JUVENILE JUSTICE AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The object of the Bill is to amend the *Juvenile Justice Act 1992*, the *Bail Act 1980*, the *Childrens Court Act 1992*, the *Criminal Code*, the *Criminal Offence Victims Act 1995*, the *District Court Act 1967*, the *Evidence Act 1977*, the *Jury Act 1995*, the *Police Powers and Responsibilities Act 2000* and other relevant legislation to provide an improved, relevant and cohesive legislative basis to the administration of juvenile justice.

Reasons for the Bill

The *Juvenile Justice Act 1992* has been in operation since September 1993. Since that time, a number of issues have emerged which have prevented the effective operation of the Act. Amendments made to the Act in 1996 did not provide appropriate clarification and resulted in some additional operational problems.

The need for legislative change has been highlighted through commentary on the Act by the judiciary and by important juvenile justice stakeholders, particularly in relation to bail provisions for children and the right of election to the Childrens Court of Queensland. Also, certain recommendations from the *Commission of Inquiry into Abuse of Children in Queensland Institutions* (the Forde Report) and implementation of election commitments can only be achieved through legislative change.

Amendments Implementing Government Election Commitments

Major objectives of the Bill include the implementation of a number of the Government's election commitments. One election commitment is the Government's naming strategy, which is implemented by:

- allowing a court to permit the naming of a child convicted of a serious, violent offence in certain circumstances; and
- empowering the chief executive of the Department of Families to release the name and details of a child when the safety of the public requires this.

Another election commitment implemented by the Bill is to strengthen the *Juvenile Justice Act 1992*, by:

- introducing a new sentence option called the "intensive supervision order" targeted at high risk children too young to do community service work;
- transferring to courts the decision making power, currently exercised by public servants, to revoke supervised release from detention;
- preventing "forum shopping" and strengthening the Childrens Court of Queensland by removing a child's right to elect to be dealt with by the District Court; and
- incorporating into the Act a new "charter of juvenile justice principles".

Amendments Arising from the Forde Report

The Bill implements those parts of the Government's response to the recommendations of the Forde Report that are appropriate to include in the *Juvenile Justice Act 1992*. The matters which require amendment of the *Juvenile Justice Act 1992* include, for example, inclusion of a list of basic rights of children in youth detention centres in the charter of juvenile justice principles, an obligation on youth detention centre staff to report harm suffered by a child in a youth detention centre and mandatory regular inspection of youth detention centres.

Amendments to Improve the Administration of Juvenile Justice

The Bill also contains amendments that seek to improve the juvenile justice system by providing clarification in a number of areas, including the major areas noted below.

Changes have been made to the policing of children, so that police are able to use the same process (a notice to appear) to bring children to court that is used to bring adults to court, in matters where arrest is not required.

New provisions have been included in the *Police Powers and Responsibilities Act 2000* to ensure that the notice to appear processes are appropriate to the bringing of children to court. Changes have also been made to policing provisions in both the *Juvenile Justice Act 1992* and the *Police Powers and Responsibilities Act 2000* to ensure that a balanced and appropriate system of rights and responsibilities is provided.

The bail system will be enhanced to make it more relevant to the juvenile justice system and so that it is consistent with well-established juvenile justice principles, including the principle that for a child, detention is the option of last resort. This has resulted in amendments including the removal of the requirement that a child "show cause" why they should be granted bail in certain circumstances, so that for a child, each bail application is considered on its merits.

The use and administration of court diversionary responses to juvenile offending, such as cautioning and conferencing, have been revised and updated. This has included removing the complex rules relating to the admissibility of a child's participation in diversionary processes, where evidence has not been tested by a court, and replacing these with a straightforward system that places appropriate limitations on the admissibility of these processes.

Also, while it will no longer be a requirement that a victim must consent to a conference, convenors will have a duty to ensure that the victim is notified of, and is invited to, the conference. Provision has been made for the return of the conference referral to the referral source if the victim does not wish to participate and the victim's participation is considered necessary.

The management of community based sentence orders such as probation and community service orders are to be replaced by a consolidated and consistent framework for the administration, breach and variation of these orders.

The Bill seeks to improve the management of young people who are involved in both the adult and child criminal justice systems. The court processes relevant to young people who have both adult and child offences or who are subject to an application to stand trial with an adult offender have been refined. Clear direction is also provided about whether a young adult is to be incarcerated in a youth detention centre or in a corrective services facility.

The confidentiality provisions in the Act have been amended to be consistent with other legislation dealing with children, such as the *Child Protection Act 1999*.

Compliance with Fundamental Legislative Principles

Clause 104 of the Bill inserts a new section 213A into the Act that gives the Police Commissioner the power to release to the chief executive the details of the criminal history of a person visiting or applying to visit a youth detention centre. It may be argued that this power impacts adversely on an individual's right to privacy. However, it is considered that this power is necessary to ensure that the manager of a youth detention centre can assess the risk posed to children in the detention centre or to the staff and security of the centre, and that, on balance, it is justified.

The section is modelled on section 244 of the *Corrective Services Act 2000*, which allows the criminal history of visitors to prisons to be revealed to the Department of Corrective Services. As an existing power in relation to the administration of adult correctional facilities, it is regarded as an important tool in maintaining the security and good order of correctional facilities.

Also, to limit any impact on a person's privacy, section 213AA clarifies that if any criminal history is obtained, this can only be used to assess and address any risk posed by the person to a child in a youth detention centre or to the staff and security of the centre.

Estimated Cost for Government Implementation

The major costs of implementing the Bill is likely to arise from the new intensive supervision order and for the training needs arising as a result of amendments. In particular, training will be required by Queensland Police and staff of the Department of Families. These costs will be subject to the normal budget appropriation process if required.

There is also likely to be some cost in changing the information systems in place to manage criminal history information within the Queensland Police Service and the client information system within the Department of Families. These costs will also be subject to the normal budget appropriation process if required.

Queensland Police Service estimates that there will be a one-off cost of $18,000 to produce notices to appear so that these notices can apply to children as well as adults.

Consultation

In late 1999 and early 2000, a series of 11 community forums and meetings with individual community groups, including the Victims of Crime Association, were held to determine the extent and breadth of the amendments required. Written submissions were called for in response to the release of an issues paper that highlighted areas of the Act that had been the subject of concern. Approximately 30 written submissions were received from peak community organisations and government departments in response to the distribution of the issues paper.

Following this review process, an exposure draft of the Bill was prepared. In June 2001, Cabinet approved a period of targeted consultation on the exposure draft of the Bill. The purpose of consultation was to ensure that the Bill was able to operate effectively in practice. Therefore, consultation was limited to organisations with a working knowledge of the legislation.

The exposure draft was forwarded by the Attorney-General and Minister for Justice to senior members of the judiciary and to all judges holding commissions as judges of the Childrens Court of Queensland.

The Minister for Families forwarded the exposure draft to organisations who work in the juvenile justice area, including Legal Aid Queensland and Aboriginal and Torres Strait Islander legal services and to the Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat. The Bill was forwarded to professional organisations including the Queensland Law Society and the Bar Association of Queensland and to community legal services and peak youth services throughout Queensland, as well as to those who had made written submissions during the earlier review of the Act.

A four-page information paper outlining the major changes proposed by the Bill was distributed to a large number of juvenile justice stakeholders. The information paper was forwarded to those organisations unlikely to have sufficient staff or resources to read the exposure draft, bearing in mind that many aspects of the Bill are of a technical nature.

A series of forums to explain the changes proposed by the Bill were conducted throughout August 2001 in Mt Isa, Townsville, Cairns, Rockhampton, Mackay, Toowoomba, Brisbane, Hervey Bay, Sunshine Coast and the Gold Coast. These forums provided an opportunity for people to receive an explanation of the major changes proposed by the Bill and to provide comments and ask questions about the Bill.

There has been extensive consultation between the Department of Families and the Queensland Police Service in determining the appropriate resolution of interface issues between the *Juvenile Justice Act 1992* and the *Police Powers and Responsibilities Act 2000*. Extensive consultation has also taken place between the Department of Families and the Department of Justice and Attorney-General to ensure that the enhanced jurisdiction of the Childrens Court of Queensland allows an effective specialist jurisdiction to develop without compromising the timely hearing of matters in regional areas or in situations where a Childrens Court of Queensland judge is not available.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act will commence upon proclamation.

PART 2—AMENDMENT OF JUVENILE JUSTICE ACT 1992

Clause 3 provides that the *Juvenile Justice Act 1992* is amended by this part.

Clause 4 replaces section 4 (Principles of juvenile justice) and the former principles of the Act with the Charter of Juvenile Justice Principles and locates that charter in schedule 1. The juvenile justice principles underlie the operation of the Act.

Clause 5 replaces section 5 (Definitions) with a new dictionary located in schedule 4 and also omits redundant definitions, inserts new definitions and updates some definitions.

