

Queensland

Youth Justice Act 1992

Current as at [Not applicable]

Indicative reprint note
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The point-in-time date for this indicative reprint is the introduction date for the Human Rights Bill 2018—31 October 2018.

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Queensland

Youth Justice Act 1992

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Youth Justice Act 1992

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

Part 1 Preliminary

1 Short title

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

2 Objectives of Act

The principal objectives of this Act are—

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

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

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

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

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

(i) rehabilitate children who commit offences; and

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

3 Youth justice principles

(1) Schedule 1 sets out a charter of youth justice principles.

(2) The principles underlie the operation of this Act.

4 Definitions

The dictionary in schedule 4 defines particular words used in this Act.

5 Note in text

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

7 Meaning of police officer *starting a proceeding*

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

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

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

8 Meaning of *serious offence*

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

(a) a life offence; or

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

(2) An offence is not a serious offence if—

(a) it is a relevant offence under the Criminal Code, section 552BA; or

Editor's note—

Criminal Code, section 552BA (Charges of indictable offences that must be heard and decided summarily)

(b) it is an offence that is the subject of a charge to which the Criminal Code, section 552A or 552B applies; or

Editor's note—

Criminal Code, section 552A (Charges of indictable offences that must be heard and decided summarily on prosecution election) or 552B (Charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial)

(c) under the *Drugs Misuse Act 1986*, section 13, proceedings for a charge for the offence may be taken summarily; or

Editor's note—

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

(d) under the *Drugs Misuse Act 1986*, section 14, proceedings for a charge for the offence may be taken summarily.

Note—

Proceedings for a charge for an offence may not be taken summarily under section 14 if the prosecution allegations include an allegation as to a commercial purpose.

Editor's note—

Drugs Misuse Act 1986, section 14 (Other offences that may be dealt with summarily if no commercial purpose alleged)

(2A) If it is necessary for the purposes of subsection (2) to have reference to the table of excluded offences included in the Criminal Code, section 552BB, a reference in that table to the circumstance that the offender does not plead guilty to an offence is taken to be a reference to a child not admitting to committing the offence.

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

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9 Meaning of court that made order

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

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

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

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

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

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

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

Part 2 Special provisions about policing and children

Division 1 Police officer must consider appropriate way to proceed

10 Division does not apply to 2 general ways of proceeding

This division has no effect on—

(a) the charging of a child under the *Justices Act 1886*, section 42(1A); or

(b) a proceeding on an indictment.

11 Police officer to consider alternatives to proceeding against child

(1) Unless otherwise provided under this division, a police officer, before starting a proceeding against a child for an offence other than a serious offence, must first consider whether in all the circumstances it would be more appropriate to do 1 of the following—

(a) to take no action;

(b) to administer a caution to the child;

(c) to refer the offence to the chief executive for a restorative justice process;

(d) if the offence is a minor drugs offence within the meaning of the *Police Powers and Responsibilities Act 2000* and the child may be offered an opportunity to attend a drug diversion assessment program under section 379 of that Act—to offer the child that opportunity in accordance with that section;

(e) if the offence is a graffiti offence and the child may be offered an opportunity to attend a graffiti removal program under the *Police Powers and Responsibilities Act 2000*, section 379A—to offer the child that opportunity in accordance with that section.

Note—

Because of section 134, a police officer must consider offering the same opportunities for diversion from the court system as apply to a child to a person who committed an offence as a child but is now an adult.

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

(a) the circumstances of the alleged offence; and

(b) the child's criminal history, any previous cautions administered to the child for an offence and, if the child has been in any other way dealt with for an offence under any Act, the other dealings.

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(3) If necessary, the police officer must delay starting the proceeding in order to comply with a requirement under subsection (1) or (2).

(4) If, on complying with subsections (1) and (2), the police officer considers it would be more appropriate to act as mentioned in subsection (1)(a), (b), (c), (d) or (e), then the police officer must do so.

(5) If, on complying with subsections (1) and (2), the police officer considers it would not be more appropriate to act as mentioned in subsection (1)(a), (b), (c), (d) or (e), the police officer may start a proceeding against the child for the offence.

(6) The police officer may take the action mentioned in subsection (1)(a), (b), (c) or (e) even though—

(a) action of that kind has been taken in relation to the child on a previous occasion; or

(b) a proceeding against the child for another offence has already been started or has ended.

(7) Subsection (1) does not prevent a police officer from taking the action mentioned in subsection (1)(a) to (c) for a serious offence.

12 Preferred way for police officer to start proceedings

A police officer starting a proceeding against a child for an offence, other than a serious offence, must start the proceeding by way of complaint and summons or notice to appear, unless otherwise provided under this Act.

13 Police officer's power of arrest preserved in particular general circumstances

(1) A police officer may use the police officer's power of arrest under the *Police Powers and Responsibilities Act 2000*, section 365(3), without a warrant, to arrest a child for an offence without regard to sections 11 and 12 only if the police officer believes on reasonable grounds—

(a) the arrest is necessary—

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

(ii) to obtain or preserve, or prevent concealment, loss or destruction of, evidence relating to the offence; or

(iii) to prevent the fabrication of evidence; or

(iv) to ensure the child's appearance before a court; or

Note—

Under the youth justice principles in schedule 1, it is a principle of this Act that a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

(b) the child is an adult; or

(c) the child is contravening section 278 or is unlawfully at large.

(2) In deciding for subsection (1)(b) whether the police officer had reasonable grounds, a court may have regard to the child's apparent age and the circumstances of the arrest.

(3) Also, a police officer may use the police officer's power of arrest under the *Police Powers and Responsibilities Act 2000*, section 365(2), without a warrant, to arrest a child without regard to sections 11 and 12.

(4) Also, a police officer may use the police officer's power of arrest under a warrant issued under the *Bail Act 1980* without regard to sections 11 and 12.

(5) To remove any doubt, it is declared that this section does not affect a police officer's power under the *Police Powers and Responsibilities Act 2000*, section 365(3), to arrest a child without warrant for a serious offence.

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Division 2 Cautioning

14 Purpose of caution

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

15 Police officer may administer a caution

(1) A police officer instead of bringing a child before a court for an offence may administer a caution to the child.

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

(3) The caution is not part of the child's criminal history.

16 Conditions for administration of police caution

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

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

(b) consents to being cautioned.

(2) A police officer who administers a caution, or who requests the administration of a caution under section 17, must, if practicable, arrange to be present at the administration of the caution—

(a) an adult chosen by the child; or

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

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

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

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

(1) If a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, an authorised officer mentioned in section 16—

(a) must consider whether there is a respected person of the community who is available and willing to administer the caution; and

(b) if a respected person of the community is available and willing to administer the caution—must request the person to administer the caution.

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

18 Caution procedure must involve explanation

(1) A police officer who administers, or requests the administration of, a caution to a child must take steps to ensure that the child and the person present under section 16(2) understand the purpose, nature and effect of the caution.

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

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

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

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

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

19 Caution procedure may involve apology to victim

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

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

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

(b) the child is willing to apologise; and

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

20 Child must be given a notice of caution

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

(a) administered the caution; or

(b) under section 17, requested the administration of the caution;

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

(2) The notice must state—

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

(b) the time and date the caution was administered; and

(c) the child's name; and

(d) the substance of the offence; and

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

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

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

(h) the nature and effect of a caution.

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

(4) A document mentioned in subsection (3) is not evidence that the child committed the offence.

21 Childrens Court may dismiss charge if caution should have been administered or no action taken

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

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

(b) the court is satisfied that the child should have been cautioned instead of being charged or no action should have been taken against the child.

(2) In deciding the application, the Childrens Court may have regard to—

(a) any other cautions administered to the child for any offence; and

(b) whether any previous conference agreements have been made by the child.

(3) If the court dismisses a charge under subsection (1) because the child should have been cautioned, the court may—

(a) administer a caution to the child; or

(b) direct a police officer to administer a caution to the child as directed by the court.

(4) The caution is not part of the child's criminal history.

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Division 3 Referral for restorative justice process

22 When police officer may refer offence for restorative justice process

(1) This section applies if a child admits committing an offence to a police officer.

(2) Instead of bringing the child before a court for the offence, the police officer may, by written notice given to the chief executive, refer the offence to the chief executive for a restorative justice process.

(3) However, the police officer may make the referral only if—

(a) the child indicates willingness to comply with the referral; and

(b) having regard to the deciding factors, the officer considers—

(i) a caution is inappropriate; and

(ii) a proceeding for the offence would be appropriate if the referral were not made; and

(iii) the referral is a more appropriate way of dealing with the offence than starting a proceeding.

(4) The ***deciding factors*** for referring an offence to the chief executive for a restorative justice process are—

(a) the nature of the offence; and

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

(c) whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process.

(5) The police officer must inform the child generally of the restorative justice process and potential consequences for the child if he or she fails to properly participate in the process.

(6) If the referral is accepted by the chief executive, the chief executive must give written notice of the acceptance to the police officer and the child.

23 If restorative justice agreement is made as a consequence of referral for restorative justice process

(1) This section applies if—

(a) a police officer refers an offence committed by a child to the chief executive for a restorative justice process; and

(b) a restorative justice agreement is made as a consequence of the referral.

(2) The child is not liable to be prosecuted for the offence unless otherwise provided under this Act.

24 Powers of police officer if referral is unsuccessful or if child contravenes restorative justice agreement

(1) This section applies if a police officer refers an offence committed by a child to the chief executive for a restorative justice process and—

(a) the chief executive returns the referral to the officer under section 32(1); or

(b) the child fails to comply with a restorative justice agreement made as a consequence of the referral.

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

(a) the matters mentioned in section 11(2); and

(b) any participation by the child in the restorative justice process; and

(c) if a restorative justice agreement was made as a consequence of the referral—anything done by the child under the agreement.

(3) The police officer may—

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(a) take no action; or

(b) administer a caution to the child; or

(c) refer the offence to the chief executive for another restorative justice process; or

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

24A Childrens Court may dismiss charge if offence should have been referred to restorative justice process

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

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

(b) the court is satisfied the offence should have been referred to the chief executive for a restorative justice process under section 22, regardless of whether or not the child admitted committing the offence to the police officer.

(1A) In deciding the application, the Childrens Court may have regard to—

(a) any cautions administered to the child for any offence; and

(b) whether any previous restorative justice agreements have been made by the child.

(2) If the court dismisses the charge, the court may refer the offence to the chief executive for a restorative justice process.

(3) However, the dismissal of the charge does not prevent a police officer restarting a proceeding against the child for the offence or a court sentencing the child for the offence if—

(a) the chief executive returns the referral under section 32(1); or

(b) the child fails to comply with a restorative justice agreement made as a consequence of the referral.

(4) For part 3, the police officer is taken to be the referring authority for a referral made under subsection (2).

(5) If the court decides to—

(a) make an order of dismissal under the *Justices Act 1886*, section 149 and give the child a certificate of the dismissal; or

(b) give the child a certificate of dismissal under the Criminal Code, section 700;

the court must not give the child the certificate until the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral.

Division 4 Identifying particulars

25 Application by police officer for permission to take child's identifying particulars

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

- Criminal Code
- *Drugs Misuse Act 1986*
- *Police Service Administration Act 1990*
- *Regulatory Offences Act 1985*
- *Summary Offences Act 2005*
- *Weapons Act 1990*.

(2) A police officer (the ***applicant***) may apply to a Childrens Court magistrate (the ***court***) to have all or any of the identifying particulars of the child taken.

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

(a) the child; and

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

(c) the chief executive.

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

(5) On the application—

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

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

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

(a) someone has committed the charged offence;

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

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

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

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

(8) If the child will not be in custody when the particulars are taken, the order must require the child to report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take the identifying particulars.

(9) A child must not contravene the order.

Maximum penalty (subject to part 7)—10 penalty units.

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

(11) This section is subject to section 26.

(12) In this section—

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

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

26 Support person must be present when identifying particulars are taken

(1) In a proceeding for an offence, a court must not admit into evidence against a defendant identifying particulars taken from the defendant under section 25 unless the court is satisfied a support person chosen by the child was present when the identifying particulars were taken.

(2) Subsection (1) does not apply if—

(a) the prosecution satisfies the court there was proper and sufficient reason for the absence of a support person when the particulars were taken; and

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

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

(a) is an accomplice of the child; or

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

for the offence or another offence under investigation.

(4) Also, this section does not require that a police officer permit or cause to be present when the identifying particulars are

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taken a parent of the child whom the police officer suspects on reasonable grounds is a person against whom the offence under investigation is alleged to have been committed.

(5) This section does not limit the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion.

27 Destruction of identifying particulars taken under court order

(1) Identifying particulars taken from a child under an order under section 25 must be destroyed if the investigation for which the order was made does not result in a sentence order being made.

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

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

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

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

Note—

See the extended meaning of *charged offence* in section 25.

(3) An applicant who obtains an order to have identifying particulars taken from a child under section 25 must not fail to ensure the particulars are destroyed under this section, unless the applicant has a reasonable excuse for failing to do so.

(4) A failure to comply with subsection (3) may be dealt with as a breach of discipline under the *Police Service Administration Act 1990*.

28 Division does not limit other provisions

This division does not limit provisions of the *Police Powers and Responsibilities Act 2000* authorising the taking of someone's identifying particulars to the extent to which those provisions apply to a child.

Division 5 Statements

29 Support person must be present for statement to be admissible

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

(2) Subsection (1) does not apply if—

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

Examples—

1 There was a reasonable suspicion that allowing a support person to be present would result in an accomplice or accessory of the relevant person taking steps to avoid apprehension.

2 A support person was excluded under the *Police Powers and Responsibilities Act 2000*.

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

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

(a) is an accomplice of the child; or

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

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in relation to the offence or another offence under investigation.

(4) This section does not limit the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion.

Part 3 Restorative justice processes

Division 1 Preliminary

30 Object of part

The object of this part is to provide for the use of a restorative justice process for a child who commits an offence.

31 The restorative justice process

(1) This part applies if a police officer or a court (each a ***referring authority***) refers an offence to the chief executive for a restorative justice process.

(2) The restorative justice process is to be a conference.

(3) However, the restorative justice process is to be an alternative diversion program if—

(a) the referral is made by a police officer under section 22 or made by a court under section 24A or 164; and

(b) a conference can not be convened for any reason other than—

(i) the chief executive being unable to contact the child after reasonable inquiries; or

(ii) the child being unwilling to participate in the conference.

32 Returning referrals

(1) The chief executive may, by written notice given to the referring authority, return the referral if—

(a) the chief executive is unable to contact the child after reasonable inquiries; or

(b) the chief executive has made reasonable requirements of the child to attend an interview about the process and the child has failed to attend as required; or

(c) the chief executive considers it necessary for a victim of the offence to participate and the victim does not wish to participate or can not be located after reasonable inquiries; or

(d) during the restorative justice process the child denies committing the offence to the chief executive, a convenor or victim of the offence; or

(e) the chief executive is satisfied that an appropriate restorative justice agreement is unlikely to be made within a time the chief executive considers appropriate; or

(f) the chief executive considers that the referral is unsuitable for a restorative justice process; or

(g) a conference is convened for the referral and the convenor ends the conference without an agreement being made.

(2) The notice must state the reasons for returning the referral, and the reasons may be considered by a court in any later proceeding for sentencing the child for the offence.

(3) The referring authority must make reasonable efforts to inform the child that the referral has been returned.

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Division 2 Conferences

33 Object of division

This division provides for the use of a conference to allow a child, who commits an offence, and other concerned persons to consider or deal with the offence in a way that benefits all concerned.

34 Who may participate in conference

(1) The following persons are entitled to participate in the conference—

(a) the child;

(b) the victim;

(c) the convenor;

(d) a representative of the commissioner of the police service;

(e) a parent of the child;

(f) if requested by the child, 1 or more of the following—

(i) the child's legal representative;

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

(iii) another adult;

(g) if requested by the victim, 1 or more of the following—

(i) the victim's legal representative;

(ii) a member of the victim's family;

(iii) another adult;

(h) another person approved by the convenor.

Examples for paragraph (h)—

1 a representative of the chief executive

2 a person present for the purpose of training, research or education

3 for an Aboriginal or Torres Strait Islander child who is from an Aboriginal or Torres Strait Islander community, a respected person of the community or a representative of a community justice group that may be in the community

(2) To ensure that a victim of the offence is informed of his or her entitlement to participate in the conference, the referring authority must give the chief executive contact information for the victims of the offence.

(3) For subsection (1)(h), if the child is an Aboriginal or Torres Strait Islander person from an Aboriginal or Torres Strait Islander community, the convenor must consider inviting to attend the conference either or both of the following—

(a) a respected person of the community;

(b) if there is a community justice group in the community—a representative of the community justice group.

35 Convening conference

(1) The conference may be convened only if—

(a) the child and the convenor attend the conference; and

(b) there is a degree of victim participation in the conference through—

(i) the attendance of the victim or a representative of the victim; or

(ii) the use of pre-recorded communication recorded by the victim for use in the conference; or

(iii) a representative of an organisation that advocates on behalf of victims of crime.

(2) The convenor is responsible for convening the conference and must be independent of the circumstances of the offence.

(3) The conference must be directed towards making a conference agreement.

(4) If the child is not legally represented at the conference, the convenor must ensure the child—

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(a) is informed of the right to obtain legal advice; and

(b) has reasonable information about how to obtain legal advice and a reasonable opportunity to do so.

(5) The conference ends when a conference agreement is made or the convenor brings the conference to an end because—

(a) the child fails to attend the conference as required; or

(b) the child denies committing the offence at the conference; or

(c) the convenor concludes a participant's conduct or failure will result in a conference agreement being unlikely to be made; or

(d) the convenor concludes a conference agreement is unlikely to be made within a time the convenor considers appropriate.

(6) If the conference ends without a conference agreement but the convenor considers it is worthwhile persisting with efforts to make a conference agreement, the convenor may convene another conference.

36 Conference agreement

(1) A ***conference agreement*** is an agreement reached at the conference—

(a) in which a child admits committing the offence; and

(b) in which the child undertakes to address the harm caused by the child committing the offence.

(2) The conference agreement must be in the approved form and be agreed to and signed by—

(a) the child; and

(b) the convenor; and

(c) if a representative of the commissioner of the police service participates in the conference—the representative; and

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

Note—

If a court makes a presentence referral, the court must, amongst other things, have regard to the child's obligations, and anything done by the child, under the conference agreement in sentencing the child for the offence. See section 165(6).

(3) The conference agreement may not provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way that contravenes the sentencing principles in section 150.

(4) A copy of the conference agreement must immediately be given to each person who signed the agreement.

(5) To remove any doubt, it is declared that the conference agreement may contain a requirement that the child must comply with outside the State.

Example—

A conference agreement may require the child to perform voluntary work for a charity that is located outside the State.

37 Amendment of conference agreement by chief executive

(1) This section applies if the chief executive considers that the conference agreement is or becomes unworkable, including, for example, because compliance with the agreement has become impossible or unsafe.

(2) The chief executive may, if the child agrees, amend the conference agreement to the extent necessary to make the agreement workable.

(3) In deciding how to amend the conference agreement, the chief executive must take reasonable steps to find out, and give effect to, the views of each participant who signed the agreement.

(4) The amended conference agreement replaces the original agreement and takes effect from its amendment by the chief executive.

Not authorised—indicative only

Not authorised—indicative only

(5) After amending the conference agreement, the chief executive must make reasonable efforts to give a copy of the amended agreement to each participant who signed the agreement.

Division 3 Alternative diversion programs

38 Alternative diversion program

(1) An ***alternative diversion program*** is a program, agreed to by the chief executive and the child, that involves the child participating in any of the following to address the child's behaviour—

(a) remedial actions;

(b) activities intended to strengthen the child's relationship with the child's family and community;

(c) educational programs.

(2) The program must be designed to—

(a) help the child to understand the harm caused by his or her behaviour; and

(b) allow the child an opportunity to take responsibility for the offence committed by the child.

(3) The program may not provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way that contravenes the sentencing principles in section 150.

(4) The program must be in writing and be signed by the child.

(5) The chief executive must give the referring authority a copy of the alternative diversion program.

Division 4 General

39 Convenors

(1) A convenor is responsible for convening a conference.

(2) The chief executive may approve appropriately qualified persons as convenors.

(3) A convenor has all the powers—

(a) necessary to perform the responsibilities of a convenor; or

(b) conferred on the convenor under this Act or another Act.

40 Admissibility of particular evidence

(1) An admission about committing the relevant offence, made by the child while participating in a restorative justice process, is inadmissible in any proceeding.

(2) Subsection (1) extends to—

(a) any written material or other correspondence made for the purpose of the restorative justice process; or

Example—

a written apology given as a requirement of a conference agreement

(b) actions of the child, done for the purpose of the restorative justice process, that make evident that the child committed the relevant offence.

(3) However, evidence that would otherwise be inadmissible in a proceeding because of subsection (1) is admissible—

(a) if the child agrees to the admission of the evidence; or

(b) in a proceeding under part 7, division 2.

(4) In this section—

relevant offence, in relation to a restorative justice process, means the offence to which the process relates.

Not authorised—indicative only

Not authorised—indicative only

41 Notice of successful completion of restorative justice agreement

If a child discharges his or her obligations under a restorative justice agreement made as a consequence of a restorative justice process, the chief executive must notify the referring authority for the process accordingly.

Part 4 Proceedings generally started by complaint and summons

42 Preferred way of starting proceedings

(1) A proceeding against a child for an offence, other than a serious offence, must be started by way of complaint and summons.

(2) This section does not apply to a police officer.

Note—

The requirement for a police officer to start a proceeding by complaint and summons or notice to appear is dealt with by section 12.

(3) This section does not affect—

(a) the charging of a child under the *Justices Act 1886*, section 42(1A); or

(b) the arrest of a child for escaping from lawful custody or who is unlawfully at large; or

(c) a proceeding against a child on an indictment.

43 Service of complaint and summons if offender a child

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

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

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

(b) the chief executive.

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

(a) as discreetly as practicable; and

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

(4) Subject to the *Police Powers and Responsibilities Act 2000*, sections 382(3) and 388, this section does not apply to a notice to appear.

(5) In this section—

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

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

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

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

45 No costs against child for lodgement of complaint and summons

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

Not authorised—indicative only

Not authorised—indicative only

46 Proceeding in relation to simple offence in absence of child

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

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

Part 5 Bail and custody of children

47 Bail Act 1980 applies

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

(2) A review of a sentence order under part 6, division 9 is an appeal for the purposes of the *Bail Act 1980*.

48 Decisions about bail and related matters

(1) This section applies to a court or police officer in making any of the following decisions relating to a child in custody in connection with a charge of an offence—

(a) whether to release the child or keep the child in custody;

(b) if releasing the child, whether to release the child without bail or grant bail to the child;

(c) if the child is being, or has been, granted bail, the conditions that should apply to the grant of bail.

(2) The court or officer must consider the need to ensure that, if the child is released—

(a) the child will surrender into custody in accordance with the bail or the conditions of the release, whichever is relevant; and

(b) while on release, the child will not—

(i) commit an offence; or

(ii) endanger anyone's safety or welfare; or

(iii) interfere with a witness or otherwise obstruct the course of justice, whether for the child or anyone else.

(3) The court or officer must have regard to any of the following matters of which the court or officer is aware—

(a) the nature and seriousness of the offence;

(b) the child's character, criminal history and other relevant history, associations, home environment, employment and background;

(c) the history of any previous grants of bail to the child;

(d) the strength of the evidence against the child relating to the offence;

(da) if the child is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the child's community, including, for example, about—

(i) the child's relationship to the child's community; or

(ii) any cultural considerations; or

(iii) any considerations relating to programs and services established for offenders in which the community justice group participates;

(e) any other relevant matter.

(3A) Also, if it is a court that is making the decision, the court must have regard to the sentence order or other order likely to be made for the child if found guilty.

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Not authorised—indicative only

(4) In deciding whether to release the child or keep the child in custody, the court or officer must decide to release the child unless the court or officer is required by this Act or another Act to keep the child in custody.

(5) The court or officer must not release the child if the court or officer is satisfied there is an unacceptable risk relating to a matter mentioned in subsection (2).

(6) If the child is before a court and the court has information indicating there may be an unacceptable risk relating to a matter mentioned in subsection (2), but does not have enough information to properly consider the matter, the court must remand the child in custody while the information is obtained.

(7) The court or officer must not release the child if the court or officer is satisfied—

(a) the child's safety would be endangered, because of the alleged offence, if the child were released; and

(b) in the circumstances, there is no reasonably practicable way of ensuring the child's safety other than by keeping the child in custody.

(7A) If required by the court or officer for subsection (3)(da), a representative of the community justice group in the child's community must advise the court or police officer whether—

(a) any member of the community justice group that is responsible for the submission is related to the child or the victim; or

(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the child or victim.

(8) In this section—

keep the child in custody includes, for a court, remand the child in custody.

49 Arrested child must be brought promptly before the Childrens Court

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

(2) Subsection (1) does not apply if—

(a) the child is being dealt with in a way mentioned in the *Police Powers and Responsibilities Act 2000*, section 393(2)(b) to (e) or (3)(b); or

(b) the child is released under this part or the *Police Powers and Responsibilities Act 2000*, chapter 14, part 4.

50 Dealing with a child if court can not be promptly constituted

(1) This section applies if—

(a) a child is arrested in connection with a charge of an offence and delivered into the custody of a police officer at a place that is a police station, police establishment or watch-house; and

(b) the child is not being detained under the *Police Powers and Responsibilities Act 2000*, chapter 15, part 2; and

(c) it is not practicable to promptly constitute the Childrens Court to deal with the child.

(2) The police officer for the time being in charge of the place or, if the place is a watch-house, a prescribed police officer within the meaning of the *Bail Act 1980*, section 7, must—

(a) give the child a release notice or a notice to appear and release the child from custody under section 51; or

(b) grant bail to the child and release the child from custody under section 52; or

(c) keep the child in custody.

(3) However, if the child is released under the *Police Powers and Responsibilities Act 2000*, section 378 or 379—

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Not authorised—indicative only

(a) subsection (2) does not apply; and

(b) any proceeding against the child for the offence is discontinued even though the child may have been charged with having committed the offence.

(4) If the officer decides to keep the child in custody, the officer must record the reasons for the decision in a record of the persons kept in custody at the place.

(5) The keeping of the child in custody is not unlawful merely because of a failure to comply with subsection (4).

(6) This section applies subject to section 48.

51 Release of child without bail

(1) This section applies if, under section 50, a police officer decides to release a child without bail.

(2) The officer may release the child into the custody of the child's parents or release the child to go at large.

(3) Before releasing the child, if the officer does not issue and give to the child a notice to appear, the officer must give the child a notice in the approved form (a ***release notice***).

(4) The release notice must set out—

(a) the child's name; and

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

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

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

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

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

52 Conditions of release on bail

(1) This section applies if a court or police officer decides to grant bail to a child who is being held in custody in connection with a charge of an offence.

(2) The court or officer must release the child on the child's own undertaking, without sureties and without deposit of money or other security, unless the court or officer is satisfied it would be inappropriate in all the circumstances.

(3) If the court or officer does not release the child under subsection (2), the court or officer must consider the conditions for the release of the child on bail in the following sequence—

(a) the release of the child on the child's own undertaking with a deposit of money or other security of stated value;

(b) the release of the child on the child's own undertaking with a surety or sureties of stated value;

(c) the release of the child on the child's own undertaking with a deposit of money or other security of stated value and a surety or sureties of stated value.

(4) The court or officer may impose other conditions on the grant of bail including, for example, conditions necessary for ensuring the matters mentioned in section 48(2) are appropriately addressed.

Example of a condition—

a condition imposing a curfew on the child

(5) Any conditions imposed on the grant of bail—

(a) must not be more onerous than the court or officer considers necessary in all the circumstances; and

(b) must be supported by the court's or officer's written reasons.

(6) Subsection (5)(b) does not apply to a condition about—

(a) attending court or surrendering into custody; or

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Not authorised—indicative only

(b) reporting to police or the chief executive; or

(c) where, or with whom, the child lives.

53 Granting of bail by audio visual link or audio link

(1) A court may allow anything that must or may be done in relation to the granting of bail to a child to be done over an audio visual link or audio link if the child agrees to the use of the link and the court is satisfied the child has had an opportunity to obtain independent legal advice.

(2) The provisions of the *Evidence Act 1977* relating to the use of an audio visual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).

54 Custody of child pending court appearance

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

(a) the commissioner of the police service; or

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

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

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

55 Court may in all cases release child without bail

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

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

(b) permit the child to go at large;

without bail.

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

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

56 Custody of child if not released by court

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

(2) Subsection (1) does not apply to a person who is an adult being dealt with for an offence committed by the person as a child if, under section 136, 137 or 138, the person must be held in a corrective services facility.

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

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

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

is taken, if the person is a child and subsection (1) applies, instead to confer jurisdiction on the court to remand the child into the custody of the chief executive and to give directions to the chief executive.

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

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

Not authorised—indicative only

Not authorised—indicative only

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

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

(6) Subject to subsection (7), the chief executive may keep a child mentioned in subsection (4) who is in the chief executive's custody in places that the chief executive determines from time to time.

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

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

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

58 Custody of child arrested on court warrant

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

59 Childrens Court judge may grant bail

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

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

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

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

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

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

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

Part 6 Jurisdiction and proceedings

Division 1 General

60 Court jurisdiction generally unaffected

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

61 Application of Mental Health Act 2016

The *Mental Health Act 2016* applies to a child charged with an offence as it applies to an adult.

62 Childrens Court judge

A Childrens Court judge has jurisdiction—

(a) to hear and determine under division 7 a charge against a child for an offence; and

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Not authorised—indicative only

(b) to delegate sentencing power to a Childrens Court magistrate under section 185; and

(c) to hear bail applications under section 59; and

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

(e) to review under section 118 a sentence order made by a Childrens Court magistrate.

63 District Court jurisdiction in aid

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

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

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

64 Childrens Court magistrate

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

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

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

65 Magistrates Court jurisdiction in aid

(1) For the purpose of the jurisdiction in relation to persons and matters assigned to a Childrens Court magistrate under this Act, a Childrens Court magistrate has the same powers and

jurisdiction as a Magistrates Court has under the *Justices Act 1886* in relation to persons and matters assigned to the Magistrates Court.

