



Queensland

# **Youth Justice and Other Legislation Amendment Act (No. 1) 2016**

**Act No. 38 of 2016**





Queensland

# Youth Justice and Other Legislation Amendment Act (No. 1) 2016

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Queensland

## **Youth Justice and Other Legislation Amendment Act (No. 1) 2016**

**Act No. 38 of 2016**

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**An Act to amend the Penalties and Sentences Act 1992, the Public Guardian Act 2014, the Youth Justice Act 1992 and the Acts mentioned in schedule 1 for particular purposes**

**[Assented to 27 June 2016]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Youth Justice and Other Legislation Amendment Act (No. 1) 2016*.

### **2 Commencement**

This Act commences on 1 July 2016.

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

### **3 Act amended**

This part amends the *Youth Justice Act 1992*.

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

Section 13(1)(a)—

*insert—*

*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.

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**5 Amendment of s 42 (Preferred way of starting proceedings)**

Section 42(1), ‘or an offence under section 59A’—  
*omit.*

**6 Omission of pt 5, div 1, hdg (Bail generally)**

Part 5, division 1, heading—  
*omit.*

**7 Amendment of s 47 (Bail Act 1980 applies)**

Section 47—

*insert—*

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

**8 Omission of pt 5, div 2 (Offence committed while on bail)**

Part 5, division 2—  
*omit.*

**9 Amendment of s 62 (Childrens Court judge)**

Section 62—

*insert—*

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

**10 Amendment of s 67 (Limitation on justices)**

(1) Section 67(2)(b)—  
*omit.*

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- (2) Section 67(2)(c)—  
*renumber* as section 67(2)(b).

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

- (1) Section 74(3)(d)—  
*omit*.
- (2) Section 74(3)(f), '(a) to (e)'—  
*omit, insert—*  
(a) to (d)
- (3) Section 74(3)(a) to (f)—  
*renumber* as section 74(a) to (e).

**12 Amendment of pt 6, div 9, hdg (Appeal)**

- Part 6, division 9, heading, after 'Appeal'—  
*insert—*  
**and review**

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

- (1) Section 117(1) and (2)—  
*omit, insert—*  
(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) Section 117(3) to (5)—  
*renumber* as section 117(2) to (4).

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**14 Insertion of new pt 6, div 9, sdiv 4**

Part 6, division 9—

*insert—*

**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

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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.
- (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

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(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—

**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.

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

(1) Section 148(1), ‘Subject to subsection (3), in’—

*omit, insert—*

In

(2) Section 148(3)—

*omit, insert—*

(3) This section does not prevent a court that is sentencing an adult from receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court’s sentence.

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

(1) Section 150(2)—

*insert—*

(e) a detention order should be imposed only as a last resort and for the shortest appropriate period.

(2) Section 150(5)—

*omit.*

**17 Amendment of s 151 (Pre-sentence report)**

Section 151(3A) and (3B)—

*omit.*

**18 Amendment of s 175 (Sentence orders—general)**

Section 175(3)—

*omit, insert—*

- (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.

**19 Amendment of s 176 (Sentence orders—life and other significant offences)**

Section 176(4)—

*omit, insert—*

- (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.

**20 Omission of s 176B (Sentence orders—recidivist vehicle offences)**

Section 176B—

*omit.*

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

Section 177, '180B'—

*omit, insert—*

180A

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

Section 178B—

*omit.*

**23 Amendment of s 180 (Combination of detention order and probation order)**

Section 180(2)—

[s 24]

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*omit, insert—*

- (2) A court may make the detention order only for a maximum period of 6 months and may not make a conditional release order.

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

Section 180B—

*omit.*

**25 Omission of pt 7, div 9A (Boot camp (vehicle offences) order)**

Part 7, division 9A—

*omit.*

**26 Insertion of new s 208**

After section 207—

*insert—*

**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.

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

Section 209(3), after 'appeal'—

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*insert—*  
or review

**28 Amendment of s 210 (Detention to be served in detention centre)**

Section 210(3)—

*omit, insert—*

- (3) Subsection (2) does not apply if the court makes a conditional release order under section 220.

**29 Amendment of s 211 (Commencement of detention period)**

Section 211(3), from ‘a sentence order’—

*omit, insert—*

, 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.

**30 Amendment of s 215 (Period of escape, mistaken release or release pending appeal not counted as detention)**

- (1) Section 215, heading, after ‘appeal’—

*insert—*

**or review**

- (2) Section 215(a), after ‘against’—

*insert—*

, or a review of,

- (3) Section 215, after ‘the appeal’—

*insert—*

or review,

[s 31]

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**31 Omission of pt 7, div 10, sdivs 2A and 2B**

Part 7, division 10, subdivisions 2A and 2B—  
*omit.*

**32 Amendment of s 234 (Court may allow publication of identifying information of first-time offender)**

(1) Section 234, heading, ‘of first-time offender’—  
*omit, insert—*

**about a child**

(2) Section 234(1), (2) and (3), ‘first-time offender’—  
*omit, insert—*  
child

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

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

Section 237(3)—  
*omit, insert—*

(3) However, subsection (2) does not apply if the chief executive does not know the child’s whereabouts and can not reasonably find out.

