



Queensland

# **Youth Justice and Other Legislation Amendment Bill 2014**

**Includes amendments agreed during Consideration**





Queensland

# Youth Justice and Other Legislation Amendment Bill 2014

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# 2014

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## A Bill

for

**An Act to amend the *Childrens Court Act 1992*, the *Penalties and Sentences Act 1992* and the *Youth Justice Act 1992* for particular purposes, and to make minor or consequential amendments of other legislation as stated in schedule 1 for purposes related to those purposes**

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Youth Justice and Other Legislation Amendment Act 2014*.

## **Part 2 Amendment of Youth Justice Act 1992**

### **2 Act amended**

This part amends the *Youth Justice Act 1992*.

### **3 Amendment of s 13 (Police officer's power of arrest preserved in particular general circumstances)**

Section 13(1)(a)(iv), note—  
*omit.*

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

Section 42(1), after 'serious offence'—  
*insert—*

or an offence under section 59A

### **4 Insertion of new pt 5, div 1, hdg**

Part 5, before section 47—

*insert—*

## **Division 1      Bail generally**

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

Section 47(2)—

*omit.*

### **5      Insertion of new pt 5, div 2**

Part 5, after section 59—

*insert—*

## **Division 2      Offence committed while on bail**

### **59AA Definitions for div 2**

In this division—

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

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

### **59A Finding of guilt while on bail**

- (1) This section applies to a child if—
  - (a) the child is granted bail after being charged with an original offence; and
  - (b) a finding of guilt is later made against the child for a subsequent offence committed while on bail for the original offence.

[s 6]

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- (2) The finding of guilt made against the child for the subsequent offence is taken to be an offence against this Act.

Maximum penalty (subject to part 7)—20 penalty units or 1 year's imprisonment.

- (3) For this section, if a finding of guilt is made against the child for more than 1 subsequent offence arising out of the same, or the same set of, circumstances, subsection (2) applies to only 1 of the subsequent offences.

### **59B Proceedings for offence against s 59A**

- (1) A proceeding for an offence under section 59A—
- (a) may be started without complaint and summons; and
  - (b) must be started immediately after the child is found guilty of the subsequent offence.
- (2) In a proceeding for the offence, a copy of the bail order issued by a court, or a copy of the child's undertaking for the original offence, is, unless the contrary is proved, sufficient proof the child was on bail for the original offence from the date of the bail order or undertaking.
- (3) Upon production to the court of the copy of the bail order or copy of the child's undertaking the court must immediately call on the child to prove why the child should not be convicted of an offence under section 59A.
- (4) In this section—  
*undertaking* see the *Bail Act 1980*, section 6.

## **6 Amendment of s 62 (Childrens Court judge)**

- (1) Section 62(c) and (e)—

*omit.*

(2) Section 62(d) and (f)—

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

**7 Amendment of s 74 (Chief executive's right of audience generally)**

Section 74(3)(d)—

*omit, insert—*

- (d) the making of a order under section 299A(2); and
- (e) the making of an order under the *Childrens Court Act 1992*, section 21C; and
- (f) without limiting paragraphs (a) to (e), matters on which the court considers the chief executive should be heard.

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

Part 6, division 9, heading, 'and review'—

*omit.*

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

(1) Section 117(1)—

*omit, insert—*

- (1) Subject to subsections (3) to (5), the *Justices Act 1886*, part 9, division 1, applies to either of the following—
  - (a) an order made by justices dealing summarily with a child charged with an offence;

[s 7C]

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- (b) an action taken by a Childrens Court magistrate under—
  - (i) section 240(2); or
  - (ii) section 240(3)(b).
- (1A) For the *Justices Act 1886*, section 222(1) an order or action mentioned in subsection (1) is taken to be an order on a complaint for an offence.
- (2) Section 117(1A) to (4)—  
*renumber* as section 117(2) to (5).

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

Part 6, division 9, subdivision 4—  
*omit.*

**8 Amendment of s 148 (Evidence of childhood finding of guilt not admissible against adult)**

- (1) Section 148(1), ‘In a proceeding’—  
*omit, insert—*  
Subject to subsection (3), in a proceeding
- (2) Section 148(3)—  
*omit, insert—*
  - (3) This section does not prevent a court that is sentencing an adult from—
    - (a) admitting evidence that the adult was found guilty as a child of an offence even if a conviction was not recorded; or
    - (b) receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court’s sentence.