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

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

66 Application of usual laws where necessary

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

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

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

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

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

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

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

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

67 Limitation on justices

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

Not authorised—indicative only

Not authorised—indicative only

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

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

(2) The justices can not make the following—

(a) a detention order;

(b) a conditional release order.

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

68 Infringement notices

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

69 Presence of parent required generally

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

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

(b) whether a parent of the child has been informed of the proceedings as required under—

(i) section 43; or

(ii) the *Police Powers and Responsibilities Act 2000*, section 392;

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

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

70 Court may order parent to attend

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

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

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

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

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

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

Maximum penalty—50 penalty units.

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

71 Consequence of parent's absence

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

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

(b) the parent making the application was—

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

(ii) unable to attend for sufficient reason.

(2) The court may set aside the finding or order if it considers that it is in the interests of justice to do so, for example if it

Not authorised—indicative only

Not authorised—indicative only

considers that the child's capacity to make an election or other decision relating to the proceeding was adversely affected.

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

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

72 Explanation of proceeding

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

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

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

(b) the court's procedures; and

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

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

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

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

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

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

73 Ordinary practice applies to explanations if child is represented

This part does not—

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

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

74 Chief executive's right of audience generally

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

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

(3) The matters are—

(a) adjournment of the proceeding; and

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

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

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

(4) However, the chief executive must not be heard on an issue under section 234.

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

75 Adjournment power generally

(1) If it appears to the Childrens Court that a proceeding before it in relation to an offence could be more conveniently,

Not authorised—indicative only

Not authorised—indicative only

economically or fairly heard before the Childrens Court at another place, the court may adjourn the hearing to that other place.

(2) The remand, bail and custody provisions of part 5 apply to the adjournment.

76 One year limitation inapplicable if indictable offence dealt with summarily

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

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

77 Court to refrain from inappropriate summary hearing of indictable offence

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

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

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

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

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

The rules set out in this part relating to election by a child of procedure in relation to an indictable offence apply despite any right of election that may be conferred on any person under any other Act or any provision of another Act that requires the indictable offence to be heard and decided summarily.

79 Court to check child's legal representation

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

(a) has had reasonable opportunity to obtain representation by a lawyer; and

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

80 Use of adduced evidence after change of procedure

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

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

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

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

(d) a decision of a court to continue or hear a proceeding in its concurrent jurisdiction under division 11.

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

Not authorised—indicative only

Not authorised—indicative only

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

Division 2 Decision on how to proceed at start of proceedings for an indictable offence before a Childrens Court magistrate

Subdivision 1 Procedure for serious offences

81 Committal proceeding if the offence is a serious offence

(1) This section applies to a proceeding to be conducted before a Childrens Court magistrate (the ***court***) in which a child is charged with a serious offence.

(2) A hearing of the charge before the court must be conducted as a committal proceeding.

(3) If the charge is changed to a charge of an offence other than a serious offence during the committal proceeding, subsection (1) is subject to divisions 3 and 4.

(4) If, in the proceeding, the child is also charged with an offence other than a serious offence, the court may treat the charge as a charge of a serious offence for the purpose of this section.

Subdivision 2 Procedure for indictable offences other than serious offences if child is legally represented

82 Application of sdiv 2

This subdivision applies to a proceeding to be conducted before a Childrens Court magistrate (the ***court***) in which a child is—

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

(b) represented by a lawyer.

83 Explanation and election at start

(1) Subject to section 77, before evidence is adduced at the proceeding, the court must explain to the child and any parent of the child who is present the child's right of election mentioned in subsection (2).

(2) The child may elect—

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

(b) to have the proceeding conducted as a hearing and deciding of the charge summarily by the court.

(3) The court must also explain to the child and any parent of the child who is present that—

(a) after all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and

(b) the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence;

the child may elect—

(c) to have the proceeding conducted as a committal proceeding; or

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

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

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

(6) If the child does not give the consent mentioned in subsection (4), the proceeding must be conducted as a committal proceeding, subject to divisions 3 and 4.

84 Procedure on summary hearing

(1) On proceeding to hear and decide the charge summarily under section 83(5), the court must—

(a) reduce the charge to writing; and

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

(2) If the child pleads guilty the court must proceed in the same way as is provided in the *Justices Act 1886*, section 145(4).

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

Subdivision 3 Procedure for indictable offences other than serious offences if child is not legally represented

85 Application of sdiv 3

This subdivision applies to a proceeding to be conducted before a Childrens Court magistrate (the ***court***) in which a child is—

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

(b) not represented by a lawyer.

86 Start as committal proceeding and explanation

(1) The proceeding must be conducted as a committal proceeding, subject to divisions 3 and 4.

(2) Before evidence is adduced at the proceeding, the court must explain to the child and any parent of the child who is present that—

(a) after all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and

(b) the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence;

the child may elect—

(c) to have the proceeding conducted as a committal proceeding; or

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

Division 3 Election for summary hearing for indictable offences other than serious offences after the prosecution evidence has been adduced

87 Application of div 3

(1) This division applies if—

(a) a hearing before a Childrens Court magistrate (the ***court***) of a charge against a child of an indictable offence is being conducted as a committal proceeding; and

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(b) all the evidence to be offered in the proceeding on the part of the prosecution has been adduced; and

(c) the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence other than a serious offence.

(2) This division applies whether or not the child is legally represented.

88 Explanation of election at end of prosecution case

(1) Subject to subsection (6) and section 77, the court must explain to the child, and any parent present in the court, the child's right of election mentioned in subsection (2).

(2) The child may elect—

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

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

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

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

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

(6) The court may, but need not, follow the process under subsections (1) to (5) if the child has already declined to give consent under section 83 for the charge to be heard and decided summarily.

89 Procedure on summary hearing

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

(a) reduce the charge to writing; and

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

(2) If the child pleads guilty the court must proceed in the same way as is provided in the *Justices Act 1886*, section 145(2).

(3) If the child pleads not guilty, the court may proceed in the same way as is provided in the *Justices Act 1886*, section 146, subject to section 80.

Division 4 Procedure if a child enters a plea of guilty at a committal proceeding

90 Application of div 4

This division applies if a child enters a plea of guilty at a committal proceeding when addressed under the *Justices Act 1886*, section 104(2).

91 If the offence is a supreme court offence

If the offence to which the child pleads guilty is a supreme court offence, the court must order the child to be committed to be sentenced before the Supreme Court.

92 If the offence is a serious offence other than a supreme court offence

If the offence to which the child pleads guilty is a serious offence other than a supreme court offence, the court must order the child to be committed to be sentenced before a court of competent jurisdiction.

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93 If the offence is an indictable offence other than a serious offence

(1) Subject to section 77, if the offence to which the child pleads guilty is an indictable offence other than a serious offence, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).

(2) The child may elect—

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

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

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

(4) If the child consents, the Childrens Court magistrate must proceed in the same way as is provided under the *Justices Act 1886*, section 145(2).

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

Division 5 Procedure after all evidence has been adduced in a committal proceeding

94 Application of div 5

This division applies if—

(a) a proceeding against a child for an indictable offence before a Childrens Court magistrate has been entirely conducted as a committal proceeding; and

(b) the child has not entered a plea of guilty when addressed under the *Justices Act 1886*, section 104(2); and

(c) all the evidence to be offered at the proceeding has been adduced.

95 If the offence is a supreme court offence

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

(2) The court must order the child to be committed to be tried before the Supreme Court.

96 If the offence is not a supreme court offence

(1) This section applies if, on consideration of all the evidence adduced at the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for an indictable offence that is not a supreme court offence.

(2) The magistrate must order the child to be committed to be tried before a court of competent jurisdiction.

(3) If the court to which the child is ordered to be committed is a Childrens Court judge, the magistrate must comply with division 6.

Division 6 Election procedure if child committed for trial before a Childrens Court judge

97 Application of div 6

This division applies if a Childrens Court magistrate decides to commit a child to be tried before a Childrens Court judge under division 5.

98 Election for trial with or without jury

(1) If the child is represented by a lawyer, then, before ordering the child to be committed to be tried under the *Justices Act 1886*, section 108, the court must explain to the child and any

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parent of the child who is present the child's right of election mentioned in subsection (2).

(2) The child may elect—

(a) to be committed to be tried before the Childrens Court judge sitting without a jury; or

(b) to be committed to be tried before the Childrens Court judge sitting with a jury.

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

(4) If the child consents, the court must order the child to be committed to be tried by the Childrens Court judge without a jury.

(5) If the child—

(a) is not represented by a lawyer; or

(b) if represented by a lawyer—does not give the consent mentioned in subsection (4);

the court must order the child to be committed to be tried before the Childrens Court judge sitting with a jury.

Division 7 Jurisdiction of Childrens Court judge

Subdivision 1 Jurisdiction generally

99 Childrens Court judge to have criminal jurisdiction over child charged with indictable offence

(1) A Childrens Court judge has jurisdiction to inquire of and hear and decide all indictable offences, wherever committed, charged against a child other than supreme court offences.

(2) For subsection (1), it does not matter where an offence is committed or whether or not a child has been committed to be

tried or sentenced before the Childrens Court judge on a charge.

100 Sentencing for summary offence

Without limiting section 99, a Childrens Court judge may sentence a child on any charge for a summary offence on which the child consents to being sentenced by the judge under the Criminal Code, section 651.

101 General laws relating to indictable offence apply

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

Subdivision 2 Whether a jury is required

102 When a jury is not required

(1) Subject to section 105, a Childrens Court judge must sit without a jury to try a child for an indictable offence if—

(a) for a committal charge—

(i) the child elected under section 98(2)(a) to be committed for trial before the judge sitting without a jury and has not withdrawn the election under section 103(3); or

(ii) the child elected under section 98(2)(b) to be committed for trial before the judge sitting with a jury, but has elected under section 103(4) to be tried before the judge sitting without a jury; or

(iii) the child was committed to be tried before a judge sitting with a jury under section 98(5), but has

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elected under section 103(5) to be tried before the judge sitting without a jury; or

(b) for a charge other than a committal charge the child elects under section 104 to be tried by the judge sitting without a jury.

(2) In this section—

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

103 Committal charge—change to jury requirement

(1) This section applies to a child who has been committed to be tried before a Childrens Court judge.

(2) If the child was committed under section 98(2)(a), but is not legally represented before the judge, the child must be tried by the judge sitting with a jury.

(3) Also, if the child was committed under section 98(2)(a), the child may withdraw the child's election under the section to be tried before a Childrens Court judge sitting without a jury and elect instead to be tried before the judge sitting with a jury.

(4) If the child was committed under section 98(2)(b) to be tried before the judge sitting with a jury and the child is legally represented, the child may withdraw the child's election under the section and elect instead to be tried before the judge sitting without a jury.

(5) If the child was committed to be tried before the judge sitting with a jury under section 98(5) and the child is legally represented before the judge, the child may elect to be tried before the judge sitting without a jury.

(6) An election or withdrawal of election must happen before the child enters a plea to the charge.

104 Charge other than committal charge—election by legally represented child for trial with or without jury

(1) This section applies to a charge against a child of an indictable offence before a Childrens Court judge that is not a committal charge mentioned in section 102.

(2) If the child is represented by a lawyer, the child may elect—

(a) to be tried before the judge sitting without a jury; or

(b) to be tried before the judge sitting with a jury.

(3) An election must happen before the child enters a plea to the charge.

105 When a trial by jury is necessary

If a child who is before a Childrens Court judge—

(a) is not represented by a lawyer; or

(b) if represented by a lawyer, has not elected, or withdraws an election, to be tried without a jury under another provision of this division; or

(c) if the judge decides that in the particular circumstances it is more appropriate for the child to be tried by the judge sitting with a jury;

the child must be tried before the judge sitting with a jury.

Subdivision 3 Change of guilty plea

106 Child may change plea of guilty

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

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

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

Division 8 Provision for joint trials

Subdivision 1 Magistrate's power

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

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

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

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

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

108 Committal or committal proceeding for joint trial with another person

(1) Before a Childrens Court magistrate starts to hear and decide summarily a charge against a child for an indictable offence other than a serious offence, the prosecution may apply to the court for the proceeding to be conducted or continued as a committal proceeding for the purpose of having the child tried on indictment with another person.

(2) Before a Childrens Court magistrate commits a child for trial before a Childrens Court judge on a charge of a serious offence, the prosecution may apply to the court for the child to be instead committed for trial to another court of competent

jurisdiction for the purpose of having the child tried on indictment with another person.

(3) On application under subsection (1) or (2), if the magistrate is satisfied that—

(a) the child may lawfully be charged in an indictment in which the other person will also be charged; and

(b) if the child were so charged it is unlikely an application would be granted resulting in the child's trial being had separately from the other person; and

(c) in all the circumstances, including the relevant principles of this Act, the application should be granted;

the magistrate may grant the application and deal with the proceedings as requested.

Subdivision 2 Removal of committed proceeding to another jurisdiction for joint trial

109 Definitions for sdiv 2

In this subdivision—

committed charge means the offence committed to be tried in the committed proceeding.

committed proceeding means a proceeding on a charge against a child of an offence committed to be tried before a Childrens Court judge.

110 Removal to another jurisdiction for joint trial with another person

(1) The prosecution may apply to a Childrens Court judge for the removal of a committed proceeding to a court of competent jurisdiction other than a Childrens Court judge for the purpose of having the child tried on indictment with another person.

(2) If the judge is satisfied that—

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(a) the child may lawfully be charged in an indictment in which the other person will also be charged; and

(b) if the child were so charged it is unlikely an application would be granted resulting in the child's trial being had separately from the other person; and

(c) in all the circumstances, including the relevant principles of this Act, the proceedings should be removed as requested;

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

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

111 Formal removal to another jurisdiction for joint trial involving another charge

(1) The prosecution may apply to a Childrens Court judge for the removal of a committed proceeding to a court of competent jurisdiction other than a Childrens Court judge for the purpose of having the child tried on an indictment charging the child with the committed charge and another charge on which the child will be dealt with as an adult.

(2) The judge may grant the request and remove the proceeding as requested.

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

(4) This section does not limit the jurisdiction of any court of competent jurisdiction to try or sentence the child on the charge.

112 Concurrent jurisdiction available

Nothing in this division excludes a Childrens Court judge from presiding over the trial of a child in the judge's concurrent jurisdiction to which a proceeding has been removed by the judge under this subdivision.

113 Removal ends possibility of trial without jury

Provisions of this division authorising a trial before a judge sitting without a jury do not apply to a proceeding removed to another court under this subdivision.

Division 9 Appeal and review

Subdivision 1 General

114 Appeal rights generally

Other than as expressly provided by this part, this part does not affect the right of any person to appeal, or apply for leave to appeal, under the Criminal Code or otherwise against the order of a court or judicial officer.

115 Community based orders stayed during appeal

(1) If a child starts an appeal against a community based order made against the child, the effect of the order is stayed until the end of the appeal.

(2) If the period for which the community based order operates is relevant to the effect of the order or a program or anything else under the order, the period between the start and end of the appeal is not counted for the purpose of the effect of the order, program or other thing.

Subdivision 2 Court of Appeal

116 Appeals to Court of Appeal

The Criminal Code, chapter 67, relating to appeals or applications for leave to appeal applies, with necessary modifications and any prescribed modifications—

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

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

(c) in relation to a proceeding before a Childrens Court judge, sitting with or without a jury, as it applies in relation to a proceeding before the District Court.

Subdivision 3 Appeals to Childrens Court judge

117 Appeals under Justices Act 1886, pt 9, div 1

(1) The *Justices Act 1886*, part 9, division 1, applies in relation to an order made by justices dealing summarily with a child charged with an offence subject to subsections (2) to (4).

(2) To appeal under the division, an aggrieved person must appeal to the Childrens Court judge.

(3) All relevant references to a District Court judge are taken for the purpose to be references to the Childrens Court judge.

(4) A District Court judge does not have jurisdiction to hear and decide the appeal.

Subdivision 4 Reviews of sentences by Childrens Court judge

118 Sentence review

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

119 Application for review

(1) An application may be made by—

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

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

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

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

(3) In this section—

complainant means a complainant who makes a complaint under the *Justices Act 1886*.

120 Preliminary procedure

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

(2) Also, if the application is not made by the chief executive, the proper officer must notify the chief executive of the making of the application and the place and time for the hearing of the application.

121 Stay of proceeding and suspension of orders

(1) Without affecting—

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

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

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

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

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(3) Without limiting subsections (1) and (2), if a community based order is subject to a review under this division, the effect of the order is stayed until the end of the review.

(4) If the period for which the community based order operates is relevant to the effect of the order or a program or anything else under the order, the period between the start and end of the review is not counted for the purpose of the effect of the order, program or other thing.

(5) If a Childrens Court judge orders a stay of a proceeding under a sentence order, the proper officer of the Childrens Court at the place where the Childrens Court judge is sitting must notify the chief executive of the making of the order.

122 Conduct of review

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

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

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

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

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

123 Review decision

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

(a) confirm the order; or

(b) vary the order; or

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

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

124 Interrelation with other types of appeal

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

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

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

(2) If—

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

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

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

(3) If—

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

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

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

(4) In this section—

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

ordinary appeal means—

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

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

sentence review means a review under section 118 of a sentence order.

125 Incidents of review

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

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

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

(b) subject to subsection (3), may be enforced or appealed against in the same way as the decision of the Childrens Court magistrate.

(3) Subsection (2) does not authorise—

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

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

126 Orders at end of reviews

(1) Subject to section 311, if as a result of the decision of the Childrens Court judge on a sentence review, a child is required to serve a period of detention or the unserved part of a period of detention, the judge, as part of the order on the review, must direct that a warrant be issued to arrest the child and commit the child to a detention centre.

(2) Any justice may issue the warrant.

Division 10 Mistake in exercise of jurisdiction

127 Meaning of *proceeding*

In this division—

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

128 Court may reopen proceedings

(1) If a court has—

(a) made a finding or order in relation to a child that is not in accordance with the law; or

(b) failed to make a finding or order in relation to a child that the court legally should have made; or

(c) made a finding or order in relation to a child decided on a clear factual error of substance;

the court, whether or not differently constituted, may reopen the proceeding.

(2) The power under subsection (1)(c) includes power to reopen proceedings because the finding or order was incorrectly made—

(a) in relation to the wrong person; or

(b) because a summons issued on a complaint originating the proceedings that resulted in the finding or order did not come to the knowledge of the child; or

(c) because it was made for a matter for which the child had been previously dealt with; or

(d) because of someone's deceit.

(3) If a court reopens a proceeding, it—

(a) must give the parties an opportunity to be heard; and

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(b) may make a finding or order in relation to the child—

(i) for a reopening under subsection (1)(a)—in accordance with law; or

(ii) for a reopening under subsection (1)(b)—the court legally should have made; or

(iii) for a reopening under subsection (1)(c)—taking into account the factual error; and

(c) may amend any relevant finding or order to the extent necessary to take into account the finding or order made under paragraph (b).

(4) The court may reopen the proceeding—

(a) on its own initiative at any time; or

(b) on the application of a party to the proceeding, the chief executive or the court's registrar or clerk of the court, made within—

(i) 28 days after the day the finding or order was made; or

(ii) any further time the court may allow on application at any time.

(5) Subject to subsection (6), this section does not affect any right of appeal.

(6) For an appeal under any Act against a finding or order made under subsection (3), the time within which the appeal must be made starts from the day the finding or order is made under subsection (3).

(7) In this section—

finding or order means a finding of guilt, conviction, sentence or other finding or order that may be made in relation to a person charged with or found guilty of an offence.

129 Removal of a proceeding because of lack of jurisdiction

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

may remove the proceeding to a court of competent jurisdiction.

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

(a) give directions it considers necessary; and

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

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

130 Lack of jurisdiction discovered in course of a proceeding

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

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

(3) If the court does not act under subsection (2), it may deal with the proceeding under section 129.

131 Lack of jurisdiction discovered after proceeding ends

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

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

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

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

(3) The application may be made by—

(a) a party to the proceeding; or

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

(c) the director of public prosecutions.

(4) The application must be made—

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

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

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

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

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

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

Division 11 Child offenders who become adults

Subdivision 1 Preliminary

132 Definitions for pt 6, div 11

In this division—

adult offence means an offence committed by an adult.

child offence means an offence committed by a child.

offender means a person who has—

(a) committed an offence as a child; and

(b) since committing the offence become an adult.

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

133 Reference to offence includes alleged offence

A reference in this division to an offence committed by the offender includes, if the offender has not been found guilty of the offence, an offence the offender is alleged to have committed.

Subdivision 2 General

134 Offender treated as child

Subject to this division, the offender must be treated as a child for the purposes of this Act in relation to a child offence committed by the offender.

Subdivision 3 Where offender is to be detained

135 Where offender is detained for adult offence

(1) This section applies if the offender is—

(a) being held on remand, in the chief executive's custody, in connection with a charge of a child offence; or

(b) serving a period of detention, in a detention centre, for a child offence; or

(c) otherwise being held in custody in a detention centre.

(2) If a court remands the offender in custody in connection with a charge of an adult offence, the offender must be remanded into the custody of the chief executive and, for that purpose, section 56 applies as if the offender were still a child.

(3) Any term of imprisonment to which the offender is sentenced for an adult offence must be served in a detention centre.

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(4) The requirement that the offender be held on remand in the chief executive's custody under subsection (2), or serve a term of imprisonment in a detention centre under subsection (3), applies only while the offender continues to be held in custody in the detention centre other than under this section.

(5) The part of a term of imprisonment served in a detention centre under subsection (3) must be counted as part of the term of imprisonment.

(6) Subsection (3) does not limit part 8, division 2A.

136 Offender remanded in custody for child offence

(1) This section applies if—

(a) a court remands the offender in custody in connection with a charge of a child offence; and

(b) the offender has been an adult for at least 1 year; and

(c) the offender is not—

(i) being held on remand, in the chief executive's custody, in connection with a charge of another offence; or

(ii) serving a period of detention, in a detention centre, for a child offence; or

(iii) otherwise being held in custody in a detention centre.

(2) The offender must be held on remand in a corrective services facility.

137 Offender remanded in custody for adult offence and child offence

(1) This section applies if—

(a) a court remands the offender in custody in connection with charges of an adult offence and a child offence; and

(b) the offender is not—

(i) being held on remand, in the chief executive's custody, in connection with a charge of another offence; or

(ii) serving a period of detention, in a detention centre, for a child offence; or

(iii) otherwise being held in custody in a detention centre.

(2) The offender must be held on remand in a corrective services facility.

138 Dealing with offender held in corrective services facility

(1) This section applies if the offender is being held on remand, serving a term of imprisonment, or otherwise being held in custody, in a corrective services facility.

(2) If a court remands the offender in custody in connection with a charge of a child offence, the offender must be held on remand in a corrective services facility.

(3) A period of detention to which the offender is sentenced for a child offence must be served in a corrective services facility.

(4) Subsection (2) or (3) continues to apply to the offender even if the offender ceases to be held in custody in a corrective services facility for any other reason.

(5) The period of detention served in a corrective services facility under subsection (3) must be counted as a period of detention.

(6) For holding the offender at a corrective services facility—

(a) the offender is liable to serve a term of imprisonment equal to the period of detention to which the offender is sentenced for the child offence; and

(b) the offender is taken to be a prisoner subject to the *Corrective Services Act 2006*; and

(c) any rights, liberties or immunities of the offender as a detainee are not preserved, transferred or otherwise applicable for the offender as a prisoner; and

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(d) the day the offender would otherwise have been released under section 227, for the period of detention, is the day the offender is to be released on parole under the *Corrective Services Act 2006*.

(7) However, the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the ***statutory parole order***) and the provisions of that Act applying to parole orders also apply to the statutory parole order.

(8) This section applies subject to section 139.

139 Application to be held in detention centre

(1) This section applies if—

(a) section 138(2) or (3) would otherwise apply to the offender; and

(b) the offender—

(i) has been an adult for less than 1 year; and

(ii) is not serving a period of detention in a corrective services facility under a transfer made under part 8, division 2A; and

(iii) is not being held on remand or serving a term of imprisonment for an adult offence.

(2) The offender may apply to a Childrens Court judge for an order that the offender be held on remand, or serve the period of detention, in a detention centre and not in a corrective services facility.

(3) The offender must immediately serve a copy of the application on the chief executive.

(4) The court may grant or refuse to grant the application.

(5) In deciding the application, the court must have regard to the following matters—

(a) the offender's age at the time of the application;

(b) if the application relates to serving a period of detention—

(i) the length of the unserved part of the period of detention; and

(ii) the earliest time the offender may be released;

(c) the amount of time the offender has spent in a corrective services facility on remand, or serving a period of detention or term of imprisonment, for any offence;

(d) the amount of time the offender has spent in a detention centre on remand, or serving a period of detention or term of imprisonment, for any offence.

(6) If the court grants the application, the court must state the day on which the order takes effect.

Subdivision 4 Circumstances affecting whether offender is treated as adult or child

140 When offender must be treated as an adult

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

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

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

(2) If—

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

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

then—

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

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

(3) If, after a finding of guilt in a proceeding started against an offender as a child—

(a) the court has been unable to sentence the offender because the offender has—

(i) escaped from detention; or

(ii) failed, without reasonable excuse, to appear as required under the conditions of bail; or

(iii) failed, without reasonable excuse, to return to the detention centre at the end of a period of leave granted under section 269; and

(b) 1 year has passed after the offender has become an adult;

the offender must be sentenced as an adult.

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

141 When offender may be treated as an adult

(1) This section applies if—

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

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

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

(ii) the offender, for another offence—

(A) is proceeded against as an adult; or

(B) has been sentenced as an adult.

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

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

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

(5) This section applies despite section 140(2).

142 Continuing effect on offender of orders made when child

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

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

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

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

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

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

(5) If—

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

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

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

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

143 When order made as child may be dealt with as adult order

(1) This section applies if—

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

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

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

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

(b) the offence were committed as an adult.

(3) The circumstances are—

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

(i) is being proceeded against; or

(ii) has been sentenced; or

(b) more than 1 year has passed after the offender becomes an adult.

(4) The court may declare the childhood sentence order to be a corresponding adult order and make all necessary changes to the childhood sentence order to change it to a corresponding adult order.

(5) The person is then subject to the corresponding adult order for the proceeding before the court and any further proceedings and orders.

(6) For the application of the *Penalties and Sentences Act 1992*—

(a) section 123 of that Act does not apply to a contravention of the childhood sentence order that happens before the order is declared under this section to be a community based order under that Act; and

(b) if the corresponding adult order is a probation order or community service order under that Act, section 12(6) of that Act does not apply to the court for the proceeding before the court.

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

(8) In this section—

corresponding adult order to a childhood sentence order, means a type of sentence to which an adult is liable that is similar to the type of the childhood sentence order, for example—

(a) a probation order made under the *Penalties and Sentences Act 1992* is a corresponding adult order to a probation order made under this Act; and

(b) a community service order made under the *Penalties and Sentences Act 1992* is a corresponding adult order to a community service order made under this Act.

144 Sentencing offender as adult

(1) Subject to subsections (2) and (3), a court sentencing an offender as an adult under section 140, 141 or 143 has jurisdiction to sentence the offender in any way that an adult may be sentenced.

(2) The court must have regard to—

(a) the fact that the offender was a child when the child offence was committed; and

(b) the sentence that might have been imposed on the offender if sentenced as a child.

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(3) The court can not order the offender—

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

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

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

145 Chief executive (corrective services) to be notified if offender sentenced as adult

(1) This section applies if, under this division, an order is made by a court sentencing an offender as an adult.

(2) The chief executive must immediately give the chief executive (corrective services) notice of the order.

146 Extension of Act for detainee offender

(1) In this section—

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

(2) If—

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

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

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

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

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

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

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

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

Division 12 Some provisions about admissibility of childhood offences

147 Use of evidence of cautions and restorative justice agreements in deciding issue of criminal responsibility

A court considering an issue of criminal responsibility under the Criminal Code, section 29 in relation to a child may have regard to any previous caution administered to the child or any previous restorative justice agreement made by the child.

148 Evidence of childhood finding of guilt not admissible against adult

(1) In a proceeding against an adult for an offence, there must not be admitted against the adult evidence that the adult was found guilty as a child of an offence if a conviction was not recorded.

(2) Subsection (1) applies even though the evidence would otherwise be admissible under the *Evidence Act 1977*, section 15 and the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 5(3)(b).

(3) This section does not prevent a court that is sentencing an adult from receiving information about any other sentence to

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which the adult is subject if that is necessary to mitigate the effect of the court's sentence.

(4) For subsection (1), if a person is found guilty as a child of an offence, the person is not taken to have been found guilty as an adult of the offence merely because of the making of a declaration under section 143(4).

Part 7 Sentencing

Division 1 Sentencing generally

149 Jurisdiction to sentence child exclusive

(1) A court that sentences a child for an offence must sentence the child under this part.

(2) Subsection (1) applies despite any other Act or law.

150 Sentencing principles

(1) In sentencing a child for an offence, a court must have regard to—

(a) subject to this Act, the general principles applying to the sentencing of all persons; and

(b) the youth justice principles; and

(c) the special considerations stated in subsection (2); and

(d) the nature and seriousness of the offence; and

(e) the child's previous offending history; and

(f) any information about the child, including a pre-sentence report, provided to assist the court in making a determination; and

(g) if the child is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the child's community

that are relevant to sentencing the child, including, for example—

(i) the child's relationship to the child's community; or

(ii) any cultural considerations; or

(iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and

(h) any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court under the *Penalties and Sentences Act 1992*, section 179K; and

(i) a sentence imposed on the child that has not been completed; and

(j) a sentence that the child is liable to have imposed because of the revocation of any order under this Act for the breach of conditions by the child; and

(k) the fitting proportion between the sentence and the offence.

(2) Special considerations are that—

(a) a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed; and

(b) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community; and

(c) the rehabilitation of a child found guilty of an offence is greatly assisted by—

(i) the child's family; and

(ii) opportunities to engage in educational programs and employment; and

(d) a child who has no apparent family support, or opportunities to engage in educational programs and

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employment, should not receive a more severe sentence because of the lack of support or opportunity; and

(e) a detention order should be imposed only as a last resort and for the shortest appropriate period.

(4) If required by the court for subsection (1)(g), the representative must advise the court whether—

(a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or

(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the child or victim.

(4A) In sentencing a child for an offence, a court may receive any information, or a sentencing submission made by a party to the proceedings, it considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence.

(6) In this section—

sentencing submission, made by a party, means a submission stating the sentence, or range of sentences, the party considers appropriate for the court to impose.

