

# Youth Justice and Other Legislation Amendment Bill 2019

## Explanatory Notes

### Short title

The short title of the Bill is the Youth Justice and Other Legislation Amendment Bill 2019.

### Policy objectives and the reasons for them

On 11 December 2018, the Queensland Government released the *Working Together Changing the Story: Youth Justice Strategy 2019-2023* (the Youth Justice Strategy). The Youth Justice Strategy adopts ‘Four Pillars’ as its policy position for youth justice reform: intervene early; keep children out of court; keep children out of custody; reduce reoffending. The Four Pillars were recommended by Mr Robert (Bob) Atkinson AO, APM in the 2018 *Report on Youth Justice*.

The fourth pillar of the Youth Justice Strategy, reduce reoffending, commits to a review of the *Youth Justice Act 1992* (YJ Act). The Bill supports the implementation of the Youth Justice Strategy by delivering the commitment to commence the review of the YJ Act.

The Bill makes a number of priority amendments to remove legislative barriers that may contribute to children being refused bail, breaching bail conditions or remaining in detention on remand for an extended period. Importantly, the Bill does not remove discretion and aims to strike a balance between maintaining community safety and enabling the appropriate release of a child from custody.

The objectives of the priority amendments in the Bill are to:

- reduce the period in which proceedings in the youth justice system are finalised, to encourage the timely finalisation of proceedings for young people and reduce demand pressures on youth detention centres and watch houses;
- remove legislative barriers to enable more young people to be granted bail, so that wherever appropriate young people can be released rather than remanded in custody; and
- ensure appropriate conditions are attached to grants of bail, to reduce the likelihood of a young person breaching their conditions, coming to the attention of police and being remanded in detention.

Other amendments included in the Bill aim to:

- introduce a contemporary information sharing framework, to assist government and non-government organisations to assess and respond to the needs of young people in the youth justice system;
- clarify that conditions requiring the use of an electronic tracking device cannot be imposed on a child;
- provide greater protection and safety for young people and increased accountability for staff within detention centres;

- recognise the defencelessness and vulnerability of child victims in the sentencing of young people in certain circumstances.

## Achievement of policy objectives

The Bill will achieve its objective of reducing the period in which proceedings in the youth justice system are finalised by:

- emphasising the importance of timeliness and the priority that should be given to proceedings for children remanded in custody in the Charter of youth justice principles in the YJ Act;
- making pre-sentence report requirements more flexible, encouraging pre-sentence reports to be only ordered if necessary, and requiring that they to be provided to the court in a reasonable timeframe set by the court, or otherwise, as soon as practicable;
- amending the *Police Powers and Responsibilities Act 2000* (PPRA) to require police to make all reasonable inquiries to promptly contact a parent of a child who has been arrested or served with a notice to appear and record when this has not occurred;
- including a new provision in the PPRA requiring police, before questioning a child in relation to an indictable offence, to contact a legal aid organisation to advise that child is in custody for the offence, to encourage legal representation to be arranged early for the child;
- requiring young people who are arrested and detained to be brought before the Childrens Court as soon as practicable and within 24 hours, or if the court cannot be constituted within 24 hours of the arrest, on the next available day; and
- amending the PPRA to provide that a notice to appear for a child must require the child to appear at the court that the police officer is satisfied is most convenient for the child to access, unless it would delay the ability of the child to appear before the court as soon as practicable.

The Bill will achieve its objective of removing legislative barriers to enable young people to be granted bail by:

- clarifying that certain provisions of the *Bail Act 1980* (Bail Act) do not apply to young people;
- clarifying that the principle of ‘detention as a last resort’ applies to bail decision making;
- including new principles in the Charter of youth justice principles, to capture contemporary ideologies that should underpin decisions made about children involved in the youth justice system;
- clarifying the bail decision-making framework in the YJ Act and incorporating an explicit presumption in favour of release, which can only be rebutted where there is an unacceptable risk of certain conduct by the young person if released (or if the child is otherwise legislatively required to be detained in custody);
- outlining the matters to be considered by a police officer or court when deciding if an unacceptable risk exists, or if to release a young person with or without bail;
- providing that even where the presumption of release can be rebutted, police officers and courts may release a young person, if satisfied that the release is not inconsistent with ensuring community safety and it is otherwise appropriate, having regard to certain additional matters;
- confirming that while a child must be detained in custody when a police officer or court is satisfied that there is a threat to the child’s safety that arises from the alleged offence and there is no other reasonably practicable way to keep them safe, the police officer or court must not be satisfied of these matters solely because the child lacks accommodation, or has

- no apparent family support;
- requiring a police officer or court to provide reasons, if a decision is made to keep a young person in custody in connection with the charge of an offence;
- providing that the court's power to remand a young person so that further information can be obtained is discretionary rather than mandatory; and
- clarifying the operation of section 13 of the Bail Act in relation to young people.

