt not admissible against adult
s 114 amd 1996 No. 22 s 40; 2002 No. 39 s 51(1)–(3)
reloc and renum (as pt 4, div 10, s 107F) 2002 No. 39 s 51(4)

Particular cautions and community conference agreements admissible as part of person's criminal history
s 114A ins 1996 No. 22 s 41
om 2002 No. 39 s 52

Outstanding charge may be taken into account on sentence
s 117 amd 1992 No. 48 s 207 sch

Children entitled to explanation of sentence
s 118 amd 2002 No. 39 s 53

Audio visual link or audio link may be used to sentence
s 118A ins 1999 No. 65 s 8
amd 2002 No. 39 s 54

Copy of court order to be given to child, parent etc.
prov hdg sub 1996 No. 22 s 42(1)
s 119 amd 1996 No. 22 s 42(2); 1998 No. 39 s 36

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div hdg ins 1996 No. 22 s 43
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sdiv hdg ins 2002 No. 39 s 56

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s 119A ins 1996 No. 22 s 43
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s 119AA ins 2002 No. 39 s 58

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sdiv hdg ins 2002 No. 39 s 58

If an agreement is made on an indefinite referral by a court
s 119B ins 1996 No. 22 s 43
amd 2002 No. 39 s 59

Powers of proper officer if indefinite referral is unsuccessful or if child contravenes agreement made on court's indefinite referral
s 119C ins 1996 No. 22 s 43
amd 2002 No. 39 s 60

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sdiv hdg ins 2002 No. 39 s 61

If an agreement is made on a referral by a court before sentence
prov hdg amd 2002 No. 39 s 62(1)
s 119D ins 1996 No. 22 s 43
amd 2002 No. 39 s 62(2)–(5)

Subdivision 4—No further action instead of sentence
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Division 2—Orders on children found guilty of offences
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s 120 amd 1996 No. 22 s 44
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More than 1 type of order may be made for a single offence
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Probation orders—requirements
s 132 amd 2002 No. 39 s 70

Child must be willing to comply
s 133 amd 2002 No. 39 s 71

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s 134 amd 1996 No. 22 s 50
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General options available to Childrens Court magistrate on breach application
s 135 amd 1994 No. 87 s 3 sch 1; 1999 No. 19 s 3 sch
om 2002 No. 39 s 72

General options available to superior court to which child committed for breach
s 136 om 2002 No. 39 s 72

General options available to court before which child found guilty of an indictable offence
s 137 om 2002 No. 39 s 72

Court may resentence child originally sentenced by lower court
s 138 amd 1999 No. 19 s 3 sch
om 2002 No. 39 s 72

General options available to court to which child committed for breach by indictable offence
s 139 om 2002 No. 39 s 72

Specific powers if breach proved
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s 141 amd 1996 No. 22 s 51
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s 146 amd 2002 No. 39 s 73

Requirements to be set out in community service order
s 147 amd 2002 No. 39 s 74

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s 149 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 52; 2002 No. 39 s 75

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s 151A ins 2002 No. 39 s 76

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s 154 amd 1999 No. 19 s 3 sch
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General options available to superior court to which child committed for breach
s 155 amd 1999 No. 19 s 3 sch
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s 156 amd 1996 No. 22 s 54
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s 158 amd 1996 No. 22 s 55
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s 159 om 2002 No. 39 s 78

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s 160 om 2002 No. 39 s 78

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s 161 om 2002 No. 39 s 78

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Division 7—Detention order
Detention to be served in detention centre
s 167 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 ss 3, 56 sch 1; 1998 No. 39 s 37; 2002 No. 39 s 79

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s 171 amd 1996 No. 22 s 57

Period of escape or release pending appeal not counted as detention
prov hdg amd 2002 No. 39 s 80(1)
s 172 amd 2002 No. 39 s 80(2)–(3)

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s 172A ins 1996 No. 22 s 58
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s 173 amd 1996 No. 22 s 59; 1998 No. 39 s 39; 1999 No. 9 s 3 sch; 2002 No. 39 s 82

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s 174 amd 1994 No. 87 s 3 sch 1; 2002 No. 39 s 83

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s 175 prov hdg amd 2002 No. 39 s 85

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s 177 sub 2002 No. 39 s 87

Child must be willing to comply
s 178 amd 2002 No. 39 s 88

Presentence report must support immediate release order
s 179 sub 2002 No. 39 s 89

Effect of program period ending
s 180 amd 2002 No. 39 s 90

Application of Workers' Compensation Act 1990
s 181 prev s 181 om 1996 No. 75 s 535 sch 2 (also see 1997 No. 9 s 4 sch 2)
pres s 181 ins 2002 No. 39 s 91

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prov hdg amd 2002 No. 39 s 92(1)
s 182 amd 2002 No. 39 s 92(2)–(2)

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s 183 amd 1999 No. 19 s 3 sch
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s 184 om 2002 No. 39 s 93

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s 185 amd 1999 No. 19 s 3 sch
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s 186 om 2002 No. 39 s 93

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s 187 om 2002 No. 39 s 93

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s 188 amd 1994 No. 87 s 3 sch 1

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s 189 sub 2002 No. 39 s 94

Child may be released from detention while absent from place of detention
s 189A ins 2002 No. 39 s 94

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s 190 amd 2002 No. 39 s 95

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s 191 amd 1998 No. 39 s 40
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Subdivision 4—Release for life sentences
sdiv hdg ins 1996 No. 22 s 60
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s 191A ins 1996 No. 22 s 60

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prov hdg amd 2000 No. 63 s 276 sch 2
s 191B ins 1996 No. 22 s 60
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Division 9—Application of Transport Operations (Road Use Management) Act 1995
div hdg amd 1999 No. 42 ss 2(1), 54(3) sch pt 3

Application of Transport Operations (Road Use Management) Act 1995 generally
prov hdg amd 1999 No. 42 s 54(3) sch pt 3
s 193 amd 1999 No. 42 s 54(3) sch pt 3

Disqualification
s 194 amd 1999 No. 42 s 54(3) sch pt 3

Division 9A—Order for identifying particulars to be taken
div hdg ins 1996 No. 22 s 61

Court may order sentenced child's identifying particulars to be taken
s 194A ins 1996 No. 22 s 61
amd 2000 No. 5 s 461 sch 3; 2002 No. 39 s 99

Division 10—Application of Criminal Offence Victims Act 1995
div hdg sub 1995 No. 54 s 45 sch 2

Civil compensation orders
prov hdg sub 2002 No. 39 s 100
s 195 sub 1995 No. 54 s 45 sch 2

Division 11—Orders against parent
Notice to parent of child offender
s 197 amd 1996 No. 22 s 62

Show cause hearing
s 198 amd 1996 No. 22 s 63; 1998 No. 39 s 41

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s 199 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 64

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Application of Corrective Services Act 2000
prov hdg amd 2000 No. 63 s 276 sch 2
s 200 amd 1997 No. 9 s 44; 2000 No. 63 s 276 sch 2

Chief executive to establish programs and services
s 202 om 1996 No. 22 s 65

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s 203 amd 1996 No. 22 s 66; 1998 No. 39 s 42; 2002 No. 39 s 101

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s 203A ins 2000 No. 16 s 590 sch 1 pt 2

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s 204 amd 1996 No. 22 s 3 sch 1; 1998 No. 39 s 43; 1999 No. 9 s 3 sch
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s 205 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 67; 1998 No. 39 s 44
om 2000 No. 60 s 175 sch 3

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s 206 amd 1996 No. 22 s 68; 1998 No. 39 s 45
om 2000 No. 60 s 175 sch 3

Where children to be detained
s 207 amd 1996 No. 22 s 69; 1998 No. 39 s 46

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s 208 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 70; 1998 No. 39 s 47; 2000 No. 46 s 3 sch

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s 209 sub 2002 No. 39 s 102

Obligation to report harm to children in detention centres
s 209A ins 2002 No. 39 s 102

Leave of absence
s 210 amd 1996 No. 22 s 71; 1998 No. 39 s 48

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s 211 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 72; 1998 No. 39 s 49; 1999 No. 9 s 3 sch; 2000 No. 63 s 276 sch 2; 2002 No. 39 s 103

Chief executive may authorise treatment
prov hdg amd 1996 No. 22 s 73; 1998 No. 39 s 50(1)
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s 213 amd 1994 No. 87 s 3 sch 1; 1996 No. 22 s 74; 1998 No. 39 s 51; 2000 No. 60 s 175 sch 3

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s 213A ins 2002 No. 39 s 104

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s 213AA ins 2002 No. 39 s 104

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s 213B ins 2002 No. 39 s 104

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s 214 amd 2002 No. 39 s 105

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s 215 amd 1996 No. 22 s 75; 1998 No. 39 s 52; 2000 No. 60 s 175 sch 3

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om 2000 No. 60 s 175 sch 3

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s 217 om 2000 No. 60 s 175 sch 3

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s 218 om 2000 No. 60 s 175 sch 3

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s 219 amd 1993 No. 32 s 3 sch 1; 2002 No. 39 s 106

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s 220 amd 1996 No. 22 s 77; 1998 No. 39 s 54
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s 221 amd 1996 No. 22 s 78; 1998 No. 39 s 55
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s 223 amd 1996 No. 22 s 80; 1998 No. 39 s 57

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s 229 amd 1996 No. 22 s 85; 1998 No. 39 s 65

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s 233 amd 2000 No. 60 s 175 sch 3; 2002 No. 39 s 113

Transitional delegations saved by Juvenile Justice Legislation Amendment Act 1996
s 234 sub 1996 No. 22 s 86
exp 31 December 1996 (see s 234(3)(b))
AIA s 20A applies (see s 234(3)(c))

Transitional orders and decisions saved by Juvenile Justice Legislation Amendment Act 1996
s 235 prev s 235 om R1 (see RA s 40)
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exp 31 December 1996 (see s 235(4)(b))
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PART 8—TRANSITIONAL PROVISIONS
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s 237 ins 1998 No. 39 s 68

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s 238 ins 1998 No. 39 s 68

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s 239 ins 1998 No. 39 s 68

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Subdivision 3—Investigation provisions
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Subdivision 4—Cautions and community conferences
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SCHEDULE 1—CHARTER OF JUVENILE JUSTICE PRINCIPLES
ins 2002 No. 39 s 117

SCHEDULE 2—TRANSITIONAL PROVISIONS
om 1996 No. 22 s 88

SCHEDULE 3—ACTS AMENDED
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pres sch 3 ins 2002 No. 39 s 118
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8 List of forms notified or published in the gazette

Form 1 Version 3—Notice of application to a Childrens Court for identifying particulars
pubd gaz 5 February 1999 p 387

Form 2 Version 2—Order that child's identifying particulars be taken
pubd gaz 22 November 1996 pp 1146–7

Form 3 Version 2—Notice of caution
pubd gaz 22 November 1996 pp 1146–7

Form 3A Version 1—Notice of caution (further offences)
pubd gaz 22 November 1996 pp 1146–7

Form 4 Version 2—Community Conference Inquiry Form
pubd gaz 11 April 1997 p 1487

Form 5 Version 2—Report on the outcome of a Community Conference
pubd gaz 11 April 1997 p 1487

Form 6 Version 2—Community Conference Agreement
pubd gaz 11 April 1997 p 1487

Form 7 Version 2—Notice to attend Community Conference referred by a Police Officer
pubd gaz 11 April 1997 p 1487

Form 8 Version 2—Notice of time and place to attend a Community Conference
pubd gaz 11 April 1997 p 1487

Form 9 Version 2—Notice declining the convening of a Community Conference
pubd gaz 11 April 1997 p 1487

Form 10 Version 2—Notice to attend Community Conference referred by the Court
pubd gaz 11 April 1997 p 1487

Form 12 Version 2—Attendance Notice
pubd gaz 22 November 1996 pp 1146–7

Form 13 Version 2—Warrant to apprehend a child where Attendance Notice is disobeyed
pubd gaz 22 November 1996 pp 1146–7

Form 14 Version 2—Release Notice
pubd gaz 22 November 1996 pp 1146–7

Form 15 Version 3—Warrant remanding a child in custody
pubd gaz 5 February 1999 p 387

Form 16 Version 2—Order that parent of child attend Court
pubd gaz 22 November 1996 pp 1146–7

Form 17 Version 2—Application by parent for rehearing
pubd gaz 22 November 1996 pp 1146–7

Form 18 Version 2—Court decision on application by parent for rehearing and notice of rehearing
pubd gaz 22 November 1996 pp 1146–7

Form 19 Version 3—Warrant of commitment for trial or for sentence
pubd gaz 5 February 1999 p 387

Form 20 Version 2—Application to set aside Finding or Order because of lack of jurisdiction
pubd gaz 22 November 1996 pp 1146–7

Form 21 Version 2—Report to the proper officer of the Court on the outcome of a Community Conference
pubd gaz 11 April 1997 p 1487

Form 22 Version 2—Notice that the proceeding for an offence is to be heard by the Court or referred for a further Community Conference
pubd gaz 11 April 1997 p 1487

Form 23 Version 1—Reprimand Order
pubd gaz 22 November 1996 pp 1146–7

Form 24 Version 1—Good Behaviour Order
pubd gaz 22 November 1996 pp 1146–7

Form 25 Version 1—Notice of Fine Order
pubd gaz 22 November 1996 pp 1146–7

Form 26 Version 1—Probation Order
pubd gaz 22 November 1996 pp 1146–7

Form 27 Version 1—Community Service Order
pubd gaz 22 November 1996 pp 1146–7

Form 28 Version 1—Notice of Detention Order
pubd gaz 22 November 1996 pp 1146–7

Form 29 Version 1—Application by proper officer for breach of a Fine Order
pubd gaz 22 November 1996 pp 1146–7

Form 30 Version 1—Warrant to arrest a child on complaint of breach of Community Service Order or Probation Order
pubd gaz 22 November 1996 pp 1146–7

Form 31 Version 1
—Court Decision
—Breach of Probation Order on application
—Breach of Probation Order child found guilty of an indictable offence(s)
pubd gaz 22 November 1996 pp 1146–7

Form 32 Version 1—Application for variation, discharge, resentence of Probation Order or Community Service Order or extension of time to perform Community Service in the interests of justice
pubd gaz 22 November 1996 pp 1146–7

Form 33 Version 1—Variation, discharge and/or resentence of Probation Order or Community Service Order or extension of time to perform Community Service in the interests of justice
pubd gaz 22 November 1996 pp 1146–7

Form 34 Version 1—Application and affidavit to vary an Order by consent
pubd gaz 22 November 1996 pp 1146–7

Form 35 Version 1—Court decision on application for breach of Community Service Order
pubd gaz 22 November 1996 pp 1146–7

Form 36 Version 2—Warrant to detain in a detention centre
pubd gaz 5 February 1999 p 387

Form 37 Version 2—Application for variation of detention order in the interests of justice
pubd gaz 5 February 1999 p 387

Form 38 Version 1—Immediate Release Order
pubd gaz 22 November 1996 pp 1146–7

Form 39 Version 1—Warrant to arrest child on complaint of failure to comply with conditions of Immediate Release Order
pubd gaz 22 November 1996 pp 1146–7

Form 40 Version 1—Application for variation or revocation of an Immediate Release Order in the interests of justice
pubd gaz 22 November 1996 pp 1146–7

Form 41 Version 1—Warrant to arrest child on complaint of failure to comply with conditions of Fixed Release Order
pubd gaz 22 November 1996 pp 1146–7

Form 42 Version 1—Notice to parent of child offender
pubd gaz 22 November 1996 pp 1146–7

Form 43 Version 1—Order requiring parent to pay compensation
pubd gaz 22 November 1996 pp 1146–7

Form 44 Version 2—Authority for admission to detention centre
pubd gaz 5 February 1999 p 387

Form 45 Version 2—Leave of Absence (s 210, Juvenile Justice Act 1992)
pubd gaz 21 January 2000 p 190

Form 46 Version 1—Application for transfer to Prison
pubd gaz 22 November 1996 pp 1146–7

Form 47 Version 1—Order on application for transfer to Prison
pubd gaz 22 November 1996 pp 1146–7

Form 48 Version 2—Information for a search warrant
pubd gaz 5 February 1999 p 387

Form 49 Version 2—Search warrant
pubd gaz 5 February 1999 p 387

Form 50 Version 1—Application for extension of time for payment of amounts
pubd gaz 22 November 1996 pp 1146–7

9 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Juvenile Justice Amendment Act 2002 No. 39 pt 2 reads as follows—

PART 2—AMENDMENT OF JUVENILE JUSTICE ACT 1992

3 Act amended in pt 2

This part amends the *Juvenile Justice Act 1992.*

4 Replacement of s 4 (Principles of juvenile justice)

Section 4—

omit, insert—

‘4 Juvenile justice principles

‘**(1)** Schedule 1 sets out a charter of juvenile justice principles.

‘**(2)** The principles underlie the operation of this Act.’.

5 Amendment of s 5 (Definitions)

(1) Section 5, ‘In this Act—’—

omit, insert—

‘The dictionary in schedule 4 defines particular words used in this Act.’.

(2) Section 5, definitions “attendance notice”, “breach of duty”, “caution”, “Childrens Court judge”, “community conference agreement”, “community conference convenor”, “convenor”, “disclosable caution”, “disclosable community conference agreement”, “finding of guilt”, “fixed release order”, “general principles of juvenile justice”, “immediate release order”, “referring court”, “referring police officer”, “sentence order” and “supreme court offence”—

omit.

(3) Section 5—

insert—

‘ **“caution”** see part 1A, division 2.

“Childrens Court judge” includes the Childrens Court when constituted by a Childrens Court judge or a District Court judge.

“community based order” means a probation order, community service order, intensive supervision order or conditional release order.

“conditional release order” means an order made under section 176.[112]

“conference” means a youth justice conference.

“conference agreement” means a youth justice conference agreement.

“conference before sentence” see section 119A(3)(a)(ii).

“convene a conference” includes anything necessary to be done for the purpose of the convening of the conference, including, for example, preparing for and conducting conference meetings and doing anything necessary to finalise the conference.

“convenor” means a youth justice conference convenor approved under section 30.

“coordinator” means a youth justice coordinator appointed under section 30.

“court of competent jurisdiction”, for the trial or sentence of a child on indictment, means—

(a) the Supreme Court; or

(b) the District Court within the jurisdiction under the *District Court of Queensland Act 1967*, part 4; or

(c) a Childrens Court judge within the jurisdiction under part 4, division 4C.

“detention centre employee” means a public service employee, any of whose functions are ordinarily performed in a detention centre.

“exceptional circumstances parole order” means an exceptional circumstances parole order under the *Corrective Services Act 2000*.

112 Section 176 (Conditional release order)

"finding of guilt" means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

"grant bail" includes, for a court, enlarge the bail.

"indefinite referral" see section 119A(3)(a)(i).

"identifying information", about a child, means information that identifies the child, or is likely to lead to the identification of the child, as a child who is being, or has been, dealt with under this Act.

Example—

Each of the following is identifying information about a child if it identifies the child, or is likely to lead to the identification of a child, as a child who is being or has been dealt with under this Act—

(a) the child's name, address, school or place of employment;

(b) a photograph, picture, videotape or other visual representation of the child or someone else.

"identifying particulars" see the *Police Powers and Responsibilities Act 2000*, schedule 4.[113]

"intensive supervision order" means an intensive supervision order made under section 120(1)(ea).

"juvenile justice principles" means the principles stated in schedule 1.

"legal representation" means representation by a legal practitioner.

"member of the police service" means a member of the Queensland Police Service under the *Police Service Administration Act 1990*, section 2.2(1).

"notice to appear" means a notice to appear under the *Police Powers and Responsibilities Act 2000*, section 214(2).[114]

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113 *Police Powers and Responsibilities Act 2000*, schedule 4 (Dictionary)—
"identifying particulars", of a person, means any of the following—
(a) palm prints;
(b) fingerprints;
(c) handwriting;
(d) voiceprints;
(e) footprints;
(f) a photograph of the person's identifying features.
Examples for paragraph (f)—
1. Photographs of scars or tattoos.
2. Photographs of the person.

