Making Queensland Safer Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Making Queensland Safer Bill 2024 (the Bill).

Policy objectives and the reasons for them

The overarching objective of the Making Queensland Safer Bill 2024 (the Bill) is to give effect to the Government's election commitment to implement legislative reforms as part of the *Making Queenslander Safer Plan* (the Plan), including 'adult crime, adult time'.

The Plan is the direct response of the Government to growing community concern and outrage over crimes being perpetrated by young offenders. Legislative reforms in the Plan being implemented in this Bill include introducing 'adult crime, adult time', removing the principle of detention as a last resort, and promoting the consideration of the impact of youth offending on victims during sentencing.

The Bill aims to hold young offenders who commit offences (particularly serious offences) to account by ensuring that courts are having primary regard to the impact of youth offending on victims and can impose appropriate penalties that meet community expectations. The amendments in the Bill further a range of purposes to achieve this – including, for example, punishment, denunciation, putting the rights of victims 'front and centre' in the youth justice process and promoting open justice and public confidence in the justice system. The Government is committed to implementing a range of measures to deter young people from committing serious crimes in the community, and reducing the number of victims that are caused harm by these young offenders. The amendments in the Bill will demonstrate to the community that youth offending is treated seriously and will increase community confidence in the justice system.

The key objectives of the Bill will be achieved by:

- amending the *Youth Justice Act 1992* (Youth Justice Act) to:
    - introduce 'adult crime, adult time';
    - remove the principles of detention as a last resort and that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community;
    - promote the consideration of the impacts of offending on victims in the Charter of Youth Justice Principles and when sentencing a child;
    - ensure a child's criminal history reflects their full history;
    - enable a person's child criminal history to be admitted when sentenced as an adult;

  - default to an 'opt out' mechanism for victims on the victim information register;
  - alter the process relating to the transfer of 18-year-olds from youth detention centres to adult correctional centres;
- amending the *Childrens Court Act 1992* (Childrens Court Act) to:
  - ensure the victim, relatives of a victim and accredited media can be present during criminal proceedings.

The Bill also makes amendments to various other Acts to achieve these policy objectives.

Transfer of 18-year-olds from youth detention centres to adult correctional centres

It is in the best interests of the children detained in youth detention centres (YDCs) to be separated from adults. Management in YDCs take reasonable measures to keep detainees over 18 years of age separated from younger children, but this is not always practicable.

When YDCs reach full capacity, children may be detained in watchhouses for extended periods pursuant to section 56 or 210 of the Youth Justice Act. Although every effort is made by the Queensland Police Service and the Department of Youth Justice and Victim Support (DYJVS) to provide age-appropriate programs in watchhouses, they are limited by the watchhouse built environment and the need for specialised staff.

The policy is to enable more 18-year-olds to be transferred to adult custody and for the process to be automatic and efficient.

'Opt out' eligible persons register for victims

Existing provisions in the Youth Justice Act enable victims of violent or sexual offences committed by a young person to be kept informed about the offender's custody movements, including for example any leave of absence, transfers between facilities, and release dates, by applying to be added to the 'eligible persons register' (the register). Specified other persons are also able to apply to receive information.

The policy objective is to streamline the process for entering direct victims and immediate family members of deceased victims on the register by removing the need for an application.

Achievement of policy objectives

To achieve its policy objectives, the Bill makes the following amendments:

Adult crime, adult time

The Bill amends the Youth Justice Act to remove the current restrictions on minimum, mandatory and maximum sentences for children for the following offences in the Criminal Code:

- murder (section 302, 305);
- manslaughter (section 303, 310);

- unlawful striking causing death (section 314A);
- acts intended to cause grievous bodily harm and other malicious acts (section 317);
- grievous bodily harm (section 320);
- wounding (section 323);
- dangerous operation of a vehicle (section 328A);
- serious assault (section 340);
- unlawful use or possession of motor vehicles, aircraft or vessels (section 408A);
- robbery (section 409, 411);
- burglary (section 419);
- entering or being in premises and committing indictable offences (section 421); and
- unlawful entry of vehicle for committing indictable offence (section 427).

The Bill provides that if a court is sentencing a child for one of these offences, the court may order that the child be placed on probation for a period not longer than three years or detained for a period not more than the maximum penalty that an adult convicted of the offence could be ordered to serve. This lifts the maximum periods of probation and detention orders that can currently be imposed for these offences under section 175 and 176 of the Youth Justice Act to align the sentences that can be imposed on children with adult penalties.

The Bill also provides that a requirement under the Criminal Code that a term of imprisonment must be the penalty, or a part of the penalty, for the offence, is taken to be a requirement that a period of detention must be the penalty, or part of the penalty for the offence.

The Bill further provides that a requirement under the Criminal Code that a minimum term of imprisonment must be served for the offence is taken to be a requirement that a minimum period of detention must be served for the offence.

This means that a child who is sentenced for these offences will be liable to the same minimum and mandatory sentences that apply to an adult, namely:

- mandatory life detention with a minimum non-parole period of 20 years for murder (or 25 years for murder of a police officer or 30 years for murder of more than one person or by a person with a previous murder conviction);
- if a child is sentenced to life detention (other than for murder), the child will be eligible for release after serving 15 years;
- if a child is sentenced to serve a period of detention for unlawful striking causing death, unless a conditional release order is made, the child must serve the lesser of 80% of the sentence or 15 years;
- detention must form whole or part of the punishment for dangerous operation of a vehicle with a circumstance of aggravation relating to previous conviction under section 328A(3) of the Criminal Code; and
- if a child is sentenced for an offence of grievous bodily harm, serious assault (in certain circumstances) or wounding committed in a public place while adversely affected by an intoxicating substance, they must be sentenced to a community service order. Consistent with what occurs for adults, there is no requirement for the child to consent to the community service order. The minimum and

maximum period for community service orders will still be governed by the Youth Justice Act.

The court can still make a conditional release order under section 220 of the Youth Justice Act for any child sentenced for these offences, even where a mandatory sentence applies (except for the offence of murder).

A court sentencing a child for these offences will apply the sentencing considerations under section 150 of the Youth Justice Act (as amended by the Bill), and sections 150A and 150B if the child is or has been declared a serious repeat offender.

Sections 183 (Recording of conviction) and 184 (Considerations whether or not to record conviction) of the Youth Justice Act will continue to apply.

The court can still sentence the child to a sentencing order under section 175 of the Youth Justice Act. However, the court will not be able to sentence the child to a restorative justice order under sections 175(1)(da) or (1)(db) as this sentencing order is not available for adults.

The court must still consider whether to make a court diversion referral or a presentence referral to a restorative justice process under section 163 of the Youth Justice Act, having regard to the nature of the offence, the harm suffered by anyone because of the offence and whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process. This is because adult restorative justice conferencing is available for adult defendants.

With respect to detention orders, before a court can impose a period of detention, a pre-sentence report must still be ordered and considered pursuant to section 207 of the Youth Justice Act.

The Bill amends section 227 of the Youth Justice Act to provide that where a child is sentenced for one of these offences (other than for murder and subject to any other minimum period of detention which must be served prior to release), the court may order that the child be released from detention after serving whatever period of detention that the court considers appropriate. This means that the requirement in section 227 of the Youth Justice Act that the child must serve 70% of the detention, unless the court orders they be released after serving 50% or more of the detention, does not apply. Rather, for consistency with sentencing of adults, the court has discretion as to when to set the release date.

To remove any doubt, the *Penalties and Sentences Act 1992*, including the Serious Violent Offence scheme and indefinite sentence provisions under Parts 9A and 10, will not apply when sentencing a child for one of these offences.

Where a Childrens Court magistrate sentences a child for one of these offences, the order can still be subject to a sentence review under section 118 of the Youth Justice Act.

The amendments related to ‘adult crime, adult time’ will apply to offences committed after commencement.

Removing detention as a last resort and primary regard to victims in sentencing

The Bill amends the Youth Justice Act to remove the principle of detention as a last resort and the principle that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community.

