

Queensland



# **JUVENILE JUSTICE AMENDMENT ACT 2002**

**Act No. 39 of 2002**



Queensland



# JUVENILE JUSTICE AMENDMENT ACT 2002

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Queensland



## **Juvenile Justice Amendment Act 2002**

### **Act No. 39 of 2002**

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**An Act to amend the *Juvenile Justice Act 1992* and other Acts and for other purposes**

*[Assented to 29 August 2002]*

The Parliament of Queensland enacts—

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Juvenile Justice Amendment Act 2002*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

## **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.<sup>1</sup>

**“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

<sup>1</sup> Section 176 (Conditional release order)

(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*.

**“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.<sup>2</sup>

**“intensive supervision order”** means an intensive supervision order made under section 120(1)(ea).

2 *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.

**“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).<sup>3</sup>

**“program period”**—

(a) for a conditional release order—see section 177;<sup>4</sup> or

(b) for an intensive supervision order—see section 154.<sup>5</sup>

**“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,<sup>6</sup> 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.<sup>7</sup>

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3 *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

4 Section 177 (Conditional release order—requirements)

5 Section 154 (Intensive supervision order—requirements)

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

7 Section 191C (Court may allow publication of identifying information)

**“supervised release order”** means an order made under section 189.<sup>8</sup>

**“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.<sup>9</sup>

**“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.’.

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8 Section 189 (Chief executive’s supervised release order)

9 *District Court of Queensland Act 1967*, section 61 (Limited criminal jurisdiction if maximum penalty more than 14 years)



## 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<sup>10</sup> or is unlawfully at large.

‘(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.

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10 Section 219 (Escape)

**‘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)<sup>11</sup> 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.

### **‘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—

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11 Section 15 (Conditions for administration of police caution)

- (a) administered the caution; or
- (b) under section 16,<sup>12</sup> 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
- (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.

---

12 Section 16 (Caution administered by respected person of Aboriginal or Torres Strait Islander community)

‘(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);<sup>13</sup> 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.

‘(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*.

---

13 Section 10 (Police officer to consider alternatives to proceeding against child)

‘(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<sup>14</sup> 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;
- (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),<sup>15</sup> means—

- (a) the making of the relevant conference agreement; and
- (b) the satisfactory completion of the requirements of the agreement.

---

14 Section 24 (Application by police officer for permission to take child’s identifying particulars)

15 Section 119A (Reference by court to a coordinator for a conference)

**‘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 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;<sup>16</sup>
- (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

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16 See section 30C (Who may participate in a conference).

- (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
  - (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<sup>17</sup> 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.

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17 Part 1A (Special provisions about policing and children), division 3 (Reference by police officer to coordinator for a conference)

‘(8) Part 5, division 1A<sup>18</sup> 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—

- (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

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



(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.<sup>19</sup>

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<sup>19</sup> Section 109 (Sentencing principles)

‘(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.

### **‘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;<sup>20</sup> 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.

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<sup>20</sup> Part 5 (Sentencing), division 1A (Court referred conferences before sentencing)

‘(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—*

### **‘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.<sup>21</sup>

‘(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.’.

<sup>21</sup> Section 11 (Preferred way for police officer to start proceedings)

**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—*

‘(4) Subject to the *Police Powers and Responsibilities Act 2000*, sections 214(3) and 219,<sup>22</sup> 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

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22 *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)



- (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;
- (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);<sup>23</sup> or
- (b) the child is released under this part or the *Police Powers and Responsibilities Act 2000*, chapter 6, part 1, division 4.<sup>24</sup>’.

### **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;<sup>25</sup> and

23 *Police Powers and Responsibilities Act 2000*, section 224 (Duty of police officer after arrest etc. of person)

24 *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)

25 *Police Powers and Responsibilities Act 2000*, chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences), part 2 (Investigations and questioning)

(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.

‘(3) However, if the child is released under the *Police Powers and Responsibilities Act 2000*, section 210 or 211<sup>26</sup>—

- (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—*

<sup>26</sup> *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)

‘(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**”).’.

## **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,<sup>27</sup> the person must be held in a corrective services facility.'