114 *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

"program period"—

(a) for a conditional release order—see section 177;[115] or

(b) for an intensive supervision order—see section 154.[116]

"publish" means publish to the public by television, radio, newspaper, periodical, notice, circular or other form of communication.

"referring court", for an offence referred to a conference, see section 30B(b).

"referring police officer", for an offence referred to a conference, see section 30B(a).

"release notice" see section 40.

"respected person", of an Aboriginal or Torres Strait Islander community, means a member of the community who is generally respected in the community.

"sentence order" means any of the following—

(a) an order made under section 120 or 121,[117] including a reprimand;

(b) the recording of a conviction under section 124;

(c) a conditional release order made under section 176;

(d) an order under section 191C.[118]

"supervised release order" means an order made under section 189.[119]

"support person", for a child, see the *Police Powers and Responsibilities Act 2000,* schedule 4.

"supreme court offence" means an offence for which the District Court does not have jurisdiction to try an adult because of the *District Court of Queensland Act 1967*, section 61.[120]

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115 Section 177 (Conditional release order—requirements)

116 Section 154 (Intensive supervision order—requirements)

117 Section 120 (Sentence orders—general) or 121 (Sentence orders—serious offences)

118 Section 191C (Court may allow publication of identifying information)

119 Section 189 (Chief executive's supervised release order)

120 *District Court of Queensland Act 1967*, section 61 (Limited criminal jurisdiction if maximum penalty more than 14 years)

"unlawfully at large", for a person who has been lawfully detained under this Act, includes—

(a) having escaped from detention; or

(b) having been mistakenly released from detention before the person is eligible for the release.'.

(4) Section 5, definition "community service", 'section 224A'—

omit, insert—

'section 224AU'.

(5) Section 5, definitions—

relocate to schedule 4 (as inserted by section 118).

6 Insertion of new s 5A

After section 5—

insert—

'5A Note in text

'A note in the text of this Act is part of the Act.'.

7 Replacement of pts 1B–1C

Parts 1B and 1C—

omit, insert—

'PART 1A—SPECIAL PROVISIONS ABOUT POLICING AND CHILDREN

'Division 1—Police officer must consider appropriate way to proceed

'9A Division does not apply to 2 general ways of proceeding

'This division has no effect on—

(a) the charging of a child under the *Justices Act 1886*, section 42(1A); or

(b) a proceeding on an indictment.

‘10 Police officer to consider alternatives to proceeding against child

‘**(1)** Unless otherwise provided under this division, a police officer, before starting a proceeding against a child for an offence other than a serious offence, must first consider whether in all the circumstances it would be more appropriate to do 1 of the following—

(a) to take no action;

(b) to administer a caution to the child;

(c) to refer the offence to a conference;

(d) if the offence is a minor drugs offence within the meaning of the *Police Powers and Responsibilities Act 2000* and the child may be offered an opportunity to attend a drug diversion assessment program under section 211 of that Act—to offer the child that opportunity in accordance with that section.

Note—

Because of section 104, a police officer must consider offering the same opportunities for diversion from the court system as apply to a child to a person who committed an offence as a child but is now an adult.

‘**(2)** The circumstances to which the police officer must have regard include—

(a) the circumstances of the alleged offence; and

(b) the child’s criminal history, any previous cautions administered to the child for an offence and, if the child has been in any other way dealt with for an offence under any Act, the other dealings.

‘**(3)** If necessary, the police officer must delay starting the proceeding in order to comply with a requirement under subsection (1) or (2).

‘**(4)** If, on complying with subsections (1) and (2), the police officer considers it would be more appropriate to act as mentioned in subsection (1)(a), (b), (c) or (d), then the police officer must do so.

‘**(5)** If, on complying with subsections (1) and (2), the police officer considers it would not be more appropriate to act as mentioned in subsection (1)(a), (b), (c) or (d), the police officer may start a proceeding against the child for the offence.

‘**(6)** The police officer may take the action mentioned in subsection (1)(a), (b) or (c) even though—

(a) action of that kind has been taken in relation to the child on a previous occasion; or

(b) a proceeding against the child for another offence has already been started or has ended.

'**(7)** Subsection (1) does not prevent a police officer from taking the action mentioned in subsection (1)(a) to (c) for a serious offence.

'11 Preferred way for police officer to start proceedings

'A police officer starting a proceeding against a child for an offence, other than a serious offence, must start the proceeding by way of complaint and summons or notice to appear, unless otherwise provided under this Act.

'12 Police officer's power of arrest preserved in particular general circumstances

'**(1)** A police officer may use the police officer's power of arrest under the *Police Powers and Responsibilities Act 2000*, section 198(3), without a warrant, to arrest a child for an offence without regard to sections 10 and 11 only if the police officer believes on reasonable grounds—

(a) the arrest is necessary—

(i) to prevent a continuation or a repetition of the offence or the commission of another offence; or

(ii) to obtain or preserve, or prevent concealment, loss or destruction of, evidence relating to the offence; or

(iii) to prevent the fabrication of evidence; or

(iv) to ensure the child's appearance before a court; or

Note—

Under the juvenile justice principles in schedule 1, it is a principle of this Act that a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

(b) the child is an adult; or

(c) the child is contravening section 219[121] or is unlawfully at large.

121 Section 219 (Escape)

'**(2)** In deciding for subsection (1)(b) whether the police officer had reasonable grounds, a court may have regard to the child's apparent age and the circumstances of the arrest.

'**(3)** Also, a police officer may use the police officer's power of arrest under the *Police Powers and Responsibilities Act 2000*, section 198(2), without a warrant, to arrest a child without regard to sections 10 and 11.

'**(4)** Also, a police officer may use the police officer's power of arrest under a warrant issued under the *Bail Act 1980* without regard to sections 10 and 11.

'Division 2—Cautioning

'13 Purpose of caution

'The purpose of this division is to set up a way of diverting a child who commits an offence from the courts' criminal justice system by allowing a police officer to administer a caution to the child instead of bringing the child before a court for the offence.

'14 Police officer may administer a caution

'**(1)** A police officer instead of bringing a child before a court for an offence may administer a caution to the child.

'**(2)** The child is then not liable to be prosecuted for the offence.

'**(3)** The caution is not part of the child's criminal history.

'15 Conditions for administration of police caution

'**(1)** A police officer may administer a caution to a child for an offence only if the child—

(a) admits committing the offence to the police officer; and

(b) consents to being cautioned.

'**(2)** A police officer who administers a caution, or who requests the administration of a caution under section 16, must, if practicable, arrange to be present at the administration of the caution—

(a) an adult chosen by the child; or

(b) a parent of the child or a person chosen by a parent of the child.

'**(3)** The commissioner of the police service may authorise a police officer who the commissioner considers has sufficient training or experience (**"authorised officer"**) to administer cautions.

'**(4)** If a police officer administering a caution is not an authorised officer, the caution must be administered in the presence of an authorised officer.

'16 Caution administered by respected person of Aboriginal or Torres Strait Islander community

'**(1)** If a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, an authorised officer mentioned in section 15—

(a) must consider whether there is a respected person of the community who is available and willing to administer the caution; and

(b) if a respected person of the community is available and willing to administer the caution—must request the person to administer the caution.

'**(2)** In a proceeding, evidence that a person purported to administer a caution under subsection (1) as a respected person mentioned in the subsection is evidence that the person was a respected person.

'17 Caution procedure must involve explanation

'**(1)** A police officer who administers, or requests the administration of, a caution to a child must take steps to ensure that the child and the person present under section 15(2)[122] understand the purpose, nature and effect of the caution.

'**(2)** The steps that can be taken include, for example—

(a) personally explaining these matters to the child; and

(b) having some person with training or experience in the cautioning of children give the explanation; and

122 Section 15 (Conditions for administration of police caution)

(c) having an interpreter or other person able to communicate effectively with the child give the explanation; and

(d) supplying an explanatory note in English or another language.

'18 Caution procedure may involve apology to victim

'**(1)** This section applies only after a police officer decides that a caution should be administered to a child for an offence.

'**(2)** The procedure of administering a caution to a child for an offence may involve the child apologising to a victim of the offence if—

(a) the police officer administering, or requesting the administration of, the caution considers that an apology is an appropriate course of action in the particular circumstances of the case; and

(b) the child is willing to apologise; and

(c) the victim is willing to participate in the procedure.

'19 Child must be given a notice of caution

'**(1)** If a caution is administered to a child for an offence, the police officer who—

(a) administered the caution; or

(b) under section 16,[123] requested the administration of the caution;

must give the child a notice in a form approved by the commissioner of the police service.

'**(2)** The notice must state—

(a) that a caution was administered to the child; and

(b) the time and date the caution was administered; and

(c) the child's name; and

(d) the substance of the offence; and

(e) the police officer's name and rank; and

(f) the place where the caution was issued; and

123 Section 16 (Caution administered by respected person of Aboriginal or Torres Strait Islander community)

(g) the names of all persons present when the caution was issued; and

(h) the nature and effect of a caution.

'**(3)** In a proceeding, a document purporting to be a notice or copy of a notice is evidence that the child was administered a caution for the offence in the circumstances stated in the notice.

'**(4)** A document mentioned in subsection (3) is not evidence that the child committed the offence.

'20 Childrens Court may dismiss charge if caution should have been administered or no action taken

'**(1)** If a child pleads guilty before a Childrens Court to a charge made against the child by a police officer, the court may dismiss the charge instead of accepting the plea of guilty if—

(a) application is made for the dismissal by or on behalf of the child; and

(b) the court is satisfied that the child should have been cautioned instead of being charged or no action should have been taken against the child.

'**(2)** In deciding the application, the Childrens Court may have regard to—

(a) any other cautions administered to the child for any offence; and

(b) whether any previous conference agreements have been made by the child.

'**(3)** If the court dismisses a charge under subsection (1) because the child should have been cautioned, the court may—

(a) administer the caution to the child; or

(b) direct that a caution be administered to the child as directed by the court.

'**(4)** The caution is not part of the child's criminal history.

'Division 3—Reference by police officer to coordinator for a conference

'21 When a police officer may refer an offence for a conference

'**(1)** A police officer may refer an offence, for a conference, to a coordinator, instead of bringing the child before a court for the offence, if—

(a) the child admits committing the offence to the police officer; and

(b) having regard to the matters in section 29(5), the police officer considers—

(i) a caution is inappropriate; and

(ii) a proceeding for the offence would be appropriate if a reference were not made; and

(iii) the referral is a more appropriate way of dealing with the offence than starting a proceeding; and

(iv) a convenor will be available for the conference.

'**(2)** The police officer may require the child to attend the conference as directed by the police officer.

'**(3)** In any of the circumstances mentioned in subsection (4) or (5), a coordinator may refer the offence back to the police officer by written notice given to the police officer.

'**(4)** One circumstance is that a convenor will not be available for the conference.

'**(5)** Other circumstances are as follows—

(a) the convenor is unable to contact the child after reasonable inquiries;

(b) the convenor has made reasonable requirements of the child to attend a pre-conference interview and the child has failed to attend as required;

(d) the convenor considers it necessary for a victim to participate and the victim does not wish to participate or the convenor can not locate the victim after reasonable inquiries;

(e) during the preparation for the conference meeting, the child denies committing the offence to the convenor;

(e) during the preparation for the conference meeting, the convenor comes to the conclusion that an appropriate conference agreement is unlikely to be made within a time the convenor considers appropriate;

(f) the convenor ends the conference under section 30D(5);

(g) the conference ends without an agreement being made.

'**(5)** A notice given by the coordinator under subsection (3) must state the reasons for referring the offence back to the police officer.

'**(6)** The reasons stated in the notice may be considered by a court in any later proceeding for the sentencing of the child for the relevant offence.

'**(7)** The police officer must take reasonable steps to inform the child that the police officer has received the notice.

'22 If a conference agreement is made on a referral by a police officer

'If a conference agreement is made on the referral by the police officer, the child is then not liable to be prosecuted for the offence unless otherwise expressly provided under this Act.

'23 Powers of police officer if referral is unsuccessful or if child contravenes conference agreement

'**(1)** This section applies if—

(a) a coordinator refers the offence back to a police officer under section 21(3); or

(b) the child contravenes a conference agreement made at the conference.

'**(2)** In considering what further action is appropriate, the police officer must consider—

(a) the matters mentioned in section 10(2);[124] and

(b) any participation by the child in the conference; and

(c) if an agreement was made at the conference—anything done by the child under the agreement.

124 Section 10 (Police officer to consider alternatives to proceeding against child)

'**(3)** The police officer may—

(a) take no action; or

(b) administer a caution to the child; or

(c) refer the offence to a coordinator for another conference; or

(d) start a proceeding against the child for the offence.

'Division 4—Identifying particulars

'24 Application by police officer for permission to take child's identifying particulars

'**(1)** This section applies if a child has been charged, without being arrested, with an indictable offence or an offence against any of the following Acts that is an arrest offence—

- Criminal Code
- *Drugs Misuse Act 1986*
- *Police Service Administration Act 1990*
- *Regulatory Offences Act 1985*
- *Vagrants, Gaming and Other Offences Act 1931*
- *Weapons Act 1990*.

'**(2)** A police officer (the "**applicant"**) may apply to a Childrens Court magistrate (the **"court"**) to have all or any of the identifying particulars of the child taken.

'**(3)** The applicant must give notice of the application to—

(a) the child; and

(b) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(c) the chief executive.

'**(4)** The court may decide the application in the absence of a person mentioned in subsection (3), if the court is satisfied that subsection (3) has been complied with.

'**(5)** On the application—

(a) the applicant and anyone mentioned in subsection (3) is entitled to be heard and to provide evidence; and

(b) the court may act on statements of information and belief.

'**(6)** The court may order the identifying particulars to be taken if it is satisfied, on the balance of probabilities, of all the following facts—

(a) someone has committed the charged offence;

(b) there is evidence of identifying particulars of the offender that are of the same type as the identifying particulars the applicant seeks to have taken from the child;

(c) the child is reasonably suspected of being the offender;

(d) the order is necessary for the proper conduct of the investigation of the offence.

'**(7)** The order must state the investigation for which the order is made.

'**(8)** If the child will not be in custody when the particulars are taken, the order must require the child to report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take the identifying particulars.

'**(9)** A child must not contravene the order.

Maximum penalty (subject to part 5)—10 penalty units.

'**(10)** If the child will be in custody when the particulars are taken, the order must require the particulars to be taken at the place the child is held in custody.

'**(11)** This section is subject to section 25.

'**(12)** In this section—

"charged offence" means the offence with which the child is charged or an offence arising out of the same, or the same set of, circumstances.

"parent", of a child, includes someone who is apparently a parent of the child.

'25 Support person must be present when identifying particulars are taken

'**(1)** In a proceeding for an offence, a court must not admit into evidence against a defendant identifying particulars taken from the defendant under

section 24 unless the court is satisfied a support person chosen by the child was present when the identifying particulars were taken.

'**(2)** Subsection (1) does not apply if—

(a) the prosecution satisfies the court there was proper and sufficient reason for the absence of a support person when the particulars were taken; and

(b) the court considers that, in the particular circumstances, the particulars should be admitted into evidence.

'**(3)** This section does not require that a police officer permit or cause to be present when the identifying particulars are taken a person whom the police officer suspects on reasonable grounds—

(a) is an accomplice of the child; or

(b) is, or is likely to become, an accessory after the fact;

for the offence or another offence under investigation.

'**(4)** Also, this section does not require that a police officer permit or cause to be present when the identifying particulars are taken a parent of the child whom the police officer suspects on reasonable grounds is a person against whom the offence under investigation is alleged to have been committed.

'**(5)** This section does not limit the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion.

'26 Destruction of identifying particulars taken under court order

'**(1)** Identifying particulars taken from a child under an order under section 24[125] must be destroyed if the investigation for which the order was made does not result in a sentence order being made.

'**(2)** For subsection (1), the destruction must happen within 7 days of whichever of the following happens last—

(a) if the investigation is for an offence for which a proceeding had started when the order was made and the proceeding ends without a sentence order being made—the end of the proceeding;

125 Section 24 (Application by police officer for permission to take child's identifying particulars)

(b) if the investigation is for an offence for which a proceeding is started within 28 days after the order is made and the proceeding ends without a sentence order being made—the end of the proceeding;

(c) if the investigation is for an offence for which a proceeding is not started within 28 days of the order—the end of the period of 28 days.

Note—

See the extended meaning of "charged offence" in section 24.

'**(3)** An applicant who obtains an order to have identifying particulars taken from a child under section 24 must not fail to ensure the particulars are destroyed under this section, unless the applicant has a reasonable excuse for failing to do so.

'**(4)** A failure to comply with subsection (3) may be dealt with as a breach of discipline under the *Police Service Administration Act 1990*.

'**(5)** In this section—

"end of the proceeding", in relation to the referral of an offence to a conference under section 119A(3)(a)(i),[126] means—

(a) the making of the relevant conference agreement; and

(b) the satisfactory completion of the requirements of the agreement.

'27 Division does not limit other provisions

'This division does not limit provisions of the *Police Powers and Responsibilities Act 2000* authorising the taking of someone's identifying particulars to the extent to which those provisions apply to a child.

'Division 5—Statements

'28 Support person must be present for statement to be admissible

'**(1)** In a proceeding for an indictable offence, a court must not admit into evidence against the defendant a statement made or given to a police officer by the defendant when a child, unless the court is satisfied a support person

126 Section 119A (Reference by court to a coordinator for a conference)

was present with the child at the time and place the statement was made or given.

'**(2)** Subsection (1) does not apply if—

(a) the prosecution satisfies the court there was a proper and sufficient reason for the absence of a support person at the time the statement was made or given; and

Examples—

1. There was a reasonable suspicion that allowing a support person to be present would result in an accomplice or accessory of the relevant person taking steps to avoid apprehension.
2. A support person was excluded under the *Police Powers and Responsibilities Act 2000*.

(b) the court considers that, in the particular circumstances, the statement should be admitted into evidence.

'**(3)** This section does not require that a police officer permit or cause to be present when a child makes or gives the statement a person the police officer suspects on reasonable grounds—

(a) is an accomplice of the child; or

(b) is, or is likely to become, an accessory after the fact;

in relation to the offence or another offence under investigation.

'**(4)** This section does not limit the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion.

'PART 1B—YOUTH JUSTICE CONFERENCES GENERALLY

'29 Object of part and explanation

'**(1)** The object of this part is to establish a youth justice conference process for a child who admits committing an offence to a police officer or after a finding of guilt for an offence is made against the child before a court.

'**(2)** The process allows the child, a victim of the offence and other concerned persons to consider or deal with the offence in a way benefiting all concerned.

'**(3)** The process includes the following basic steps—

(a) a police officer or court refers the offence to a youth justice conference;

(b) a convenor convenes the conference between the child and other concerned persons;[127]

(c) at the conference the offence is discussed and an agreement made on what must be done because of the offence.

'**(4)** The benefits intended are—

(a) the child may benefit by—

(i) meeting any victim and taking responsibility for the results of the offence in an appropriate way; and

(ii) having the opportunity to make restitution and pay compensation for the offence; and

(iii) taking responsibility for the way in which the conference deals with the offence; and

(iv) having less involvement with the courts' criminal justice system; and

(b) the child's parents may benefit by—

(i) being involved in decision making about the child's behaviour; and

(ii) being encouraged to fulfil their responsibility for the support and supervision of the child; and

(iii) being involved in a process that encourages their participation and provides support in family relationships; and

(c) the victim may benefit by the opportunity—

(i) to meet and understand the child and understand why the offence was committed; and

(ii) to express the victim's concerns; and

127 See section 30C (Who may participate in a conference).

(iii) to have questions answered; and

(iv) to influence the way in which the conference deals with the offence; and

(v) to encourage the child's sense of responsibility; and

(d) the community may benefit by—

(i) fewer offences being committed because of effective early intervention by the community; and

(ii) less public cost from unnecessary involvement of the courts' criminal justice system; and

(iii) increasing resolution of disputes within the community without government intervention or legal proceedings.

'**(5)** In deciding whether it is appropriate to refer an offence to a conference, a police officer or court must have regard to—

(a) the offence's nature; and

(b) the harm suffered by anyone because of the offence; and

(c) whether the interests of the community and the child would be served by having the offence considered or dealt with at a conference.