The Bill will achieve its objective of ensuring appropriate conditions are attached to grants of bail by:

- requiring bail decision-makers to be satisfied that a condition is necessary to mitigate an identified risk that the child will commit an offence; endanger a person's safety or welfare; or interfere with a witness or otherwise obstruct the course of justice;
- providing that a bail condition must not involve undue management or supervision of the child, having regard to the child's age, maturity, cognitive ability and developmental needs, health, including need for medical assessment or treatment, any disability, including need to access supports and services, home environment and ability to comply with the condition;
- requiring a court or police officer when imposing a condition, to specify the period that the condition will be in effect and providing that the period of the condition must be no longer than is necessary to mitigate an identified risk;
- requiring a court or police officer to give reasons or record reasons about how a bail condition is intended to mitigate a risk for the child; and
- providing that police officers must consider alternatives to arrest when responding to young people who breach conditions of bail, and inserting a new child-focused, discretion-based framework to guide police in their potential responses.

The Bill will achieve its objective of providing a contemporary information sharing regime by:

- providing that a chief executive of a government department may establish an arrangement for providing a coordinated response to the needs of children who have been charged with an offence;
- allowing information to be shared between prescribed government agencies and non-government service providers, for specified purposes relating to that arrangement; and
- providing that a principle that underlies the information sharing framework is that whenever possible and practical, a person's consent should be obtained before sharing information about them.

The Bill will also:

- resolve uncertainty and protect the rights and interests of children by clarifying that conditions requiring the use of an electronic tracking device cannot be imposed on a child, including as a condition of bail, a community based order or early release for a child;
- achieve greater protection and safety for young people and increased accountability for staff within detention centres by authorising the use of body worn cameras and the capture of audio recordings through CCTV technology;
- achieve greater recognition of the special characteristics of child victims by providing that in sentencing a young person for the manslaughter of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor; and
- allow the Office of the Public Guardian's community visitor program for children to visit young people who may reside at a child accommodation service provided or funded by the Department of Youth Justice.

## ***Reducing the period in which proceedings in the youth justice system are finalised***

### *Timeliness and priority for young people in custody*

When court proceedings cannot be finalised quickly, this means that some young people will remain on remand, awaiting trial or sentencing, for extended periods.

Principle 7 of the Charter of youth justice principles provides that if a proceeding is started against a child for an offence, it should be conducted in a fair, just and timely manner. The Bill strengthens Principle 7 to make it clear that proceedings started against a child for an offence should be finalised as soon as practicable.

The Bill also introduces a new principle, requiring the youth justice system (including, for example, courts, legal representatives and the Office of the Director of Public Prosecutions) to give priority to proceedings for young people who are remanded in custody. These amendments are intended to assist in reducing the length of time that young people are held on remand.

### *Pre-sentence reports*

Sections 203 and 207 of the YJ Act requires the court to obtain a pre-sentence report from the chief executive (youth justice services), before it may make an intensive supervision order or detention order against a child. Section 151 allows the court to order a pre-sentence report in other circumstances and provides that reports must be provided promptly, but need not be given to the court in less than 15 business days. However, in some cases, pre-sentence reports are not helpful to the court (for example, where a young person was sentenced to detention in the previous six months and the court has a previously provided a pre-sentence report), so the time it takes for them to be prepared can contribute to delays in finalising proceedings relating to young people.

