Youth Justice and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the *Youth Justice and Other Legislation Amendment Act 2016.*

Policy objectives and the reasons for them

The objectives of the Bill are to:

- Close the Childrens Magistrates Court when hearing all youth justice matters under the *Childrens Court Act 1992* (the CC Act) and provide for victims or their representatives to be present in closed court;

- Increase the age at which children and young people subject to periods of detention under the *Youth Justice Act 1992* (the YJ Act) are to be transferred to adult corrections from 17 to 18 and empower a court on application, to delay a young person's transfer for up to six months; and

- Reinstate a court-referred youth justice conferencing program and expand the program to allow for increased flexibility in the delivery of restorative justice interventions as part of police-referred and court-referred conferencing.

The current provisions in the YJ Act were based on a non-evidenced policy rationale that stronger penalties and other negative consequences which hold repeat offenders more accountable for their actions will deter further offending by the small cohort of recidivist offenders responsible for a significant proportion of youth offending.

During the 2015 general election, the Government committed to repealing reforms made to the CC Act and YJ Act in 2014 (the 2014 amendments) as introduced by the former Government and effected by the *Youth Justice and Other Legislation Amendment Act 2014* (the 2014 Amendment Act). The 2014 amendments, amongst other things, opened the Childrens Magistrates Court when hearing youth justice matters involving repeat offenders and provided for the automatic transfer to adult correctional facilities of 17 year olds who had at least six months left to serve in detention.

In the lead up to the 2015 general election, the elected Government also committed to reinstate court-referred youth justice conferencing, removed by the previous Government in 2012 through the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012* (Act No. 41 of 2012) (the Boot Camp Act).

The Government's commitment to repeal the 2014 amendments and reinstate court-referred youth justice conferencing is based on a substantial body of international criminological evidence which indicates that increasing the severity of punishment is a poor means of reducing recidivism. Criminological evidence shows that it is the likelihood of being apprehended and punished for an offence, rather than the severity of that punishment, which exhibits the greatest deterrent effect on offending behaviour.

This is particularly the case with children and young people, whose neurological and cognitive development remains incomplete while they are within the age range to which the YJ Act applies. Children and young people's cognitive immaturity significantly impedes their capacity to rationally consider the long term consequences of their actions, meaning their behaviour is likely to be more impulsive and marked by poorer decision making and greater risk taking than that of adults. This places children and young people at a heightened risk of opportunistic offending, notwithstanding increases in applicable tariffs and more onerous forms of accountability for that offending.

The 2014 amendments were viewed as unduly punitive and inappropriate by the majority of stakeholders. The Legal Affairs and Community Safety Committee (LACSC) consulted widely on the 2014 amendments during its examination of the 2014 Bill. The measures implemented were not supported by any of the submitters to the Parliamentary inquiry, including the Queensland Law Society (the QLS), Bar Association of Queensland, Anti-Discrimination Commission Queensland, Queensland Council for Civil Liberties, leading church and research organisations and Amnesty International. Stakeholders, instead, urged implementation of measures to divert children and address the causes of offending. The amendments proposed in the Bill address the concerns of key stakeholders.

In reinstating youth justice conferencing, the Bill gives effect to a key restorative justice process and an effective diversionary strategy to reducing youth offending.

Evidence shows conferencing can, having regard to the right cohorts of offenders and circumstances, have a positive impact on a child or young person's likelihood of reoffending. Critically, evidence also strongly shows there are direct benefits to victims from being involved in a restorative justice process. These include a reduction in post-traumatic stress symptoms, reduction in the desire for violent revenge and a heightened level of satisfaction when compared to conventional criminal justice practices.

Research suggests restorative justice is most effectively taken up when it is legislated as a required consideration rather than on an optional basis.

Achievement of policy objectives

Youth Justice Act 1992 and Childrens Court Act 1992

The Bill achieves the Government's policy objectives by restoring affected provisions to the YJ Act and CC Act to their position prior to enactment of the 2012 and 2014 Amendment Acts, with the inclusion of new and enhanced measures. These relate to:

- New provisions for victims or their representatives to be present in closed court;

- Increasing from 17 to 18 the age at which children and young people subject to periods of detention under the YJ Act are to be transferred to adult corrections, including new powers for a court on application, to delay a young person's transfer for up to six months beyond their 18th birthday; and

- Reinstatement and expansion of the youth justice conferencing program to allow for increased flexibility in the delivery of restorative justice interventions as part of police and court-referred conferencing.

Repeal of the 2014 amendments and reinstatement and expansion of youth justice conferencing, is warranted as it draws on an evidence base of what works to address youth offending. Amendments contained in the Bill enjoy wide stakeholder support.

Corrective Services Act 2006

The Bill also inserts a consequential amendment to the *Corrective Services Act 2006* (CS Act) to provide statutory recognition of the Supreme Court decision in Coolwell v Chief Executive, Department of Justice and Attorney-General and Anor (No 2) [2015] QSC 261, that a parole order issued in relation to a prisoner in adult corrections who was sentenced under the YJ Act is a parole order for the purposes of the CS Act.

This includes provision that, the day the person would otherwise have been released on a supervised release order under the YJ Act is instead the person's parole release date for the person's term of imprisonment, subject to the CS Act.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

As part of the 2015/16 State Budget, funding amounting to $23.6 million over four years was allocated by Government for the reinstatement and enhancement of court referrals to youth justice conferencing. This funding will enable an increase in the number of conferences performed from the current level of 870 per annum to an estimated 3000 per annum.

Any implementation costs to close the Childrens Magistrates Court and increase the age at which children and young people are transferred to adult corrections will be met from within existing agency resources.

Consistency with fundamental legislative principles

The following aspects of the Bill will have limited retrospective application and therefore raise potential fundamental legislative principles (FLP) issues.

However, the changes that affect rights and liabilities which have accrued prior to commencement do so beneficially and therefore constitute a justifiable breach of fundamental legislative principles:

- Replacement part 4 division 2 of the CC Act provides for Childrens Courts hearing matters involving repeat offenders to be closed in a wider set of circumstances than at present. Its application to proceedings started before, but still on foot at the time of, commencement, will therefore not be detrimental and may be beneficial to some affected young people;

- Replacement part 8 division 2A delays the date at which a young person in detention becomes eligible to transfer to adult corrections to their 18th birthday, with an option to delay that transfer by up to a further six months. Its application to young people already in detention at commencement and to young people who committed the offence and/or were found guilty of the offence prior to commencement therefore is wholly beneficial for affected young people; and

- The application of new part 3 of the YJ Act to police referrals to conferences where guilt was acknowledged prior to commencement means affected young people will potentially be subject to a different conferencing process to the process in operation at the time of the acknowledgement. However, the inclusion of an express requirement that young people consent to a referral means affected young people will have the opportunity to consider whether participation in the adjusted process is in their best interests, meaning this limited degree of retrospectivity will not affect them detrimentally.

The following aspect of the Bill confers immunity from proceedings or prosecution and therefore raises potential FLP issues. However, adequate justification is provided:

- Although new section 40 of the YJ Act provides for an admission made during the restorative justice process by the child or young person to be inadmissible, the section is a replacement of the current section and reduces the scope of the immunity provided. In its current form, the immunity covers all admissions and anybody participating in the process. The immunity has now been limited to only the child offender and only their admission for the relevant offence that was referred to the restorative justice process, and is needed to encourage genuine participation and frank and open disclosures by the child during the process.