'**(6)** This part provides for youth justice conferences generally.

'**(7)** Part 1A, division 3[128] has provisions for a youth justice conference when an offence is referred by a police officer instead of bringing a child before a court for the offence.

'**(8)** Part 5, division 1A[129] has provisions for a youth justice conference when an offence is referred by a court after a finding of guilt is made against a child for the offence.

'30 Appointment of coordinator and approval of convenor

'**(1)** Youth justice coordinators may be appointed under the *Public Service Act 1996*.

'**(2)** A coordinator has the following functions—

128 Part 1A (Special provisions about policing and children), division 3 (Reference by police officer to coordinator for a conference)

129 Part 5 (Sentencing), division 1A (Court referred conferences before sentencing)

(a) as provided under this Act, to take part in the management of the youth justice conference process;

(b) other functions conferred on the coordinator under an Act.

'**(3)** The chief executive may approve persons as youth justice conference convenors.

'**(4)** Before approving a person as a convenor, the chief executive must be satisfied the person has appropriate experience or training to be a convenor.

'**(5)** A convenor has the following functions—

(a) as provided under this Act, to convene particular conferences;

(b) other functions conferred on the convenor under an Act.

'**(6)** The convenor of a particular conference must be independent of the circumstances of the offence.

'**(7)** A convenor is not disqualified from convening a conference about a particular offence only because, after a previous conference convened by the convenor about the offence has ended without an agreement—

(a) a coordinator has arranged for the convenor to convene another conference about the offence; or

(b) the offence has been referred to a coordinator for another conference under section 23(3)(c) or 119C(3)(b).

'**(8)** A coordinator or convenor has all powers—

(a) necessary to perform the functions of the coordinator or convenor; or

(b) conferred on the coordinator or convenor under an Act.

'**(9)** A person may be appointed as a coordinator and approved as a convenor and perform the functions of both for the same conference.

'**(10)** A coordinator or convenor may perform a function or exercise a power under arrangements established by the chief executive for the efficient management of the conference process.

'30A Protection against liability for convenor or coordinator

'A convenor or coordinator does not incur civil liability for an act done, or omission made, honestly by the convenor or coordinator with the

intention of performing functions or exercising powers as convenor or coordinator.

'30B Who may refer an offence to a coordinator

'An offence may be referred for a conference to a coordinator by—

(a) a police officer under part 1A, division 3 (the **"referring police officer"**); or

(b) a court under part 5, division 1A (the **"referring court"**).

'30C Who may participate in a conference

'**(1)** The following persons (**"participants")** are entitled to participate in a conference—

(a) the convenor;

(b) the child;

(c) at the child's request, 1 or more of the following—

(i) a legal practitioner acting for the child;

(ii) an adult member of the child's family;

(iii) another adult nominated by the child;

(d) the child's parent;

(e) the victim;

(f) at the victim's request—

(i) a legal practitioner acting for the victim; or

(ii) a member of the victim's family; or

(iii) a support person;

(g) a representative of—

(i) if the offence is referred to the conference by a police officer—the commissioner of the police service; or

(ii) if the offence is referred to the conference by a court—the prosecution in the proceeding for the offence;

(h) another person decided by the convenor.

Examples of paragraph (h)—

1. A representative of the chief executive.
2. A member of the child's family.
3. For an Aboriginal or Torres Strait Islander child who is from an Aboriginal or Torres Strait Islander community, a respected member of the community or a representative of a community justice group that may be in the community.

'**(2)** To ensure that a victim of the offence is informed of the entitlement under subsection (1)(e), the following must give details of victims of the offence to a coordinator —

(a) if the offence is referred to the conference by a police officer—the referring police officer;

(b) if the offence is referred to the conference by a court—the referring court.

'**(3)** For subsection (1)(h), if the child is an Aboriginal or Torres Strait Islander person from an Aboriginal or Torres Strait Islander community, the convenor must consider inviting to attend the conference either or both of the following—

(a) a respected member of the community;

(b) if there is a community justice group in the community—a representative of the community justice group.

'30D Convening of a conference

'**(1)** The convenor of a conference is responsible for convening the conference.

'**(2)** If the child is not legally represented, the convenor must ensure the child is informed of the right to obtain legal advice and has reasonable information about how to obtain it and a reasonable opportunity to do so.

'**(3)** All decisions made by the convenor necessary for convening the conference must be respected by the participants.

'**(4)** The conference must be directed towards making an agreement about the offence (the **"youth justice conference agreement"** or **"conference agreement"**).

'**(5)** When the conference meets, the convenor may bring the conference to an end at any time if—

(a) the child fails to attend the conference as directed by the referring police officer or referring court; or

(b) the child denies committing the offence at the conference; or

(c) the convenor comes to the conclusion—

(i) the offence is unsuitable for a conference; or

(ii) an agreement is unlikely to be made within a time the convenor considers appropriate.

'**(6)** Also, the conference ends if an agreement is made.

'**(7)** A coordinator must give the referring police officer or court a report about the outcome of the conference within 14 days of the conference's end.

'**(8)** The report must be in the approved form.

'30E Coordinator may persist in efforts to achieve a conference agreement

'A coordinator may, even though a conference has ended under section 30D(5), arrange for the conference to be reconvened or another conference convened if the coordinator considers it is worthwhile persisting with efforts to make a conference agreement.

'30F Form and content of conference agreement

'**(1)** A conference agreement about an offence must be in the approved form.

'**(2)** The agreement must be agreed to and signed by—

(a) the convenor; and

(b) the child; and

(c) a representative of—

(i) if the offence is referred to the conference by a police officer—the commissioner of the police service; or

(ii) if the offence is referred to the conference by a court—the prosecution in the proceeding for the offence; and

(d) if a victim of the offence participates in the conference—the victim.

'**(3)** The agreement must contain provisions under which—

(a) the child admits committing the offence; and

(b) the child's compliance with the agreement is monitored.

'**(4)** Without limiting what an agreement may contain, the agreement may contain a provision about the following—

(a) the making of restitution or payment of compensation;

(b) voluntary work to be performed by the child;

(c) an apology made to a victim;

(d) the child's future conduct while a child;

(e) a program mentioned in subsection (6);

(f) another matter the convenor considers appropriate.

'**(5)** A condition of the agreement may contain a requirement that the child must comply with outside the State.

Example—

An agreement may require the child to perform voluntary work for a charity that is located outside the State.

'**(6)** An agreement signed by the chief executive may provide for the child to be subject to a program similar to one a child is subject to under a community service order or a probation order.

'**(7)** The agreement may not provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way contravening the sentencing principles in section 109.[130]

'**(8)** A copy of the agreement must be given immediately to each person who signs the agreement under subsection (2).

'**(9)** The agreement is not part of the child's criminal history.

'**(10)** In a proceeding, a document purporting to be an agreement or copy of an agreement is evidence that the offence was dealt with by a conference.

'**(11)** A document mentioned in subsection (10) is not evidence that the child committed the offence.

130 Section 109 (Sentencing principles)

‘30G Intervention of chief executive to correct conference agreement

‘**(1)** This section applies if the chief executive considers that a conference agreement is or becomes inappropriate.

Example—

An agreement provides for a child to repair a school fence the child damaged. It becomes inappropriate because the person controlling the fence won’t let the child repair it.

‘**(2)** The chief executive may amend the agreement.

‘**(3)** In deciding how to amend the agreement, the chief executive must—

(a) take reasonable steps to find out, and give effect to, the views of those who participated in the conference; and

(b) act in the interests of justice.

‘**(4)** In this section—

“inappropriate” includes unworkable.

‘30H If the chief executive amends the conference agreement

‘**(1)** This section applies if the chief executive amends a conference agreement under section 30G(2).

‘**(2)** The agreement as amended is taken to be the conference agreement made by the child at the conference.

‘30I Admissibility of a conference agreement and related evidence

‘**(1)** This section applies for any conference.

‘**(2)** In any proceeding, evidence is inadmissible of anything done or said, or an admission made, about an offence in the convening of the conference or in the performance by a coordinator or convenor of the coordinator or convenor’s functions for the conference.

‘**(3)** To remove any doubt, it is declared subsection (2) applies to a conference agreement made at the conference.

‘**(4)** However, evidence that would otherwise be excluded from admission in a proceeding because of subsection (2) or (3) is admissible in a proceeding if—

(a) all the parties to the conference agree to the admission of the evidence; or

(b) the proceeding is under part 5, division 1A;[131] or

(c) the evidence is admissible under this or another Act; or

(d) the evidence is relevant to a proceeding about an offence or a disciplinary matter happening during the convening of the conference or in the performance of a coordinator or convenor of their functions for the conference.

'**(5)** Also, if a court is considering referring a child to a conference for an offence, subsection (2) or (3) does not prevent the court from considering the reasons previously given by a coordinator under section 21(3) for referring the offence back to a police officer.

'**(6)** Also, if a court is considering how to sentence a child for an offence, subsection (2) or (3) does not prevent the court from considering any conference agreement previously entered by the child for the offence and the child's performance of the child's obligations under the conference agreement.

'30J If chief executive signs agreement for program

'**(1)** This section applies if the chief executive signs a conference agreement providing for a program similar to one a child is subject to under a community service order or a probation order.

'**(2)** The chief executive may arrange the program and monitor the child's participation.

'**(3)** If the child fails to comply with the agreement's requirements about the program, the chief executive may take no action or notify—

(a) for an offence referred to the conference by a police officer—the police officer; or

(b) for an offence referred to the conference by a court—the court's proper officer.'.

8 Replacement of pt 2 hdg (Start of proceedings)

Part 2, heading—

omit, insert—

131 Part 5 (Sentencing), division 1A (Court referred conferences before sentencing)

‘PART 2—PROCEEDINGS GENERALLY STARTED BY COMPLAINT AND SUMMONS’.

9 Replacement of pt 2, divs 1–3

Part 2, divisions 1 to 3—

omit, insert—

‘31 Preferred way of starting proceedings

‘**(1)** A proceeding against a child for an offence, other than a serious offence, must be started by way of complaint and summons.

‘**(2)** This section does not apply to a police officer.

Note—

The requirement for a police officer to start a proceeding by complaint and summons or notice to appear is dealt with by section 11.[132]

‘**(3)** This section does not affect—

(a) the charging of a child under the *Justices Act 1886*, section 42(1A); or

(b) the arrest of a child for escaping from lawful custody or who is unlawfully at large; or

(c) a proceeding against a child on an indictment.’.

10 Omission of pt 2, div 4, hdg (Complaint and summons)

Part 2, division 4, heading—

omit.

11 Amendment of s 32 (Service of complaint and summons if offender a child)

Section 32(4)—

omit, insert—

132 Section 11 (Preferred way for police officer to start proceedings)

'**(4)** Subject to the *Police Powers and Responsibilities Act 2000*, sections 214(3) and 219,[133] this section does not apply to a notice to appear.'.

12 Insertion of new s 37A

After section 37—

insert—

'37A Decisions about bail and related matters

'**(1)** This section applies to a court or police officer in making any of the following decisions relating to a child in custody in connection with a charge of an offence—

(a) whether to release the child or keep the child in custody;

(b) if releasing the child, whether to release the child without bail or grant bail to the child;

(c) if the child is being, or has been, granted bail, the conditions that should apply to the grant of bail.

'**(2)** The court or officer must consider the need to ensure that, if the child is released—

(a) the child will surrender into custody in accordance with the bail or the conditions of the release, whichever is relevant; and

(b) while on release, the child will not—

(i) commit an offence; or

(ii) endanger anyone's safety or welfare; or

(iii) interfere with a witness or otherwise obstruct the course of justice, whether for the child or anyone else.

'**(3)** The court or officer must have regard to any of the following matters of which the court or officer is aware—

(a) the nature and seriousness of the offence;

(b) the child's character, criminal history and other relevant history, associations, home environment, employment and background;

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133 *Police Powers and Responsibilities Act 2000*, sections 214 (Notice to appear may be issued for offence) and 219 (Notice to appear equivalent to complaint and summons)

(c) the history of any previous grants of bail to the child;

(d) the strength of the evidence against the child relating to the offence;

(e) any other relevant matter.

'**(4)** In deciding whether to release the child or keep the child in custody, the court or officer must decide to release the child unless the court or officer is required by this Act or another Act to keep the child in custody.

'**(5)** The court or officer must not release the child if the court or officer is satisfied there is an unacceptable risk relating to a matter mentioned in subsection (2).

'**(6)** If the child is before a court and the court has information indicating there may be an unacceptable risk relating to a matter mentioned in subsection (2), but does not have enough information to properly consider the matter, the court must remand the child in custody while the information is obtained.

'**(7)** The court or officer must not release the child if the court or officer is satisfied—

(a) the child's safety would be endangered if the child were released; and

(b) in the circumstances, there is no reasonably practicable way of ensuring the child's safety other than by keeping the child in custody.

Examples for paragraph (a)—

1. The child is heavily intoxicated.
2. Someone has threatened to harm the child as soon as the child is released.

'**(8)** In this section—

"keep the child in custody" includes, for a court, remand the child in custody.'.

13 Amendment of s 38 (Arrested child must be brought promptly before the Childrens Court)

Section 38—

insert—

'**(2)** Subsection (1) does not apply if—

(a) the child is being dealt with in a way mentioned in the *Police Powers and Responsibilities Act 2000*, section 224(2)(b) to (e) or (3)(b);[134] or

(b) the child is released under this part or the *Police Powers and Responsibilities Act 2000*, chapter 6, part 1, division 4.[135]'.

14 Replacement of s 39 (Child must ordinarily be released from custody on charge)

Section 39—

omit, insert—

'39 Dealing with a child if court can not be promptly constituted

'**(1)** This section applies if—

(a) a child is arrested in connection with a charge of an offence and delivered into the custody of a police officer at a place that is a police station or watch-house; and

(b) the child is not being detained under the *Police Powers and Responsibilities Act 2000*, chapter 7, part 2;[136] and

(c) it is not practicable to promptly constitute the Childrens Court to deal with the child.

'**(2)** The police officer for the time being in charge of the place must—

(a) give the child a release notice or a notice to appear and release the child from custody under section 40; or

(b) grant bail to the child and release the child from custody under section 40A; or

(c) keep the child in custody.

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134 *Police Powers and Responsibilities Act 2000*, section 224 (Duty of police officer after arrest etc. of person)

135 *Police Powers and Responsibilities Act 2000*, chapter 6 (Arrest and custody powers), part 1 (Powers relating to arrest and taking people into custody), division 4 (Discontinuing arrest)

136 *Police Powers and Responsibilities Act 2000*, chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences), part 2 (Investigations and questioning)

'**(3)** However, if the child is released under the *Police Powers and Responsibilities Act 2000*, section 210 or 211[137]—

(a) subsection (2) does not apply; and

(b) any proceeding against the child for the offence is discontinued even though the child may have been charged with having committed the offence.

'**(4)** If the officer decides to keep the child in custody, the officer must record the reasons for the decision in a record of the persons kept in custody at the place.

'**(5)** The keeping of the child in custody is not unlawful merely because of a failure to comply with subsection (4).

'**(6)** This section applies subject to section 37A.'.

15 Amendment of s 40 (Child must be given release notice)

(1) Section 40, heading—

omit, insert—

'40 Release of child without bail'.

(2) Section 40(2)—

renumber as section 40(4).

(3) Section 40(1)—

omit, insert—

'**(1)** This section applies if, under section 39, a police officer decides to release a child without bail.

'**(2)** The officer may release the child into the custody of the child's parents or release the child to go at large.

'**(3)** Before releasing the child, if the officer does not issue and give to the child a notice to appear, the officer must give the child a notice in the approved form (a **"release notice"**).'.

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137 *Police Powers and Responsibilities Act 2000*, section 210 (Additional case when arrest for being drunk in a public place may be discontinued) or 211 (Additional case when arrest for minor drugs offence may be discontinued)

16 Insertion of new ss 40A and 40B

After section 40—

insert—

'40A Conditions of release on bail

'**(1)** This section applies if a court or police officer decides to grant bail to a child who is being held in custody in connection with a charge of an offence.

'**(2)** The court or officer must release the child on the child's own undertaking, without sureties and without deposit of money or other security, unless the court or officer is satisfied it would be inappropriate in all the circumstances.

'**(3)** If the court or officer does not release the child under subsection (2), the court or officer must consider the conditions for the release of the child on bail in the following sequence—

(a) the release of the child on the child's own undertaking with a deposit of money or other security of stated value;

(b) the release of the child on the child's own undertaking with a surety or sureties of stated value;

(c) the release of the child on the child's own undertaking with a deposit of money or other security of stated value and a surety or sureties of stated value.

'**(4)** The court or officer may impose other conditions on the grant of bail including, for example, conditions necessary for ensuring the matters mentioned in section 37A(2) are appropriately addressed.

'**(5)** Any conditions imposed on the grant of bail—

(a) must not be more onerous than the court or officer considers necessary in all the circumstances; and

(b) must be supported by the court's or officer's written reasons.

'**(6)** Subsection (5)(b) does not apply to a condition about—

(a) attending court or surrendering into custody; or

(b) reporting to police or the chief executive; or

(c) where, or with whom, the child lives.

‘40B Granting of bail by audiovisual link or audio link

‘**(1)** A court may allow anything that must or may be done in relation to the granting of bail to a child to be done over an audiovisual link or audio link if the child agrees to the use of the link and the court is satisfied the child has had an opportunity to obtain independent legal advice.

‘**(2)** The provisions of the *Evidence Act 1977* relating to the use of an audiovisual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).’.

17 Amendment of s 42 (Court may in all cases release child without bail)

Section 42(1), ‘If, in a particular case, a court may grant bail to and release a child from custody under the *Bail Act 1980*’—

omit, insert—

‘If, under this Act or the *Bail Act 1980*, a court may grant bail to a child and release the child from custody’.

18 Amendment of s 43 (Custody of child if not released by court)

(1) After section 43(1)—

insert—

‘**(1A)** Subsection (1) does not apply to a person who is an adult being dealt with for an offence committed by the person as a child if, under section 104B, 104C or 104D,[138] the person must be held in a corrective services facility.’.

(2) Section 43(2), after ‘if the person is a child’—

insert—

‘and subsection (1) applies’.

138 Section 104B (Offender remanded in custody for child offence), 104C (Offender remanded in custody for adult offence and child offence) and 104D (Dealing with offender held in corrective services facility)

19 Amendment of s 49 (Childrens Court judge)

Section 49(a), 'section 72'—

omit, insert—

'division 4C[139]'.

20 Amendment of s 50 (District Court jurisdiction in aid)

Section 50(1)—

omit, insert—

'**(1)** For the purpose of the jurisdiction in relation to persons and matters assigned to a Childrens Court judge under this Act, a Childrens Court judge has the same powers and jurisdiction as the District Court has in its criminal jurisdiction in relation to persons and matters assigned to the District Court.'.

21 Amendment of s 52 (Magistrates Court jurisdiction in aid)

Section 52(1)—

omit, insert—

'**(1)** For the purpose of the jurisdiction in relation to persons and matters assigned to a Childrens Court magistrate under this Act, a Childrens Court magistrate has the same powers and jurisdiction as a Magistrates Court has under the *Justices Act 1886* in relation to persons and matters assigned to the Magistrates Court.'.

139 Division 4C (Jurisdiction of Childrens Court judge)

22 Amendment of s 54 (Limitation on justices)

Section 54(2), 'immediate'—

omit, insert—

'conditional'.

23 Amendment of s 56 (Presence of parent required generally)

Section 56(1)(b), from 'under'—

omit, insert—

'under—

(i) section 32; or

(ii) the *Police Powers and Responsibilities Act 2000*, section 223;[140]'.

24 Amendment of s 60 (Chief executive's right of audience generally)

(1) Section 60(4)—

renumber as section 60(5).

(2) Section 60—

insert—

'**(4)** However, the chief executive must not be heard on an issue under section 191C.[141]'.

25 Omission of s 62 (Publication prohibited)

Section 62—

omit.

