

# Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012

## Explanatory Notes

### Objectives of the Bill

The primary objectives of the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012* (the Bill) are to amend the:

1. *Youth Justice Act 1992* to:
  - introduce a Boot Camp Order as an option instead of detention for young offenders; and
  - remove the option of court referred youth justice conferencing.
2. *Anti-Discrimination Act 1991* to introduce new exemptions in relation to:
  - accommodation used in connection with work as a sex worker; and
  - the imposition of eligibility requirements based on citizenship or visa status in government policies for the provision of assistance, services or support; and
3. *Fiscal Repair Amendment Act 2012* to bring forward the commencement date (from 1 July 2013 to 1 January 2013) of sections that transfer the powers of the Queensland Liquor and Gaming Commission and chief executive under the *Gaming Machine Act 1991* and *Liquor Act 1992* to a Queensland Liquor and Gaming Commissioner.

### Reasons for the Bill

#### *Youth Justice Act 1992*

The Bill implements the 2012 election commitment of the Liberal National Party to introduce a two year trial of a youth boot camp diversion program.

Community concern regarding youth offending has been escalating and there is an expectation that young people are held accountable for their crimes. Detention is not effective in reducing future offending or changing offending behaviour of the small number of young people who are responsible for the majority of the offences.

The Bill will amend the *Youth Justice Act 1992* (the Act) to introduce a boot camp order which will provide an option before detention for the courts. The order will be significantly more onerous than a conditional release order which is the current option available to courts when releasing a child upon the making of a detention order. The boot camp program will entail a period of one month in a residential boot camp centre followed by at least two months and not more than five months of intensive supervision in the community. The program, which is approved by the Chief Executive, is a requirement of the boot camp order and will be tailored to meet the specific needs of each child with a view to preventing young people entering the ‘revolving door’ of custodial placements.

For a young offender to be eligible they must be at least 13 years old at the time of sentence, usually reside in an area prescribed by regulation and have provided consent to participate in the boot camp program. The areas will be prescribed by the amendment to the regulation which shall commence at the same time as the relevant clauses of the Bill. A young offender is not eligible to participate if the offence for which they are being sentenced is a disqualifying offence, they have at any time had a finding of guilt for a disqualifying offence or have a pending charge for a disqualifying offence. The disqualifying offences are contained in a Schedule to the Bill and contain a number of serious violent and sexual offences. In addition to the Schedule of disqualifying offences, the court, in considering eligibility, must have regard to whether the child poses an unacceptable risk of harm to the boot camp centre employees and other children participating in the boot camp program.

Under the Act, the court must order a pre-sentence report if the court is satisfied that a detention order is the only option. Given that a child must be ordered to a period of detention and released on to a boot camp order, the court must order a pre-sentence report. The Bill provides that where the court is considering a boot camp order the court must request that the report contain an assessment of the young offender’s physical and mental health, advice on the availability of a boot camp centre, suitability of the child for release from detention on to a boot camp order, a statement about whether the parent of the child has consented to participate in the boot

camp program and a statement that the details of the boot camp order have been explained to the young offender in a way and to an extent that is reasonable and the consent of the young offender.

The boot camp order must be for a period of at least three months but not more than six months. The order will also contain the name and location of the boot camp centre and the details of the boot camp program (as approved by the chief executive). There is also an obligation on the child to report to the chief executive on the day that the court makes the boot camp order. The boot camp program must comprise a period of one month in a boot camp centre (residential phase) followed by a maximum period of five months of intensive community supervision.

This is provided through an individualised and intensive program which includes strenuous physical activities during the residential phase and offence focussed programs, counselling, substance abuse programs, community reparation, family support and support to re-engage with learning or employment in both the residential and community supervision phases of the boot camp program. While mentoring programs will be offered to the child from the commencement of the program, the mentoring phase which is provided upon completion of the order is entirely voluntary. As such it is not a mandatory component of the boot camp program for the purposes of the boot camp order. Given that the program is tailored to meet the individual needs of a child, the program is outlined in the Bill in general terms only.

If a young offender breaches the order, a number of options will be available to the court. The court may revoke the boot camp order and require the young offender to serve the period of detention for which the boot camp order was made, make a new boot camp order or make a conditional release order. The court may also permit the young offender the opportunity to complete the order. In so doing, the court may vary the requirements of the order. The court cannot, however, vary the details of the boot camp program. This will prevent the court ordering a child to participate again in the residential phase of the program if this has already been completed (unless a new boot camp order is made). This is to protect the therapeutic integrity of the boot camp program which requires that for the one month spent in the residential phase a minimum of two months is required to be spent under strict community supervision.

The key objective of the boot camp program is to instil discipline, respect and values into young people entrenched in the youth justice system to

divert them from further offending and support them to make constructive life choices.