The Bill does this by omitting:
- Youth Justice Principle 18 from the Charter of youth justice principles, enshrined in schedule 1 to the Youth Justice Act;
- the special sentencing consideration in section 150(2)(b) of the Youth Justice Act that requires the sentencing court to have regard to the principle that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community;
- the special sentencing consideration in section 150(2)(e) of the Youth Justice Act that requires a detention order should be imposed with reference to Principle 18;
- the requirement in section 208 of the Youth Justice Act that a court may make a detention order against a child only if, after considering all other available sentences and taking into account the desirability of not holding a child in detention, the court is satisfied that no other sentence is appropriate in the circumstances.

The Bill also provides for new section 150(1AA) (renumbered as section 150(1)) which provides that the court must not have regard to any principle that detention should only be imposed as a last resort or that a sentence that allows the child to stay in the community is preferable.

The Bill also elevates existing section 150(1)(j) of the Youth Justice Act, which provides that one of the matters the court is to have regard to in sentencing a young offender is the impact of the offending on the victim, to a standalone subsection (renumbered section 150(2)) and requiring that the court must have primary regard to it.

A new principle will also be included in the Charter of youth justice principles to specifically recognise the impact of offending on a victim as the second principle.

The amendments related to removing detention as a last resort and having primary regard to victims in sentencing will apply to offences committed after commencement.

Contents and admissibility of child criminal histories

The Bill provides a new definition of a criminal history of a child (new section 6 of the Youth Justice Act) which includes cautions, restorative justice agreements and contraventions of a supervised release order.

Consistent with this, the Bill removes sections 15(3), 21(4), and 252G(3) of the Youth Justice Act, which currently prohibit cautions and contraventions of a supervised release order from appearing on the criminal history of a child. The Bill also requires that, when a police officer is administering a caution or making a restorative justice

referral, they must explain to the child that the caution and any restorative justice agreement will appear on their criminal history.

The Bill amends section 148 and inserts new section 148AA (renumbered section 148A) into the Youth Justice Act to provide that a person's child criminal history, inclusive of police cautions, restorative justice agreements and contraventions of a supervised release order, is admissible when the court is sentencing an adult for an offence. The admissibility of a child criminal history is limited for a period of five years from the date of the outcome for the last childhood offence.

By providing for the recording, and consideration, of police cautions, restorative justice agreements and contraventions of supervised release orders in a child's criminal history, sentencing courts will be provided all relevant information about an offender's interaction with the justice system or previous history of offending. This will assist the court in determining an appropriate sentence as these factors might potentially be of relevance to that determination. The court will be able to determine what weight to give to this information.

The Bill also amends section 328A (Dangerous operation of a vehicle) of the Criminal Code and inserts new section 148AB (renumbered as section 148B) into the Youth Justice Act to enable childhood findings of guilt to be admissible for a circumstance of aggravation under sections 328A(2)(c) or (3) of the Criminal in certain circumstances. The admissible childhood findings of guilt are limited to those made in respect of relevant offences mentioned in sections 328A(2)(c) and (3) of the Criminal Code and that are within five years of the adult committing an offence of dangerous operation of a vehicle.

Subject to a publication order under section 234 of the Youth Justice Act, the offence under section 301 of the Youth Justice Act, prohibiting the publication of identifying information about a child, will apply in respect of child criminal histories admitted in criminal proceedings when the person is an adult.

It is not intended that the amendments to what appears on a child's criminal history and to allow a person's child criminal history to be admitted at sentencing will impact the spent convictions scheme under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Childhood findings of guilt which occur prior to the commencement of these provisions will be made admissible when sentencing an adult for an offence that is committed after the commencement of these provisions. However, the amendments to capture police cautions, restorative justice agreements and contraventions of a supervised release order on a child's criminal history will only apply to these outcomes that occur after commencement.

The amendments to section 328A of the Criminal Code will apply to new offences committed after the commencement, and may make a person liable to circumstances of aggravation relating to previous convictions, where childhood findings of guilt committed before the commencement are admissible to prove the circumstance of aggravation.

Further opening up the Childrens Court

The Bill makes the following amendments to the Childrens Court Act:

- amends section 20(1)(c) to include a relative of the victim among the class of persons able to be present during criminal proceedings;
- amends the definition of 'relative' in section 20(9) so as to also include relatives of victims generally; and
- omits the ability of a court to make an exclusion order under section 20(2).

The amendments to the Childrens Court Act are intended to further open up the Childrens Court, including by ensuring victims, victims' representatives, victims' relatives, the representatives of relatives of a deceased victim, and persons holding media accreditation cannot be the subject of an exclusion order.

Childrens Court matters which do not proceed by way of indictment will continue to be closed to the general public.

Offences found in other Acts which prohibit the publication of certain information that may be heard by persons present during Childrens Court proceedings will continue to apply. These provisions include section 301 (Prohibition of publication of identifying information about a child) of the Youth Justice Act, section 189 (Prohibition of publication of information leading to identity of children) of the *Child Protection Act 1999*, and section 12 (Restriction on publication of information, evidence and the like given in bail application) of the *Bail Act 1980*.

It is not intended that these amendments will in any way affect the court's general powers to deal with contempt or exclude persons whilst a special witness is giving evidence.

Section 20(6) (renumbered section 20(3)) of the Childrens Court Act will continue to apply in respect of the presence of persons at proceedings where the court is hearing a matter under section 172 or 173 of the *Mental Health Act 2016*.

The amendments related to further opening up the Childrens Court will apply to any proceedings on foot or started, after commencement. If there is an exclusion order with respect to a proceeding on foot, a person who is subject to the exclusion order may apply to the court to have the order set aside.

Transfer of 18-year-olds from youth detention centres to adult correctional centres

The amendments create a new legal framework for the transfer of detainees to adult custody. The default position would be that all YDC detainees should be transferred to adult custody within one month after they turn 18, subject only to a chief executive discretion with no appeal or review (except judicial review). Chief executive discretion may be exercised in cases where, for example, the detainee is to be released in the near future, or where their unique needs are being met in the YDC environment and would be unable to be met in the adult custodial environment, increasing the risk of reoffending post-release. In these cases, it may be in the best interests of Queensland Corrective Services, DYJVS, the community, and the detainee for the detainee to remain in a YDC.

This ability of the chief executive to make and implement decisions with timeliness and certainty will enhance the chief executive's ability to ensure the security of YDCs, and the safety and wellbeing of children and staff.

'Opt out' eligible persons register for victims

The changes facilitate an opt-out (rather than opt-in) approach to the register. They do this by dispensing with the need for an application from victims and immediate family members of deceased victims.

The amendments will still allow the chief executive a discretion to refuse registration of even direct victims or the deceased relatives of direct victims, but only in the narrow circumstances listed in section 282D(2) of the Youth Justice Act, where disclosure of information about the offender may put someone's safety or welfare or the security of a detention centre at risk. This could be the case, for example, where the victim and offender are known to each other and members of rival gangs in ongoing conflict, or where the victim is a child in the same YDC as the offender. Furthermore, if the victim is a young child, providing information to that victim could be detrimental to their welfare.

Two categories of person who are currently eligible to apply will need to continue to be by application only. These are:

- the victim's parent, if the victim is a child or has a legal incapacity. The parent would need to provide evidence that the child victim is in their care, or evidence of the legal incapacity. In the case of a child, this is because the victim may be estranged from their parents and living independently, or in the care of the State. This should not be a barrier in legitimate cases;
- another person who satisfies the chief executive the person's life or physical safety could reasonably be expected to be endangered, because of the child's history of violence against the person or a connection between the person and the offence.

Given the definition of 'parent' in schedule 4 of the Youth Justice Act, prescribing a victim's 'parent' as an eligible person for an adult victim with a legal incapacity appears to be an error, which the Bill rectifies by adding a guardian appointed under the *Guardianship and Administration Act 2000* and an attorney under an enduring power of attorney under the *Powers of Attorney Act 1998* as eligible persons for such a victim.

Alternative ways of achieving policy objectives

A legislative response is the most effective way to achieve the policy objectives. These laws and the purposes to which they are directed are a direct response to growing community concern and outrage over crimes perpetrated by young offenders.