To better facilitate timeliness in this regard, the Bill amends the YJ Act to allow the chief executive to provide further material to be considered with an existing pre-sentence report given to the court for another sentencing of the child within the previous six months. This means that if the court already has a recent pre-sentence report about the child, and only requires an update to capture any changes in the child's circumstances since that time, it can request further material, rather than a new full pre-sentence report. This updated material will be able to be provided by the chief executive more expeditiously than a full pre-sentence report and reduce the time the child is remanded in custody. The Bill also amends section 151 of the YJ Act to require a court to consider, before ordering a pre-sentence report other than under section 203 or 207, whether it is the most beneficial and efficient method of obtaining information. There may be other practical ways that the court can obtain the information it is seeking, for example, directly from the child's legal representative. Finally, the Bill removes the existing 15 day period in section 151 and instead requires that a pre-sentence report is to be provided to the court as soon as practicable, or in a reasonable timeframe ordered by the court.

### *Police contact with parents and lawyers*

Section 392 of the PPRA requires a police officer who arrests or serves a notice to appear on a child, to promptly advise a parent of the child about this. The Bill strengthens this provision by requiring a police officer to make all reasonable inquiries to promptly contact a parent and keep a record of inquiries made to do so, when contact could not be made. The requirement to record

inquiries to contact a parent, when contact has not ultimately been made, are not intended to be administratively onerous for police, but rather to align with existing operational procedures and assist police to demonstrate that ‘all reasonable inquiries’ have been made to notify a parent.

The Bill also expands the definition of *parent* in section 392 to incorporate the broader definition applying under the YJ Act. The YJ Act definition includes, in addition to a parent or guardian of a child, a person who has lawful custody of a child other than because of the child’s detention for an offence or pending a proceeding for an offence and a person who has the day-to-day care and control of a child.

The Bill also amends section 421 of the PPRA. Existing section 421 provides that a police officer not question a child in relation to an alleged indictable offence, unless the police officer has, if practicable, allowed the child to speak privately to a support person chosen by the child, and the support person is present while the child is being questioned. The amendment to this section requires police to notify a legal aid organisation that the child is in custody, as soon as reasonably practicable. The obligation on police to contact a legal aid organisation will not arise if the police officer is aware that the child has already spoken to a lawyer acting for the child, or arranged for their lawyer to be present during questioning as a support person. The amendment does not prohibit police from questioning the child if a legal aid organisation has not been contacted, but recognises that to do so is best practice, having regard to the serious consequences (including significant sentences of detention) that can result from indictable offences and the particular vulnerabilities of children.

Requiring a police officer to contact particular persons for a child as soon as practicable aims to ensure arrangements can be put in place and an application for bail made for the child, as soon as possible. This aims to reduce the amount of time that a child may be detained, awaiting legal representation and the making of a bail application.

This amendment is consistent with recommendations 25.33 and 25.4 of the Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (the NT Royal Commission). These recommendations related to directing police to contact a young person’s legal representative and the establishment of a custody notification scheme in the Northern Territory.

#### Notice to appear

The Bill also amends section 384 of the PPRA to provide that a notice to appear for a child should require the child to appear at the court that a police officer is satisfied is most convenient for the child to attend, having regard to the child’s individual circumstances. This is unless it would delay the ability of the child to appear before the court as soon as practicable after service of the notice to appear.

This responds to concerns that some children may fail to appear, or evade payment of public transport fares in order to attend court, due to difficulties in travelling to a court that may be located some distance from the child’s home (notwithstanding that it may be the location of the alleged offence).

#### Requirement for child to be brought before the Childrens Court

Section 49 of the YJ Act provides that a child who is arrested on a charge of an offence must be brought promptly before the Childrens Court to be dealt with according to law, unless the child falls within one of the listed exceptions, including being detained in relation to an indictable offence, or delivered into the custody of a watch-house manager or the officer in charge of a police establishment.

The Bill amends the YJ Act to require a child who is arrested for an offence, or for a breach of a bail condition, and is in custody to be brought before the Childrens Court as soon as practicable and within 24 hours after arrest. If it is not practicable for the court to be constituted within 24 hours of the arrest, then the child must be brought before the court as soon as practicable on the next day the court can practicably be constituted. The purpose of this amendment is to limit the time young people spend in custody awaiting an appearance by prescribing explicit time limits in the YJ Act. This aligns with Principle 17 of the Charter of youth justice principles in Schedule 1 of the YJ Act, which provides that a child should be detained in custody for an offence, only as a last resort and for the least time that is justified in the circumstances.