The following aspect of the Bill confers administrative power that affects rights and liberties of individuals and therefore raises potential FLP issues. However, the administrative power is sufficiently defined and subject to appropriate review:

- The transfer provisions detailed in new section 276C are based on the principle that it is in the best interests of the welfare of all detainees at a detention centre that persons who are 18 years or older are not detained at the centre. There is a need to consider the safety of all detainees, not preferencing the needs of one person over the needs of others. The transfer provision is subject to the prisoner being able to apply to the court for a temporary delay of their transfer if the court is satisfied of particular matters.

Consultation

The Bill was developed through the release of an Issues Paper (January 2016) to targeted stakeholders which identified issues and legislative options for consideration under the Bill. Submissions were received from 24 respondents from legal, academic, community and youth groups and government agencies. Analysis of responses showed that 81% supported the measures in full and only 3% were opposed to one or more of the proposed measures.

In particular, of those respondents who expressed a view on the individual measures:

- 92% supported permitting victims or their representatives to be present in a closed court;
- 77% of respondents who expressed a view support the transfer of children and young people subject to lengthy periods of detention from youth detention centres to corrective services facilities on turning 18; and
- 86% supported the reintroduction of court referrals to youth justice conferencing, with no stakeholders raising unequivocal opposition to proposed measures.

The Bill is reflective of both community and stakeholder feedback received in response to the former government's *Safer Streets Crime Action Plan—Youth Justice* publically released survey and the Legal Affairs and Community Safety Parliamentary Committee (LACSPC) inquiry into the 2014 Bill.

Results of this consultation showed a lack of support for the 2014 reforms with diversionary measures and addressing the causes of offending instead seen as being more effective in reducing youth offending.

Community and legal sector representatives, including the Queensland Law Society and Youth Advocacy Centre, have continued to make submissions to the Government reiterating their concerns and advocating for the removal of the 2014 amendments.

In finalising the Bill, the Government approved the release of an exposure draft to targeted stakeholders, with stakeholder feedback considered and proposed changes adopted where appropriate.

Consistency with legislation of other jurisdictions

Provisions contained in the Bill which allow for the transfer of young people to adult correctional facilities, are specific to the State of Queensland.

The Bill's emphasis on victim participation in youth justice proceedings is reflective of other jurisdictional practices.

Core aspects of the restorative justice provisions contained within the Bill are consistent with other Australian jurisdictions and international practices, with diversionary and sentenced provisions, specific to the State of Queensland.

Notes on provisions

Part 1 – Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Youth Justice and Other Legislation Amendment Act 2016*.

Part 2 – Amendment of Childrens Court Act 1992

Clause 2 provides that the Act amends the *Childrens Court Act 1992* (CC Act).

Clause 3 omits the definitions: child's community, community justice group, first-time offender, interested person, non-youth justice matter, relevant person and youth justice matter, from section 3 of the CC Act, which are no longer required due to insertion of new section 20.

Clause 4 omits part 4, division 1, heading (Constitution and sitting times) from the CC Act. Part 4 division 2 of the CC Act prescribes the circumstances in which the lower Childrens Court must be open and closed when hearing youth justice matters and is replaced by new section 20 of the CC Act. Consequently, part 4 no longer requires separation into two divisions.

Clause 5 inserts new section 20 of the CC Act, which closes the lower Childrens Court when hearing matters under the *Youth Justice Act 1992* (YJ Act).

Subsection 20(1) – Consistent with the approach taken prior to the 2014 amendments, the court must exclude from the court any person who is not the (a) child, (b) a parent or other adult member of the child's family, (d) a witness giving evidence, (e) if the witness is a complainant within the meaning of the *Criminal Law (Sexual Offences) Act 1978* – a person whose presence will provide emotional support to the witness, (f) a party or person representing a party to the proceeding, (g) a representative of the chief executive of the department, (h) if the child is an Aboriginal or Torres Strait Islander person – (i) a representative of an organisation whose principal purpose is the provision of welfare services to Aboriginal and Torres Strait Islander children and families or (ii) a representative of the community justice group in the child's community who is to make submissions that are relevant to sentencing the child or (i) an infant or young child in the care of an adult who may be present in the room.

To alleviate some of the alienation and dissatisfaction that victims of crime previously experienced with the lower court process and to contribute to victims' capacity to observe the process of justice, subsection 20(1)(c) introduces the victim of the alleged offence committed by the child, and their representative, to the list of persons who cannot be excluded from a closed court. The provision is limited to proceedings against a child under the YJ Act for an offence or for the sentencing of the child for an offence. It is not intended that the scope of this provision extends to proceedings

beyond sentence, for example, an application by the child for a temporary delay of transfer under new section 276D.

Subsection 20(2) – the court must exclude a victim of the alleged offence committed by the child, or their representative if the court considers their presence would be prejudicial to the interests of the child.

Subsection 20(3) states that the court may also permit to be present in the room a person who is engaged in a course of professional study relevant to the operation of the court or research approved by the chief executive of the department or a person who, in the court's opinion, will assist the court. For a criminal proceeding against a child the court may also permit one or more representative of mass media or people who, in the courts opinion, have a proper interest in the proceeding, if the court is satisfied that the person's presence would not be prejudicial to the interests of the child.

Subsection 20(4) – Consistent with former section 21B(3) and as per the approach taken prior to the 2014 amendments, subsection 20(4) states that the operation of section 20 is subject to any order made or that may be made, excluding any person (including a defendant) from the place in which the court is sitting, or permitting any person to be present, while a special witness within the meaning of section 21A of the *Evidence Act 1977* is giving evidence.

Subsection 20(5) confirms that section 20 applies even if the court's jurisdiction is being exercised conjointly with another jurisdiction, for example, where a matter concerns both the YJ Act and another Act. The court is empowered with discretion under subsections 20(2) and (3) to remove persons from the place in which the court is sitting if their presence would be prejudicial to the interests of the child, for example, because the child's privacy would be adversely affected. Section 20 does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment and as such, youth justice proceedings that are heard under the jurisdiction of the higher Childrens Court of Queensland (CCQ) remain open. The CCQ was not affected by the 2014 amendments and has historically remained open with note of the more serious criminal matters that they preside over and recognition of the increased relevance of those proceedings being open to the public in the interests of justice.

Subsection 20(6) defines a child's community as the child's Aboriginal or Torres Strait Islander community, whether it is an urban community, rural community or a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act* 1991.

Community justice group, for a child, is defined as (a) the community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 4, for the child's community, or (b) a group of persons within the child's community (other than a department of government) that is involved in the provision of (i) information to a court about Aboriginal or Torres Strait Islander offenders, (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders or (iii) other activities

relating to local justice issues, or (c) a group of persons made up of the elders or other respected persons of the child's community.

Inclusion of the community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 4, for the child's community in the definition of community justice group ensures consistency with the term as already defined in the *Penalties and Sentences Act 1992* and YJ Act.

A definition is provided for criminal proceedings.

Clause 6 omits part 4, division 2 (Closed and open proceedings) from the CC Act. Part 4 division 2 of the CC Act prescribes the circumstances in which the lower Childrens Court must be open and closed when hearing youth justice matters and is replaced by new section 20 of the CC Act.

Part 3 – Amendment of Corrective Services Act 2006

Clause 7 provides that the Act amends the *Corrective Services Act 2006* (CS Act).

Clause 8 omits the former and inserts a new definition of parole order under Schedule 4 of the CS Act, including the insertion of an editor's note clarifying that provisions in the CS Act that apply to parole orders also apply to statutory parole orders established under sections 276E and 276F of the YJ Act.