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**9 Amendment of s 150 (Sentencing principles)**

(1) Section 150(2)(e)—

*omit.*

(2) Section 150—

*insert—*

- (5) This section overrides any other Act or law to the extent that, in sentencing a child for an offence, the court must not have regard to any principle that a detention order should be imposed only as a last resort.

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

Section 151—

*insert—*

- (3B) If a report is ordered under section 176B(2)(a), the report must contain the following—
- (a) an assessment of the child's physical and mental health;
  - (b) advice from the chief executive on whether—
    - (i) the child usually resides in an area prescribed for the purposes of a boot camp (vehicle offences) order; and
    - (ii) an appropriate boot camp centre provider is likely to be available;
  - (c) the details of the proposed boot camp program;
  - (d) an assessment of the suitability of the child participating in a boot camp (vehicle offences) order;
  - (e) a statement that the details of the boot camp program have been explained to the child in

[s 9B]

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a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand.

**9B Insertion of new s 176B**

After section 176A—

*insert—*

**176B Sentence orders—recidivist vehicle offences**

- (1) This section applies if a child—
  - (a) is found guilty of a vehicle offence before a court; and
  - (b) is a recidivist vehicle offender.
- (2) Before sentencing the child, the court must—
  - (a) order the chief executive to prepare a pre-sentence report; and
  - (b) have received and considered the report.
- (3) Without limiting section 175, the court must make a boot camp (vehicle offences) order for the child.

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

Section 177, '180A'—

*omit, insert—*

180B

**9D Insertion of new s 178B**

After section 178A—

*insert—*

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

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

**9E Insertion of new s 180B**

After section 180A—

*insert—*

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

- (1) This section applies if a court makes—

[s 10]

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

**10 Amendment of s 194D (Graffiti removal service to be performed within limited period)**

Section 194D(b), '245'—

*omit, insert—*

245(1)(aa)(ii)

**11 Amendment of s 198 (Community service to be performed within limited period)**

Section 198(b), '245'—

*omit, insert—*

245(1)(b)(ii)

**11A Insertion of new pt 7, div 9A**

Part 7—

*insert—*

## **Division 9A      Boot camp (vehicle offences) order**

### **206A Boot camp (vehicle offences) order**

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

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

***vehicle offence*** means—

[s 12]

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- (a) an offence, with or without a circumstance of aggravation, against the Criminal Code, section 408A; or
- (b) an attempt to commit an offence mentioned in paragraph (a).

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

- (1) A boot camp (vehicle offences) order must—
  - (a) be for a period of at least 3 months but not more than 6 months; and
  - (b) contain requirements of the boot camp order.
- (2) The requirements of the boot camp order apply to a boot camp (vehicle offences) order as if reference to the boot camp order were a reference to the boot camp (vehicle offences) order.
- (3) The BCO program provisions apply to the boot camp (vehicle offences) order.
- (4) In this section—

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

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

**12 Omission of s 208 (Detention must be only appropriate sentence)**

Section 208—

*omit.*

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

Section 209(3), 'or review'—

*omit.*

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

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

*omit.*

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

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

*omit.*

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

Section 226E(4), 'order,'—

*omit, insert—*

order or boot camp (vehicle offences) order,

**12E Amendment of s 226G (Program period)**

(1) Section 226G(1), 'when the boot camp order'—

*omit, insert—*

when the boot camp order or boot camp (vehicle offences) order

(2) Section 226G(1)(a), 'order'—

*omit, insert—*

order or boot camp (vehicle offences) order

[s 13]

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

**13 Amendment of s 234 (Court may allow publication of identifying information)**

- (1) Section 234, heading, after ‘information’—  
*insert—*  
**of first-time offender**
- (2) Section 234, ‘child’—  
*omit, insert—*  
first-time offender
- (3) Section 234(2)(c), ‘child’s’—  
*omit, insert—*  
first-time offender’s

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

Section 237(3)—

*omit, insert—*

- (3) However, subsection (2) does not apply if the chief executive—
  - (a) for a community based order that is a boot camp order or boot camp (vehicle offences) order—reasonably believes the child has contravened the order by leaving the boot

camp centre stated in the order without the chief executive's written consent; or

- (b) otherwise—does not know the child's whereabouts and can not reasonably find out.