The Bill also removes the two exceptions above where a child is currently not required to be brought promptly before the court (that is, where a child is in watch house custody and where a child is being detained for an indictable offence), as in both of these circumstances, it is crucial that a child have the opportunity to be heard by the court as soon as possible.

### ***Removing legislative barriers to enable young people to be granted bail appropriately***

#### ***Bail decision making framework***

Stakeholders advised that the existing bail decision-making framework in section 48 of the YJ Act is confusing and difficult to apply. Notably, the requirement that a police officer or a court must not release a child if there is an unacceptable risk of certain conduct, is inconsistent with the principle of ‘detention as a last resort’ (Principle 17 of the Charter of youth justice principles). Due to the lack of legislative direction around ‘unacceptable risk’, it is considered that this is sometimes given priority over the presumption in favour of bail and principle of detention as a last resort, including in cases where there is a risk of minor reoffending.

Further, section 48 places an additional obligation on bail decision makers, in contrast to the adult system, to ensure that if the child is released they will not commit an offence, endanger anyone’s safety or welfare, or interfere with a witness or otherwise obstruct the course of justice whether for the child or anyone else. Section 48 also lists a number of matters that the court or police officer must have regard to, in deciding whether to grant bail or not. The current drafting of the provision makes it unclear whether a presumption in favour of release applies in the first instance. Also of concern is that section 16 of the Bail Act, which sets out when bail should be refused to an adult, has at times been erroneously applied to young people and that many children and young people are refused bail solely on the basis of welfare concerns (for example, because they lack adequate accommodation).

The Bill substantially amends section 48 of the YJ Act to create a logical, child-focused bail decision making framework. Most importantly, the Bill provides an explicit presumption in favour of release that can only be rebutted where the YJ Act or another Act requires the child to be detained in custody, or where the court or police officer is satisfied that there is an unacceptable risk that if released on bail, the child will fail to surrender into custody as required,

commit an offence, endanger the safety or welfare of any person, or interfere with witnesses or otherwise obstruct the course of justice.

The Bill provides that when deciding whether there is an unacceptable risk of one of the above matters, police officers and courts may have regard to a number of factors, including several of those included in current section 48(3) of the YJ Act (for example, the nature and seriousness of the alleged offence, the criminal history, associations and home environment of the child, and the history of a previous grant of bail to the child). When deciding whether an unacceptable risk exists, police officers and courts may also consider whether a condition could be imposed on a grant of bail to the child to mitigate an otherwise unacceptable risk. A police officer or court must not be satisfied the unacceptable risk exists only because the child would not have accommodation if release, or has no apparent family support.

#### Risk of reoffending

If the assessment of risk relates to the young person committing an offence while on release, the nature and seriousness of the offence that the young person might commit and its likely impact on a victim or the community must also be considered. This aims to ensure that children are not refused bail on the grounds that they are likely to commit a minor offence (for example, fare evasion).

#### Threat to a child's safety and welfare concerns

The Bill retains the provisions in existing section 48(10) of the YJ Act that requires a court or police officer to keep a young person in custody if satisfied there is a threat to the child's safety because of the alleged offence (for example, a threat of retribution from a victim or a co-accused) and there is no reasonably practicable way of ensuring the child's safety other than by keeping them in custody. However, the Bill clarifies that a court or police officer must not be satisfied of these matters based solely on the fact that the young person will not have any, or adequate, accommodation if released from custody, or has no apparent family support.

This change gives effect to the intent behind amendments made to section 48 in 2009 by the *Juvenile Justice and Other Acts Amendment Act 2009* (the 2009 Amendment Act). The 2009 Amendment Act amended then section 46(7), to make a connection between the endangerment of the safety of the child and the alleged offence and remove previous examples of endangerment, including the child being heavily intoxicated or a threat of harm to the child. The Explanatory Notes for the 2009 Amendment Act clarify that these changes were made to ensure that children would only be kept in custody under this section where the threat to their safety arose from the alleged offence, not from another source. The Second Reading Speech for the 2009 Amendment Act stated that the aim was to ensure that young people would not be refused bail simply for welfare reasons, such as a lack of accommodation.