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<sup>27</sup> 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)

(2) Section 43(2), after ‘if the person is a child’—  
*insert*—  
‘and subsection (1) applies’.

### **19 Amendment of s 49 (Childrens Court judge)**

Section 49(a), ‘section 72’—  
*omit, insert*—  
‘division 4C<sup>28</sup>’.

### **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.’.

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28 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;<sup>29</sup>’.

**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.<sup>30</sup>’.

**25 Omission of s 62 (Publication prohibited)**

Section 62—

*omit.*

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29 *Police Powers and Responsibilities Act 2000*, section 223 (Parent and chief executive to be advised of arrest or service of notice to appear)

30 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,<sup>31</sup> 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—

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31 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,<sup>32</sup> 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.

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32 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.<sup>33</sup>

### ***‘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.

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33 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<sup>34</sup> 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.<sup>35</sup>

#### **‘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—

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34 Section 43 (Custody of child if not released by court)

35 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;<sup>36</sup> 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.

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36 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<sup>37</sup> 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

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37 *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<sup>38</sup> 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’.

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38 *Penalties and Sentences Act 1992*, section 12(6) (Court to consider whether or not to record conviction)



**50 Amendment of s 110 (Presentence report)**

(1) Section 110—

*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<sup>39</sup> 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.

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39 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 resented 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.<sup>40</sup>’.

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40 Division 7 (Detention order), subdivision 5 (Publication orders)

**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’.

**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.’.





**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.<sup>41</sup>

**‘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.

‘(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—

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41 Section 107 (Continuing effect on offender of orders made when child)

- (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;<sup>42</sup>
- (b) for a conditional release order—any action allowed under section 192K.<sup>43</sup>

‘(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

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42 Section 192J (Court's power on breach of order other than conditional release order)

43 Section 192K (Court's power on breach of conditional release order)

- (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);<sup>44</sup> 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.

‘(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.

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44 Sections 120 (Sentence orders—general), 121 (Sentence orders—serious offences) and 121D (Combination of detention order and other orders)



‘(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 resented 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 resents 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.<sup>45</sup>

‘(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.

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<sup>45</sup> *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)

**‘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—*

‘(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;<sup>46</sup> 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.

#### **‘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

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<sup>46</sup> *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

- (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,<sup>47</sup> 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.

#### **‘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).

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47 *Child Protection Act 1999*, section 82 (Placing child in care)

**‘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);<sup>48</sup> 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
- (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.

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48 Section 30D (Convening of a conference)

*‘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,<sup>49</sup> 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
- (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.

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49 Section 209A (Obligation to report harm to children in detention centres)



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.<sup>50</sup>

‘(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.

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

<sup>50</sup> Section 209A (Obligation to report harm to children in detention centres)

(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.<sup>51</sup>’

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51 Section 224AT (Prohibition of publication of identifying information about a child)

**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—*

***‘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<sup>52</sup> in relation to a child is taken to have been made under section 39.

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52 *Bail Act 1980*, section 7 (Power of police officer to grant bail)



‘(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 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).<sup>53</sup>

‘(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.

53 Section 87C (Appeals under *Justices Act 1886*, pt 9, div 1)

**‘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.

**‘256 Current community based orders made by District Court**

‘(1) For part 5, division 8A,<sup>54</sup> 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.

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54 Part 5 (Sentencing), division 8A (Contravention of community based orders and related matters)

‘(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.

### ‘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’.

## **PART 3—AMENDMENT OF ACTS INTERPRETATION ACT 1954**

### **119 Act amended in pt 3**

This part amends the *Acts Interpretation Act 1954*.

### **120 Amendment of s 36 (Meaning of commonly used words and expressions)**

Section 36—

*insert—*

‘**“Childrens Court judge”** means —

- (a) a District Court judge appointed as a Childrens Court judge; or
- (b) a District Court judge when constituting a Childrens Court under the *Childrens Court Act 1992*, section 5(2)(b).

**“Childrens Court magistrate”** means—

- (a) a magistrate appointed as a Childrens Court magistrate; or
- (b) a magistrate or 2 justices of the peace when constituting a Childrens Court under the *Childrens Court Act 1992*, section 5(3)(b) or (c).’