These sections apply when a person is detained at a corrective services facility for an offence dealt with under the YJ Act and state that the person is a prisoner subject to the CS Act. The person is to be paroled under the CS Act on the day on which they would have been released on a supervised release order under section 227 of the YJ Act, subject to the provisions in the CS Act that apply to parole orders.

Part 4 – Amendment of Youth Justice Act 1992

Clause 9 provides that the Act amends the *Youth Justice Act 1992* (YJ Act).

Clause 10 replaces reference in subsection 11(1)(c) to 'a conference' with 'the chief executive for a restorative justice process'. This is a consequential amendment to incorporate the umbrella term 'restorative justice process', which reflects the expansion of referrals to include both a conference and in limited circumstances, an alternative diversion program if a conference is unable to be convened.

Clause 11 states that a police officer is to administer a caution if directed by a court under section 21(3)(b). This amendment does not create new or impose greater obligations on the Queensland Police Service. It has been included to clarify section 21(3)(b) which was otherwise silent on this matter.

Clause 12 omits part 2, division 3, heading (Reference by police officer for a conference) from the YJ Act and replaces it with the heading Division 3 Referral for restorative justice process. This amendment reflects the use of the umbrella term

'restorative justice process' which includes a conference and in limited circumstances, an alternative diversion program if a conference is unable to be convened.

Clause 13 replaces sections 22 and 23 with provisions that establish the police diversion referral, prescribe when a police officer may refer an offence for a restorative justice process and detail the effect of a restorative justice agreement being made.

Subsection 22(1) authorises a police officer to refer an offence for a restorative justice process if a child admits committing an offence to a police officer. The need for a child to take responsibility for their action is central to a restorative justice approach, with note that denial by the child to committing the offence during the restorative justice process constitutes reason to return a referral under new section 32.

Subsection 22(2) states that, instead of bringing the child before a court for the offence, the police officer may, by written notice given to the chief executive, refer the offence to the chief executive for a restorative justice process.

Subsection 22(3) outlines the circumstances that must exist for a police officer to make a referral, namely, that (a) the child indicates willingness to comply with the referral and (b) having regard to the deciding factors the officer considers that (i) a caution is inappropriate and (ii) a proceeding for the offence would be appropriate if the referral were not made however (iii) the referral is a more appropriate way of dealing with the offence than starting a proceeding.

Subsection 22(4) sets out the deciding factors that a police officer must have regard to when referring an offence to the chief executive for a restorative justice process. The deciding factors are consistent with those that a court must have regard when making a court diversion referral or sentence based referral.

Subsection 22(5) obliges the police officer to inform the child generally of the restorative justice process and potential consequences for the child if he or she fails to properly participate in the process. This is a new requirement inserted to achieve procedural fairness. It is designed to ensure that the child, who must indicate willingness to comply with the process for police to make the referral, is informed as to what they are agreeing to by accepting the referral. This amendment does not impose greater obligations on the Queensland Police Service beyond what is currently standard practice. Provision of detailed information to the child about the process will remain the responsibility of the chief executive once the referral has been received.

Subsection 22(6) provides that, if the referral is accepted by the chief executive, the chief executive must give written notice of the acceptance to the police officer and the child. This is a new requirement inserted to achieve procedural fairness.

Subsection 23(1) states that if a police officer refers an offence committed by a child to the chief executive for a restorative justice process and a restorative justice agreement is made as a consequence of the referral, subsection 23(2) applies.

Subsection 23(2) provides that the child is not liable to be prosecuted for the offence unless otherwise provided under the YJ Act. An example of how an offence may

otherwise be dealt with is new section 24, which details the exercise of police powers if a referral is unsuccessful or if a child contravenes a conference agreement.

Clause 14 amends the heading to section 24 (Powers of police officer if referral is unsuccessful or if child contravenes conference agreement) by inserting the phrase 'restorative justice' in place of 'conference'. Use of the umbrella term 'restorative justice' reflects the expansion of referrals to include both a conference and in limited circumstances, an alternative diversion program if a conference is unable to be convened.

Subclause (2) restructures subsection 24(1) and includes reference to the new section that enables the chief executive to return a referral in certain circumstances being section 32(1).

Subclause (3) replaces references in subsections 24(2)(b) and (c) to 'conference' with 'restorative justice process' and 'restorative justice agreement'. Use of the umbrella term 'restorative justice' reflects the expansion of referrals to include both a conference and in limited circumstances, an alternative diversion program if a conference is unable to be convened.

Subclause (4) replaces reference in subsections 24(3)(c) to 'conference' with 'restorative justice process'. Use of the umbrella term 'restorative justice' reflects the expansion of referrals to include both a conference and in limited circumstances, an alternative diversion program if a conference is unable to be convened.

Clause 15 inserts new section 24A, which establishes the court referral to a police diversion referral. The section allows the Childrens Court to dismiss a charge and refer an offence to a restorative justice process as though the referral was made by a police officer under section 22.

Subsection 24A(1) establishes that, if a child pleads guilty before a Childrens Court to a charge made against the child by a police officer, the court may dismiss the charge instead of accepting the plea of guilty. This provision applies if application is made for the dismissal by or on behalf of the child and the court is satisfied the offence should have been referred to the chief executive for a restorative justice process under section 22, regardless of whether or not the child admitted committing the offence to the police officer.

The requirement that the child pleads guilty is consistent with the diversionary nature of this referral. This is a suitable option where the court considers a child or young person should be given an opportunity to be diverted from a justice system response, but a police officer did not exercise that discretion or the child's refusal to be interviewed by police or failure or refusal to admit guilt during the interview, prevented police from making a diversionary referral. This strategy, aimed at reducing the risk of children and young people being unnecessarily criminalised through being further entrenched in the formal criminal justice system, is fundamental to addressing the overrepresentation of Aboriginal and Torres Strait Islander young people in the youth justice system, who are generally reluctant to cooperate with the police process.

Subsection 24A(2) allows a court which dismisses a charge, to refer the offence to the chief executive for a restorative justice process.

Subsection 24A(3) clarifies that the dismissal of the charge does not prevent a police officer starting a proceeding against the child for the offence or a court sentencing the child for the offence if the chief executive returns the referral under section 32(1) or the child fails to comply with a restorative justice agreement made as a consequence of the referral.

Subsection 24A(4) establishes that, although the referral was made by a court, for the purposes of part 3, it is taken to have been made by a police officer. Part 3 prescribes the procedural framework for police-referrals and court-referrals to restorative justice processes. The referral is characterised as a police diversion referral to reflect the court's assessment that the matter would have been more appropriately dealt with by a police referral and ensure that, in that circumstance, the child does not have unnecessary contact with the court system. Over time, this approach will encourage greater consistency in the use of diversionary options by courts and police.

The reasons why a referral may be returned are not limited to increased criminality and an unwillingness of the child to participate in a restorative justice process, making the return of unsuccessful referrals to police a justified approach. Family and personal circumstances, for example, a child relocating due to domestic violence and being uncontactable by the chief executive, may trigger a return of the referral, in which case it is more appropriate for the matter to be returned to police for their further action. The procedure set out in the new s24A differs from the existing power of the court pursuant to s21 of the Act, which enables the court to dismiss a charge outright. Under s24A, the Police retain their capacity and discretion to deal with the matter further following an unsuccessful referral.

If a matter is brought back to court by police following an unsuccessful referral, the chief executive will provide relevant information in relation to the failed referral to the court to make an informed decision. This would include where the chief executive considers it would not be appropriate to pursue further diversionary processes.