The Bill will also enact the decision made in the context of the 2012-13 Budget handed down on 11 September 2012 to remove the option for courts to refer a child to participate in a youth justice conference. Currently, the court can refer a matter to conference as the sentence outcome (indefinite referral) or refer to a conference prior to sentence. The Bill will remove both of these options.

The Bill also removes references to the redundant role of youth justice conferencing ‘coordinator’ and replaces responsibilities for these functions with those of the chief executive.

### *Anti-Discrimination Act 1991*

#### Accommodation used in connection with lawful sexual activity

Recently, the Queensland Civil and Administrative Tribunal (QCAT) Internal Appeal Body, in *GK v Dovedeen Pty Ltd and Anor* held that a motel that refused accommodation to a sex worker who had used the accommodation to provide prostitution services had contravened the *Anti-Discrimination Act 1991* (ADA). QCAT found that the conduct constituted direct discrimination on the basis of “lawful sexual activity”. Under the ADA, “lawful sexual activity” is defined to mean “*a person’s status as a lawfully employed sex worker, whether or not self-employed*”. The decision has been appealed to the Court of Appeal.

#### Government Eligibility Policies

Recent litigation has highlighted the potential for certain government policies where eligibility for government assistance, services or support is based on citizenship or visa status, to be subject to complaints of racial discrimination under the ADA.

### *Fiscal Repair Amendment Act 2012*

Currently, the Queensland Liquor and Gaming Commission (commission) and the chief executive make decisions under the *Gaming Machine Act 1991* (Gaming Machine Act) and the *Liquor Act 1992* (Liquor Act). However, amendments in the *Fiscal Repair Amendment Act 2012*, assented to on 21 September 2012, combined the roles and decision making of the commission and the chief executive under the Gaming Machine Act and Liquor Act and transferred them to a new Liquor and Gaming Commissioner (commissioner).

The amendments do not remove the long established licensing processes under the Gaming Machine Act and Liquor Act; but rather streamline the decision making process by removing unnecessary delays created by applications passing through the chief executive and then to the commission and the waiting times associated with commission meetings. The creation of the commissioner will simplify the legislation and clarify who is the decision maker.

The amendments were to commence on 1 July 2013. However, given the benefits to industry and government in streamlining the decision making process, it would be preferable for the amendments to commence on 1 January 2013, to maximise their effect.

## **Achievement of the Objectives**

### *Youth Justice Act 1992*

To achieve its objectives, the Bill will establish the boot camp order as an option before detention. The Bill will also achieve the objective for the removal of court referred youth justice conferencing by removal of the relevant section.

### *Anti-Discrimination Act 1991 (ADA)*

#### Accommodation used in connection with work as a sex worker.

The Bill amends the ADA to give accommodation providers certainty and control in the use that is made of their premises by inserting an exemption in the ADA which allows a person to discriminate against another person in relation to accommodation if the accommodation provider reasonably believes that the other person is using or intends to use the accommodation in connection with that person's or another person's work as a sex worker.

### Government Eligibility Policies

The Bill amends the ADA to provide an exemption in relation to government eligibility policies based on citizenship or visa status, and actions taken under these policies. The exemption applies in relation to a "prescribed eligibility provision" in a "relevant policy" or the performance of functions in connection with a "prescribed eligibility provision". A "relevant policy" is a policy of a government entity under which people are provided with financial or other assistance, services or support. The effect of the amendment will be that the ADA will not apply to a provision requiring a person to have a particular citizenship or visa status to be eligible for assistance, services or support, or a provision under which

people who have a particular citizenship or visa status are treated more favourably in relation to eligibility for assistance, services or support.

#### Fiscal Repair Amendment Act 2012

To achieve the objective of bringing forward the commencement date of sections that transfer the powers of the Queensland Liquor and Gaming Commission and chief executive under the *Gaming Machine Act 1991* and *Liquor Act 1992* to a Queensland Liquor and Gaming Commissioner, amendment is made to the *Fiscal Repair Amendment Act 2012*.

### **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

### **Estimated Cost for Government Implementation**

#### Youth Justice Act 1992

The Government has committed \$2M for the two year boot camp trial. Any additional costs in relation to the amendments will be met from existing agency resources.

#### Anti-Discrimination Act 1991, Fiscal Repair Amendment Act 2012

The amendments will not have any significant cost implications for government.

### **Consistency with Fundamental Legislative Principles**

#### Youth Justice Act 1992, Fiscal Repair Amendment Act 2012

There is consistency with Fundamental Legislative Principles.

#### Anti-Discrimination Act 1991

The amendments to the ADA inserting two new exemptions (accommodation used in connection with work as a sex worker and government eligibility policies) raise an issue regarding the fundamental legislative principle that legislation should not adversely impact rights retrospectively.