Notwithstanding the intent behind the changes made by the 2009 Amendment Act, stakeholders have advised that in 2019, children continue to be refused bail under this provision solely because they do not have accommodation, or adequate accommodation. Stakeholders have expressed concern that this equates detention with a placement option for the child and is not consistent with a child's human rights, given most children on remand have not been convicted of an offence. The amendments in the Bill clarify that a court or police officer must not decide that a child must be kept in custody for their own safety only because the child will not have accommodation, or adequate accommodation, if released. This also aligns with section 414(5)

of the *Children, Youth and Families Act 2005* (Vic). The Bill also clarifies that a police officer or court must not keep a child in custody only because the child has no apparent family support.

#### Release where unacceptable risk exists

Where a bail decision-maker comes to the conclusion that the presumption of release can be rebutted and an unacceptable risk presented by the child cannot be mitigated by the imposition of reasonable conditions, the decision-maker must then have regard to new section 48AD. Under this section, the child may be released, despite the unacceptable risk, if the decision-maker is satisfied that the child's release is not inconsistent with the need to ensure community safety, and is otherwise appropriate, having regard to any of the additional factors listed.

These factors include the principle of detention as a last resort, the need to preserve the relationship between a child and their family, the child's prior exposure to trauma, the child's age, maturity, cognitive capacity, developmental needs, health and any disability (including the child's need for medical assessment or treatment and other disability supports) and, if the child is an Aboriginal or Torres Strait Islander person, the need to retain the child's connection to their community, family and kin. A further additional factor relates to children aged under 14 years and provides for the consideration of their particular vulnerability and community expectations that children of this age are entitled to special care and protection.

These child-specific criteria reflect the complex needs of young people involved in the youth justice system, which should be taken into account when making bail decisions. For example, the court may have determined that a young person who has been charged with a number of shoplifting offences poses a high risk of reoffending. However, as the reoffending is of a type that does not threaten community safety, and the child has complex health needs that can be more readily addressed if the child remains living at home, the child should be released. The court or police officer may decide in these circumstances to impose appropriate bail conditions on the child, to reduce or mitigate the unacceptable risk of the child committing further shoplifting offences.

#### Other amendments to support new decision-making framework

The Bill makes further amendments to support the new decision-making framework and promote appropriate grants of bail. It is confirmed that the principle of 'detention as a last resort' applies to detention on remand and that courts and police officers are required to give reasons as to why a child is being remanded.

The Bill further provides that a court's power to remand a young person in custody to obtain further information to make a decision about whether to release a child on bail will be discretionary, rather than mandatory, as provided in the current drafting of section 48(9). This amendment recognises that there may be options available to the court, other than remanding the child in custody, to obtain relevant information in a short timeframe, for example, directly from the young person's legal representative. This change aligns with the principle of 'detention as a last resort.'

To further support and encourage appropriate grants of bail, and recognise the additional vulnerability and special status of children, the Bill also includes three new principles in the Charter of youth justice principles in Schedule 1 of the YJ Act, being:

- children who commit offences bear responsibility for their actions but, because of their



- state of dependency and immaturity, require guidance and assistance;
- it is desirable, if practicable, to allow the education or employment of a child to proceed without interruption; and
- it is desirable, if practicable, to allow a child to reside in his or her own home.

Under section 3 of the YJ Act, the principles in the Charter of youth justice principles underlie the operation of the YJ Act. These new principles, drawn from the New South Wales *Children (Criminal Proceedings) Act 1987*, will provide further guidance to decision-makers and support the existing principle of ‘detention as a last resort’ and the further considerations outlined in new section 48AD.

### **Appropriate bail conditions**

#### **Bail conditions to be sustainable, appropriate and targeted**

Stakeholders have advised that bail conditions imposed on young people are at times onerous and do not appropriately address or target the individual circumstances of the young person’s alleged offending behaviour. Many of the children who come into contact with the youth justice system have had limited structure and supervision in their lives. For some young people, bail conditions, while possibly well-meaning, and intended to limit a risk of reoffending, are counterproductive and increase the likelihood of the young person breaching their bail, coming to the attention of police and being remanded in detention. Further, a young person subject to intensive supervision while on bail may be consumed by attempting to comply with the requirements on them, making it difficult for them to engage or re-engage with education, training or to get a job. These are all factors which could support a child’s reintegration into the community and reduce the likelihood of reoffending.