Clause 6 inserts a new section 5A that confirms that a note in the text of the Act is a part of the Act.

Clause 7 removes parts 1B-1C of the Act dealing with some policing matters, cautions and community conferences. Notes for the provisions for the new parts follow:

PART 1A—SPECIAL PROVISIONS ABOUT POLICING AND CHILDREN

Division 1—Police officer must consider appropriate way to proceed

- Section 9A notes that this division of the Act has no effect if a child is present at proceedings before a Childrens Court magistrate and a further or amended charge is made against the child, or there is a proceeding against the child on indictment.

- Section 10 outlines the obligation on a police officer to consider specified alternatives to commencing court proceedings against a child for offences other than serious offences ("serious offences" are defined in section 8 of the Act to be offences that, with some noted exceptions, are life offences or an offence for which an adult could receive a maximum of 14 years imprisonment or more), and considerations relevant to making a decision about the appropriateness of these alternatives. The section also includes an obligation to take that alternative action if a police officer considers it appropriate to do so and that such action may also be taken in relation to a serious offence. It is clarified that an alternative to starting a proceeding may be taken even if an alternative of that kind has been used before or the child has previously had matters dealt with by a court.

- Section 11 notes that the preferred way of commencing proceedings against a child is by way of complaint and summons, or notice to appear.

- Section 12 provides the circumstances in which a police officer can arrest a child.

Division 2—Cautioning

- Section 13 outlines the purpose of cautioning.

- Section 14 makes clear that a caution is an alternative to bringing a child to court and means that the child cannot then be prosecuted for the offence and is not part of the child's criminal history.
- Section 15 provides the conditions required for a police officer to issue a caution.
- Section 16 provides that when a caution is to be administered to a child who is a member of an Aboriginal and Torres Strait Islander community, police must consider if a respected person from the child's community is available and willing to administer the caution, and if so, police must request that person to administer the caution.
- Section 17 requires police to explain the purpose, nature and effect of the caution to the child and the parent or adult present with the child when the caution is issued.
- Section 18 notes that, if appropriate, a caution may involve an apology to a victim of the offence.
- Section 19 states what is to be provided in a notice that must be issued to the cautioned child.
- Section 20 replicates previous section 18 of the Act, allowing a court to dismiss a charge if a caution should have been issued. The section now provides that a court can also dismiss a charge if no action should have been taken against the child. The section also requires a court to take into account whether any previous youth justice conference agreements have been made by the child.

Division 3—Reference by police officer to coordinator for a conference

This division provides for police to refer a child to a youth justice conference and replaces the term "community conference" with "youth justice conference". This has been done pursuant to an agreement amongst states to achieve uniformity in the naming of conference schemes. Changes have also been introduced to reflect the different roles of convenor and coordinator in the conferencing process. A coordinator is responsible for management functions within the conferencing system and a convenor is responsible for preparing and convening a particular youth justice conference. The requirement that a victim consent to an offence being referred to a conference has been removed.

- Section 21 provides that a police officer may, in certain circumstances, refer an offence to a coordinator for a youth justice conference and require the child to attend the conference. The requirement in the Act that victim consent be obtained by a police officer before referring an offence to a conference has been omitted. The section also outlines the circumstances in which a coordinator may return a referral to police. A coordinator must provide written reasons for the decision to return the referral, which may be considered by a court if a sentence is to be imposed on the child for the offence.
- Section 22 states that if a conference agreement is made for an offence referred to a conference by a police officer, the child cannot be prosecuted for the offence unless otherwise expressly provided under the Act.
- Section 23 provides that a police officer may take certain action if an offence referred to a conference is returned, or if a child contravenes a conference agreement. Police must consider matters including the matters in section 10(2), the participation by the child in the conference and if an agreement is made, anything done by the child under the agreement. Action taken by the police may include considering whether an alternative to starting a proceeding against a child should be used.

Division 4—Identifying particulars

- Section 24 describes when police may apply to a court to take a child's identifying particulars, the application process, the basis upon which a court may make an order for the particulars to be taken, the process for the particulars to be taken and penalties for non-compliance.
- Section 25 provides that, for identifying particulars to be admissible against the child, a support person chosen by the child must be with the child when the particulars are taken and the exceptions to this requirement. The conditions for admissibility of the particulars if a support person is not present are also provided.
- Section 26 states the obligation to destroy the particulars if a sentence order is not made, the time when the particulars must be destroyed and the consequences for failing to destroy the particulars.

- Section 27 notes that this division does not limit certain provisions of the *Police Powers and Responsibilities Act 2000* relevant to the taking of identifying particulars from a child.

Division 5—Statements

- Section 28 provides that unless a support person is present when a child is interviewed by police about an indictable offence, a court must not admit that interview into evidence. The exception to this is when the prosecution satisfies the court that there is a proper and sufficient reason why a support person was not present and the court finds that, in the circumstances of that case, the statement should be admitted into evidence. Examples are provided of circumstances that may, in a particular case, be considered to be proper and sufficient reason. It is clarified that police may exclude certain people when a child makes a statement. This section does not limit the common law under which a court may exclude evidence.

PART 1B—YOUTH JUSTICE CONFERENCES GENERALLY

- Section 29 states the benefits of the conferencing process and includes new provisions outlining the benefits for a child's parents. The appropriateness of referring an offence to a youth justice conference is determined by reference to the nature of the offence, the harm it has caused, and the interests of the community and child in having the offence dealt with at a youth justice conference. The provision now omits the description of conferencing as an informal process to encourage the use of conferencing for serious as well as less serious offences.
- Section 30 provides for the appointment of coordinators and outlines their functions and powers and also provides for the appointment of convenors and outlines their functions and powers.
- Section 30A protects a convenor and coordinator from civil liability for any act or omission committed honestly and with the intention of exercising relevant functions and powers as a convenor or coordinator.
- Section 30B provides that an offence may be referred to a youth justice conference by a police officer or by a court.

- Section 30C outlines who may participate in a youth justice conference. The section establishes the right of a parent to attend a conference and the right of a victim to attend with a support person or legal representative. Where an offence is committed by an Aboriginal or Torres Strait Islander child, a convenor must consider inviting a respected member of the child's Aboriginal or Torres Strait Islander community or a representative of the community justice group from the child's community or both, to attend the conference. To enable a convenor to inform a victim of the right to participate, the referring police officer or referring court, as relevant, must provide the victim's contact details to the youth justice coordinator.
- Section 30D deals with the role and responsibilities of a convenor in trying to reach a conference agreement. It requires a convenor to ensure that a legally unrepresented child is given a reasonable opportunity to access legal advice, that all participants at a conference respect the decisions made by the convenor and provides that a convenor may bring a conference to an end in certain circumstances.
- Section 30E makes clear that after a conference has ended without an agreement being made, a coordinator may arrange for a reconvening of the conference or arrange for another conference to be convened if the coordinator thinks that an agreement can still be made.
- Section 30F provides for agreements to be made in an approved form and for the agreement to contain certain matters and be agreed to and signed by relevant parties to the conference, including the victim, if the victim chooses to participate in the conference. This section also clarifies that agreements are not limited by conditions associated with sentencing orders, such as community service orders. An agreement, provided that it is signed by the chief executive, may contain requirements that are similar to community service or probation orders. A requirement in an agreement may be complied with outside of the State and an agreement, or document purporting to be an agreement, is to be taken as evidence that an offence was dealt with at a conference but not as proof that the child committed the offence. The limitation that a conference agreement may not provide for a child to be treated more severely than if the child was sentenced by a court for an offence or in a way that contravenes the sentencing principles in the Act has been retained. Provisions

regarding the admissibility of conference agreements are omitted and it is clarified that an agreement is not part of a child's criminal history.

- Section 30G provides for the amending of an agreement by the chief executive if the agreement is, or becomes, inappropriate or unworkable. An example is provided of a circumstance where an agreement becomes inappropriate or unworkable. The process to be taken by the chief executive when amending the agreement is outlined. The chief executive's power must be exercised in the interests of justice and after reasonable steps have been taken to ascertain the views of those who participated in the conference that led to the agreement.
- Section 30H provides that if the chief executive amends the conference agreement, the amended agreement is taken to be the agreement that was made by the child at the youth justice conference.
- Section 30I clarifies that anything done or said or any admission made, in the course of establishing, preparing, conducting or dealing with a conference is inadmissible in any proceeding, except in limited circumstances.
- Section 30J states that if the chief executive signs a conference agreement providing for a program similar to one under a community service order or probation order, the chief executive may arrange for and monitor the program. The chief executive may, in these circumstances, notify the referring police or court officer of a child's non-compliance with any terms of the conference agreement.

Clause 8 replaces the heading "Part 2—Start of Proceedings" and introduces a new part 2 heading—"Proceedings Generally Started by Complaint and Summons". All provisions relating to starting proceedings by way of attendance notice are omitted. The provisions in the *Police Powers and Responsibilities Act 2000* as amended by this Act, about starting a proceeding by notice to appear will now apply to children.