**34 Amendment of s 238 (Chief executive’s application on contravention)**

Section 238(6)(b)(ii)(C)—  
*omit.*

---

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

(1) Section 240(2)(a) to (d)—

*omit, insert—*

- (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.

(2) Section 240(3)(b)(i) to (iv)—

*omit, insert—*

- (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).

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

Section 241(2)(a) to (d)—

*omit, insert—*

- (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.

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

(1) Section 242(2)(a) to (d)—

*omit, insert—*

[s 38]

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- (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.
- (2) Section 242(3)(b)(i) to (iv)—  
*omit, insert—*
- (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).

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

- (1) Section 243(2)(a) to (d)—  
*omit, insert—*
- (a) for an order other than a conditional release order—section 245(1)(d)(ii);
  - (b) for a conditional release order—section 246(1).
- (2) Section 243(4)(a) to (d)—  
*omit, insert—*
- (a) for an order other than a conditional release order—section 245(1)(d)(ii);
  - (b) for a conditional release order—section 246(1).

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

Section 244(2)(a) to (d)—



---

*omit, insert—*

- (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.

**40 Amendment of s 245 (Court’s power on breach of a community based order other than a boot camp (vehicle offences) order, conditional release order or boot camp order)**

- (1) Section 245, heading, from ‘boot camp (vehicle offences)’—

*omit, insert—*

**conditional release order**

- (2) Section 245(1)(d), ‘other than a boot camp (vehicle offences) order, conditional release order or a boot camp order’—

*omit.*

- (3) Section 245(6), definition *community based order*, ‘or a boot camp order’—

*omit.*

- (4) Section 245(6)—

*renumber* as section 245(7).

- (5) Section 245—

*insert—*

- (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.

**41 Amendment of s 246 (Court’s power on breach of conditional release order)**

- (1) Section 246(1)—

*omit, insert—*

[s 42]

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- (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) Section 246(4A)—  
*omit.*
- (3) Section 246—  
*insert—*
  - (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.

**42 Omission of ss 246AA and 246A**

Sections 246AA and 246A—

*omit.*

**43 Amendment of s 247 (Variation, discharge and resentence in the interests of justice)**

- (1) Section 247(1)(b), ‘or a boot camp order’—  
*omit.*
- (2) Section 247(1)(c) and (d)—  
*omit, insert—*
  - (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.

**44 Amendment of s 248 (Detention reduced to the extent just)**

- (1) Section 248(1), ‘or a boot camp order’—

*omit.*

(2) Section 248(1) and (2), ‘or boot camp order’—  
*omit.*

**45 Amendment of s 249 (Matters relevant to making further order)**

Section 249(1), ‘or a boot camp order’—  
*omit.*

**46 Amendment of s 252 (Variations by consent)**

Section 252(1), ‘or a boot camp order’—  
*omit.*

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

Section 252G(2), after ‘appeal’—  
*insert*—  
or review

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

Section 263(5), ‘18 and 19’—  
*omit, insert*—  
19 and 20

**49 Omission of pt 8A (Boot camp centre administration)**

Part 8A—  
*omit.*

[s 50]

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**50 Amendment of s 285 (When does someone gain information through involvement in the administration of this Act)**

(1) Section 285(1)(h), ‘a person who is’—  
*omit.*

(2) Section 285—  
*insert—*

(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.

**51 Omission of s 299A (Prohibition of publication of identifying information about a child who is not a first-time offender)**

Section 299A—  
*omit.*

**52 Amendment of s 301 (Prohibition of publication of identifying information about a first-time offender)**

Section 301, ‘first-time offender’—  
*omit, insert—*

child

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

Section 303(3), ‘sections 299A and’—  
*omit, insert—*

section

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**54 Insertion of new ss 305A and 305B**

After section 305—

*insert—*

**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.

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*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.
- (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

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written instructions under repealed section 282J as in force immediately before the commencement.

(7) In this section—

*boot camp program* see section 305A(5).

## 55 Insertion of new pt 11, div 13

Part 11—

*insert*—

### **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—

*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**

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### **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.
- (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

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- (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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- (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.

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### **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

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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
  - (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.

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

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

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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.

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

(1) Schedule 2, items 13 and 14—

*omit.*

(2) Schedule 2, item 5, from ‘, boot camp (vehicle offences)’—

*omit, insert—*

and conditional release orders.