The Bill amends the YJ Act to ensure that bail conditions are sustainable, appropriate and targeted to manage the actual bail risks for an individual child while they are on bail and reduce the risk of a child breaching the conditions of their bail.

The Bill requires bail decision-makers to be satisfied that a condition that they wish to impose is relevant to mitigating an identified risk that the child will commit an offence; endanger anyone’s safety or welfare; or interfere with a witness or otherwise obstruct the course of justice. The Bill requires a court or police officer to give reasons or record reasons about how each bail condition imposed on a child is intended to mitigate a particular risk for that child.

Additionally, to ensure that bail conditions are not overly onerous or unfair, the Bill provides that a condition must not involve undue management or supervision of the child, having regard to the child’s age, maturity, cognitive ability and developmental needs, health and any disability (including the child’s need for medical assessment, treatment and access to supports and services), as well as the child’s home environment and ability to comply with the condition. For example, a bail condition requiring a child to regularly attend a police station located some distance from where the child lives may be undue management, if the child cannot afford public transport fares to travel to that location and does not have any private transportation.

#### **Length of bail conditions**

The Bill provides that a court or police officer that imposes a condition must specify the duration that a condition applies. A condition will necessarily stop having effect at the end of

the stated period. The duration of the condition must be no longer than is necessary to mitigate the identified risk it is imposed to address. If a condition lapses, the child's grant of bail will continue until they are sentenced or an application is made to vary or revoke the bail. This is intended to reduce the likelihood that intensive and unnecessary bail conditions are imposed on young people for long and burdensome periods. This recognises that conditions of this nature are likely to result in more breaches, with the consequence that more young people are returned to or placed in custody. The conditions imposed on the child should be appropriate, in nature and length, to address or reduce a real risk relating to bail under the YJ Act.

### *Breach of bail conditions*

The Bill also amends the YJ Act to require police officers to consider alternatives to arrest when responding to young people who breach their bail conditions. While breach of a bail condition is not an offence for a child as it is for an adult, a child can be arrested under the PPRA and returned to custody if they contravene a bail condition (for example, being found to have broken a curfew imposed by way of a bail condition).

The Bill inserts a new provision into the YJ Act that provides a child-focused, discretion-based framework to guide police in their response to a child or young person who has breached a bail condition. It allows police the following options: to take no action; issue a warning; or make an application to vary or revoke the child's bail. If a police officer is considering varying or revoking the child's bail, he or she must have regard to factors, including: the seriousness of the contravention or likely contravention, whether the child has a reasonable excuse, the child's particular circumstances and any other relevant circumstances.

For example, a police officer may choose to take no action in relation to a child who breached a bail condition requiring attendance at a police station at a certain time, if the child was unwell at the time of required attendance. The Bill retains the current discretion of police to arrest and remand a child who has breached bail.

### *Information sharing framework*

Part 9 of the YJ Act deals with confidential information relating to a child who is being, or has been, dealt with under the YJ Act. Under section 283, the ways that a child may be dealt with under the YJ Act include being investigated for an offence, being detained, participating in a restorative justice process, and being cautioned, prosecuted or sentenced for an offence. As a general rule, a person who gains confidential information through their involvement in the administration of the YJ Act, must not record or use the information, or intentionally disclose it to anyone, unless authorised under the YJ Act.

However, government entities and government and non-government service providers (including, for example, drug and alcohol workers, education specialists, mental health practitioners and case workers) need to be able to share information with one another to facilitate a multi-disciplinary, cross-agency problem solving approach to meet the needs of children in the youth justice system. This will allow underlying health, social or other issues that may be a contributing factor in the young person's offending to be addressed, referrals to be provided to necessary support services, and ensure that the court has relevant information about a young person when making a decision about sentencing or bail. This is particularly important to ensure a range of suitable supports can be put in place to enable a child to be released on bail.

The Bill inserts a new and contemporary information sharing framework into the YJ Act, to allow prescribed entities (primarily Queensland Government departments) and service providers (for example, legal, health and allied health service providers) to share information for specific purposes. The purposes of information sharing could be to assess the needs of a young person involved in the youth justice system, provide a referral, participate in case planning, or deliver services, programs or support to the young person.