Estimated cost for government implementation

The Bill is likely to increase demand for courts, police, the legal profession, corrective services, and youth justice. The Bill may increase the amount of time that young offenders spend in detention centres and corrective services facilities, increasing

demand for these facilities. Government will monitor demand and the impacts of the legislative amendments. Any cost impacts will be dealt with as part of normal budget processes.

Consistency with fundamental legislative principles

The Bill has been prepared with due regard to the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act) and is generally consistent with the fundamental legislative principles. Fundamental legislative principles that are engaged by the amendments are addressed below.

Adult crime, adult time

Legislation must have sufficient regard to the rights and liberties of individuals, including children, under section 4(2)(a) of the Legislative Standards Act.

The amendments provide that the maximum, minimum and mandatory penalties available for adults are available for children who are found guilty of certain offences.

While a child's liberty may be impacted by imposing minimum and mandatory penalties for certain offences, it is limited to specific serious offences in order to achieve the policy intent of holding young offenders accountable for their actions.

Having had regard to the potential impacts on the rights and liberties of individuals, the consequences imposed by the amendments are reasonable to achieve the policy intent as they are limited to certain serious offences.

Removing detention as a last resort and primary regard to victims in sentencing

Legislation must have sufficient regard to the rights and liberties of individuals, including children, under section 4(2)(a) of the Legislative Standards Act.

Under international law, the United Nations Convention on the Rights of the Child, to which Australia is a signatory, requires that detention of children should only happen as a last resort, and for the shortest possible time, recognising that detention is inherently harmful for children and, by extension, the community as a whole.

The amendments remove this principle and the principle that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community. However, the removal is justified as it meets the policy objectives of the Bill, by allowing courts to impose sentences that reflect the seriousness of offences and holding young offenders more accountable. The court will still be able to consider relevant mitigating and aggravating factors and impose a proportionate appropriate penalty.

The amendments related to having primary regard to victims in sentencing may limit judicial discretion to the extent that they require certain sentencing considerations to be given primary regard. The amendments are consistent with the policy objective of putting victims at the heart of the youth justice process and promoting the rights of victims. A court is still able to consider relevant mitigating and aggravating factors and impose a proportionate appropriate penalty.

Therefore, it is considered that these amendments are consistent with fundamental legislative principles.

Contents and admissibility of child criminal histories

The amendments are consistent with fundamental legislative principles.

Further opening up the Childrens Court

Legislation must have sufficient regard to the rights and liberties of individuals, including children, under section 4(2)(a) of the Legislative Standards Act.

The amendments to open the Childrens Court are inconsistent with rules 8.1 and 8.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (which provide that a young offender's privacy should be respected, and their identifying information withheld from publication) and article 40(2)(b)(vii) of the United Nations Convention on the Rights of the Child (which provides that every child accused of committing an offence should have their privacy fully respected at all stages of a proceeding against them). This inconsistency must be balanced against supporting the rights of victims of crime and their families to access and understand the criminal justice system, as well as to support open justice and transparency.

The amendments will open the Childrens Court by ensuring victims, victims' representatives, victims' relatives, the representatives of a relative of a deceased victim and persons holding media accreditation cannot be subject to an exclusion order.

With respect to the media, the amendments allow only persons holding media accreditation to be present during proceedings. Nothing in the amendments will affect the court's general powers to deal with contempt, or to exclude persons whilst a special witness is giving evidence or when hearing a matter under sections 172 or 173 of the *Mental Health Act 2016*.

Offences found in other Acts which prohibit the publication of certain information that may be heard by persons present during Childrens Court proceedings continue to apply, and criminal proceedings in the Childrens Court in relation to charges not on indictment will remain closed to the public.

These amendments are accordingly justified on the basis that they protect and promote the rights of victims in the process, along with the benefits of informed and transparent reporting on court processes involving children.

Transfer of 18-year-olds from youth detention centres to adult correctional centres

Legislation must have sufficient regard to the rights and liberties of individuals and ensure that the exercise of administrative power is subject to appropriate review under sections 4(2)(a) and 4(3)(a) of the Legislative Standards Act.

The amendments are inconsistent with fundamental legislative principles, to the extent that the chief executive's decision to transfer a detainee to a corrective services facility is not subject to review, other than judicial review, and procedural fairness is not

required. However, the proposed arrangements enable the prompt transition of 18-year-olds to adult custody, to enhance and protect the rights of younger children in YDCs.

'Opt out' eligible persons register for victims

The amendments are consistent with fundamental legislative principles.

Transitional regulation-making power

Legislation must have sufficient regard to the institution of Parliament, including only authorising the amendment of an Act only by another Act, under section 4(4)(c) of the Legislative Standards Act.

The Bill includes the power to make a regulation to facilitate the doing of anything that is necessary to achieve the transition of the amendments being made by the Bill. This is to ensure flexibility to respond to any emergent issues in the transition. The provision also contains a safeguard in that it expires one year after the provision commences.

It is considered that the transitional regulation-making power is justified because of the significance and complexity of the amendments and the need for flexibility.

Consultation

'Adult crime, adult time' featured significantly in the Government's election campaign for the 2024 Queensland State election.

Given the Government's commitment to enact laws by the end of 2024, there has not otherwise been any consultation on the Bill.

Consistency with legislation of other jurisdictions

Adult crime, adult time

The amendments related to 'adult crime, adult time', are specific to Queensland and not uniform with or complementary to legislation of the Commonwealth or another state.

In New South Wales, the Children's Court must commit children's serious indictable offences to a higher court to be dealt with 'according to law' under the *Crimes (Sentencing Procedure) Act 1999*. Children's serious indictable offences are limited to the most serious offences and include offences, for example, that are punishable by up to 25 years imprisonment or life imprisonment. The Children's Court has discretion when dealing with a child charged with an indictable offence to commit that child to a higher court to be dealt with 'according to law' under the *Crimes (Sentencing Procedure) Act 1999* and must consider a range of factors including the nature and seriousness of the offence. Even where a child is dealt with 'according to law' mandatory and minimum sentences do not apply and neither do standard non-parole periods.

Removing detention as a last resort and primary regard to victims in sentencing

Most Australian jurisdictions (Victoria, Western Australia, Tasmania, Northern Territory, and the Australian Capital Territory) have expressly incorporated the principle that a child should only be sentenced to detention as a last resort and for the shortest period that is appropriate or necessary.

In New South Wales, the Children's Court may only impose a sentence of detention on a child if they are satisfied that other, less serious sentences would not be appropriate. If a higher court is sentencing a child, a sentence of imprisonment must only be imposed if the court is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.

In South Australia, a court can only impose a sentence of detention on a child if they have been declared to be a recidivist youth offender, if they are a serious firearms offender, or if the court is satisfied that a non-custodial sentence would be inadequate due to the gravity or circumstances of the offence or it being part of a pattern of repeated offending.

All Australian jurisdictions reference victims in their equivalent charters of principles that underlie their youth justice framework. New South Wales, Northern Territory, Victoria, Western Australia and Tasmania include a similar principle to Queensland's existing principle 10 in relation to giving victims the opportunity to participate or receive information in the process of dealing with the child for the offence.

The Northern Territory and Australian Capital Territory include a principle that requires a balanced approach to be taken in considering the needs of the young offender, the rights of any victim of the offending and the interests of the community.

While no jurisdiction explicitly provides that victims' rights are to be considered above other principles, the Australian Capital Territory provides that it is a high priority that intervention with young offenders must promote their rehabilitation and must be balanced with the rights of any victim of the young offender's offence and the interests of the community.

Most Australian jurisdictions (New South Wales, Northern Territory, Victoria, Western Australia and the Australian Capital Territory) specifically provide that the effect or impact on a victim is a relevant factor when sentencing a child. No jurisdiction prioritises this sentencing consideration over all other considerations.

Contents and admissibility of child criminal histories

Australian jurisdictions have varying approaches to what is included in child criminal histories. In New South Wales, the fact that a person has been dealt with by warning, caution or youth justice conference is not admissible in any criminal proceeding subsequently taken against the person outside of the Children's Court. Similarly, in Victoria, a youth warning, caution or an early diversion outcome plan must not be recorded on a child's criminal record or form part of a child's criminal history.