Clause 9 omits part 2, divisions 1—3 and inserts a new section 31 that makes clear that proceedings against a child, except proceedings taken by police, are generally to be commenced by complaint and summons. For example, if a Fisheries Inspector takes a proceeding against a child for an offence under the *Fisheries Act 1994*, the proceeding must be commenced by way of complaint and summons. The note in the text makes it clear that

the obligation on a police officer to start a proceeding by way of complaint and summons or notice to appear is dealt with in an earlier section of the Act. The obligation to start proceedings by complaint and summons does not affect procedures where a charge is added on committal under the *Justices Act 1886*, where a child is escaping from detention or otherwise unlawfully at large, or a matter is being proceeded on indictment.

Clause 10 omits a redundant heading.

Clause 11 amends section 32 (Service of complaint and summons if offender is a child) by clarifying that the section does not apply to the notice to appear provisions in the *Police Powers and Responsibilities Act 2000*.

Clause 12 inserts new section 37A and introduces the bail regime to be considered when dealing with a child. Because of the amendment made by clause 128 to section 16 of the *Bail Act 1980*, the "show cause" provisions in that Act no longer apply to children. This is consistent with the juvenile justice principle that for a child, detention is the option of last resort. The provisions in section 37A provide that a court or a police officer must consider a broad range of matters when deciding the issue of bail and that the child must be granted bail unless there is an unacceptable risk posed by the child against listed criteria. The child must not be released if release would threaten the child's safety (examples are provided of when a child's safety might be threatened by release on bail) and there is no other reasonably practicable way of ensuring the child's safety.

Clause 13 amends section 38 (Arrested child must be brought promptly before the Childrens Court). This clause recognises that in some cases an arrested child may be dealt with under certain specified powers in the *Police Powers and Responsibilities Act 2000* before being brought to court. Also, if the child is released, the obligation to bring a child promptly before the court is superfluous.

Clause 14 replaces section 39 (Child must ordinarily be released from custody on charge). A new section directs how a police officer at a police station or watch-house is to deal with a child arrested in connection with a charge of an offence who cannot be brought promptly before a court, unless certain circumstances apply. The words "in connection with a charge of an offence" includes, for example, arrest on a warrant for failing to appear. The section provides that a child can be released or kept in custody and if kept in custody, the reasons for keeping the child in custody must be recorded.

Clause 15 amends section 40 (Child must be given release notice) by updating the section heading and clarifying the application of the section and the responsibilities of police under the section.

Clause 16 inserts new sections 40A and 40B.

- Section 40A requires that a court or police officer granting bail to a child must release the child on their own undertaking without sureties or deposit of money or other security unless this option is inappropriate. In such a case, release with conditions must otherwise be considered in the sequence provided. Section 40A also allows conditions to be imposed on bail, provided they are not more onerous than necessary and, in the case of non-standard conditions, are supported by written reasons.

- Section 40B makes clear that a child may use audio and audio visual links to have the issue of bail decided, as long as the child agrees to the use of the link and has had the opportunity to obtain independent legal advice. This provision does not limit the *Evidence Act 1977* in relation to use of such a link.

Clause 17 amends section 42 (Court may in all cases release child without bail) to take into account that bail can be granted under the Act.

Clause 18 amends section 43 (Custody of child if not released by court) to acknowledge that a person remanded by a court may be held in a corrective services facility and excepts this situation from the application of the section.

Clause 19 amends section 49 (Childrens Court judge) to refer to the jurisdiction of a Childrens Court judge.

Clause 20 amends section 50 (District Court jurisdiction in aid) to clarify that a Childrens Court judge has the same power as the District Court in its criminal jurisdiction, when jurisdiction in aid is required.

Clause 21 amends section 52 (Magistrates Court jurisdiction in aid) to clarify that a Childrens Court magistrate has the same power as the Magistrates Court, when jurisdiction in aid is required.

Clause 22 changes the reference in section 54 (Limitation on justices) from immediate release order to conditional release order.

Clause 23 amends section 56 (Presence of parent required generally) to take into account that children will be brought to court by the notice to appear process under the *Police Powers and Responsibilities Act 2000*.

Clause 24 amends section 60 (Chief executive's right of audience generally) to make clear that the chief executive can not be heard on the issue of whether the court should make an order permitting the naming of a child found guilty of a serious, violent offence.

Clause 25 omits section 62 (Publication prohibited) because the restriction on publication of material identifying a child is now located in the division dealing with confidentiality.

Clause 26 removes part 4, divisions 2-4 of the Act dealing with procedures relating to indictable and serious offences and proceedings before a Childrens Court judge. Notes for the provisions in the new divisions follow:

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

- Section 68 provides that serious offences (the meaning of "serious offence" is defined in section 8 as is noted above at clause 7, section 10) must be conducted as committal proceedings unless the charge is changed during the committal to an offence other than a serious offence. If a child is also charged with an offence other than a serious offence, for convenience, this may be dealt with in the same proceedings as the serious offence.

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

- Section 69 outlines when the subdivision applies.
- Section 69A requires the court to explain the child's right of election before the start and at the end of the prosecution case, to have either a committal proceeding or a summary hearing of the charge.
- Section 69B outlines the procedure if the child elects to have the charge decided summarily.

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

- Section 69C outlines when the subdivision applies.
- Section 69D requires the proceedings to be conducted as committal proceedings subject to divisions 3 and 4. The section also requires the court to explain the child's right of election before the start and at the end of the prosecution case, to have either a committal proceeding or a summary hearing of the charge.

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

- Section 70 outlines when the division applies.
- Section 70A provides that a court must explain the child's right of election and what is to happen depending on the decision made by the child.
- Section 70B outlines the procedure if the child elects to have the charge decided summarily.

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

- Section 71 outlines that the division applies when a child enters a guilty plea at a committal proceeding.
- Section 71A requires that Supreme Court offences (a Supreme Court offence is defined as an offence that the District Court does not have jurisdiction to try because of section 61 of the *District Court Act 1967*) must be committed for sentence before the Supreme Court.
- Section 71B requires that serious offences that are not Supreme Court offences must be committed for sentence to a court of competent jurisdiction.
- Section 71C provides that where the offence is an indictable offence that is not a serious offence, the court must provide an explanation of the child's right of election. The child may then elect to be sentenced by the Childrens Court magistrate or be committed to a court of competent jurisdiction for sentence.

Division 4A—Procedure after all evidence has been adduced in a committal proceeding

- Section 72 outlines when the division applies.
- Section 72A requires that a Supreme Court offence must be committed to the Supreme Court for trial.
- Section 72B provides that if the offence is not a Supreme Court offence, the child must be committed to be tried before a court of competent jurisdiction.

Division 4B—Election procedure if child committed for trial before a Childrens Court judge

- Section 73 outlines when the division applies.
- Section 73A provides that the election available to the child must be explained. A child represented by a lawyer may elect to be committed for trial to a Childrens Court judge, sitting either with a jury or without a jury. A child not represented by a lawyer must be committed to a Childrens Court judge sitting with a jury.

Division 4C—Jurisdiction of Childrens Court judge

Subdivision 1—Jurisdiction generally

- Sections 74, 74A and 74B provide that a Childrens Court judge has jurisdiction to hear all indictable offences against a child other than Supreme Court offences. A Childrens Court judge has jurisdiction to sentence a child on summary matters under section 651 of the *Criminal Code* if the child consents to this procedure and the provisions in the *Criminal Code* or another Act relating to the hearing and deciding on indictment of an indictable offence apply.

Subdivision 2—Whether a jury is required

- Section 75 provides that a Childrens Court judge must sit without a jury if the child has so elected and has not withdrawn or changed that election.

- Sections 75A, 75B and 75C set out the circumstances where the child's decision to have a jury or not have a jury may be changed. In some situations, a child must be tried before a judge and jury, including if the child is not legally represented or when the judge decides that, in the circumstances, trial by jury is more appropriate.

Subdivision 3—Change of guilty plea

- Section 76 permits a child to change their plea to not guilty upon their appearance before a Childrens Court judge. Evidence of the plea of guilty at the committal proceeding is not admissible at the child's trial.

Clause 27 replaces the part 4, division 5 heading "Rules applying if child and another person are charged" and inserts a new division and subdivision heading.

Clause 28 replaces section 86 (Prosecution may request a matter proceed as a committal to the Supreme or the District Court in order to ensure joint trial). The new section provides that the prosecution may apply to the court to have a committal instead of a summary trial for an indictable offence other than a serious offence if the child could be tried on indictment with another person. The section also enables the prosecution to have the child committed to the District or Supreme Court for a serious offence so that the child is tried with another person. The section also outlines what the Childrens Court magistrate must consider in determining such an application.