Clause 16 replaces existing part 3 (Youth justice conferences) with a new part (Restorative justice processes) containing four divisions, which prescribe a procedural framework for police and court-referrals to restorative justice processes.

Division 1 Preliminary

Section 30 declares that the object of this part is to provide for the use of a restorative justice process for a child who commits an offence. 'Restorative justice process' is new terminology and replaces the previously used 'conference'. The term reflects the expansion of referrals to include both a conference and in limited circumstances, an alternative diversion program if a conference is unable to be convened.

Subsection 31(1) establishes that part 3 applies if a police officer or a court refers an offence to the chief executive for a restorative justice process and sets up the term

'referring authority' as a reference to the entity (police officer or a court) that made the referral.

Subsection 31(2) declares that the restorative justice process is to be a conference.

Subsection 31(3) provides that the restorative justice process is to be an alternative diversion program if the referral is made by a police officer under section 22 or made by a court under section 24A or 164 and a conference cannot be convened for any reason other than (a) the chief executive being unable to contact the child after reasonable enquires or (b) the child being unwilling to participate in the conference. This allows a further opportunity for police and court diversion referrals, which would have otherwise been frustrated, to be effectively discharged. The primary reason for a conference not being convened (excluding unwillingness to participate by the child) is unavailability of a primary victim, or a person who is able to represent the victim's perspective in a meaningful way. The alternative diversion program will alleviate this limitation.

Subsection 32(1) authorises the chief executive to, by written notice to the referring authority, return a referral in certain prescribed circumstances. This includes subsection 32(1)(c) which states that a referral may be returned if the chief executive considers victim participation to be necessary for achievement of a meaningful and effective process, however the victim does not wish to participate or cannot be located after reasonable inquiries.

Subsection 32(2) specifies that the notice must state the reasons for returning the referral and the reasons may be considered by a court in any later proceeding for sentencing the child for the underlying offence.

Subsection 32(3) obliges the referring authority to make reasonable efforts to inform the child that the referral has been returned. This is a new requirement inserted to achieve procedural fairness.

Division 2 Conferences

Section 33 declares that the object of this division is to provide for the use of a conference to allow a child, who commits an offence, and other concerned persons to consider or deal with the offence in a way that benefits all concerned.

Subsection 34(1) lists the persons who are entitled to participate in the conference.

Subsection 34(2) obliges the referring authority to provide details of a victim of the offence to the chief executive to ensure that a victim of the offence is informed of his or her entitlement to participate in the conference.

Subsection 34(3) provides that, if the child is an Aboriginal or Torres Strait Islander person from an Aboriginal or Torres Strait Islander community, the convenor must consider inviting to attend the conference either or both of the following: (a) a respected person of the community or, (b) if there is a community justice group in the community, a representative of the community justice group. That person would be entitled to attend under section 34(1)(h).

Subsection 35(1) establishes the minimum participants for a conference to proceed. The conference may be convened if at least the child and the convenor attend and there is a degree of victim participation in the conference through (i) the attendance of the victim or their representative or (ii) use of pre-recorded communication recorded by the victim for use in the conference or (iii) a representative of an organisation that advocates on behalf of victims of crime. Victim participation is fundamental to the delivery of a meaningful and effective conference. The primary victim, who was directly impacted by the offence relevant to the conference, is not a mandatory participant for a conference to proceed. This is to allow conferences to reasonably be convened having regard to victim unavailability. An effective victim perspective leading to delivery of a meaningful conference can still be achieved through indirect means, for example, attendance by a representative of the victim (i.e. their family member), victim impacts communicated by letter, video or audio recording, otherwise a community representative from a victims of crime organisation or the Queensland Police Service. When a direct victim is unavailable or unwilling to participate, these indirect means are utilised to the greatest extent possible to ensure that a tangible victim perspective remains central to the conference process.

Subsection 35(2) states that the convenor is responsible for convening the conference and must be independent of the circumstances of the offence.

Subsection 35(3) declares that the conference must be directed towards making a conference agreement.

Subsection 35(4) obliges the convenor to ensure that the child is informed of the right to obtain legal advice and has reasonable information about how to obtain legal advice and a reasonable opportunity to do so if they are not legally represented at the conference.

Subsection 35(5) declares that the conference ends when a conference agreement is made or the convenor brings the conference to an end because (a) the child fails to attend the conference as required, (b) the child denies committing the offence at the conference, (c) the convenor concludes that a participant's conduct or failure will result in a conference agreement being unlikely to be made or (d) the convenor concludes a conference agreement is unlikely to be made within a time the convenor considers appropriate.

Subsection 35(6) enables the convenor to convene another conference if the conference ends without a conference agreement being reached but the convenor considers it is worthwhile persisting with efforts to make a conference agreement.

Subsection 36(1) defines a conference agreement as an agreement reached at the conference in which a child admits committing the offence and in which the child undertakes to address the harm caused by the child committing the offence. A conference agreement is included under the definition of a restorative justice agreement [Schedule 4 dictionary]. The term restorative justice agreement is used throughout the new provisions because it, like restorative justice process, is an umbrella term that encompasses agreements reached in relation to both conferences and an alternative diversion program.

Subsection 36(2) sets out that the conference agreement must be in the approved form and be agreed to and signed by the child, the convenor, a representative of the commissioner of the police service (if they participate in the conference) and the victim of the offence (if they participate in the conference). A key feature of the new framework is the shift away from requiring that a representative of the commissioner of the police service sign every conference agreement, which resulted in the need for a police officer to attend all conferences. This amendment reduces the burden on police to attend conferences where their participation is not considered necessary or likely to add to the process. A note is included that provides an example of when the conference agreement might be utilised by a court.

Subsection 36(3) provides a safeguard that the conference agreement may not provide for the child to be treated more severely for the offence than if the child were sentenced by a court, or in a way contravening the sentencing principles in section 150. If the conference agreement requires the child to perform unpaid community service or graffiti removal, the agreed hours for performing the service must not be more onerous than the limits set under sections 175(1)(e) and 176A(3), respectively.

Subsection 36(4) states that a copy of the conference agreement must immediately be given to each person who signed the agreement.

Subsection 36(5) declares that the conference agreement may contain a requirement that the child must comply with outside the State, for example, a conference agreement may require the child to perform voluntary work for a charity or attend a substance use assessment or program that is located outside the State.

Subsection 37(1) establishes that this section applies if the chief executive considers that the conference agreement is or becomes unworkable, including, for example, because compliance with the agreement has become impossible or unsafe. A conference agreement may, for example, become impossible because a charity does not allow the child to perform previously agreed voluntary work or because a substance use assessment or program no longer operates.

Subsection 37(2) authorises the chief executive, if the child agrees, to amend the conference agreement to the extent necessary to make the agreement workable.

Subsection 37(3) obliges the chief executive to take reasonable steps to find out, and give effect to, the views of each participant who signed the agreement in deciding how to amend the conference agreement.

Subsection 37(4) declares that the amended conference agreement replaces the original agreement and takes effect from its amendment by the chief executive.

Subsection 37(5) obliges the chief executive to make reasonable efforts to give a copy of the amendment to each participant who signed the agreement after amending the conference agreement. This is a new requirement inserted to achieve procedural fairness.

Division 3 Alternative diversion programs

Subsection 38(1) defines an alternative diversion program as a program, agreed to by the chief executive and the child and involves the child participating in any of the following to address the child's behaviour: (a) remedial actions, (b) activities intended to strengthen the child's relationship with the child's family and community and (c) educational programs. Family related issues and disengagement from education are key risk factors for youth offending, with alternative diversion programs to target these underlying causes to reduce risk of further offending by a child or young person.