## **PART 4—AMENDMENT OF BAIL ACT 1980**

### **121 Act amended in pt 4**

This part amends the *Bail Act 1980*.

**122 Amendment of s 6 (Definitions)**

Section 6—

*insert—*

‘**“child”** see the *Juvenile Justice Act 1992*, schedule 4.<sup>55</sup>’.

**123 Amendment of s 7 (Power of police officer to grant bail)**

(1) Section 7(1A)(b)(ii), ‘if the person is not a child—’—

*omit.*

(2) Section 7(1A)(b)(iii)—

*omit.*

(3) Section 7(4), ‘or the serving on a person of an attendance notice’—

*omit.*

(4) Section 7—

*insert—*

‘**(5A)** This section does not apply if the arrested person is a child.<sup>56</sup>’.

(5) Section 7(6), definitions “attendance notice” and “child”—

*omit.*

**124 Amendment of s 11A (Release of intellectually impaired person)**

Section 11A(1) and (5), after ‘this Act’—

*insert—*

‘or the *Juvenile Justice Act 1992*’.

55 *Juvenile Justice Act 1992*, schedule 4—

**“child”** means—

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

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

56 See the *Juvenile Justice Act 1992*, section 39 (Dealing with a child if court can not be promptly constituted).

**125 Amendment of s 12 (Restriction on publication of information, evidence and the like given in bail application)**

Section 12(1), after ‘this part’—

*insert—*

‘or the *Juvenile Justice Act 1992*, part 3’.

**126 Amendment of s 14 (Release of persons apprehended on making deposit of money as security for appearance)**

Section 14(2), ‘pursuant to subsection (1)’—

*omit, insert—*

‘under subsection (1A) or the *Juvenile Justice Act 1992*, part 3’.

**127 Amendment of s 15 (Procedure upon application for bail)**

Section 15, after ‘this part’—

*insert—*

‘or the *Juvenile Justice Act 1992*, part 3’.

**128 Amendment of s 16 (Refusal of bail)**

Section 16—

*insert—*

‘(5) This section does not apply if the defendant is a child.<sup>57</sup>’.

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<sup>57</sup> See the *Juvenile Justice Act 1992*, section 37A (Decisions about bail and related matters).



**129 Replacement of s 19A (Consideration of findings of guilt, cautions and community conference agreements as child for decisions about release from custody)**

Section 19A—

*omit, insert—*

**‘19A Consideration of unrecorded convictions**

‘(1) This section applies to a person in custody in connection with a charge of an offence if the person has previously been found guilty of an offence, as a child, without a conviction being recorded.

‘(2) A court or police officer deciding whether to release the person or keep the person in custody may have regard to the finding.’.

**130 Amendment of s 19B (Review of particular decisions)**

(1) Section 19B(2), after ‘this part’—

*insert—*

‘or the *Juvenile Justice Act 1992*, part 3,’.

(2) Section 19B(7), after ‘17(1A)’—

*insert—*

‘and, if the defendant is a child, the *Juvenile Justice Act 1992*, section 37A’.

**131 Amendment of s 19C (Review by Supreme Court of magistrate’s decision on a review)**

(1) Section 19C(1), after ‘this part’—

*insert—*

‘or the *Juvenile Justice Act 1992*, part 3’.

(2) Section 19C(6), after ‘17(1A)’—

*insert—*

‘and, if the defendant is a child, the *Juvenile Justice Act 1992*, section 37A’.

**132 Amendment of s 20 (Undertaking as to bail)**

(1) Section 20(3)(b)(i), after ‘section 11(2) or (3)’—

*insert—*

‘or the *Juvenile Justice Act 1992*, section 40A’.

(2) Section 20(3A)(b)(i), after ‘section 11(2) or (3)’—

*insert—*

‘or the *Juvenile Justice Act 1992*, section 40A’.

(3) Section 20(6)(b), after ‘this Act’—

*insert—*

‘or the *Juvenile Justice Act 1992*’.

(4) Section 20(6)(c)(ii)—

*omit, insert—*

‘(ii) is a child detained in a place established under the *Juvenile Justice Act 1992*, part 6—a person for the time being in charge of the place.’.