The Bill provides that complaints made on or after the day of introduction of the Bill will be determined in accordance with the ADA as amended by the Bill (ie the new exemptions in Chapter 2 Part 5 will apply to these complaints). This will mean that the new exemptions will apply to these

complaints even if the conduct complained of occurred before the day of introduction of the Bill. This raises an issue about a potential adverse impact on the rights of potential complainants in relation to conduct which may have occurred before the commencement of the new laws.

The Bill will, however, preserve the rights of complainants who have made complaints before the day of introduction of the Bill to be dealt with as if the amendments to the ADA had not commenced.

These transitional arrangements can be justified on the basis that the amendments to the ADA clarify areas of uncertainty in the law and address potential unintended consequences.

The new exemption in the accommodation area will provide certainty to accommodation providers in the management of their premises and clarity to enable them to meet their obligations under the ADA. Providing that complaints made on or after the introduction of the Bill are subject to the new exemption (regardless of when the conduct complained of occurred) will ensure that accommodation providers have certainty in making decisions about the use that can be made of their premises as soon as possible and protect accommodation providers from further complaints.

The new exemption for certain government eligibility polices will ensure that the allocation of limited public resources can be effectively managed. Providing that complaints made on or after the introduction of the Bill are subject to the new exemption (regardless of when the conduct complained of occurred) will ensure the objectives of the exemption are not undermined by complainants seeking to exploit the grey “window” period before the Bill receives assent and involving the government in litigation which may dilute the government resources available for the provision of services.

## **Consultation**

### *Youth Justice Act 1992*

Consultation with the following government departments and agencies occurred: the Department of the Premier and Cabinet, Queensland Treasury, Queensland Police Service, Department of Communities, Child Safety and Disability Services, Queensland Health, Department of Education, Training and Employment, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs and the Commission for Children and Young People and Child Guardian. The Chief Magistrate, Magistrates of

the Cairns area and the President of the Childrens Court were also provided a copy of the draft Bill for comment.

### *Anti-Discrimination Act 1991*

The Anti-Discrimination Commission Queensland was consulted.

The Prostitution Licensing Authority was consulted on the exemption relating to accommodation used in connection with work as a sex worker.

## **Notes on Provisions**

### **Part 1 – Preliminary**

*Clause 1* establishes the short title to the Act as the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012*.

*Clause 2* provides that the clauses relating to the removal of court referred conferencing and the replacement of the term ‘coordinator’ are to commence on 1 January 2013. The provisions which provide for the introduction of a boot camp order commence on 31 January 2013.

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

*Clause 3* provides that the Act amends the *Youth Justice Act 1992*.

*Clause 4* amends the heading of Part 2, division 3 by removing the term ‘coordinator’ as the role of the coordinator is redundant.

*Clause 5* amends section 22 (When a police officer may refer and offence for conference), subsections (1), (2) and (6) by replacing the reference to the ‘coordinator’ with the ‘chief executive’ as the role of the coordinator is redundant.



*Clause 6* amends section 24 (Powers of police officer if referral is unsuccessful or if child contravenes conference agreement) (1) and (3) by replacing ‘coordinator’ with the ‘chief executive’ as the role of the coordinator is redundant.

*Clause 7* omits section 27(5) as it relates to the referral of an offence to conference by a court which are provisions which are removed by this Bill.

*Clause 8* amends section 30 (Object of part and explanation) to reflect that the Bill removes the option for courts to refer conferencing.

*Clause 9* removes section 31 (Appointment of coordinator and approval of convenor) and replaces it with a section that refers only to the approval of youth justice conference convenors. The provisions relating to the appointment of a coordinator are removed as this role no longer exists.

*Clause 10* replaces section 32 (Protection against liability for convenor or coordinator) by removing any reference to the ‘coordinator’ as this role is redundant and replacing it with the ‘chief executive.’

*Clause 11* replaces section 33 (Who may refer an offence to a coordinator) by removing the references to the ‘coordinator’ as this role no longer exists and replacing it with ‘chief executive’. It also omits the reference to the referral to conference by a court as this is no longer an option available to the court.

*Clause 12* amends section 34 (Who may participate in a conference) by removing subsection (1)(g)(ii) as the option for the court to refer an offence to conference. Subclause 2 also removes subsection (2)(b) for the same reason.

*Clause 13* replaces section 35 (Convening of a conference) to clarify that a conference ends where a conference agreement is made, the convenor ends the conference because the child fails to attend, the child denies committing the offence, where the convenor considers that the offence is unsuitable for conference or an agreement is unlikely to be made within a time the convenor considers appropriate. Where the conference ends, a notice must be provided to the referring police officer under subsection (6) within 14 days from the end of the conference. The clause inserts a new subsection (8) which clarifies that where the chief executive considers that it is worthwhile persisting with efforts, despite the convenor’s decision to end the conference a notice under subsection (6) does not need to be provided to the referring police officer and the chief executive must arrange for a convenor to convene another conference. The clause also removes the

requirement for a notice to be provided to the referring court as the court is no longer able to refer matters to conference.