**15 Amendment of s 238 (Chief executive's application on contravention)**

Section 238(6)(b)(ii)—

*omit, insert—*

- (ii) that the chief executive—
- (A) does not know the child's whereabouts and can not reasonably find out; or
  - (B) reasonably believes the child would not comply with a summons; or
  - (C) reasonably believes the child has contravened the order by leaving the boot camp centre stated in the order without the chief executive's written consent.

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

- (1) Section 240(2)(a), 'conditional'—

*omit, insert—*

boot camp (vehicle offences) order,  
conditional

- (2) Section 240(2)—

*insert—*

[s 15B]

---

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

(3) Section 240(2)(ab) to (c)—

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

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

*omit, insert*—

boot camp (vehicle offences) order,  
conditional

(5) Section 240(3)(b)—

*insert*—

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

(6) Section 240(3)(b)(ia) to (iii)—

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

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

(1) Section 241(2)(a), ‘conditional’—

*omit, insert*—

boot camp (vehicle offences) order,  
conditional

(2) Section 241(2)—

*insert*—

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

(3) Section 241(2)(ab) to (c)—

*renumber* as section 241(2)(b) to (d).

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

- (1) Section 242(2)(a), ‘conditional’—

*omit, insert—*

boot camp (vehicle offences) order,  
conditional

- (2) Section 242(2)—

*insert—*

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

- (3) Section 242(2)(ab) to (c)—

*renumber* as section 242(2)(b) to (d).

- (4) Section 242(3)(b)(i), ‘conditional’—

*omit, insert—*

boot camp (vehicle offences) order,  
conditional

- (5) Section 242(3)(b)—

*insert—*

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

- (6) Section 242(3)(b)(ia) to (iii)—

*renumber* as section 242(3)(b)(ii) to (iv).

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

- (1) Section 243(2)(a), ‘conditional’—

*omit, insert—*

boot camp (vehicle offences) order,  
conditional

[s 15E]

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(2) Section 243(2)—

*insert—*

(ab) for a boot camp (vehicle offences)  
order—section 246AA(1)(a);

(3) Section 243(2)(ab) to (c)—

*renumber* as section 243(2)(b) to (d).

(4) Section 243(4)(a), ‘conditional’—

*omit, insert—*

boot camp (vehicle offences) order,  
conditional

(5) Section 243(4)—

*insert—*

(ab) for a boot camp (vehicle offences)  
order—section 246AA(1)(a);

(6) Section 243(4)(ab) to (c)—

*renumber* as section 243(4)(b) to (d).

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

(1) Section 244(2)(a), ‘conditional’—

*omit, insert—*

boot camp (vehicle offences) order,  
conditional

(2) Section 244(2)—

*insert—*

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

(3) Section 244(2)(ab) to (c)—

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

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

(1) Section 245, heading, 'conditional'—

*omit, insert*—

**boot camp (vehicle offences) order, conditional**

(2) Section 245(1)(d), 'conditional'—

*omit, insert*—

boot camp (vehicle offences) order,  
conditional

(3) Section 245(6)—

*omit.*

(4) Section 245(7)—

*renumber* as section 245(6).

**17 Amendment of s 246 (Court's power on breach of conditional release order)**

Section 246(6)—

*omit.*

**18 Amendment of s 246A (Court's power on breach of boot camp order)**

Section 246A(8)—

*omit.*

**18A Insertion of new s 246AA**

After section 246—

*insert*—

[s 18A]

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

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

*Example—*

The court may vary a curfew requirement.

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

*Example—*

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

- (5) The onus is on the child to satisfy the court it should permit the child this further opportunity.

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

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

Section 252G(2), 'or review'—

*omit.*

**19 Amendment of s 263 (Management of detention centres)**

Section 263(5), '19 and 20'—

*omit, insert—*

18 and 19

**20 Replacement of pt 8, div 2A**

Part 8, division 2A—

*omit, insert—*

**Division 2A      Period of detention to be served as period of imprisonment**

**276A Definitions for div 2A**

In this division—

*period of detention*, for a person who is liable to serve a further period of detention cumulatively

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with a period of detention being served, includes the further period of detention.

*period of imprisonment* see the *Penalties and Sentences Act 1992*, section 4.

*prison transfer direction* see section 276C(1).

*relevant individual* see section 276B.

*transfer day* see section 276B(a)(iii).

*transferred detention order* see section 276B(b)(iii).