Clause 29 inserts a new part 4, division 5, subdivision 2 heading and the new subdivision provides for the removal of proceedings committed to a Childrens Court judge to another court. Notes for the provisions in the new subdivision follow:

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

- Section 86A provides definitions for the subdivision.
- Section 86B provides that the prosecution may apply to a Childrens Court judge to have a child's matter transferred to the District Court, so that the child is jointly tried with an adult. This section also includes the basis upon which such an application can be granted.

- Section 86C provides that the prosecution may apply to a Childrens Court judge to have a child offence transferred to the District Court, so that the child offence is dealt with at the same time as adult offences charged against the person.
- Sections 86D and 86E make clear that a Childrens Court judge may sit in the judge's concurrent jurisdiction to hear matters transferred to the District Court and that if a proceeding is removed from the Childrens Court judge to another jurisdiction, trial without jury is not possible.

Clause 30 replaces section 87 (Appeal rights generally) and updates and re-structures appeal provisions to acknowledge that appeals will be made to a Childrens Court judge. Notes for the new provisions in the new divisions follow:

Subdivision 1—General

- Section 87 provides that unless expressly provided for in this part, the right of any person to appeal is not affected.
- Section 87A automatically suspends a community based order whilst appeal proceedings are conducted.

Subdivision 2—Court of Appeal

- Section 87B provides that chapter 67 of the *Criminal Code* applies with necessary modifications for a child before the Childrens Court as it applies to an adult before the Magistrates or District Court.

Subdivision 3—Appeals to Childrens Court judge

- Section 87C requires that an appeal under section part 9, division 1 of the *Justices Act 1886* is to be made to a Childrens Court judge.

Subdivision 4—Reviews of sentences by Childrens Court judge

- The heading "Subdivision 4—Reviews of sentences by Childrens Court judge" immediately above is the subdivision heading for that subdivision of the Act.

Clause 31 amends section 89 (Application for review) so that a definition of "complainant", as the person able to bring an application for review, is provided.

Clause 32 amends section 91 (Stay of proceedings and suspension of orders) to allow a community based order to be suspended while a sentence review procedure is on foot. The section is also amended so that if the operational period of an order is relevant, the period of time between the start and end of the appeal is not counted toward that period.

Clause 33 amends section 95 (Incidents of review) to update the reference to a Childrens Court judge.

Clause 34 replaces sections 98 and 98A with a new section 98 that provides comprehensive instructions for reopening proceedings where there has been a mistake in law or fact. Utilisation of these provisions does not affect a right of appeal.

Clause 35 omits the part 4, division 8 heading.

Clause 36 renumbers section 102 (Extension of Act for detainee offender) so that it becomes 107D and relocates that section to part 4, division 9.

Clause 37 inserts a new part 4, division 9, subdivision 1 heading.

Clause 38 amends section 103 (Definitions for pt 4, div 9) by providing definitions of the terms "adult offence" and "child offence" for that division.

Clause 39 inserts a new section 103A to clarify that the term "offence" includes alleged offences for that division.

Clause 40 inserts a new part 4, division 9, subdivision 2 heading.

Clause 41 amends section 104 (Offender treated as child) to clarify that the provision refers to a child offence committed by an offender.

Clause 42 inserts a new part 4, division 9, subdivision 3 and 4 heading and new sections 104A—104E. The new provisions apply to young people who are being dealt with in both the adult and the child jurisdictions. The provisions instruct how a child is to be dealt with in certain circumstances as follows:

- Section 104A provides that if an offender is in custody in a youth detention centre and then becomes subject to adult custody (either remand or sentence) the adult custody is to be served in a youth detention centre, until such time as the childhood custody expires. This section does not limit the transfer of a person in a

youth detention centre to an adult corrective services centre under section 211 of the Act. The time spent serving a term of imprisonment in a youth detention centre under this section is to be counted as part of the term of imprisonment.

- Section 104B applies when a person is remanded for a child matter and the person has been an adult for at least one year. If the person is not already being held in a youth detention centre, the person must be held on remand in an adult corrective services facility.
- Section 104C provides that if a person is not being held in a youth detention centre and a court remands the person in custody for both child and adult matters, the person must be held on remand in an adult corrective services facility.
- Section 104D provides that a person who is in an adult corrective services facility, and who becomes subject to childhood custody (either remand or sentence), shall remain in the adult corrective services facility, even if the adult order expires and only a childhood order remains.
- Section 104E provides that if section 104D requires a person to be remanded or detained in a corrective services facility, then, in certain circumstances, that person can apply to a Childrens Court judge for an order that the person be held in a youth detention centre. The section provides criteria that the court must consider in deciding such an application.

Clause 43 amends section 105 (When offender must be treated as an adult) to clarify that the provision applies generally to a childhood offence. The provision also introduces the ability of a court to sentence a person as an adult, if the offender has absconded between the finding of guilt as a child, and the time of sentence, and they have been an adult for more than one year before they are sentenced.

Clause 44 amends section 106 (When offender may be treated as an adult) by changing the reference from "offence" to "the child offence".

Clause 45 amends section 107 (Continuing effect on offender of orders made when child) to ensure consistency of expression when referring to requirements for "the order" and "adult offence".

Clause 46 amends section 107A (When order made as child may be dealt with as adult order) to ensure that a conviction is not automatically recorded when a childhood community service order or probation order is converted to an equivalent adult order.

Clause 47 amends section 107B (Sentencing offender as adult) to clarify that the provision refers to a child offence.

Clause 48 inserts a new division 10 and a new section 107E to make clear that, when deciding an issue of criminal responsibility under section 29 of the Criminal Code, a court may have regard to any previous caution or youth justice conference agreement made by the child. Section 114A (Particular cautions and community conference agreements admissible as part of person's criminal history), that previously dealt with this situation, is omitted by clause 52.

Clause 49 amends section 109 (Sentencing principles) to update the reference to the juvenile justice principles.

Clause 50 amends section 110 (Presentence report) to recognise a court decision that allowed a presentence report prepared for offences to be updated with material concerning new offences for sentencing on the day the report is presented. It is also made clear that a presentence report may not contain the chief executive's opinion on what impact an order permitting the naming of a child may have on that child.

Clause 51 amends section 114 (Evidence of childhood finding of guilt not admissible against adult) to omit provisions which would allow diversionary proceedings such as cautions and youth justice conferences to be admitted as part of a child's criminal history. The provision also clarifies that when a childhood order is converted to an adult order under section 107A(4) of the Act, the finding of guilt remains part of the childhood criminal history and does not become part of the person's adult criminal history. The clause also renumbers this section to be section 107E and relocates the section to include it with other provisions relevant to findings of guilt.

Clause 52 omits section 114A (Particular cautions and community conference agreements admissible as part of person's criminal history) as other sections, including new section 107E, now deal with the admissibility of cautions and conference agreements—see clause 48 above.

Clause 53 amends section 118 (Children entitled to explanation of sentence) to omit reference to "a requirement of" an order.

Clause 54 amends section 118A (Audio visual link or audio link may be used to sentence) to require that a child can only be dealt with by way of audio or audio visual link if the child is legally represented.

Clause 55 amends the part 5, division 1A heading (Court referred community conferences before sentencing) so that the heading refers not to

a community conference but to conferences, because "conference" is defined in the dictionary to mean youth justice conference.

Clause 56 inserts a new part 5, division 1A, subdivision 1 heading**.**

Clause 57 omits section 119A (Reference to community conference by court) and replaces it with a new section that requires that a court must always consider referring an offence for which a finding of guilt has been made, to a conference. It removes the requirement that victim consent be obtained as a condition for referral. The section also provides for an offence to be referred to a conference either without the court making a sentence order (defined as an indefinite referral), or to assist the court in making a sentence order (defined as a conference before sentence). When deciding whether to make a conference referral, the court may consider the fact that a child has previously made an agreement, without looking at the terms of any such agreement. When making the referral, the court may issue directions to those who might participate in the conference, as may be necessary and may adjourn the proceedings for the offence.

Clause 58 inserts a new part 5, division 1A, subdivision 2 heading and a new section 119AA. The new 119AA outlines the circumstances in which a coordinator may return an offence to court. The coordinator must supply written reasons for the decision to return the referral and a court may consider these reasons in later sentencing proceedings for the offence. This clause also inserts a new subdivision 2 heading "Indefinite referral".

Clause 59 amends section 119B (If an agreement is made on an indefinite referral by a court) by up-dating it to reflect the different roles of coordinator and convenor in the Act and the name change from community conference to youth justice conference. It also specifies that it is at the point of the court receiving a notice that an agreement has been made, rather than at the time of the coordinator issuing the notice, that a child is taken to have been found guilty of the offence, without a conviction being recorded.

Clause 60 amends section 119C (Powers of proper officer if indefinite referral is unsuccessful or if child contravenes agreement made on court's indefinite referral). This is done by providing that a court may take a course of action if an offence referred to a conference is returned, or if a child contravenes a conference agreement. The clause also updates the section to reflect the role of the coordinator in returning referrals to court and the change in name from community conference to youth justice conference.