(3) Schedule 2, items 6 and 7, ‘or boot camp centres’—

*omit.*

(4) Schedule 2, item 9, ‘or in a boot camp centre’—

*omit.*

(5) Schedule 2, item 10—

*omit, insert—*

10 Searches of children and their possessions in detention centres.

## **58 Amendment of sch 4 (Dictionary)**

(1) Schedule 4, definitions *boot camp centre, boot camp centre provider, boot camp order, boot camp program, boot camp (vehicle offences) order, details of the boot camp program, first-time offender, original offence, recidivist vehicle offender, requirements of the boot camp order, residential phase, subsequent offence* and *vehicle offence*—

*omit.*

(2) Schedule 4, definition *program period*, paragraph (c)—

*omit.*



- (3) Schedule 4, definition *community based order*, from ‘, boot camp (vehicle offences)’—

*omit, insert—*

or conditional release order.

- (4) Schedule 4, definition *sentence order*, paragraphs (e) and (f)—

*omit.*

**59 Omission of sch 5 (Disqualifying offences)**

Schedule 5—

*omit.*

## **Part 3 Amendment of Penalties and Sentences Act 1992**

**60 Act amended**

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

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

- (1) Section 9(2)(a) to (q)—

*renumber* as section 9(2)(b) to (r).

- (2) Section 9(2)—

*insert—*

(a) principles that—

- (i) a sentence of imprisonment should only be imposed as a last resort; and

[s 61]

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- (ii) a sentence that allows the offender to stay in the community is preferable; and

(3) Section 9—

*insert—*

- (2A) However, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence—

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

(4) Section 9(3), ‘a violent offender’—

*omit, insert—*

an offender to whom subsection (2A) applies

(5) Section 9(4)—

*omit, insert—*

- (4) Also, in sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years—

- (a) the principles mentioned in subsection (2)(a) do not apply; and
- (b) the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.

(6) Section 9(5), ‘(4)’—

*omit, insert—*

- (4)(b)

(7) Section 9—

*insert—*

- (6A) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for the following offences—
- (a) an offence against the *Classification of Computer Games and Images Act 1995*, section 28 if the objectionable computer game is a child abuse computer game under the Act;
  - (b) an offence against any of the following provisions of the *Classification of Films Act 1991*—
    - (i) section 41(3) or 42(3) or (4);
    - (ii) section 43 if the offence involves a child abuse film under the Act;
  - (c) an offence against any of the following provisions of the *Classification of Publications Act 1991*—
    - (i) section 14;
    - (ii) section 12, 13, 15, 16 or 17 if the offence involves a child abuse publication or child abuse photograph under the Act;
  - (d) an offence against the Criminal Code, section 228A, 228B, 228C or 228D.

(8) Section 9(7), ‘a child-images offender’—

*omit, insert—*

an offender to whom subsection (6A) applies

(9) Section 9(8), ‘(2)(o)’—

*omit, insert—*

(2)(p)

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(10) Section 9(12)—

*omit.*

(11) Section 9(13), definitions *child-images offender* and *violent offender*—

*omit.*

(12) Section 9(13)—

*renumber* as section 9(12).

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

Section 195B(2), '9(2)(o)'—

*omit, insert*—

9(2)(p)

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

Section 195C(2)(a)(i), '9(2)(o)'—

*omit, insert*—

9(2)(p)

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

Section 195D(1)(b), '(9)(2)(o)'—

*omit, insert*—

9(2)(p)

**65 Insertion of new pt 14, div 13**

Part 14—

*insert*—

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**Division 13**      **Transitional provision for  
Youth Justice and Other  
Legislation Amendment  
Act (No. 1) 2016**

**240 Sentencing guidelines**

Section 9, as amended by the *Youth Justice and Other Legislation Amendment Act (No. 1) 2016*, applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

**Part 4**                      **Amendment of Public Guardian  
Act 2014**

**66**      **Act amended**

This part amends the *Public Guardian Act 2014*.

**67**      **Amendment of s 51 (Definitions for ch 4)**

- (1) Section 51, definition *boot camp centre*—  
*omit.*
- (2) Section 51, definition *visitable site*, paragraph (c)—  
*omit.*
- (3) Section 51, definition *visitable site*, paragraphs (d) and (e)—  
*renumber* as paragraphs (c) and (d).

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**68 Amendment of sch 1 (Dictionary)**

Schedule 1, definition *boot camp centre*—  
*omit.*

**Part 5 Minor and consequential  
amendments**

**69 Acts amended in sch 1**

Schedule 1 amends the Acts it mentions.

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

section 69

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

#### **1      Section 365(3)—**

*insert—*

*Note—*

Under the youth justice principles in the *Youth Justice Act 1992*, schedule 1, it is a principle of that Act that a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

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

#### **1      Section 15(3), note, paragraph (a), ‘section 9(2)(b)(i)’—**

*omit, insert—*

section 9(2)(c)(i)

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