Subsection 38(2) specifies that the alternative diversion program must be designed to assist the child to understand the harm caused by their behaviour and allow the child an opportunity to take responsibility for the offence committed by the child. A suite of evidence based programs are to be made available by the Government agency with lead responsibility for statutory youth justice services. It is not intended for development or delivery of these programs to impact upon the resources of the Queensland Police Service.

Subsection 38(3) provides a safeguard that the program may not provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way contravening the sentencing principles in section 150.

Subsection 38(4) states that the program must be in writing and be signed by the child.

Subsection 38(5) requires the chief executive to give the referring authority a copy of the signed program. This mechanism ensures that the referring authority is kept informed on how the matter was dealt with and ensures police and the court remain informed about the types of programs being delivered to children and young people.

Division 4 General

Subsection 39(1) declares that a convenor is responsible for convening a conference.

Subsection 39(2) allows the chief executive to approve appropriately qualified persons as convenors.

Subsection 39(3) authorises a convenor with all of the powers necessary to perform the responsibilities of a convenor and conferred on the convenor under this Act or another Act.

Subsection 40(1) provides a safeguard to a child who completes their obligations under a restorative justice agreement. An admission about committing the relevant offence, made by a child while participating in a restorative justice process as an offender, is inadmissible in any proceeding.

Subsection 40(2) extends the safeguard established by subsection 40(1) to any written material or other correspondence made for the purpose of the restorative justice process, for example, a written apology given as a requirement of a conference agreement. Further, actions of the child, done for the purpose of the restorative

justice process, that make evident that the child committed the relevant offence are also inadmissible in any proceeding.

Subsection 40(3) limits the scope of the protection conferred by subsection 40(1) if the child agrees to the admission of the evidence, or for a proceeding under part 7, division 2. Part 7, division 2 establishes restorative justice referrals before a court's sentencing of a child. For those referrals, the child's guilt must be recorded for the child to be eligible for a referral. Any further admission made while participating in a restorative justice process may be a relevant consideration in sentencing the child, therefore the protection offered by subsection 40(1) is only relevant to referrals made under this part, which do not require a child's guilt to be recorded by a court.

Subsection 40(4) defines relevant offence, in relation to a restorative justice process, as the offence to which the process relates.

Clause 17 amends section 74 (Chief executive's right of audience generally) to omit subsection 74(3)(e) and renumber 74(3)(f) as 74(3)(e). Subsection 74(3)(e) refers to when a court may order that an open court be closed. Omission of this provision is consequential of new section 20 which closes proceedings in the lower Childrens Court.

Clause 18 amends section 138 (Dealing with offender held in corrective services facility).

Subclause 1 omits the former and inserts new subsection 138(6) to 138(8).

Subsection 138(6) provides that, for an offender being held at a corrective services facility, the person is (a) liable to serve a term of imprisonment equal to the period of detention to which the offender is sentenced for a child offence, (b) taken to be a prisoner subject to the *Corrective Services Act 2006*, (c) any rights, liberties or immunities of the person as a detainee end and are not preserved, transferred or otherwise applicable for the person as a prisoner and (d) the day the person would otherwise have been released under section 227, for the period of detention, is the day the person is to be released on parole under the *Corrective Services Act 2006*.

Subsection 138(7) makes clear that the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the statutory parole order) and the provisions of that Act applying to parole orders also apply to the statutory parole order.

Subclause 2 consequentially renumbers subsection 138(9) as 138(8).

Clause 19 amends section 139 (Application to be held in detention centre) by replacing reference to 'order' in subsection 139(1)(b)(ii) with 'transfer'. This corrects an anomaly in that the Act does not provide for an order to be made in this circumstance.

Clause 20 consequentially amends section 147 (Use of evidence of cautions and conferences in deciding issue of criminal responsibility) by replacing 'conference'

with 'restorative justice agreements' in the section 147 heading and replacing 'conference agreement' in section 147 with 'restorative justice agreement'.

Clause 21 amends section 154 (Finding of guilt as child may be disclosed while a child) by inserting new section 154(3).

The new subsection 154(3) provides that subsection 154(1) does not apply to a finding of guilt against a child by a court for an offence if the offence was referred to the chief executive for a restorative justice process under section 163(1)(d)(i) and a restorative justice agreement was made as a consequence of the referral. A referral under subsection 163(1)(d)(i) is a court diversion referral, a prerequisite of which is that the child enters a plea of guilty for an offence. This provision ensures that a finding of guilt against a child by a court for an offence, whether or not a conviction has been recorded, does not form part of the criminal history of the child to which regard may be had by a court that subsequently sentences the child for any further offence as a child. This mechanism, which is limited to the court diversion referral, provides incentive for a child to enter a plea of guilty and agree to a referral to a restorative justice process.

Clause 22 amends section 160 (Copy of court order or decision to be given to child, parents etc) by inserting new sections 160(1)(c) and (d) and renumbering existing 160(1)(c) as 160(1)(e). Section 160 prescribes that a court that makes an order or decision to which section 160 applies must cause the order or decision to be promptly recorded in writing and a copy given to the child, their parent and the chief executive.

New subsections 160(1)(c) and (d) provide that a decision to dismiss a charge under section 24A(1) for the referral of an offence to the chief executive for a restorative justice process and a referral of an offence to the chief executive for a restorative justice process under section 163(1)(d)(i) are decisions to which section 160 apply.

Clause 23 inserts new part 7, division 2 (Restorative justice referrals before sentencing).

Section 161 provides the following definitions for Division 2: *Child*, in relation to a referral, means the child to which the referral relates. *Court diversion referral* is defined in subsection 163(1)(d)(i). *Offence*, in relation to a referral, means the offence to which the referral relates.

Section 162 prescribes when a court must consider making a court diversion referral or presentence referral.

Subsection 162(1) establishes the court diversion referral and provides that, if a child enters a plea of guilty for an offence in a proceeding before a court, the court must consider referring the offence to the chief executive for a restorative justice process instead of sentencing the child. This option, which represents an alternative to sentencing a child or young person, is similar in nature and consequence to the indefinite referral that was available prior to the removal of court-referred conferencing in 2012.

Subsection 162(2) establishes the presentence referral and provides that, if a finding of guilt for an offence is made against a child before a court, the court must consider referring the offence to the chief executive for a restorative justice process to help the court make an appropriate sentence order. This option is similar in nature and consequence to the presentence referral that was available prior to the removal of court-referred conferencing in 2012.

Section 163 authorises the court to make a restorative justice referral in certain circumstances.

Subsection 163(1) allows the court to, by notice given to the chief executive, refer an offence to the chief executive for a restorative justice process if (a) the court considers the child is informed of and understands, the process, (b) the child indicates willingness to comply with the referral, (c) the court is satisfied that the child is a suitable person to participate in a restorative justice process, and (d) having regard to the deciding factors, the court considers the referral would (i) allow the offence to be appropriately dealt with without making a sentence order (this option constitutes a court diversion referral) or (ii) help the court make an appropriate community based order or detention order (this option constitutes a presentence referral). Further, the court, (e) having regard to a submission by the chief executive about the appropriateness of the offence for a referral, considers the referral is appropriate in the circumstances.

Subsection 163(2) sets out the deciding factors that a court must have regard to when referring an offence to the chief executive for a restorative justice process. The list of deciding factors is consistent with those that a police officer must have regard to under section 22(4) when referring an offence to a restorative justice process.