Australian jurisdictions also have varying approaches to the admissibility of juvenile criminal histories where convictions are not recorded when sentencing an adult offender. In several jurisdictions, the admissibility can depend on the age of the child when they committed the offence, the passage of time between the juvenile sentence and adult sentence, what the juvenile sentencing order was, and whether the juvenile sentencing order was discharged or breached.

For example, limitations on the period that a child's criminal history can be admissible are found in New South Wales, Western Australia and Victoria. New South Wales and Western Australia have a two year limitation on admissibility of child criminal histories. In Victoria, childhood findings of guilt are admissible for up to 10 years after the relevant court order.

In the Northern Territory, only offences committed after the person turns 15 years of age appear on their criminal history when sentenced as an adult.

Further opening up the Childrens Court

In Victoria, any person can be present during criminal proceedings against children unless the court orders otherwise. Similarly, in Western Australia, any person can be present unless the interests of the child may be prejudicially affected. In other jurisdictions, criminal proceedings against children are generally closed to the public, however, victims, their support person and/or the media may be permitted to attend, subject to possible exclusion. No jurisdiction with closed Childrens Court proceedings specifically allows the victim's family members to attend (unless they are a support person, or the victim is deceased).

Transfer of 18-year-olds from youth detention centres to adult correctional centres

In Western Australia, under the *Young Offenders Act 1994*, a young person in custody, either on remand or serving a sentence order, will be transferred to an adult correctional centre within one month of their 18th birthday. Only the chief executive can prevent the transfer, and the decision cannot be reviewed by any court or tribunal (with the exception of judicial review on grounds of jurisdictional error).

The proposed changes are modelled on the Western Australian approach.

'Opt out' eligible persons register for victims

The amendments are specific to Queensland and not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Part 1 – Preliminary

Clause 1 provides that the short title of the Act is the *Making Queensland Safer Act 2024*.

Clause 2 provides that part 3 and part 4, division 3 commence on a day to be fixed by proclamation.

Part 2 – Amendment of *Childrens Court Act 1992*

Clause 3 provides that this part amends the *Childrens Court Act 1992*.

Clause 4 amends section 20 (Who may be present at a proceeding).

Subclause (1) omits the existing list of classes of persons who can be present at a criminal proceeding relating to a child in subsection 20(1)(c) and provides the following classes of persons can be present:

- a victim, or a relative of a victim, of the offence committed by the child;
- a relative of a deceased victim of the offence committed by the child;
- a person who is a representative of a victim, or of a relative of a deceased victim, of the offence committed by the child;
- a person who, in the court's opinion, has a proper interest in the proceeding; or
- a person holding media accreditation.

Examples of a person who is a representative of a victim, or of a relative of a deceased victim are provided.

Subclause (2) omits subsections 20(2) to (4) to remove the power of the court to make an exclusion order if necessary to prevent prejudice to the proper administration of justice, or for the safety of any person, including the child.

Subclause (3) makes a consequential amendment to subsection 20(6) (renumbered subsection 20(3)) to omit the reference to the repealed subsection 20(2).

Subclause (4) omits the definitions of *accredited media entity*, *criminal proceeding*, and *relative* from subsection 20(9).

Subclause (5) inserts definitions for *criminal proceeding*, *media accreditation*, *offence*, and *relative* in subsection 20(9).

Subclause (6) renumbers subsections 20(5) to (9) as 20(2) to (6).

Clause 5 inserts new part 7 division 7 (Transitional provisions for the Making Queensland Safer Act 2024).

New section 40 (Definition for division) provides that reference to *new section 20* in division 7 means section 20 as in force from the commencement.

New section 41 (Application of new s 20) provides that, subject to section 42, new section 20 applies in relation to a proceeding whether the proceeding was started before or after commencement of this section.

New section 42 (Existing exclusion orders) applies in relation to an exclusion order made by the court under former section 20 that if the order was in effect immediately before the commencement and applies in relation to a proceeding that has not been decided, discontinued, finalised or withdrawn immediately before the commencement. Subsection (2) provides that a person who is subject to the exclusion order may apply to the court to have the order set aside. Subsection (3) provides that, if the court is satisfied the applicant is a person mentioned in new section 20(1)(c), the court must set aside the exclusion order. Subsection (4) provides that reference of *former section 20* in the section means section 20 as in force from time to time before the commencement.

Part 3 – Amendment of Criminal Code

Clause 6 provides that this part amends the Criminal Code.

Clause 7 amends section 328A (Dangerous operation of a vehicle) to insert a new definition of *previously convicted* in subsection 328A(6). This new definition provides that *previously convicted*, for an offender who is an adult, includes a previous finding of guilt, within the meaning of schedule 4 of the *Youth Justice Act 1992*, against the offender as a child. A note is also included to refer to section 148B of the *Youth Justice Act 1992* in relation to the admissibility of evidence about a previous finding of guilt.

The effect of this new definition of *previously convicted* is that it ousts section 184(2) of the *Youth Justice Act 1992* and provides that a childhood finding of guilt without the recording of a conviction is taken to be a conviction for the purpose of sections 328A(2)(c) and (3) of the Criminal Code, subject to the operation of new section 148B of the *Youth Justice Act 1992* being inserted by the Bill.

Clause 8 amends section 590AH (Disclosure that must always be made).

Subclause (1) amends section 590AH(2)(b) to provide that, for a relevant proceeding, among the list of materials that the prosecution must give the accused person is the accused person's childhood criminal history information.

Subclause (2) inserts a new definition of *childhood criminal history information* in subsection 590AH(4).

Part 4 – Amendment of *Youth Justice Act 1992*

Division 1 Preliminary

Clause 9 provides that this part amends the *Youth Justice Act 1992*.

Division 2 Amendments commencing on assent

Clause 10 amends section 13 (Police officer’s power of arrest preserved in particular general circumstances) to omit the note which referred to the repealed principle 18 of the Youth Justice Principles.

Clause 11 amends section 48AA (Matters to be considered in making particular decisions about release and bail) to omit subsection 48AA(4)(b)(i) which referred to the repealed principle 18 of the Youth Justice Principles.

Clause 12 amends section 56 (Custody of child if not released by court) to insert a note drawing attention to new section 276A, which has the effect that once a detainee in a watchhouse turns 18 years, they will be subject to the adult custodial system rather than the youth detention system.

Subclause (2) provides that in deciding the date for transfer to a youth detention centre, the chief executive must not have regard to the effect of section 276A, noted above.

Subclause (3) is a consequential provision following the consolidation of sections 136 to 138.

Clause 13 adds a clarification that part 8, division 2A of the *Youth Justice Act 1992* also impacts when a person may be treated as an adult.

Clause 14 replaces sections 135 to 139 with two new sections.

New section 135 (Offender to be remanded in a corrective services facility) sets out a number of remand scenarios in which a person is to be held on remand in a corrective services facility, rather than a youth detention centre, unless the chief executive directs, under new section 276D, that they be held in a youth detention centre:

(a) the person is already in youth detention, and is remanded in custody on an adult offence;
(b) the person is not already in youth detention, and is remanded in custody on a child offence or on child and adult offences;
(c) the person is already in adult custody, and is remanded in custody on a child offence.

New subsections (6) and (7) also provide that if a person described in scenario (b) or (c) is sentenced to detention for the child offence, they serve the detention in adult custody unless the chief executive makes a direction under new section 276D.

New subsections (3) to (5) provide that if a person described in scenario (a) is sentenced to imprisonment for the adult offence, they serve the imprisonment in a youth detention centre if a direction under new section 276D is in effect.

New section 136 (Application of Corrective Services Act 2006) establishes certain arrangements for the purpose of a person being held in a corrective services facility under new section 135. It also retains the former policy position for the eventual release persons transferred to adult custody while serving detention for a child offence, which is that they are to be released on the date they would have been released on a supervised

release order under the *Youth Justice Act 1992*, but treated as though they are on parole under the *Corrective Services Act 2006*.

Clause 15 amends section 150 (Sentencing principles).