*unserved period of detention* see section 276B(a)(iii).

## **276B Application of div 2A**

This division applies to the following (each a *relevant individual*)—

- (a) a child who—
  - (i) has been ordered to serve a period of detention under a detention order; and
  - (ii) will, during the period of detention, turn 17 years; and
  - (iii) from the day the child turns 17 years (the *transfer day*), has to serve part of the period of detention for a period (the *unserved period of detention*) that is 6 months or more; and
  - (iv) will not, within 6 months after the transfer day, be required to be released under section 227;
- (b) an adult who—
  - (i) either—

- (A) is 17 years and is sentenced for an offence committed by the adult as a child; or
  - (B) was 17 years at the time the adult was found guilty of an offence committed as a child and is 18 years or more at the time the adult is sentenced for the offence; and
- (ii) is ordered to serve a period of detention under a detention order (the *transferred detention order*) that is 6 months or more; and
  - (iii) will not, within 6 months after being sentenced, be required to be released under section 227.

### **276C Chief executive must make prison transfer direction**

- (1) Within 28 days after the child is sentenced to serve a period of detention, the chief executive must give a written direction (a *prison transfer direction*) to—
  - (a) the child; and
  - (b) the chief executive (corrective services).
- (2) The prison transfer direction must state—
  - (a) the transfer day; and
  - (b) that the child is to be transferred to a corrective services facility on the transfer day; and
  - (c) that the unserved period of detention must be served as a period of imprisonment.
- (3) If the child can not be transferred on the transfer day, the child must be transferred as soon as practicable after that day.

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### **276D Application of Corrective Services Act 2006**

- (1) The *Corrective Services Act 2006* applies to the relevant individual.
- (2) A prison transfer direction or a transferred detention order is taken for all purposes to be a sentence to a period of imprisonment equal to the unserved period of detention or the period of detention.
- (3) Subject to subsection (4), the relevant individual must be released on parole on the day the relevant individual would have been released under a supervised release order as if the prison transfer direction had not been given or transferred detention order had not been made.
- (4) Subsection (3) does not prevent—
  - (a) the earlier release of the relevant individual under an exceptional circumstances parole order; or
  - (b) the continued custody of the relevant individual for the unserved part of any other sentence of imprisonment imposed against the relevant individual.

### **276E Application of Judicial Review Act 1991**

- (1) The *Judicial Review Act 1991*, part 4 does not apply to a decision of the chief executive to give a prison transfer direction.
- (2) Subject to subsection (3), unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial*

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*Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (3) The *Judicial Review Act 1991*, part 5 applies to the decision to the extent it is affected by jurisdictional error.

## 21 Insertion of new s 299A

Part 9, division 3—

*insert—*

### **299A Prohibition of publication of identifying information about a child who is not a first-time offender**

- (1) This section applies in a proceeding before a court for a child who—
  - (a) has been charged with an offence; and
  - (b) is not a first-time offender.
- (2) The court may, at any time during a proceeding, make an order it considers is in the interests of justice prohibiting the publication of identifying information about the child (a ***publication prohibition order***).
- (3) The court may make a publication prohibition order—
  - (a) on its own initiative; or
  - (b) on application by a relevant party.
- (4) In considering whether it would be in the interests of justice to make a publication

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prohibition order, the court must have regard to the following—

- (a) the number of the child's previous findings of guilt;
  - (b) the seriousness of the offence;
  - (c) the period between the proceeding and any previous offence committed by the child;
  - (d) the need to protect the community;
  - (e) the effect of publication on—
    - (i) the safety of the child; or
    - (ii) the rehabilitation of the child; or
    - (iii) the safety or wellbeing of a person other than the child;
  - (f) any other relevant matter.
- (5) A person must not publish identifying information about the child if the court has made a publication prohibition order in relation to the child.

Maximum penalty (subject to part 7)—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
  - (b) for a corporation—1000 penalty units.
- (6) In this section—

*relevant party* means—

- (a) the child; or
- (b) a parent or other member of the child's family; or
- (c) a party or person representing a party to the proceeding, including, for example, a police officer or another person in charge of a case

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against the child in relation to the offence  
the subject of the proceeding; or

- (d) the chief executive; or
- (e) the chief executive (child safety); or
- (f) if the child is an Aboriginal or Torres Strait Islander person—
  - (i) a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or
  - (ii) a representative of the community justice group in the child's community who is to make submissions that are relevant to sentencing the child.