151 Pre-sentence report

(1) A court, before it sentences a child found guilty of an offence, may order the chief executive to give to the court a pre-sentence report concerning the child.

(2) Subject to subsection (9), the report must be made for the purpose of the sentencing of the child for the offence.

(3) The court may request that the report contain specified information, assessments and reports relating to the child or the child's family or other matters.

(4) The pre-sentence report may not contain the chief executive's opinion on what impact an order under section 234 may have on the child.

(5) Pending the giving of a pre-sentence report, the court may adjourn the proceeding and remand the child in custody or exercise the powers conferred by part 5 to grant bail to and release the child from custody.

(6) In releasing the child from custody, the court may impose conditions that it considers necessary to facilitate the preparation of the pre-sentence report.

(7) The chief executive must cause the pre-sentence report to be prepared in documentary form and given to the court promptly.

(8) The report must be given to the court promptly, but need not be given in less than 15 business days.

(9) For subsection (7), it is enough if the chief executive gives the court further material to be considered with another report prepared for another sentencing of the child that happens on the same day.

151A Permitted use and disclosure of information for pre-sentence report

The chief executive may make information about a child, obtained under this Act or another Act, available to a person in order to assist the chief executive comply with section 151(1).

152 Pre-sentence report evidence

(1) The court may request the author of a pre-sentence report, or a person who gave a statement included in the report, to attend before the court in the way indicated by the court for the purpose of giving more information.

(2) The court may ask, and allow parties to the proceeding to ask, questions of a person attending the court under subsection (1).

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(3) A court may give as much weight as it considers appropriate to a pre-sentence report or answers given in response to questions under subsection (2).

153 Disclosure of pre-sentence report

(1) If a pre-sentence report is given to a court under section 151, the court must give a copy of the report as soon as practicable—

(a) to the prosecution; and

(b) if the child is represented by a lawyer—the lawyer.

(2) If the child is not represented by a lawyer, the court may give the report to the child or a parent of the child present in the court.

(3) The court may give directions it considers appropriate about a report given to anyone under subsection (1) or (2), including, for example, a direction limiting disclosure and a direction requiring the report's return.

153A Permitted use and disclosure of information in a pre-sentence report

(1) This section applies to information—

(a) given under section 152; or

(b) included in a pre-sentence report.

(2) Subject to a direction given under section 153(3), nothing in this Act or another Act limits or restricts the use or disclosure of the information in court.

(3) Nothing in this section permits the publication of information that contravenes the *Child Protection Act 1999*, section 189.

154 Finding of guilt as child may be disclosed while a child

(1) A finding of guilt against a child by a court for an offence, whether or not a conviction has been recorded, is part of the

criminal history of the child to which regard may be had by a court that subsequently sentences the child for any offence as a child.

(2) Subsection (1) applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

(3) However, subsection (1) does not apply to a finding of guilt against a child by a court for an offence if—

(a) the offence was referred to the chief executive for a restorative justice process under section 163(1)(d)(i); and

(b) a restorative justice agreement was made as a consequence of the referral.

155 Mandatory sentence provisions inapplicable

A court that sentences a child for an offence—

(a) must disregard a requirement under any other Act that an amount of money or term of imprisonment must be the minimum penalty for the offence; and

(b) must take a requirement under any other Act that an amount of money or term of imprisonment must be the only penalty for the offence as providing instead that the amount or term is the maximum penalty for the offence.

156 Preference to be given to compensation and restitution

If a court sentencing a child for an offence considers—

(a) that it is appropriate to make both of the orders that the child pay—

(i) an amount by way of compensation or restitution; and

(ii) an amount by way of fine; and

(b) that the child has insufficient resources to pay both amounts;

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the court must give preference to ordering the child to pay only the compensation or restitution amount.

157 Outstanding charge may be taken into account on sentence

(1) A court sentencing a child for an offence may take into account an outstanding charge against the child in the same way an outstanding charge may be taken into account when an adult is sentenced.

(2) The *Penalties and Sentences Act 1992*, section 189 applies for the purpose of subsection (1).

158 Children entitled to explanation of sentence

(1) When making an order sentencing a child for an offence a court must take steps to ensure that the child understands—

(a) the purpose and effect of the order; and

(b) the consequences (if any) that may follow if the child fails to comply with the order.

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

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

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

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

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

(3) Subsection (1) does not apply where the child's presence is not required at sentence.

159 Audio visual link or audio link may be used to sentence

(1) The court may allow anything that must or may be done in relation to the sentencing of a child who is legally represented

to be done over an audio visual link or audio link, if the prosecutor and the child agree to the use of the link.

(2) The provisions of the *Evidence Act 1977* relating to the use of an audio visual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).

160 Copy of court order or decision to be given to child, parent etc.

(1) This section applies to the following (each of which is an ***order or decision to which this section applies***)—

(a) a sentence order;

(b) a decision to dismiss a charge under section 21(1), with or without a further decision or direction under section 21(3) for the administration of a caution by the court or someone else;

(c) a decision to dismiss a charge under section 24A(1) for the referral of an offence to the chief executive for a restorative justice process;

(d) the referral of an offence to the chief executive for a restorative justice process under section 163(1)(d)(i);

(e) the referral of a child to a drug assessment and education session under section 172(3).

(2) A court that makes an order or decision to which this section applies must cause—

(a) the order or decision to be promptly reduced to writing by the proper officer of the court in the prescribed form or in the form of a verdict and judgment record under the *Criminal Practice Rules 1999*; and

(b) a copy of the order or decision to be given by the proper officer of the court to—

(i) the child; and

(ii) a parent of the child; and

(iii) the chief executive.

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(3) If a person mentioned in subsection (2)(b) is not present in the court, the subsection—

(a) is sufficiently complied with if the proper officer of the court serves a copy of the order or decision on the person; and

(b) does not apply if the proper officer of the court is unable to ascertain the whereabouts of the person after reasonable inquiries.

(4) Failure to comply with subsection (2) does not affect the validity of the order or decision.

Division 2 Restorative justice process referrals before sentencing

161 Definitions for division

In this division—

child, in relation to a referral, means the child to which the referral relates.

court diversion referral see section 163(1)(d)(i).

offence, in relation to a referral, means the offence to which the referral relates.

162 When court must consider making court diversion referral or presentence referral

(1) If a child enters a plea of guilty for an offence in a proceeding before a court, the court must consider referring the offence to the chief executive for a restorative justice process instead of sentencing the child.

(2) If a finding of guilt for an offence is made against a child before a court, the court must consider referring the offence to the chief executive for a restorative justice process to help the court make an appropriate sentence order.

163 Power of court to make restorative justice process referral

(1) The court may, by notice given to the chief executive, refer an offence to the chief executive for a restorative justice process if—

(a) the court considers the child is informed of, and understands, the process; and

(b) the child indicates willingness to comply with the referral; and

(c) the court is satisfied that the child is a suitable person to participate in a restorative justice process; and

(d) having regard to the deciding factors for referring the offence, the court considers the referral would—

(i) allow the offence to be appropriately dealt with without making a sentence order (a ***court diversion referral***); or

(ii) help the court make an appropriate community based order or detention order (a ***presentence referral***); and

(e) having regard to a submission by the chief executive about the appropriateness of the offence for a referral, the court considers the referral is appropriate in the circumstances.

(2) In this section—

deciding factors, for referring an offence, means—

(a) the nature of the offence; and

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

(c) whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process.

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164 Court diversion referrals

(1) This section applies if the court makes a court diversion referral.

(2) The making of the referral brings the court proceeding for the offence to an end and the child is not liable to be further prosecuted for the offence unless—

(a) the chief executive returns the referral under section 32(1); or

(b) the chief executive advises the court's proper officer that the child failed to comply with a restorative justice agreement made as a consequence of the referral.

(3) If subsection (2)(a) applies—

(a) the court's proper officer must bring the charge for the offence back on before the court for sentencing; and

(b) in sentencing the child, the court must not have regard to the referral being returned.

(4) If subsection (2)(b) applies, the court's proper officer must bring the charge for the offence back on before the court for sentencing and the court must either—

(a) take no further action; or

(b) allow the child a further opportunity to comply with the agreement; or

(c) sentence the child for the offence.

(5) If the charge for the offence is brought back on before the court for sentencing, the court's proper officer must give the child and the chief executive notice that the proceeding for the offence is to be heard by the court on a stated day.

(6) The notice must include a warning that, if the child fails to appear before the court in compliance with the notice, the court may issue a warrant for the child's arrest.

(7) The notice restarts the proceeding from when it ended and the child is liable to be sentenced for the offence.

(8) If the child fails to appear before the court in compliance with the notice, the court may issue a warrant for the child's arrest.

(9) If subsection (4)(a) applies, the court proceeding for the offence is brought to an end and the child is not liable to be further prosecuted for the offence.

165 Presentence referrals

(1) This section applies if the court makes a presentence referral.

(2) On making the referral, the court may—

(a) give the directions it considers appropriate to the child or the chief executive; and

(b) adjourn the proceeding for the offence.

(3) If the chief executive returns the referral under section 32(1), the court must proceed with sentencing the child for the offence.

(4) If a restorative justice agreement is made as a consequence of the referral, the chief executive must—

(a) give the court a copy of the agreement; and

(b) inform the court of any obligations of the child under the agreement that have already been performed.

(5) If a restorative justice agreement is given to the court under subsection (4), the court must give a copy of the agreement as soon as practicable to—

(a) the prosecution; and

(b) if the child is represented by a lawyer—the lawyer.

(6) In sentencing the child for the offence, the court must have regard to—

(a) the child's participation in the relevant restorative justice process; and

(b) the child's obligations under the restorative justice agreement; and

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(c) anything done by the child under the restorative justice agreement; and

(d) any information provided by the chief executive about sentencing the child.

Division 3 Court referred drug assessment and education sessions before sentencing

Subdivision 1 Interpretation

167 Definitions for div 3

In this division—

approved provider see section 171.

attend, for a drug assessment and education session, means attend all of the session.

disqualifying offence see section 170.

drug assessment and education session, for a child, means a single one-on-one session provided by an approved provider involving assessment of the child's drug use, drug education and identification of any appropriate treatment options for the child.

drug diversion court means a court prescribed under a regulation for the *Penalties and Sentences Act 1992*, section 15B to be a drug diversion court.

eligible child see section 168.

eligible drug offence see section 169.

168 Meaning of *eligible child*

(1) An ***eligible child*** is a child charged with an eligible drug offence who has pleaded guilty to the offence.

(2) The child is not an ***eligible child*** if—

(a) a charge against the child for a disqualifying offence is pending in a court; or

(b) the child has, at any time, been convicted of a disqualifying offence; or

(c) 2 diversion alternatives have previously been given to the child.

(3) For subsection (2)(b), a conviction of a disqualifying offence does not include a conviction in relation to which the rehabilitation period has expired, and not been revived, under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

(4) For subsection (2)(c)—

(a) a diversion alternative has been given to the child if—

(i) a court has referred the child to a drug assessment and education session under section 172; or

(ii) the child has, at any time, agreed under the *Police Powers and Responsibilities Act 2000*, section 379 to attend a drug diversion assessment program; or

(iii) the child has been given a prescribed diversion alternative under a law of another State or the Commonwealth; and

(b) for counting the number of diversion alternatives given to the child, a diversion alternative—

(i) is counted even if it was given for an offence committed before the diversion alternative counted as the first diversion alternative was given; and

(ii) is not counted if it was given on the same day as the diversion alternative counted as the first diversion alternative was given.

(5) In this section—

conviction see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

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Not authorised—indicative only

prescribed diversion alternative means circumstances prescribed under a regulation for this definition that are similar to the circumstances mentioned in subsection (4)(a)(i) or (ii).

rehabilitation period see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

revived see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

169 Meaning of *eligible drug offence*

(1) An ***eligible drug offence*** is—

(a) an offence by a child against the *Drugs Misuse Act 1986*, section 9 of unlawfully having possession of a dangerous drug if—

(i) each dangerous drug mentioned in the charge for the offence is a prescribed dangerous drug; and

(ii) for each dangerous drug mentioned in the charge, the total quantity of the substances, preparations, solutions and admixtures in the child's possession containing the dangerous drug is not more than the prescribed quantity in relation to the dangerous drug; and

Example—

Assume the charge mentioned prescribed drugs X and Y. The prescribed quantity in relation to X is 1.0g and the prescribed quantity in relation to Y is 0.2g. The child had—

- 0.2g of a preparation containing X and Y; and
- 0.7g of a preparation containing X; and
- 0.1g of an admixture containing Y.

The total quantity of the preparations in the child's possession containing X is 0.9g (0.2 + 0.7) which is not more than the prescribed quantity in relation to X (1.0g).

The total quantity of the preparation and admixture in the child's possession containing Y is 0.3g (0.2 + 0.1) which

is more than the prescribed quantity in relation to Y (0.2g).

Subsection (1)(a)(ii) is not satisfied.

(iii) the court considers each dangerous drug mentioned in the charge was for the child's personal use; or

(b) an offence against the *Drugs Misuse Act 1986*, section 10(2), (4) or (4A).

(2) In this section—

dangerous drug see the *Drugs Misuse Act 1986*, section 4.

prescribed dangerous drug means a dangerous drug prescribed under a regulation for the *Penalties and Sentences Act 1992*, section 15D.

prescribed quantity means a quantity prescribed under a regulation for the *Penalties and Sentences Act 1992*, section 15D.

170 Meaning of *disqualifying offence*

(1) A ***disqualifying offence*** is—

(a) an offence of a sexual nature; or

(b) an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9, other than an offence dealt with, or to be dealt with, summarily; or

(c) an indictable offence involving violence against another person, other than an offence charged under any of the following provisions of the Criminal Code—

- section 335
- section 340(1)(a), but only if the offence is the assault of another with intent to resist or prevent the lawful arrest or detention of the child or of any other person
- section 340(1)(b).

Not authorised—indicative only

Not authorised—indicative only

(2) A reference to a provision in subsection (1) or (4) includes a reference to a law of another State or the Commonwealth that corresponds to the provision.

(3) A reference in subsection (1)(c) to an indictable offence includes a reference to an indictable offence dealt with summarily.

(4) In this section—

offence of a sexual nature means an offence defined in the Criminal Code, section 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 228, 229B, 323A, 323B, 363A or chapter 32.

171 Meaning of *approved provider*

(1) An ***approved provider*** is an entity approved by the chief executive (health) by gazette notice to provide drug assessment and education sessions.

(2) In this section—

chief executive (health) means the chief executive of the department within which the *Health Act 1937* is administered.

Subdivision 2 Reference and consequences

172 Reference to drug assessment and education session by court

(1) This section applies if a finding of guilt for an eligible drug offence is made against an eligible child before a drug diversion court.

(2) The court may refer the child to a drug assessment and education session if the child consents to attend the session.

(3) On making the referral, the court must—

(a) direct the child attend a drug assessment and education session by a stated date; and

(b) adjourn the proceeding for the offence.

173 If child attends drug assessment and education session

(1) This section applies if—

(a) a court refers a child to a drug assessment and education session and directs the child attend the session by a stated date; and

(b) the child attends the session by the stated date.

(2) The approved provider for the drug assessment and education session must give notice to the court's proper officer that the child attended the session by the stated date.

(3) A notice under subsection (2)—

(a) brings the court proceeding for the offence to an end; and

(b) the child is then not liable to be further prosecuted for the offence.

(4) On the day the notice is received by the court, the child is taken to have been found guilty by the court of the offence without a conviction being recorded.

174 If child fails to attend drug assessment and education session

(1) This section applies if—

(a) a court refers a child to a drug assessment and education session and directs the child attend the session by a stated date; and

(b) the child fails to attend the session by the stated date.

(2) The approved provider for the drug assessment and education session must give notice to the court's proper officer that the child failed to attend the session by the stated date.

(3) The court's proper officer may—

(a) take no action; or

(b) bring the charge for the offence back on before the court for sentencing.

Not authorised—indicative only

Not authorised—indicative only

(4) For subsection (3)(b), the proper officer must give notice to the child and the chief executive that the proceeding for the offence is to be heard by the court on a stated day.

(5) The notice must include a warning that, if the child fails to appear before the court in answer to the notice, the court may issue a warrant for the child's arrest.

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

(7) If the child fails to appear before the court in answer to the notice, the court may issue a warrant for the child's arrest.

(8) For part 5, if the court issues a warrant and the child is arrested under the warrant, the child must be treated as if arrested on a charge of an offence.

Division 4 Orders on children found guilty of offences

175 Sentence orders—general

(1) When a child is found guilty of an offence before a court, the court may—

(a) reprimand the child; or

(b) order the child to be of good behaviour for a period not longer than 1 year; or

(c) order the child to pay a fine of an amount prescribed under an Act in relation to the offence; or

(d) subject to subsection (2), order the child to be placed on probation for a period not longer than—

(i) if the court is not constituted by a judge—1 year; or

(ii) if the court is constituted by a judge and section 176 does not apply—2 years; or

(da) if a restorative justice agreement is made as a consequence of a presentence referral relating to the child—order the child to perform his or her obligations under the agreement; or

(db) order that the child participate in a restorative justice process as directed by the chief executive; or

(e) subject to subsection (2), if the child has attained the age of 13 years at the time of sentence—order the child to perform unpaid community service for a period not longer than—

(i) if the child has not attained the age of 15 years at the time of sentence—100 hours; or

(ii) if the child has attained the age of 15 years at the time of sentence—200 hours; or

(f) if the child has not attained the age of 13 years at the time of sentence, make an intensive supervision order for the child for a period of not more than 6 months; or

(g) order that the child be detained for a period not more than—

(i) if the court is not constituted by a judge—1 year; or

(ii) if the court is constituted by a judge and section 176 does not apply—the shorter period of the following—

(A) half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve;

(B) 5 years.

(2) An order of the following type may only be made against a child found guilty of an offence of a type that, if committed by an adult, would make the adult liable to imprisonment—

(a) a probation order under subsection (1)(d);

(b) a community service order;

Not authorised—indicative only

Not authorised—indicative only

(c) an intensive supervision order.

(2A) For subsection (1)(db), the offence the child is found guilty of is taken to be referred by the court to the chief executive for a restorative justice process.

(3) A court may make an order for a child's detention under subsection (1)(g) with or without a conditional release order under section 220.

(4) This section has effect subject to the *Childrens Court Act 1992*.

176 Sentence orders—life and other significant offences

(1) If a child is found guilty of a relevant offence before a court presided over by a judge (***the court***), the court, may—

(a) order the child to be placed on probation for a period not longer than 3 years; or

(b) make a detention order against the child under subsection (2) or (3).

(2) For a relevant offence other than a life offence, the court may order the child to be detained for a period not more than 7 years.

(3) For a relevant offence that is a life offence, the court may order that the child be detained for—

(a) a period not more than 10 years; or

(b) a period up to and including the maximum of life, if—

(i) the offence involves the commission of violence against a person; and

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

(4) A court may make an order for a child's detention under subsection (2) or (3) with or without a conditional release order under section 220.

(5) A court may make an order for a child's detention under subsection (3), with or without an order under division 10, subdivision 5.

(6) The Criminal Code, section 305(2), (3) and (4) applies to a court sentencing a child to detention for life on a conviction of murder.

Note—

For the child's parole eligibility, see section 233 of this Act and the *Corrective Services Act 2006*, section 181.

(7) Subsection (6) applies despite section 155.

(8) For the purpose of subsection (6), a reference in the Criminal Code, section 305 to imprisonment is taken to be a reference to detention.

(9) This section does not limit a court's power to make an order under section 175.

(10) In this section—

relevant offence means a life offence, or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, but does not include any of the following offences—

(a) an offence of receiving if the value of the property, benefit or detriment is not more than $5,000;

(b) an offence against the Criminal Code, section 419 or 421, if—

(i) the offence involved stealing or an intent to steal, or an intent to destroy or damage property, or the damage or destruction of property; and

(ii) the offender was not armed or pretending to be armed when the offence was committed; and

(iii) the value of any property stolen, damaged or destroyed was not more than $1,000;

(c) an offence that, if committed by an adult, may be dealt with summarily under the *Drugs Misuse Act 1986*, section 13.

Not authorised—indicative only

Not authorised—indicative only

176A Sentence orders—graffiti offences

(1) This section applies if—

(a) a child is found guilty of a graffiti offence before a court; and

(b) the child had attained at least the age of 12 years at the time of the offence.

(2) Without limiting section 175, the court must make a graffiti removal order for the child.

(3) Subject to sections 194A and 249(3), the graffiti removal order must order the child to perform graffiti removal service for a period no longer than—

(a) if the child has not attained the age of 13 years at the time of sentence—5 hours; or

(b) if the child has attained the age of 13 years, but not the age of 15 years, at the time of sentence—10 hours; or

(c) if the child has attained the age of 15 years at the time of sentence—20 hours.

177 More than 1 type of order may be made for a single offence

A court may make more than 1 type of sentence order for a single offence, subject to sections 178 to 180A.

178 Combination of probation and community service orders

(1) This section applies if a court makes, for a single offence (the ***original offence***), a probation order and a community service order.

(2) The court—

(a) must make separate orders; and

(b) must not impose one of the orders as a requirement of the other.

(3) If the child contravenes one of the orders after the orders are made and is resentenced for the original offence, the other order is discharged.

178A Combination of graffiti removal order and probation and community service orders

(1) This section applies if a court makes, for a single graffiti offence (the ***original offence***), a graffiti removal order and also one or both of the following orders—

(a) a probation order;

(b) a community service order.

(2) The court—

(a) must make separate orders; and

(b) must not impose one of the orders as a requirement of the other.

(3) If the child contravenes one of the orders, other than the graffiti removal order, after the orders are made and is resentenced for the original offence—

(a) the orders, other than the graffiti removal order, are discharged; and

(b) the court may, if it considers it appropriate, discharge the graffiti removal order.

(4) If the child contravenes the graffiti removal order after the orders are made and is resentenced for the original offence, all of the orders are discharged.

178C Combination of restorative justice orders and other sentence orders

(1) This section applies if a court makes, for a single offence, a restorative justice order and any other sentence order.

(2) The court—

(a) must make separate orders; and

Not authorised—indicative only

Not authorised—indicative only

(b) must not impose one of the orders as a requirement of the other.

(3) If the child contravenes the restorative justice order after the orders are made and is resentenced for the offence, the court may discharge any or all of the other sentence orders.

(4) If the child contravenes one of the other sentence orders after the orders are made and is resentenced for the offence, the court may discharge the restorative justice order.

179 Combination of intensive supervision order and probation or detention order prohibited

A court may not make, for a single offence—

(a) an intensive supervision order; and

(b) a probation order or detention order.

180 Combination of detention order and probation order

(1) This section applies if a court makes a detention order and a probation order for a single offence.

(2) A court may make the detention order only for a maximum period of 6 months and may not make a conditional release order.

(3) The probation order may only start when the child is released from detention under the detention order and be for a maximum period ending 1 year after the release.

180A Combination of detention order and graffiti removal order

(1) This section applies if a court makes—

(a) a detention order and a graffiti removal order for—

(i) a single graffiti offence; or

(ii) multiple offences of which one is a graffiti offence; or

(b) a detention order for a child subject to 1 or more existing graffiti removal orders.

(2) The graffiti removal 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.

(3) Any period that, under section 194B(3) or 194D, applies to the graffiti removal 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 extended by the period the child is detained under the detention order.

181 Other orders

A court that makes a sentence order against a child for an offence under section 175 or 176, in addition to the order, may make 1 or more of the following orders—

(a) an order allowed by division 11 requiring the child—

(i) to make restitution of property; or

(ii) to pay compensation of not more than an amount equal to 20 penalty units for loss to property; or

(iii) to pay compensation for injury suffered by another person;

(b) an order allowed by division 13;

(c) an order allowed by division 14.

182 Orders may be combined in 1 form

(1) This section applies if a court makes more than 1 sentence order against a child charged before it with more than 1 offence.

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(2) The court may combine more than 1 of the sentence orders in 1 order form if each sentence order that the form deals with is—

(a) of the same type; and

(b) subject to similar conditions.

(3) The order form must contain, or have attached, a list of each offence for which the order form is made.

(4) In a proceeding, it is taken that a separate sentence order was made for each offence.

183 Recording of conviction

(1) Other than under this section, a conviction is not to be recorded against a child who is found guilty of an offence.

(2) If a court makes an order under section 175(1)(a) or (b), a conviction must not be recorded.

(3) If a court makes an order under section 175(1)(c) to (g) or 176 or 176A, the court may order that a conviction be recorded or decide that a conviction not be recorded.

184 Considerations whether or not to record conviction

(1) In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including—

(a) the nature of the offence; and

(b) the child's age and any previous convictions; and

(c) the impact the recording of a conviction will have on the child's chances of—

(i) rehabilitation generally; or

(ii) finding or retaining employment.

(2) Except as otherwise provided by this or another Act, a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose.

(3) A finding of guilt against a child for an offence without the recording of a conviction stops a subsequent proceeding against the child for the same offence as if a conviction had been recorded.

185 Judge may delegate sentencing power to magistrate

(1) This section applies if—

(a) a proceeding in which a child may be sentenced for an offence is before a Childrens Court magistrate; and

(b) the Childrens Court magistrate considers that an appropriate sentence would be beyond the jurisdiction of the Childrens Court magistrate because of the limit to the jurisdiction set out in section 175(1)(d) or (g).

(2) The magistrate may request a Childrens Court judge to delegate to the magistrate the power to impose a sentence that, under section 175(1), may only be made if a judge constitutes the sentencing court.

(3) The Childrens Court judge has jurisdiction to delegate the power.

(4) The delegation must be made before any evidence is heard, plea entered or election made, unless the child—

(a) is represented by a lawyer; and

(b) consents to a delegation happening at a later time.

(5) The request and delegation may be made informally, including by any form of distance communication.

(6) The magistrate must inform the child of the delegation.

186 Reference of case to Childrens Court judge for sentence

(1) If, in a proceeding for the sentencing of a child for an offence, a Childrens Court magistrate considers that the circumstances require the making of a sentence order—

(a) beyond the jurisdiction of a Childrens Court magistrate; but

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Not authorised—indicative only

(b) within the jurisdiction of a Childrens Court judge;

the magistrate may commit the child for sentence before a Childrens Court judge.

(2) In relation to a committal under subsection (1), the Childrens Court magistrate may make all orders and directions as if it were a committal following a committal proceeding.

(3) The Childrens Court judge may exercise sentencing powers to the extent mentioned in section 175.

187 Reference to complying with, or contravening, an order

In this part, a reference to complying with, or contravening, a sentence order includes complying with, or contravening, a requirement applying to the order under a regulation.

Division 5 Good behaviour orders

188 Good behaviour order

A court that makes a good behaviour order against a child must impose a condition that the child abstains from violation of the law for the period of the order.

189 Breach of conditions

(1) If a person against whom a good behaviour order has been made commits an offence during the period of the order, a court that deals with the person on a charge for the offence may have regard to the breach of the good behaviour order when determining its sentence for the offence.

(2) Otherwise a court must not take any action in relation to a breach of a good behaviour order.

Division 6 Fines

190 Child's capacity to pay fine to be considered

A court may make an order requiring a child to pay an amount by way of fine only if it is satisfied that the child has the capacity to pay the amount.

191 Requirements of fine order

An order made by a court requiring a child to pay a fine must direct that—

(a) the fine be paid by a specified time or by specified instalments; and

(b) the fine must be paid in the first instance to the proper officer of the court.

192 Proper officer's application on breach

(1) This section applies if a child who is ordered to pay a fine for an offence fails to pay all the fine within the time allowed for payment.

(2) The proper officer may apply to the court to cancel the fine order and make a community service order against the child.

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

(a) the child; and

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

(c) the chief executive.

(4) If the court is satisfied that the child has not paid an amount of the fine within the time allowed, the court may—

(a) take no action; or

(b) extend the time for paying the amount; or

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Not authorised—indicative only

(c) cancel the fine order and resentence the child by making a community service order against the child.

(5) The community service hours under the community service order must be calculated using the following formula—

$$\frac{\textbf{unpaid amount of fine} \times \textbf{8}}{\textbf{1 penalty unit}}$$

(6) However, the community service hours calculated using the formula must not be more than that permitted under section 175(1)(e) or 200.

(7) If the hours calculated under the formula are less than that permitted by section 200, the court may not make an order under subsection (4)(c).

(8) If the hours calculated under the formula are more than that permitted by section 175(1)(e) or 200, the court may only make an order for the maximum hours permitted.

(9) The community service order is a community service order under section 175(1)(e).

(10) In this section—

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

Division 6A Restorative justice orders

192A Preconditions to making restorative justice order

(1) A court may make a restorative justice order against a child only if—

(a) the court considers the child is informed of, and understands, the process; and

(b) the child indicates willingness to comply with the order; and

(c) the court is satisfied that the child is a suitable person to participate in a restorative justice process; and

(d) having regard to the following, the court considers the order is appropriate in the circumstances—

(i) a submission by the chief executive about the appropriateness of the order;

(ii) the deciding factors for referring the offence.

(2) In this section—

deciding factors, for referring an offence, means—

(a) the nature of the offence; and

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

(c) whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process.

192B Requirements to be set out in restorative justice order

A restorative justice order made against a child must require—

(a) that the child must report in person to the chief executive within 1 business day after the order is made or any longer period that may be specified in the order; and

(b) that, during the order—

(i) the child abstain from violation of the law; and

(ii) the child comply with every reasonable direction of the chief executive; and

(iii) the child report and receive visits as directed by the chief executive; and

(iv) the child or a parent of the child must notify the chief executive within 2 business days of any change of the child's address, employment or school; and

(v) the child must not leave, or stay out of, Queensland while the order is in force, without the prior approval of the chief executive; and

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Not authorised—indicative only

(vi) the child participate in a restorative justice process as directed by the chief executive; and

(vii) the child perform his or her obligations under a restorative justice agreement made as a consequence of the child's participation in the restorative justice process.

192C Making restorative justice order and community service order or graffiti removal order

(1) This section applies if, for the same offence, a court makes a restorative justice order and—

(a) a community service order; or

(b) a graffiti removal order.

(2) In making the community service order, the court must, when deciding the number of hours of unpaid community service, have regard to the child's obligations under the restorative justice agreement related to the restorative justice order.