140 *Police Powers and Responsibilities Act 2000*, section 223 (Parent and chief executive to be advised of arrest or service of notice to appear)

141 Section 191C (Court may allow publication of identifying information)

26 Replacement of pt 4, divs 2–4

Part 4, divisions 2 to 4—

omit, insert—

'Division 2—Decision on how to proceed at start of proceedings for an indictable offence before a Childrens Court magistrate

'Subdivision 1—Procedure for serious offences

'68 Committal proceeding if the offence is a serious offence

'**(1)** This section applies to a proceeding to be conducted before a Childrens Court magistrate (the **"court"**) in which a child is charged with a serious offence.

'**(2)** A hearing of the charge before the court must be conducted as a committal proceeding.

'**(3)** If the charge is changed to a charge of an offence other than a serious offence during the committal proceeding, subsection (1) is subject to divisions 3 and 4.

'**(4)** If, in the proceeding, the child is also charged with an offence other than a serious offence, the court may treat the charge as a charge of a serious offence for the purpose of this section.

'Subdivision 2—Procedure for indictable offences other than serious offences if child is legally represented

'69 Application of sdiv 2

'This subdivision applies to a proceeding to be conducted before a Childrens Court magistrate (the **"court"**) in which a child is—

(a) charged with an indictable offence other than a serious offence; and

(b) represented by a legal practitioner.

‘69A Explanation and election at start

‘**(1)** Subject to section 64,[142] before evidence is adduced at the proceeding, the court must explain to the child and any parent of the child who is present the child’s right of election mentioned in subsection (2).

‘**(2)** The child may elect—

(a) to have the proceeding conducted as a committal proceeding; or

(b) to have the proceeding conducted as a hearing and deciding of the charge summarily by the court.

‘**(3)** The court must also explain to the child and any parent of the child who is present that—

(a) after all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and

(b) the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence;

the child may elect—

(c) to have the proceeding conducted as a committal proceeding; or

(d) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court.

‘**(4)** The court must then ask the child whether the child consents to having the charge heard and decided summarily by the court.

‘**(5)** If the child consents, the court must proceed to hear and decide the charge summarily.

‘**(6)** If the child does not give the consent mentioned in subsection (4), the proceeding must be conducted as a committal proceeding, subject to divisions 3 and 4.

‘69B Procedure on summary hearing

‘**(1)** On proceeding to hear and decide the charge summarily under section 69A(5), the court must—

142 Section 64 (Court to refrain from inappropriate summary hearing of indictable offence)

(a) reduce the charge to writing; and

(b) ask the child whether the child is guilty or not guilty.

'**(2)** If the child pleads guilty the court must proceed in the same way as is provided in the *Justices Act 1886*, section 145(2).

'**(3)** If the child pleads not guilty, the court may proceed in the same way as is provided in the *Justices Act 1886*, section 146.

'Subdivision 3—Procedure for indictable offences other than serious offences if child is not legally represented

'69C Application of sdiv 3

'This subdivision applies to a proceeding to be conducted before a Childrens Court magistrate (the **"court"**) in which a child is—

(a) charged with an indictable offence other than a serious offence; and

(b) not represented by a legal practitioner.

'69D Start as committal proceeding and explanation

'**(1)** The proceeding must be conducted as a committal proceeding, subject to divisions 3 and 4.

'**(2)** Before evidence is adduced at the proceeding, the court must explain to the child and any parent of the child who is present that—

(a) after all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and

(b) the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence;

the child may elect—

(c) to have the proceeding conducted as a committal proceeding; or

(d) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court.

'Division 3—Election for summary hearing for indictable offences other than serious offences after the prosecution evidence has been adduced

'70 Application of div 3

'**(1)** This division applies if—

(a) a hearing before a Childrens Court magistrate (the **"court"**) of a charge against a child of an indictable offence is being conducted as a committal proceeding; and

(b) all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and

(c) the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence.

'**(2)** This division applies whether or not the child is legally represented.

'70A Explanation of election at end of prosecution case

'**(1)** Subject to subsection (6) and section 64,[143] the court must explain to the child, and any parent present in the court, the child's right of election mentioned in subsection (2).

'**(2)** The child may elect—

(a) to have the proceeding continue as a committal proceeding; or

(b) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and deciding of the charge summarily by the court.

'**(3)** The court must then ask the child whether the child consents to having the charge heard and decided summarily by the court.

'**(4)** If the child consents, the court must discontinue the committal proceeding and proceed to hear and decide the charge summarily.

'**(5)** If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.

143 Section 64 (Court to refrain from inappropriate summary hearing of indictable offence)

'**(6)** The court may, but need not, follow the process under subsections (1) to (5) if the child has already declined to give consent under section 69A for the charge to be heard and decided summarily.

'70B Procedure on summary hearing

'**(1)** On proceeding to hear and decide the charge summarily, the court must—

(a) reduce the charge to writing; and

(b) ask the child whether the child is guilty or not guilty.

'**(2)** If the child pleads guilty the court must proceed in the same way as is provided in the *Justices Act 1886*, section 145(2).

'**(3)** If the child pleads not guilty, the court may proceed in the same way as is provided in the *Justices Act 1886*, section 146, subject to section 67.[144]

'Division 4—Procedure if a child enters a plea of guilty at a committal proceeding

'71 Application of div 4

'This division applies if a child enters a plea of guilty at a committal proceeding when addressed under the *Justices Act 1886,* section 104(2).

'71A If the offence is a supreme court offence

'If the offence to which the child pleads guilty is a supreme court offence, the court must order the child to be committed to be sentenced before the Supreme Court.

'71B If the offence is a serious offence other than a supreme court offence

'If the offence to which the child pleads guilty is a serious offence other than a supreme court offence, the court must order the child to be committed to be sentenced before a court of competent jurisdiction.

144 Section 67 (Use of adduced evidence after change of procedure)

‘71C If the offence is an indictable offence other than a serious offence

‘**(1)** Subject to section 64, if the offence to which the child pleads guilty is an indictable offence other than a serious offence, the court must explain to the child, and any parent of the child who is present, the child’s right of election mentioned in subsection (2).

‘**(2)** The child may elect—

(a) to be committed to be sentenced before a court of competent jurisdiction; or

(b) to be sentenced by the Childrens Court magistrate.

‘**(3)** The court must then ask the child whether the child consents to being sentenced by the Childrens Court magistrate.

‘**(4)** If the child consents, the Childrens Court magistrate must proceed in the same way as is provided under the *Justices Act 1886*, section 145(2).

‘**(5)** If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed to be sentenced before a court of competent jurisdiction.

‘Division 4A—Procedure after all evidence has been adduced in a committal proceeding

‘72 Application of div 4A

‘This division applies if—

(a) a proceeding against a child for an indictable offence before a Childrens Court magistrate has been entirely conducted as a committal proceeding; and

(b) the child has not entered a plea of guilty when addressed under the *Justices Act 1886*, section 104(2); and

(c) all the evidence to be offered at the proceeding has been adduced.

‘72A If the offence is a supreme court offence

‘**(1)** This section applies if, on consideration of all the evidence adduced at the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for a supreme court offence.

'**(2)** The court must order the child to be committed to be tried before the Supreme Court.

'72B If the offence is not a supreme court offence

'**(1)** This section applies if, on consideration of all the evidence adduced at the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence that is not a supreme court offence.

'**(2)** The magistrate must order the child to be committed to be tried before a court of competent jurisdiction.

'**(3)** If the court to which the child is ordered to be committed is a Childrens Court judge, the magistrate must comply with division 4B.

'Division 4B—Election procedure if child committed for trial before a Childrens Court judge

'73 Application of div 4B

'This division applies if a Childrens Court magistrate decides to commit a child to be tried before a Childrens Court judge under division 4A.

'73A Election for trial with or without jury

'**(1)** If the child is represented by a legal practitioner, then, before ordering the child to be committed to be tried under the *Justices Act 1886*, section 108, the court must explain to the child and any parent of the child who is present the child's right of election mentioned in subsection (2).

'**(2)** The child may elect—

(a) to be committed to be tried before the Childrens Court judge sitting without a jury; or

(b) to be committed to be tried before the Childrens Court judge sitting with a jury.

'**(3)** After the explanation, the court must then ask the child whether the child consents to being tried before the Childrens Court judge sitting without a jury.

'**(4)** If the child consents, the court must order the child to be committed to be tried by the Childrens Court judge without a jury.

'**(5)** If the child—

(a) is not represented by a legal practitioner; or

(b) if represented by a legal practitioner—does not give the consent mentioned in subsection (4);

the court must order the child to be committed to be tried before the Childrens Court judge sitting with a jury.

'Division 4C—Jurisdiction of Childrens Court judge

'Subdivision 1—Jurisdiction generally

'74 Childrens Court judge to have criminal jurisdiction over child charged with indictable offence

'**(1)** A Childrens Court judge has jurisdiction to inquire of and hear and decide all indictable offences, wherever committed, charged against a child other than supreme court offences.

'**(2)** For subsection (1), it does not matter where an offence is committed or whether or not a child has been committed to be tried or sentenced before the Childrens Court judge on a charge.

'74A Sentencing for summary offence

'Without limiting section 74, a Childrens Court judge may sentence a child on any charge for a summary offence on which the child consents to being sentenced by the judge under the Criminal Code, section 651.

'74B General laws relating to indictable offence apply

'Subject to this division, the provisions of the Criminal Code or any other Act relating to the hearing and deciding on indictment of an indictable offence apply to a proceeding for an indictable offence before a Childrens Court judge under this division.

'Subdivision 2—Whether a jury is required

'75 When a jury is not required

'**(1)** Subject to section 75C, a Childrens Court judge must sit without a jury to try a child for an indictable offence if—

(a) for a committal charge—

(i) the child elected under section 73A(2)(a) to be committed for trial before the judge sitting without a jury and has not withdrawn the election under section 75A(3); or

(ii) the child elected under section 73A(2)(b) to be committed for trial before the judge sitting with a jury, but has elected under section 75A(4) to be tried before the judge sitting without a jury; or

(ii) the child was committed to be tried before a judge sitting with a jury under section 73A(5), but has elected under section 75A(5) to be tried before the judge sitting without a jury; or

(b) for a charge other than a committal charge the child elects under section 75B to be tried by the judge sitting without a jury.

'**(2)** In this section—

"committal charge" means a charge on which a child is committed for trial or sentence before a Childrens Court judge, and includes a charge arising out of the same, or the same set of, circumstances.

'75A Committal charge—change to jury requirement

'**(1)** This section applies to a child who has been committed to be tried before a Childrens Court judge.

'**(2)** If the child was committed under section 73A(2)(a), but is not legally represented before the judge, the child must be tried by the judge sitting with a jury.

'**(3)** Also, if the child was committed under section 73A(2)(a), the child may withdraw the child's election under the section to be tried before a Childrens Court judge sitting without a jury and elect instead to be tried before the judge sitting with a jury.

'**(4)** If the child was committed under section 73A(2)(b) to be tried before the judge sitting with a jury and the child is legally represented, the child may withdraw the child's election under the section and elect instead to be tried before the judge sitting without a jury.

'**(5)** If the child was committed to be tried before the judge sitting with a jury under section 73A(5) and the child is legally represented before the judge, the child may elect to be tried before the judge sitting without a jury.

'**(6)** An election or withdrawal of election must happen before the child enters a plea to the charge.

'75B Charge other than committal charge—election by legally represented child for trial with or without jury

'**(1)** This section applies to a charge against a child of an indictable offence before a Childrens Court judge that is not a committal charge mentioned in section 75.

'**(2)** If the child is represented by a legal practitioner, the child may elect—

(a) to be tried before the judge sitting without a jury; or

(b) to be tried before the judge sitting with a jury.

'**(3)** An election must happen before the child enters a plea to the charge.

'75C When a trial by jury is necessary

'If a child who is before a Childrens Court judge—

(a) is not represented by a legal practitioner; or

(b) if represented by a legal practitioner, has not elected, or withdraws an election, to be tried without a jury under another provision of this division; or

(c) if the judge decides that in the particular circumstances it is more appropriate for the child to be tried by the judge sitting with a jury;

the child must be tried before the judge sitting with a jury.

'Subdivision 3—Change of guilty plea

'76 Child may change plea of guilty

'**(1)** A child who appears before a Childrens Court judge after being committed to be sentenced on an indictable offence is in all cases entitled to enter a plea of not guilty when called on to enter a plea under the Criminal Code, section 600.

'**(2)** To the extent that this section is inconsistent with the Criminal Code, section 600, this section prevails.

'**(3)** Evidence that the child previously entered a plea of guilty at the committal proceeding is not admissible in the trial following the change of plea.'.

27 Replacement of pt 4, div 5, hdg (Rules applying if child and another person are charged)

Part 4, division 5, heading—

omit, insert—

'Division 5—Provision for joint trials

'Subdivision 1—Magistrate's power'.

28 Replacement of s 86 (Prosecution may request a matter proceed as a committal to the Supreme or the District Court in order to ensure joint trial)

Section 86—

omit, insert—

'86 Committal or committal proceeding for joint trial with another person

'**(1)** Before a Childrens Court magistrate starts to hear and decide summarily a charge against a child for an indictable offence other than a serious offence, the prosecution may apply to the court for the proceeding to be conducted or continued as a committal proceeding for the purpose of having the child tried on indictment with another person.

'**(2)** Before a Childrens Court magistrate commits a child for trial before a Childrens Court judge on a charge of a serious offence, the prosecution may apply to the court for the child to be instead committed for trial to another court of competent jurisdiction for the purpose of having the child tried on indictment with another person.

'**(3)** On application under subsection (1) or (2), if the judge is satisfied that—

(a) the child may lawfully be charged in an indictment in which the other person will also be charged; and

(b) if the child were so charged it is unlikely an application would be granted resulting in the child's trial being had separately from the other person; and

(c) in all the circumstances, including the relevant principles of this Act, the application should be granted;

the judge may grant the application and deal with the proceedings as requested.'.

29 Insertion of new pt 4, div 5, sdiv 2

Part 4, division 5—

insert—

'Subdivision 2—Removal of committed proceeding to another jurisdiction for joint trial

'86A Definitions for sdiv 2

'In this subdivision—

"committed charge" means the offence committed to be tried in the committed proceeding.

"committed proceeding" mean a proceeding on a charge against a child of an offence committed to be tried before a Childrens Court judge.

'86B Removal to another jurisdiction for joint trial with another person

'**(1)** The prosecution may apply to a Childrens Court judge for the removal of a committed proceeding to a court of competent jurisdiction

other than a Childrens Court judge for the purpose of having the child tried on indictment with another person.

'**(2)** If the judge is satisfied that—

(a) the child may lawfully be charged in an indictment in which the other person will also be charged; and

(b) if the child were so charged it is unlikely an application would be granted resulting in the child's trial being had separately from the other person; and

(c) in all the circumstances, including the relevant principles of this Act, the proceedings should be removed as requested;

the judge may grant the request and remove the proceeding as requested.

'**(3)** In removing the proceeding, the judge may exercise power as if the proceeding had been brought before the wrong court.

'86C Formal removal to another jurisdiction for joint trial involving another charge

'**(1)** The prosecution may apply to a Childrens Court judge for the removal of a committed proceeding to a court of competent jurisdiction other than a Childrens Court judge for the purpose of having the child tried on an indictment charging the child with the committed charge and another charge on which the child will be dealt with as an adult.

'**(2)** The judge may grant the request and remove the proceeding as requested.

'**(3)** In removing the proceeding, the judge may exercise power as if the proceeding had been brought before the wrong court.

'**(4)** This section does not limit the jurisdiction of any court of competent jurisdiction to try or sentence the child on the charge.

'86D Concurrent jurisdiction available

'Nothing in this division excludes a Childrens Court judge from presiding over the trial of a child in the judge's concurrent jurisdiction to which a proceeding has been removed by the judge under this subdivision.

‘86E Removal ends possibility of trial without jury

‘Provisions of this division authorising a trial before a judge sitting without a jury do not apply to a proceeding removed to another court under this subdivision.’.

30 Replacement of s 87 (Appeal rights generally)

Section 87—

omit, insert—

‘Subdivision 1—General

‘87 Appeal rights generally

‘Other than as expressly provided by this part, this part does not affect the right of any person to appeal, or apply for leave to appeal, under the Criminal Code or otherwise against the order of a court or judicial officer.

‘87A Community based orders stayed during appeal

‘**(1)** If a child starts an appeal against a community based order made against the child, the effect of the order is stayed until the end of the appeal.

‘**(2)** If the period for which the community based order operates is relevant to the effect of the order or a program or anything else under the order, the period between the start and end of the appeal is not counted for the purpose of the effect of the order, program or other thing.

‘Subdivision 2—Court of Appeal

‘87B Appeals to Court of Appeal

‘The Criminal Code, chapter 67, relating to appeals or applications for leave to appeal applies, with necessary modifications and any prescribed modifications—

(a) in relation to a finding of guilt or order made in a proceeding against a child for an offence as it applies in relation to a conviction or order made in a proceeding against an adult for an offence; and

(b) in relation to a proceeding before a Childrens Court magistrate as it applies to a proceeding before a Magistrates Court; and

(c) in relation to a proceeding before a Childrens Court judge, sitting with or without a jury, as it applies in relation to a proceeding before the District Court.

'Subdivision 3—Appeals to Childrens Court judge

'87C Appeals under Justices Act 1886, pt 9, div 1

'**(1)** The *Justices Act 1886*, part 9, division 1, applies in relation to an order made by justices dealing summarily with a child charged with an offence, subject to subsections (2) to (4).

'**(2)** To appeal under the division, an aggrieved person must appeal to the Childrens Court judge.

'**(3)** All relevant references to a District Court judge are taken for the purpose to be references to the Childrens Court judge.

'**(4)** A District Court judge does not have jurisdiction to hear and decide the appeal.

'Subdivision 4—Reviews of sentences by Childrens Court judge'.

31 Amendment of s 89 (Application for review)

Section 89—

insert—

'**(3)** In this section—

"complainant" means a complainant who makes a complaint under the *Justices Act 1886.*'.

32 Amendment of s 91 (Stay of proceedings and suspension of orders)

Section 91—

insert—

'**(3)** Without limiting subsections (1) and (2), if a community based order is subject to a review under this division, the effect of the order is stayed until the end of the review.

'**(4)** If the period for which the community based order operates is relevant to the effect of the order or a program or anything else under the order, the period between the start and end of the appeal is not counted for the purpose of the effect of the order, program or other thing.'.

33 Amendment of s 95 (Incidents of review)

(1) Section 95(2)(b), 'subsection (2)'—

omit, insert—

'subsection (3)'.

(2) Section 95(3)(b), 'a District Court'—

omit, insert—

'the Childrens Court'.

34 Replacement of ss 98 and 98A

Sections 98 and 98A—

omit, insert—

'98 Court may reopen proceedings

'**(1)** If a court has—

(a) made a finding or order in relation to a child that is not in accordance with the law; or

(b) failed to make a finding or order in relation to a child that the court legally should have made; or

(c) made a finding or order in relation to a child decided on a clear factual error of substance;

the court, whether or not differently constituted, may reopen the proceeding.

'**(2)** The power under subsection (1)(c) includes power to reopen proceedings because the finding or order was incorrectly made—

(a) in relation to the wrong person; or

(b) because a summons issued on a complaint originating the proceedings that resulted in the finding or order did not come to the knowledge of the child; or

(c) because it was made for a matter for which the child had been previously dealt with; or

(d) because of someone's deceit.

'**(3)** If a court reopens a proceeding, it—

(a) must give the parties an opportunity to be heard; and

(b) may make a finding or order in relation to the child—

(i) for a reopening under subsection (1)(a)—in accordance with law; or

(ii) for a reopening under subsection (1)(b)—the court legally should have made; or

(iii) for a reopening under subsection (1)(c)—taking into account the factual error; and

(c) may amend any relevant finding or order to the extent necessary to take into account the finding or order made under paragraph (b).

'**(4)** The court may reopen the proceeding—

(a) on its own initiative at any time; or

(b) on the application of a party to the proceeding, the chief executive or the court's registrar or clerk of the court, made within—

(i) 28 days after the day the finding or order was made; or

(ii) any further time the court may allow on application at any time.

'**(5)** Subject to subsection (6), this section does not affect any right of appeal.

'**(6)** For an appeal under any Act against a finding or order made under subsection (3), the time within which the appeal must be made starts from the day the finding or order is made under subsection (3).