Clause 61 inserts a new part 5, division 1A, subdivision 3 heading—"Subdivision 3—Court dealing with offence after referral to a conference before sentence".

Clause 62 amends section 119D (If an agreement is made on a referral by a court before sentence) to provide that a court may include any, or all, of the terms of a conference agreement in a sentence order and require a child to comply with these terms. If a child does not comply with a requirement to perform a term of an agreement, the court has the same options available to it as those applying where an indefinite referred conference agreement is contravened, including the option of imposing another sentence order. The provision also contains miscellaneous amendments to reflect the role of the coordinator and the change in name from community conference to youth justice conference.

Clause 63 inserts a new part 5, division 1A, subdivision 4 heading "Subdivision 4—No further action instead of sentence" and a new section 119E. This section allows a court to decide to take no further action in relation to an offence that is the subject of a conference agreement reached after referral from the court and provided the child agrees to perform the terms of the agreement. The provision allows the offence to be brought back to the court, if the child does not comply with the terms of the agreement. In such a case, a court may take no action or decide to sentence the child. If the court decides to sentence the child, the court must have regard to the child's participation in the conference, the agreement reached and anything done by the child under the agreement.

Clause 64 amends section 120 (Sentence orders—general) by inserting a provision to allow a court to make a new sentence order called an "intensive supervision order". This order can only be imposed on offences that, for an adult, carry a sentence of imprisonment. This order can only be imposed on a child who has not reached 13 years of age at the time of sentence. The order can be for a period of no longer than 6 months. The provision also changes the name "immediate release order" to "conditional release order".

Clause 65 amends section 121 (Sentence orders—serious offences) to change the reference from immediate release order to conditional release order. The section is also amended to take into account the power of a court, in certain circumstances, to make a naming order when sentencing a child to a period of detention.

Clause 66 amends section 121A (More than 1 type of order may be made for a single offence) to refer to new section numbers.

Clause 67 omits sections 121B and 121C and replaces them with new sections 121B, 121C and 121D which regulate combinations of orders including the intensive supervision order. These provisions also clarify that a probation order made in combination with a detention order will only start at the time the child is released from detention.

Clause 68 amends section 124 (Recording of conviction) to ensure that for specified minor sentence orders a conviction cannot be recorded, but that in all other circumstances the recording of a conviction is at the discretion of the court.

Clause 69 inserts new section 127A to make it clear that the reference to "a sentence order" in this part of the Act will always refer to the requirements of the order.

Clause 70 amends section 132 (Probation orders—requirements) so that there is consistency with other community based orders in the obligation for a child to attend programs as directed by the chief executive and comply with reasonable directions from the chief executive. The clause also amends the section to allow a probation order to be complied with outside of the State, to allow the orders to have extra territorial application if a child moves or complies with orders outside of Queensland.

Clause 71 amends section 133 (Child must be willing to comply) to delete obsolete reference to requirements of the order.

Clause 72 omits sections 134 to 145 to delete the provisions dealing with the breach, revocation and variation of probation orders. These are now to be found in generic provisions introduced by clause 98.

Clause 73 amends section 146 (Preconditions to making of community service order) to delete an obsolete reference to requirements of a community service order.

Clause 74 amends section 147 (Requirements to be set out in community service order) to require as a condition of the community service order that a child abstains from violations of the law. Also, the child must not leave the State during the period of the order without the permission of the chief executive. The provision allows the requirements of a community service order to be complied with outside of the State, to allow the orders to have extra territorial application if a child moves outside of Queensland, so that the child can continue to comply with the order.

Clause 75 amends section 149 (Community service to be performed within limited period) to update section references.

Clause 76 inserts new section 151A to clarify that when a child is subject to both child and adult community service orders, the total number of hours imposed above the maximum allowed in the adult jurisdiction do not have to be performed.

Clause 77 amends section 152 (Ending of community service order) to update section references.

Clause 78 omits sections 153-163, which dealt with the breach, revocation and variation of community service orders. These are now to be found in generic breach provisions. The clause also inserts a new division 6A about intensive supervision orders and the notes for the new provisions follow:

- Section 153 sets out the preconditions for making an intensive supervision order. Before making an intensive supervision order, the provisions require that a child is willing to comply with the order and that the court has considered a presentence report, which must outline the suitability of the child for the order and the availability of an intensive supervision order program. The court may also only make the order if it believes that unless subject to an intensive period of supervision and support in the community, the child is likely to commit further offences, having regard to listed criteria.

- Section 154 sets out the requirements for the order. Specifically, it requires that a child participate in a program for the period decided by a court and that the child abstain from violations of the law and comply with standard conditions in that period. A court may also impose conditions on the order as long as they relate to the offence and are supported by written reasons.

- Sections 155 and 156 define when an intensive supervision order program period begins and ends and when a program may be suspended.

Clause 79 amends section 167 (Detention to be served in detention centre) to replace the term immediate release order with conditional release order.

Clause 80 amends section 172 (Period of escape or release pending appeal not counted as detention) to include references to a child being mistakenly released and unlawfully at large.

Clause 81 amends section 172A (Application for variation of detention order in interests of justice) to include a reference to a child being unlawfully at large.

Clause 82 amends section 173 (Multiple orders of detention and imprisonment against person as adult and child) to omit sections 173(2) to (5) because these subsections have been superseded by a division dealing with a child subject to both child and adult orders.

Clause 83 amends section 174 (Period of custody on remand to be treated as detention on sentence) to make clear that the time spent on remand is counted as part of the period of detention, whether the sentence is served in a corrective services facility (for example, because of new section 104C) or in a detention centre.

Clause 84 amends the heading for part 5, division 7, subdivision 2 (Immediate release orders) to replace the term immediate release order with conditional release order.

Clause 85 amends section 175 (Purpose of immediate release order) to replace the term immediate release order with conditional release order.

Clause 86 amends section 176 (Immediate release order) to replace the term immediate release order with conditional release order.

Clause 87 omits section 177 (Immediate release order—requirements) and inserts a new section that outlines standard requirements for conditional release orders, including that a child may be required to comply with a requirement outside the State.

Clause 88 amends section 178 (Child must be willing to comply) by replacing the term immediate release order with conditional release order.

Clause 89 replaces section 179 (Presentence report must support immediate release order) by replacing the term immediate release order with conditional release order. The provision also alters the emphasis of a presentence report from determining the suitability of a child for a conditional release order (formerly known as an immediate release order), to commenting about the suitability of a child for the order.

Clause 90 amends section 180 (Effect of program period ending) to update an altered section reference.

Clause 91 inserts a new section 181 to define the program period of a conditional release order including where an existing conditional release order will overlap with a new conditional release order.

Clause 92 amends section 182 (Suspension of program period) to clarify that when a warrant is issued for the arrest of a child for the breach of a conditional release order, the program period is suspended until the child is dealt with under the warrant or the warrant is withdrawn.

Clause 93 omits sections 183—187. The sections relating to breach, revocation and variation of immediate release orders (now called conditional release orders) are omitted. The powers to breach conditional release orders are located in generic provisions introduced by clause 98.

Clause 94 replaces section 189 (Chief executive's fixed release order) with a provision that changes the name "fixed release order" with "supervised release order". The provision also inserts new section 189 that outlines standard requirements for conditional release orders. The new section makes allowance for a term of the release order to be complied with out of the State of Queensland. This clause also inserts new section 189A allowing a child to be released from a period of detention even if they are not physically on detention centre grounds.

Clause 95 amends section 190 (Release period counts as part of detention period) by replacing the term fixed release order with supervised release order.

Clause 96 replaces section 191 (Cancellation of release order). The section dealing with the administrative cancellation of a supervised release order is omitted and a new scheme replaces the previous procedures. The new scheme involves a child, who is believed to have breached the order, being brought back to a Childrens Court magistrate by way of complaint and summons, or if necessary, by warrant. If the court finds the breach proved, the court may take no further action, order the child to be returned to a detention centre with a new supervised release order date, or return the child to a detention centre for the remainder of the period of detention. The court must take into account the child's compliance with the order. It is made clear that the decision made by the court is appealable.

Clause 97 inserts new part 5, division 7, subdivision 5, including a new section 191C, which provides a power for a court to make an order permitting the publication of identifying information about a child. The order can only be made when a detention order has been made for a serious offence that is a life offence. The offence must also have involved the commission of violence against a person and the court must consider that it was a particularly heinous offence. The court must decide that it is the interests of justice to make the order. The order only takes effect after the end of any appeal period or the appeal proceeding, if any, has been

finalised. To remove doubt, it is made clear that a Childrens Court magistrate cannot make the order.