(3) In making the graffiti removal order, the court must, when deciding the number of hours of graffiti removal service, have regard to the child's obligations under the restorative justice agreement related to the restorative justice order.

(4) Subsections (2) and (3) only apply to a restorative justice agreement that is in force at the time of making the community service order or graffiti removal order.

192D Ending of restorative justice order

(1) A restorative justice order remains in force until the earlier of the following—

(a) the chief executive is satisfied the child has discharged the child's obligations under the related restorative justice agreement;

(b) the order is discharged under section 245 or 247;

(c) 12 months from the date the order is made.

(2) The period that a restorative justice order remains in force under subsection (1) is subject to sections 245, 247 and 252.

Division 7 Probation orders

193 Probation orders—requirements

(1) A probation order made against a child must require—

(a) that the child must report in person to the chief executive within 1 business day after the order is made or any longer period that may be specified in the order; and

(b) that, during the probation order—

(i) the child must abstain from violation of the law; and

(ii) the child must satisfactorily attend programs as directed by the chief executive; and

(iii) the child must comply with every reasonable direction of the chief executive; and

(iv) the child must report and receive visits as directed by the chief executive; and

(v) the child or a parent of the child must notify the chief executive within 2 business days of any change of address, employment or school; and

(vi) the child must not leave, or stay out of, Queensland during the probation period, without the prior approval of the chief executive.

(2) A probation order made against a child may contain requirements that the child must comply during the whole or a part of the probation period with conditions that the court considers necessary or desirable for preventing—

(a) a repetition by the child of the offence in relation to which the order was made; or

(b) the commission by the child of other offences.

Not authorised—indicative only

Not authorised—indicative only

Example of a condition—

a condition imposing a curfew on the child

(3) An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to attend a particular educational establishment that is located outside the State.

(4) A requirement imposed by a court under subsection (2)—

(a) must relate to the offence for which the probation is made; and

(b) must be supported by the court's written reasons.

194 Child must be willing to comply

A court may make a probation order against a child only if the child indicates willingness to comply with the order.

Division 7A Graffiti removal orders

194A Preconditions to making of graffiti removal order

(1) A court must make a graffiti removal order against a child found guilty by a court of a graffiti offence unless the court is satisfied that, because of the child's physical or mental capacity, the child is not capable of complying with the order.

(2) A court must, when deciding the number of hours of graffiti removal service to order under a graffiti removal order, take into account the age, maturity and abilities of the child against whom the order will be made.

194B Requirements to be set out in graffiti removal order

(1) A graffiti removal order must contain requirements—

(a) that the child report in person to the chief executive within 1 business day after the order is made or any longer period that is specified in the order; and

(b) that the child perform in a satisfactory way graffiti removal service, directed by the chief executive, for the number of hours specified in the order; and

(c) that the child, while performing graffiti removal service, comply with every reasonable direction of the chief executive; and

(d) that the child or a parent of the child inform the chief executive of every change in the child's place of residence within 2 business days of the change; and

(e) that the child abstain from violation of the law during the period of the order; and

(f) that the child not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.

(2) An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to perform graffiti removal service at a place outside the State.

(3) The order may contain a requirement that the child must perform the graffiti removal service within a period starting on the date of the order that is less than 1 year.

Note—

If a requirement is not imposed under this subsection, the period of 1 year mentioned in section 194D(a) will apply.

(4) Before imposing a requirement under subsection (3), a court must consider what is a reasonable period for the child to perform the graffiti removal in all the circumstances of the case.

Not authorised—indicative only

Not authorised—indicative only

194C Obligation of chief executive

The chief executive, in giving directions to a child in relation to the child's performance of graffiti removal service, is—

(a) to avoid, if practicable, conflicts with the religious and cultural beliefs and practices of the child or the child's parent; and

(b) to avoid, if practicable, interference with the child's attendance at a place of employment or a school or other educational or training establishment; and

(c) to take all steps necessary to ensure that the child, if practicable, is kept apart from any adult under sentence for an offence.

194D Graffiti removal service to be performed within limited period

Subject to section 180A, a child against whom a graffiti removal order is made must perform the number of hours of graffiti removal service specified in the order—

(a) within the period of 1 year starting on the date of the order or, if the order states a lesser period, the lesser period; or

(b) within any extended period that a court may order under section 245(1)(aa)(ii) or 247; or

(c) within any extended period allowed by order of the proper officer of the court under section 252.

194E Multiple offences dealt with together

(1) A court—

(a) if a child is found guilty of 2 or more graffiti offences in the same proceeding—

(i) must make at least 1 graffiti removal order against the child; and

(ii) may make more than 1 graffiti removal order against the child; and

(b) if a child is found guilty of 2 or more offences in the same proceeding, one of which is a graffiti offence—must make a graffiti removal order against the child.

(2) This section does not limit section 176A.

194F Limitation on number of hours of graffiti removal service for multiple graffiti offences

(1) This section applies if—

(a) a court makes 1 or more graffiti removal orders against a child found guilty of 2 or more graffiti offences, whether or not the child is also found guilty of any other offence; and

(b) the child is not subject to an existing graffiti removal order.

(2) The total number of hours of graffiti removal service specified in the order, or orders, must not be more than the maximum appropriate to the child allowed by section 176A(3) for 1 graffiti offence.

194G Limitation on number of hours of unpaid service

(1) This section applies if—

(a) a court makes 1 or more graffiti removal orders and 1 or more community service orders against a child found guilty of 1 or more graffiti offences, whether or not the child is also found guilty of any other offence; and

(b) the child is not subject to an existing graffiti removal order or an existing community service order.

(2) The total number of hours of unpaid service specified in the orders must not be more than the maximum number of hours of community service, appropriate to the child, allowed by section 175(1)(e) for 1 offence.

Not authorised—indicative only

Not authorised—indicative only

194H Limitation on number of hours of graffiti removal service when there is unperformed graffiti removal service

(1) This section applies if—

(a) a court makes 1 or more graffiti removal orders against a child found guilty of 1 or more graffiti offences, whether or not the child is also found guilty of any other offence; and

(b) the child is subject to 1 or more existing graffiti removal orders.

(2) Subject to subsection (3), the number of hours of unperformed graffiti removal service and the number of hours of graffiti removal service ordered for the graffiti offence, or offences, mentioned in subsection (1)(a) must not, when added together, total more than the maximum number of hours of graffiti removal service, appropriate to the child, allowed by section 176A(3) for 1 graffiti offence.

(3) If the number of hours of unperformed graffiti removal service equals the maximum number of hours of graffiti removal service, appropriate to the child, allowed by section 176A(3) for 1 graffiti offence, the graffiti removal service ordered to be served for the graffiti offence, or offences, mentioned in subsection (1)(a) must be performed concurrently with the unperformed graffiti removal service.

194I Limitation on number of hours of graffiti removal service when there is unperformed unpaid service

(1) This section applies if—

(a) a court makes 1 or more graffiti removal orders against a child found guilty of 1 or more graffiti offences, whether or not the child is also found guilty of any other offence; and

(b) the child is subject to either of the following—

(i) 1 or more existing community service orders;

(ii) 1 or more existing graffiti removal orders and 1 or more existing community service orders.

(2) Subject to subsection (3), the number of hours of unperformed unpaid service and the number of hours of graffiti removal service ordered for the graffiti offence, or offences, mentioned in subsection (1)(a) must not, when added together, total more than the maximum number of hours of community service, appropriate to the child, allowed by section 175(1)(e) for 1 offence.

(3) If the number of hours of unperformed unpaid service equals the maximum number of hours of community service, appropriate to the child, allowed by section 175(1)(e) for 1 offence, then the graffiti removal service ordered to be served for the graffiti offence, or offences, mentioned in subsection (1)(a)—

(a) must be performed concurrently with any unperformed graffiti removal service to the extent that the number of hours of graffiti removal service ordered to be served for the graffiti offence, or offences, mentioned in subsection (1)(a) is, when added to the number of hours of unperformed graffiti removal service, more than the maximum number of hours of graffiti removal service, appropriate to the child, allowed by section 176A(3) for 1 graffiti offence; or

(b) to the extent that paragraph (a) does not apply—must, when it is performed by the child, be taken to be both—

(i) community service performed under 1 or more of the existing community service orders; and

(ii) graffiti removal service performed under the graffiti removal order made by the court for the offence.

(4) For subsection (3)(b), the chief executive must—

(a) subject to any order of the court, identify the existing community service order, or orders, in relation to which the graffiti removal service is taken to have been performed; and

(b) notify the child in writing of the matter mentioned in paragraph (a).

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194J Unpaid service to be performed cumulatively

All unpaid service to which the following sections apply is to be performed cumulatively unless the court orders otherwise—

(a) section 194F, subject to subsection (2) of that section;

(b) section 194G, subject to subsection (2) of that section;

(c) section 194H, subject to subsections (2) and (3) of that section;

(d) section 194I, subject to subsections (2) and (3) of that section.

194K Cumulative effect of child and adult orders

(1) This section applies if a person is subject to 1 or more of the following orders—

(a) a graffiti removal order under this Act;

(b) a community service order under this Act;

(c) a graffiti removal order under the *Penalties and Sentences Act 1992*;

(d) a community service order under the *Penalties and Sentences Act 1992*.

(2) To the extent that the total number of hours of service to which the person is subject under all of the orders is more than the maximum number of hours of unpaid service applicable to the person under this division or division 8 or under the *Penalties and Sentences Act 1992*, part 5 or 5A, the order or orders made by the court is or are of no effect.

(3) The hours of service in each order to which the person is subject are cumulative on the hours in each other order to which the person is subject, unless the court that makes the order directs otherwise.

194L Ending of graffiti removal order

A graffiti removal order made against a child remains in effect until—

(a) the child has performed graffiti removal service in accordance with the requirements specified under section 194B(1)(b) and (c) for the number of hours specified in the order; or

(b) the order is discharged under section 245 or 247; or

(c) the expiry of the period within which the graffiti removal service is required to be performed under section 194D;

whichever first happens.

Division 8 Community service orders

195 Preconditions to making of community service order

A court may make a community service order against a child only if—

(a) the child indicates willingness to comply with the order; and

(b) the court is satisfied that the child is a suitable person to perform community service; and

(c) the court is satisfied on consideration of a report by the chief executive that community service of a suitable nature can be provided for the child.

196 Requirements to be set out in community service order

(1) A community service order must contain requirements—

(a) that the child report in person to the chief executive within 1 business day after the order is made or any longer period that is specified in the order; and

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(b) that the child perform in a satisfactory way for the number of hours specified in the order the community service that the chief executive directs the child to perform; and

(c) that the child, while performing community service, comply with every reasonable direction of the chief executive; and

(d) that the child or a parent of the child inform the chief executive of every change in the child's place of residence within 2 business days of the change; and

(e) that the child abstain from violation of the law during the period of the order; and

(f) that the child not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.

(2) An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to perform a community service at a place outside the State.

(3) If the order is for less than 50 hours of community service, the order may contain a requirement that the child must perform the community service within a period starting on the date of the order that is less than 1 year.

Note—

If a requirement is not imposed under this subsection, the period of 1 year mentioned in section 198(a)(i) will apply.

(4) Before imposing a requirement under subsection (3), a court must consider what is a reasonable period for the child to perform the community service in all the circumstances of the case.

197 Obligation of chief executive

The chief executive, in giving directions to a child in relation to the child's performance of community service, is—

(a) to avoid, if practicable, conflicts with the religious and cultural beliefs and practices of the child or the child's parent; and

(b) to avoid, if practicable, interference with the child's attendance at a place of employment or a school or other educational or training establishment; and

(c) to take all steps necessary to ensure that the child, if practicable, is kept apart from any adult under sentence for an offence.

198 Community service to be performed within limited period

A child against whom a community service order is made must perform the number of hours of community service specified in the order—

(a) within—

(i) for a community service order of less than 50 hours—the period of 1 year starting on the date of the order or, if the order states a lesser period, the lesser period; or

(ii) otherwise—the period of 1 year starting on the date of the order; or

(b) within any extended period that a court may order under section 245(1)(b)(ii) or 247; or

(c) any extended period allowed by order of the proper officer of the court under section 252.

199 Multiple or successive community service orders

A court—

(a) may make 2 or more community service orders against a child in respect of 2 or more offences; and

(b) may make a community service order against a child who is already subject to an existing community service order.

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200 Limitation on number of hours of community service

(1) Subject to subsections (2) and (3), the community service hours specified in a community service order must not be less than 20.

(2) If—

(a) a court makes 2 or more community service orders against a child found guilty of 2 or more offences; and

(b) the child is not subject to an existing community service order;

the total of the community service hours specified in the orders must not be less than 20 or more than the maximum appropriate to the child allowed by section 175(1)(e) for 1 offence.

(3) If—

(a) a court makes 1 or more community service orders against a child; and

(b) the child is subject to 1 or more existing community service orders;

the total of the community service hours specified in all the orders, less the number of hours for which the child has performed community service under the existing order or orders, must not be less than 20 or more than the maximum appropriate to the child allowed by section 175(1)(e) for 1 offence.

(4) To the extent that the total exceeds the maximum allowed, the order or orders made by the court is or are of no effect.

(5) The community service hours in each community service order made against a child are cumulative on the hours in each other community service order made against the child, unless the court that makes a community service order directs otherwise.

201 Cumulative effect of child and adult community service orders

(1) This section applies if—

(a) a court makes a community service order against a person; and

(b) the person is already subject to 1 or more existing community service orders; and

(c) on the making of the order, the person will be subject to an adult community service order and a child community service order.

(2) The order mentioned in subsection (1)(a) is of no effect to the extent that the total number of hours of community service under all the community service orders to which the person will be subject, less the number of hours for which the person has performed community service under the existing order or orders, is more than the maximum number of hours of community service an adult may be ordered to perform.

(3) In this section—

adult community service order means a community service order made against a person under the *Penalties and Sentences Act 1992* for an offence committed by the person as an adult.

child community service order means a community service order made against a person under this Act for an offence committed by the person as a child.

community service order means an adult community service order or child community service order.

202 Ending of community service order

A community service order made against a child remains in effect until—

(a) the child has performed community service in accordance with the requirements specified under

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section 196(1)(b) and (c) for the number of hours specified in the order; or

(b) the order is discharged under section 245 or 247; or

(c) the expiry of the period within which the community service is required to be performed under section 198;

whichever first happens.

Division 9 Intensive supervision order

203 Preconditions to making of intensive supervision order

(1) A court may make an intensive supervision order for a child only if—

(a) the child expresses willingness to comply with the order; and

(b) the court has ordered a pre-sentence report and considered the report; and

(c) the court considers the child, unless subject to an intensive period of supervision and support in the community, is likely to commit further offences having regard to the following—

(i) the number of offences committed by the child, including the child's criminal history;

(ii) the circumstances of the offences;

(iii) the circumstances of the child;

(iv) whether other sentence orders have not or are unlikely to stop the child from committing further offences.

(2) The pre-sentence report mentioned in subsection (1)(b) must include comments—

(a) outlining the potential suitability of the child for an intensive supervision order; and

(b) advising whether an appropriate intensive supervision program is available for the child.

204 Intensive supervision order—requirements

(1) An intensive supervision order must require—

(a) that the child participate as directed by the chief executive in a program (the ***intensive supervision program***) for the period decided under section 175(1)(f) (the ***program period***); and

(b) that, during the period of the order—

(i) the child abstain from violation of the law; and

(ii) the child comply with every reasonable direction of the chief executive; and

(iii) the child report and receive visits as directed by the chief executive; and

(iv) the child or a parent of the child notify the chief executive within 2 business days of any change of address or school; and

(v) the child not leave, or stay out of, Queensland without the prior approval of the chief executive.

(2) An intensive supervision order made for the child may contain requirements that the child comply, during the whole or a part of the period of the order, with conditions that the court considers necessary for preventing a repetition by the child of the offence for which the order was made or the commission by the child of other offences.

Example of a condition—

a condition imposing a curfew on the child

(3) An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to attend a particular educational establishment that is located outside the State.

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(4) A requirement imposed by a court under subsection (2)—

(a) must relate to the offence for which the order was made; and

(b) must be supported by the court's written reasons.

205 Program period

(1) The program period of a child's intensive supervision program starts when the intensive supervision order is made and ends at the later of the following times—

(a) the end of the last day of the period of the intensive supervision order;

(b) if the intensive supervision program was suspended for part or all of any days (the ***suspended days***)—the end of the last day that is the last day of the period of the order and, additionally, the number of suspended days.

(2) If, at the time a court makes an intensive supervision order for a child—

(a) another intensive supervision order has already been made against the child; and

(b) the intensive supervision program under the other order has not ended;

the period when the child is subject to both intensive supervision programs is counted concurrently.

206 Suspension of intensive supervision program

(1) If, during the program period, a child for good reason is unable to participate in the intensive supervision program, the chief executive may, by written notice given to the child, suspend the intensive supervision program for a specified period.

(2) The period for which the intensive supervision program is suspended is not to be counted as part of the program period.

Division 10 Detention order

Subdivision 1 Initial order

207 Pre-sentence report must be obtained before detention order sentence

A court may make a detention order against a child only if it has first—

(a) ordered the chief executive to prepare a pre-sentence report; and

(b) received and considered the report.

208 Detention must be only appropriate sentence

A court may make a detention order against a child only if the court, after—

(a) considering all other available sentences; and

(b) taking into account the desirability of not holding a child in detention;

is satisfied that no other sentence is appropriate in the circumstances of the case.

209 Court's reasons for detention order to be stated and recorded

(1) A court that makes a detention order against a child must—

(a) state its reasons in court; and

(b) cause the reasons to be reduced to writing and kept by the proper officer of the court with the documents relating to the proceeding.

(2) Subject to subsection (3), a court's failure to comply with subsection (1) does not affect the sentence order.

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(3) A court considering the sentence order on appeal or review must take into account a failure to comply with subsection (1)(a) and give the failure the weight it considers appropriate.

210 Detention to be served in detention centre

(1) Subject to this Act, a child who is sentenced to serve a period of detention must serve the period of detention in a detention centre.

(2) Subject to section 311, on making a detention order against a child, a court must issue its warrant in the prescribed form (if any) directing the commissioner of the police service to take the child into custody and deliver the child to a detention centre decided by the chief executive.

(3) Subsection (2) does not apply if the court makes a conditional release order under section 220.

211 Commencement of detention period

(1) A period of detention under a detention order takes effect from the day the court makes the detention order.

(2) Subsection (1) has effect subject to section 213, section 218 and subsection (3).

(3) If a child is required to serve a period of detention or the unserved part of a period of detention as a result of an appeal against, or a review of, a sentence order, the period or unserved part takes effect from the start of the child's custody on sentence for the offence in question after the appeal or review.

212 Detention orders ordinarily concurrent

If, at the time a court makes a detention order against a child for an offence, the child—

(a) is serving; or

(b) has been sentenced to serve;

a period of detention for another offence, the period of detention under the court's detention order must be served concurrently with the other period of detention, unless other provision is made under section 213 or another Act.

213 Court may order detention period to be cumulative

(1) If, at the time a court makes a detention order against a child for an offence, the child—

(a) is serving; or

(b) has been sentenced to serve;

a period of detention for another offence, the court may order the period of detention under the court's detention order to take effect from the end of the other period of detention.

(2) Subsection (1) applies even if the other period of detention has to be served concurrently or cumulatively with a period of detention for an offence other than the one for which the court makes the detention order.

214 Limitation on cumulative orders

(1) A court making more than 1 detention order under section 175 against a child on the same day or in the same proceedings is not to direct that a detention order be served cumulatively with another of the detention orders if the total period of the detention orders would exceed—

(a) when made by a Childrens Court magistrate—1 year; or

(b) when made by another court—7 years.

(2) To the extent that the total exceeds the maximum allowed the orders are of no effect.

215 Period of escape, mistaken release or release pending appeal or review not counted as detention

If a child serving a period of detention under a detention order—

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(a) is released from custody under part 5 pending an appeal against, or a review of, the detention order; or

(b) is unlawfully at large;

the period for which the child is absent from custody pending the appeal or review, or is unlawfully at large, as the case may be, must not be counted as part of the period of detention.

216 Application for variation of detention order in interests of justice

(1) This section applies to a child who—

(a) is unlawfully at large while subject to a detention order for an offence (the ***original*** order and offence); and

(b) is held in custody in another State for another offence committed in the other State or on a charge of an offence allegedly committed in the other State (the ***interstate custody***).

(2) An application may be made at any time to the court that made the original order to change the original order in the interests of justice.

(3) The application may be made by the child or the chief executive, acting in the interests of the child.

(4) If the application is not made by the chief executive, notice of the application must be given to the chief executive.

(5) On the application the court may—

(a) take no action; or

(b) order all or part of the period of interstate custody to be a period of detention taken to have been served under the original order.

(6) An order under subsection (5)(b) has effect even if the period of interstate custody is required to be served, concurrently or cumulatively, with a period of custody imposed because of an offence, other than the original offence, committed in Queensland or elsewhere.

217 Multiple orders of detention and imprisonment against person as adult and child

Sections 212 and 213 extend to a case where—

(a) at the time a court makes a detention order against a person as a child, the person is serving or has been sentenced to serve a term of imprisonment as an adult; or

(b) at the time a court makes an order sentencing a person to a term of imprisonment as an adult, the person is serving or has been sentenced to serve a period of detention as a child;

as if a reference in the sections to a period of detention included a reference to the term of imprisonment mentioned in paragraph (a) or (b).

218 Period of custody on remand to be treated as detention on sentence

(1) If a child is sentenced to a period of detention for an offence, any period of time for which the child was held in custody pending the proceeding for the offence must be counted as part of the period of detention that is served in a detention centre or corrective services facility.

Note—

In determining, under section 227, when to release the child from detention under a supervised release order under section 228, the chief executive counts the period of time for which the child was held in custody pending the proceeding for the offence.

(2) A period of time for which a child is also held in custody on sentence for another offence is not to be counted for the purposes of subsection (1).

(3) Any period of custody of less than 1 day is not to be counted under subsection (1).

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Subdivision 2 Conditional release order

219 Purpose of conditional release order

The purpose of this subdivision is to provide for an option instead of the detention of a child by allowing a court to immediately release the child into a structured program with strict conditions.

220 Conditional release order

(1) A court that makes a detention order against a child may immediately suspend the order and make an order (***conditional release order***) that the child be immediately released from detention.

(2) The child must be released from detention in accordance with the conditional release order.

221 Conditional release order—requirements

(1) A conditional release order must require—

(a) that the child participate as directed by the chief executive in a program (the ***conditional release program***) for the period, of not more than 3 months, stated in the order (the ***program period***); and

(b) that, during the period of the order—

(i) the child abstain from violation of the law; and

(ii) the child comply with every reasonable direction of the chief executive; and

(iii) the child report and receive visits as directed by the chief executive; and

(iv) the child or a parent of the child notify the chief executive within 2 business days of any change of address, employment or school; and

(v) the child not leave, or stay out of, Queensland without the prior approval of the chief executive.

(2) A conditional release order made in relation to a child may contain requirements that the child comply, during the whole or a part of the period of the order, with conditions that the court considers necessary for preventing a repetition by the child of the offence for which the detention order was made or the commission by the child of other offences.

Example of a condition—

a condition imposing a curfew on the child

(3) An order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to attend a particular educational establishment that is located outside the State.

(4) A requirement imposed by a court under subsection (2)—

(a) must relate to the offence for which the detention order was made; and

(b) must be supported by the court's written reasons.

222 Child must be willing to comply

A court may make a conditional release order in relation to a child only if the child expresses willingness to comply with the order.

223 Pre-sentence report must include particular comments

The pre-sentence report considered by a court before making the relevant detention order must include comments—

(a) outlining the potential suitability of the child for release from detention under a conditional release order; and

(b) advising whether an appropriate conditional release program is available on the child's release under the order.

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Not authorised—indicative only

224 Effect of program period ending

Subject to division 12, at the end of the program period the child is no longer liable to serve a period of detention under the detention order.

225 Program period

(1) The program period of a child's conditional release program starts when the conditional release order is made and ends at the later of the following times—

(a) the end of the last day of the period of the conditional release order;

(b) if the conditional release program was suspended for part or all of any days (the ***suspended days***)—the end of the day that is the last day of the period of the order and, additionally, the number of suspended days.

(2) If, at the time a court makes a conditional release order for a child—

(a) another conditional release order has already been made for the child; and

(b) the conditional release program under the other order has not ended;

the period when the child is subject to both conditional release programs is counted concurrently.

226 Suspension of program

(1) If, during the program period, a child for good reason is unable to participate in the program mentioned in section 221(1)(a), the chief executive may, by written notice given to the child, suspend the program for a stated period.

(2) The period for which the program is suspended is not to be counted as part of the program period.

Subdivision 3 Release after fixed period of detention

227 Release of child after service of period of detention

(1) Unless a court makes an order under subsection (2), a child sentenced to serve a period of detention must be released from detention after serving 70% of the period of detention.

(2) A court may order a child to be released from detention after serving 50% or more, and less than 70%, of a period of detention if it considers that there are special circumstances, for example to ensure parity of sentence with that imposed on a person involved in the same or related offence.

(3) If the child is entitled under section 218 to have a period of custody pending the proceeding (the ***custody period***) treated as detention on sentence, the period before the child is released under this section must be reduced by the custody period.

Example—

C is sentenced to 10 weeks detention. C spent 2 weeks on remand before sentence. The chief executive must make a supervised release order releasing the child 5 weeks after sentence, which is 70% of 10 weeks with a further reduction of 2 weeks.

228 Chief executive's supervised release order

(1) At the end of the period after which a child is required to be released under section 227, the chief executive must make an order (a ***supervised release order***) releasing the child from detention.

(2) However, the chief executive is not required to make a supervised release order if the custody period mentioned in section 227(3) is equal to or more than the period of detention the child was sentenced to serve.

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Examples—

1 C is sentenced to 10 weeks detention. C spent 10 weeks on remand before sentence. The chief executive is not required to make a supervised release order.

2 C is sentenced to 10 weeks detention. C spent 8 weeks on remand before sentence. The chief executive must make a supervised release order for the remaining 2 weeks.

(3) The chief executive may—

(a) impose conditions that the chief executive considers appropriate on the supervised release order; and

(b) amend the conditions at any time by written notice served on the child.

(4) The supervised release order must require that, during the period of the order—

(a) the child abstain from violation of the law; and

(b) the child satisfactorily attend programs as directed by the chief executive; and

(c) the child comply with every reasonable direction of the chief executive; and

(d) the child report and receive visits as directed by the chief executive; and

(e) the child or a parent of the child notify the chief executive within 2 business days of any change of address, employment or school; and

(f) the child not leave, or stay out of, Queensland without the prior approval of the chief executive.

(5) A supervised release order may contain a requirement that the child must comply with outside the State.

Example—

An order may require the child to attend a particular educational establishment that is located outside the State.

229 Child may be released from detention while absent from place of detention

To remove any doubt, it is declared that a child who is serving a period of detention at a place may be released from detention under this subdivision whether or not the child is at the place at the time of release.

Example—

A child is serving a period of detention at a detention centre. The chief executive grants the child leave of absence under section 269. While the child is on the leave of absence, the chief executive may make a supervised release order releasing the child from detention.

230 Release period counts as part of detention period

A period of time for which a child is released from detention under a supervised release order must be counted as part of the period that the child spent in detention for the purpose of calculating the end of the child's period of detention.

Subdivision 4 Release for life sentences

232 Application of sdiv 4

This subdivision applies to a child who is sentenced to detention for life.

233 Application of parole provisions

(1) The *Corrective Services Act 2006*, chapter 5, part 1 applies to the child.

(2) For subsection (1), a reference in the part to a prisoner serving a term of imprisonment for life is taken to include the child.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 5 Publication orders

234 Court may allow publication of identifying information about a child

(1) This section applies if a court makes an order against a child under section 176(3)(b).

(2) The court may order that identifying information about the child may be published if the court considers it would be in the interests of justice to allow the publication, having regard to—

(a) the need to protect the community; and

(b) the safety or wellbeing of a person other than the child; and

(c) the impact of publication on the child's rehabilitation; and

(d) any other relevant matter.

(3) The order does not authorise publication of identifying information before the end of any appeal period or, if the child gives notice of appeal or of application for leave to appeal, before any appeal proceeding has ended.

(4) To remove any doubt, it is declared this section does not apply to a Childrens Court constituted by a Childrens Court magistrate.

(5) In this section—

appeal period means the 1 calendar month from the date of conviction or sentence mentioned in the Criminal Code, section 671.

Division 11 Restitution and compensation

235 Restitution, compensation

(1) In this section—

offence affected property includes—

(a) property in relation to which the offence was committed; or

(b) property affected in the course of, or in connection with, the commission of the offence, for example, property of a victim of an offence committed against the victim's person.

(2) If a child is found guilty before a court of an offence relating to property or against the person of another, the court may in addition to making a sentence order against the child, make 1 or more of the following orders—

(a) an order that the child make restitution of offence affected property;

(b) an order that the child pay compensation (not more than an amount equal to 20 penalty units) for loss caused to offence affected property;

(c) an order that the child pay compensation for injury suffered by another person (whether the victim against whose person the offence was committed or another) because of the commission of the offence.

(3) An order under this section requiring a child to pay an amount by way of compensation or making restitution must direct—

(a) that the amount must be paid by a time specified in the order or by instalments specified in the order; and

(b) that the amount must be paid in the first instance to the proper officer of the court.

(4) An order under this section may include a direction the court considers necessary or convenient for the order, for example the way in which restitution of property is to be carried out.

(5) A court may make an order requiring a child to pay an amount under this section only if the court is satisfied that the child has the capacity to pay the amount.

Not authorised—indicative only

Not authorised—indicative only

Division 12 Contravention of community based orders and related matters

236 Reference to child

(1) A reference in this division to a child against whom a community based order has been made includes a person who has become an adult since the order was made.

(2) Subsection (1) does not limit section 142.

237 Chief executive must warn child about contravention

(1) This section applies if—

(a) a community based order is made against a child; and

(b) the chief executive reasonably believes the child has contravened the order.

(2) The chief executive must warn the child of the consequences of further contravention, including the making of an application under section 238.

(3) However, subsection (2) does not apply if the chief executive does not know the child's whereabouts and can not reasonably find out.