Section 164 gives effect to court diversion referrals.

Subsection 164(1) provides that this section applies if the court makes a court diversion referral.

Subsection 164(2) declares that the making of the referral brings the court proceeding for the offence to an end and the child is not liable to be further prosecuted for the offence unless the chief executive returns the referral under section 32(1) or the chief executive advises the court's proper officer that the child failed to comply with a restorative justice agreement made as a consequence of the referral. New subsection 154(2) ensures that in this instance, a finding of guilt against the child by a court for the offence does not form part of the criminal history of the child to which regard may be had by a court that subsequently sentences the child for any further offence as a child.

Subsection 164(3) provides that, if the chief executive returns the referral under section 32(1), the court's proper officer (a) must bring the charge for the offence back before the court for sentencing and (b) in sentencing the child, the court must not have regard to the referral being returned.

Subsection 164(4) provides that, if the chief executive advises the court's proper officer that the child failed to comply with a restorative justice agreement made as a

consequence of the referral, the court's proper officer must bring the charge for the offence back on before the court for sentencing and the court must either (a) take no further action, (b) allow the child a further opportunity to comply with the agreement or (c) sentence the child for the offence.

Subsection 164(5) provides that, if the charge for the offence is brought back on before the court for sentencing, the court's proper officer must give the child and the chief executive notice that the proceeding for the offence is to be heard by the court on a stated day.

Subsection 164(6) requires the notice to include a warning that if the child fails to appear before the court in compliance with the notice the court may issue a warrant for the child's arrest.

Subsection 164(7) states that the notice restarts the proceeding from when it ended and the child is liable to be sentenced for the offence.

Subsection 164(8) authorises the court to issue a warrant for the child's arrest if the child fails to appear before the court in compliance with the notice.

Subsection 164(9) provides that, if subsection 164(4) applies, the court proceeding for the offence is brought to an end and the child is not liable to be further prosecuted for the offence.

Section 165 gives effect to presentence referrals.

Subsection 165(1) provides that this section applies if the court makes a presentence referral.

Subsection 165(2) allows the court, on making the referral, to give the directions it considers appropriate to the child or the chief executive and adjourn the proceeding for the offence.

Subsection 165(3) obliges the court to proceed with sentencing the child for the offence if the chief executive returns the referral under section 32(1).

Subsection 165(4) obliges the chief executive, if a restorative justice agreement is made as a consequence of the referral, to give the court a copy of the agreement and inform the court of any obligations of the child under the agreement that have already been performed.

Subsection 165(5) obliges the court, if a restorative justice agreement is given to the court under subsection 165(4), to give a copy of the agreement as soon as practicable (a) to the prosecution and, (b) if the child is represented by a lawyer, the lawyer. The communication of the conference agreement obligations to parties, who have an interest in their detail, will allow for their relevant preparation for the child's sentence proceeding.

Subsection 165(6) requires the court, in sentencing the child for the offence, to have regard to the (a) child's participation in the relevant restorative justice process, (b) the

child's obligations under the restorative justice agreement, (c) anything done by the child under the restorative justice agreement and (d) any information provided by the chief executive about sentencing the child.

Clause 24 amends section 175 (Sentence orders—general) to create a new restorative justice order. The order can be utilised to make the performance of conference agreements made under presentence or sentence based referrals, enforceable, with a clear breach process.

Subclause (1) inserts new subsections 175(1)(da) and (db).

Subsection 175(1)(da) provides that, if a restorative justice agreement is made as a consequence of a presentence referral relating to the child, the court may order that the child perform his or her obligations under the agreement.

Subsection 175(1)(db) provides that the court may order that the child participate in a restorative justice process as directed by the chief executive. This referral option constitutes a sentence based referral and is a key enhancement of the new referral framework. The YJ Act has not previously provided for the court to make a referral after sentence, with this provision reflective of the relevance and importance in being able to defer engagement in a restorative justice process until a child is assessed as being appropriately ready to participate and for restorative justice benefits to best be achieved. This option also provides the opportunity for victims who may not have initially been willing or ready to participate in a presentence process and who subsequently, with regard to passage of time and revised readiness, express a willingness to participate and obtain benefits of a restorative justice process.

Subclause (2) inserts new subsection 175(2A) which provides that for subsection 175(1)(db), the offence the child is found guilty of is taken to be referred by the court to the chief executive for a restorative justice process.

Clause 25 inserts new section 178C after existing section 178B.

Section 178C enables the court to make a restorative justice order in conjunction with other sentence order.

Subsection 178C(1) provides that this section applies if a court makes, for a single offence, a restorative justice order and any other sentence order.

Subsection 178C(2) states that the court must make separate orders and must not impose one of the orders as a requirement of the other.

Subsection 178C(3) allows the court, if the child contravenes the restorative justice order after the orders are made and is resentenced for the offence, to discharge any or all of the other sentence orders.

Subsection 178C(4) allows the court, if the child contravenes one of the other sentence orders after the orders are made and is resentenced for the offence, to discharge the restorative justice order.

Clause 26 inserts new part 7, division 6A (Restorative justice orders).

Section 192A outlines the preconditions to making a restorative justice order.

Subsection 192A(1) provides that a court may make a restorative justice order against a child only if (a) the court considers the child is informed of and understands the process, (b) the child indicates willingness to comply with the order, (c) the court is satisfied that the child is a suitable person to participate in a restorative justice process and (d) having regard to a submission by the chief executive about the appropriateness of the order and the deciding factors set out in 192A(2), the court considers the order is appropriate in the circumstances.

Subsection 192A(2) sets out the deciding factors that a court must have regard to when referring an offence to the chief executive for a restorative justice process. The list of deciding factors is consistent with those that a police officer must have regard to under section 22(4) when referring an offence to a restorative justice process and that a court must have regard to under section 163(2) when making a court diversion referral or presentence referral.

Section 192B prescribes the standard requirements that must apply to a restorative justice order made against a child. The requirements are consistent with the requirements of a probation order under section 193, with the following additions: that (vi) the child participate in a restorative justice process as directed by the chief executive and that (vii) the child perform his or her obligations under a restorative justice agreement made as a consequence of the child's participation in the restorative justice process.

Section 192C inserts a new provision that clarifies the obligations that exist under a restorative justice order when combined with a community service order or graffiti removal order.

Subsection 192C(1) states that this section applies if, for the same offence, a court makes a restorative justice order and a community service order or a graffiti removal order.

Subsection 192C(2) obliges the court, in making the community service order, to have regard to the child's obligations under the restorative justice agreement related to the restorative justice order when deciding the number of hours of unpaid community service to order.

Subsection 192C(3) obliges the court, in making the graffiti removal order, to have regard to the child's obligations under the restorative justice agreement related to the restorative justice order when deciding the number of hours of graffiti removal service to order.

Subsection 192C(4) notes that subsections 192C(2) and 192C(3) only apply to a restorative justice agreement that is in force at the time of making the community service order or graffiti removal order (i.e. the application of this provision is limited to presentence referrals). This safeguard in the combination of hours, is similarly achieved for restorative justice orders made under section 175(1)(db) (sentence based

referrals), with a convenor obliged under section 36(3) to ensure that the conference agreement does not provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way that contravenes the sentencing principles in section 150. A child may apply to the court under section 247 for a variation, discharge and resentence in the interests of justice if the cumulative obligations under the combined order were unreasonable.

Section 192D establishes the ending of a restorative justice order.