'**(7)** In this section—

"finding or order" means a finding of guilt, conviction, sentence or other finding or order that may be made in relation to a person charged with or found guilty of an offence.'.

35 Omission of pt 4, div 8, hdg (Special sentencing provisions relating to detainee)

Part 4, division 8, heading—

omit.

36 Relocation and renumbering of s 102 (Extension of Act for detainee offender)

Section 102—

relocate and *renumber*, in part 4, division 9, as section 107D.

37 Insertion of new pt 4, div 9, sdiv 1, hdg

Before section 103—

insert—

'Subdivision 1—Preliminary'.

38 Amendment of s 103 (Definitions for pt 4, div 9)

(1) Section 103, definition "offence"—

omit.

(2) Section 103—

insert—

' **"adult offence"** means an offence committed by an adult.

"child offence" means an offence committed by a child.'.

39 Insertion of new s 103A

After section 103—

insert—

‘103A Reference to “offence” includes alleged offence

‘A reference in this division to an offence committed by the offender includes, if the offender has not been found guilty of the offence, an offence the offender is alleged to have committed.’.

40 Insertion of new pt 4, div 9, sdiv 2, hdg

Before section 104—

insert—

‘Subdivision 2—General’.

41 Amendment of s 104 (Offender treated as child)

Section 104, ‘during any proceeding for the offence’—

omit, insert—

‘in relation to a child offence committed by the offender’.

42 Insertion of new pt 4, div 9, sdiv 3 and sdiv 4, hdg

After section 104—

insert—

‘Subdivision 3—Where offender is to be detained

‘104A Offender remanded in custody for adult offence

‘**(1)** This section applies if—

(a) a court remands the offender in custody in connection with a charge of an adult offence; and

(b) the offender is—

(i) being held on remand, in the chief executive’s custody, in connection with a charge of a child offence; or

(ii) serving a period of detention, in a detention centre, for a child offence; or

(iii) otherwise being held in custody in a detention centre.

'**(2)** The offender must be remanded into the custody of the chief executive and, for that purpose, section 43[145] applies as if the offender were still a child.

'**(3)** While subsection (1)(b) applies to the offender, a term of imprisonment to which the offender is sentenced for an adult offence must be served in a detention centre.

'**(4)** The part of a term of imprisonment served in a detention centre must be counted as part of the term of imprisonment.

'**(5)** Subsection (3) does not limit section 211.[146]

'104B Offender remanded in custody for child offence

'**(1)** This section applies if—

(a) a court remands the offender in custody in connection with a charge of a child offence; and

(b) the offender has been an adult for at least 1 year; and

(c) the offender is not—

(i) being held on remand, in the chief executive's custody, in connection with a charge of another offence; or

(ii) serving a period of detention, in a detention centre, for a child offence; or

(iii) otherwise being held in custody in a detention centre.

'**(2)** The offender must be held on remand in a corrective services facility.

'104C Offender remanded in custody for adult offence and child offence

'**(1)** This section applies if—

(a) a court remands the offender in custody in connection with charges of an adult offence and a child offence; and

(b) the offender is not—

145 Section 43 (Custody of child if not released by court)

146 Section 211 (Childrens Court may order transfer to prison)

(i) being held on remand, in the chief executive's custody, in connection with a charge of another offence; or

(ii) serving a period of detention, in a detention centre, for a child offence; or

(iii) otherwise being held in custody in a detention centre.

'**(2)** The offender must be held on remand in a corrective services facility.

'104D Dealing with offender held in corrective services facility

'**(1)** This section applies if the offender is being held on remand, serving a term of imprisonment, or otherwise being held in custody, in a corrective services facility.

'**(2)** If a court remands the offender in custody in connection with a charge of a child offence, the offender must be held on remand in a corrective services facility.

'**(3)** A period of detention to which the offender is sentenced for a child offence must be served in a corrective services facility.

'**(4)** Subsection (2) or (3) continues to apply to the offender even if the offender ceases to be held in custody in a corrective services facility for any other reason.

'**(5)** The period of detention served in a corrective services facility under subsection (3) must be counted as a period of detention.

'**(6)** The *Corrective Services Act 2000* applies to the offender in relation to the period of detention served in a corrective services facility under subsection (3).

'**(7)** However, the offender may only, and must, be released on parole on the day the offender would have been released under a supervised release order if the offender were serving the period of detention in a detention centre.

'**(8)** Subsection (7) does not prevent—

(a) the earlier release of the offender under an exceptional circumstances parole order; or

(b) the continued custody of the offender for the unserved part of any sentence of imprisonment imposed against the offender.

'**(9)** This section applies subject to section 104E.

‘104E Application to be held in detention centre

‘**(1)** This section applies if—

(a) section 104D(2) or (3) would otherwise apply to the offender; and

(b) the offender—

(i) has been an adult for less than 1 year; and

(ii) is not serving a period of detention in a corrective services facility under an order made under section 211;[147] and

(iii) is not being held on remand or serving a term of imprisonment for an adult offence.

‘**(2)** The offender may apply to a Childrens Court judge for an order that the offender be held on remand, or serve the period of detention, in a detention centre and not in a corrective services facility.

‘**(3)** The offender must immediately serve a copy of the application on the chief executive.

‘**(4)** The court may grant or refuse to grant the application.

‘**(5)** In deciding the application, the court must have regard to the following matters—

(a) the offender’s age at the time of the application;

(b) if the application relates to serving a period of detention—

(i) the length of the unserved part of the period of detention; and

(ii) the earliest time the offender may be released;

(c) the amount of time the offender has spent in a corrective services facility on remand, or serving a period of detention or term of imprisonment, for any offence;

(d) the amount of time the offender has spent in a detention centre on remand, or serving a period of detention or term of imprisonment, for any offence.

‘**(6)** If the court grants the application, the court must state the day on which the order takes effect.

147 Section 211 (Childrens Court may order transfer to prison)

'Subdivision 4—Circumstances affecting whether offender is treated as adult or child'.

43 Amendment of s 105 (When offender must be treated as an adult)

(1) Section 105(1)(a), 'for the offence'—

omit, insert—

'for a child offence'.

(2) Section 105(1)(a), 'of the offence'—

omit, insert—

'of the child offence'.

(3) Section 105(2)(a), 'the offence'—

omit, insert—

'a child offence'.

(4) Section 105—

insert—

'**(2A)** If, after a finding of guilt in a proceeding started against an offender as a child—

(a) the court has been unable to sentence the offender because the offender has—

(i) escaped from detention; or

(ii) failed, without reasonable excuse, to appear as required under the conditions of bail; or

(iii) failed, without reasonable excuse, to return to the detention centre at the end of a period of leave granted under section 210; and

(b) 1 year has passed after the offender has become an adult;

the offender must be sentenced as an adult.'.

44 Amendment of s 106 (When offender may be treated as an adult)

(1) Section 106(1)(a), 'an offence'—

omit, insert—

'a child offence'.

(2) Section 106(2), 'the offence'—

omit, insert—

'the child offence'.

45 Amendment of s 107 (Continuing effect on offender of orders made when child)

(1) Section 107(3), 'a requirement of, or prescribed requirement relating to,'—

omit.

(2) Section 107(3), 'the requirement'—

omit, insert—

'the order'.

(3) Section 107(5)(b), 'offence committed as an adult'—

omit, insert—

'adult offence'.

46 Amendment of s 107A (When order made as child may be dealt with as adult order)

(1) Section 107A(5), 'sentence'—

omit, insert—

'adult'.

(2) Section 107A—

insert—

'**(5A)** For the application of the *Penalties and Sentences Act 1992*—

(a) section 123[148] of that Act does not apply to a contravention of the childhood sentence order that happens before the order is declared under this section to be a community based order under that Act; and

148 *Penalties and Sentences Act 1992*, section 123 (Offence to contravene requirement of community based orders)

(b) if the corresponding adult order is a probation order or community service order under that Act, section 12(6) of that Act[149] does not apply to the court for the proceeding before the court.'.

47 Amendment of s 107B (Sentencing offender as adult)

Section 107B(2)(a), 'the offence'—

omit, insert—

'the child offence'.

48 Insertion of new pt 4, div 10

After section 107D (as renumbered)—

insert—

'Division 10—Some provisions about admissibility of childhood offences

'107E Use of evidence of cautions and conferences in deciding issue of criminal responsibility

'A court considering an issue of criminal responsibility under the Criminal Code, section 29 in relation to a child may have regard to any previous caution administered to the child or any previous conference agreement made by the child.'.

49 Amendment of s 109 (Sentencing principles)

Section 109(1)(b)—

omit, insert—

'(b) the juvenile justice principles; and'.

50 Amendment of s 110 (Presentence report)

(1) Section 110—

149 *Penalties and Sentences Act 1992*, section 12(6) (Court to consider whether or not to record conviction)

insert—

'**(1A)** Subject to subsection (7), the report must be made for the purpose of the sentencing of the child for the offence.'.

(2) Section 110—

insert—

'**(2A)** The presentence report may not contain the chief executive's opinion on what impact an order under section 191C[150] may have on the child.'.

(3) Section 110—

insert—

'**(7)** For subsection (5), it is enough if the chief executive gives the court further material to be considered with another report prepared for another sentencing of the child that happens on the same day.'.

51 Amendment of s 114 (Evidence of childhood finding of guilt not admissible against adult)

(1) Section 114(3) to (7)—

omit.

(2) Section 114(8)—

renumber as section 114(3).

(3) Section 114—

insert—

'**(4)** For subsection (1), if a person is found guilty as a child of an offence, the person is not taken to have been found guilty as an adult of the offence merely because of the making of a declaration under section 107A(4).'.

(4) Section 114—

relocate to part 4, division 10 and *renumber* as section 107F.

150 Section 191C (Court may allow publication of identifying information)

52 Omission of s 114A (Particular cautions and community conference agreements admissible as part of person's criminal history)

Section 114A—

omit.

53 Amendment of s 118 (Children entitled to explanation of sentence)

Section 118(1)(b), 'the requirements of'—

omit.

54 Amendment of s 118A (Audio visual link or audio link may be used to sentence)

Section 118A(1), after 'of a child'—

insert—

'who is legally represented'.

55 Amendment of pt 5, div 1A, hdg (Court referred community conferences before sentencing)

Part 5, division 1A, heading, '***community***'—

omit.

56 Insertion of new pt 5, div 1A, sdiv 1, hdg

Before section 119A—

insert—

'Subdivision 1—Initial reference procedure'.

57 Replacement of s 119A (Reference to community conference by court)

Section 119A—

omit, insert—

‘119A Reference by court to a coordinator for a conference

‘**(1)** This section applies if a finding of guilt for an offence is made against a child before a court.

‘**(2)** The court must consider referring the offence to a coordinator for a conference.

‘**(3)** The court may refer the offence to the coordinator, if the court considers—

(a) referral to a conference—

(i) would allow the offence to be appropriately dealt with without the court making a sentence order (an **“indefinite referral”**); or

(ii) would help the court to make an appropriate sentence order (a **“conference before sentence”**); and

(b) a convenor will be available for the conference.

‘**(4)** In considering whether to refer the offence to a conference, the court may consider whether the child has made any other conference agreement for any offence, without considering the terms of any agreement.

‘**(5)** On making the referral, the court may—

(a) give directions it considers appropriate to the child, the coordinator, convenor of the conference and anyone else who may participate in the conference; and

(b) adjourn the proceeding for the offence.’.

58 Insertion of new s 119AA and pt 5, div 1A, sdiv 2, hdg

After section 119A—

insert—

‘119AA Reference back to court from conference

‘**(1)** In any of the circumstances mentioned in subsection (2) or (3), a coordinator may refer the offence back to the court by written notice given to the court’s proper officer.

‘**(2)** One circumstance is that a convenor will not be available for the conference.

‘**(3)** Other circumstances are as follows—

(a) the convenor is unable to contact the child after reasonable inquiries;

(b) the convenor has made reasonable requirements of the child to attend a pre-conference interview and the child has failed to attend as required;

(c) the convenor considers it necessary for a victim to participate and the victim does not wish to participate or can not be located after reasonable inquiries;

(d) during the preparation for the conference meeting, the child denies committing the offence to the convenor;

(e) during the preparation for the conference meeting, the convenor comes to the conclusion that an appropriate conference agreement is unlikely to be made within a time the convenor considers appropriate;

(f) the convenor ends the conference under section 30D(5);

(g) the conference ends without an agreement being made.

'**(4)** A notice under subsection (1) must state the reasons for referring the offence back to the court.

'**(5)** The reasons stated in the notice may be considered by a court in any later proceeding for the sentencing of the child for the relevant offence.

'Subdivision 2—Indefinite referral'.

59 Amendment of s 119B (If an agreement is made on an indefinite referral by a court)

(1) Section 119B(1), 'community conference'—

omit, insert—

'conference'.

(2) Section 119B(2), 'The community conference convenor'—

omit, insert—

'A coordinator'.

(3) Section 119B(4), 'On the giving of the notice'—

omit, insert—

'On the day the notice is received by the court'.

60 Amendment of s 119C (Powers of proper officer if indefinite referral is unsuccessful or if child contravenes agreement made on court's indefinite referral)

(1) Section 119C(1) 'community conference', first mention—

omit, insert—

'coordinator'.

(2) Section 119C(1), 'community conference', second mention—

omit, insert—

'conference'.

(3) Section 119C(2)—

omit, insert—

'**(2)** The circumstances are—

(a) a coordinator refers the offence back from the youth justice conference to a court under section 119AA(1); or

(b) a conference agreement is made and the child contravenes the agreement.'.

(4) Section 119C(3)(b)—

omit, insert—

'(b) refer the offence to a coordinator for another conference; or'.

(5) Section 119C(6)—

omit, insert—

'**(6)** If the proceeding for the offence was previously brought to an end by a notice under section 119B(2), a notice under subsection (4) restarts the proceeding from when it was brought to an end and the child is then liable to be sentenced for the offence.'.

(6) Section 119C(7), 'community conference'—

omit, insert—

'conference'.

61 Insertion of new pt 5, div 1A, sdiv 3, hdg

Before section 119D—

insert—

'Subdivision 3—Court dealing with offence after referral to a conference before sentence'.

62 Amendment of s 119D (If an agreement is made on a referral by a court before sentence)

(1) Section 119D, heading, after '**court**'—

insert—

'**to a conference**'.

(2) Section 119D(1) and (2), 'community conference'—

omit, insert—

'conference'.

(3) Section 119D(2)(d)—

omit, insert—

'(d) a coordinator's report under section 30D(7).'.

(4) Section 119D—

insert—

'**(2A)** For the purpose of the sentence, the court must give a copy of the conference agreement and any report provided under section 30D(7) to the parties to the proceeding.'.

(5) Section 119D(3)—

omit, insert—

'**(3)** The court may include all or any of the terms of the agreement in, or as part of, the sentence order and impose requirements on the child to ensure the child complies with the terms so included.

'**(4)** If the child contravenes a term of the agreement included in the sentence order, the court's proper officer may—

(a) take no action; or

(b) bring the charge for the offence back on before the court for resentencing.

'**(5)** For subsection (4)(b), the proper officer must give notice to the child and the chief executive that the proceeding for the resentencing is to be heard by the court on a stated day.

'**(6)** If requested by the proper officer, the commissioner of the police service must help the proper officer give the notice.

'**(7)** A notice under subsection (5) makes the child liable to be resentenced for the offence.

'**(8)** In making a new sentence order for the offence, the court must consider—

(a) any participation by the child in a conference; and

(b) the agreement; and

(c) anything done by the child under the agreement.

'**(9)** A new sentence order may include requirements under subsection (3).'.

63 Insertion of new pt 5, div 1A, sdiv 4

After section 119D—

insert—

'Subdivision 4—No further action instead of sentence

'119E Court may take no further action if agreement is made

'**(1)** This section applies if a court may make a sentence order for a child in the circumstances mentioned in section 119D(1).

'**(2)** The court may decide to take no further action, if the child agrees to carry out the agreement made by the child in the conference.

'**(3)** If the child contravenes the agreement, the court's proper officer may—

(a) take no action; or

(b) bring the charge for the offence back on before the court for sentencing.

'**(4)** For subsection (3)(b), the proper officer must give notice to the child and the chief executive that the proceeding for the offence is to be heard by the court on a stated day.

'**(5)** If requested by the proper officer, the commissioner of the police service must help the proper officer give the notice.

'**(6)** A notice under subsection (4) restarts the proceeding from when it was brought to an end and the child is then liable to be sentenced for the offence.

'**(7)** In making a sentence order for the offence, the court must consider—

(a) any participation by the child in a conference; and

(b) the agreement; and

(c) anything done by the child under the agreement.'.

64 Amendment of s 120 (Sentence orders—general)

(1) Section 120(1)(d) and (e), 'subsection (3)'—

*omit, insert***—**

'subsection (2)'.

(2) Section 120(1)(e), after '13 years'—

insert—

'at the time of sentence'.

(3) Section 120(1)—

insert—

'(ea) if the child has not attained the age of 13 years at the time of sentence, make an intensive supervision order for the child for a period of not more than 6 months; or'.

(4) Section 120(2), 'an immediate'—

omit, insert—

'a conditional'.

(5) Section 120(3)—

omit.

(6) Section 120(2)—

renumber as subsection (3).

(7) Section 120—

insert—

'**(2)** An order of the following type may only be made against a child found guilty of an offence of a type that, if committed by an adult, would make the adult liable to imprisonment—

(a) a probation order under subsection (1)(d);

(b) a community service order;

(c) an intensive supervision order.'.

65 Amendment of s 121 (Sentence orders—serious offences)

(1) Section 121(3), 'In relation to'—

omit, insert—

'For'.

(2) Section 121(4), 'an immediate'—

omit, insert—

'a conditional'.

(3) Section 121(5)—

renumber as section 120(6).

(4) Section 121—

insert—

'**(5)** A court may make an order for a child's detention under subsection (3), with or without an order under division 7, subdivision 5.[151]'.

66 Amendment of s 121A (More than 1 type of order may be made for a single offence)

Section 121A, 'and 121C'—

omit, insert—

'to 121D'.

151 Division 7 (Detention order), subdivision 5 (Publication orders)

67 Replacement of ss 121B and 121C

Sections 121B and 121C—

omit, insert—

'121B Combination of probation and community service orders

'**(1)** This section applies if a court makes, for a single offence (the **"original offence"**), a probation order and a community service order.

'**(2)** The court—

(a) must make separate orders; and

(b) must not impose one of the orders as a requirement of the other.

'**(3)** If the child contravenes one of the orders after the orders are made and is resentenced for the original offence, the other order is discharged.

'121C Combination of intensive supervision order and probation or detention order prohibited

A court may not make, for a single offence—

(a) an intensive supervision order; and

(b) a probation order or detention order.

'121D Combination of detention order and other orders

'**(1)** This section applies if a court makes a detention order and a probation order for a single offence.

'**(2)** The court may make the detention order only for a maximum period of 6 months and may not make a conditional release order.

'**(3)** The probation order may only start when the child is released from detention under the detention order and be for a maximum period ending 1 year after the release.'.

68 Amendment of s 124 (Recording of conviction)

Section 124(2) to (4)—

omit, insert—

'**(2)** If a court makes an order under section 120(1)(a) or (b), a conviction must not be recorded.

'**(3)** If a court makes an order under section 120(1)(c) to (f) or 121, the court may order that a conviction be recorded or decide that a conviction not be recorded.'.

69 Insertion of new s 127A

Part 5, division 2, after section 127—

insert—

'127A Reference to complying with, or contravening, an order

'In this part, a reference to complying with, or contravening, a sentence order includes complying with, or contravening, a requirement applying to the order under a regulation.'.

70 Amendment of s 132 (Probation orders—requirements)

(1) Section 132(1)(b)(iii) to (v)—

renumber as section 132(1)(b)(iv) to (vi).

(2) Section 132(1)(b)(ii)—

omit, insert—

'(ii) the child must satisfactorily attend programs as directed by the chief executive; and

(iii) the child must comply with every reasonable direction of the chief executive; and'.

(3) Section 132—

insert—

'**(2A)** An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to attend a particular educational establishment that is located outside the State.'.

71 Amendment of s 133 (Child must be willing to comply)

Section 133, 'the requirements of'—

omit.