**133 Amendment of s 28A (Other warrants for apprehension of defendant)**

Section 28A(1)—

*insert—*

‘(ea) released, on bail or without bail, under the *Juvenile Justice Act 1992*, part 3;<sup>58</sup> or’.

**134 Amendment of s 29 (Offence to breach conditions of bail)**

Section 29(2)(a), ‘within the meaning of the *Juvenile Justice Act 1992*’—

*omit.*

**135 Amendment of s 33 (Failure to appear in accordance with undertaking)**

Section 33—

*insert—*

‘(5) Subsection (4) does not apply if the defendant was a child when the defendant committed the offence mentioned in subsection (1).’.

**PART 5—AMENDMENT OF CHILDRENS COURT ACT 1992****136 Act amended in pt 5**

This part amends the *Childrens Court Act 1992*.

**137 Amendment of s 5 (Members and constitution of the Childrens Court)**

(1) Section 5(2)—

*omit, insert—*

‘(2) If an Act expressly requires the Childrens Court to be constituted by a Childrens Court judge, the court must be constituted by either of the following—

- (a) a Childrens Court judge;
- (b) if a Childrens Court judge is not available—a District Court judge.

*Examples of when a Childrens Court judge is not available—*

1. A child is committed to be tried or sentenced before a Childrens Court judge at a place where the Childrens Court sits only a few times in a year. At the time the child would ordinarily be dealt with at the place, there is no Childrens Court judge available, but a District Court judge is available. The District Court judge may constitute the Childrens Court and deal with the child.
2. A child is due to be tried or sentenced before a Childrens Court judge. A Childrens Court judge is present at the place and at the time but, in the judge’s capacity as a District Court judge, is needed for the jurisdiction of the District Court. Another District Court judge is

available. The other District Court judge may constitute the Childrens Court and deal with the child.’.

(2) Section 5—

*insert—*

‘(5) In this section—

“**available**” means available having regard to the orderly and expeditious exercise of the jurisdiction of the District Court and Childrens Court.’.

### **138 Renumbering of pt 5 (General)**

Part 5—

*renumber* as part 6.

### **139 Renumbering of ss 22–31**

Sections 22 to 31—

*renumber* as sections 24 to 32.

### **140 Insertion of new pt 5**

After section 21—

*insert—*

## **‘PART 5—JURY TRIALS**

### **‘22 Jury in criminal trials**

‘(1) All indictable offences prosecuted in the Childrens Court must be tried by a Childrens Court judge and a jury.

‘(2) Subsection (1) is subject to an Act that allows or requires an indictable offence prosecuted in the Childrens Court to be tried in another way.

‘(3) Despite section 18(1)(a), a trial by a Childrens Court judge and a jury must be held at a place where a District Court may be held.

‘(4) The *Jury Act 1995* states the law about the following—

(a) the obligation to perform jury service;

- (b) organisation of juries generally;
- (c) the selection of a jury;
- (d) arrangements for a jury during a trial;
- (e) juror's remuneration and allowances.

### **'23 Issues of law and fact**

'Issues of law and fact are to be decided by the judge or jury as if the trial were a trial on indictment in the Supreme Court.'

### **141 Amendment of s 24 (Annual report)**

Section 24(1) (as renumbered), '3'—

*omit, insert—*

'5'.

## **PART 6—AMENDMENT OF COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000**

### **142 Act amended in pt 6**

This part amends the *Commission for Children and Young People Act 2000*.

### **143 Amendment of s 32 (Subject matter of complaints)**

Section 32(c), 'community service order, fixed release order, immediate release order or probation order'—

*omit, insert—*

'conditional release order, supervised release order, intensive supervision order, community service order or probation order'.

## **PART 7—AMENDMENT OF CRIMINAL CODE**

### **144 Act amended in pt 7**

This part amends the Criminal Code.

### **145 Amendment of s 669A (Appeal by Attorney-General)**

Section 669A(6), after ‘222’—

*insert—*

‘or the *Juvenile Justice Act 1992*, part 4, division 6, subdivision 3,<sup>59</sup>’.

## **PART 8—AMENDMENT OF CRIMINAL OFFENCE VICTIMS ACT 1995**

### **146 Act amended in pt 8**

This part amends the *Criminal Offence Victims Act 1995*.