*Clause 14* replaces section 36 (Coordinator may persist in efforts to achieve a conference agreement) to clarify that the convenor is not required to provide a report to the referring police office upon a conference ending where the chief executive considers that a conference is worthwhile pursuing. The chief executive must also, in these circumstance arrange for a convenor to convene another conference.

*Clause 15* replaces section 37 (Form and content of conference agreement) subsection (2)(c) to ensure that an offence will no longer be referred to conference by a court.

*Clause 16* amends section 40 (Admissibility of a conference agreement and related evidence) by clarifying subsection (2) so that evidence of anything said or done in convening a conference is inadmissible in any proceedings. Sub clause 2 omits section 40(4)(b) as it is a proceedings under Part 7, Division 2 which has been removed by clause 18 of this Bill. The reference to ‘coordinator’ in section 40(4)(d) is also replaced under sub clause 3 with ‘chief executive’ as the role of the coordinator is redundant. Sub clause 6 of clause 15 removes section 40(5) as a court is no longer able to refer an offence to conference with the removal of Part 7, Division 2 under clause 18.

*Clause 17* amends section 41 (If chief executive signs agreement for program) subsection (3) to remove the option for the chief executive to notify a court’s proper officer where a child fails to comply with the requirements of a conference agreement given that the court will no longer be referring offences for conference.

*Clause 18* replaces section 67(2) to provide that where the Childrens Court is constituted by two justices, in addition to not being able to make a detention order or conditional release order, the justices will also not be able to make a boot camp order.

*Clause 19* inserts subsection 3A into section 151 (Pre-sentence report) which provides that where the court is considering a boot camp order, the court must request that the pre-sentence report contain:

- an assessment of the child’s physical and mental health
- advice on whether an appropriate boot camp program is available
- an assessment on the suitability of the child for release from detention under the order

- a statement about whether the chief executive has obtained the agreement of a parent of the child to participate in the program
- a statement that the details of the boot camp program has been explained to the child in a way and to an extent that is reasonable, having regard for the child's age and ability to understand
- a statement that the child consents to participating in the program.

These requirements have been inserted in recognition of the onerous nature of the order. Where a court is considering a boot camp order, the court may have regard to the eligibility criteria contained in the inserted section 226C which requires that the child has attained the age of 13, usually resides in a prescribed area (provided for by regulation) and consents to participating in the program.

*Clause 20* amends section 160 (Copy of court order or decision to be given to child, parent etc) by removing subsection (1)(c) as the option for the court to refer an offence to conference is removed under clause 18.

*Clause 21* removes Part 7, Division 2 to give effect to the decision made in the context of the 2012 -13 Budget to remove the option for a court to refer an offence to conference.

*Clause 22* replaces section 175 (Sentence orders - general) subsection (3) with a new section 175(3) which provides that where a court makes an order for detention under section 175(1)(g), that child may be released with or without either a conditional release order or a boot camp order.

*Clause 23* omits and inserts a new section 176 (Sentence order – serious offences) subsection (4) which allows a court to make an order for detention for serious offences under section 176(2) or (3) with or without either a conditional release order or a boot camp order.

*Clause 24* amends section 180 (Combination of detention order and other orders) subsection (2) so that where a court makes a detention order and a probation order for a single offence, the court may only make the detention order for a period of 6 months and may not make either a conditional release order or a boot camp order.

*Clause 25* amends section 210 (Detention to be served in a detention centre) subsection (3) is amended to make it clear that, like a conditional release order, the court is not required to issue a warrant where a child is sentenced to serve a period of detention, directing the commissioner of the

police service to take the child into custody and deliver the child to the detention centre. A child who is released from detention under a boot camp order is subject to the requirements of the order (outlined in clause 25), including that the child report to the chief executive on the day of the order.

*Clause 26* amends section 219 (Purpose of conditional release order) to provide that a conditional release order is ‘an’ option before detention instead of the ‘final’ option, given that the boot camp order will also serve as an option before detention.

*Clause 27* Inserts a new subdivision after Part 7 Sentencing Subdivision 2 (Conditional release order) entitled Part 7 Subdivision 2A (Boot camp orders). This subdivision incorporates sections 226A to 226G.

Section 226A (Purpose of a boot camp order) is inserted to provide the option for a child to be released on to a boot camp order instead of detention.

Section 226B (Boot camp order) provides that where the court makes a detention order, the court may immediately suspend the order and make a boot order. The making of a boot camp order means that the child is immediately released from detention to which the order relates. The child is also immediately released into a boot camp program. The court may only make a boot camp order where the chief executive has provided advice in the pre-sentence report that a boot camp centre provider is immediately available upon the child’s release from detention .