Subsection 192D(1) provides that a restorative justice order remains in force until (a) the chief executive is satisfied the child has discharged the child's obligations under the related restorative justice agreement, or (b) the order is discharged under section 245 or 247, or (c) 12 months from the date the order was made, whichever occurs first. As a consequence of the overarching 12 month time limit on restorative justice orders, the due date for satisfaction of obligations under the restorative justice agreement will, in effect, be set for completion within 12 months from the date the order was made.

Subsection 192D(2) states that the period that a restorative justice order remains in force under subsection (1) is subject to sections 245, 247 and 252.

Clause 27 amends section 245 (Court's power on breach of a community based order other than a boot camp (vehicle offences) order, conditional release order or boot camp order).

Subclause (1) inserts new subsection 245(1)(ab) which allows a court to extend the period within which the child's obligations under a restorative justice order must be performed, but not so that the extended period ends more than 1 year after the court acts under this section.

Subclause (2) inserts into existing subsection 245(3), reference to (ab) after '(aa)'.

Subsection 245(3) provides that the variation in new subsection 245(1)(ab) can be combined with an order to vary another requirement of the order (other than the requirement that the child abstain from violation of the law).

Clause 28 amends section 247 (Variation, discharge and resentence in the interests of justice).

Subsection 247(1) will include new (ba) which provides that, for a restorative justice order, the court may extend the period within which the child's obligations under the order must be performed, but not so that the extended period ends more than 1 year after the court acts under this section.

Clause 29 amends section 252 (Variations by consent).

Section 252(5)(b) states that an amendment of the period of the order may not be made under this section for community based orders. However, that does not apply to community service orders or restorative justice orders. The chief executive and the child may consent to a variation to the period of the restorative justice order.

Clause 30 replaces part 8, division 2A (Period of detention to be served as period of imprisonment) with new part 8, division 2A (Age related transfers to corrective services facility).

Subdivision 1 Prison transfer directions.

Section 276A provides definitions for subdivision 1. *Detainee* includes a person liable to serve a period of detention under this Act and *Prison transfer direction* is defined in section 276C(1).

Section 276B establishes that particular detainees are liable to be transferred to a corrective services facility.

Subsection 276B(1) provides that a person in detention who (a)(i) turns 18 years while serving a period of detention and who (a)(ii) is liable to serve a remaining period of detention of 6 months or more is liable to be transferred to a corrective services facility. Further, a person beginning detention who (b)(i) is 18 years or older when beginning detention and who (b)(ii) is liable to serve a remaining period of detention of 6 months or more is liable to be transferred to a corrective services facility.

Subsection 276B(2) states that the remaining period of detention for a person is (a) taken to start, if the person turns (i) 18 years during detention, on the day the person turns 18 years, or (ii) if 18 years or older when beginning detention, on the day the person begins detention. The remaining period of detention is (b) taken to end (i) at the conclusion of all periods of detention that the person is liable to serve cumulatively and (ii) no later than the day the person is required to be released from detention under section 227. [Section 227 provides that a person must be released from detention after serving 70 percent of the period of detention. A court can further reduce the period of actual detention to 50 percent of the period ordered].

Subsection 276B(3) defines that *beginning detention* includes returning to detention to continue or complete a period of detention because of a contravention of a conditional release order or supervised release order.

Section 276C sets out the process for transfer of particular detainees to a corrective services facility.

Subsection 276C(1) obliges the chief executive to, as soon as practicable after the chief executive becomes aware that a person is liable to be transferred to a corrective services facility under section 276B, give a written direction (a prison transfer direction) to the chief executive (corrective services) stating (a) that the person is to be transferred to a corrective services facility on a stated day (the transfer day) and (b) the period of detention that the person remains liable to serve at the transfer day. The obligation on the chief executive to issue the prison transfer direction as soon as practicable after becoming aware that the person is liable to be transferred will provide certainty and advance notice which will ensure, to the greatest extent possible, that the process is not unduly stressful for affected young people.

Subsection 276C(2) directs that the transfer day must not be earlier than the day the person becomes liable to be transferred to the corrective services facility.

Subsection 276C(3) requires that, within 28 days after giving the prison transfer direction to the chief executive (corrective services), the chief executive must (a) give the person a copy of the direction and (b) inform the person that, from the transfer day, the person will be held at a corrective services facility and be subject to the *Corrective Services Act 2006* and (c) inform the person of his or her right under this division to apply for a delay of the transfer. This notice requirement is included for procedural fairness. In recognition that the administrative action affects the person's rights and liberties and the person is unlikely to be legally represented at the time of the prison transfer direction being issued, the chief executive will seek to proactively inform the affected person of the availability of a temporary delay of transfer under section 276D and the related application process.

Subsection 276C(4) allows the chief executive to issue another prison transfer direction in relation to the person, if the person was allowed a temporary delay of transfer under section 276D and the chief executive considers that (a) the circumstances relevant to the person obtaining a delay no longer exist or (b) the person poses a risk to the safety or wellbeing of a detainee at the detention centre at which the person is detained.

Subsection 276C(5) provides that failure to comply with subsection 276C(1) does not invalidate a prison transfer direction.

Section 276D provides for the application for a temporary delay of transfer.

Subsection 276D(1) provides that, if, when a court makes a detention order against a person for an offence, the person becomes liable to be transferred to a corrective services facility under section 276B, the person may immediately apply to the court for a temporary delay of the person's transfer to the corrective services facility.

Subsection 276D(2) allows a detainee who is given a copy of a prison transfer direction under section 276C(3) to make application to the Childrens Court for a temporary delay of the detainee's transfer to the corrective services facility. The application must be made before the transfer is affected.

Subsection 276D(3) states that, on receipt by the court of a detainee's application made under subsection 276D(2), the detainee's transfer is stayed until the application is decided, withdrawn or otherwise ends.

Subsection 276D(4) authorises the court to grant an application made under subsection 276D(1) or 276D(2) only if it is satisfied that the delay (a) would be in the interests of justice, (b) would not prejudice the security or good order of the detention centre at which the applicant is, or is to be, detained, (c) would not prejudice the safety or wellbeing of any detainee at the detention centre at which the applicant is detained and (d) would not cause the person to be detained at a detention centre after the person turns 18 years and 6 months.

Subsection 276D(5) does not limit the matters to which the court may have regard, but requires a court, in making a decision on an application made under subsection 276D(1) or 276D(2) to consider (a) any vulnerability of the applicant and (b) any interventionist, rehabilitation or similar activities being undertaken by the applicant and the availability of those activities if transferred.

Subsection 276D(6) provides that, if the chief executive agrees to the application, subsections 276(4) and 276(5) do not apply and the court's proper officer may grant the application. This provision reduces the burden on the judiciary in circumstances where the chief executive agrees to the delay of transfer.

Subsection 276D(7) states that, if the court grants an application [made under subsection 276D(1) or 276D(2)] the court (a) must decide a new day for the prison transfer direction to take effect being no more than 6 months after the day the applicant turns 18 years and (b) the chief executive must inform the chief executive (corrective services) of the new day for the prison transfer direction.

Subsection 276D(8) provides that, for the purpose of this section, *temporary delay* means a delay of 6 months or less.

Section 276E provides that a transferee is subject to the *Corrective Services Act 2006* from transfer.

Subsection 276E(1) provides that this section applies if a person is transferred to a corrective services facility under this division.