## **22 Replacement of s 301 (Prohibition of publication of identifying information about a child)**

Section 301—

*omit, insert—*

### **301 Prohibition of publication of identifying information about a first-time offender**

- (1) A person must not publish identifying information about a first-time offender.

Maximum penalty (subject to part 7)—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
  - (b) for a corporation—1000 penalty units.
- (2) Subsection (1) does not apply to—
    - (a) publication in a way permitted by a court order; or

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(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 first-time offender if the chief executive is satisfied the publication is necessary to ensure a person's safety.

**23 Amendment of s 303 (Chief executive must collect and keep information)**

Section 303(3), 'section 301'—

*omit, insert—*

sections 299A and 301

**24 Insertion of new pt 11, div 11**

Part 11—

*insert—*

**Division 11 Transitional provisions for  
Youth Justice and Other  
Legislation Amendment  
Act 2014**

**358 Definitions for div 11**

In this division—

*amending Act* means the *Youth Justice and Other Legislation Amendment Act 2014*.

*commencement* means the commencement of this section.

*pre-amended Act* means the *Youth Justice Act 1992* as in force immediately before the commencement.

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### **358A Uncommenced applications for review of sentence orders**

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

### **359 Evidence of childhood finding of guilt**

- (1) This section applies to a proceeding against an adult for an offence.
- (2) This Act, as amended by the amending Act, applies even if 1 or both of the following happened before the commencement—
  - (a) the commission of the offence;
  - (b) the start of the proceeding for the offence.

### **360 Detention orders and sentencing principles**

- (1) This section applies to a child who is found guilty of an offence after the commencement.

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- (2) This Act, as amended by the amending Act, applies even if 1 or both of the following happened before the commencement—
- (a) the commission of the offence;
  - (b) the start of the proceeding for the offence.

### **361 Publication of identifying information**

This Act, as amended by the amending Act, applies to a proceeding against a child or first-time offender for an offence started before the commencement.

### **362 Court's power on particular proceedings**

This Act, as amended by the amending Act, applies to a proceeding against a child under the pre-amended Act, section 245, 246 or 246A that is started before the commencement.

### **363 Application of amendments about transfer direction for a child who will turn 17 years**

- (1) This section applies to a child who—
- (a) is subject to a detention order made after the commencement; or
  - (b) at the commencement—
    - (i) is serving a period of detention; and
    - (ii) during the period of detention, will turn 17 years; and
    - (iii) on the transfer day, will have 6 months or more to be served in detention.
- (2) This Act applies to the child even if 1 or both of the following happened before the commencement—

- (a) the commission of the offence for which the child is subject to a detention order or is serving a period of detention;
  - (b) the start of the proceeding for the offence.
- (3) In this section—  
*transfer day* see section 276B.

### **364 Application of amendments about transfer direction for a person who is 17 years**

- (1) This section applies to a person who, at the commencement—
  - (a) is 17 years or more and is serving a period of detention; and
  - (b) is not subject to an order made under the pre-amended Act, section 276B or 276C; and
  - (c) will have 6 months or more to be served in detention.
- (2) The chief executive must, as soon as practicable after the commencement, comply with section 276C.

### **365 Applications not granted before commencement**

- (1) This section applies to an application made under the pre-amended Act, section 276C or 276E but not granted before the commencement.
- (2) The application is taken to have never been made.

### **366 Orders made before commencement**

A transfer order made under the pre-amended Act, section 276B or 276C in relation to a person, and in

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force immediately before the commencement,  
continues to apply to the person.

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

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

## **25 Amendment of sch 1 (Charter of youth justice principles)**

- (1) Schedule 1, item 17—  
*omit.*
- (2) Schedule 1, items 18 to 20—  
*renumber* as items 17 to 19.

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

- (1) Schedule 2, item 5, ‘conditional’—  
*omit, insert—*  
boot camp (vehicle offences) orders, conditional
- (2) Schedule 2—  
*insert—*
  - 14 Areas to be prescribed for the purpose of a boot camp (vehicle offences) order.