Section 226C (Boot camp order – eligibility) is inserted to outline the eligibility requirements for a child participating in a boot camp order.

Subsection (1) provides that a court may only make a boot camp order where the child is eligible. A child is eligible under subsection 2, where:

- the child usually resides in a prescribed area; and
- the child has attained the age of 13 years at the time of sentence; and
- the pre-sentence report state that the child consents to participating in the boot camp program.

Subsection 2 is subject to subsection 3 of the new section 226C which provides that a child is not eligible where:

- the child is being sentenced, has a previous finding of guilt or has a pending charge for a disqualifying offence (as outlined in the new schedule 5) before the court; or
- the child is serving a period of detention in a detention centre for another offence; or
- the court forms the view that the child poses an unacceptable risk of physical harm to other children on the boot camp program or employees of the boot camp centre after having taken into consideration the pre-sentence report, the nature or extent of any violent or sexual act committed or threatened in the commission of the offence that the child is being sentenced for or any other pending charges before the court, the past record of the child including any attempted rehabilitation and the number and circumstances of any previous offences of any type committed by the child as well as any medical, psychiatric or other relevant report.

Section 226D (Boot camp order – duration and requirements) is inserted to outline the particulars of the boot camp order. The boot camp order is for duration of between three and six months. The boot camp order must also state the following (which are considered the requirements of the order):

- the name and location of the boot camp centre
- details of the boot camp program
- that the child must report to the chief executive on the day of the order
- that the child must comply with the reasonable and lawful direction of the chief executive to facilitate any phase of the boot camp program
- that the child attend and participate in the boot camp program; and
- the child must not leave the boot camp centre during the residential phase of the program unless the chief executive authorises otherwise.

The order must also state that during the program period:

- the child must abstain from violation of the law
- the child must report and receive visits from the chief executive

- the child or the parent of the child advise the chief executive of any change of address, employment or school
- the child not leave or stay out of Queensland without the approval of the Chief Executive; and
- that the child comply with conditions that the court considers necessary to reduce the risk of the child reoffending. These conditions must relate to the offence for which the detention order was made and must be supported in writing.

The new subsection (3) also provides that the boot camp order may contain a requirement that the child must comply with that is outside Queensland, such as attending a school which is in New South Wales.

Subdivision 2B (Boot camp programs) has been inserted to outline the boot camp program in which a child shall be participating upon the making of a boot camp order by the court.

Section 226E (Boot camp program) has been inserted to outline the details of the boot camp program in which the child shall be participating upon the making of a boot camp order. The boot camp program must be approved by the Chief Executive and is a requirement of the order. The program will provide intensive support for the child by giving the child training, instruction and supervision and access to developmental and mentoring programs. In approving the program, the chief executive must have regard to the factors outlined in subsection (2) which include the child's cultural, developmental, educational, emotional, health, intellectual, physical and social needs as well as a program which considers reducing the risk of the child reoffending and community reparation. In accordance with subsection (3) the boot camp program must comprise a one month residential phase at a boot camp centre followed by a maximum of five months of community supervision. Where a child is subject to more than one boot camp order simultaneously, the cumulative total of the period in the residential phase at a boot camp centre must not exceed one month. Where a court revokes and resentences a child to a boot camp order under the new section 246A and this is the only existing boot camp program to which the child is subject, the chief executive may approve a program which does require the child to again participate in the residential phase of the program in a boot camp centre. This will ensure that the integrity of a therapeutic program commencing with one month in the residential phase followed by a minimum of two months in a community supervision phase is not disrupted. Subsection (5) of the new section 226E provides that

information relating to the boot camp program is available at [www.justice.qld.gov.au/youth-justice](http://www.justice.qld.gov.au/youth-justice).

Section 226F (Effect of program period ending) is inserted to provide that the child is not liable to serve a period of detention under the detention order at the end of the program period.

Section 226G (Program period) provides that the program period of the boot camp program starts when the boot camp order is made and ends on either the last day of the period of the boot camp order or if the boot camp program was suspended for any period of time during the order, the end of the day that is the last day of the order plus those days for which the program was suspended. Where a court makes a boot camp order and a boot camp order has already been made against the child, the program period counted as concurrent.

Section 226H (Suspension of program) is inserted to allow the chief executive to suspend the program where the child, for good reason, is unable to participate. The suspended period of time is not included in the program period.

*Clause 28* amends section 240 (General options available on breach of order) subsection (2)(a) to allow a magistrate, where any order was made by a Childrens Court magistrate other than a conditional release order or a boot camp order to take any action under section 245 (Court's power on breach of order other than conditional release order). Subsection 2(c) is inserted to allow a magistrate, where a boot camp order was made by a Childrens Court magistrate, to take any action under section 246A. Section 240(3)(b)(i) is amended to include that where an order was made by a higher court the magistrate may for an order other than a conditional release order or boot camp order, take any action under section 245 other than section 245(1)(d)(ii). Where the order made by the higher court was a boot camp order, the magistrate may under the inserted subsection (3)(b)(iii) deal with the child under section 246A(2).