238 Chief executive's application on contravention

(1) This section applies if—

(a) a community based order is made against a child; and

(b) the chief executive reasonably believes the child has contravened the order; and

(c) either—

(i) the contravention is believed to have happened after the child has been given a warning, under section 237, relating to a previous believed contravention of the order; or

(ii) the chief executive is not required to warn the child under section 237; and

(d) the child has not been charged with an offence for the act or omission comprising the contravention.

(2) The chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court magistrate for a finding that the child has contravened the order.

(3) The application may only be made during the period of the order.

(4) A copy of the complaint must be served on a parent of the child, unless a parent can not be found after reasonable inquiry.

(5) A Childrens Court magistrate may issue a warrant for the child's arrest if the child fails to appear before the court in answer to the summons.

(6) A justice may issue a warrant for the child's arrest if the chief executive—

(a) makes a complaint before the justice that the child has contravened a community based order; and

(b) gives information before the justice, on oath, substantiating—

(i) the matter of the complaint; and

(ii) that the chief executive—

(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.

(7) A warrant issued under subsection (5) or (6) must state which part of the community based order has been contravened.

(8) For part 5, a child arrested under the warrant must be treated as if arrested on a charge of an offence.

(9) In this section—

Not authorised—indicative only

Not authorised—indicative only

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

239 Cancellation of warrant

(1) This section applies if—

(a) a warrant for a child's arrest is issued under section 238; and

(b) the child appears before a Childrens Court magistrate other than through the execution of the warrant.

(2) The magistrate may cancel the warrant and deal with the child under this division for the alleged contravention of the community based order.

240 General options available on breach of order

(1) This section applies if—

(a) a complaint is made under section 238 that a child has breached a community based order; and

(b) the child appears before a Childrens Court magistrate; and

(c) the magistrate is satisfied beyond reasonable doubt the contravention has happened.

(2) If the order was made by a Childrens Court magistrate, the magistrate may take the following action—

(a) for an order other than a conditional release order—any action allowed under section 245;

(b) for a conditional release order—any action allowed under section 246.

(3) If the order was made by a higher court, the magistrate may take the following action—

(a) if the magistrate considers that, having regard to the circumstances of the contravention, the order should be discharged and the child dealt with for the offence in

respect of which the order was made—order the child to appear before the higher court;

(b) otherwise—

(i) for an order other than a conditional release order—any action under section 245 other than section 245(1)(d)(ii); or

(ii) for a conditional release order—deal with the child under section 246(2).

(4) If the magistrate orders the child to appear before the higher court, the magistrate may commit the child to custody or release the child under part 5 to be brought or to appear before the higher court.

(5) In this section—

higher court means the Supreme Court or a Childrens Court judge.

241 General options available to superior court to which child committed for breach

(1) This section applies if—

(a) the chief executive applies to a Childrens Court magistrate under section 238 for a finding that a child has breached a community based order; and

(b) under section 240(3)(a), the magistrate orders the child to appear before the Supreme Court or a Childrens Court judge (the ***higher court***); and

(c) the higher court is satisfied beyond reasonable doubt of the matter alleged against the child in the chief executive's application.

(2) The higher court may take the following action—

(a) for an order other than a conditional release order—any action allowed by section 245;

(b) for a conditional release order—any action allowed by section 246.

Not authorised—indicative only

Not authorised—indicative only

(3) The proceeding before the higher court must be heard and decided by a judge sitting without a jury.

242 General options available to court before which child found guilty of an indictable offence

(1) This section applies if—

(a) a child commits an indictable offence while the child is subject to a community based order; and

(b) a court finds the child guilty of the offence.

(2) If the order was made by the court, it may take the following action—

(a) for an order other than a conditional release order—any action allowed by section 245;

(b) for a conditional release order—any action allowed by section 246.

(3) If the order was not made by the court, it may take the following action—

(a) if it considers that, having regard to the circumstances of the offence, the order should be discharged and the child resentenced for the offence in respect of which the order was made—order the child to appear before the court that made the order or, if it may act under section 243, act under that section;

(b) otherwise—

(i) for an order other than a conditional release order—any action under section 245 other than section 245(1)(d)(ii); or

(ii) for a conditional release order—deal with the child under section 246(2).

(4) If the court orders the child to appear before another court under subsection (3)(a), it may commit the child to custody or release the child under part 5 to be brought or to appear before the other court.

243 Court may resentence child originally sentenced by lower court

(1) This section applies to a court acting under section 242(3)(a) in relation to a community based order that it did not make.

(2) If the court is the Supreme Court or a Childrens Court judge and the court that made the order is a Childrens Court magistrate, it may make a sentence order under the following provisions that a Childrens Court magistrate could make in the same circumstances—

(a) for an order other than a conditional release order—section 245(1)(d)(ii);

(b) for a conditional release order—section 246(1).

(3) A sentence order made under subsection (2)—

(a) for the purposes of an appeal, is taken to be a sentence order made on indictment; but

(b) for all other purposes, is taken to be a sentence order made by a Childrens Court magistrate.

(4) If the court is the Supreme Court and the court that made the order is a Childrens Court judge, it may make a sentence order under the following provisions that a Childrens Court judge could make in the same circumstances—

(a) for an order other than a conditional release order—section 245(1)(d)(ii);

(b) for a conditional release order—section 246(1).

(5) A sentence order made under subsection (4) is taken to be a sentence order made by the Childrens Court judge.

244 General options available to court to which child committed for breach by indictable offence

(1) This section applies if a court orders a child to appear before another court under section 242(3)(a).

(2) The other court may take the following action—

Not authorised—indicative only

Not authorised—indicative only

(a) for an order other than a conditional release order—any action allowed by section 245;

(b) for a conditional release order—any action allowed by section 246.

(3) If the other court is the Supreme Court or Childrens Court judge, the proceeding must be heard and decided by a judge sitting without a jury.

245 Court's power on breach of a community based order other than a conditional release order

(1) A court that acts under this section may—

(a) for a probation order—extend the period of the order, but not so that the period by which the order is extended is longer than the period for which the order could be made under sections 175(1)(d), 176(1)(a) and 180(3); or

(aa) for a graffiti removal order—

(i) increase the number of graffiti removal service hours but not so that the total number of hours is more than the number allowed under section 176A(3) or sections 194F to 194I; or

(ii) extend the period within which the graffiti removal service must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or

(ab) for a restorative justice order—extend the period within which the child's obligations under the order must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or

(b) for a community service order—

(i) increase the number of community service hours, but not so that the total number of hours is more than the number allowed under section 175(1)(e); or

(ii) extend the period within which the community service must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or

(c) for an intensive supervision order—extend the period of the order, but not so that the last day of the order is more than 6 months after the court acts under this section; or

(d) for any community based order—

(i) vary another requirement of the order other than the requirement that the child abstain from violation of the law; or

(ii) discharge the order and resentence the child for the offence for which the order was made as if the child had just been found guilty before the court of that offence; or

(iii) on the undertaking of the child to comply in all respects with the order, take no further action.

(2) The court may vary the community based order only if the child expresses a willingness to comply with the order as varied.

(3) An order under subsection (1)(a), (aa), (ab), (b) or (c) may be made in conjunction with an order under subsection (1)(d)(i).

(4) If the court decides to extend the period of the community based order, the court must have regard to the period for which the child has complied with the order.

(5) An order may be made under this section even though, at the time it is made, the community based order in relation to which the order is made is no longer in force because the period of the community based order has ended.

(6) For part 6, division 9, subdivision 4, an order or decision mentioned in this section and made by a Childrens Court magistrate is a sentence order.

(7) In this section—

Not authorised—indicative only

community based order means a community based order other than a conditional release order.

246 Court's power on breach of conditional release order

(1) A court that acts under this section may revoke the conditional release order and order the child to serve the sentence of detention for which the conditional release order was made.

(2) However, instead of revoking the conditional release order, the court may permit the child a further opportunity to satisfy the requirements of the order and, for that purpose, may—

(a) vary the requirements in a way it considers just; or

(b) extend the program period for the order, but not so that the last day of the period is more than 3 months after the court acts under this section.

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

(4) If the court decides to extend the program period for the conditional release order, the court must have regard to the period for which the child has complied with the order.

(5) An order may be made under this section even though, at the time it is made, the conditional release order in relation to which the order is made is no longer in force because the period of the conditional release order has ended.

(6) For part 6, division 9, subdivision 4, an order mentioned in this section and made by a Childrens Court magistrate is a sentence order.

247 Variation, discharge and resentence in the interests of justice

(1) If a community based order is in force for a child, the child or the chief executive may apply to the court that made the order to—

Not authorised—indicative only

(a) vary the requirements of the order, other than the requirement that the child abstain from violation of the law; or

(b) for an order other than a conditional release order—

(i) discharge the order; or

(ii) discharge the order and resentence the child for the offence in respect of which the order was made as if the child had just been found guilty before the court of the offence; or

(ba) for a restorative justice order—extend the period within which the child's obligations under the order must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or

(c) for a conditional release order—revoke the order and order the child to serve the sentence of detention for which the conditional release order was made.

(2) The applicant must give written notice of the making of the application—

(a) if the application is made by the child—to the chief executive; or

(b) if the application is made by the chief executive—to the child.

(3) The court may grant the application if the court considers it would be in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

(4) The application can not be made on the grounds that the child has contravened the order.

(5) On an application mentioned in subsection (1)(b)(ii), the child can not be resentenced to a greater penalty than would be the case if the balance of the order were served.

Not authorised—indicative only

Not authorised—indicative only

Example of a greater penalty—

a penalty that would impose a greater degree of restriction on the child's liberty

248 Detention reduced to the extent just

(1) This section applies to a court if, under this division, it revokes a conditional release order and orders a child to serve the period of detention for which the conditional release order was made.

(2) The court must reduce the period of detention by the period the court considers just, having regard to everything done by the child to conform with the conditional release order.

249 Matters relevant to making further order

(1) This section applies to a court if, under this division, it discharges a community based order, other than a conditional release order, and resentences the child for the offence in respect of which the order was made.

(2) The court must have regard to—

(a) the reasons for making the order; and

(b) anything done by the child in compliance with the order.

(3) If the community based order is a graffiti removal order, the court need not, when resentencing the child for the graffiti offence for which the order was made, make another graffiti removal order.

250 Affidavits may be used in certain proceedings

(1) In a proceeding before a court under this division, evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.

(2) The proceeding may be decided on evidence by affidavit alone, unless the court orders, in the interests of justice, that a

person who has made an affidavit be called to give evidence in the proceeding.

(3) The court may make an order under subsection (2) of its own initiative or on the application of a party to the proceeding.

(4) This section does not limit another way in which the proceeding may be conducted.

251 Notice of discharge etc. of community based order

If a court in the exercise of jurisdiction under this division affects the terms or operation of a community based order made against a child, it must cause written notice of the exercise of the jurisdiction to be given to—

(a) the child; and

(b) the chief executive; and

(c) if that court is not the court that made the community based order to which the application for exercise of the jurisdiction applied—the court that made the order.

252 Variations by consent

(1) This section applies to a community based order, other than a conditional release order, that is in force for a child.

(2) The child or the chief executive may apply to the proper officer of the court that made the order to make stated amendments to the requirements of the order.

(3) The application must be accompanied by an affidavit deposing to the fact that the chief executive and the child consent to the proposed amendment of the order.

(4) If the application is made under this section, the proper officer must grant the application by amending the order and noting the amendments on the court's record of the order.

(5) The following amendments may not be made under this section—

Not authorised—indicative only

Not authorised—indicative only

(a) an amendment of the requirement that the child abstain from violation of the law;

(b) for a community based order other than a community service order—an amendment of the period of the order;

(c) for a community service order—an amendment that—

(i) increases the number of community service hours; or

(ii) lessens the period within which the community service is required to be performed;

(ca) for a graffiti removal order—an amendment that—

(i) increases the number of graffiti removal service hours; or

(ii) lessens the period within which the graffiti removal service is required to be performed;

(d) an amendment prohibited by the community based order.

Division 12A Contravention of supervised release orders and related matters

252A Definitions for div 12A

In this division—

child, for a child on release from detention under a supervised release order, includes, without limiting section 142, a person who was an adult when the order was made or has become an adult since the order was made.

original sentencing court, for a supervised release order, means the court that made the sentence order relating to the supervised release order.

252B Chief executive must warn child of contravention

(1) This section applies if—

(a) a child is on release from detention under a supervised release order; and

(b) the chief executive reasonably believes the child has contravened the order.

(2) The chief executive must warn the child of the consequences of further contravention, including the making of an application under section 252C.

(3) Subsection (2) does not apply if the chief executive does not know the child's whereabouts and can not reasonably find out.

252C Chief executive's application on contravention

(1) This section applies if—

(a) a child is on release from detention under a supervised release order; and

(b) the chief executive reasonably believes the child has contravened the order; and

(c) either—

(i) the contravention is believed to have happened after the child has been given a warning, under section 252B, relating to a previous believed contravention of the order; or

(ii) the chief executive is not required to warn the child under section 252B(3); and

(d) the child has not been charged with an offence for the act or omission comprising the contravention.

(2) The chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court magistrate for a finding that the child has contravened the order.

(3) A copy of the complaint must be served on a parent of the child, unless a parent can not be found after reasonable inquiry.

(4) In this section—

Not authorised—indicative only

Not authorised—indicative only

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

252D General options available to a Childrens Court magistrate on chief executive's application

(1) This section applies if—

(a) a complaint is made under section 252C(2) that a child has contravened a supervised release order; and

(b) the child appears before a Childrens Court magistrate; and

(c) the magistrate is satisfied beyond reasonable doubt that the contravention has happened.

(2) If the magistrate considers the child should be given a further opportunity to satisfy the conditions of the order, the magistrate may order that no further action be taken.

(3) If subsection (2) does not apply, the magistrate may act under subsection (4) or (5).

(4) If the unexpired part of the child's sentence is 1 year or less, the magistrate may—

(a) order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or

(b) order the child to be returned to the detention centre for the unexpired part of the child's sentence.

(5) If the unexpired part of the child's sentence is more than 1 year, the magistrate may order the child to appear before the original sentencing court.

252E General options available to a court if child found guilty of indictable offence

(1) This section applies if—

(a) a child on release from detention under a supervised release order commits an indictable offence; and

(b) a court finds the child guilty of the offence.

Note—

The commission of an indictable offence is a contravention of the supervised release order—see section 228(4)(a).

(2) If the court (including in its concurrent jurisdiction) was the original sentencing court, or is a higher court, the court may—

(a) if the court considers the child should be given a further opportunity to satisfy the conditions of the order—order that no further action be taken; or

(b) order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or

(c) order the child to be returned to the detention centre for the unexpired part of the child's sentence.

(3) If subsection (2) does not apply and the court is a Childrens Court magistrate or a Magistrates Court, the court may—

(a) if the court considers the child should be given a further opportunity to satisfy the conditions of the order—order that no further action be taken; or

(b) if the unexpired part of the child's sentence is 1 year or less—

(i) order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or

(ii) order the child to be returned to the detention centre for the unexpired part of the child's sentence; or

(c) if the unexpired part of the child's sentence is more than 1 year—order the child to appear before the original sentencing court.

Not authorised—indicative only

Not authorised—indicative only

(4) If subsections (2) and (3) do not apply, the court may order the child to appear before the original sentencing court.

(5) If the court is a Magistrates Court or the District Court, the order under subsection (2), (3) or (4) must be made in its concurrent jurisdiction.

(6) In this section—

higher court means—

(a) for a Magistrates Court or a Childrens Court magistrate—the District Court or a Childrens Court judge; or

(b) for the District Court or a Childrens Court judge—the Supreme Court.

252F General options available to a court before which a child is ordered to appear

(1) This section applies if—

(a) the chief executive applies to a Childrens Court magistrate under section 252C for a finding that a child has contravened a supervised release order; and

(b) under section 252D, the magistrate orders the child to appear before another court; and

(c) the child appears before the other court; and

(d) the other court is satisfied beyond reasonable doubt of the matter alleged against the child in the chief executive's application.

(2) This section also applies if —

(a) a child has been ordered by a court to appear before another court under section 252E; and

(b) the child appears before the other court.

(3) The other court may—

(a) if the court considers the child should be given a further opportunity to satisfy the conditions of the order—order that no further action be taken; or

(b) order the child to be returned to the detention centre and set a day on which the chief executive must make another supervised release order releasing the child from detention; or

(c) order the child to be returned to the detention centre for the unexpired part of the child's sentence.

(4) For subsection (1)(d), the proceeding before the other court must be heard and decided by a judge sitting without a jury.

252G Matters relevant to making further order

(1) In making an order under section 252D, 252E or 252F, a court must have regard to anything done by the child in compliance with the supervised release order.

(2) For an Act providing rights to anyone of appeal or review—

(a) a finding under section 252D(1)(c) in relation to an order under section 252D(4)(a) or (b) is taken to be a finding of guilt on complaint and summons for an offence; and

(b) an order under section 252D(2) or (4)(a) or (b) is taken to be a sentence order made on complaint and summons; and

(c) a finding under section 252F(1)(d) is taken to be a finding of guilt on a charge on indictment; and

(d) an order under section 252E(2) or (3)(a) or (b) or 252F(3) is taken to be a sentence order made on—

(i) complaint and summons, if the order is made by the Childrens Court magistrate or Magistrates Court; or

(ii) indictment, if the order is made by another court.

Not authorised—indicative only

Not authorised—indicative only

(3) However, a finding that the child has contravened a supervised release order is not part of the child's criminal history.

252H Committal to custody pending appearance before another court

(1) If a court orders a child to appear before another court under section 252D or 252E, it may commit the child to custody or release the child under part 5 to be brought or to appear before the other court.

(2) A period spent by a child in custody under subsection (1) is to be counted as part of the time spent by the child in detention for the purpose of calculating the end of the period of detention from which the child was released.

252I Issue of warrant for child in particular circumstances

(1) A justice may issue a warrant for the child's arrest if the chief executive—

(a) makes a complaint before the justice that the child has contravened a supervised release order; and

(b) gives information before the justice, on oath, substantiating—

(i) the matter of the complaint; and

(ii) that the chief executive does not know the child's whereabouts and can not reasonably find out, or reasonably believes that the child would not comply with a summons.

(2) Also, a Childrens Court magistrate may issue a warrant for the child's arrest if the child fails to appear before the court in answer to a summons under section 252C(2).

(3) A warrant issued under subsection (1) or (2) must state which part of the supervised release order has been contravened.

(4) For part 5, a child arrested under a warrant issued under subsection (1) or (2) must be treated as if arrested on a charge of an offence.

(5) If a warrant is issued against a child under subsection (1) or (2) and the child appears before a Childrens Court magistrate other than through the execution of the warrant, the magistrate may cancel the warrant.

(6) A period spent by a child in custody on the execution of a warrant issued under subsection (1) or (2) is to be counted as part of the time spent by the child in detention for the purpose of calculating the end of the period of detention from which the child was released.

(7) The period spent by the child out of custody after the issue of a warrant under subsection (1) or (2) is not to be counted as part of the time spent by the child in detention for the purpose of calculating the end of the period of detention from which the child was released.

252J Effect of expiry of supervised release order before application dealt with

(1) This section applies if a supervised release order expires before a child is finally dealt with on an application under this division.

(2) The application expires.

(3) If the child is in custody under a warrant issued under section 252I or a court order under section 252H(1), the child must be released from custody under the warrant or order.

Not authorised—indicative only

Not authorised—indicative only

Division 13 Application of Transport Operations (Road Use Management) Act 1995 and Heavy Vehicle National Law (Queensland)

253 Application of Transport Operations (Road Use Management) Act 1995 and Heavy Vehicle National Law (Queensland) generally

(1) Subject to this Act, the provisions of the *Transport Operations (Road Use Management) Act 1995* and the Heavy Vehicle National Law (Queensland) apply in relation to a child as they apply in relation to an adult.

(2) For this purpose, for the *Transport Operations (Road Use Management) Act 1995*—

(a) a reference in that Act to a Magistrates Court or justice is taken to include a reference to a Childrens Court magistrate; and

(b) a reference in that Act to a clerk of a Magistrates Court is taken to be a reference to a clerk of a Childrens Court.

254 Disqualification

(1) In this section—

disqualified means disqualified from holding or obtaining a driver licence.

(2) If—

(a) a child is found guilty of an offence under the Criminal Code, *Transport Operations (Road Use Management) Act 1995* or another Act; and

(b) were the child convicted of the offence as an adult the child would be liable to be disqualified on the conviction whether under the Criminal Code, *Transport Operations (Road Use Management) Act 1995* or another Act;

the child is also liable to be disqualified to the same extent.

(3) If—

(a) a child aged less than 17 years is found guilty of an offence under the Criminal Code, *Transport Operations (Road Use Management) Act 1995* or another Act; and

(b) a conviction is recorded; and

(c) were the child convicted of the offence as an adult, the child would be disqualified by the conviction by operation of law;

the child is also disqualified to the same extent.

(4) If—

(a) a child aged at least 17 years is found guilty of an offence under the Criminal Code, *Transport Operations (Road Use Management) Act 1995* or another Act; and

(b) were the child convicted of the offence as an adult, the child would be disqualified by the conviction by operation of law;

the child is also disqualified to the same extent.

(5) Subject to subsection (7), the *Transport Operations (Road Use Management) Act 1995*, section 82 applies in relation to a child found guilty of an offence under section 79 of that Act and, for this purpose, a mention in the section of a conviction includes a finding of guilt.

(6) Subject to subsection (7), the *Transport Operations (Road Use Management) Act 1995*, sections 89 and 90 apply in relation to a child acquitted of a charge of an offence.

(7) Subsections (5) and (6) apply only if the child is of an age when persons generally are eligible to obtain a driver licence.

Not authorised—indicative only

Not authorised—indicative only

Division 14 Order for identifying particulars to be taken

255 Court may order sentenced child's identifying particulars to be taken

(1) This section applies if a child is found guilty before a court of an indictable offence or an offence against any of the following Acts that is an arrest offence—

(a) the Criminal Code;

(b) the *Drugs Misuse Act 1986*;

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

(d) the *Regulatory Offences Act 1985*;

(e) the *Summary Offences Act 2005*;

(f) the *Weapons Act 1990*.

(2) The court, in addition to making a sentence order against the child, may make an order that the child's identifying particulars be taken.

(3) If the child will not be in custody when the particulars are taken, the order must require the child to report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take the identifying particulars.

(4) A child must not contravene the order.

Maximum penalty—10 penalty units.

(5) If the child will be in custody when the particulars are to be taken, the order must require them to be taken at the place the child is held in custody.

(6) In this section—

identifying particulars means fingerprints and palm prints.

Division 15 Application of Acts applying to victims

256 Victims of Crime Assistance Act 2009 etc.

To remove any doubt, it is declared that the *Victims of Crime Assistance Act 2009*, and the repealed *Criminal Offence Victims Act 1995* as it continues to apply under that Act, apply to an offence committed by a child.

Division 16 Orders against parent

257 Interpretation

In this division—

parent means a guardian of the child, other than the chief executive (child safety).

show cause hearing means the hearing and determination of the issue of whether a parent should be ordered to pay compensation under section 259(5).

258 Notice to parent of child offender

(1) This section applies if it appears to a court, on the evidence or submissions in a case against a child found guilty of a personal or property offence, that—

(a) compensation for the offence should be paid to anyone; and

(b) a parent of the child may have contributed to the fact the offence happened by not adequately supervising the child; and

(c) it is reasonable that the parent should be ordered to pay compensation for the offence.

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(2) The court may decide to call on a parent of the child to show cause, as directed by the court, why the parent should not pay the compensation.

(3) The court may act under subsection (2) on its own initiative or on the prosecution's application.

(4) If the parent is present in court when the court decides to call on the parent to show cause, the court may call on the parent to show cause by announcing its decision in court.

(5) If a court calls on a parent under subsection (2), the court must—

(a) reduce its grounds to writing; and

(b) give a copy to the parent.

(6) The court in all cases, instead of acting under subsection (2), may cause the proper officer of the court to give written notice to the parent calling on the parent to show cause as directed by the notice why the parent should not pay the compensation.

(7) If a parent is called on under subsection (4)—

(a) the court must reduce its grounds to writing; and

(b) a copy of the grounds must be given, in accordance with the court's directions (if any), to the parent a reasonable time before the show cause hearing.

(8) A proceeding under this section or section 259 is a civil proceeding and a court may make an order for the costs of the proceeding.

(9) In this section—

compensation for the offence means compensation for—

(a) loss caused to a person's property whether the loss was an element of the offence charged or happened in the course of the commission of the offence; or

(b) injury suffered by a person, whether as the victim of the offence or otherwise, because of the commission of the offence.

259 Show cause hearing

(1) At the show cause hearing—

(a) evidence and submissions in the case against the child are to be treated as evidence and submissions in the show cause hearing; and

(b) further evidence may be given and submissions made; and

(c) the parent may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and

(d) the parent may require any fact stated in submissions mentioned in paragraph (a) to be proved.

(2) Subject to subsection (1)—

(a) the determination of the issues on the show cause hearing must be by way of a fresh hearing on the merits; and

(b) the court is not bound by a determination made by it under section 258.

(3) If the parent was called on to show cause on the prosecution's application, the prosecution is a party to the show cause hearing.

(4) If the parent was called on to show cause by the court's own initiative the prosecution, which in this case always includes the director of public prosecutions, may at the show cause hearing—

(a) appear and give the court the assistance it may require; or

(b) intervene as a party with the court's permission.

(5) If, on consideration of the evidence and submissions mentioned in subsection (1)(a) and (b), a court is satisfied of the matters mentioned in section 258(1)(a), (b) and (c), the court may make an order requiring the parent to pay compensation.

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(6) The court is to make its decision on the basis of proof beyond a reasonable doubt.

(7) The maximum amount of compensation payable under an order is 67 penalty units.

(8) The order must direct that—

(a) the amount must be paid by a time specified in the order or by instalments specified in the order; and

(b) the amount must be paid in the first instance to the proper officer of the court.

(9) In determining the amount to be paid by a parent by way of compensation, the court must have regard to the parent's capacity to pay the amount, which must include an assessment of the effect any order would have on the parent's capacity to provide for dependants.

(10) A court may proceed under this section in the absence of the parent if the court is satisfied that the parent has been given notice of the show cause hearing under section 258.

(11) A show cause hearing may be heard before the court as constituted when calling on the parent to show cause, or as otherwise constituted.

(12) To remove doubt, it is declared that the chief executive (child safety) can not be ordered to pay compensation under subsection (5).

260 Recovery of unpaid compensations amount

(1) An amount of compensation ordered to be paid under section 259, and any amount of costs ordered to be paid, is a debt owed by the parent to the person in whose favour the order is made.

(2) The order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*.

(3) If the order is filed in the registry of a Magistrates Court, the order is taken to be an order made by the court and may be enforced as an order of the court.

Part 8 Detention administration

Division 1 Administration

261 Application of Corrective Services Act 2006

The *Corrective Services Act 2006* does not apply to a child, unless this Act expressly applies that Act to a child in particular circumstances.

262 Establishment of detention centres and other places

The Governor in Council may, by regulation—

(a) establish detention centres and other places for the purposes of this Act; and

(b) determine the purpose for which a place (other than a detention centre) may be used; and

(c) name a detention centre or other place.

263 Management of detention centres

(1) Subject to this Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

(2) The chief executive may carry out the responsibilities mentioned in subsection (1) by using any convenient form of direction, for example, rules, directions, codes, standards and guidelines relating to—

(a) detention centre organisation; or

(b) functions, conduct and responsibilities of detention centre employees; or

(c) types of programs for children detained in a detention centre; or

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(d) contact between children detained in the detention centre and members of the public; or

(e) arrangements for educational, recreational and social activities of children detained in detention centres.

(3) In relation to each detention centre, the chief executive is responsible for—

(a) providing services that promote the health and wellbeing of children detained at the centre; and

(b) promoting the social, cultural and educational development of children detained at the centre; and

(c) maintaining discipline and good order in the centre; and

(d) maintaining the security and management of the centre.

(4) The chief executive must monitor the operation of the detention centres and inspect each detention centre at least once every 3 months.

(5) Also, as far as reasonably practicable, the chief executive must ensure principles 3, 15, 19 and 20 of the youth justice principles are complied with in relation to each child detained in a detention centre.

(6) Subsection (5) does not limit another provision of this Act.

(7) Subsection (8) applies in relation to the chief executive's consideration of—

(a) the Human Rights Act 2018, section 30(2) in relation to a child detained in a detention centre on remand; and

(b) the segregation of the child mentioned in paragraph (a) from a child detained on sentence.

(8) To remove any doubt, it is declared that the chief executive does not contravene the Human Rights Act 2018, section 58(1) only because the chief executive's consideration takes into account—

(a) the safety and wellbeing of the child on remand and other detainees; and

(b) the chief executive's responsibilities and obligations under this section.

264 Authorisations for Mental Health Act 2016

(1) The chief executive may, by signed writing, authorise a member of staff of a detention centre to exercise powers of a detention centre officer under the *Mental Health Act 2016*.

(2) However, the chief executive may authorise a staff member only if, in the chief executive's opinion, the staff member has the necessary expertise or experience to exercise the powers.

Division 2 Children in detention centres

265 Where children to be detained

(1) The chief executive must decide the detention centre at which a child ordered to be detained or remanded in custody is to be detained.

(2) The chief executive may direct that a child detained in a detention centre be transferred to another detention centre.

266 Authority for admission to detention centre

(1) The chief executive must not—

(a) admit a child to a detention centre; or

(b) detain a child in a detention centre;

unless the chief executive is given a document mentioned in subsection (2).

(2) The documents are—

(a) a warrant authorising the detention of the child; or

(b) if the child has been refused bail by a police officer in relation to a charge of an offence—a copy of the bench charge sheet for the offence; or

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Not authorised—indicative only

(c) a court verdict and judgment records containing the name of the child and particulars of the judgment pronounced on the child; or

(d) a document in the prescribed form that contains the relevant details of an existing document mentioned in paragraph (c); or

(e) a document prescribed by regulation.

267 Child must be given information on entry to detention centre

(1) The chief executive must ensure that, as soon as practicable after a child is admitted to a detention centre, the child is given a document containing the following information—

(a) the rules governing the facility;

(b) the child's rights and responsibilities under the youth justice principles;

(c) how, and to whom, the child may make a complaint about a matter relating to the detention;

(d) how the child can access legal services during the detention;

(e) the obligation on a detention centre employee under section 268 to report any harm the child suffers during the detention;

(f) any other information the chief executive considers appropriate.