Subclause (1) inserts new subsection 150(1AA) (renumbered subsection 150(1)) which provides that, in sentencing a child for an offence, a court must not have regard to:

(a) any principle that a detention order should only be imposed as a last resort; or
(b) any principle that a sentence that allows the child to stay in the community is preferable.

Subclause (1) also inserts new subsection 150(1AB) (renumbered subsection 150(2)) which provides that in sentencing a child for an offence, a court must have primary regard to any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court under section 179K of the *Penalties and Sentences Act 1992*.

Subclause (2) inserts new subsection 150(1)(ba) (renumbered subsection 150(3)) which provides that, in sentencing a child for an offence, a court must have regard to the matter to which the court must have primary regard under subsection (2).

Subclause (3) makes a consequential amendment to subsection 150(1)(c) to update the reference to subsection (2) with subsection (4).

Subclause (4) omits subsection 150(1)(j), as this sentencing consideration is now the matter the court must have primary regard to under new subsection 150(1AB) (renumbered subsection 150(2)).

Subclause (5) omits subsections 150(2)(b) and (2)(e) to remove the special sentencing considerations that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community and that a detention order should be imposed having regard to principle 18 of the Youth Justice Principles.

Subclause (6) makes a consequential amendment to subsection 150(4) to update the reference to subsection (1)(i) with subsection (3)(i).

Subclause (7) inserts new subsection 150(5) (renumbered subsection 150(10)) which provides that, for the purposes of section 43(1) of the *Human Rights Act 2019*, it is declared that subsection 150(1) has effect—

(a) despite being incompatible with human rights; and
(b) despite anything else in the *Human Rights Act 2019*.

A note is also inserted which provides that, under section 45(2) of the *Human Rights Act 2019*, subsection 150(10) expires 5 years after the commencement.

Subclause (8) renumbers subsections 150(1AA) to (6) as 250(1) to (11).

Clause 16 amends section 150A (Serious repeat offenders) to include the matter to which the court must have primary regard under section 150(2) among the list of matters in subsection (3) (new subsection 150A(3)(f)). This means that, if the court

makes a declaration that the child is a serious repeat offender, the court in sentencing the child must have primary regard to a number of matters, including any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court under section 179K of the *Penalties and Sentences Act 1992*.

Clause 17 amends section 150B (Court must rely on earlier serious repeat offender declaration) to provide that, in sentencing a child under this section, the court must have primary regard to the matters in section 150A(3), including the new 150A(3)(f).

Clause 18 amends section 175 (Sentence orders – general).

Subclauses (1) and (2) amend subsections 175(1)(d)(i) and (ii) to provide that, subject to subsection (2):

- a court not constituted by a judge may order that a child be placed on probation for a period not longer than 1 year if new section 175A does not apply; and
- a court constituted by a judge may order that a child be placed on probation for a period not longer than 2 years if neither new section 175A nor section 176 applies.

Subclauses (3) and (4) amend subsection 175(1)(g)(i) and (ii) to provide that, subject to subsection (2):

- a court not constituted by a judge may order a child to be detained for a period not longer than 1 year if new section 175A does not apply;
- a court constituted by a judge may order a child to be detained for whichever is the shorter period between half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve or 5 years, if neither new section 175A nor section 176 applies.

Clause 19 inserts new section 175A (Sentence orders – significant offences to which adult penalties apply).

New section 175A(1) provides that the section applies if a court is sentencing a child for an offence against the following provisions of the Criminal Code:

(a) sections 302 and 305 (murder);
(b) section 303 and 310 (manslaughter);
(c) section 314A (unlawful striking causing death);
(d) section 317 (acts intended to cause grievous bodily harm and other malicious acts);
(e) section 320 (grievous bodily harm);
(f) section 323 (wounding);
(g) section 328A (dangerous operation of a vehicle);
(h) section 340 (serious assault);
(i) section 408A (unlawful use or possession of motor vehicles, aircraft or vessels);
(j) sections 409 and 411 (robbery);
(k) section 419 (burglary);
(l) section 421 (entering or being in premises and committing indictable offences);
(m)section 427 (unlawful entry of vehicle for committing indictable offence).

New section 175A(2) provides that the court may order that the child be:

(a) placed on probation for a period not longer than 3 years; or

(b) detained for a period not more than the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve.

New section 175A(3) provides that section 155, which provides that mandatory sentence provisions are inapplicable, does not apply to the court. Subsection 175A(4) provides that a requirement under the Criminal Code that a term of imprisonment must be the penalty, or a part of the penalty, for the offence is taken to be a requirement that a period of detention must be the penalty, or a part of the penalty for the offence. Subsection 175A(5) provides that a requirement under the Criminal Code that a minimum term of imprisonment must be served for the offence is taken to be a requirement that a minimum period of detention must be served for the offence.

New section 175A(6) provides that the court may make a detention order:

(a) with or without a conditional release order under section 220; and
(b) with or without an order under section 234 that identifying information about the child may be published, if that section applies.

New section 175A(7) provides that if the court is sentencing the child to detention for life on a conviction of murder, sections 305(2), (3) and (4) of the Criminal Code (which provide minimum non-parole periods with respect to the murder of a police officer and murder of more than one person or by a person with a previous murder conviction) apply. New section 175A(7) also provides that a reference to imprisonment in section 305 of the Criminal Code is taken to be a reference to detention. A note is included which provides that, for the child's parole eligibility, see section 233 of the *Youth Justice Act 1992* and section 181 of the *Corrective Services Act 2006*.

New section 175A(8) provides that sections 175(1)(da) and (db) do not apply to the court. This means that the court sentencing a child for an offence under section 175A cannot sentence the child to an order requiring the child to participate in a restorative justice process or perform their obligations under a restorative justice agreement.

New section 175A(9) provides that if an offence is a prescribed offence under section 108A of the *Penalties and Sentences Act 1992*, then part 5, division 2, subdivision 2 of that Act applies as if:

- a reference to a community service order or graffiti removal order was a reference to those orders under the *Youth Justice Act 1992*;
- a reference to the period within which the total number of hours stated in the order must be performed in section 103(2)(b) of the *Penalties and Sentences Act 1992* was a reference to the relevant period under the *Youth Justice Act 1992* (namely, section 198); and
- a reference to serving a term of imprisonment in a corrective services facility was a reference to serving a period of detention.

The prescribed offences listed in section 108A of the *Penalties and Sentences Act 1992* which apply to section 175A are grievous bodily harm, serious assault (in certain circumstances) or wounding. This means that when the court is sentencing the child to an offence of grievous bodily harm, serious assault (with the relevant circumstances of aggravation apply) or wounding committed in a public place while adversely affected by an intoxicating substance, subsection 175A(9) applies.

New section 175A(10) provides that section 195(a) does not apply to the making of a community service order under subsection (9) but subsection (9) applies subject to section 195(b) and (c). This means that when the court is sentencing the child to a prescribed offence, the court must impose a community service order even if the child is not willing to comply with the order. However, before the court can make a community service order, it must still be satisfied that the child is a suitable person to perform community service and is satisfied on consideration of a report by the chief executive that community service of a suitable nature can be provided for the child.

New section 175A(11) provides that this section applies despite anything else in the *Youth Justice Act 1992*, and, subject to the exclusion of restorative justice orders in subclause 175A(8), does not limit a court's power to make an order under section 175.

New section 175A(12) provides that for the purposes of section 43(1) of the *Human Rights Act 2019*, it is declared that this section has effect—

(a) despite being incompatible with human rights; and
(b) despite anything else in the *Human Rights Act 2019*.

A note is also included which provides that, under section 45(2) of the *Human Rights Act 2019*, subsection 175A(12) expires 5 years after the commencement.

Clause 20 amends section 176 (Sentence orders – life and other significant offences).

Subclause (1) omits the words 'life and' from the heading. The heading of section 176 will now read 'Sentence orders – other significant offences'.

Subclause (2) omits subclauses 176(6) to (8). These subsections are now reflected in new subsections 175A(3) and (7).

Subclauses (3) and *(4)* make consequential amendments to the definition of *relevant offence* in subsection 176(10) (renumbered subsection 176(7)) to provide that:

- a relevant offence does not include an offence mentioned in section 175A(1); and
- a relevant offence no longer includes offences under section 419 or 421 of the Criminal Code (as these offences are mentioned in section 175A(1)).