*Clause 29* amends section 241 (General options available to superior court to which child committed for breach) to allow a higher court to which a child is committed for a breach of an order to take any action under section 245 where the order was not a conditional release order or boot camp order. Subsection (2)(c) is inserted to allow a higher to take action under section 246A where the order was a boot camp order.

*Clause 30* amends section 242 (General options available to court before which child found guilty of an indictable offence) so that the court before

which a child is found guilty of an indictable offence while that child is subject to a community based order made by the court, may take action under section 245 where that order was not a conditional release order or boot camp order or under section 246A where that order was a boot camp order. When the order was not made by the court and was not a conditional release order or boot camp order, the court may take any action under section 245 other than section 245(1)(d)(ii). Where the order was not made by the court and was a boot camp order, the court may take any action under section 246A(2).

*Clause 31* amends section 243 (Court may resentence child originally sentenced by lower court) so that where this section excludes a conditional release order, it also excludes the boot camp order and where the original sentence was a boot camp order, the court may take any action under section 246A (1)(a).

*Clause 32* amends section 244 (General options available to court to which child committed for breach by indictable offence) so that the other court can take any action under section 245 for any order other than a conditional release order or boot camp order. Subsection 245 (2)(c) is inserted to allow the other court, where a boot camp order was made, to take any action under section 246A.

*Clause 33* amends section 245 (Court's power on breach of order other than conditional release order) so that the heading also indicates exclusion of a boot camp order. Subsection 1(d) is also amended to clarify that the reference to a community based order excludes a boot camp order and a conditional release order.

*Clause 34* replaces subsection 1 of section 246 (Court's power on breach of a conditional release order) so that a court may order the child to serve either the sentence of detention for which the conditional release order was made or a boot camp order. Subsection 4A is inserted to allow a court, when making a boot camp order under subsection 1, to take into account the time for which the child complied with the conditional release order. This is in recognition that both the boot camp order and the conditional release orders are options before detention.

*Clause 35* inserts section 246A (Court's power on breach of a boot camp order) to allow a court, upon a breach of a boot camp order, to revoke the boot camp order and order the child to serve the sentence of detention for the which the boot camp order was made, make a new boot camp order or make a conditional release order. Where the court forms the view that the



child would benefit from participating again in the boot camp program in its entirety, including the residential phase (even where this may have been completed under the boot camp order the breach of which is currently before the court), the court may revoke and resentence the child to a new boot camp order. A court is able to make a conditional release order, even though this would appear to be contrary to the policy of creating a hierarchy of orders which a court may make upon release from detention, given that the child may have demonstrated significant compliance with the boot camp order at the time of breach and the court takes the view that this is a more appropriate order upon breach of the boot camp order. Subsection 2 allows the court to provide the child with a further opportunity to satisfy the requirements of the boot camp order and in so doing may vary the requirements. The requirements of the order are provided for in the new section 226D(2) and (3) (Boot camp order – duration and requirements). Upon varying the requirements however, the court is not able to vary the details of the boot camp program (subsection 3). The meaning of the boot camp program may be derived by reference to the new section 226E(1). In effect, where the court provides the child with the further opportunity to satisfy the requirements of the boot camp order, the court is prevented from ordering a child to participate again in the residential phase of the program when it has already been successfully completed. This approach upholds the therapeutic integrity of the boot camp program. Subsection 4 provides that the onus is on the child to satisfy the court that they should have this further opportunity to complete the boot camp order. Where the court varies the boot camp order by extending the period of the order under subsection 2 or makes a conditional release order under subsection 1(c), subsections (5) and (6) provide that the court must consider the time for which the child has already complied with the boot camp order. Subsections (7) and (8) allow the court to make an order under this section even where the original period of the boot camp order has expired at the time of the decision, thereby replicating the process applied for a breach of a conditional release order.

*Clause 36* amends section 247 (Variation, discharge and resentence in the interests of justice) to provide that a boot camp order will be treated in the same way as a conditional release order and as a further option before detention. Sub clause 2 inserts a new section 247(1)(c) so that upon application of the chief executive or the child to the court to which made a conditional release order for the child, the court may revoke the order and order the child to serve the sentence of detention for which the conditional release order was made or make a boot camp order. Where a boot camp

order was made, the court may revoke the order and order the child to serve the sentence of detention for which the boot camp order was made or make a conditional release order.

*Clause 37* amends section 248 (Detention reduced to the extent just) so that a where a conditional release order or a boot camp order is revoked and a child ordered under this division to serve the period of detention for which the conditional release order or boot camp order was made, that the court must reduce the period of the detention by the period the court considers just after taking into account the child's compliance with the respective orders.