(2) The chief executive must also ensure the information in the document is orally explained to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand.

268 Obligation to report harm to children in detention centres

(1) If a detention centre employee becomes aware, or reasonably suspects, that a child has suffered harm while detained in a

detention centre, the employee must, unless the employee has a reasonable excuse, report the harm or suspected harm to the chief executive—

(a) immediately; and

(b) if a regulation is in force under subsection (3)—in accordance with the regulation.

Maximum penalty—20 penalty units.

(2) It is immaterial how the harm was caused.

(3) A regulation may prescribe the way the report must be given or the particulars that the report must include.

(4) It is a reasonable excuse for the employee not to report a matter that reporting the matter might tend to incriminate the employee.

(5) Subsection (1) does not apply if the employee knows, or reasonably supposes, that the chief executive is aware of the harm or suspected harm.

(6) In this section—

harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.

269 Leave of absence

(1) Subject to this Act, the chief executive may, by written notice given to a child detained in a detention centre, and subject to conditions that the chief executive determines, grant the child leave of absence.

(2) The leave may only be granted—

(a) for a specified period; and

(b) for a specified purpose set out in subsection (3); and

(c) subject to specified conditions.

(3) The purposes for which leave may be granted are—

(a) to seek or engage in paid or unpaid employment; and

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(b) to attend any place for educational or training purposes; and

(c) to visit the child's family, relatives or friends; and

(d) to take part in sport, recreation or entertainment in the community; and

(e) to attend any place for medical examination or treatment; and

(f) to attend a funeral; and

(g) any other purpose that the chief executive considers will assist in the child's reintegration into the community.

(4) If a child is granted leave of absence—

(a) the child is taken to be in lawful custody during the period of leave; and

(b) the period of leave counts as part of the child's period of detention.

(5) If the child contravenes a condition imposed in relation to a grant of leave of absence (other than a condition with respect to returning to a detention centre) the chief executive may, in writing—

(a) vary the conditions of the grant; or

(b) cancel the leave of absence.

271 Chief executive may authorise treatment

Despite any other Act or law, the chief executive is authorised to give consent to any medical treatment of a child in the chief executive's custody if—

(a) the medical treatment requires the consent of a guardian of the child; and

(b) the chief executive is unable to ascertain the whereabouts of a guardian of the child despite reasonable inquiries; and

(c) it would be detrimental to the child's health to delay the medical treatment until the guardian's consent can be obtained.

272 Ordinary visitor

(1) This section does not apply to a community visitor (child) or child advocacy officer.

(2) The chief executive may approve the entry of visitors to a detention centre either generally or in a particular case.

(3) The chief executive may refuse entry to a detention centre to a person if—

(a) in the chief executive's opinion, the person's presence in the detention centre would prejudice the security or good order of the detention centre; or

(b) the person does not, on request, give the person's name, address or proof of identity; or

(c) the person refuses to comply with a request made under subsection (5).

(4) Subject to section 276, the chief executive may require a visit to a detention centre to take place in the presence, or under the supervision, of a member of the staff of the detention centre.

(5) The chief executive may, on reasonable grounds, ask a visitor to a detention centre—

(a) to submit to an external physical search by a member of the staff of the detention centre; or

(b) to submit anything in the visitor's possession to a search by a member of the staff of the detention centre.

(6) The chief executive may give a visitor who has entered a detention centre a direction it considers necessary for the security or good order of the centre.

(7) If a visitor refuses to submit to a search requested under subsection (5) or fails to comply with a direction under

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subsection (6), the chief executive may ask the visitor to leave the centre immediately.

(8) A police officer or a member of the staff of a detention centre may, using force that is reasonable and necessary, remove from the centre a visitor who refuses to leave the centre immediately when requested to leave.

273 Commissioner of police service to provide criminal history

(1) The chief executive may ask the commissioner of the police service to give the chief executive a report about the criminal history of a person visiting, or who has applied to visit, a detention centre.

(2) The commissioner must give the chief executive a written report about the criminal history that—

(a) is in the commissioner's possession; or

(b) the commissioner can access through arrangements with the police service of another State.

(3) The information in the report may include a reference to, or a disclosure of, a conviction referred to in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.

(4) In this section—

criminal history, of a person, means—

(a) the offences of which the person has been convicted; or

(b) the court briefs for the offences.

274 Use of criminal history information

The chief executive must not use information obtained under section 273, about a person's criminal history, other than for assessing—

(a) any risk of either of the following being harmed by the person—

(i) a child in a detention centre;

(ii) a detention centre employee; or

(b) any risk to the security of the detention centre.

275 Helping child gain access to lawyer

The chief executive must ensure that, if a child detained in a detention centre asks the chief executive or a detention centre employee for help in gaining access to a lawyer, the child is given the help that is reasonable in the circumstances.

276 Protection of lawyer representing child

(1) A lawyer representing a child held in a detention centre is entitled to access to the child at all reasonable times.

(2) A detention centre employee—

(a) must allow the lawyer to conduct an interview with the child out of the hearing of any other person; and

(b) must not open, copy, remove or read any correspondence—

(i) from the child to the lawyer; or

(ii) from the lawyer to the child.

(3) Subsection (2)(b) does not prevent a detention centre employee from handling the correspondence to the extent necessary to give the child access to it or, at the child's request, to store it in a secure place.

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Division 2A Age related transfers to corrective services facility

Subdivision 1 Prison transfer directions

276A Definitions for subdivision

In this subdivision—

detainee includes a person liable to serve a period of detention under this Act.

prison transfer direction see section 276C(1).

276B Particular detainees liable to be transferred to corrective services facility

(1) The following persons are liable to be transferred to a corrective services facility—

(a) a person in detention who—

(i) turns 18 years while serving a period of detention; and

(ii) is liable to serve a remaining period of detention of 6 months or more;

(b) a person beginning detention who—

(i) is 18 years or older when beginning detention; and

(ii) is liable to serve a remaining period of detention of 6 months or more.

(2) For this section, the ***remaining period of detention*** for a person—

(a) is taken to start—

(i) if turning 18 years during detention—on the day the person turns 18 years; or

(ii) if 18 years or older when beginning detention—on the day the person begins detention; and

(b) is taken to end—

(i) at the conclusion of all periods of detention that the person is liable to serve cumulatively; but

(ii) no later than the day the person is required to be released from detention under section 227.

(3) In this section—

beginning detention includes returning to detention to continue or complete a period of detention because of a contravention of a conditional release order or supervised release order.

276C Transfer of particular detainees to corrective services facility

(1) As soon as practicable after the chief executive becomes aware a person is liable to be transferred to a corrective services facility under section 276B, the chief executive must give a written direction (a ***prison transfer direction***) to the chief executive (corrective services) stating—

(a) that the person is to be transferred to a corrective services facility on a stated day (the ***transfer day***); and

(b) the period of detention the person remains liable to serve at the transfer day.

(2) The transfer day must not be earlier than the day the person becomes liable to be transferred to the corrective services facility.

(3) Within 28 days after giving the prison transfer direction to the chief executive (corrective services), the chief executive must—

(a) give the person a copy of the direction; and

(b) inform the person that, from the transfer day, the person will be held at a corrective services facility and be subject to the *Corrective Services Act 2006*; and

(c) inform the person of his or her right under this subdivision to apply for a delay of the transfer.

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(4) The chief executive may issue another prison transfer direction in relation to the person if the chief executive considers—

(a) the circumstances relevant to the person previously obtaining a delay no longer exist; or

(b) the person poses a risk to the safety or wellbeing of a detainee at the detention centre at which the person is detained.

(5) Failure to comply with subsection (1) does not invalidate a prison transfer direction.

276D Application for temporary delay of transfer

(1) If, when a court makes a detention order against a person for an offence, the person becomes liable to be transferred to a corrective services facility under section 276B, the person may immediately apply to the court for a temporary delay of the person's transfer to the corrective services facility.

(2) A detainee given a copy of a prison transfer direction under section 276C(3) may, before the transfer, apply to the Childrens Court for a temporary delay of the detainee's transfer to the corrective services facility.

(3) On receipt by the court of a detainee's application made under subsection (2), the detainee's transfer is stayed until the application is decided, withdrawn or otherwise ends.

(4) The court may grant an application made under subsection (1) or (2) only if it is satisfied the delay—

(a) would be in the interests of justice; and

(b) would not prejudice the security or good order of the detention centre at which the applicant is, or is to be, detained; and

(c) would not prejudice the safety or wellbeing of any detainee at the detention centre at which the applicant is, or is to be, detained; and

(d) would not cause the person to be detained at a detention centre after the person turns 18 years and 6 months.

(5) Without limiting the matters the court may have regard to, the court must have regard to the following matters in making a decision on an application made under subsection (1) or (2)—

(a) any vulnerability of the applicant;

(b) any interventionist, rehabilitation or similar activities being undertaken by the applicant and the availability of those activities if transferred.

(6) However, if the chief executive agrees to the application—

(a) subsections (4) and (5) do not apply; and

(b) the court's proper officer may grant the application.

(7) If the court grants an application made under subsection (1) or (2)—

(a) the court must decide a new day for the prison transfer direction to take effect being no more than 6 months after the day the applicant turns 18 years; and

(b) the chief executive must inform the chief executive (corrective services) of the new day for the prison transfer direction.

(8) In this section—

temporary delay means a delay of 6 months or less.

276E Transferee subject to *Corrective Services Act 2006* from transfer

(1) This section applies if a person is transferred to a corrective services facility under this subdivision.

(2) From the transfer—

(a) the person is liable to serve a term of imprisonment equal to the period of detention the person remains liable to serve at the transfer; and

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(b) the person is taken to be a prisoner subject to the *Corrective Services Act 2006*; and

(c) any rights, liberties or immunities of the person as a detainee end and are not preserved, transferred or otherwise applicable for the person as a prisoner; and

(d) the day the person would otherwise have been released under section 227, for the period of detention, is the day the person is to be released on parole under the *Corrective Services Act 2006*.

(3) However, the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the ***statutory parole order***) and the provisions of that Act applying to parole orders also apply to the statutory parole order.

Subdivision 2 Age limits for detention

276F Persons over 18 years and 6 months should not serve period of detention at detention centre

(1) This Act is subject to the overriding principle that it is in the best interests of the welfare of all detainees at a detention centre that persons who are 18 years and 6 months or older are not detained at the centre.

(2) To give effect to the principle—

(a) a person who is 18 years and 6 months or older must not—

(i) enter a detention centre to begin serving a period of detention; or

(ii) return to a detention centre to continue or complete a period of detention, including, for example, returning because of a contravention of a conditional release order or supervised release order; and

(b) an application for a temporary delay of a transfer is of no effect if the applicant is 18 years and 6 months or older; and

(c) an application for a temporary delay of a transfer lapses when the applicant turns 18 years and 6 months; and

(d) a temporary delay of a transfer under section 276D is of no effect to the extent it delays the transfer of a person for any period after the person turns 18 years and 6 months.

(3) If the application of subsection (2)(a) prevents a person from being detained at a detention centre, the person must instead be held at a corrective services facility.

(4) For holding the person at a corrective services facility—

(a) the person is liable to serve a term of imprisonment equal to the period of detention the person remains liable to serve when the person would otherwise enter or return to a detention centre; and

(b) the person is taken to be a prisoner subject to the *Corrective Services Act 2006*; and

(c) any rights, liberties or immunities of the person as a detainee are not preserved, transferred or otherwise applicable for the person as a prisoner; and

(d) the day the person would otherwise have been released under section 227, for the period of detention, is the day the person is to be released on parole under the *Corrective Services Act 2006*.

(5) However, the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the ***statutory parole order***) and the provisions of that Act applying to parole orders also apply to the statutory parole order.

(6) This section applies despite anything else in this Act.

(7) In this section—

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application for a temporary delay of a transfer means an application made under section 276D(1) or (2).

Division 3 Complaints

277 Complaints generally

(1) A child or parent of a child detained in a detention centre may complain about a matter that affects the child.

(2) The chief executive must issue written instructions on how a complaint may be made and dealt with, which may include the direction of the complaint to a community visitor (child), child advocacy officer or other appropriate authority.

(3) Despite subsection (2), a child is entitled to complain directly to a community visitor (child) or child advocacy officer.

(4) The chief executive need not deal with a complaint that the chief executive reasonably believes to be trivial or made only to cause annoyance.

(5) The chief executive must tell the child how the complaint will be dealt with.

(6) This section does not limit the powers of a community visitor (child) or child advocacy officer.

Division 4 Offences

278 Escape

A person who is lawfully detained under this Act must not—

(a) escape from detention; or

(b) attempt to escape from detention; or

(c) be absent from a detention centre without lawful authority; or

(d) escape or attempt to escape from the custody of a police officer or an officer of the department into which the person was placed under this Act.

Maximum penalty (subject to part 7)—40 penalty units or 1 year's imprisonment.

279 Offences relating to detention centres

(1) A person must not—

(a) without lawful authority enter or attempt to enter a detention centre; or

(b) remain in or in the vicinity of a detention centre after having been directed to leave by—

(i) the chief executive; or

(ii) a police officer; or

(c) in contravention of a direction from the chief executive, communicate or attempt to communicate with a person detained at the detention centre; or

(d) without lawful authority—

(i) convey or deliver, or allow another person to convey or deliver, to a person detained in the centre any liquor, drugs, money, letter, document or other article; or

(ii) convey, or allow another person to convey, from the detention centre any liquor, drugs, money, letter, document, clothing or other article; or

(iii) leave, or allow to be left, at the centre any liquor, drugs, money, letter, document, clothing or other article with the intention that it come into the possession of a person detained in the centre.

Maximum penalty (subject to part 7)—40 penalty units or 1 year's imprisonment.

(2) A police officer may arrest without warrant any person found committing an offence against subsection (1).

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Not authorised—indicative only

Division 5 Child of detainee

280 Child of detainee may be accommodated in detention centre

The chief executive may allow a child of a person detained in a detention centre to be accommodated in the detention centre subject to conditions the chief executive considers appropriate.

281 Registration of birth of child of detainee

(1) In this section—

document means a certificate or other document made or issued under the *Births, Deaths and Marriages Registration Act 2003* in relation to the birth of a child or an alteration or addition to the name of a child.

(2) If a document is made or issued in relation to a child whose mother or father is, or was when the child was born, detained in a detention centre or otherwise detained under this Act—

(a) the document must not state that fact or contain information from which that fact can reasonably be inferred; and

(b) an address—

(i) that is required by the *Births, Deaths and Marriages Registration Act 2003* to be shown in the document; and

(ii) that can not be shown in the document because of paragraph (a);

must instead be shown as the city or town in which or nearest to which the address is situated.

Division 6 Trust fund

282 Detainees trust fund to be kept

(1) The chief executive must keep a detainees trust fund.

(2) All amounts received by the chief executive, or anyone else under an arrangement with the chief executive, for a detainee must be paid into the detainees trust fund.

(3) Amounts in the detainees trust fund to the credit of a detainee—

(a) may be spent by the detainee, with the chief executive's consent; and

(b) must be paid by the chief executive to the public trustee, if the public trustee is managing the detainee's estate and the public trustee requests the payment; and

(c) must be paid by the chief executive to the detainee on being discharged or being released on parole or under a supervised release order under this Act; and

(d) must be paid by the chief executive to the chief executive (corrective services) if the detainee is transferred from the chief executive's custody to the custody of the chief executive (corrective services).

(4) In this section—

detainee means a person in the custody of the chief executive under this Act.

Division 7 Releasing information to eligible persons

282A Eligible persons register

(1) The chief executive must keep a register of persons who are eligible to receive information (***detainee information***) under section 282F about a child detained in a detention centre who

Not authorised—indicative only

Not authorised—indicative only

has been sentenced to detention for a violent offence or a sexual offence.

(2) The following persons (each an ***applicant***) may apply in writing to the chief executive to be registered as an eligible person in relation to the child—

(a) a victim of the offence;

(b) if a victim is deceased because of the offence—an immediate family member of the deceased victim;

(c) if a victim is a child or has a legal incapacity—the victim's parent;

(d) another person who satisfies the chief executive the person's life or physical safety could reasonably be expected to be endangered because of—

(i) the child's history of violence against the person; or

Example—

a domestic violence order has been made against the child under the *Domestic and Family Violence Protection Act 2012* for the benefit of the person

(ii) a connection between the person and the offence.

(3) An application must be accompanied by documentary evidence satisfying the chief executive of the applicant's identity.

(4) The applicant may nominate a person (a ***nominee***) to receive the detainee information for the applicant.

Example—

a victim support worker from a victims' support agency

(5) Before deciding an applicant is eligible under subsection (2)(d) to make the application, the chief executive must give the child a reasonable opportunity to make a submission to the chief executive about why the applicant should not be registered as an eligible person.

(6) In this section—

sexual offence see the *Corrective Services Act 2006*, schedule 4.

violent offence means an offence in which a victim suffers actual or threatened violence.

282B Non-release declaration

The applicant and, if the applicant nominated a nominee, the nominee must sign a declaration stating that the applicant or nominee will not disclose detainee information received by the applicant or nominee other than as permitted under section 282G(3).

282C Application by child

If the applicant is a child, the chief executive must, before registering the child as an eligible person—

(a) give the child information about registering; and

Example—

how to register and how the child's details may be removed from the register

(b) tell the child that the child's parent may register to receive the detainee information for the child.

282D Deciding application

(1) The chief executive may grant the application if the chief executive is satisfied the applicant may, under section 282A(2), make the application.

(2) However, the chief executive may refuse the application if the chief executive reasonably believes releasing detainee information to the applicant may endanger—

(a) the security of a detention centre; or

(b) the safe custody or welfare of a child detained in a detention centre; or

(c) the safety or welfare of another person.

Not authorised—indicative only

Not authorised—indicative only

Example—

Releasing detainee information to a child who is also detained in a detention centre may endanger the safe custody or welfare of the child sentenced to detention for the offence.

(3) Also, the chief executive may grant an application by a child only if the child's registration as an eligible person is in the child's best interests.

(4) If the applicant is a child in care, the chief executive must consult with the chief executive (child safety) before deciding what is in the child's best interests.

(5) In this section—

child in care means a child—

(a) who is in the custody or guardianship of the chief executive (child safety); or

(b) who, under an agreement entered into by the chief executive (child safety) and a parent of the child, has been placed in the care of a person other than a parent of the child.

282E Removing details from eligible persons register etc.

(1) The chief executive must remove an eligible person's details from the eligible persons register—

(a) when the child in relation to whom the person is registered—

(i) is discharged; or

(ii) if the child is released from detention under a supervised release order—stops being subject to the order; or

(iii) dies in detention; or

(iv) is transferred to another jurisdiction; or

(v) is transferred to a corrective services facility; or

(b) if the child's conviction in relation to which the person is registered is overturned; or

(c) if asked to do so by the eligible person.

(2) The chief executive may remove an eligible person's details from the register if—

(a) the chief executive reasonably considers the person's continued registration may endanger—

(i) the security of a detention centre; or

(ii) the safe custody or welfare of a child detained in a detention centre; or

(iii) the safety or welfare of another person; or

(b) the eligible person discloses detainee information received under this division other than as permitted under section 282G(3).

(3) The chief executive may also remove an eligible person's details from the register if the chief executive is unable, after making reasonable efforts, to contact the eligible person.

(4) If a nominee nominated under section 282A(4) to receive detainee information for an eligible person discloses detainee information received under this division other than as permitted under section 282G(3)—

(a) the chief executive may remove the nominee's details from the register; and

(b) if the chief executive removes the nominee's details from the register—the nominee is taken not to have been nominated under section 282A(4) to receive detainee information for the eligible person.

(5) In this section—

details, of an eligible person, includes details of a nominee nominated under section 282A(4) to receive detainee information for the eligible person.

282F Releasing information

(1) The chief executive may, to the extent the chief executive considers it appropriate, give an eligible person in relation to a

Not authorised—indicative only

Not authorised—indicative only

child detained in a detention centre the following information about the child—

(a) the transfer of the child—

(i) interstate or overseas under a scheme for the transfer of children detained under a sentence; or

(ii) to a corrective services facility;

(b) the length of the period of the child's detention;

(c) the day the child is eligible for, or due for, discharge or release, including under a supervised release order;

(d) any further cumulative periods of detention imposed on the child while the child is detained for the offence;

(e) the granting to the child of leave of absence under section 269;

(f) whether the child is unlawfully at large;

(g) the death of the child.

(2) If the eligible person nominated a nominee under section 282A(4) to receive the information, the chief executive may give the information to the nominee.

282G Confidentiality of detainee information

(1) This section applies to a person who receives detainee information.

(2) The person must not disclose detainee information received by the person to another person other than under subsection (3).

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) The person may disclose detainee information—

(a) for this Act; or

(b) to discharge a function under another law or if the disclosure is otherwise authorised under another law; or

(c) for a proceeding in a court, if the person is required to do so by order of the court or otherwise by law; or

(d) if authorised by the child to whom the information relates; or

(e) if reasonably necessary to obtain counselling, advice or other treatment.

Part 9 Confidentiality

Division 1 Preliminary

283 Confidential information to which this part applies

(1) This part applies to confidential information relating to a child who is being, or has been, dealt with under this Act.

(2) The ways that a child may be dealt with under this Act include—

(a) being investigated for an offence; and

(b) being detained; and

(c) participating in a restorative justice process; and

(d) being cautioned, prosecuted or sentenced for an offence.

(3) This part continues to apply to the information after the child becomes an adult.

(4) This part also applies to confidential information relating to an adult who is being, or has been, dealt with under this Act for a child offence, as if he or she were still a child.

284 Definitions for pt 9

In this part—

child offence means an offence committed, or alleged to have been committed, by a person when he or she was a child.

Not authorised—indicative only

Not authorised—indicative only

confidential information, relating to a child, includes—

(a) identifying information about the child; and

(b) a report made for the purposes of a court proceeding relating to the child; and

(c) a report about the child made for the department or another government department; and

(d) a report about the child given to an agency for the purpose of carrying out the objects of this Act; and

(e) information about the child gained by a convenor or coordinator in relation to the convening of a conference; and

(f) a record or transcription of a court proceeding relating to the child.

coordinator means a person appointed as a youth justice coordinator under section 31 before the commencement of this section.

disclose see section 286.

285 When does someone gain information through involvement in the administration of this Act

(1) Anyone who at any time has been or is any of the following persons is taken to have been, or to be, involved in the administration of this Act—

(a) an officer of the department;

(b) a member of the police service;

(c) a person investigating a matter under this Act;

(d) a coordinator;

(e) a convenor convening a conference;

(f) a person performing a function in relation to a record or transcription, made under the *Recording of Evidence Act 1962*, of a proceeding relating to a child (including a recorder under that Act);

(g) a member of the community justice group in a child's community;

(h) a boot camp centre provider;

(i) anyone else performing a function under or for a purpose of this Act.

(2) A person has gained, gains, or has access to, information through involvement in the administration of this Act if the person has gained, gains, or has access to, the information in the course of the involvement or because of opportunity provided by the involvement.

(3) In this section—

boot camp centre provider means a person who was approved under repealed section 282A, as in force from time to time before the commencement, as a boot camp centre provider.

286 Meaning of *disclose* for pt 9

For this part, a person ***discloses*** information to someone else if the person—

(a) orally discloses the information to the other person; or

(b) produces to the other person, or gives the other person access to, a document containing the information; or

(c) discloses the information to the other person in another way.

Division 2 Preservation of confidentiality generally

287 Application

This division applies to a person who has gained, gains, or has access to, confidential information relating to a child through involvement in the administration of this Act.

Not authorised—indicative only

Not authorised—indicative only

288 Preservation of confidentiality

The person must not—

(a) record or use the information, or intentionally disclose it to anyone, other than under this division; or

(b) recklessly disclose the information to anyone.

Maximum penalty (subject to part 7)—100 penalty units or 2 years imprisonment.

289 Recording, use or disclosure for authorised purpose

The person may record, use or disclose the information—

(a) for a purpose of this Act; or

(b) if the person is a member of the police service, for the purpose of the functions of the police service not involving publishing the information; or

(c) if the person is a member of the community justice group in a child's community, as part of making submissions about the child to—

(i) a court or police officer under section 48(3)(da); or

(ii) a court under section 150(1)(g); or

(d) for the purpose of the *Police Powers and Responsibilities Act 2000*, section 379; or

(e) for statistical purposes, without revealing, or being likely to reveal, the identity of the child; or

(f) when authorised by a court under section 234; or

(g) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or

(h) as expressly permitted or required under another Act; or

(i) when authorised under the regulations.

289AA Disclosure to the commissioner of the police service

(1) The chief executive may disclose the information to the commissioner of the police service, for the purpose of the functions of the police service not involving publishing the information, if the chief executive is satisfied the disclosure is in the public interest.

(2) This section does not apply to a disclosure that the department may make under the *Justice and Other Information Disclosure Act 2008*, part 2.

289A Disclosure to another member of the community justice group in a child's community

(1) This section applies if the person is a member of the community justice group in a child's community.

(2) The person may disclose the information to another member of the community justice group.

290 Disclosure to the child or with the child's consent

(1) The person may disclose the information to the child.

(2) The person may disclose the information to someone else if the child consents to the disclosure after being told—

(a) the information to be disclosed; and

(b) to whom it is to be disclosed; and

(c) the reason for the disclosure.

292 Disclosure to ensure someone's safety

(1) The chief executive may give written authority to a person to disclose confidential information if the chief executive is satisfied the disclosure is necessary to ensure a person's safety.

(2) The authorised person may disclose the information under the authority.

Not authorised—indicative only

Not authorised—indicative only

293 Disclosure by chief executive to approved carers and others

If the child has been, or is being, placed in care under the *Child Protection Act 1999*, section 82, the chief executive may disclose the information to—

(a) for a placement in the care of a licensee—a person conducting the licensed care service; or

(b) for a placement in the care of an entity conducting a departmental care service—a person conducting the service; or

(c) for a placement in the care of an approved carer or other person—the approved carer or other person, or a person coordinating the placement.

294 Disclosure to law enforcement entity in another jurisdiction

(1) The person may disclose the information to an officer of a department of another State responsible for the administration or enforcement of a law about child offenders.

(2) Subsection (1) does not apply to the disclosure, by a member of the police service, of information mentioned in section 295(1).

295 Disclosure by police of information about cautions and restorative justice process referrals and restorative justice agreements

(1) This section applies if the confidential information is information that identifies a child, or is likely to lead to the identification of a child, as a child who—

(a) is to be or has been cautioned for an offence; or

(b) has been referred to a restorative justice process; or

(c) has made a restorative justice agreement.

(2) A member of the police service may disclose the information to—

(a) a parent of the child; or

(b) a complainant for the offence; or

(c) the chief executive; or

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

(e) a lawyer acting for the child; or

(f) a person who has the function of investigating offences under an Act and who is dealing with the child.

(3) Subsection (2)(d) applies to information that is inadmissible in a proceeding against the child in Queensland only if the information is also inadmissible in a proceeding against the child in the Commonwealth or other State.

(4) Also, a member of the police service may disclose the information to a person undertaking research if—

(a) the research has been approved by the commissioner of the police service for the purpose of the disclosure; and

(b) the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates.

(5) A person to whom information is disclosed under subsection (4) must not contravene the undertaking.

Maximum penalty (subject to part 7)—100 penalty units or 2 years imprisonment.

(6) The commissioner of the police service may approve research for subsection (4) if the commissioner is satisfied the research is genuine.

296 Disclosure by chief executive or convenor of information about restorative justice processes

(1) This section applies if the confidential information is information gained by the chief executive or convenor in the convening of a conference or the managing of an alternative diversion program.

Not authorised—indicative only

Not authorised—indicative only

(2) The chief executive or convenor may record, disclose or use the information—

(a) for informing a referring authority about a referral made by it; or

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

(c) for this or another Act; or

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

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

297 Disclosure by chief executive of information for research purposes

(1) The chief executive may disclose the information to a person undertaking research if—

(a) the chief executive is satisfied the research is genuine; and

(b) the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates.

(2) The person must not contravene the undertaking.

Maximum penalty for subsection (2) (subject to part 7)—100 penalty units or 2 years imprisonment.

297A Making information available for Child Protection Act 1999

(1) The chief executive may, under arrangements made with the chief executive (child safety), make information, including confidential information, relating to a person, gained in the administration of this Act, available to officers of the

department (child safety) for the purposes of the *Child Protection Act 1999.*

(2) However, subsection (1) does not apply to information about the identity of a detention centre employee who makes a report to the chief executive under section 268.

(3) In this section—

chief executive (child safety) means the chief executive of the department (child safety).

department (child safety) means the department in which the *Child Protection Act 1999* is administered.

Note—

The *Child Protection Act 1999*, chapter 6, part 6, restricts the use or disclosure of stated information and access to stated documents.

Division 3 Confidentiality in relation to proceedings

298 Disclosure of information to court or tribunal

(1) A person is not required to disclose confidential information relating to a child, or the identity of a detention centre employee who has made a report to the chief executive under section 268, to a court or tribunal unless the court or tribunal orders the disclosure.

(2) A court or tribunal may order the disclosure only if it considers the disclosure—

(a) is necessary for a purpose of this Act; or

(b) would be in the interests of justice.

299 Production of department's records

(1) This section applies if a party to a proceeding in a court or tribunal requires, under applicable rules—

Not authorised—indicative only

Not authorised—indicative only

(a) the chief executive to produce to the court, tribunal or party a document in the department's records under this Act in relation to a child; or

(b) a government entity to produce to the court, tribunal or party a document mentioned in paragraph (a) that has been given to the entity under division 2.

(2) The requirement must describe the document to be produced—

(a) by reference to the person or persons to whom it relates; and

(b) by general reference to the circumstances to which it relates; and

(c) by stating the period to which the requirement relates.

(3) For subsection (2)(b), the requirement must show the circumstances to be relevant to the proceeding.

(4) A person must not, directly or indirectly, disclose or make use of information obtained under the requirement other than for a purpose connected with the proceeding.

Maximum penalty (subject to part 7)—100 penalty units or 2 years imprisonment.

(5) Despite any Act to the contrary, if a document in the department's records under this Act about a child is produced in a proceeding in a court, an officer of the court must not make the document available for inspection to any person other than a party to the proceeding or a party's legal representative.

Maximum penalty for subsection (5) (subject to part 7)—50 penalty units or 1 year's imprisonment.