Subclause (5) renumbers the paragraphs under the definition of *relevant offence* in subsection 176(10) (renumbered subsection 176(7)).

Subclause (6) renumbers subsections 176(9) and (10) as 176(6) and (7).

Clause 21 amends section 181 (Other orders) so that the court's power to make orders, such as an order of restitution or compensation, also applies when the court is making a sentencing order against a child for an offence under new section 175A.

Clause 22 amends section 183 (Recording of conviction) to provide that, if the court makes an order under new section 175A, the court may order under subsection 183(3) that a conviction be recorded or decide that a conviction not be recorded.

Clause 23 inserts a note into section 192A (Preconditions to making restorative justice order) to provide for a court sentencing a child for an offence under section 175A to refer to section 175A(8).

Clause 24 omits section 208 (Detention must be only appropriate sentence). This removes the requirement for a court to only make a detention order if it is satisfied that no other sentence is appropriate in the circumstances of the case after considering all other available sentences and taking into account the desirability of not holding the child in detention.

Clause 25 amends section 210 (Detention to be served in detention centre) in the same way as clause 12(1) and (2) amend section 56.

Subclause (1) inserts a note drawing attention to new section 276A, which has the effect that once a detainee in a watchhouse turns 18 years, they will be subject to the adult custodial system rather than the youth detention system.

Subclause (2) provides that in deciding the date for transfer to a youth detention centre, the chief executive must not have regard to the effect of section 276A, noted above.

Clause 26 amends section 227 (Release of child after service of period of detention).

Subclause (1) amends section 227(1) to provide that, unless a court makes an order under subsection (2) or (4), a child sentenced to serve a period of detention must be released from detention after serving 70% of the period of detention.

Subclause (2) inserts a new subsection 227(3A) (renumbered subsection 227(4)) which provides that if a court makes an order for a child's detention under section 175A, the court may order the child to be released from detention after serving the proportion of the period of detention that the court considers appropriate.

This means that, where a court is requiring a child to serve a detention order under section 175A, subject to any other provision requiring the child to serve a minimum period of time in detention, the court has discretion in setting the child's release date; the requirement to serve 70% unless special circumstances allow for a release date as low as 50% under subsections 227(1) and (2) do not apply to the court.

Subclause (3) renumbers subsections 227(3A) and (4) as (4) and (5).

Clause 27 makes a consequential amendment to section 228 (Chief executive's supervised release order) to update the reference to section 227(4) with section 227(5).

Clause 28 amends section 234 (Court may allow publication of identifying information about a child).

Subclause (1) inserts new subsection 234(1A) (renumbered section 234(2)) which provides that section 234 also applies if:

(a) a court sentences a child under section 175A; and
(b) if the offence involves the commission of violence against another person; and

(c) the court considers the offence to be a particularly heinous offence having regard to all the circumstances.

Subclause (2) renumbers subsections 234(1A) to (5) as (2) to (6).

Clause 29 amends section 245 (Court's power on breach of a community based order other than a conditional release order) to include reference to new section 175A(2)(a) in section 245(1)(a). This will allow a court to extend the period of a probation 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 new section 175A(2)(a).

Clause 30 renames the heading of part 7, division 15 to 'Application of legislation relating to victims'.

Clause 31 inserts new section 256A (Penalties and Sentences Act 1992, pt 10B) which clarifies that part 10B of the *Penalties and Sentences Act 1992* applies in relation to the sentencing of a child for an offence mentioned in section 179J of that Act. A note referring to part 10B (Victim impact statements) of the *Penalties and Sentences Act 1992* is included.

Clause 32 makes a consequential amendment to section 263 (Management of detention centres) to update the references in section 263(5) to youth justice principles to the renumbered youth justice principles 4 and 17.

Clause 33 replaces the former part 8, division 2A (Transfer of detainees to corrective services facilities) with a new part 8, division 2A (Persons to be detained in corrective services facility).

New subdivision 1 contains three sections providing for when persons must be detained in a corrective services facility.

New subdivision 2 establishes a sole discretion for the chief executive to direct that a person stay in a youth detention centre when subdivision 1 would otherwise have resulted in a transfer to a corrective services facility.

New subdivision 3 establishes certain arrangements for the purpose of a person being held in a corrective services facility under subdivision 1, and for the person's release.

New section 276A (Persons who turn 18 years before delivery into custody of chief executive) provides for when a person in a watchhouse pursuant to section 56 or section 210 turns 18 before they transfer to a youth detention centre. The chief executive is required to notify the commissioners of police and corrective services. On the day of the person's 18th birthday, the process under section 56 or 210 (as applicable) for transfer to a youth detention centre ceases to apply and section 6 of the *Corrective Services Act 2006* applies instead. The chief executive is then required to provide specified information to the corrective services commissioner to facilitate the management of the person in the adult system.

New section 276B (Persons who turn 18 years before period of detention begins) provides for when a person turns 18 before they are sentenced to custody for a child

offence, or before that are returned to custody to continue or complete a period of detention, including, for example, because of a contravention of a conditional release order or supervised release order. The person is to serve, continue or complete the period of detention as a period of imprisonment in a corrective services facility.

The chief executive is required to provide specified information to the corrective services commissioner to facilitate the management of the person in the adult system.

New section 276C (Persons who turn 18 years while held on remand or serving period of detention) provides for the transfer of youth detention centre detainees to adult custody once they turn 18. New subsection (2) requires the transfer to be made within one month, although a failure to comply does not affect the requirement to transfer or the validity of a transfer.

New subsection (4) requires the chief executive to give advance notice of a likely transfer to the corrective services commissioner. New subsection (5) requires the chief executive to give notice again once the actual transfer date is known.

New section 276D (Chief executive may direct particular person be detained in detention centre) gives the chief executive the power to direct that a person who would otherwise transfer under new section 276C instead be held in a detention centre – in other words, that the transfer not take place.

In giving the direction, the chief executive must have regard to the interests of the person, the interests of other detainees and staff at the detention centre, and may have regard to any other matter the chief executive considers appropriate.

New subsection (5) allows the chief executive to revoke the direction at any time.

New subsection (7) expressly provides that the chief executive is not required to provide procedural fairness in giving or revoking a direction. This is to ensure the prompt transition of 18-year-olds to adult custody, to enhance and protect the rights of younger children in youth detention centres.

New section 276E (Application of Corrective Services Act 2006) establishes certain arrangements for the purpose of a person being held in a corrective services facility under new sections 276A, 276B or 276C. It also retains the former policy position for the eventual release persons transferred to adult custody while serving detention for a child offence, which is that they are to be released on the date they would have been released on a supervised release order under the *Youth Justice Act 1992*, but treated as though they are on parole under the *Corrective Services Act 2006*.

Clause 34 makes a consequential amendment to section 289 (Recording, use or disclosure for authorised purpose) to update the reference in section 289(c)(ii) to section 150(1)(i) with section 150(3)(i).

Clause 35 makes a consequential amendment to section 301A (Protection from liability) to update the reference in section 301A(1)(b)(ii) to the renumbered section 150(3)(i).

Clause 36 inserts new part 11 division 25 (Transitional provisions for the Making Queensland Safer Act 2024).

New section 429 provides definitions of *amending Act, former* and *new* for the transitional provisions.

New section 430 provides that new part 6, division 11, subdivision 3 applies whether the relevant offence was committed before or after the commencement. This means the amendments about where an adult is to be detained in relation to child offences regardless of when the offence was committed.

New section 431 provides that for the purposes of new part 8, division 2A (Persons to be detained in corrective services facility), persons over 18 in youth detention centres pursuant to former sections 135 or 136 immediately prior to commencement are deemed to have turned 18 on the commencement day.

This means the one month period within which an 18-year-old is to be transferred under new part 8, division 2A starts on commencement.

New section 432 provides that if, before the commencement, an application to be held in a detention centre had been made under former section 139 but not decided, the application lapses on commencement. Former section 139 allowed applications by persons in adult custody, in certain circumstances, to be transferred to a youth detention centre. Clause 14 repeals former section 139, as it was inconsistent with the new policy position to transfer 18-year-olds promptly to adult custody.