*Clause 38* amends section 249 (Matters relevant to making further order) so that a boot camp order as well as a conditional release order is excluded from application of the operation of this section.

*Clause 39* amends section 252 (Variations by consent) to exclude the application of the section to boot camp orders in the same way that it excludes conditional release orders.

*Clause 40* inserts a new Part 8A (Boot camp centre administration). This Part provides the obligations and responsibilities of the boot camp centre provider, the chief executive and the child during the residential phase of the program.

The new section 282A (Boot camp centre provider) provides that a boot camp centre provider, who has appropriate experience and expertise, may be approved by the chief executive and will assist the chief executive in implementing the residential phase of the boot camp program.

The new section 282B (Management of boot camp centres) is inserted to make clear the way in which it is expected that the boot camp service provider will assist the chief executive in delivering the residential phase of the boot camp program. A boot camp centre must provide for the health and wellbeing of the children at the centre as well as the cultural, educational, emotional, intellectual, physical and social development of the children at the centre. The boot camp centre provider must also ensure security and management of the centre, safe custody of the children and maintain order and discipline. In achieving these requirements, the new subsection (2) permits a boot camp service provider to use any form of direction which including rules, codes, standards and guidelines in achieving these outcomes. These directions may relate to the organisation of the boot camp centre, functions, conduct and responsibilities of boot camp centre employees, the types of programs for children participating in

the residential phase of the boot camp program, contact between children and members of the public and arrangements for educational, recreational and social activities of children. The new subsection (3) requires compliance with the youth justice principles so far as it would not limit another provision in the Act. In order to ensure compliance with the new Part 8A, there is an obligation placed upon the chief executive to monitor the operation of the boot camp centres under the new subsection (5).

The new section 282C (Where children participate in boot camp program) clarifies that the chief executive must decide the boot camp centre where a child must participate during the residential phase of the program, upon a boot camp order. This facilitates the making of a boot camp order by the court under the new section 226D which requires the name and location of a boot camp centre.

The new section 282D (Authority for admission to boot camp centre) is inserted to make clear that the chief executive must not direct a child to a boot camp centre without first been given a copy of the boot camp order.

Section 282E (Child must be given information on entry to boot camp centre) places an obligation on the boot camp centre provider to ensure that the child is given a document upon entry into the boot camp centre outlining the rules of the centre, the child's rights and responsibilities under the youth justice principles, complaint procedures, access to legal services, the processes for reporting harm and any other appropriate information. In order to ensure that the child understands this information, the boot camp centre provider must explain the document orally and in a way and extent that is reasonable, having regard to the child's age and ability to understand.

Section 282F (Obligation to report harm to children in boot camp centres) is inserted to place an obligation upon a boot camp centre employee to immediately report harm or suspected harm (regardless of how that harm was caused) to the chief executive while the child is participating in the residential phase of the boot camp program. A maximum penalty is imposed of 20 penalty units for failure to comply. The new section also provides that it is a reasonable excuse for an employee not to report a matter if it might tend to incriminate the employee.

The new section 282G (Chief executive may authorise treatment) is inserted to enable the chief executive to authorise medical treatment where that treatment requires consent of a parent of the child and the chief

executive is unable, despite reasonable inquiries, to locate the parent. It must also be considered detrimental to the child's health to delay treatment.

Section 282H (Helping child gain access to lawyer) is inserted to place an obligation upon the boot camp centre provider to ensure a child, who requests access to a lawyer is provided with reasonable assistance.

The new section 282I (Protection of lawyer representing child) ensures that where a lawyer representing a child is entitled to access the child at the boot camp centre, that the boot camp centre employee allows the lawyer to conduct an interview in privacy. In addition, any correspondence from the lawyer to the child is managed in a confidential manner.

Section 282J (Complaints generally) is inserted to so that a child or a parent of child who is participating in the boot camp program is able to make a complaint about a matter which affects the child. The section provides that the chief executive must issue written instructions on the way in which a complaint will be dealt. The child is able to complain to a community visitor, which will be arranged under administrative arrangements with the Commission for Children, Young People and Child Guardian. The chief executive is not obliged, however, to deal with a complaint if it is considered that that complaint is trivial or made only to cause annoyance.

*Clause 41* amends section 284 (Definitions for pt 9) to include a definition of a 'coordinator'.

*Clause 42* inserts paragraph (h) and (i) into section 285 (When does someone gain information through involvement in the administration of this Act) to ensure that the provisions of Part 9 apply to a boot camp provider.

*Clause 43* omits section 295 (Disclosure by police of information about cautions and youth justice conferences and agreements) subsection (g) as the role of the coordinator no longer exists under the Bill.

*Clause 44* Amends section 296 (Disclosure by coordinator or convenor of information about conference agreements) by removing the reference to 'coordinator' in the heading and in subsection 2. Sub clause 3 removes the reference to 'court' in subsection 2(a) as court referred conferencing has been removed under the Bill.