72 Omission of ss 134–145

Sections 134 to 145—

omit.

73 Amendment of s 146 (Preconditions to making of community service order)

Section 146(a), 'the requirements of'—

omit.

74 Amendment of s 147 (Requirements to be set out in community service order)

(1) Section 147—

insert—

'(e) that the child abstain from violation of the law during the period of the order; and

(f) that the child not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.'.

(2) Section 147—

insert—

'**(2)** An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to perform a community service at a place outside the State.'.

75 Amendment of s 149 (Community service to be performed within limited period)

(1) Section 149(b), 'section 156, 157 or 158'—

omit, insert—

'section 192J or 192L'.

(2) Section 149(c), 'section 163'—

omit, insert—

'section 192Q'.

76 Insertion of new s 151A

After section 151—

insert—

'151A Cumulative effect of child and adult community service orders

'**(1)** This section applies if—

(a) a court makes a community service order against a person; and

(b) the person is already subject to 1 or more existing community service orders; and

(c) on the making of the order, the person will be subject to an adult community service order and a child community service order.

'**(2)** The order mentioned in subsection (1)(a) is of no effect to the extent that the total number of hours of community service under all the community service orders to which the person will be subject, less the number of hours for which the person has performed community service under the existing order or orders, is more than the maximum number of hours of community service an adult may be ordered to perform.

'**(3)** In this section—

"adult community service order" means a community service order made against a person under the *Penalties and Sentences Act 1992* for an offence committed by the person as an adult.

"child community service order" means a community service order made against a person under this Act for an offence committed by the person as a child.

"community service order" means an adult community service order or child community service order.'.

77 Amendment of s 152 (Ending of community service order)

(1) Section 152(a), 'section 147(b) and (c)'—

omit, insert—

'section 147(1)(b) and (c)'.

(2) Section 152(b), 'section 156 or 158'—

omit, insert—

'section 192J or 192L'.

78 Replacement of ss 153–163

Sections 153 to 163—

omit, insert—

'Division 6A—Intensive supervision order

'153 Preconditions to making of intensive supervision order

'**(1)** A court may make an intensive supervision order for a child only if—

(a) the child expresses willingness to comply with the order; and

(b) the court has ordered a pre-sentence report and considered the report; and

(c) the court considers the child, unless subject to an intensive period of supervision and support in the community, is likely to commit further offences having regard to the following—

(i) the number of offences committed by the child, including the child's criminal history;

(ii) the circumstances of the offences;

(iii) the circumstances of the child;

(iv) whether other sentence orders have not or are unlikely to stop the child from committing further offences.

'**(2)** The pre-sentence report mentioned in subsection (1)(b) must include comments—

(a) outlining the potential suitability of the child for an intensive supervision order; and

(b) advising whether an appropriate intensive supervision program is available for the child.

‘154 Intensive supervision order—requirements

‘**(1)** An intensive supervision order must require—

(a) that the child participate as directed by the chief executive in a program (the **“intensive supervision program”**) for the period decided under section 120(1)(ea) (the **“program period”**); and

(b) that, during the period of the order—

(i) the child abstain from violation of the law; and

(ii) the child comply with every reasonable direction of the chief executive; and

(iii) the child report and receive visits as directed by the chief executive; and

(iv) the child or a parent of the child notify the chief executive within 2 business days of any change of address or school; and

(v) the child not leave, or stay out of, Queensland without the prior approval of the chief executive.

‘**(2)** An intensive supervision order made for the child may contain requirements that the child comply, during the whole or a part of the period of the order, with conditions that the court considers necessary for preventing a repetition by the child of the offence for which the order was made or the commission by the child of other offences.

‘**(3)** An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to attend a particular educational establishment that is located outside the State.

‘**(4)** A requirement imposed by a court under subsection (2)—

(a) must relate to the offence for which the order was made; and

(b) must be supported by the court’s written reasons.

‘155 Program period

‘**(1)** The program period of a child’s intensive supervision program starts when the intensive supervision order is made and ends at the later of the following times—

(a) the end of the last day of the period of the intensive supervision order;

(b) if the intensive supervision program was suspended for part or all of any days (the **"suspended days"**)—the end of the last day that is the last day of the period of the order and, additionally, the number of suspended days.

'**(2)** If, at the time a court makes an intensive supervision order for a child—

(a) another intensive supervision order has already been made against the child; and

(b) the intensive supervision program under the other order has not ended;

the period when the child is subject to both intensive supervision programs is counted concurrently.

'156 Suspension of intensive supervision program

'**(1)** If, during the program period, a child for good reason is unable to participate in the intensive supervision program, the chief executive may, by written notice given to the child, suspend the intensive supervision program for a specified period.

'**(2)** The period for which the intensive supervision program is suspended is not to be counted as part of the program period.'.

79 Amendment of s 167 (Detention to be served in detention centre)

Section 167(3), 'an immediate'—

omit, insert—

'a conditional'.

80 Amendment of s 172 (Period of escape or release pending appeal not counted as detention)

(1) Section 172, heading, after '**escape**'—

insert—

'**, mistaken release**'.

(2) Section 172(b)—

omit, insert—

'(b) is unlawfully at large;'.

(3) Section 172, 'or escape'—

omit, insert—

'or is unlawfully at large'.

81 Amendment of s 172A (Application for variation of detention order in interests of justice)

Section 172A(1)(a), 'escapes from detention under'—

omit, insert—

'is unlawfully at large while subject to'.

82 Amendment of s 173 (Multiple orders of detention and imprisonment against person as adult and child)

Section 173(2) to (5)—

omit.

83 Amendment of s 174 (Period of custody on remand to be treated as detention on sentence)

Section 174(1), after 'detention centre'—

insert—

'or corrective services facility'.

84 Amendment of pt 5, div 7, sdiv 2, hdg (Immediate release order)

Part 5, division 7, subdivision 2, heading, '***Immediate***'—

omit, insert—

'***Conditional***'.

85 Amendment of s 175 (Purpose of immediate release order)

Section 175, heading, '**immediate**'—

omit, insert—

'**conditional**'.

86 Amendment of s 176 (Immediate release order)

(1) Section 176, heading, '**Immediate**'—

omit, insert—

'**Conditional**'.

(2) Section 176(1), '**immediate**'—

omit, insert—

'**conditional**'.

(3) Section 176(2), 'immediate'—

omit, insert—

'conditional'.

87 Replacement of s 177 (Immediate release order—requirements)

Section 177—

omit, insert—

'177 Conditional release order—requirements

'**(1)** A conditional release order must require—

(a) that the child participate as directed by the chief executive in a program (the **"conditional release program"**) for the period, of not more than 3 months, stated in the order (the **"program period"**); and

(b) that, during the period of the order —

(i) the child abstain from violation of the law; and

(ii) the child comply with every reasonable direction of the chief executive; and

(iii) the child report and receive visits as directed by the chief executive; and

(iv) the child or a parent of the child notify the chief executive within 2 business days of any change of address, employment or school; and

(v) the child not leave, or stay out of, Queensland without the prior approval of the chief executive.

'**(2)** A conditional release order made in relation to a child may contain requirements that the child comply, during the whole or a part of the period of the order, with conditions that the court considers necessary for preventing a repetition by the child of the offence for which the detention order was made or the commission by the child of other offences.

'**(3)** An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to attend a particular educational establishment that is located outside the State.

'**(4)** A requirement imposed by a court under subsection (2)—

(a) must relate to the offence for which the detention order was made; and

(b) must be supported by the court's written reasons.'.

88 Amendment of s 178 (Child must be willing to comply)

(1) Section 178, 'an immediate'—

omit, insert—

'a conditional'.

(2) Section 178, 'the requirements of'—

omit.

89 Replacement of s 179 (Presentence report must support immediate release order)

Section 179—

omit, *insert—*

‘179 Presentence report must include particular comments

‘The presentence report considered by a court before making the relevant detention order must include comments—

(a) outlining the potential suitability of the child for release from detention under a conditional release order; and

(b) advising whether an appropriate conditional release program is available on the child’s release under the order.’.

90 Amendment of s 180 (Effect of program period ending)

Section 180, ‘section 183’—

omit, insert—

‘division 8A’.

91 Insertion of new s 181

After section 180—

insert—

‘181 Program period

‘**(1)** The program period of a child’s conditional release program starts when the conditional release order is made and ends at the later of the following times—

(a) the end of the last day of the period of the conditional release order;

(b) if the conditional release program was suspended for part or all of any days (the **“suspended days”**)—the end of the day that is the last day of the period of the order and, additionally, the number of suspended days.

‘**(2)** If, at the time a court makes a conditional release order for a child—

(a) another conditional release order has already been made for the child; and

(b) the conditional release program under the other order has not ended;

the period when the child is subject to both conditional release programs is counted concurrently.’.

92 Amendment of s 182 (Suspension of program period)

(1) Section 182, heading, '**period**'—

omit.

(2) Section 182(1), from 'suspend'—

omit, insert—

'suspend the program for a stated period.'.

(2) Section 182(2), 'program period is'—

omit, insert—

'program is'.

93 Omission of ss 183–187

Sections 183 to 187—

omit.

94 Replacement of s 189 (Chief executive's fixed release order)

Section 189—

omit, insert—

'189 Chief executive's supervised release order

'**(1)** At the end of the period after which a child is required to be released under section 188, the chief executive must make an order (a **"supervised release order"**) releasing the child from detention.

'**(2)** The chief executive may—

(a) impose conditions that the chief executive considers appropriate on the supervised release order; and

(b) amend the conditions at any time by written notice served on the child.

'**(3)** The supervised release order must require that, during the period of the order—

(a) the child abstain from violation of the law; and

(b) the child satisfactorily attend programs as directed by the chief executive; and

(c) the child comply with every reasonable direction of the chief executive; and

(d) the child report and receive visits as directed by the chief executive; and

(e) the child or a parent of the child notify the chief executive within 2 business days of any change of address, employment or school; and

(f) the child not leave, or stay out of, Queensland without the prior approval of the chief executive.

'**(4)** A supervised release order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to attend a particular educational establishment that is located outside the State.

'189A Child may be released from detention while absent from place of detention

'To remove any doubt, it is declared that a child who is serving a period of detention at a place may be released from detention under this subdivision whether or not the child is at the place at the time of release.

Example—

A child is serving a period of detention at a detention centre. The chief executive grants the child leave of absence under section 210. While the child is on the leave of absence, the chief executive may make a supervised release order releasing the child from detention.'.

95 Amendment of s 190 (Release period counts as part of detention period)

Section 190, 'fixed'—

omit, insert—

'supervised'.

96 Replacement of s 191 (Cancellation of release order)

Section 191—

omit, insert—

‘191 Cancellation of supervised release order

‘**(1)** This section applies if—

(a) a child is on release from detention under a supervised release order; and

(b) the chief executive reasonably believes the child has contravened the order.

‘**(2)** The chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court magistrate for a finding that the child has contravened the order.

‘**(3)** A copy of the complaint must be served on a parent of the child, unless a parent can not be found after reasonable inquiry.

‘**(4)** A Childrens Court magistrate may issue a warrant for the child’s arrest if the child fails to appear before the court in answer to the summons.

‘**(5)** A justice may issue a warrant for the child’s arrest if the chief executive—

(a) makes a complaint before the justice that the child has contravened a supervised release order; and

(b) gives information before the justice, on oath, substantiating—

(i) the matter of the complaint; and

(ii) that the chief executive does not know the child’s whereabouts and can not reasonably find out, or reasonably believes that the child would not comply with a summons.

‘**(6)** A warrant issued under subsection (4) or (5) must state which part of the supervised release order has been contravened.

‘**(7)** For part 3, a child arrested under the warrant must be treated as if arrested on a charge of an offence.

‘**(8)** If the child appears before a Childrens Court magistrate other than through the execution of the warrant, the magistrate may cancel the warrant.

‘**(9)** If a Childrens Court magistrate is satisfied beyond reasonable doubt the child has contravened the supervised release order, the magistrate may—

(a) if the magistrate considers the child should be given a further opportunity to satisfy the conditions of the order—order that no further action be taken; or

(b) order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or

(c) order the child to be returned to the detention centre for the unexpired part of the child's sentence.

'**(10)** In making an order under subsection (9), the Childrens Court magistrate must have regard to anything done by the child in compliance with the supervised release order.

'**(11)** An order under subsection (9) is a sentence order for any Act providing rights to anyone of appeal or review.

'**(12)** The period spent by the child out of custody after the issue of a warrant is not to be counted as part of the time spent by the child in detention for the purpose of calculating the end of the period of detention from which the child was released.'.

97 Insertion of new pt 5, div 7, sdiv 5

After section 191B—

insert—

'Subdivision 5—Publication orders

'191C Court may allow publication of identifying information

'**(1)** This section applies if—

(a) a court makes an order under section 121(3) relating to a child found guilty of a serious offence that is a life offence; and

(b) the offence involves the commission of violence against a person; and

(c) the court considers—

(i) the offence to be a particularly heinous offence having regard to all the circumstances; and

(ii) that it would be in the interests of justice to allow publication of identifying information about the child.

'**(2)** The court may order that identifying information about the child may be published.

'**(3)** The order does not authorise publication of identifying information before the end of any appeal period or, if the child gives notice of appeal or of application for leave to appeal, before any appeal proceeding has ended.

'**(4)** To remove any doubt, it is declared this section does not apply to a Childrens Court constituted by a Childrens Court magistrate.

'**(5)** In this section—

"appeal period" means the 1 calendar month from the date of conviction or sentence mentioned in the Criminal Code, section 671.'.

98 Insertion of new pt 5, div 8A

After section 192—

insert—

'Division 8A—Contravention of community based orders and related matters

'192A Reference to "child"

'**(1)** A reference in this division to a child against whom a community based order has been made includes a person who has become an adult since the order was made.

'**(2)** Subsection (1) does not limit section 107.[152]

'192B Chief executive must warn child about contravention

'**(1)** This section applies if—

(a) a community based order is made against a child; and

(b) the chief executive reasonably believes the child has contravened the order.

'**(2)** The chief executive must warn the child of the consequences of further contravention, including the making of an application under section 192C.

---

152 Section 107 (Continuing effect on offender of orders made when child)

'**(3)** Subsection (2) does not apply if the chief executive does not know the child's whereabouts and can not reasonably find out.

'192C Chief executive's application on contravention

'**(1)** This section applies if—

(a) a community based order is made against a child; and

(b) the chief executive reasonably believes the child has contravened the order; and

(c) either—

(i) the contravention is believed to have happened after the child has been given a warning, under section 192B, relating to a previous believed contravention of the order; or

(ii) the chief executive is not required to warn the child under section 192B; and

(d) the child has not been charged with an offence for the act or omission comprising the contravention.

'**(2)** The chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court magistrate for a finding that the child has contravened the order.

'**(3)** The application may only be made during the period of the order.

'**(4)** A copy of the complaint must be served on a parent of the child, unless a parent can not be found after reasonable inquiry.

'**(5)** A Childrens Court magistrate may issue a warrant for the child's arrest if the child fails to appear before the court in answer to the summons.

'**(6)** A justice may issue a warrant for the child's arrest if the chief executive—

(a) makes a complaint before the justice that the child has contravened a community based order; and

(b) gives information before the justice, on oath, substantiating—

(i) the matter of the complaint; and

(ii) that the chief executive does not know the child's whereabouts and can not reasonably find out, or reasonably believes that the child would not comply with a summons.

'**(7)** A warrant issued under subsection (5) or (6) must state which part of the community based order has been contravened.

'**(8)** For part 3, a child arrested under the warrant must be treated as if arrested on a charge of an offence.

'**(9)** In this section—

"parent", of a child, includes someone who is apparently a parent of the child.

'192D Cancellation of warrant

'**(1)** This section applies if—

(a) a warrant for a child's arrest is issued under section 192C; and

(b) the child appears before a Childrens Court magistrate other than through the execution of the warrant.

'**(2)** The magistrate may cancel the warrant and deal with the child under this division for the alleged contravention of the community based order.

'192E General options available on breach of order

'**(1)** This section applies if—

(a) a complaint is made under section 192C that a child has breached a community based order; and

(b) the child appears before a Childrens Court magistrate; and

(c) the magistrate is satisfied beyond reasonable doubt the contravention has happened.

'**(2)** If the order was made by a Childrens Court magistrate, the magistrate may take the following action—

(a) for an order other than a conditional release order—any action allowed under section 192J;[153]

(b) for a conditional release order—any action allowed under section 192K.[154]

153 Section 192J (Court's power on breach of order other than conditional release order)

154 Section 192K (Court's power on breach of conditional release order)

'**(3)** If the order was made by a higher court, the magistrate may take the following action—

(a) if the magistrate considers that, having regard to the circumstances of the contravention, the order should be discharged and the child dealt with for the offence in respect of which the order was made—order the child to appear before the higher court;

(b) otherwise—

(i) for an order other than a conditional release order—any action under section 192J other than section 192J(1)(d)(ii); or

(ii) for a conditional release order—deal with the child under section 192K(2).

'**(4)** If the magistrate orders the child to appear before the higher court, the magistrate may commit the child to custody or release the child under part 3 to be brought or to appear before the higher court.

'**(5)** In this section—

"higher court" means the Supreme Court or a Childrens Court judge.

'192F General options available to superior court to which child committed for breach

'**(1)** This section applies if—

(a) the chief executive applies to a Childrens Court magistrate under section 192C for a finding that a child has breached a community based order; and

(b) under section 192E(3)(a), the magistrate orders the child to appear before the Supreme Court or a Childrens Court judge (the **"higher court"**); and

(c) the higher court is satisfied beyond reasonable doubt of the matter alleged against the child in the chief executive's application.

'**(2)** The higher court may take the following action—

(a) for an order other than a conditional release order—any action allowed by section 192J;

(b) for a conditional release order—any action allowed by section 192K.

'**(3)** The proceeding before the higher court must be heard and decided by a judge sitting without a jury.

'192G General options available to court before which child found guilty of an indictable offence

'**(1)** This section applies if—

(a) a child commits an indictable offence while the child is subject to a community based order; and

(b) a court finds the child guilty of the offence.

'**(2)** If the order was made by the court, it may take the following action—

(a) for an order other than a conditional release order—any action allowed by section 192J;

(b) for a conditional release order—any action allowed by section 192K.

'**(3)** If the order was not made by the court, it may take the following action—

(a) if it considers that, having regard to the circumstances of the offence, the order should be discharged and the child resentenced for the offence in respect of which the order was made—order the child to appear before the court that made the order or, if it may act under section 192H, act under that section;

(b) otherwise—

(i) for an order other than a conditional release order—any action under section 192J other than section 192J(1)(d)(ii); or

(ii) for a conditional release order—deal with the child under section 192K(2).

'**(4)** If the court orders the child to appear before another court under subsection (3)(a), it may commit the child to custody or release the child under part 3 to be brought or to appear before the other court.

‘192H Court may resentence child originally sentenced by lower court

‘**(1)** This section applies to a court acting under section 192G(3)(a) in relation to a community based order that it did not make.

‘**(2)** If the court is the Supreme Court or a Childrens Court judge and the court that made the order is a Childrens Court magistrate, it may make a sentence order under the following provisions that a Childrens Court magistrate could make in the same circumstances—

(a) for an order other than a conditional release order—section 192J(1)(d)(ii);

(b) for a conditional release order—section 192K(1).

‘**(3)** A sentence order made under subsection (2)—

(a) for the purposes of an appeal, is taken to be a sentence order made on indictment; but

(b) for all other purposes, is taken to be a sentence order made by a Childrens Court magistrate.

‘**(4)** If the court is the Supreme Court and the court that made the order is a Childrens Court judge, it may make a sentence order under the following provisions that a Childrens Court judge could make in the same circumstances—

(a) for an order other than a conditional release order—section 192J(1)(d)(ii);

(b) for a conditional release order—section 192K(1).

‘**(5)** A sentence order made under subsection (4) is taken to be a sentence order made by the Childrens Court judge.

‘192I General options available to court to which child committed for breach by indictable offence

‘**(1)** This section applies if a court orders a child to appear before another court under section 192G(3)(a).