Clause 98 inserts new part 5, division 8A to deal with the breach, variation and revocation of community based orders. Specifically, the provisions are as follows:

- Section 192A makes clear that the provisions apply to a person who was a child when the community based order was made, but is now an adult.
- Section 192B provides that if the chief executive reasonably believes that a community based order has been contravened, the child must be warned of the consequences of further contravention.
- Section 192C provides that in the event that a child contravenes the order again, and has not been charged with an offence for the act comprising the contravention, then the chief executive may make an application to a Childrens Court magistrate to breach the order. The chief executive commences such an application by way of complaint and summons served on the child. A Childrens Court magistrate may issue a warrant for the arrest of a child if the child does not appear in response to the summons.
- Section 192D states that if a warrant is issued against a child, and the child surrenders on the warrant, a power is given to a court to cancel the warrant and continue to deal with the child.
- Section 192E states that if a Childrens Court magistrate is satisfied that the child has breached the order, then it may take action against the child. However, if the sentence order was made in a higher court and the magistrate considers that the order should be revoked, the magistrate must remit the matter to the higher court to be dealt with.
- Section 192F provides that upon the matter being remitted to the higher court, the court then has the power to take action against the child.
- Section 192G provides that if a child is on a community based order and commits an indictable offence while on that order and is found guilty of that offence, then a court may take breach action against the child (a breach from the bench). However, if the original order was made in a higher court, the matter must be remitted to that higher court for further action.

- Section 192H states that if a court decides to breach a child from the bench and the original order was made in a lower court, then the higher court may deal with the breach issue before it.

- Section 192I provides the action available to the higher court to which the child is committed for breach because of the commission of an indictable offence.

•Section 192J outlines what a court may do in dealing with a breach of a community based order, other than a conditional release order and provides options relevant to the order that has been breached. Powers applicable for any community based order include the power to vary the order, extend the period of the order, discharge and resentence for the original order, or take no further action. A court may act under this section, even if the original period of the order has expired at the time of the decision.

- Section 192K outlines what a court may do in dealing with a breach of a conditional release order. The court may revoke the order and order the child to serve the period of detention, or permit the child to continue on the order, with a variation of the requirements of the order or an extension of the program period. In these circumstances, the onus is on the child to satisfy the court that a further opportunity should be given. A court may act under this section, even if the original period of the order has expired at the time of the decision.

- Section 192L allows the child or the chief executive to apply to a court to vary the requirements of an order (other than the requirement to abstain from violations of the law), discharge the order, discharge and resentence on the order, or for a conditional release order, revoke the order. The court may grant the application if it considers it is in the interests of justice to do so. However, the application cannot be made on the grounds that a child has breached the order. Further, under this section a child can not be resentenced to a greater penalty.

- Section 192M provides that if a court revokes a conditional release order and orders the child to be returned to a youth detention centre, the court must reduce the period of detention as it considers just, upon consideration of everything done in conforming with the order.

- Section 192N states that if a court discharges a community based order, other than a conditional release order, it must consider the

reasons for the making of the order and the child's compliance with the order when considering the appropriate resentence.

- Section 192O permits affidavits to be used to prove material facts during proceedings under this division, without limiting another way in which the proceeding may be conducted.
- Section 192P requires that if a court affects the terms of a community based order, the court must give a notice of this to the child, the chief executive and, if necessary, the court that made the original community based order.
- Section 192Q provides that a community based order, other than a conditional release order, may be varied by consent between the chief executive and the child. The conditions that cannot be varied are abstaining from violation of the law and the period of the order. Variation of a term of the order is restricted to the extent that the community based order prohibits such amendments.

Clause 99 amends section 194A (Court may order sentenced child's identifying particulars to be taken) to allow a court to make a more specific order for a child's attendance at a police station for the identifying particulars to be taken.

Clause 100 amends section 195 (Civil compensation orders) to replace the section heading with the words "Criminal Offence Victims Act 1995".

Clause 101 amends section 203 (Management of detention centres) to comply with a recommendation of the Forde Report. New section 203(4) provides for the monitoring and quarterly inspection of detention centres by the chief executive in managing the centres. The provision also requires the chief executive to ensure that certain juvenile justice principles relevant to children in youth detention centres must be complied with "as far as reasonably practicable". It is expressly stated that this obligation on the chief executive does not limit another provision of the Act.

Clause 102 replaces section 209 (Child must be given an explanation on entry to detention centre) with a new section. This new provision expands requirements about the information to be given to a child entering a youth detention centre and how the information is to be provided. The clause also inserts new section 209A in compliance with a recommendation in the Forde Report. This new section provides that a detention centre employee must report incidents or suspected incidents of harm suffered by a child detained in a youth detention centre. "Harm" is defined to be "any detrimental effect of a significant nature on the child's physical,

psychological or emotional wellbeing", to ensure that minor incidents, such as a child grazing their knee while playing sport, are not subject to the mandatory reporting requirement. If a detention centre employee fails to comply with this provision without reasonable excuse, the employee commits an offence.

Clause 103 amends section 211 (Childrens Court may order transfer to prison) to replace the term fixed release order with supervised release order. The clause also clarifies that while a child who has been transferred to a corrective services facility must be released on the child's supervised release date, this mandate does not negate the possibility of earlier release under an "exceptional circumstances parole order" under the *Corrective Services Act 2000* or the continued custody of the person if they are required to continue to serve a period of imprisonment.

Clause 104 inserts new sections 213A, 213AA and 213B. The notes for these three new sections are as follows:

- Section 213A provides that the chief executive may request certain information from the commissioner of the police service that could not, but for this new section, be provided because of the confidentiality provisions of the *Police Service Administration Act 1990*. This will allow the commissioner of the police service to disclose criminal history information about people visiting, or applying to visit a detention centre. The provision is similar to a power provided in the *Corrective Services Act 2000* relevant to the adult prison system. The criminal history that can be provided in these circumstances includes the court briefs for the offences and can include information about "spent" convictions.

- Section 213AA ensures that any information obtained under section 213A is only used for the limited purpose of assessing any risk posed by the person to a child, an employee or to the security of the centre.

- Section 213B helps to implement a Forde Report recommendation by requiring the chief executive to ensure that if a child detained in a detention centre asks detention centre staff for help in contacting a lawyer, the staff must provide the help that is reasonable.

Clause 105 amends section 214 (Protection of legal practitioner representing child) to clarify that a member of staff of a detention centre

may handle legal correspondence to give the child access to it or, at the child's request, to store the correspondence in a secure place.

Clause 106 omits section 219 (Escape) because the power of a police officer to arrest without warrant a person who escapes is contained in the *Police Powers and Responsibilities Act 2000*.

Clause 107 omits sections 220 to 221 because they are redundant sections relating to the apprehension of escapees. These provisions are now adequately covered in the *Police Powers and Responsibilities Act 2000*.

Clause 108 amends section 224AA (Detainees trust fund to be kept) to replace the term fixed release order with supervised release order.

Clause 109 inserts new part 6A relating to confidentiality issues. Notes for the provisions in the new part follow:

Division 1—Preliminary

- Section 224AB provides that the part applies to confidential information about a child who is being dealt with, or has previously been dealt with under the Act.
- Section 224AC is a definition section clarifying certain terms used in the part, including what is meant by "confidential information".
- Section 224AD outlines the people who are taken to be involved in administration of the Act. This list now includes court reporters and those responsible for the distribution of court transcripts.
- Section 224AE defines when a person "discloses" information.

Division 2—Preservation of confidentiality generally

- Section 224AF states that the confidentiality provisions apply to any person who has gained, or gains information through involvement in the administration of the Act.
- Section 224AG states that such a person is prohibited from revealing confidential information and is subject to a penalty if they do so.

- Section 224AH provides that the exceptions to the prohibition include for the purposes of the *Juvenile Justice Act 1992*, for performing the functions of the police service not involving publication of the information, for statistical purposes, when allowed by a court order permitting the naming of a child, in compliance with a lawful process requiring production of documents to court, when expressly authorised under an Act, or when authorised under the regulations.
- Section 224AI creates another exception if the disclosure is to the child, or to another person with the child's informed consent.
- Section 224AJ also permits disclosure to respond to a complaint made to the commissioner under the *Commission for Children and Young People Act 2000*.
- Section 224AK provides that the chief executive may give an authority to disclose information to ensure a person's safety and permits that authorised person to disclose that information under the authority.
- Section 224AL allows disclosure to specified people if a child is being placed in care under the *Child Protection Act 1999*.
- Section 224AM allows disclosure for the purposes of interstate law enforcement and administration.
- Section 224AN permits disclosure for purposes related to cautions and youth justice conferences. Such information can be disclosed for interstate law enforcement purposes, but not if this would result in the revealing of a diversionary process to a court interstate that is not admissible in Queensland. The section also allows disclosure for research on the basis that the person provided with the information undertakes to preserve the confidential nature of that information. A penalty applies if the person breaches such an undertaking.
- Section 224AO allows a youth justice conference coordinator or convenor to reveal information gained in the convening of a conference in certain circumstances.
- Section 224AP allows the chief executive to disclose information for the purposes of research on the basis that the person provided with the information undertakes to preserve the confidential nature of that information. A penalty applies if the person breaches such an undertaking.