*Clause 45* inserts Part 11, division 10 (Transitional provisions for Youth Justice (Boot Camp Orders) Amendment Act 2012) and new sections 354 to 358 inclusive.

The new section 354 provides for the definitions of ‘amending act’ and ‘commencement’.

The new section 355 (Application of provisions about destruction of identifying particulars taken under court order) applies to the destruction of identifying particulars under section 27. Section 27(5) will continue to apply upon commencement of the amending Act where an offence has been referred by a court to conference under section 161(3)(a)(i).

The new section 356 (Application of provisions about referral by court for a conference) makes it clear that where a conference has been referred to a coordinator by a court for an offence under section 161 before commencement, Part 7 division 2 as it was in force before commencement continues to apply as if the amending Act had not commenced. Sub clause 3 provides that where there is a reference to ‘coordinator’ under Part 7 division 2, it is taken to be a reference to the chief executive and that the chief executive may exercise any of the functions, powers or obligations of the coordinator.

The new section 357 (Application of provisions about boot camp) provides that the court will be able to make a boot camp order after commencement. The option of the boot camp order is available to the court upon commencement regardless of whether the offence had been committed or proceedings had commenced prior to this time.

*Clause 46* amends Schedule 2 (Regulation making power) to ensure that the regulation making powers for boot camp service providers is permitted wherever there is a regulation making power for a detention centre. In addition, subclause 5 is amended to include that the regulation making power is extended to provide for the areas to be prescribed for the purposes of eligibility for a boot camp order.

*Clause 47* omits the definitions in Schedule 4 (Dictionary) for ‘conference before sentence’, ‘coordinator’, ‘indefinite referral’ and ‘referring court’. Sub clauses 2, 3, 4 and 5 inserts relevant definitions into Schedule 4 (Dictionary) for the purposes of the operation of the boot camp order.

*Clause 48* inserts Schedule 5 (Disqualifying offences) which contains those offences which will disqualify a child from being eligible for a boot camp order. These offences are serious violent or sexual offences which carry a penalty of a maximum term of imprisonment of life.

## **Part 3- Amendment of Anti-Discrimination Act 1991**

*Clause 49* provides that this Part amends the *Anti-Discrimination Act 1991*.

*Clause 50* inserts new sections 106B and 106C. Section 106B excludes from the operation of the Act the inclusion of a “prescribed eligibility provision” (as defined) in a “relevant policy” (as defined) or the performance of a function in connection with a “prescribed eligibility provision”. A “prescribed eligibility provision” is a provision requiring a person to have a particular citizenship or visa status to be eligible for assistance, services or support or a provision which allows for more favourable treatment of persons who have a particular citizenship or visa status in relation to eligibility. A “relevant policy” is a government policy under which people are provided with financial or other assistance, services or support and can be a policy relating to any area of activity covered by Part 4 of the *Anti-Discrimination Act 1991*.

Section 106C provides that it is not unlawful for an accommodation provider to discriminate against another person in relation to accommodation if the accommodation provider reasonably believes that the other person is using or intends to use the accommodation in connection with that person’s, or another person’s, work as a sex worker. The discrimination may involve refusing to supply accommodation, eviction of the other person or unfavourable treatment of the other person.

*Clause 51* inserts new Chapter 11, Part 3 which sets out the transitional arrangements that will apply to complaints under section 136 about alleged contraventions of the Act. Complaints made on or after the day of introduction of the Bill will be determined in accordance with the *Anti-Discrimination Act 1991* as amended by the Bill (ie the new exemptions in Chapter 2 Part 5 will apply to these complaints). This will mean that the new exemptions will apply to these complaints even if the conduct complained of occurred before the day of introduction of the Bill. The section makes it clear that the exemptions will apply to the hearing of any such complaint before the tribunal and any appeal against a decision or order made by the tribunal in relation to the complaint. The provisions in force before the day of introduction will continue to apply to complaints made before the day on which the Bill is introduced (whether or not the complaint has been accepted by the Anti-Discrimination Commissioner).

## **Part 4 - Amendment of the Fiscal Repair Amendment Bill 2012**

*Clause 52* provides that this part amends the *Fiscal Repair Amendment Act 2012*.

*Clause 53* amends section 2 which relates to commencement of sections in the Amendment Act, changing the commencement date of sections that transfer the powers of the Queensland Liquor and Gaming Commission and chief executive under the *Gaming Machine Act 1991* and *Liquor Act 1992* to a Queensland Liquor and Gaming Commissioner from 1 July 2013 to 1 January 2013.

*Clause 54* amends the heading of Part 4, Division 3 to change a reference from 1 July to 1 January.

*Clause 55* amends section 122 to change a reference from 1 July to 1 January.