‘**(2)** The other court may take the following action—

(a) for an order other than a conditional release order—any action allowed by section 192J;

(b) for a conditional release order—any action allowed by section 192K.

'**(3)** If the other court is the Supreme Court or Childrens Court judge, the proceeding must be heard and decided by a judge sitting without a jury.

'192J Court's power on breach of order other than conditional release order

'**(1)** A court that acts under this section may—

(a) for a probation order—extend the period of the order, but not so that the period by which the order is extended is longer than the period for which the order could be made under sections 120(1)(d), 121(1)(a) and 121D(3);[155] or

(b) for a community service order—

(i) increase the number of community service hours, but not so that the total number of hours is more than the number allowed under section 120(1)(e); or

(ii) extend the period within which the community service must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or

(c) for an intensive supervision order—extend the period of the order, but not so that the last day of the order is more than 6 months after the court acts under this section; or

(d) for any community based order—

(i) vary another requirement of the order other than the requirement that the child abstain from violation of the law; or

(ii) discharge the order and resentence the child for the offence for which the order was made as if the child had just been found guilty before the court of that offence; or

(iii) on the undertaking of the child to comply in all respects with the order, take no further action.

'**(2)** The court may vary the community based order only if the child expresses a willingness to comply with the order as varied.

155 Sections 120 (Sentence orders—general), 121 (Sentence orders—serious offences) and 121D (Combination of detention order and other orders)

'**(3)** An order under subsection (1)(a), (b) or (c) may be made in conjunction with an order under subsection (1)(d)(i).

'**(4)** If the court decides to extend the period of the community based order, the court must have regard to the period for which the child has complied with the order.

'**(5)** An order may be made under this section even though, at the time it is made, the community based order in relation to which the order is made is no longer in force because the period of the community based order has ended.

'**(6)** For the purpose of subsection (5), the community based order is taken to continue in force until a proceeding under this section is heard and decided.

'192K Court's power on breach of conditional release order

'**(1)** A court that acts under this section may revoke the conditional release order and order the child to serve the sentence of detention for which the conditional release order was made.

'**(2)** However, instead of revoking the conditional release order, the court may permit the child a further opportunity to satisfy the requirements of the order and, for that purpose, may—

(a) vary the requirements in a way it considers just; or

(b) extend the program period for the order, but not so that the last day of the period is more than 3 months after the court acts under this section.

'**(3)** The onus is on the child to satisfy the court it should permit the child this further opportunity.

'**(4)** If the court decides to extend the program period for the conditional release order, the court must have regard to the period for which the child has complied with the order.

'**(5)** An order may be made under this section even though, at the time it is made, the conditional release order in relation to which the order is made is no longer in force because the period of the conditional release order has ended.

'**(6)** For the purpose of subsection (5), the conditional release order is taken to continue in force until a proceeding under this section is heard and decided.

‘192L Variation, discharge and resentence in the interests of justice

‘**(1)** If a community based order is in force for a child, the child or the chief executive may apply to the court that made the order to—

(a) vary the requirements of the order, other than the requirement that the child abstain from violation of the law; or

(b) for an order other than a conditional release order—

(i) discharge the order; or

(ii) discharge the order and resentence the child for the offence in respect of which the order was made as if the child had just been found guilty before the court of the offence; or

(c) for a conditional release order—revoke the order and order the child to serve the sentence of detention for which the conditional release order was made.

Examples for paragraph (a)—

1. An application to extend the period within which the community service is required to be performed under a community service order.

2. An application to reduce, without restriction, the number of community service hours under a community service order.

‘**(2)** The applicant must give written notice of the making of the application—

(a) if the application is made by the child—to the chief executive; or

(b) if the application is made by the chief executive—to the child.

‘**(3)** The court may grant the application if the court considers it would be in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

‘**(4)** The application can not be made on the grounds that the child has contravened the order.

‘**(5)** On an application mentioned in subsection (1)(b)(ii), the child can not be resentenced to a greater penalty than would be the case if the balance of the order were served.

Example of a greater penalty—

A penalty that would impose a greater degree of restriction on the child’s liberty.

‘192M Detention reduced to the extent just

‘**(1)** This section applies to a court if, under this division, it revokes a conditional release order and orders a child to serve the period of detention for which the conditional release order was made.

‘**(2)** The court must reduce the period of detention by the period the court considers just, having regard to everything done by the child to conform with the conditional release order.

‘192N Matters relevant to making further order

‘**(1)** This section applies to a court if, under this division, it discharges a community based order, other than a conditional release order, and resentences the child for the offence in respect of which the order was made.

‘**(2)** The court must have regard to—

(a) the reasons for making the order; and

(b) anything done by the child in compliance with the order.

‘192O Affidavits may be used in certain proceedings

‘**(1)** In a proceeding before a court under this division, evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.

‘**(2)** The proceeding may be decided on evidence by affidavit alone, unless the court orders, in the interests of justice, that a person who has made an affidavit be called to give evidence in the proceeding.

‘**(3)** The court may make an order under subsection (2) of its own initiative or on the application of a party to the proceeding.

‘**(4)** This section does not limit another way in which the proceeding may be conducted.

‘192P Notice of discharge etc. of community based order

‘If a court in the exercise of jurisdiction under this division affects the terms or operation of a community based order made against a child, it must cause written notice of the exercise of the jurisdiction to be given to—

(a) the child; and

(b) the chief executive; and

(c) if that court is not the court that made the community based order to which the application for exercise of the jurisdiction applied—the court that made the order.

'192Q Variations by consent

'**(1)** This section applies to a community based order, other than a conditional release order, that is in force for a child.

'**(2)** The child or the chief executive may apply to the proper officer of the court that made the order to make stated amendments to the requirements of the order.

'**(3)** The application must be accompanied by an affidavit deposing to the fact that the chief executive and the child consent to the proposed amendment of the order.

'**(4)** If the application is made under this section, the proper officer must grant the application by amending the order and noting the amendments on the court's record of the order.

'**(5)** The following amendments may not be made under this section—

(a) an amendment of the requirement that the child abstain from violation of the law;

(b) for a community based order other than a community service order—an amendment of the period of the order;

(c) for a community service order—an amendment that—

(i) increases the number of community service hours; or

(ii) lessens the period within which the community service is required to be performed;

(d) an amendment prohibited by the community based order.'.

99 Amendment of s 194A (Court may order sentenced child's identifying particulars to be taken)

(1) Section 194A(3)—

omit, insert—

'**(3)** If the child will not be in custody when the particulars are taken, the order must require the child to report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take the identifying particulars.'.

(2) Section 194A(7)—

omit.

(3) Section 194A(8)—

renumber as section 194A(7).

100 Amendment of s 195 (Civil compensation orders)

Section 195, heading—

omit, insert—

'195 Criminal Offence Victims Act 1995'.

101 Amendment of s 203 (Management of detention centres)

(1) Section 203(2)(b), 'detention centre officers'—

omit, insert—

'detention centre employees'.

(2) Section 203—

insert—

'**(4)** The chief executive must monitor the operation of the detention centres and inspect each detention centre at least once every 3 months.

'**(5)** Also, as far as reasonably practicable, the chief executive must ensure principles 3, 15, 19 and 20 of the juvenile justice principles are complied with in relation to each child detained in a detention centre.

'**(6)** Subsection (5) does not limit another provision of this Act.'.

102 Replacement of s 209 (Child must be given an explanation on entry to detention centre)

Section 209—

omit, insert—

‘209 Child must be given information on entry to detention centre

‘**(1)** The chief executive must ensure that, as soon as practicable after a child is admitted to a detention centre, the child is given a document containing the following information—

(a) the rules governing the facility;

(b) the child’s rights and responsibilities under the juvenile justice principles;

(c) how, and to whom, the child may make a complaint about a matter relating to the detention;

(d) how the child can access legal services during the detention;

(e) the obligation on a detention centre employee under section 209A to report any harm the child suffers during the detention;

(f) any other information the chief executive considers appropriate.

‘**(2)** The chief executive must also ensure the information in the document is orally explained to the child in a way, and to an extent, that is reasonable, having regard to the child’s age and ability to understand.

‘209A Obligation to report harm to children in detention centres

‘**(1)** If a detention centre employee becomes aware, or reasonably suspects, that a child has suffered harm while detained in a detention centre, the employee must, unless the employee has a reasonable excuse, report the harm or suspected harm to the chief executive—

(a) immediately; and

(b) if a regulation is in force under subsection (3)—in accordance with the regulation.

Maximum penalty—20 penalty units.

‘**(2)** It is immaterial how the harm was caused.

‘**(3)** A regulation may prescribe the way the report must be given or the particulars that the report must include.

‘**(4)** It is a reasonable excuse for the employee not to report a matter that reporting the matter might tend to incriminate the employee.

‘**(5)** Subsection (1) does not apply if the employee knows, or reasonably supposes, that the chief executive is aware of the harm or suspected harm.

'**(6)** In this section—

"harm", to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.'.

103 Amendment of s 211 (Childrens Court may order transfer to prison)

(1) Section 211(6), 'fixed'—

omit, insert—

'supervised'.

(2) Section 211(6), from 'made'—

omit, insert—

'made.

'**(6A)** Subsection (6) does not prevent—

(a) the earlier release of the person under an exceptional circumstances parole order; or

(b) the continued custody of the person for the unserved part of any sentence of imprisonment imposed against the person.'.

104 Insertion of new ss 213A–213B

After section 213—

insert—

'213A Commissioner of police service to provide criminal history

'**(1)** The chief executive may ask the commissioner of the police service to give the chief executive a report about the criminal history of a person visiting, or who has applied to visit, a detention centre.

'**(2)** The commissioner must give the chief executive a written report about the criminal history that—

(a) is in the commissioner's possession; or

(b) the commissioner can access through arrangements with the police service of another State.

'**(3)** The information in the report may include a reference to, or a disclosure of, a conviction referred to in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.[156]

'**(4)** In this section—

"criminal history", of a person, means—

(a) the offences of which the person has been convicted; or

(b) the court briefs for the offences.

'213AA Use of criminal history information

'The chief executive must not use information obtained under section 213A, about a person's criminal history, other than for assessing—

(a) any risk of either of the following being harmed by the person—

(i) a child in a detention centre;

(ii) a detention centre employee; or

(b) any risk to the security of the detention centre.

'213B Helping child gain access to legal practitioner

'The chief executive must ensure that, if a child detained in a detention centre asks the chief executive or a detention centre employee for help in gaining access to a legal practitioner, the child is given the help that is reasonable in the circumstances.'.

105 Amendment of s 214 (Protection of legal practitioner representing child)

(1) Section 214(2), 'member of the staff of the detention centre'—

omit, insert—

'detention centre employee'.

(2) Section 214—

insert—

156 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)

'**(3)** Subsection (2)(b) does not prevent a detention centre employee from handling the correspondence to the extent necessary to give the child access to it or, at the child's request, to store it in a secure place.'.

106 Amendment of s 219 (Escape)

Section 219(2)—

omit.

107 Omission of ss 220–221

Sections 220 and 221—

omit.

108 Amendment of s 224AA (Detainees trust fund to be kept)

Section 224AA(3)(c), 'fixed'—

omit, insert—

'supervised'.

109 Insertion of new pt 6A

After section 224AA—

insert—

'PART 6A—CONFIDENTIALITY

'Division 1—Preliminary

'224AB Confidential information to which this part applies

'**(1)** This part applies to confidential information relating to a child who is being, or has been, dealt with under this Act.

'**(2)** The ways that a child may be dealt with under this Act include—

(a) being investigated for an offence; and

(b) being detained; and

(c) participating in a conference; and

(d) being cautioned, prosecuted or sentenced for an offence.

'**(3)** This part continues to apply to the information after the child becomes an adult.

'**(4)** This part also applies to confidential information relating to an adult who is being, or has been, dealt with under this Act for a child offence, as if he or she were still a child.

'224AC Definitions for pt 6A

'In this part—

"child offence" means an offence committed, or alleged to have been committed, by a person when he or she was a child.

"confidential information", relating to a child, includes—

(a) identifying information about the child; and

(b) a report made for the purposes of a court proceeding relating to the child; and

(c) a report about the child made for the department or another Government department; and

(d) a report about the child given to an agency for the purpose of carrying out the objects of this Act; and

(e) information about the child gained by a convenor or coordinator in relation to the convening of a conference; and

(f) a record or transcription of a court proceeding relating to the child.

"disclose" see section 224AE.

'224AD When does someone gain information through involvement in the administration of this Act

'**(1)** Anyone who at any time has been or is any of the following persons is taken to have been, or to be, involved in the administration of this Act—

(a) an officer of the department;

(b) a member of the police service;

(c) a person investigating a matter under this Act;

(d) a coordinator;

(e) a convenor convening a conference;

(f) a person performing a function in relation to a record or transcription, made under the *Recording of Evidence Act 1962,* of a proceeding relating to a child;

(g) anyone else performing a function under or for a purpose of this Act.

'**(2)** A person has gained, gains, or has access to, information through involvement in the administration of this Act if the person has gained, gains, or has access to, the information in the course of the involvement or because of opportunity provided by the involvement.

'224AE Meaning of "disclose" for pt 6A

'For this part, a person **"discloses"** information to someone else if the person—

(a) orally discloses the information to the other person; or

(b) produces to the other person, or gives the other person access to, a document containing the information; or

(c) discloses the information to the other person in another way.

'Division 2—Preservation of confidentiality generally

'224AF Application

'This division applies to a person who has gained, gains, or has access to, confidential information relating to a child through involvement in the administration of this Act.

'224AG Preservation of confidentiality

'The person must not—

(a) record or use the information, or intentionally disclose it to anyone, other than under this division; or

(b) recklessly disclose the information to anyone.

Maximum penalty (subject to part 5)—100 penalty units or 2 years imprisonment.

'224AH Recording, use or disclosure for authorised purpose

'The person may record, use or disclose the information—

(a) for a purpose of this Act; or

(b) if the person is a member of the police service, for the purpose of the functions of the police service not involving publishing the information; or

(c) for the purpose of the *Police Powers and Responsibilities Act 2000*, section 211;[157] or

(d) for statistical purposes, without revealing, or being likely to reveal, the identity of the child; or

(e) when authorised by a court under section 191C; or

(f) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or

(g) as expressly permitted or required under another Act; or

(h) when authorised under the regulations.

'224AI Disclosure to the child or with the child's consent

'**(1)** The person may disclose the information to the child.

'**(2)** The person may disclose the information to someone else if the child consents to the disclosure after being told—

(a) the information to be disclosed; and

(b) to whom it is to be disclosed; and

(c) the reason for the disclosure.

157 *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

‘224AJ Disclosure to Commissioner for Children and Young People

‘The person may disclose the information to the Commissioner for Children and Young People if a complaint is made to the commissioner under the *Commission for Children and Young People Act 2000* and—

(a) the disclosure is made in compliance with a notice from the commissioner requiring the disclosure; or

(b) the commissioner refers the complaint to the department and the disclosure is made in giving the commissioner a report about an investigation of the complaint or other information relating to the complaint; or

(c) the disclosure is made in response to a notice from the commissioner inviting the department to make a written submission about the complaint.

‘224AK Disclosure to ensure someone’s safety

‘**(1)** The chief executive may give written authority to a person to disclose confidential information if the chief executive is satisfied the disclosure is necessary to ensure a person’s safety.

‘**(2)** The authorised person may disclose the information under the authority.

‘224AL Disclosure by chief executive to approved foster carers and others

‘If the child has been, or is being, placed in care under the *Child Protection Act 1999*, section 82,[158] the chief executive may disclose the information to—

(a) for a placement in the care of a licensed care service—a person conducting the service; or

(b) for a placement in the care of an approved foster carer or other person—the approved foster carer or other person, or a person coordinating the placement.

158 *Child Protection Act 1999*, section 82 (Placing child in care)

‘224AM Disclosure to law enforcement entity in another jurisdiction

‘**(1)** The person may disclose the information to an officer of a department of another State responsible for the administration or enforcement of a law about child offenders.

‘**(2)** Subsection (1) does not apply to the disclosure, by a member of the police service, of information mentioned in section 224AN(1).

‘224AN Disclosure by police of information about cautions and youth justice conferences and agreements

‘**(1)** This section applies if the confidential information is information that identifies a child, or is likely to lead to the identification of a child, as a child who—

(a) is to be or has been cautioned for an offence; or

(b) has been referred to a conference; or

(c) has made a conference agreement.

‘**(2)** A member of the police service may disclose the information to—

(a) a parent of the child; or

(b) a complainant for the offence; or

(c) the chief executive; or

(d) a member of a police service of the Commonwealth or another State dealing with the child; or

(e) a legal practitioner acting for the child; or

(f) a person who has the function of investigating offences under an Act and who is dealing with the child; or

(g) a coordinator.

‘**(3)** Subsection (2)(d) applies to information that is inadmissible in a proceeding against the child in Queensland only if the information is also inadmissible in a proceeding against the child in the Commonwealth or other State.

‘**(4)** Also, a member of the police service may disclose the information to a person undertaking research if—

(a) the research has been approved by the commissioner of the police service for the purpose of the disclosure; and

(b) the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates.

'**(5)** A person to whom information is disclosed under subsection (4) must not contravene the undertaking.

Maximum penalty (subject to part 5)—100 penalty units or 2 years imprisonment.

'**(6)** The commissioner of the police service may approve research for subsection (4) if the commissioner is satisfied the research is genuine.

'224AO Disclosure by coordinator or convenor of information about conference agreements

'**(1)** This section applies if the confidential information is information gained by a coordinator or convenor in the convening of a conference.

'**(2)** The coordinator or convenor may record, disclose or use the information—

(a) for a report to a referring police officer or court under section 30D(7);[159] or

(b) with the agreement of all the parties to the conference; or

(c) for this or another Act; or

(d) for statistical purposes without revealing, or being likely to reveal, the identity of a person to whom the information relates; or

(e) for an inquiry or proceeding about an offence happening in the conduct of the conference.

'224AP Disclosure by chief executive of information for research purposes

'**(1)** The chief executive may disclose the information to a person undertaking research if—

(a) the chief executive is satisfied the research is genuine; and

159 Section 30D (Convening of a conference)

(b) the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates.

'**(2)** The person must not contravene the undertaking.

Maximum penalty for subsection (2) (subject to part 5)—100 penalty units or 2 years imprisonment.

'Division 3—Confidentiality in relation to proceedings

'224AQ Disclosure of information to court or tribunal

'**(1)** A person is not required to disclose confidential information relating to a child, or the identity of a detention centre employee who has made a report to the chief executive under section 209A,[160] to a court or tribunal unless the court or tribunal orders the disclosure.

'**(2)** A court or tribunal may order the disclosure only if it considers the disclosure—

(a) is necessary for a purpose of this Act; or

(b) would be in the interests of justice.

'224AR Production of department's records

'**(1)** This section applies if a party to a proceeding in a court or tribunal requires, under applicable rules—

(a) the chief executive to produce to the court, tribunal or party a document in the department's records under this Act in relation to a child; or

(b) a government entity to produce to the court, tribunal or party a document mentioned in paragraph (a) that has been given to the entity under division 2.

'**(2)** The requirement must describe the document to be produced—

(a) by reference to the person or persons to whom it relates; and

(b) by general reference to the circumstances to which it relates; and

160 Section 209A (Obligation to report harm to children in detention centres)

(c) by stating the period to which the requirement relates.

'**(3)** For subsection (2)(b), the requirement must show the circumstances to be relevant to the proceeding.

'**(4)** A person must not, directly or indirectly, disclose or make use of information obtained under the requirement other than for a purpose connected with the proceeding.

Maximum penalty (subject to part 5)—100 penalty units or 2 years imprisonment.

'**(5)** Despite any Act to the contrary, if a document in the department's records under this Act about a child is produced in a proceeding in a court, an officer of the court must not make the document available for inspection to any person other than a party to the proceeding or a party's legal representative.

Maximum penalty for subsection (5) (subject to part 5)—50 penalty units or 1 year's imprisonment.

'Division 4—Other matters relating to confidential information

'224AS Identity of officer making a report under s 209A

'**(1)** This section applies if a detention centre employee makes a report to the chief executive under section 209A.[161]

'**(2)** The person who receives the report, or a person who becomes aware of the officer's identity, must not disclose the officer's identity to another person unless—

(a) the disclosure is made in the course of performing functions under this Act; or

(b) the disclosure is expressly permitted or required under an Act.