New section 433 provides that:

- new part 7, except for new section 210 and 256A, and new schedule 1 apply in relation to an offence only if the offence was committed after the commencement;
- former part 7 and former schedule 1 continue to apply in relation to an offence committed before the commencement; and
- new section 256A applies whether the offence for which detention is imposed was committed before or after commencement.

This means that:

- the amendments related to ‘adult crime, adult time’, removing detention as a last resort, and requiring the courts to have primary regard to victims in sentencing will apply to offences committed after commencement; and
- the amendments relating to persons in watchhouses post-sentence, and whether they progress to a youth detention centre or to a corrective services facility, will apply regardless of when the relevant offence was committed.

New section 434 applies for the purposes of applying sections 305(2) and (3) of the Criminal Code to a child under new section 175A(7) of the *Youth Justice Act 1992*. The court, in applying sections 305(2) and (3), may have regard to an offence of murder that was committed before the commencement, whether the conviction or sentence for the murder happened before or happens after the commencement. This can occur even if the offence of murder is an offence for which the court Is also sentencing the child or that the court is taking into account on the sentence of the child.

New section 435 provides that new sections 56 and 210 and new part 8, division 2A (Persons to be detained in corrective services facility) apply whether the person entered custody or was sentenced before or after commencement, subject to sections 436 and 437.

This means the new arrangements for transfers to adult custody apply to all persons in custody in relation to child offences on commencement, subject to the following exceptions.

New section 436 provides that if, before commencement, the chief executive had given a detainee:

- a prison transfer notice, or
- a notice of a decision to temporarily delay giving a prison transfer notice, specifying a date after commencement, or
- a notice of a decision not to give a prison transfer notice, and

immediately before the commencement the detainee is detained in a detention centre, former part 8, division 2A (Transfer of detainees to corrective services facilities) continues to apply.

This means the arrangements for internal review by the chief executive, and review by a Childrens Court judge, continue to apply for that cohort.

New section 437 provides that applications under former sections 276P and 276T that had been made but not decided on commencement are to continue to be heard and decided by the courts, and former part 8, division 2A (Transfer of detainees to corrective services facilities) is to continue to apply to the applicant detainees.

This means the arrangements under the former provisions continue to apply for that cohort.

New section 441 provides a transitional regulation-making power for one year after the day the section commences. This provides that a transitional regulation may make provision about a matter for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of former provisions to new provisions of the *Youth Justice Act 1992*.

Clause 37 amends schedule 1 (Charter of youth justice principles).

Subclause (1) inserts new item 1A (renumbered item 2) which provides that a child who commits an offence should be held accountable in a way that recognises the impact of the child's offending on any victim of that offending.

Subclause (2) omits item 18. This removes the principle that a child should be detained in custody: (a) where necessary, including to ensure community safety, and where other non-custodial measures of prevention and intervention would not be sufficient; and (b) for no longer than necessary to meet the purpose of detention.

Subclause (3) renumbers new item 1A to 17 as items 2 to 18.

Clause 38 amends schedule 4 (Dictionary).

Subclause (1) omits the definitions of *detainee, prison transfer notice, review application* and *temporary delay.*

Subclause (2) inserts a new definition of *detainee*, the same as the former definition but without the reference to the division-specific definition in the former section 276A, which has been omitted.

Subclause (3) updates a section reference as a consequence of other amendments.

Subclause (4) inserts reference to new section 175A(2)(b) in the definition of *detention order*.

Subclause (5) updates a section reference as a consequence of other amendments.

Subclause (6) inserts reference to new section 175A(2)(a) in the definition of *probation order*.

Subclause (7) inserts reference to new section 175A in the definition of *sentence order*.

Division 3 Amendments commencing on proclamation

Clause 39 inserts new section 6 (Meaning of *criminal history* of a child).

New section 6(1) provides that, in the *Youth Justice Act 1992*, *criminal history* of a child means –

(a) each caution administered to the child for an offence; and
(b) each finding of guilt against the child for an offence, other than a finding of guilt that is set aside or quashed; and
(c) each restorative justice agreement made by the child for an offence; and
(d) all findings and orders by a court, a Childrens Court magistrate or other judicial officer in relation to an offence that forms part of the child's criminal history.

A finding or order by a court, a Childrens Court magistrate or other judicial officer in relation to an offence that forms part of the child's criminal history includes a finding that the child has contravened a community based order or a supervised release order. To reflect this, new section 6(1)(d) includes the example of a finding that the child has contravened a supervised release order for a period of detention ordered in relation to an offence.

New section 6(2) provides that if a child fails to comply with a restorative justice agreement that forms part of the child's criminal history, the child's criminal history also includes any action taken by a police officer under section 24(3).

New section 6(3) provides that the section applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Clause 40 makes a consequential amendment to section 11 (Police officer to consider alternatives to proceeding against child) to remove ', any previous cautions administered to the child for an offence' as these will now be captured in the criminal history of a child.

Clause 41 amends section 15 (Police officer may administer a caution) to omit subsection 15(3) which provided that a caution is not part of the child's criminal history.

Clause 42 amends section 18 (Caution procedure must involve explanation) to provide that 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 16(2) understand the purpose, nature and effect of the caution, including the effect on the child's criminal history.

Clause 43 amends section 20 (Child must be given a notice of caution) to provide that a notice of caution must state, among other things, the nature and effect of a caution, including the effect on the child's criminal history.

Clause 44 amends section 21 (Childrens Court may dismiss charge if caution should have been administered or no action taken) to omit subsection 21(4) which provided that a caution is not part of the child's criminal history.

Clause 45 amends section 22 (When police officer may refer offence for restorative justice process) to provide that, under subsection 22(5), the police officer must inform the child:

- (a) generally of the restorative justice process and potential consequences for the child of failing to properly participate in the process; and
- (b) that the making of a restorative justice agreement will form part of the child's criminal history.

Clause 46 amends section 36 (Conference agreement) to insert new subsection (6) which provides that a conference agreement is not evidence that the child committed the offence.

Clause 47 amends section 148 (Evidence of childhood finding of guilt not admissible against adult).

Subclause (1) provides that, subject to sections 148A and 148B, in a proceeding against a person who is an adult for an offence, there must not be admitted against the person evidence that the person was found guilty as a child of an offence if a conviction was not recorded.

Subclause (2) omits subsection 148(3). This subsection is now reflected in new section 148AA(3) (renumbered section 148A(3)).

Subclause (3) renumbers section 148(4) as 148(3).

Clause 48 inserts new sections 148AA and 148AB (renumbered as section 148A and 148B).

New section 148AA (Admissibility and use of childhood criminal history in sentencing adults) applies in relation to a court that is sentencing an adult for an offence. New section 148AA(2) (renumbered section 148A(2)) provides that, during the prescribed period of five years:

(a) section 148 does not prevent the court admitting evidence that the person was found guilty as a child of an offence without the recording of a conviction; and
(b) the court may admit other evidence from the person's criminal history as a child; and
(c) a previous finding of guilt, other than an excluded previous finding of guilt, against the person as a child, for an offence without the recording of a conviction that forms part of the person's criminal history as a child is taken to be a previous conviction of the person.

This allows for a person's child criminal history, inclusive of cautions and restorative justice agreements, to be admitted when the person is being sentenced as an adult within the prescribed period of five years. New section 148AA (renumbered section 148(2)) provides that childhood findings of guilt can be considered previous convictions when, for example, the court is considering previous convictions as an aggravating sentencing factor under section 9(10), or when determining the character of an offender under section 11, of the *Penalties and Sentences Act 1992*.

New section 148AA(3) (renumbered section 148A(3)) provides that, when a court is sentencing an adult for an offence, section 148 does not prevent the court from receiving information about any sentence to which the person is subject under the *Youth Justice Act 1992* if that is necessary to mitigate the effect of the court's sentence. This reflects the repealed section 148(3).

Definitions of excluded *previous finding of guilt* and *prescribed period* is provided in new section 148AA(4) (renumbered section 148A(4)). It provides that:

- *excluded previous finding of guilt* means a finding of guilt to which section 148B(2) applies; and
- *prescribed period* means a period of five years starting on the latest day that a matter became part of the person's criminal history as a child.