Subsection 276E(2) declares that, from the transfer, (a) the person is liable to serve a term of imprisonment equal to the period of detention the person remains liable to serve at the transfer, (b) the person is taken to be a prisoner subject to the *Corrective Services Act 2006*, (c) any rights, liberties or immunities of the person as a detainee end and are not preserved, transferred or otherwise applicable for the person as a prisoner and (d) the day the person would otherwise have been released under section 227, for the period of detention, is the day the person is to be released on parole under the *Corrective Services Act 2006*.

Subsection 276E(3) makes clear that the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the statutory parole order) and the provisions of that Act applying to parole orders also apply to the statutory parole order.

Subdivision 2 Age limits for detention

Section 276F provides that persons over 18 years and 6 months should not serve period of detention at a detention centre.

Subsection 276F(1) states that this Act is subject to the overriding principle that it is in the best interests of the welfare of all detainees at a detention centre that persons who are 18 years and 6 months or older are not detained at the centre. Accommodating young people 18 and older in a youth detention centre with children as young as 10, can contribute to increased security requirements for detention centres

and can exacerbate the risk of contagion arising from younger children associating with, and being influenced by, much older offenders. Young people 18 and over in detention are most often sentenced to lengthy detention periods because of serious and violent offending, and are more likely to be entrenched in offending than the younger children with whom they may be accommodated.

Subsection 276F(2) gives effect to the principle by declaring that a person who is 18 years and 6 months or older must not enter a detention centre to begin serving a period of detention or return to a detention centre to continue or complete a period of detention (including, for example, returning because of a contravention of a conditional release order or supervised release order). Further, an application for a temporary delay of a transfer is of no effect if the applicant turns 18 years and 6 months. An application for a temporary delay of a transfer lapses when the applicant turns 18 years and 6 months and a temporary delay of a transfer under section 276D is of no effect to the extent that it delays the transfer of a person who is 18 years and 6 months.

Subsection 276F(3) clarifies that, if the application of subsection 276E(2)(a) prevents a person from being detained at a detention centre, the person must instead be held at a corrective services facility.

Subsection 276F(4) declares that a person held at a corrective services facility (a) is liable to serve a term of imprisonment equal to the period of detention the person remains liable to serve when the person would otherwise enter or return to a detention centre, (b) is taken to be a prisoner subject to the *Corrective Services Act 2006*, (c) any rights, liberties or immunities of the person as a detainee are not preserved, transferred or otherwise applicable for the person as a prisoner and (d) the day the person would otherwise have been released under section 227, for the period of detention, is the day the person is to be released on parole under the *Corrective Services Act 2006*.

Subsection 276F(5) makes clear that the release is subject to the *Corrective Services Act 2006* as if granted under a court ordered parole order (the statutory parole order) and the provisions of that Act applying to parole orders also apply to the statutory parole order.

Subsection 276F(6) provides that this section applies despite anything else in this Act.

Subsection 276F(7) states that an application for a delay of a transfer means an application made under section 276D(1) or (2).

Clause 31 replaces references in subsection 283(2)(c) to ‘conference’ with ‘restorative justice process’. Use of the umbrella term ‘restorative justice’ reflects the expansion of referrals to include both a conference and in limited circumstances, an alternative diversion program if a conference is unable to be convened.

Clause 32 consequentially amends section 295 (Disclosure by police of information about cautions and youth justice conferences and agreements).

Subclause (1) replaces the section 295 heading ('youth justice conferences and') with 'restorative justice process referrals and restorative justice'.

Subclause (2) replaces reference in section 295(1)(b) to 'conference' with 'restorative justice process'.

Subclause (3) replaces reference in section 295(1)(c) 'conference' with 'restorative justice'.

Clause 33 consequentially amends section 296 (Disclosure by chief executive or convenor of information about conference agreements).

Subclause (1) replaces the section 296 heading ('conference agreements') with 'restorative justice processes'.

Subclause (2) amends section 296(1) to include 'or the managing of an alternative diversion program' after 'conference'.

Subclause (3) replaces current section 296(2)(a) (which refers to a report to the referring police officer) with 'for informing a referring authority about a referral made by it'. Use of the word 'referring authority' widens the scope of this provision to include court referrals.

Subclause (4) replaces reference in section 296(2)(b) to 'parties' with 'participants' to reflect the updated terminology in section 34.

Clause 34 inserts new section 302A after existing section 302.

Section 302A provides that the chief executive may seek contact information for victims of offences for the purpose of coordinating a youth justice referral to a restorative justice process for a child or young person who is currently on a supervised order but for whom the diversionary and sentence based referral options were not exercised. This post sentence referral is a key enhancement of the new referral framework. This provision would apply where, subject to a victim's informed consent, the chief executive considers that the victim's participation would make the activities to be completed as part of a sentence more meaningful or would aid a child's or young person's transition out of the youth justice system.

Subsection 302A(1) allows the chief executive to, by written notice given to the scheme manager, require the scheme manager to give the chief executive contact information for victims of an offence committed by a child.

Subsection 302A(2) limits the requirement under subsection (1) to victims who consent to their contact information being given to the chief executive.

Subsection 302A(3) specifies that the scheme manager means the scheme manager under the *Victims of Crime Assistance Act 2009*, schedule 3.

Clause 35 inserts new part 11, division 12 Transitional provision for the Youth Justice and Other Legislation Amendment Act 2016

Subsection 368(1) declares that the provisions of this Act, as in force after the commencement of the amendments, apply to incomplete proceedings under this Act.

Subsection 368(2) states that, to remove any doubt, it is declared that the requirements for transferring a detainee to a corrective services facility under this Act apply to (a) a detainee who turns 18 years on or after the commencement of the amendments, regardless of when the detainee's period of detention started and (b) a person sentenced for an offence, or returned to detention in relation to an offence, after the commencement of the amendments, regardless of when the person committed the offence, was charged with the offence or criminal proceedings for the offence were started.

Subsection 368(3) provides that a prison transfer direction issued before the commencement ceases to have effect if the person, the subject of the notice, was not transferred to a corrective services facility before the commencement of the amendments.

Subsection 368(4) establishes that, despite the replacement of part 3 by the amendments, that part, as in force immediately before the replacement, continues to apply for any of the following started before the replacement: (a) a referral by a police officer of an offence to the chief executive for a conference, (b) a youth justice conference or (c) a conference agreement.

Subsection 368(5) provides that, for this section, amendments means the amendments of this Act made by the *Youth Justice and Other Legislation Amendment Act 2016*, *incomplete proceedings* means proceedings against a child for an offence conducted under this Act and started, but not completed, before the commencement of the amendments and prison transfer direction means a prison transfer direction under section 276C(1) as in force immediately before the commencement of the amendments.

Clause 36 amends schedule 4 (Dictionary)

Subclause (1) omits the following from the schedule 4: community based order, conference, conference agreement, convenor, period of detention, period of imprisonment, prison transfer direction, relevant individual, referring police officer, transfer day, transferred detention order and unserved period of detention.

Subclause (2) inserts into schedule 4 the following: adult offence, alternative diversion program, child, child offence, community based order, conference, conference agreement, contact information, convenor, corrective services facility, court diversion referral, detainee, offence, offender, participant, presentence referral, prisoner, prison transfer direction, referring authority, restorative justice agreement, restorative justice order, restorative justice process, sentence, term of imprisonment.

Part 5 – Minor and consequential Amendments

Clause 37 authorises Schedule 1, which makes minor and consequential amendment to the acts mentioned in it.

Schedule 1 amends the Acts it mentions. Schedule 1 makes consequential amendments to various Acts, including for example updating cross references and terms, to reflect the amendments made to the YJ Act by the Bill.