### **147 Amendment of s 14 (Information during sentencing of impact of crime on victim)**

Section 14(4)(b), ‘section 109(1)(g)’—

*omit, insert—*

‘section 109(1)(h)’.

### **148 Amendment of s 15 (Information about investigation and prosecution of offender)**

Section 15(3)—

*omit.*

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<sup>59</sup> *Juvenile Justice Act 1992*, part 4 (Jurisdiction and proceedings), division 6 (Appeal and review), subdivision 3 (Appeals to Childrens Court judge)

## PART 9—AMENDMENT OF DISTRICT COURT OF QUEENSLAND ACT 1967

### 149 Act amended in pt 9

This part amends the *District Court of Queensland Act 1967*.

### 150 Insertion of new s 61A

After section 61—

*insert—*

#### **‘61A No general criminal jurisdiction over a child**

‘(1) The District Court does not have jurisdiction to try a child charged with an indictable offence, unless otherwise expressly provided by an Act.

‘(2) Subject to this division, the District Court has jurisdiction—

- (a) to try a child on an indictment in which the child is also charged as an adult with an offence; or
- (b) to try a child in proceedings removed to the court under the *Juvenile Justice Act 1992*, part 4, division 5, subdivision 2;<sup>60</sup> or
- (c) to sentence a child for an offence if the child is appearing before it also for sentence as an adult on a charge of an offence.

‘(3) In exercising jurisdiction to sentence a child under subsection (2), the court may also sentence the child under the *Criminal Code*, section 651.

‘(4) In this section—

“**child**” means a child within the meaning of the *Juvenile Justice Act 1992*.

“**adult**” means an adult within the meaning of the *Juvenile Justice Act 1992*.’.

---

<sup>60</sup> *Juvenile Justice Act 1992*, part 4 (Jurisdiction and proceedings), division 5 (Provision for joint trials), subdivision 2 (Removal of committed proceeding to another jurisdiction for joint trial)

**PART 10—AMENDMENT OF EVIDENCE ACT 1977****151 Act amended in pt 10**

This part amends the *Evidence Act 1977*.

**152 Amendment of s 39B (Application of pt 3A)**

Section 39B(4), ‘section 118A’—  
*omit, insert—*  
‘section 40B or 118A’.

**PART 11—AMENDMENT OF JURY ACT 1995****153 Act amended in pt 11**

This part amends the *Jury Act 1995*.

**154 Amendment of s 4 (Qualification to serve as juror)**

(1) Section 4(3)(h) to (l)—  
*renumber as* section 4(3)(i) to (m).  
(2) Section 4(3)—  
*insert—*  
‘(h) a detention centre employee;’.

**155 Amendment of s 13 (Practice directions)**

Section 13, after ‘District Courts’—  
*insert—*  
‘and the President of the Childrens Court’.



**156 Amendment of sch 3 (Dictionary)**

(1) Schedule 3—

*insert—*

‘**“detention centre employee”** means a person who—

- (a) is or has been, in Queensland, a detention centre employee under the *Juvenile Justice Act 1992*; or
- (b) has been, in Queensland, a person with functions corresponding to those of a detention centre employee under the *Juvenile Justice Act 1992*; or
- (c) is or has been, under a law of another State, a person with functions corresponding to those of a detention centre employee under the *Juvenile Justice Act 1992*.’.

(2) Schedule 3, definition ‘judge’, after ‘District Court judge’—

*insert—*

‘, a Childrens Court judge’.

**PART 12—AMENDMENT OF JUSTICES ACT 1886****157 Act amended in pt 12**

This part amends the *Justices Act 1886*.

**158 Insertion of new s 2**

After section 1—

*insert—*

**‘2 Note in text**

‘A note in the text of this Act is part of this Act.’.

**159 Amendment of s 222 (Appeal to a single judge)**

After section 222(1)—

*insert—*

‘Note—

This division applies in relation to an order made by justices dealing summarily with a child charged with an offence, but appeals must be made to a Childrens Court judge—see the *Juvenile Justice Act 1992*, section 87C.’.

**PART 13—AMENDMENT OF MENTAL HEALTH ACT  
2000****160 Act amended in pt 13**

This part amends the *Mental Health Act 2000*.