Division 4 Other matters relating to confidential information

300 Identity of officer making a report under s 268

(1) This section applies if a detention centre employee makes a report to the chief executive under section 268.

(2) The person who receives the report, or a person who becomes aware of the officer's identity, must not disclose the officer's identity to another person unless—

(a) the disclosure is made in the course of performing functions under this Act; or

(b) the disclosure is expressly permitted or required under an Act.

Maximum penalty for subsection (2) (subject to part 7)—40 penalty units.

301 Prohibition of publication of identifying information about a child

(1) A person must not publish identifying information about a child.

Maximum penalty (subject to part 7)—

(a) for an individual—100 penalty units or 2 years imprisonment; or

(b) for a corporation—1,000 penalty units.

(2) Subsection (1) does not apply to—

(a) publication in a way permitted by a court order; or

(b) publication under written authority given under subsection (3).

(3) The chief executive may give written authority to a person to publish identifying information about a child if the chief executive is satisfied the publication is necessary to ensure a person's safety.

Not authorised—indicative only

Not authorised—indicative only

301A Protection from liability

(1) This section applies to a person who—

(a) is a member of the community justice group in a child's community; and

(b) is responsible for the making of a submission about the child to—

(i) a court or a police officer under section 48(3)(da); or

(ii) a court under section 150(1)(g).

(2) For subsection (1)(b), it does not matter that the person did not personally make the submission to the court or the police officer.

(3) The person is not civilly liable for an act done, or an omission made, honestly and without negligence in relation to the making of the submission.

Part 10 General

302 Programs and services for children

(1) The chief executive must establish—

(a) programs and services necessary to give effect to any order or direction under this Act; and

(b) programs and services to support, help, and reintegrate into the community children who have committed offences.

(2) Without limiting subsection (1), the chief executive must decide the activities that are to comprise community service for every community service order.

(3) The chief executive may establish any other programs and services for children who have committed offences.

(4) The chief executive must monitor the operation of each program and service to ensure it achieves the purpose for

which it was established in a way that complies with the youth justice principles.

(5) The chief executive may exercise a power under subsection (1) or (2) in or outside Queensland or Australia.

302A Chief executive may seek contact information for victims of offences

(1) The chief executive may, by written notice given to the scheme manager, require the scheme manager to give the chief executive contact information for victims of an offence committed by a child.

(2) However, a requirement under subsection (1) only applies for a victim if the victim consents to his or her contact information being given to the chief executive.

(3) In this section—

scheme manager means the scheme manager under the *Victims of Crime Assistance Act 2009*, schedule 3.

303 Chief executive must collect and keep information

(1) The chief executive must—

(a) collect the information prescribed under a regulation about children dealt with under this Act; and

(b) keep the information for the time prescribed under a regulation.

(2) A regulation may also provide for requirements about giving reports about the information or publishing the information.

(3) Subsection (2) applies subject to section 301.

304 Police may help in keeping child in custody

Nothing in this Act stops the commissioner of the police service entering into arrangements with the chief executive

Not authorised—indicative only

Not authorised—indicative only

under which the commissioner holds a child in custody for the chief executive.

305 Parent entitled to know of whereabouts of child in custody

(1) A parent of a child who is being held in custody on being arrested for an offence, or on an order made under this Act, may request the chief executive to inform the parent of the whereabouts of the child.

(2) The chief executive on request must give the information to the parent if the child is in the chief executive's custody, or the chief executive knows where the child is.

305A Ongoing obligation to report harm to children in former boot camp centres

(1) If a former boot camp centre employee is or becomes aware, or reasonably suspects, that a child has suffered harm while participating in the residential phase for a former boot camp program, the former boot camp centre employee must immediately, unless the former boot camp centre employee has a reasonable excuse, report the harm or suspected harm to the chief executive.

Maximum penalty—20 penalty units.

(2) It is immaterial how the harm was caused.

(3) It is a reasonable excuse, for the former boot camp centre employee not to report the harm or suspected harm, that reporting of the harm or suspected harm might tend to incriminate the employee.

(4) Subsection (1) does not apply if the former boot camp centre employee knows or reasonably considers that the chief executive is aware of the harm or suspected harm.

(5) In this section—

boot camp program means a program approved as a boot camp program under repealed section 226E as in force from time to time before the commencement.

former boot camp centre means a place that was operated by a former boot camp centre provider from which services and facilities necessary for the residential phase for a boot camp program were provided.

former boot camp centre employee means a person who was employed at a former boot camp centre.

former boot camp centre provider means a person who was approved under repealed section 282A, as in force from time to time before the commencement, as a boot camp centre provider.

harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.

residential phase, for a boot camp program, means the 1 month placement mentioned in repealed section 226E(3)(a) as in force from time to time before the commencement.

305B Complaint about boot camp programs

(1) A child or a parent of a child who participated in a boot camp program may complain about a matter that affects the child.

(2) The chief executive must issue written instructions on how a complaint may be made and dealt with, which may include that the complaint must be made to a child advocacy officer or other appropriate authority.

(3) Despite subsection (2), a child is entitled to complain directly to a child advocacy officer.

(4) The chief executive need not deal with a complaint that the chief executive reasonably believes to be trivial or made only to cause annoyance.

Not authorised—indicative only

Not authorised—indicative only

(5) The chief executive must tell the person who made the complaint under subsection (1), how the complaint will be dealt with.

(6) The chief executive is taken to have complied with subsection (2) if the chief executive issued written instructions under repealed section 282J as in force immediately before the commencement.

(7) In this section—

boot camp program see section 305A(5).

306 Approved forms

The chief executive may approve forms for use under this Act.

307 Evidence

(1) This section applies to any proceeding.

(2) It is unnecessary to prove the appointment of a department's chief executive, a public service officer, a community visitor (child), child advocacy officer or anyone appointed under this Act.

(3) It is not necessary to prove the authority of any person to take any action under this Act.

(4) Subsection (2) or (3) does not apply if a party to the proceeding, by reasonable notice, requires the appointment or authority to be proved.

(5) This section does not affect a person's right to adduce evidence to disprove the appointment or authority.

308 Proceeding for offence

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) In a proceeding for an offence against this Act, a police officer or a public service officer may appear for the prosecution even though not a complainant or arresting officer.

(3) A reference in this Act to a lawyer acting for a party includes anyone appearing for the prosecution under subsection (2).

309 Extension of time for payment of amounts

The proper officer of a court by which a person is ordered to pay an amount under this Act by way of fine, restitution or compensation on application in writing made by any party to the proceeding in which the order was made may extend the period in which the person is required to pay the amount subject to conditions if any that the proper officer considers just.

310 Enforcement of child payments

If an order is made by a court under this Act requiring a child to pay to the State or to any person an amount of money by way of fine, restitution or compensation—

(a) the amount ordered to be paid constitutes a debt owing to the State or other person by the child; and

(b) the order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*; and

(c) on being so filed, the order is taken to be an order properly made by the Magistrates Court under that Act and may be enforced as an order so made.

311 Enforcement of sentence by calendar

Despite a provision of this Act requiring a court to issue or order the issue of a warrant to have a child taken into custody and delivered to a detention centre to serve a period of detention, the court need not act under the provision if a calendar or other document of the registrar or other official of the court has the same effect.

Not authorised—indicative only

Not authorised—indicative only

312 Delegation

(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified public service officer.

(2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

the officer's seniority level in the public service

313 Delegation of powers by proper officer

(1) A proper officer may delegate the proper officer's powers under this Act to a public service officer mentioned in subsection (2) if the public service officer is a justice.

(2) If the proper officer is—

(a) the registrar, sheriff or deputy sheriff—the powers may be delegated to a public service officer employed in the registry of the court concerned; or

(b) the clerk of the court—the powers may be delegated to a public service officer employed in the registry of the court concerned.

314 Regulations

(1) The Governor in Council may make regulations for the purpose of this Act.

(2) Without limiting the power conferred by subsection (1), the Governor in Council may make regulations in relation to the matters set out in schedule 2.

Part 11 Transitional provisions

Division 1 Transitional provision for Juvenile Justice Legislation Amendment Act 1996

315 Application of Act to matters before Juvenile Justice Legislation Amendment Act 1996

(1) This Act as amended by a provision of the amendment Act applies to an offence committed, and proceeding started, before the commencement of the provision.

(2) However—

(a) a person can not be sentenced more severely for an offence committed before the commencement of a provision of the amendment Act than would have been the case if the provision had not been enacted; and

(b) a caution administered before the commencement of section 18N or 18O can not be disclosed to a court or anyone after the commencement of the section if the disclosure could not have been made if the section had not been enacted.

(c) a parent of a child can not be ordered under section 259 to pay compensation for an offence committed by the child before the commencement of section 63 of the amendment Act that the parent could not have been ordered to pay before the commencement.

Note—

Sections 18N and 18O commenced on 15 August 1996 and were repealed by the *Juvenile Justice Amendment Act 2002*.

(3) Subsection (2)(a) is about punishment level and does not stop a court making orders against anyone of a type or number only available because of the amendment Act.

(4) In this section—

Not authorised—indicative only

Not authorised—indicative only

amendment Act means the *Juvenile Justice Legislation Amendment Act 1996*.

Division 2 Transitional provisions for Juvenile Justice Legislation Amendment Act 1998

316 Transfer of staff

(1) The purpose of this section is to transfer officers and employees of Queensland Corrections to the public service because of the change to the chief executive's functions under the *Juvenile Justice Legislation Amendment Act 1998*.

(2) On the commencement of this section, the following persons become public service employees employed in the department—

(a) persons who, immediately before the commencement, were officers or employees of Queensland Corrections employed as members of the staff of detention centres;

(b) persons decided by the Governor in Council who, immediately before the commencement, were employed by Queensland Corrections.

(3) Appointments for subsection (2) are to be made under the *Public Service Act 2008*.

(4) The remuneration under the *Public Service Act 2008* of a person under an appointment under subsection (3) must not be less than the remuneration to which the person would have been entitled if the person's employment as an officer or employee of Queensland Corrections had continued.

(5) The person may claim against the department all entitlements accrued as an officer or employee of Queensland Corrections.

(6) The person's leave entitlements are to be calculated as if previous service as an officer of the public service and service as an officer or employee of the Queensland Corrective Services Commission or Queensland Corrections and service

as a public service employee were continuous service as a public service employee.

(7) To remove any doubt, it is declared that for this section an officer or employee of Queensland Corrections includes a person appointed under a fixed-term contract of employment.

(8) In this section—

remuneration means total remuneration including entitlements.

317 Disciplinary proceedings

(1) This section applies to a person who becomes a public service employee under section 316(2).

(2) Disciplinary proceedings may be taken against the person after the commencement of this section for a disciplinary matter that happened while the person was an officer or employee of Queensland Corrections as if the person were a public service employee at the time the matter happened.

318 Transfer of amounts held on trust for detainees

(1) This section applies to all amounts that, immediately before the commencement of this section, were credited to the detainees trust fund kept by the Queensland Corrective Services Commission under the *Corrective Services (Administration) Act 1988*, section 51.

(2) The commission must, on the commencement of this section, transfer the amounts to the detainees trust fund kept by the chief executive under this Act.

319 Termination of contracts

(1) The detention centre contracts are terminated.

(2) The State does not incur liability because of the termination.

(3) In this section—

Not authorised—indicative only

Not authorised—indicative only

detention centre contracts means the following contracts entered into between the Queensland Corrective Services Commission and Queensland Corrections—

(a) a contract dated 29 August 1997 for the operation and management of the John Oxley Youth Detention Centre;

(b) a contract dated 29 August 1997 for the operation and management of the Sir Leslie Wilson Youth Detention Centre;

(c) a contract dated 29 August 1997 for the operation and management of the Cleveland Youth Detention Centre.

Division 3 Transitional provisions for the Juvenile Justice Amendment Act 2002

Subdivision 1 Interpretation

320 Definitions for pt 11, div 3

In this division—

amending Act means the *Juvenile Justice Amendment Act 2002*.

amendment means an amendment carried out by the amending Act.

amendment provision means a provision of the amending Act.

community conference means a community conference as defined under the Act immediately before the relevant commencement.

community conference agreement means a community conference agreement as defined under the Act immediately before the relevant commencement.

community conference convenor means a community conference convenor as defined under the Act immediately before the relevant commencement.

current means—

(a) for a provision or Act—as in existence immediately before the relevant commencement; or

(b) for a decision, warning, notification or document—in effect immediately before the relevant commencement; or

(c) for an order or warrant—in force immediately before the relevant commencement; or

(d) for a proceeding—started but not completed before the relevant commencement.

new, for a provision or Act, means as in existence from the relevant commencement.

relevant commencement—

(a) for the definitions *community conference*, *community conference agreement* and *community conference convenor* in this section, means the commencement of the definitions *conference*, *conference agreement* and *convenor* under section 5 of the amending Act; or

(b) for other definitions in this section, means the relevant commencement as defined in the provision for which the definition is being applied.

Subdivision 2 References

321 References to community conference

(1) This section applies—

(a) from the relevant commencement; and

(b) to any current Act, community conference agreement or other instrument or document; and

Not authorised—indicative only

Not authorised—indicative only

(c) to any new Act, youth justice conference agreement or other instrument or document.

(2) A reference to a community conference, a community conference agreement or a community conference convenor, may, if the context permits, be taken to include a reference to a youth justice conference, a youth justice conference agreement and a youth justice conference convenor (or coordinator).

(3) A reference to a youth justice conference, a youth justice conference agreement or a youth justice conference convenor (or coordinator), may, if the context permits, be taken to include a reference to a community conference, a community conference agreement and a community conference convenor.

(4) In this section—

relevant commencement means the commencement of section 7 of the amending Act to the extent it inserts section 34 in this Act.

322 Immediate release orders and fixed release orders

(1) From the relevant commencement, a reference in a current Act or document to an immediate release order may, if the context permits, be taken to include a reference to a conditional release order.

(2) From the relevant commencement, a reference in a current Act or document to a fixed release order may, if the context permits, be taken to include a reference to a supervised release order.

(3) A fixed release order in force immediately before the relevant commencement is, from the relevant commencement, a supervised release order.

(4) A contravention of a fixed release order before the relevant commencement may be dealt with under this Act as a contravention of a supervised release order.

(5) In this section—

relevant commencement means the commencement of—

(a) for subsection (1)—section 86 of the amending Act; or

(b) for subsections (2) to (4)—section 94 of the amending Act.

323 References to attendance notices

(1) From the relevant commencement, a reference in a current Act or document to an attendance notice may, if the context permits, be taken to include a reference to a notice to appear.

(2) An attendance notice issued under the current Act is, for all proceedings taken on the notice from the relevant commencement, taken to be a notice to appear issued under the *Police Powers and Responsibilities Act 2000*, section 382.

(3) In this section—

relevant commencement means the commencement of section 9 of the amending Act.

Subdivision 3 Investigation provisions

324 Statements

(1) From the relevant commencement, new part 2, division 5 applies to all statements to which it is expressed to apply made after the relevant commencement, whether or not the offence to which the statement relates was committed before or after the relevant commencement.

(2) In this section—

relevant commencement means the commencement of section 7 of the amending Act to the extent it inserts part 2, division 5 in this Act.

Not authorised—indicative only

Not authorised—indicative only

325 Identifying particulars

(1) From the relevant commencement, new part 2, division 4 may be relied on by a police officer to make an application in relation to any charge to which it is expressed to apply—

(a) whether the charge relates to an offence committed before or after the relevant commencement; and

(b) whether or not an application has already been made under current part 1B, division 2.

Editor's note—

part 1B (Investigation provisions), division 2 (Fingerprints and palmprints) (Note—These are the headings immediately before the relevant commencement.)

(2) In this section—

relevant commencement means the commencement of section 7 of the amending Act to the extent it inserts part 2, division 4 in this Act.

Subdivision 4 Cautions and community conferences

326 Cautioning

(1) From the relevant commencement, new part 2, division 2 applies to a police officer for the purpose of giving a caution after the relevant commencement, whether the offence was committed before or after the relevant commencement.

(2) In this section—

relevant commencement means the commencement of section 7 of the amending Act to the extent it inserts part 2, division 2 in this Act.

327 Community conferencing

(1) From the relevant commencement, new part 2, division 3, new part 3 and new part 7, division 2 apply in relation to an offence, even if the offence was—

(a) committed before the relevant commencement; or

(b) referred for a community conference before the relevant commencement.

(2) If a community conference agreement is made before the relevant commencement, from the relevant commencement—

(a) the agreement is taken to be a youth justice conference agreement; and

(b) the child who made the agreement is, in relation to the agreement, subject to the provisions of this Act about youth justice conference agreements as if the agreement were made after the relevant commencement.

(3) If—

(a) before the relevant commencement—

(i) an offence was referred to a community conference; and

(ii) any possible procedure relating to the reference had not been finalised; and

(b) subsection (2) does not apply;

from the relevant commencement, the provisions of the new Act apply as if the offence had been referred for a youth justice conference after the relevant commencement.

(4) The amending Act has no effect on the validity of anything done in relation to the referral under the current Act and no step in the process of a referral is required to be taken again because of the amending Act.

(5) In this section—

relevant commencement means the commencement of section 7 of the amending Act to the extent it inserts part 2,

Not authorised—indicative only

Not authorised—indicative only

division 3 and part 3 in this Act and the commencement of sections 55 to 63 of the amending Act.

Subdivision 5 Start of proceedings

328 Start of proceedings by a police officer

(1) From the relevant commencement, new part 2, division 1 and the *Police Powers and Responsibilities Act 2000*, chapter 14 apply to a police officer in relation to the start of proceedings against a child even if the offence was committed before the relevant commencement.

(2) Subsection (1) does not affect anything done by a police officer before the relevant commencement.

(3) In this section—

relevant commencement means the commencement of section 7 of the amending Act to the extent it inserts part 2, division 1 in this Act.

Subdivision 6 Bail and custody of children

329 Police decision about bail or a related matter

(1) From the relevant commencement, a current decision that was made under the *Bail Act 1980*, section 7 in relation to a child is taken to have been made under section 50.

(2) If the decision was to release the child on bail, the bail is taken to have been granted under section 52.

(3) In this section—

relevant commencement means the commencement of section 123 of the amending Act.

Subdivision 7 Jurisdiction and proceedings

330 Generally in relation to new pt 6

(1) Unless otherwise provided, a provision of new part 6 applies from the relevant commencement to all proceedings to which it is stated to apply—

(a) whether current or otherwise; and

(b) whether the proceeding relates to an offence committed before or after the commencement; and

(c) whether or not the proceeding follows any form of appeal or review.

(2) In this section—

relevant commencement means the commencement of section 26 of the amending Act.

331 Transitional provision for current pt 4, divs 2–5

(1) This section applies to a committal proceeding, after the relevant commencement, in which a child appears charged with an indictable offence before a Childrens Court magistrate if, before the relevant commencement, evidence had already been adduced in the proceeding.

(2) If all the evidence to be adduced by the prosecution (the ***prosecution evidence***) had not been adduced before the relevant commencement—

(a) the proceeding must continue under current part 4 until all the prosecution evidence has been adduced; and

(b) after all the prosecution evidence has been adduced, the proceeding must continue under the new part 6, divisions 3 to 7.

(3) New part 6, division 4 applies without exception, as provided under section 330.

Not authorised—indicative only

Not authorised—indicative only

(4) If all the prosecution evidence had been adduced before the relevant commencement, but all the evidence to be adduced at the proceeding has not been adduced—

(a) the proceeding must continue under current part 4 until all the evidence has been adduced; and

(b) after all the evidence has been adduced, the proceeding must continue under the new part 6, divisions 5 to 7.

(5) If a child has been committed to be tried or sentenced before any court before the relevant commencement, current part 4 continues to apply to the proceedings before that court.

(6) In this section—

relevant commencement, means the commencement of section 26 of the amending Act.

332 Transitional provision for appeals under Justices Act 1886, pt 9, div 1

(1) This section applies to a Childrens Court judge appeal under the *Justices Act 1886*, part 9, division 1, made to a District Court judge—

(a) before the relevant commencement and not decided at the relevant commencement; or

(b) within 28 days after the relevant commencement.

(2) The District Court judge has jurisdiction to hear and decide the appeal, despite section 117(4).

(3) In this section—

Childrens Court judge appeal means an appeal under the *Justices Act 1886*, part 9, division 1 that, after the relevant commencement, may only be made to the Childrens Court judge.

relevant commencement means the commencement of section 30 of the amending Act to the extent it inserts new section 117 in this Act.

333 Child offender who becomes an adult

(1) Sections 135, 136, 137 and 138(2) apply only to a remand by a court after the relevant commencement.

(2) Sections 135(3) and 138(3) apply only to a term of imprisonment or period of detention to which the offender is sentenced after the relevant commencement.

(3) In this section—

relevant commencement means the commencement of section 42 of the amending Act.

Subdivision 8 Sentencing

334 Sentencing generally

(1) From the commencement of any amendment of part 7, division 1, part 7, division 1 as amended applies in relation to an offence even if the offence was committed before the commencement.

(2) Subsection (1) has no effect on anything done, in relation to the offence, under a provision of part 7, division 1 before it was amended.

335 Current community based orders made by District Court

(1) For part 7, division 12, a community based order made by the District Court before the relevant commencement is taken, from the relevant commencement, to have been made by a Childrens Court judge.

(2) In this section—

relevant commencement means the commencement of section 98 of the amending Act.

Not authorised—indicative only

Not authorised—indicative only

336 Contravention of a current probation order

(1) A current warning given by the chief executive under section 134(1), relating to a contravention of a probation order, is taken, from the relevant commencement, to have been given under section 237.

Editor's note—

section 134 (Chief executive's application on breach) (Note—This was the section heading immediately before the relevant commencement.)

(2) A current complaint and summons served under section 134, relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been served under section 238.

(3) A current warrant issued under section 134 is taken, from the relevant commencement, to have been issued under section 238.

(4) A current order made under section 135(4) is taken, from the relevant commencement, to have been made under section 240(3)(a).

Editor's note—

section 135 (General options available to Childrens Court magistrate on breach application) (Note—This was the section heading immediately before the relevant commencement.)

(5) A current order made under section 137(4)(c) is taken, from the relevant commencement, to have been made under section 242(3)(a).

Editor's note—

section 137 (General options available to court before which child found guilty of an indictable offence) (Note—This was the section heading immediately before the relevant commencement.)

(6) A current notification given under section 141(2), relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been given under section 247(2).

Editor's note—

section 141 (Variation, discharge and resentence in the interests of justice) (Note—This was the section heading immediately before the relevant commencement.)

(7) In this section—

relevant commencement means the commencement of section 98 of the amending Act.

337 Cumulative effect of child and adult community service orders

(1) Section 201(2) applies only to an order mentioned in section 201(1)(a) made after the relevant commencement.

(2) In this section—

relevant commencement means the commencement of section 76 of the amending Act.

338 Contravention of a community service order

(1) A current warning given by the chief executive under section 153(1), relating to a contravention of a community service order, is taken, from the relevant commencement, to have been given under section 237.

Editor's note—

section 153 (Chief executive's application on breach) (Note—This was the section heading immediately before the relevant commencement.)

(2) A current complaint and summons served under section 153, relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been served under section 238.

(3) A current warrant issued under section 153 is taken, from the relevant commencement, to have been issued under section 238.

(4) A current order made under section 154(4) is taken, from the relevant commencement, to have been made under section 240(3)(a).

Not authorised—indicative only

Not authorised—indicative only

Editor's note—

section 154 (General options available to Childrens Court magistrate on breach application) (Note—This was the section heading immediately before the relevant commencement.)

(5) A current notification given under section 158(2) relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been given under section 247(2).

Editor's note—

section 158 (Variation, discharge or resentence in the interests of justice) (Note—This was the section heading immediately before the relevant commencement.)

(6) In this section—

relevant commencement means the commencement of section 98 of the amending Act.

339 Contravention of a conditional release order

(1) A current warrant issued under section 183 is taken, from the relevant commencement, to have been issued under section 238.

Editor's note—

section 183 (Failure to comply with conditions of immediate release order) (Note—This was the section heading immediately before the relevant commencement.)

(2) A current order made under section 185(5) is taken, from the relevant commencement, to have been made under section 242(3)(a).

Editor's note—

section 185 (Options available to court before which a child subject to an immediate release order is found guilty of an indictable offence) (Note—This was the section heading immediately before the relevant commencement.)

(3) A current notification given under section 186(2), relating to an application made or proposed to be made under that section, is taken, from the relevant commencement, to have been given under section 247(2).

Editor's note—

section 186 (Variation and revocation in the interests of justice) (Note—This was the section heading immediately before the relevant commencement.)

(4) In this section—

relevant commencement means the commencement of section 98 of the amending Act.

340 Contravention of community based orders generally

(1) Part 7, division 12 applies to a contravention of a community based order whether the contravention happened before or after the relevant commencement.

(2) Without limiting this subdivision—

(a) a current proceeding under this Act, relating to a contravention of a community based order, may be continued and finished as if it had been started under part 7, division 12; and

(b) a current order made under this Act, relating to a contravention of a community based order, continues in force as if it had been made under part 7, division 12.

(3) In this section—

relevant commencement means the commencement of section 98 of the amending Act.

Division 4 Transitional provision for Summary Offences Act 2005

341 Vagrants, Gaming and Other Offences Act 1931

Despite the repeal of the *Vagrants, Gaming and Other Offences Act 1931*, an offence against that Act that is an arrest offence continues to be an arrest offence for which a court may order that a child's identifying particulars may be taken under section 25 or 255 of this Act.

Not authorised—indicative only

Not authorised—indicative only

Division 5 Transitional provision for Criminal Code and Other Acts Amendment Act 2008

342 Reference to particular offence

The definition *offence of a sexual nature* in section 170(4) applies as if the reference to the Criminal Code, section 208 included a reference to the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

Division 6 Transitional provisions for Juvenile Justice and Other Acts Amendment Act 2009

343 Definitions for pt 11, div 6

In this division—

amending Act means the *Juvenile Justice and Other Acts Amendment Act 2009.*

new, in relation to a section, means the section as it exists at any time after its commencement under the amending Act.

old, in relation to a section, means the section as it existed at any time before its repeal under the amending Act.

344 Reference to Juvenile Justice Act 1992 and related references

From the commencement of the amending Act, section 9, a reference set out in column 1 of the following table in any other Act or any instrument or document is taken, if the context permits, to be the reference set out opposite in column 2.

Column 1	Column 2
Juvenile Justice Act 1992	*Youth Justice Act 1992*
chief executive (juvenile justice)	chief executive (youth justice)
juvenile justice principles	youth justice principles

345 Particular notices to include warning about arrest

(1) This section applies if—

(a) before the commencement day, a child is given a relevant notice; and

(b) the notice does not include a warning that, if the child fails to appear before the court in answer to the notice, the court may issue a warrant for the child's arrest; and

(c) the child fails to appear before the court in answer to the notice.

(2) The court may not issue a warrant for the child's arrest under the relevant warrant provision unless a further relevant notice is given to the child that includes the warning mentioned in subsection (1)(b) and the child fails to appear before the court in answer to the further notice.

(3) This section does not limit any other power of the court to issue a warrant for the child's arrest.

(4) For this section—

(a) a notice given under a provision mentioned in column 1 of the following table is a relevant notice; and

(b) the relevant warrant provision for the relevant notice is the provision stated opposite in column 2; and

(c) the commencement day for the relevant notice is the day stated opposite in column 3.

Not authorised—indicative only

Not authorised—indicative only

Provision under which relevant notice is given	Relevant warrant provision	Commencement day
s 164(4)	s 164(7)	the day the amending Act, s 21 commences
s 165(6)	s 165(9)	the day the amending Act, s 22 commences
s 166(4)	s 166(7)	the day the amending Act, s 23 commences
s 174(4)	s 174(7)	the day the amending Act, s 24 commences

346 If an agreement is made on a referral by a court to a conference before sentence

(1) This section applies if immediately before the commencement of the amending Act, section 22(2) (the ***commencement***), a child has been given a notice under section 165(6) for a contravention of a term of a conference agreement but not been entirely dealt with under the section.

(2) The child must, despite the commencement, be dealt with for the contravention under the section as it existed at that time.

(3) Any other contravention must be dealt with under this Act as amended by the amending Act, even if the contravention happened before the commencement.

347 Application of Criminal Code, s 305

(1) This section applies for the purpose of applying the Criminal Code, section 305(2) and (3) (the ***Code provisions***) to a child under section 176(6) of this Act.

(2) The Code provisions apply only if the court is sentencing the child on a conviction of murder committed after the commencement day.

(3) However, the court, in applying the Code provisions, may have regard to an offence of murder that was committed before the commencement day, whether or not the conviction or sentence for the murder happened before or happens after the commencement day.

(4) Subsection (3) applies even if the offence of murder is an offence for which the court is also sentencing the child or taking into account on the sentence of the child.

(5) In this section—

commencement day means the day the amending Act, section 25 commences.

348 Cancellation of supervised release order

(1) Subsections (2) and (3) apply if an application about a contravention of supervised release order is made under old section 231 but not entirely dealt with before its repeal under the amending Act.

(2) The application continues as if old section 231 were not repealed.

(2A) Old section 231(12) continues to apply (and is declared to have always continued to apply despite its repeal) in relation to a warrant issued for a child's arrest under old section 231(4) or (5) for the period spent by the child out of custody.

(3) If the supervised release order expires before the child is finally dealt with on the application—

(a) the application expires; and

(b) if the child is in custody under a warrant issued under old section 231(4) or (5), the child must be released from custody under the warrant.

(4) New part 7, division 12A applies to all other contraventions arising before the commencement.

Not authorised—indicative only

Not authorised—indicative only

(5) To remove any doubt, it is declared that, under subsection (4), a court is to act under new sections 252E and 252F if the circumstances mentioned in section 252E(1) apply.

(6) However, a court in its discretion need not act under new sections 252E and 252F if the child's sentencing for the offence mentioned in new section 252E(1) has started but not ended before the repeal of old section 231 by the amending Act.

349 Court may order transfer to prison

(1) Subsection (2) applies if an application has been made but not entirely dealt with on the repeal of old section 270.

(2) The application must be dealt with, and if necessary reheard, under new section 276C.

(3) New part 8, division 2A applies to all other matters relating to the serving of a period of detention as a term of imprisonment even if the relevant circumstances arose before the commencement of the division.

(4) From the repeal of the old section 270, an order made under the section is taken to be a transfer order made under new section 276C.