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## 26 Amendment of sch 4 (Dictionary)

(1) Schedule 4—

*insert—*

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

***first-time offender*** means a child who at any time during a proceeding has not been found guilty of an offence.

***original offence*** see section 59AA.

***period of detention***, for part 8, division 2A, see section 276A.

***period of imprisonment***, for part 8, division 2A, see section 276A.

***prison transfer direction***, for part 8, division 2A, see section 276C(1).

***recidivist vehicle offender*** means a child who—

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

***relevant individual***, for part 8, division 2A, see section 276B.

***subsequent offence*** see section 59AA.

***transfer day***, for part 8, division 2A, see section 276B(a)(iii).

***transferred detention order***, for part 8, division 2A, see section 276B(b)(iii).

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*unserved period of detention*, for part 8, division 2A, see section 276B(a)(iii).

*vehicle offence* see section 206A(4).

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

*omit, insert—*

boot camp (vehicle offences) order, conditional

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

*omit, insert—*

(vehicle offences) order or boot camp order

- (2) Schedule 4, definition *publish*, after 'radio,'—

*insert—*

internet,

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

*omit, insert—*

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

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

## **Part 3**                      **Amendment of Childrens Court Act 1992**

### **27**      **Act amended**

This part amends the *Childrens Court Act 1992*.

### **28**      **Amendment of s 3 (Definitions)**

Section 3—

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*insert—*

***child's community*** means the child's Aboriginal or Torres Strait Islander community, whether it is—

- (a) an urban community; or
- (b) a rural community; or
- (c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

***community justice group***, for a child, means a group of persons made up of any of the following—

- (a) an entity within the child's community, other than a department of government, that is involved in the provision of any of the following—
  - (i) information to a court about Aboriginal or Torres Strait Islander offenders;
  - (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
  - (iii) other activities relating to local justice issues;
- (b) elders or other respected persons of the child's community.

***first-time offender***, for part 4, division 2, see section 21A.

***interested person***, for part 4, division 2, see section 21A.

***non-youth justice matter***, for part 4, division 2, see section 21A.

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*relevant person*, for part 4, division 2, see section 21A.

*youth justice matter*, for part 4, division 2, see section 21A.

**29 Insertion of new pt 4, div 1, hdg**

Part 4, before section 18—

*insert—*

**Division 1                      Constitution and sitting  
times**

**30 Omission of s 20 (Who may be present at a proceeding)**

Section 20—

*omit.*

**31 Insertion of new pt 4, div 2**

After section 21—

*insert—*

**Division 2                      Closed and open  
proceedings**

**21A Definitions for div 4**

In this division—

*first-time offender* means a child who, at any time during a proceeding for a youth justice matter, has not been found guilty of an offence.

*interested person* means—

(a) a person who is engaged in—

(i) a course of professional study relevant to the operation of the court; or

- (ii) research approved by the chief executive; or
- (b) a person who, in the court's opinion, will assist the court.

***non-youth justice matter*** means a proceeding under the *Adoption Act 2009* or the *Child Protection Act 1999*.

***relevant person***, for a proceeding in relation to a child, means—

- (a) the child; or
- (b) for a non-youth justice matter—a parent or other adult member of the child's family; or
- (c) for a youth justice matter—a parent or other member of the child's family; or
- (d) a witness giving evidence in the proceeding; or
- (e) a party or person representing a party to the proceeding, including, for example, a police officer or another person in charge of a case against the child in relation to the offence that is the subject of the proceeding; or
- (f) the chief executive; or
- (g) if the child is an Aboriginal or Torres Strait Islander person—
  - (i) a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families; or
  - (ii) a representative of the community justice group in the child's community who is to make submissions that are relevant to sentencing the child.

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*youth justice matter* means a proceeding under the *Youth Justice Act 1992*.

### **21B Who may be present at non-youth justice matters or particular youth justice matters**

- (1) In a proceeding before the court for a non-youth justice matter in relation to a child or for a youth justice matter in relation to a child who is a first-time offender, the court must exclude from the room in which the court is sitting a person who is not—
  - (a) a relevant person for the proceeding; or
  - (b) an interested person whom the court permits to be present under subsection (2).
- (2) The court may permit an interested person to be present.
- (2A) Also, for a youth justice matter in relation to a child who is a first-time offender, the court may permit to be present—
  - (a) a representative of the media; or
  - (b) a person if, in the court’s opinion—
    - (i) the person has a proper interest in the proceeding; and
    - (ii) the person’s presence would not be prejudicial to the interests of the child.
- (3) Subsection (1) applies subject to any order made by the court under the *Evidence Act 1977*, section 21A—
  - (a) excluding any person (including a defendant) from the place in which the court is sitting; or
  - (b) permitting any person to be present while a special witness within the meaning of that section is giving evidence.