New section 148AB (Admissibility of childhood finding of guilt against adult for particular purposes) applies to:
(a) a proceeding before a court to hear and determine a charge against an adult of an offence under section 328A of the Criminal Code, on indictment or summarily, alleged to have been committed after a previous conviction mentioned in section 328A; or
(b) a proceeding before a court for the sentencing of an adult convicted of an offence under section 328A(2)(c) or (3) of the Criminal Code.

New section 148AB(2) (renumbered section 148B(2)) provides that section 148 does not prevent the court admitting a previous finding of guilt against the adult, as a child, for a relevant offence without the recording of a conviction if the finding of guilt:
(a) forms part of the person's criminal history as a child; and
(b) was made during a period of five years before the offence mentioned in subsection (1) was committed.

A definition of *relevant offence* is provided in new section 148AA(3) (renumbered section 148B(3)). It provides that a *relevant offence* is an offence mentioned in section 328A(2) or (3) of the Criminal Code.

The effect of new section 148AB (renumbered section 148B) is that previous childhood findings of guilt can be admitted to prove that the person committed a circumstance of aggravation under sections 328A(2)(c) and (3) of the Criminal Code. The admissible childhood findings of guilt are limited to those made in respect of relevant offences mentioned in sections 328A(2)(c) and (3) of the Criminal Code and that have been made within five years of the adult committing the offence of dangerous operation of a vehicle.

If a previous childhood finding of guilt was made earlier than five years before the dangerous operation of a vehicle offence was committed, then the previous childhood finding of guilt is not admissible as a previous conviction for the purposes of sections 328A(2)(c) or (3) of the Criminal Code. This does not prevent that previous childhood finding of guilt from being admissible when sentenced as an adult under section 148AA (renumbered section 148A).

Clause 49 renumbers sections 148AA to 148A as sections 148A to 148C.

Clause 50 amends renumbered section 150(3)(e) to replace the reference to a 'previous offending history' with a 'criminal history'.

Clause 51 amends section 150A(2)(c)(i) and (3)(e) to replace the references to a 'previous offending history' with a 'criminal history'.

Clause 52 omits section 154. This section is no longer required as a result of new section 6 and consequential amendments to sections 150 and 150A.

Clause 53 amends section 252G (Matters relevant to making further order) to omit subsection 252G(3) which provided that a finding that the child has contravened a supervised release order is not part of the child's criminal history.

Clause 54 replaces former provisions in relation to the 'eligible persons register' (the register), which allows victims and certain other persons to be kept informed about the offender's custody movements and release dates.

The new provisions establish the 'opt out' model for direct victims and relatives of deceased victims, by dispensing with the need for an application from those persons.

New section 282A provides that following receipt by the chief executive of relevant information from the Queensland Police Service or the Office of the Director of Public Prosecutions, victims will be automatically registered. However, the chief executive retains a discretion not to register in circumstances where it is reasonably believed that releasing detainee information to the person may endanger the security of a detention centre, the safe custody or welfare of a detainee, or the safety or welfare of another person. This could happen if, for example, the victim is a member of a rival gang and has a criminal history that includes violence.

New subsection 282A(9) requires the detainee to be given the opportunity to provide information to the chief executive to inform the exercise of this discretion.

New subsection 282A(5) requires the victim to make a confidentiality declaration under new section 282B prior to being registered.

A further safeguard is that new subsection 282A(7) allows a child victim to be registered only if the chief executive is satisfied that to do so is in their best interests. Registration of a child in care must be done in consultation with the Child Safety chief executive.

New section 282B requires a registered eligible person or their nominee to sign a declaration stating that they will not disclose detainee information.

New section 282BA retains the application process for other persons, including a parent or guardian of a child victim, the guardian of an adult victim with legal incapacity, and a person whose life or safety could reasonably be expected to be in danger because of the child's history of violence against the person or a connection between the person and the offence. These applications must be accompanied by supporting documentation.

New section 282BA also allows the applicant to nominate a person (the nominee) to receive the detainee information for them. A nominee could be a victim support worker from a victims' support agency.

Clause 55 amends section 282D (Deciding application) with a consequential amendment to a section reference, and a provision allowing the refusal of applications in appropriate cases.

Clause 56 contains a consequential amendment to a section reference.

Clause 57 contains a consequential amendment to a section reference.

Clause 58 inserts new sections 438 to 440.

New section 438 (Admissibility and use of childhood criminal histories and particular findings of guilt) applies in relation to a proceeding against an adult for an offence. New section 438(2) provides that the former Act applies to a proceeding for an appeal from a sentence that happened before the commencement. New section 438(3) provides that, subject to subsection (2), the new Act applies in relation to a proceeding for an offence:

(a) whether the proceeding was started before, or is started after, the commencement of this section; or
(b) whether the offence was committed before, or is committed after, the commencement of this section.

New section 438(4) provides definitions of *former Act* and *new Act*.

New section 439 (Criminal histories) provides that, in new section 6:

(a) a reference to a caution does not include a caution administered to a child before the commencement; and
(b) a reference to a finding of guilt includes a finding of guilt that was made in relation to a child before the commencement; and

(c) a reference to a restorative justice agreement does not include a restorative justice agreement made by the child before the commencement; and
(d) subject to subsection (2) – a reference to a finding or order in relation to an offence that formed part of a child's criminal history includes a finding or order that was made before the commencement.

New section 439(2) provides that new section 6 does not apply to a finding that a child has contravened a supervised release order if the finding was made before the commencement.

New section 439(3) provides that new section 6 applies in relation to a person:
(a) whether the person is a child or an adult on the commencement; and
(b) whether an offence committed by the person as a child was committed before, or is committed after, the commencement of this section; or
(c) whether a proceeding for an offence against the person as a child was started before, or is started after, the commencement of this section.

New section 439(4) provides that, for applying section 11 of the Act in relation to a child after the commencement, a reference to a child's criminal history is taken to include any previous cautions administered to the child for an offence.

New section 439(5) provides a definition of *new section 6*.

New section 440 provides that new part 8, division 7 applies in relation to detainee information about a child whether the violent offence or sexual offence for which the child has been detained was committed before or after the commencement.

This means the new eligible persons register provisions will apply on commencement, regardless of when the offence was committed.

Clause 59 inserts a new definition of *criminal history* in schedule 4 (Dictionary).

Part 5 – Other amendments

Clause 60 provides that Schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

Amendment of Corrective Services Act 2006

Clause 1 contains a consequential amendment to a note in the *Corrective Services Act 2006* as a result of changes to section numbers of provisions that facilitate offenders eventually being subject to parole for child offences.

Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003

Clause 1 contains a consequential amendment to the *Dangerous Prisoners (Sexual Offenders) Act 2003* as a result of a change to a provision that results in an offender serving a period of detention as a term of imprisonment in a corrective services facility.

Amendment of Evidence Act 1977

Clause 1 makes a consequential amendment to the definition of *allegation of fact* in section 132C(5) of the *Evidence Act 1977* to update the reference to section 150(4A) of the *Youth Justice Act* with new section 150(9).

Amendment of Penalties and Sentences Act 1992

Clause 1 inserts a note into section 179J (Application of part) of the *Penalties and Sentences Act 1992* which provides that, under section 256A of the *Youth Justice Act 1992*, part 10B (Victim impact statements) of the *Penalties and Sentences Act 1992* also applies in relation to an offender who is a child.

Clause 2 makes a consequential amendment to the note in section 179K(3) of the *Penalties and Sentences Act 1992* to update the reference to section 150(1)(j) to new section 150(2).

Amendment of Police Powers and Responsibilities Act 2000

Clause 1 omits the note under section 365(3) in the *Police Powers and Responsibilities Act 2000* which referred to the repealed Principle 18 of the youth justice principles.

Amendment of Youth Justice Regulation 2016

Clause 1 makes a consequential amendment to section 38(1)(a)(ii) of the *Youth Justice Regulation 2016* to update the references to Principles 3 and 16 with Principles 4 and 17.