Division 3—Confidentiality in relation to proceedings

- Section 224AQ protects the identity of a youth detention centre employee who makes a report of harm to a child in a detention centre to the chief executive and helps in the implementation of the relevant Forde Report recommendation.
- Section 224AR provides for disclosure of documents containing confidential information to a court or tribunal under the rules of that court or tribunal. If such a document is to be produced to a court, some specificity must be provided about the document and if a document is produced, the document itself is restricted to the parties to the court proceedings. A person must not disclose information obtained other than for a purpose connected with the proceeding. A penalty applies to a breach of this requirement. A penalty also applies if a court officer permits inspection of the document by a person other than a party to the proceedings.

Division 4 —Other matters relating to confidential information

- Section 224AS provides that a person who receives a report from a detention centre employee about harm or suspected harm suffered by a child in a detention centre, must not disclose the officer's identity to another person and is subject to a penalty if they do so. The exceptions are for the purpose of performing functions under the Act or where disclosure is expressly required under another Act. A penalty applies to a breach of this section. This provision helps the implementation of the relevant Forde Report recommendation.
- Section 224AT prohibits the publishing of identifying information about a child. The exceptions to this are where the publication is pursuant to a court order or where the chief executive is satisfied the publication is necessary to ensure a person's safety. Penalties apply at levels according to whether the breach is by an individual or a corporation.

Clause 110 amends section 224A (Programs and services for children) to provide that the chief executive must monitor programs and services delivered to children under the Act. Such programs and services are to be monitored to ensure their compliance with the juvenile justice principles. Further, a specific reference is included to allow the chief executive's functions to be operable interstate. The section is also re-numbered to be section 224AU.

Clause 111 inserts new section 224AV, as recommended by the Forde Report, obliging the chief executive to collect and keep information about children dealt with under the Act as prescribed by a regulation.

Clause 112 omits section 226 (Preservation of confidentiality) as this provision is dealt with in the new confidentiality provisions noted at clause 109.

Clause 113 amends section 233 (Regulations) to update a reference to the schedule number.

Clause 114 amends section 236 (Application of Act to matters before Juvenile Justice Legislation Amendment Act 1996) to include a note explaining the legislative history of sections 18N and 18O that are repealed by this Act.

Clause 115 inserts new part 8, division 3 to deal with transitional provisions. The provisions provide the following:

Subdivision 1—Interpretation

- Section 241 provides a definition section.

Subdivision 2—References

- Section 242 deals with the transition from the term community conference to youth justice conference.
- Section 243 deals with the transition from the terms immediate release order and fixed release order, to conditional release order and supervised release order.
- Section 244 deals with the transition from the use of attendance notices to notices to appear.

Subdivision 3—Investigation provisions

- Section 245 deals with the transition to the new provisions applying to statements.
- Section 246 deals with the transition to the new provisions applying to the identifying particulars.

Subdivision 4—Cautions and community conferences

- Section 247 deals with the transition to the new cautioning provisions.
- Section 248 deals with the transition to the new conferencing provisions.

Subdivision 5—Start of proceedings

- Section 249 deals with the transition to the new provisions relating to the start of proceedings by a police officer.

Subdivision 6—Bail and custody of children

- Section 250 deals with the transition to the new bail provisions.

Subdivision 7—Jurisdiction and proceedings

- Section 251 deals with the transition to the new provisions relating to jurisdiction and proceedings generally.
- Section 252 deals with the transition to the new provisions applicable at committal.
- Section 253 deals with the situation where appeals are currently before the District Court.
- Section 254 deals with the transition to the new provisions relating to child offenders who become adults.

Subdivision 8—Sentencing

- Section 255 deals with the transition to the new sentencing provisions.
- Section 256 deals with the management of community based orders made by the District Court.
- Sections 257, 258, 259, 260 and 261 deal with the transition to the new provisions relevant to community based orders and their contravention.

Subdivision 9—Renumbering

- Section 262 provides that the Act will be re-numbered, in the same way that a reprint may be re-numbered and other Acts that refer to sections of the Act will have those section numbers updated.

Clause 116 amends schedule 1 (Regulation making power) by updating the schedule so it includes the new terms introduced by this Act and to note that regulations may be made about the functions of youth justice conference coordinators and convenors.

Clause 117 inserts new schedule 1. This schedule introduces the Charter of Juvenile Justice Principles that underlie the operation of the Act. The charter incorporates the principles that were previously found at section 4 of the Act and incorporates further statements in compliance with recommendations of the Forde Report, including the right to advocacy and interpreting and translating services. The charter also introduces principles specific to children in youth detention centres. Because of an amendment to section 203, the chief executive must ensure, as far as is reasonably practicable, the principles of the charter that are specially relevant to children in detention centres are complied with. Because they underlie the operation of the Act, the charter of juvenile justice principles also applies generally to a child in a detention centre.

Clause 118 inserts new schedules 3 and 4 into the Act. Schedule 3 identifies references to sections of the *Juvenile Justice Act 1992* made in other legislation so that those section numbers will be updated when the *Juvenile Justice Act 1992* is renumbered. Schedule 4 introduces a dictionary to the Act, so that all definitions can be found in schedule 4.

PART 3—AMENDMENT OF ACTS INTERPRETATION ACT 1954

Clause 119 provides that the *Acts Interpretation Act 1954* is amended by this part.

Clause 120 amends section 36 (Meaning of commonly used words and expressions) to insert what is meant by Childrens Court judge and a Childrens Court magistrate.

PART 4—AMENDMENT OF BAIL ACT 1980

Clause 121 provides that the *Bail Act 1980* is amended by this part.

Clause 122 amends section 6 (Definitions) to make clear the meaning of "child" in the *Bail Act 1980* is the same as in the *Juvenile Justice Act 1992*.

Clause 123 amends section 7 (Power of police officer to grant bail) to omit the application of that section to a child because section 39 of the *Juvenile Justice Act 1992*, as amended by this Act, now deals with the situation covered by section 7.

Clause 124 updates section 11A (Release of intellectually impaired person) to make reference to bail under the *Juvenile Justice Act 1992*.

Clause 125 updates section 12 (Restriction on publication of information, evidence and the like given in bail application) to make reference to bail under the *Juvenile Justice Act 1992*.

Clause 126 updates section 14 (Release of persons apprehended on making deposit of money as security for appearance) to make reference to bail under the *Juvenile Justice Act 1992*.

Clause 127 updates section 15 (Procedure upon application for bail) to make reference to bail under the *Juvenile Justice Act 1992*.

Clause 128 amends section 16 (Refusal of bail) to make clear that subsection 16(3), which contains the "show cause" provisions, do not apply to a child.

Clause 129 replaces section 19A (Consideration of findings of guilt, cautions and community conference agreements as child for decisions about release from custody) with a new section titled "Consideration of unrecorded convictions". Amendments to the *Juvenile Justice Act 1992* provide that cautions and community conferences do not form part of a person's criminal history. These matters are also inadmissible under the *Bail Act 1980*. The new section expressly allows consideration to be given to findings of guilt, without convictions being recorded, when deciding custody under the *Bail Act 1980*.

Clause 130 amends section 19B (Review of particular decisions) to allow for review of decisions about bail made under the *Juvenile Justice Act 1992*.

Clause 131 amends section 19C (Review by Supreme Court of magistrate's decision on review) to allow for review of decisions about bail made under the *Juvenile Justice Act 1992*.

Clause 132 amends section 20 (Undertaking as to bail) to reflect changes made to the *Juvenile Justice Act 1992* and to allow for a grant of bail made under the *Juvenile Justice Act 1992*.

Clause 133 amends section 28A (Other warrants for apprehension of defendant) to include reference to release on bail or without bail under the *Juvenile Justice Act 1992*.

Clause 134 amends section 29 (Offence to breach conditions of bail) to omit section 29(2)(a) to make the reference to "child" consistent with that employed in the *Juvenile Justice Act 1992*.

Clause 135 amends section 33 (Failure to appear in accordance with undertaking) to clarify that a sentence of detention imposed for failing to appear in accordance with a bail undertaking, while a child, is not automatically cumulative on other periods of detention.

PART 5—AMENDMENT OF CHILDRENS COURT ACT 1992

Clause 136 provides that the *Childrens Court Act 1992* is amended by this part.

Clause 137 amends section 5 (Members and constitution of the Childrens Court) to provide that if an Act (such as the *Juvenile Justice Act 1992*) requires the Childrens Court to be constituted by a Childrens Court judge, the court may, when a Childrens Court judge is not available, be constituted by a District Court judge. Examples are provided to illustrate situations where a Childrens Court judge is not available and a District Court judge can constitute the Childrens Court. "Available" is defined to mean with regard to the orderly and expeditious exercise of the jurisdiction of the District Court and Childrens Court.