- 
- (4) Also, subsection (1) applies even though the court's jurisdiction is being exercised conjointly with another jurisdiction.
  - (5) However, subsection (1) does not prevent an infant or young child in the care of an adult being present in court with the adult.
  - (6) Subsection (1) does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment.

### **21C Who may be present at other youth justice matters**

- (1) A proceeding before the court for a youth justice matter in relation to a child who is not a first-time offender must be held in open court, other than if the court—
  - (a) orders the court be closed; or
  - (b) excludes a person under section 21E.
- (2) The court may close the court to the public or particular persons if it considers it is necessary and desirable in the interests of justice.
- (3) The court may order the court to be closed for all or part of the proceedings—
  - (a) on its own initiative; or
  - (b) on application under section 21D.
- (4) However, an order under subsection (3) must not exclude from the room in which the court is sitting—
  - (a) a relevant person; or
  - (b) if a witness is a complainant within the meaning of the *Criminal Law (Sexual Offences) Act 1978*—a person whose presence will provide emotional support to the witness.

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- (5) Subsection (4) applies subject to any order made by the court under the *Evidence Act 1977*, section 21A—
  - (a) excluding any person (including a defendant) from the place in which the court is sitting; or
  - (b) permitting any person to be present while a special witness within the meaning of that section is giving evidence.
- (6) Also, despite an order under subsection (3), the court may permit to be present—
  - (a) an interested person; or
  - (b) a representative of the media; or
  - (c) a person, in the court’s opinion—
    - (i) who has a proper interest in the proceeding; and
    - (ii) whose presence would not be prejudicial to the interests of the child.
- (7) Subsection (2) does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment.

### **21D Application for closed proceedings**

- (1) An application to the court to close the court for all or a part of the proceeding may be made by—
  - (a) a relevant person for the proceeding; or
  - (b) the chief executive (child protection); or
  - (c) the child guardian.
- (2) An application under subsection (1) may be made at any time during the proceeding.
- (3) In this section—

*chief executive (child protection)* means the chief executive of the department in which the *Child Protection Act 1999* is administered.

*child guardian* means the commissioner under the *Commission for Children and Young People and Child Guardian Act 2000*.

## **21E Exclusion of public in particular youth justice matters**

- (1) This section applies to a proceeding in relation to a child who is charged with a sexual offence.
- (2) When a complainant is giving evidence in any examination of a witness or trial, the court must exclude from the room in which it is sitting all persons other than—
  - (a) a person representing the complainant; or
  - (b) the defendant and any person representing the defendant; or
  - (c) a Crown law officer or a person authorised by a Crown law officer; or
  - (d) the prosecutor; or
  - (e) any person whose presence is, in the court's opinion, necessary or desirable for the proper conduct of the examination or trial; or
  - (f) any person whose presence will provide emotional support to the complainant; or
  - (g) if the complainant is under or apparently under 17 years—the parent or guardian of the child unless, in the court's opinion, the presence of that person would not be in the child's interests; or

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- (h) any person who makes application to the court to be present and whose presence, in the court's opinion—
  - (i) would serve a proper interest of the applicant; and
  - (ii) would not be prejudicial to the interests of the complainant; or
- (i) the chief executive.
- (3) Subsection (2) does not limit the power of the court under any other provision or rule of law to exclude from the room in which it is sitting any person, including the defendant.
- (4) In this section—

***complainant*** means a person in respect of whom a sexual offence is alleged to have been committed.

***defendant*** means a person charged with having committed a sexual offence.

***prescribed sexual offence*** means any of the following offences—

- (a) rape;
- (b) attempt to commit rape;
- (c) assault with intent to commit rape;
- (d) an offence defined in the Criminal Code, section 352.

***sexual offence*** means any offence of a sexual nature, and includes a prescribed sexual offence.

## 32 Insertion of new pt 7, div 4

Part 7—

*insert—*

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**Division 4**      **Transitional provision for  
Youth Justice and Other  
Legislation Amendment  
Act 2014**

**37 Application of provision about open and  
closed proceedings**

Part 4, division 2 applies to a proceeding for an offence even if 1 or both of the following happened before the commencement of this section—

- (a) the commission of the offence;
- (b) the start of the proceeding for the offence.