**161 Amendment of sch 2 (Dictionary)**

Schedule 2, definition “parole”, ‘fixed release order’—

*omit, insert—*

‘supervised release order’.

**PART 14—AMENDMENT OF POLICE POWERS AND  
RESPONSIBILITIES ACT 2000****162 Act amended in pt 14**

This part amends the *Police Powers and Responsibilities Act 2000*.

**163 Amendment of s 198 (Arrest without warrant)**

(1) Section 198(1), ‘arrest a person’—

*omit, insert—*

‘arrest an adult’.

(2) Section 198(3), from ‘Subsection (1)’ to ‘section 20’—

*omit, insert—*

‘Subject to the *Juvenile Justice Act 1992*, section 12’.

(3) Section 198(3), ‘an offence.’—

*omit, insert—*

‘an offence.<sup>61</sup>’.

**164 Amendment of s 200 (Arrest of person granted bail)**

(1) Section 200(3)(a)(i)—

*omit, insert—*

(i) the person is likely to contravene, is contravening, or has contravened—

(A) the condition for the person’s appearance; or

(B) another condition of the undertaking on which the person was granted bail; or’.

(2) Section 200(4)—

*renumber* as section 200(6).

(3) Section 200—

*insert—*

‘(4) However, before arresting a child under subsection (3), a police officer must consider whether, in all the circumstances, it would be more appropriate for an application to be made under the *Bail Act 1980* for a variation or revocation of the child’s bail.’

---

61 Under the juvenile justice principles in the *Juvenile Justice Act 1992*, schedule 1, it is a principle of that 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.

‘(5) Subsection (4) does not apply to the arrest of a child under subsection (3)(a)(i)(A), (a)(iv) or (c).’.

**165 Amendment of s 201 (Arrest of person given notice to appear or summons)**

Section 201—

*insert—*

‘(3) This section does not apply to a child.’.

**166 Amendment of s 204 (Issue of arrest warrant)**

Section 204(b), ‘, attendance notice’—

*omit.*

**167 Omission of s 207 (Police officer to consider alternatives to proceeding against child)**

Section 207—

*omit.*

**168 Amendment of s 212 (Additional case when arrest of child may be discontinued)**

(1) Section 212(3)(c), ‘community conference’—

*omit, insert—*

‘youth justice conference’.

(2) Section 212(3)(d), ‘attendance notice’—

*omit, insert—*

‘notice to appear’.

**169 Amendment of s 214 (Notice to appear may be issued for offence)**

(1) Section 214(1), ‘an adult that’—

*omit, insert—*

‘a person that reduces the need for custody associated with arrest and’.

(2) Section 214(2), ‘an adult’—

*omit, insert—*

‘a person’.

(3) Section 214—

*insert—*

‘(4) If a person is alleged to have committed offences as a child and as an adult, a separate notice to appear must be issued for the offences committed as a child.’.

**170 Insertion of new s 214A**

After section 214—

*insert—*

**‘214A Notice to appear must be served discreetly on a child**

‘A notice to appear must be served on a child—

- (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.’.

**171 Amendment of s 215 (Notice to appear form)**

(1) Section 215(1)(c), ‘Magistrates Court’—

*omit, insert—*

‘court of summary jurisdiction’.

(2) Section 215(1)(c) and (d)—

*renumber* as section 215(d) and (e).

(3) Section 215(1)—

*insert—*

‘(c) clearly state whether the person was, at the time of the alleged offence, an adult or a child; and’.

**(4)** Section 215(3)—

*omit, insert—*

‘**(3)** The time stated in a notice to appear for the person’s appearance before a court must be a time—

- (a) for an adult—at least 14 days or, with the person’s written agreement, a stated shorter time, after the notice is served; or
- (b) for a child—
  - (i) as soon as practicable after service of the notice to appear; and
  - (ii) fixed generally by the clerk of the court for hearing matters under the *Juvenile Justice Act 1992*.’.

## **172 Replacement of s 216 (Notice to appear must be filed in court without cost to person)**

Section 216—

*omit, insert—*

### **‘216 Filing of notice to appear**

‘**(1)** As soon as reasonably practicable after service of a notice to appear on a person, and before the time the person is required to appear at a place before a court under the notice, the notice must be lodged with the clerk of the court at the place.