Division 7 Transitional provision for Criminal History Screening Legislation Amendment Act 2010

351 Effect of s 252I on particular warrants

(1) This section applies in relation to a warrant issued for a child's arrest under section 252I(1) before the commencement of the amendment of the section by the amending Act.

(2) Section 252I(7) as amended by the amending Act—

(a) does not apply in relation to the period of time spent by the child out of custody before the commencement of the amendment; but

(b) does apply in relation to the period of time spent by the child out of custody after the commencement of the amendment.

(3) In this section—

amending Act means the *Criminal History Screening Legislation Amendment Act 2010*.

Division 8 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010

352 Particular amended provisions apply only to prosecutions commenced after commencement

(1) Sections 8, 78 and 176, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*, apply in relation to an offence only if an originating step for a proceeding for the offence is taken on or after the commencement of this section.

(2) For subsection (1), it does not matter when the offence was committed.

(3) In this section—

originating step, for a proceeding, means—

(a) the arrest of the defendant in the proceeding; or

(b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or

(c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

Not authorised—indicative only

Not authorised—indicative only

Division 9 Transitional provision for Criminal Law Amendment Act 2012

353 Application of Criminal Code, s 305

(1) This section applies for the purpose of applying the Criminal Code, section 305(2), (3) and (4) to a child under section 176(6) of this Act.

(2) Section 305, as amended by the amendment Act, section 3, to the extent the amendment Act increases the minimum number of years of imprisonment to be served, applies only if—

(a) for section 305(2)(a), at least 1 conviction of murder is for an offence committed after the commencement, even if the other offence or offences were committed before the commencement; or

(b) for section 305(2)(b), either the conviction of murder is for, or the other offence of murder taken into account is for, an offence committed after the commencement, even if one of those offences was committed before the commencement; or

(c) for section 305(2)(c), either the conviction of murder is for, or the other offence of murder for which the person has previously been sentenced is for, an offence committed after the commencement, even if one of those offences was committed before the commencement; or

(d) for section 305(4), the conviction of murder is for an offence committed after the commencement.

(3) For an offence mentioned in subsection (2) as having been committed before the commencement, for which there was a conviction, it does not matter whether the conviction was recorded before or after the commencement.

(4) This section applies despite the *Acts Interpretation Act 1954*, section 20C(3) and the Criminal Code, section 11.

(5) In this section—

amendment Act means the *Criminal Law Amendment Act 2012*.

commencement means the commencement of the amendment Act, section 3.

minimum number of years of imprisonment to be served means the minimum number of years of imprisonment a person must serve before the person may be released from imprisonment under an order made under the Criminal Code, section 305 by the court sentencing the person.

Division 10 Transitional provisions for Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012

354 Definitions for div 10

In this division—

amending act means the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012*.

commencement means the commencement of the provision in which the term is used.

355 Application of provisions about destruction of identifying particulars taken under court order

(1) This section applies for deciding the end of the proceeding for section 27 in relation to the referral of an offence to a conference under section 161(3)(a)(i) before the commencement.

(2) Section 27(5) as in force immediately before the commencement continues to apply after the commencement to decide the end of the proceeding.

Not authorised—indicative only

Not authorised—indicative only

356 Application of provisions about referral by court for a conference

(1) This section applies to a referral by a court to a coordinator for a conference made under section 161 as in force immediately before the commencement.

(2) Part 7, division 2 as in force immediately before the commencement continues to apply to the offence as if the amending Act had not commenced.

(3) Despite subsection (2)—

(a) a reference in part 7, division 2 to a coordinator is taken to be a reference to the chief executive; and

(b) for the purposes of any function, power or obligation that the coordinator may or is required to exercise, the chief executive may or must exercise that function, power or obligation.

357 Application of provisions about boot camp order

(1) A court may make a boot camp order against a child sentenced after the commencement.

(2) Subsection (1) applies even if one or both the following happened before the commencement—

(a) the commission of the offence;

(b) the start of the proceeding for the offence.

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.

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.

Not authorised—indicative only

Not authorised—indicative only

(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) Subject to subsection (2A), 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.

(2A) A requirement under section 276C(1) to give a prison transfer direction within 28 days after the child is sentenced to serve a period of detention is taken to be a requirement to give a prison transfer direction before, or as soon as practicable after, the commencement of this subsection.

(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.

(3) For subsection (2)—

(a) a reference in section 276C to a child includes a reference to the person; and

(b) a requirement under section 276C(1) to give a prison transfer direction within 28 days after the person is sentenced to serve a period of detention is taken to be a requirement to give a prison transfer direction before, or as soon as practicable after, the commencement of this subsection; and

Not authorised—indicative only

Not authorised—indicative only

(c) a reference in section 276C(2) and (3) to the transfer day is, for the person, taken to be a reference to the commencement of this subsection; and

(d) a reference in section 276C(2) to the unserved period of detention is, for the person, taken to be a reference to the part of the period of detention that the person would have to serve under a detention order if the prison transfer direction was not given.

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 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.

Division 12 Transitional provision for Criminal Law (Domestic Violence) Amendment Act 2016

368 Sentencing submissions

The amendments made to section 150 by the *Criminal Law (Domestic Violence) Amendment Act 2016* apply in relation to sentencing a child even if the offence or conviction happened before the commencement.

Division 12A Transitional provision for Health and Other Legislation Amendment Act 2016

368A Particular definitions are taken to include reference to Criminal Code, s 208

The following apply as if each provision included a reference to the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*—

(a) definition *offence of a sexual nature* in section 170(4);

(b) definition *disqualifying offence* in section 226C(4).

Division 13 Transitional provisions for Youth Justice and Other Legislation Amendment Act (No. 1) 2016

Subdivision 1 Preliminary

369 Definitions for div 13

In this division—

Not authorised—indicative only

Not authorised—indicative only

amending Act means the *Youth Justice and Other Legislation Amendment Act (No. 1) 2016*.

repealed, in relation to a provision, means the provision as in force immediately before its repeal.

Subdivision 2 Continuation of boot camp (vehicle offences) orders and boot camp orders

370 Boot camp (vehicle offences) order existing immediately before commencement

(1) This section applies if immediately before the commencement a child was subject to a boot camp (vehicle offences) order made under repealed section 206A.

(2) Subject to subdivision 3, the boot camp (vehicle offences) order continues to have effect as if the amending Act had not been enacted.

371 Boot camp order existing immediately before commencement

(1) This section applies if immediately before the commencement a child was subject to a boot camp order made under repealed section 226B.

(2) Subject to subdivision 3, the boot camp order continues to have effect as if the amending Act had not been enacted.

Subdivision 3 Continued boot camp (vehicle offences) orders and boot camp order—contravention, revocation, discharge and resentence proceedings

372 Purpose of sdiv 3

(1) The purpose of this subdivision is to provide for the proceedings that apply and the orders that may be made for—

(a) contravention of a boot camp (vehicle offences) order continued under section 370 or a boot camp order continued under section 371; or

(b) variation, discharge and resentencing in relation to a boot camp (vehicle offences) order continued under section 370; or

(c) revocation and resentencing in relation to a boot camp order continued under section 371.

(2) This subdivision applies whether the contravention of the order is alleged to have happened before or after the commencement.

373 Application of pt 7, div 13

(1) Part 7, division 13, other than sections 245, 246, 247(1), 248 and 249, applies in relation to a boot camp (vehicle offences) order continued under section 370 as if—

(a) a reference to a community based order included a reference to a boot camp (vehicle offences) order continued under section 370; and

(b) a reference to section 245 in sections 240, 241, 242 and 244 were a reference to section 376; and

(c) a reference to section 245(1)(d)(ii) in section 243 were a reference to section 376.

Not authorised—indicative only

Not authorised—indicative only

(2) Part 7, division 13, other than sections 245, 246, 247(1), 248, 249 and 252, applies in relation to a boot camp order continued under section 371 as if—

(a) a reference to a community based order included a reference to a boot camp order continued under section 371; and

(b) a reference to section 245 in sections 240, 241, 242 and 244 were a reference to section 377; and

(c) a reference to section 245(1)(d)(ii) in section 243 were a reference to section 377.

374 Application of s 237

(1) This section applies if a child is subject to a boot camp (vehicle offences) order continued under section 370 or a boot camp order continued under section 371.

(2) Despite section 373, section 237(2) does not apply in relation to the child if the chief executive 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.

375 Application of s 238

(1) This section applies if a child is subject to a boot camp (vehicle offences) order continued under section 370 or a boot camp order continued under section 371.

(2) For section 238(6), in addition to the matters mentioned in section 238(6)(b)(ii), the chief executive may also give information to the justice, on oath, substantiating that the chief executive 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.

376 Court's power on breach of boot camp (vehicle offences) order

(1) A court that acts under this section may revoke a boot camp (vehicle offences) 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.

(2) In resentencing the child the court must have regard to—

(a) the reasons for making the boot camp (vehicle offences) order; and

(b) anything done by the child in compliance with the order.

(3) If the court makes a community based order for the child under subsection (1), the court must have regard to the period the child complied with the boot camp (vehicle offences) order.

(4) The court may resentence the child under this section even though it is unnecessary to revoke the boot camp (vehicle offences) order because the period the order was in force has ended.

(5) For part 6, division 9, subdivision 4, an order mentioned in this section and made by a Childrens Court magistrate is a sentence order.

377 Court's power on breach of boot camp order

(1) A court that acts under this section may revoke a boot camp order and make either of the following orders—

(a) an order the child serve the sentence of detention for which the boot camp order was made;

(b) a conditional release order for the child.

(2) If the court orders the child to serve the sentence of detention under subsection (1)(a), the court must reduce the period of detention by the period the court considers just, having regard to everything done by the child to conform with the boot camp order.

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Not authorised—indicative only

(3) If the court makes a conditional release order for the child under subsection (1)(b), the court must have regard to the period for which the child has complied with the boot camp order.

(4) The court may make an order under this section even though it is unnecessary to revoke the boot camp order because the period the order was in force has ended.

(5) For part 6, division 9, subdivision 4, an order mentioned in this section and made by a Childrens Court magistrate is a sentence order.

378 Continued boot camp (vehicle offences) order—variation, discharge and resentence

(1) If a child is subject to a boot camp (vehicle offences) order continued under section 370, the child or the chief executive may apply to the court that made the order to—

(a) vary the requirements of the order, other than the requirement that the child abstain from violence; or

(b) discharge the order; or

(c) discharge the order and resentence the child for the offence for which the order was made as if the child had just been found guilty before the court of the offence.

(2) Section 247(2) to (4) apply to an application made under this section.

(3) Section 247(5) applies to an order made under this section.

379 Continued boot camp order—revocation and resentence

(1) If a child is subject to a boot camp order continued under section 371, the child or the chief executive may apply to the court that made the order to revoke the order and make either of the following orders—

(a) an order the child serve the sentence of detention for which the boot camp order was made;

(b) a conditional release order.

(2) Section 247(2) to (4) apply to an application made under this section.

(3) Section 247(5) applies to an order made under this section.

Subdivision 4 No boot camp (vehicle offences) orders or boot camp orders after commencement

380 Court may not make boot camp (vehicle offences) order or boot camp order after commencement

(1) In sentencing a child after the commencement a court may not make a boot camp (vehicle offences) order or a boot camp order against the child.

(2) Subsection (1) applies—

(a) whether the offence or the conviction of the offence happened before or after the commencement; or

(b) for a boot camp (vehicle offences) order—whether or not a pre-sentence report was ordered by the court, prepared by the chief executive or received by the court under repealed section 176B before the commencement; or

(c) for a boot camp order—whether or not a pre-sentence report was requested by the court under repealed section 151(3A) before the commencement.

Subdivision 5 Other transitional provisions

381 Offence committed while on bail

(1) This section applies if—

(a) before the commencement a child was charged with an offence under repealed section 59A; and

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Not authorised—indicative only

(b) at the commencement the charge of the offence has not been finally dealt with in any of the following ways—

(i) the charge has been withdrawn;

(ii) the charge has been dismissed by the court;

(iii) the child has been discharged;

(iv) the child has been acquitted;

(v) the child has been found guilty of, and sentenced for, the offence.

(2) The child can not be prosecuted for, or further prosecuted for, or convicted of, or punished for, the offence.

382 Childhood finding of guilt

Section 148, as amended by the amending Act, applies to the sentencing of an adult after the commencement whether the offence the subject of the sentencing happened before or after the commencement.

383 Sentence review

(1) A Childrens Court judge may conduct a review under section 118 whether the sentence order subject of the review was made before or after the commencement.

(2) Subsection (1) applies subject to section 119(2).

384 Sentencing principles

Section 150, as amended by the amending Act, applies to the sentencing of a child after the commencement whether the offence or conviction happened before or after the commencement.

385 Publication of identifying information about child

Sections 234 and 301, as amended by the amending Act, apply to identifying information about a child whether or not

the identifying information was the subject of an order under repealed section 299A.

Division 14 Transitional provision for the Youth Justice and Other Legislation Amendment Act (No. 2) 2016

386 Application of Act to matters before commencement

(1) The provisions of this Act, as in force after the commencement of the amendments, apply to incomplete proceedings under this Act.

(2) To remove any doubt, it is declared that the requirements for transferring a detainee to a corrective services facility under this Act apply to—

(a) a detainee who turns 18 years on or after the commencement of the amendments, regardless of when the detainee's period of detention started; and

(b) a person sentenced for an offence, or returned to detention in relation to an offence, after the commencement of the amendments, regardless of when the person committed the offence, was charged with the offence or criminal proceedings for the offence were started.

(3) A prison transfer direction issued before the commencement ceases to have effect if the person, the subject of the notice, was not transferred to a corrective services facility before the commencement of the amendments.

(4) Despite the replacement of part 3 by the amendments, that part, as in force immediately before the replacement, continues to apply for any of the following started before the replacement—

(a) a referral by a police officer of an offence to the chief executive for a conference;

(b) a youth justice conference;

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Not authorised—indicative only

(c) a conference agreement.

(5) In this section—

amendments means the amendments of this Act made by the *Youth Justice and Other Legislation Amendment Act (No. 2) 2016*.

incomplete proceedings means proceedings against a child for an offence conducted under this Act and started, but not completed, before the commencement of the amendments.

prison transfer direction means a prison transfer direction under section 276C(1) as in force immediately before the commencement of the amendments.

Division 15 Transitional provisions for Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016

387 Offences by 17-year-olds before commencement if offence proceedings not started

(1) This section applies to a person who, as a 17-year-old, committed an offence before the commencement if a proceeding against the person for the offence had not been started before the commencement.

(2) For this Act or another Act, the person is taken to have committed the offence as a child.

388 Transitional regulation-making power

(1) The Governor in Council may make a regulation (a ***transitional regulation***) under this division.

(2) A transitional regulation must declare it is a transitional regulation.

(3) This section, sections 389 to 391 and any transitional regulation expire 2 years after the commencement.

389 Uncompleted sentences for offences by 17-year-olds

(1) This section applies if—

(a) a person, as a 17-year-old, committed an offence before the commencement; and

(b) the person is still 17 years old on the commencement; and

(c) a sentence for the offence was imposed but not completed before the commencement.

(2) A transitional regulation may provide for the application of this Act or another Act to the person as if the sentence or a subsequent order about the sentence were a corresponding child sentence or order.

(3) The matters for which the transitional regulation may provide include the following—

(a) the continued application of a provision of an Act to the sentence or subsequent order for particular purposes even though another provision of the same Act or another Act applies as if the sentence or subsequent order were a corresponding child sentence or order;

(b) if the sentence includes a term of imprisonment—applying a provision of this Act about supervised release orders to the term of imprisonment as if it were a period of detention;

(c) if the person is serving a term of imprisonment in a corrective services facility on the commencement—

(i) providing for the transfer of the person to a detention centre for detention as if the term of imprisonment were a period of detention; or

(ii) applying a provision of this Act to the person as if the person were serving a period of detention in a detention centre.

(4) A court may, on application by the person or the chief executive or on its own initiative—

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(a) make an order or give directions it considers necessary to facilitate the application of this Act or another Act to the person under the transitional regulation; or

(b) if the court considers it would be in the interests of justice to do so, having regard to the application of this Act or another Act to the person under the transitional regulation—

(i) vary the sentence or subsequent order; or

(ii) discharge the sentence or subsequent order and substitute it with a corresponding child sentence or order.

(5) An application may not be made under subsection (4)(b) on the ground that the penalty imposed by the person's sentence would have been lower if the person had been sentenced as a child.

(6) For this section, a sentence or order under this Act mentioned in column 2 is a ***corresponding child sentence or order*** for the sentence or order mentioned in column 1—

sentence or order	**corresponding child sentence or order**
term of imprisonment	period of detention
community service order under the *Penalties and Sentences Act 1992*	community service order
fine option order under the *Penalties and Sentences Act 1992*	community service order
graffiti removal order under the *Penalties and Sentences Act 1992*	graffiti removal order
intensive correction order under the *Penalties and Sentences Act 1992*	conditional release order

sentence or order	corresponding child sentence or order
parole order under the *Corrective Services Act 2006*	supervised release order
probation order under the *Penalties and Sentences Act 1992*	probation order

390 Current proceedings for offences by 17-year-olds

(1) This section applies in relation to an offence committed, or alleged to have been committed, by a person when the person was 17 years old if there is a current proceeding for the offence.

(2) A transitional regulation may provide for the person to be treated as a child in relation to the offence and, for that purpose, provide for the application of this Act or another Act to the person.

(3) The matters for which the transitional regulation may provide include the following—

(a) removing the current proceeding to the Childrens Court for hearing and determining under this Act;

(b) if the current proceeding is not removed to the Childrens Court for hearing and determining under this Act—applying a provision of this Act to the proceeding;

(c) applying a provision about bail under part 5 to the person;

(d) if the person is being held on remand, or otherwise being held in custody, in a corrective services facility on the commencement—

(i) providing for the transfer of the person to a detention centre; or

(ii) applying a provision of this Act to the person as if the person were being held on remand in the chief

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Not authorised—indicative only

executive's custody, or otherwise held in custody in a detention centre;

(e) applying a provision of this Act to any sentencing for the offence.

(4) A court may, on application by the person, the prosecution or the chief executive or on its own initiative, make an order or give directions it considers necessary to facilitate the application of this Act or another Act to the person under the transitional regulation.

(5) In this section—

***current proceeding*—**

(a) means a proceeding started but not finally dealt with before the commencement; and

(b) includes a proceeding in which a person has been convicted, within the meaning of the *Penalties and Sentences Act 1992*, but not sentenced before the commencement.

391 Administrative arrangements

(1) A transitional regulation may provide for administrative arrangements to facilitate the operation of the regulation.

(2) The matters for which the transitional regulation may provide include the following—

(a) the staged transfer to a detention centre of persons to whom the regulation applies who, at the commencement, are being held on remand, serving a term of imprisonment, or otherwise being held in custody, in a corrective services facility;

(b) the chief executive (corrective services) giving to the chief executive information about a person to whom the regulation applies.

(3) A transitional regulation providing for a matter mentioned in subsection (2)(a) applies to a person despite any provision of

this Act providing that the person must be detained in a detention centre.

(4) A transitional regulation providing for a matter mentioned in subsection (2)(b) applies to information about a person despite any provision of an Act preventing the chief executive (corrective services) giving the information to the chief executive.

Division 16 Transitional provision for Victims of Crime Assistance and Other Legislation Amendment Act 2017

392 Eligible persons register

(1) This section applies to a person who, immediately before the commencement, was a victim who had requested information under the *Victims of Crime Assistance Act 2009*, repealed section 16, about a child detained in a detention centre.

(2) From the commencement, the person is taken to be included on the eligible persons register as an eligible person in relation to the child.

Not authorised—indicative only

Not authorised—indicative only

Schedule 1 Charter of youth justice principles

section 3

1 The community should be protected from offences.

2 The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.

3 A child being dealt with under this Act should be—

(a) treated with respect and dignity, including while the child is in custody; and

(b) encouraged to treat others with respect and dignity, including courts, persons administering this Act and other children being dealt with under this Act.

4 Because a child tends to be vulnerable in dealings with a person in authority, a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.

5 If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.

6 A child being dealt with under this Act should have procedures and other matters explained to the child in a way the child understands.

7 If a proceeding is started against a child for an offence—

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

(b) the child should be given the opportunity to participate in and understand the proceeding.

8 A child who commits an offence should be—

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

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

(c) dealt with in a way that strengthens the child's family.

9 A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.

10 A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility.

11 A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.

12 A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural and religious beliefs and practices.

13 If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.

14 Programs and services established under this Act for children should—

(a) be culturally appropriate; and

(b) promote their health and self respect; and

(c) foster their sense of responsibility; and

(d) encourage attitudes and the development of skills that will help the children to develop their potential as members of society.

15 A child being dealt with under this Act should have access to legal and other support services, including services concerned with advocacy and interpretation.

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Not authorised—indicative only

16 A child should be dealt with under this Act in a way that allows the child to be reintegrated into the community.

17 A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

18 A child detained in custody should only be held in a facility suitable for children.

19 While a child is in detention, contacts should be fostered between the child and the community.

20 A child who is detained in a detention centre under this Act—

(a) should be provided with a safe and stable living environment; and

(b) should be helped to maintain relationships with the child's family and community; and

(c) should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about—

(i) the child's participation in programs at the detention centre; and

(ii) contact with the child's family; and

(iii) the child's health; and

(iv) the child's schooling; and

(d) should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand and the security and safety of the child, other persons and property); and

(e) should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information; and

(f) should have access to dental, medical and therapeutic services necessary to meet the child's needs; and

(g) should have access to education appropriate to the child's age and development; and

(h) should receive appropriate help in making the transition from being in detention to independence.

Example for paragraph (h)—

help in gaining access to training or finding suitable employment

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Not authorised—indicative only

Schedule 2 Regulation-making power

section 314(2) of this Act

1 The form of an attendance notice, all matters relating to the operation of attendance notices in the place of complaints and summons.

2 All matters concerning conferences, including—

(a) convening of a conference; and

(b) reports to be given by the chief executive or convenor; and

(c) time for completing a conference; and

(d) regulating contents of conference agreements; and

(e) keeping of names of persons approved as conference convenors and information about conferences; and

(f) functions of the chief executive and convenors not otherwise expressed in this Act.

3 Matters to be included in pre-sentence reports.

4 Forms, conditions, requirements, duties, functions and powers relating to orders made under part 7.

5 The standards, management, control and supervision of probation orders, community service orders, intensive supervision orders and conditional release orders.

6 Standards, management, control and supervision of detention centres.

7 Maintenance of good order and discipline within detention centres.

8 Conditions for the release of children from detention centres.

9 Medical services to children in detention.

10 Searches of children and their possessions in detention centres.

11 Matters relating to the breach, revocation or variation of orders made under this Act.

12 Penalties for a contravention of a regulation of not more than 20 penalty units.

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Schedule 4 Dictionary

section 4

adult offence, for part 6, division 11, see section 132.

alternative diversion program see section 38.

applicant, for part 8, division 7, see section 282A(2).

approved form see section 306.

approved provider, for part 7, division 3, see section 171.

arrest includes apprehension and taking into custody.

arrest offence means—

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

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

attend, for part 7, division 3, see section 167.

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

caution see part 2, division 2.

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

child, for part 7, division 2, see section 161.

child advocacy officer means a person appointed as a child advocacy officer under the *Public Guardian Act 2014*.

child offence, for part 6, division 11, see section 132.

Childrens Court judge includes the Childrens Court when constituted by a Childrens Court judge or a District Court judge.

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

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*.

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

community based order means a probation order, graffiti removal order, community service order, intensive supervision order, conditional release order or restorative justice order.

community justice group, for a child, means—

(a) the community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 4, for the child's community; or

(b) a group of persons within the child's community, other than a department of government, that is involved in the provision of any of the following—

  (i) information to a court about Aboriginal or Torres Strait Islander offenders;

  (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;

  (iii) other activities relating to local justice issues; or

(c) a group of persons made up of the elders or other respected persons of the child's community.

community service means activities decided to be community service under section 302.

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

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Not authorised—indicative only

community service order means an order under section 175(1)(e).

community visitor (child) means a person appointed as a community visitor (child) under the *Public Guardian Act 2014*.

concurrent jurisdiction means—

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

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

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

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

conditional release order means an order made under section 220.

conference means a conference under part 3, division 2.

conference agreement see section 36.

contact information, for a victim of an offence, means sufficient information about the victim to enable the chief executive to communicate with the victim.

convene a conference includes anything necessary to be done for the purpose of the convening of the conference, including, for example, preparing for and conducting conference meetings and doing anything necessary to finalise the conference.

convenor means a person approved as a convenor under section 39.

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

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

court diversion referral, for part 7, division 2, see section 163(1)(d)(i).

court of competent jurisdiction, for the trial or sentence of a child on indictment, means—

(a) the Supreme Court; or

(b) the District Court within the jurisdiction under the *District Court of Queensland Act 1967*, part 4; or

(c) a Childrens Court judge within the jurisdiction under part 6, division 7.

curfew means a requirement to remain at a stated place for stated periods.

detainee means a person—

(a) being held on remand, in the chief executive's custody, in connection with a charge of an offence; or

(b) serving a period of detention, in a detention centre, for an offence; or

(c) otherwise being held in custody in a detention centre.

detainee information, for part 8, division 7, see section 282A(1).

detention centre means a detention centre established under section 262.

detention centre employee means a public service employee, any of whose functions are ordinarily performed in a detention centre.

detention order means an order made under section 175(1)(g) or 176(1)(b).

disqualifying offence, for part 7, division 3, see section 170.

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

drug assessment and education session, for part 7, division 3, see section 167.

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drug diversion court, for part 7, division 3, see section 167.

eligible child, for part 7, division 3, see section 168.

eligible drug offence, for part 7, division 3, see section 169.

eligible person, in relation to a child detained in a detention centre, means a person included on the eligible persons register as an eligible person in relation to the child.

eligible persons register means the register kept under section 282A(1).

exceptional circumstances parole order means an exceptional circumstances parole order under the *Corrective Services Act 2006*.

finding of guilt means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

good behaviour order means an order made under section 175(1)(b).

graffiti offence means an offence against the Criminal Code, section 469 that is punishable under section 469, item 9.

graffiti removal order means a graffiti removal order in force under part 7, division 7A.

graffiti removal program see the *Police Powers and Responsibilities Act 2000*, section 379A(10).

graffiti removal service means—

(a) the removal of graffiti; or

(b) work related or incidental to the work mentioned in paragraph (a); or

(c) other work related to or incidental to the clean up of public places whether or not it relates to the removal of graffiti.

grant bail includes, for a court, enlarge the bail.

identifying information, about a child, means information that identifies the child, or is likely to lead to the identification

of the child, as a child who is being, or has been, dealt with under this Act.

Example—

Each of the following is identifying information about a child if it identifies the child, or is likely to lead to the identification of a child, as a child who is being or has been dealt with under this Act—

(a) the child's name, address, school or place of employment;

(b) a photograph, picture, videotape or other visual representation of the child or someone else.

identifying particulars see the *Police Powers and Responsibilities Act 2000*, schedule 6.

intensive supervision order means an intensive supervision order made under section 175(1)(f).

lawyer means—

(a) an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State; or

(b) a person mentioned in section 308(2) acting for a party.

legal representation means representation by a lawyer.

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

loss of property includes loss, damage or destruction.

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

member of the police service means a member of the Queensland Police Service under the *Police Service Administration Act 1990*, section 2.2(1).

nominee, for part 8, division 7, see section 282A(4).

notice to appear means a notice to appear under the *Police Powers and Responsibilities Act 2000*, section 382(2).

offence, for part 7, division 2, see section 161.

offender, for part 6, division 11, see section 132.

parent means—

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

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

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

parole means a parole order under the *Corrective Services Act 2006*.

participant means a person entitled to participate in a conference under section 34.

penalty unit see *Penalties and Sentences Act 1992*, section 5.

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

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

presentence referral see section 163(1)(d)(ii).

prison means a prison within the meaning of the *Corrective Services Act 2006*.

prisoner see the *Corrective Services Act 2006*, schedule 4.

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

probation order means an order made under section 175(1)(d) or 176(1)(a).

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

(a) the charging of a defendant; and

(b) the issue of a warrant; and

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

(d) the remand of a defendant; and

(e) the adjournment of the proceeding.

program period—

(a) for a conditional release order—see section 221; or

(b) for an intensive supervision order—see section 204.

proper officer means—

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

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

property offence means an offence relating to property.

publish means publish to the public by television, radio, internet, newspaper, periodical, notice, circular or other form of communication.

referring authority see section 31(1).

release notice see section 51.

remove, in relation to graffiti, includes the following—

(a) repair;

(b) conceal;

(c) cover;

(d) attempt to remove.

Example—

painting over graffiti

respected person, of an Aboriginal or Torres Strait Islander community, means a member of the community who is generally respected in the community.

restorative justice agreement means—

(a) a conference agreement; or

(b) an alternative diversion program agreed to by the chief executive and the child who is to complete the program.

restorative justice order means an order made under section 175(1)(da) or (db).

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restorative justice process means a conference or an alternative diversion program.

sentence, for part 6, division 11, see section 132.

sentence order means any of the following—

(a) an order made under section 175 or 176, including a reprimand;

(b) the recording of a conviction under section 183;

(c) a conditional release order made under section 220;

(d) an order under section 234.

serious offence means an offence mentioned in section 8.

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

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

State includes a Territory.

supervised release order means an order made under section 228.

support person, for a child, see the *Police Powers and Responsibilities Act 2000*, schedule 6.

supreme court offence means an offence for which the District Court does not have jurisdiction to try an adult because of the *District Court of Queensland Act 1967*, section 61.

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

treatment includes therapeutic, palliative and preventative treatment.

unlawfully at large, for a person who has been lawfully detained under this Act, includes—

(a) having escaped from detention; or

(b) having been mistakenly released from detention before the person is eligible for the release.

unpaid service means the following—

(a) community service required to be performed under a community service order;

(b) graffiti removal service required to be performed under a graffiti removal order.

unperformed graffiti removal service, for a child, means graffiti removal service that the child—

(a) is required to perform under a graffiti removal order; and

(b) has not performed.

unperformed unpaid service, for a child, means unpaid service that the child—

(a) is required to perform under a community service order or a graffiti removal order; and

(b) has not performed.

youth justice principles means the principles stated in schedule 1.

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