**Part 4**                      **Amendment of Penalties and  
Sentences Act 1992**

**33 Act amended**

This part amends the *Penalties and Sentences Act 1992*.

**34 Amendment of s 9 (Sentencing guidelines)**

- (1) Section 9(2)(a)—  
*omit.*
- (2) Section 9(2)(b) to (r)—  
*renumber* as section 9(2)(a) to (q).
- (3) Section 9(3)—  
*omit.*
- (4) Section 9(4), ‘an offender to whom subsection (3) applies’—  
*omit, insert—*

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a violent offender

(5) Section 9(5)—

*omit, insert—*

(5) In sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years, the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.

(6) Section 9(5A), '(5)(b)'—

*omit, insert—*

(4)

(7) Section 9(6), '(5)'—

*omit, insert—*

(4)

(8) Section 9(6A)—

*omit.*

(9) Section 9(6B), 'an offender to whom subsection (6A) applies'—

*omit, insert—*

a child-images offender

(10) Section 9(7), '(2)(p)'—

*omit, insert—*

(2)(o)

(11) Section (9)(7A) and (7B)—

*omit, insert—*

(7A) In sentencing an offender, a court must not have regard to the following—

(a) the offender levy imposed under section 179C;

(b) whether or not the offender—

- (i) may become, or is, the subject of a dangerous prisoners application; or
- (ii) may become subject to an order because of a dangerous prisoners application.

(12) Section 9(9), '(8)'—

*omit, insert—*

(10)

(13) Section 9—

*insert—*

- (9A) This section overrides any other Act or law to the extent that, in sentencing an offender for any offence, the court must not have regard to any principle that a sentence of imprisonment should be imposed only as a last resort.

(14) Section 9(10)—

*insert—*

***child-images offender*** means an offender being sentenced for any of the following offences—

- (a) an offence against the *Classification of Computer Games and Images Act 1995*, section 28, if the objectionable computer game is a child abuse computer game under the Act;
- (b) an offence against any of the following provisions of the *Classification of Films Act 1991*—
  - (i) section 41(3) or 42(3) or (4);
  - (ii) section 43, if the offence involves a child abuse film under the Act;
- (c) an offence against any of the following provisions of the *Classification of Publications Act 1991*—

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- (i) section 14;
- (ii) section 12, 13, 15, 16 or 17, if the offence involves a child abuse publication or child abuse photograph under the Act;
- (d) an offence against the Criminal Code, section 228A, 228B, 228C or 228D.

***violent offender*** means an offender being sentenced for any offence—

- (a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or
- (b) that resulted in physical harm to another person.

- (15) Section 9(4) to (10)—  
*renumber* as section 9(3) to (13).

**35 Amendment of s 172D (Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003)**

Section 172D, note, ‘9(7B)’—

*omit, insert*—

9(9)(b)

**36 Amendment of s 195B (Access to court files by representative of community justice group in offender’s community)**

Section 195B(2), ‘9(2)(o)’—

*omit, insert*—

9(2)(n)

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**37 Amendment of s 195C (Confidentiality)**

Section 195C(2)(a)(i), '9(2)(o)'—

*omit, insert—*

9(2)(n)

**38 Amendment of s 195D (Protection from liability)**

Section 195D(1)(b), '9(2)(o)'—

*omit, insert—*

9(2)(n)

**39 Insertion of new pt 14, div 9**

Part 14—

*insert—*

**Division 9 Transitional provision for  
Youth Justice and Other  
Legislation Amendment  
Act 2014**

**234 Sentencing guidelines**

This Act applies to the sentencing of an offender convicted after the commencement of this section even if 1 or both of the following happened before the commencement—

- (a) the commission of the offence the subject of the conviction;
- (b) the start of the proceeding for the offence.

[s 40]

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## **Part 5**                      **Minor and consequential amendments**

### **40**      **Acts amended in sch 1**

Schedule 1 amends the Acts mentioned in it.

## **Schedule 1      Minor and consequential amendments**

section 40

### **Police Powers and Responsibilities Act 2000**

**1      Section 365(3), editor's note —**

*omit.*

### **Victims of Crime Assistance Act 2009**

**1      Section 15(3), note, paragraph (a), 'section 9(2)(c)(i)'—**

*omit insert—*

section (9)(2)(b)(i)

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