Maximum penalty for subsection (2) (subject to part 5)—40 penalty units.

'224AT Prohibition of publication of identifying information about a child

'**(1)** A person must not publish identifying information about a child.

161 Section 209A (Obligation to report harm to children in detention centres)

Maximum penalty (subject to part 5)—

(a) for an individual—100 penalty units or 2 years imprisonment; or

(b) for a corporation—1 000 penalty units.

'**(2)** Subsection (1) does not apply to—

(a) publication in a way permitted by a court order; or

(b) publication under written authority given under subsection (3).

'**(3)** The chief executive may give written authority to a person to publish identifying information about a child if the chief executive is satisfied the publication is necessary to ensure a person's safety.'.

110 Amendment of s 224A (Programs and services for children)

(1) Section 224A—

insert—

'**(4)** The chief executive must monitor the operation of each program and service to ensure it achieves the purpose for which it was established in a way that complies with the juvenile justice principles.

'**(5)** The chief executive may exercise a power under subsection (1) or (2) in or outside Queensland or Australia.'.

(2) Section 224A—

renumber as section 224AU.

111 Insertion of new s 224AV

After section 224AU (as renumbered)—

insert—

'224AV Chief executive must collect and keep information

'**(1)** The chief executive must—

(a) collect the information prescribed under a regulation about children dealt with under this Act; and

(b) keep the information for the time prescribed under a regulation.

'**(2)** A regulation may also provide for requirements about giving reports about the information or publishing the information.

'**(3)** Subsection (2) applies subject to section 224AT.[162]'.

112 Omission of s 226 (Preservation of confidentiality)

Section 226—

omit.

113 Amendment of s 233 (Regulations)

Section 233(2), 'the schedule'—

omit, insert—

'schedule 2'.

114 Amendment of s 236 (Application of Act to matters before Juvenile Justice Legislation Amendment Act 1996)

After section 236(2)(c)—

insert—

'Note—

Sections 18N and 18O commenced on 15 August 1996 and were repealed by the *Juvenile Justice Amendment Act 2002*.'.

115 Insertion of new pt 8, div 3

Part 8, after division 2—

insert—

162 Section 224AT (Prohibition of publication of identifying information about a child)

'Division 3—Transitional provisions for the Juvenile Justice Amendment Act 2002

'Subdivision 1—Interpretation

'241 Definitions for pt 8, div 3

'In this division—

"amending Act" means the *Juvenile Justice Amendment Act 2002*.

"amendment" means an amendment carried out by the amending Act.

"amendment provision" means a provision of the amending Act.

"community conference" means a community conference as defined under the Act immediately before the relevant commencement.

"community conference agreement" means a community conference agreement as defined under the Act immediately before the relevant commencement.

"community conference convenor" means a community conference convenor as defined under the Act immediately before the relevant commencement.

"current" means—

(a) for a provision or Act—as in existence immediately before the relevant commencement; or

(b) for a decision, warning, notification or document—in effect immediately before the relevant commencement; or

(c) for an order or warrant—in force immediately before the relevant commencement; or

(d) for a proceeding—started but not completed before the relevant commencement.

"new", for a provision or Act, means as in existence from the relevant commencement.

"relevant commencement"—

(a) for the definitions "community conference", "community conference agreement" and "community conference convenor" in this section, means the commencement of the definitions

"youth justice conference", "youth justice conference agreement" and "youth justice conference convenor" under section 5 of the amending Act; or

(b) for other definitions in this section, means the relevant commencement as defined in the provision for which the definition is being applied.

'Subdivision 2—References

'242 References to community conference

'**(1)** This section applies—

(a) from the relevant commencement; and

(b) to any current Act, community conference agreement or other instrument or document; and

(c) to any new Act, youth justice conference agreement or other instrument or document.

'**(2)** A reference to a community conference, a community conference agreement or a community conference convenor, may, if the context permits, be taken to include a reference to a youth justice conference, a youth justice conference agreement and a youth justice conference convenor (or coordinator).

'**(3)** A reference to a youth justice conference, a youth justice conference agreement or a youth justice conference convenor (or coordinator), may, if the context permits, be taken to include a reference to a community conference, a community conference agreement and a community conference convenor.

'**(4)** In this section—

"relevant commencement" means the commencement of section 7 of the amending Act to the extent it inserts section 30C in this Act.

'243 References to immediate release orders and fixed release orders

'**(1)** From the relevant commencement, a reference in a current Act or document to an immediate release order may, if the context permits, be taken to include a reference to a conditional release order.

'**(2)** From the relevant commencement, a reference in a current Act or document to a fixed release order may, if the context permits, be taken to include a reference to a supervised release order.

'**(3)** In this section—

"relevant commencement" means the commencement of—

(a) for subsection (1)—section 86 of the amending Act; or

(b) for subsection (2)—the section 94 of the amending Act.

'244 References to attendance notices

'**(1)** From the relevant commencement, a reference in a current Act or document to an attendance notice may, if the context permits, be taken to include a reference to a notice to appear.

'**(2)** An attendance notice issued under the current Act is, for all proceedings taken on the notice from the relevant commencement, taken to be a notice to appear issued under the *Police Powers and Responsibilities Act 2000*, section 214.

'**(3)** In this section—

"relevant commencement" means the commencement of section 9 of the amending Act.

'Subdivision 3—Investigation provisions

'245 Statements

'**(1)** From the relevant commencement, new part 1A, division 5 applies to all statements to which it is expressed to apply made after the relevant commencement, whether or not the offence to which the statement relates was committed before or after the relevant commencement.

'**(2)** In this section—

"relevant commencement" means the commencement of section 7 of the amending Act to the extent it inserts part 1A, division 5 in this Act.

‘246 Identifying particulars

‘From the relevant commencement, new part 1A, division 4 may be relied on by a police officer to make an application in relation to any charge to which it is expressed to apply—

(a) whether the charge relates to an offence committed before or after the relevant commencement; and

(b) whether or not an application has already been made under current part 1B, division 2.

‘**(2)** In this section—

“relevant commencement” means the commencement of section 7 of the amending Act to the extent it inserts part 1A, division 4 in this Act.

‘Subdivision 4—Cautions and community conferences

‘247 Cautioning

‘**(1)** From the relevant commencement, new part 1A, division 2 applies to a police officer for the purpose of giving a caution after the relevant commencement, whether the offence was committed before or after the relevant commencement.

‘**(2)** In this section—

“relevant commencement” means the commencement of section 7 of the amending Act to the extent it inserts part 1A, division 2 in this Act.

‘248 Community conferencing

‘**(1)** From the relevant commencement, new part 1A, division 3, new part 1B and new part 5, division 1A apply in relation to an offence, even if the offence was—

(a) committed before the relevant commencement; or

(b) referred for a community conference before the relevant commencement.

‘**(2)** If a community conference agreement is made before the relevant commencement, from the relevant commencement—

(a) the agreement is taken to be a youth justice conference agreement; and

(b) the child who made the agreement is, in relation to the agreement, subject to the provisions of this Act about youth justice conference agreements as if the agreement were made after the relevant commencement.

'**(3)** If—

(a) before the relevant commencement—

(i) an offence was referred to a community conference; and

(ii) any possible procedure relating to the reference had not been finalised; and

(b) subsection (2) does not apply;

from the relevant commencement, the provisions of the new Act apply as if the offence had been referred for a youth justice conference after the relevant commencement.

'**(4)** The amending Act has no effect on the validity of anything done in relation to the referral under the current Act and no step in the process of a referral is required to be taken again because of the amending Act.

'**(5)** In this section—

"relevant commencement" means the commencement of section 7 of the amending Act to the extent it inserts part 1A, division 3 and part 1B in this Act and the commencement of sections 55 to 63 of the amending Act.

'Subdivision 5—Start of proceedings

'249 Start of proceedings by a police officer

'**(1)** From the relevant commencement, new part 1A, division 1 and the *Police Powers and Responsibilities Act 2000*, chapter 6 apply to a police officer in relation to the start of proceedings against a child even if the offence was committed before the relevant commencement.

'**(2)** Subsection (1) does not affect anything done by a police officer before the relevant commencement.

'**(3)** In this section—

"relevant commencement" means the commencement of section 7 of the amending Act to the extent it inserts part 1A, division 1 in this Act.

'Subdivision 6—Bail and custody of children

'250 Police decision about bail or a related matter

'**(1)** From the relevant commencement, a current decision that was made under the *Bail Act 1980*, section 7[163] in relation to a child is taken to have been made under section 39.

'**(2)** If the decision was to release the child on bail, the bail is taken to have been granted under section 40A.

'**(3)** In this section—

"relevant commencement" means the commencement of section 123 of the amending Act.

'Subdivision 7—Jurisdiction and proceedings

'251 Generally in relation to new pt 4

'**(1)** Unless otherwise provided, a provision of new part 4 applies from the relevant commencement to all proceedings to which it is stated to apply—

(a) whether current or otherwise; and

(b) whether the proceeding relates to an offence committed before or after the commencement; and

(c) whether or not the proceeding follows any form of appeal or review.

'**(2)** In this section—

"relevant commencement" means the commencement of section 26 of the amending Act.

'252 Transitional provision for current pt 4, divs 2–5

'**(1)** This section applies to a committal proceeding, after the relevant commencement, in which a child appears charged with an indictable

163 *Bail Act 1980*, section 7 (Power of police officer to grant bail)

offence before a Childrens Court magistrate if, before the relevant commencement, evidence had already been adduced in the proceeding.

'**(2)** If all the evidence to be adduced by the prosecution (the **"prosecution evidence"**) had not been adduced before the relevant commencement—

(a) the proceeding must continue under current part 4 until all the prosecution evidence has been adduced; and

(b) after all the prosecution evidence has been adduced, the proceeding must continue under the new part 4, divisions 3 to 4C.

'**(3)** New part 4, division 4 applies without exception, as provided under section 251.

'**(4)** If all the prosecution evidence had been adduced before the relevant commencement, but all the evidence to be adduced at the proceeding has not been adduced—

(a) the proceeding must continue under current part 4 until all the evidence has been adduced; and

(b) after all the evidence has been adduced, the proceeding must continue under the new part 4, divisions 4A to 4C.

'**(5)** If a child has been committed to be tried or sentenced before any court before the relevant commencement, current part 4 continues to apply to the proceedings before that court.

'**(6)** In this section—

"relevant commencement", means the commencement of section 26 of the amending Act.

'253 Transitional provision for appeals under Justices Act 1886, pt 9, div 1

'**(1)** This section applies to a Childrens Court judge appeal under the *Justices Act 1886*, part 9, division 1, made to a District Court judge—

(a) before the relevant commencement and not decided at the relevant commencement; or

(b) within 28 days after the relevant commencement.

'**(2)** The District Court judge has jurisdiction to hear and decide the appeal, despite section 87C(4).[164]

'**(3)** In this section—

"Childrens Court judge appeal" means an appeal under the *Justices Act 1886*, part 9, division 1 that, after the relevant commencement, may only be made to the Childrens Court judge.

"relevant commencement" means the commencement of section 30 of the amending Act to the extent it inserts new section 87C in this Act.

'254 Child offender who becomes an adult

'**(1)** Sections 104A, 104B, 104C and 104D(2) apply only to a remand by a court after the relevant commencement.

'**(2)** Sections 104A(3) and 104D(3) apply only to a term of imprisonment or period of detention to which the offender is sentenced after the relevant commencement.

'**(3)** In this section—

"relevant commencement" means the commencement of section 42 of the amending Act.

'Subdivision 8—Sentencing

'255 Sentencing generally

'**(1)** From the commencement of any amendment of part 5, division 1, part 5, division 1 as amended applies in relation to an offence even if the offence was committed before the commencement.

'**(2)** Subsection (1) has no effect on anything done, in relation to the offence, under a provision of part 5, division 1 before it was amended.

164 Section 87C (Appeals under *Justices Act 1886*, pt 9, div 1)

‘256 Current community based orders made by District Court

‘**(1)** For part 5, division 8A,[165] a community based order made by the District Court before the relevant commencement is taken, from the relevant commencement, to have been made by a Childrens Court judge.

(2) In this section—

“relevant commencement” means the commencement of section 98 of the amending Act.

‘257 Contravention of a current probation order

‘**(1)** A current warning given by the chief executive under section 134(1), relating to a contravention of a probation order, is taken, from the relevant commencement, to have been given under section 192B.

‘**(2)** A current complaint and summons served under section 134, relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been served under section 192C.

‘**(3)** A current warrant issued under section 134 is taken, from the relevant commencement, to have been issued under section 192C.

‘**(4)** A current order made under section 135(4) is taken, from the relevant commencement, to have been made under section 192E(3)(a).

‘**(5)** A current order made under section 137(4)(c) is taken, from the relevant commencement, to have been made under section 192G(3)(a).

‘**(6)** A current notification given under section 141(2), relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been given under section 192L(2).

‘**(7)** In this section—

“relevant commencement” means the commencement of section 98 of the amending Act.

165 Part 5 (Sentencing), division 8A (Contravention of community based orders and related matters)

‘258 Cumulative effect of child and adult community service orders

‘**(1)** Section 151A(2) applies only to an order mentioned in section 151A(1)(a) made after the relevant commencement.

‘**(2)** In this section—

“relevant commencement” means the commencement of section 76 of the amending Act.

‘259 Contravention of a community service order

‘**(1)** A current warning given by the chief executive under section 153(1), relating to a contravention of a community service order, is taken, from the relevant commencement, to have been given under section 192B.

‘**(2)** A current complaint and summons served under section 153, relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been served under section 192C.

‘**(3)** A current warrant issued under section 153 is taken, from the relevant commencement, to have been issued under section 192C.

‘**(4)** A current order made under section 154(4) is taken, from the relevant commencement, to have been made under section 192E(3)(a).

‘**(5)** A current notification given under section 158(2) relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been given under section 192L(2).

‘**(6)** In this section—

“relevant commencement” means the commencement of section 98 of the amending Act.

‘260 Contravention of a conditional release order

‘**(1)** A current warrant issued under section 183 is taken, from the relevant commencement, to have been issued under section 192C.

‘**(2)** A current order made under section 185(5) is taken, from the relevant commencement, to have been made under section 192G(3)(a).

‘**(3)** A current notification given under section 186(2), relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been given under section 192L(2).

'**(4)** In this section—

"relevant commencement" means the commencement of section 98 of the amending Act.

'261 Contravention of community based orders generally

'**(1)** Part 5, division 8A applies to a contravention of a community based order whether the contravention happened before or after the relevant commencement.

'**(2)** Without limiting this subdivision—

(a) a current proceeding under this Act, relating to a contravention of a community based order, may be continued and finished as if it had been started under part 5, division 8A; and

(b) a current order made under this Act, relating to a contravention of a community based order, continues in force as if it had been made under part 5, division 8A.

'**(3)** In this section—

"relevant commencement" means the commencement of section 98 of the amending Act.

'Subdivision 9—Renumbering

'262 Renumbering of Act

'**(1)** The provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.

'**(2)** Subsection (1) applies to a provision of this Act enacted or otherwise affected (a **"relevant provision"**) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the **"uncommenced provision"**), with the following intent for the relevant provision—

(a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—

(i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and

(ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);

(b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.

'**(3)** Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act, and each reference in another Act mentioned in schedule 3, to a provision of this Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.

'**(4)** This section and schedule 3 expire the day after the commencement into effect of the last renumbering done under the section.

'**(5)** In this section**—**

"amending Act" means an Act that amends this Act.'.

116 Amendment of schedule (Regulation making power)

(1) Schedule, item 2, 'community'—

omit.

(2) Schedule, item 2, paragraph (a), 'and conduct'—

omit.

(3) Schedule, item 2, paragraph (b), 'convenor'—

omit, insert—

'coordinator or convenor'.

(4) Schedule, item 2—

insert—

'(f) functions of coordinators and convenors not otherwise expressed in this Act.'.

(4) Schedule, item 5, 'and immediate'—

omit, insert—

', intensive supervision orders and conditional'.

(5) Schedule—

renumber as schedule 2.

117 Insertion of new sch 1

Before schedule 2 (as renumbered)—

insert—

'SCHEDULE 1

'CHARTER OF JUVENILE JUSTICE PRINCIPLES

section 4

1. The community should be protected from offences.

2. The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.

3. A child being dealt with under this Act should be—

(a) treated with respect and dignity, including while the child is in custody; and

(b) encouraged to treat others with respect and dignity, including courts, persons administering this Act and other children being dealt with under this Act.

4. Because a child tends to be vulnerable in dealings with a person in authority, a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.

5. If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.

6. A child being dealt with under this Act should have procedures and other matters explained to the child in a way the child understands.

7. If a proceeding is started against a child for an offence—

(a) the proceeding should be conducted in a fair, just and timely way; and

(b) the child should be given the opportunity to participate in and understand the proceeding.

8. A child who commits an offence should be—

(a) held accountable and encouraged to accept responsibility for the offending behaviour; and

(b) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and

(c) dealt with in a way that strengthens the child's family.

9. A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.

10. A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility.

11. A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.

12. A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural and religious beliefs and practices.

13. If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.

14. Programs and services established under this Act for children should—

(a) be culturally appropriate; and

(b) promote their health and self respect; and

(c) foster their sense of responsibility; and

(d) encourage attitudes and the development of skills that will help the children to develop their potential as members of society.

15. A child being dealt with under this Act should have access to legal and other support services, including services concerned with advocacy and interpretation.

16. A child should be dealt with under this Act in a way that allows the child to be reintegrated into the community.

17. A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

18. A child detained in custody should only be held in a facility suitable for children.

19. While a child is in detention, contacts should be fostered between the child and the community.

20. A child who is detained in a detention centre under this Act—

(a) should be provided with a safe and stable living environment; and

(b) should be helped to maintain relationships with the child's family and community; and

(c) should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about—

(i) the child's participation in programs at the detention centre; and

(ii) contact with the child's family; and

(iii) the child's health; and

(iv) the child's schooling; and

(d) should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand and the security and safety of the child, other persons and property); and

(e) should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information; and

(g) should have access to dental, medical and therapeutic services necessary to meet the child's needs; and

(h) should have access to education appropriate to the child's age and development; and

(i) should receive appropriate help in making the transition from being in detention to independence.

Example for paragraph (i)—

Help in gaining access to training or finding suitable employment.'.

118 Insertion of new schs 3 and 4

After schedule 2 (as renumbered)—

insert—

'SCHEDULE 3

'RENUMBERED CROSS REFERENCES

section 262

BAIL ACT 1980

1. Section 6, definition "child"

2. Section 12(1)

3. Section 14(2)

4. Section 15

5. Section 19B(2) and (7)

6. Section 19C(1) and (6)

7. Section 20(3)(b)(i), (3A)(b)(i) and (6)(c)(ii)

8. Section 28A(1)(ea)

COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000

1. Section 32(e)

2. Schedule 4, definition "detention centre"

CRIMINAL CODE

1. Section 669A(6)

CRIMINAL OFFENCE VICTIMS ACT 1995

1. Section 14(4)(b)

2. Section 15(4)(c)

3. Section 18(3)(c)

DISTRICT COURT OF QUEENSLAND ACT 1967

1. Section 61A

EVIDENCE ACT 1977

1. Section 39B(4)

2. Section 39C, definition "external location"

3. Section 132C(5), definition "allegation of fact", paragraph (b)

FREEDOM OF INFORMATION ACT 1992

1. Schedule 1

JUSTICES ACT 1886

1. Section 222(1)

MENTAL HEALTH ACT 2000

1. Schedule 2, definitions "child", "detention centre officer" and "parole"

POLICE POWERS AND RESPONSIBILITIES ACT 2000

1. Section 198(3)

2. Section 220(6)

3. Schedule 4, definitions "detention centre" and "detention order"

YOUNG OFFENDERS (INTERSTATE TRANSFER) ACT 1987

1. Section 3, definition "young offender", paragraph (b)

2. Section 10(2)(a)(ii)

3. Section 13(c)(i) and (ii)

'SCHEDULE 4

'DICTIONARY

section 5'.