‘**(2)** A person must not be ordered to pay filing costs in the proceeding for the offence.’.

## **173 Amendment of s 218 (Particulars of notice to appear offence must be given in the proceeding)**

Section 218(2), ‘the Magistrates Court’—

*omit, insert—*

‘a court’.

**174 Amendment of s 219 (Notice to appear equivalent to a complaint and summons)**

(1) Section 219(2), ‘Magistrates Court’—

*omit, insert—*

‘court’.

(2) Section 219(3), from ‘a watch-house manager’ to ‘*Juvenile Justice Act 1992*’—

*omit, insert—*

‘a watch-house manager issues and serves a notice to appear on a person under section 225(2)(b),’.

**175 Amendment of s 220 (Court may order immediate arrest of person who fails to appear)**

(1) Section 220(1), ‘Magistrates Court’—

*omit, insert—*

‘court’.

(2) Section 220—

*insert—*

‘(5) Subsection (1)(b) does not prevent a court delaying the issue or execution of a warrant for the arrest of a person to allow the person a further opportunity to appear before the court.

‘(6) The bail and custody provisions of the *Juvenile Justice Act 1992*, part 3 apply to a child arrested on a warrant issued under subsection (1)(b).’.

**176 Amendment of s 221 (Court must strike out notice to appear if service insufficient)**

Section 221(1), ‘Magistrates Court’—

*omit, insert—*

‘court’.

**177 Replacement of s 223 (Parent and chief executive must be advised of arrest of child)**

Section 223—

*omit, insert—*

**‘223 Parent and chief executive to be advised of arrest or service of notice to appear**

‘(1) A police officer who arrests a child must promptly advise the persons mentioned in subsection (3) of the arrest and whereabouts of the child.

‘(2) A police officer who has served a notice to appear on a child must promptly advise the persons mentioned in subsection (3) of the service of the notice to appear.

‘(3) The persons to be notified are—

- (a) a parent of the child, unless a parent can not be found after reasonable inquiry; and
- (b) the chief executive (family services) or a person, nominated by that chief executive for the purpose, who holds an office within the department for which the chief executive has responsibility.

‘(4) Subsections (1) and (2) do not apply in relation to a child if a police officer 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 or service of the notice.

‘(6) In this section—

“**parent**”, of a child, includes someone who is apparently a parent of the child.’.

**178 Amendment of s 225 (Duty of police officer receiving custody of person arrested for offence)**

(1) Section 225(2)(b) and (c)—

*omit, insert—*

- ‘(b) issue and serve a notice to appear on the person; or’.



(2) Section 225(2)(d) and (e)—  
*renumber as section 225(2)(c) and (d).*

(3) Section 225—  
*insert—*

‘(4) This section does not apply to a child.<sup>62</sup>’.

### **179 Amendment of s 252 (Questioning of children)**

(1) Section 252(2)(a), after ‘support person’—  
*insert—*

‘chosen by the child’.

(2) Section 252(3)—  
*renumber as section 252(4).*

(3) Section 252—  
*insert—*

‘(3) However, the child may not choose as a support person a person against whom the offence is alleged to have been committed.’.

### **180 Amendment of s 312 (Taking DNA sample from child)**

Section 312(1)(a), ‘attendance notice under the *Juvenile Justice Act 1992*,’—

*omit, insert—*

‘notice to appear’.

### **181 Amendment of s 459 (Regulation-making power)**

Section 459(2), from ‘responsibilities’—

*omit, insert—*

‘responsibilities of the following persons under this Act—

---

62 See the *Juvenile Justice Act 1992*, section 39 (Dealing with a child if court can not be promptly constituted).

- (a) police officers;
- (b) support persons.’.

**182 Amendment of sch 1 (Acts not affected by this Act)**

Schedule 1, entry for *Juvenile Justice Act 1992*, ‘198’—  
*omit, insert—*  
‘198(2)’.

**183 Amendment of sch 4 (Dictionary)**

Schedule 4, definition “support person”, paragraph (b)(iv), ‘if no-one mentioned in subparagraphs (i) to (iii) is available—’—  
*omit.*