Clause 138 renumbers part 5 (General) as part 6.

Clause 139 renumbers sections 22-31 as sections 24-32.

Clause 140 inserts new part 5A in order to deal with jury trials that may be held by a Childrens Court judge. New sections 22 and 23 replicate equivalent provisions in the *District Court Act 1967*.

Clause 141 amends section 24 (Annual report) so that the time allowed for the President of the Childrens Court of Queensland to provide an annual report is increased from 3 months to 5 months.

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

Clause 142 provides that the *Commission for Children and Young People Act 2000* is amended by this part.

Clause 143 amends section 32 (Subject matter of complaints) to update references to community based orders.

PART 7—AMENDMENT OF CRIMINAL CODE

Clause 144 provides that the Criminal Code is amended by this part.

Clause 145 amends 669A (Appeal by Attorney-General) by inserting a reference to the capacity to launch an appeal under the *Juvenile Justice Act 1992*.

PART 8—AMENDMENT OF CRIMINAL OFFENCE VICTIMS ACT 1995

Clause 146 provides that the *Criminal Offence Victims Act 1995* is amended by this part.

Clause 147 amends section 14 (Information during sentencing of impact of crime on victim) to correct a reference to the sentencing principles in the

Juvenile Justice Act 1992 with respect to the impact of an offence on a victim.

Clause 148 amends section 15 (Information about investigation and prosecution of offender) to omit the prohibition on revealing the name of an offender to a victim who makes application for information under the Act.

PART 9—AMENDMENT OF DISTRICT COURT OF QUEENSLAND ACT 1967

Clause 149 provides that the *District Court of Queensland Act 1967* is amended by this part.

Clause 150 inserts a new section 61A to note that the District Court has no criminal jurisdiction over a child except in certain circumstances. These circumstances include trying a charge on an indictment in which the child is also charged for other offences as an adult. The District Court also has jurisdiction to try a child if the child's trial has been removed to the District Court following an application under part 4, division 5, subdivision 2 of the *Juvenile Justice Act 1992*. The District Court has jurisdiction to sentence a child for an offence if the child is also appearing before the court for sentence as an adult on a charge. It is made clear that in the situations outlined above, the District Court also has jurisdiction to sentence the child on summary offences in accordance with section 651 of the *Criminal Code*.

PART 10—AMENDMENT OF EVIDENCE ACT 1977

Clause 151 provides that the *Evidence Act 1977* is amended by this part.

Clause 152 amends section 39B (Application of pt 3A) to update references in the *Evidence Act 1977* to the new provisions in the *Juvenile Justice Act 1992* permitting the hearing of a bail application by audio visual or audio link.

PART 11 —AMENDMENT OF JURY ACT 1995

Clause 153 provides that the *Jury Act 1995* is amended by this part.

Clause 154 amends section 4 (Qualification to serve as juror) to exclude a detention centre employee from jury service, consistent with provisions excluding corrective services officers from jury service.

Clause 155 amends section 13 (Practice directions) to provide that the senior judge administrator is to consult with the President of the Childrens Court of Queensland about practice directions about the matters concerning juries listed in the section.

Clause 156 amends schedule 3 (Dictionary) of the Act to include a definition of detention centre employee and include in the definition of "judge", a Childrens Court judge.

PART 12—AMENDMENT OF JUSTICES ACT 1886

Clause 157 provides that the *Justices Act 1886* is amended by this part.

Clause 158 inserts new section 2 into the Act to provide for a note in the text of the Act, and that such a note is part of the Act.

Clause 159 amends section 222 (Appeal to a single judge) by inserting a note in the text to ensure that practitioners cross reference to the *Juvenile Justice Act 1992*.

PART 13—AMENDMENT OF MENTAL HEALTH ACT 2000

Clause 160 provides that the *Mental Health Act 2000* is amended by this part.

Clause 161 amends schedule 2 (Dictionary) to provide updated references to new terms used in the *Juvenile Justice Act 1992*.

PART 14—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

Clause 162 provides that the *Police Powers and Responsibilities Act 2000* is amended by this part.

Clause 163 amends section 198 (Arrest without warrant) to update a cross-reference in the *Police Powers and Responsibilities Act 2000* to a provision limiting arrests in the *Juvenile Justice Act 1992*. A note has been inserted in the text to ensure that police cross reference to the *Juvenile Justice Act 1992* principle that, for a child, arrest is an option of last resort and for the least time that is justified in the circumstances.

Clause 164 amends section 200 (Arrest of person granted bail) to restructure section 200(3)(a)(i) without changing its effect, and to impose a requirement on police officers to consider an application under the *Bail Act 1980* to revoke or vary a child's bail, instead of arresting a child for breach of bail conditions. The requirement does not apply to an arrest relating to a contravention of the condition for a child's appearance, the likelihood of a child failing to appear in court or the harassment or interference of a person who may be a witness.

Clause 165 amends section 201 (Arrest of person given notice to appear or summons) to clarify that the arrest provisions for the circumstances listed in this section do not apply to a child.

Clause 166 amends section 204 (Issue of arrest warrant) to omit a redundant reference to attendance notices.

Clause 167 omits section 207 (Police officer to consider alternatives to proceeding against child) because a similar provision is found in the *Juvenile Justice Act 1992*.

Clause 168 amends section 212 (Additional case when arrest of child may be discontinued) to change a reference from community conference to youth justice conference and from attendance notice to notice to appear.

Clause 169 amends section 214 (Notice to appear may be issued for offence) to strengthen the object of notices to appear by identifying their ability to reduce the need for custody associated with arrest. The amendment will allow notices to appear to be issued to commence proceedings against suspected child offenders. A new subsection ensures that a separate notice to appear must be issued for offences allegedly committed as a child, to help reinforce the distinction between adult and child matters.

Clause 170 inserts new section 214A that imposes the same rules of service of a notice to appear on a child, as were in place for serving a child with a complaint and summons. It requires that a notice to appear be served discreetly and that service at a child's school or place of employment is a last resort.

Clause 171 amends section 215 (Notice to appear form) to change the reference from a Magistrates Court to a court of summary jurisdiction, as notices will be used for both adult and child offenders. The notice must also state whether the notice to appear was issued for a child or adult offence. The provision also ensures that rules that applied to attendance notices about the time for appearance continue to apply to notices to appear.

Clause 172 replaces section 216 (Notice to appear must be filed in court without cost to person) to emphasise the need to have notices filed promptly at a court after service on a person.

Clause 173 amends section 218 (Particulars of notice to appear offence must be given in the proceeding) to change the reference from Magistrates Court to "a court", to ensure that Childrens Courts are also included.

Clause 174 amends section 219 (Notice to appear equivalent to a complaint and summons) to change the reference from Magistrates Court to "a court", to ensure that Childrens Courts are also included and to update references to bail provisions under the *Juvenile Justice Act 1992*.

Clause 175 amends section 220 (Court may order the immediate arrest of person who fails to appear) to change the reference from Magistrates Court to "a court" to ensure that Childrens Courts are also included. The provision clarifies that the bail and custody proceedings under the *Juvenile Justice Act 1992* apply to a child arrested in these circumstances. The provision also makes clear that if a court believes that a child could be brought to court by means other than through arrest on the warrant, the court may delay the issue or execution of the warrant to provide the child with a further opportunity to appear. This provision is included because, for example, a child who has not appeared may be able to be found and brought to court by Aboriginal and Torres Strait Islander legal service field officers.

Clause 176 amends section 221 (Court must strike out notice to appear if service insufficient) to change the reference from Magistrates Court to "a court" to ensure that Childrens Courts are also included.

Clause 177 omits section 223 (Parent and chief executive must be advised of arrest of child) and inserts a new section. The new section has a

similar effect as the former section, but now requires prompt notification to a parent and the chief executive (family services) when a child is served with a notice to appear, as well as when a child is arrested.

Clause 178 amends section 225 (Duty of police officer receiving custody of person arrested for offence) to update references in this section to make it clear that the duty applies for an adult only.

Clause 179 amends section 252 (Questioning of children) to make clear that the child's choice of support person is to be preferred. Also, to prevent a conflict of interest from developing, it is clarified that the child cannot choose a complainant for the offence as the support person.

Clause 180 amends section 312 (Taking DNA sample from child) to omit the reference to attendance notice and replace it with a reference to notice to appear.

Clause 181 amends section 459 (Regulation-making power) to enable a regulation to be made about the responsibilities of a support person.

Clause 182 amends schedule 1 (Acts not affected by this Act) to update a reference to the applicability of section 198 of this Act to the *Juvenile Justice Act 1992*.

Clause 183 amends schedule 4 (Dictionary) to ensure that a child is free to choose an adult relative or friend as a support person for the child.