The Bill includes additional safeguards to prevent the inappropriate sharing of confidential information. It clarifies that, in addition to the Charter of youth justice principles, it is a principle underlying the information sharing framework that, whenever possible and practical, a person's consent should be obtained before disclosing confidential information relating to the person to someone else. However, this does not mean that information must not be shared if consent has not been obtained.

A further safeguard in the Bill provides that the information sharing provisions apply subject to any limitation prescribed by regulation about how, or the circumstances in which, a prescribed entity or service provider may disclose, record or use confidential information. Additionally, the Bill amends section 285 of the YJ Act to provide that prescribed entities and service providers under the framework are 'persons involved in the administration of the YJ Act.' This will ensure that those entities are subject to the obligation in section 288 of the YJ Act to only disclose information for authorised purposes under the Act.

The amendments made by the Bill aim to balance the privacy and confidentiality of information about a young person and the young person's circumstances with ensuring that sufficient, relevant information is available to achieve the best possible outcomes for the young person and the community.

#### Electronic tracking devices

The *Bail (Domestic Violence) and Another Act Amendment Act 2017* amended the Bail Act to allow the use of electronic tracking devices as a condition of bail. It is not clear whether these provisions apply, or were intended to apply, to children.

There are a number of concerns relating to the application of conditions of this nature to children. For example, wearing an electronic tracking device is likely to identify a child as an offender to their community and lead to stigma and isolation. This is likely to be counterproductive to attempts to reintegrate a child into activities such as school, sport or employment. Electronic tracking may also have a specific cultural impact for Aboriginal young people and Torres Strait Islander young people in that it may be symbolic of the historical control and subjugation imposed on those peoples and may be a cause of shame in their community. There is also limited evidence in Australia and internationally to show that this technology is effective at managing young people on bail and reducing risks of reoffending.

There are also issues related to the use of electronic tracking for young people that are different to its use for adults, due to their stage of brain development. Young people are less likely to consider the consequences of their actions and more likely to engage in dangerous or risky behaviour. This is even more prevalent for young people who have experienced trauma, or have alcohol or drug issues. The use of electronic tracking devices on young people is unlikely to be particularly effective at deterring them from breaching their bail conditions.

There is a risk that the use of electronic tracking would result in more breaches of bail conditions coming to the attention of police, including minor breaches, with the consequence that more young people are returned to or placed in custody. This may be as a result of the intensity of supervision and the ongoing and intensive contact with police. Research suggests that among young people in particular, the longer the period they spend under electronic tracking, the more likely they are to breach their conditions. This would be counterproductive to the intention of reducing the number of young people held in custody on remand.

To resolve the above issues, the Bill clarifies that a condition requiring the use of an electronic tracking device cannot be imposed on a child.

#### Body worn cameras and CCTV in youth detention centres

The 2016 *Independent Review of Youth Detention Centres* and the 2019 Queensland Ombudsman *The Brisbane Youth Detention Centre report* recommended that CCTV coverage in youth detention centres should be enhanced and body-worn cameras used by staff, to better protect both staff and young people.

The Bill amends the YJ Act to authorise the use of body-worn cameras and the capture of audio recordings through CCTV technology in youth detention centres. This will ensure that these practices are exempted from the recording of private conversations offence under the *Invasion of Privacy Act 1971*.

The amendments prohibit the deliberate recording of communications between a child and their lawyer, an officer of a law enforcement agency, the ombudsman, a community visitor, a child advocacy officer or the Public Guardian. However, the amendments protect the inadvertent recording of these communications by a body-worn camera.

The Bill provides additional safeguards against improper recording or use of information, by requiring the chief executive to prepare guidelines about the recording of images and sounds in detention centres and the use of body-worn cameras by detention centre staff. The Bill also aligns with Information Privacy Principle 2 in the *Information Privacy Act 2009*, by requiring the chief executive to ensure that detainees, staff and visitors to detention centres are advised that sounds and images may be recorded.

#### Child homicide – aggravating factor in sentencing

On 7 May 2019, the *Criminal Code and Other Legislation Amendment Act 2019* commenced (CCOLA Act). The CCOLA Act implements Recommendation 1 of the Queensland Sentencing Advisory Council's (QSAC) report, *Sentencing for Criminal Offences Arising from the Death of a Child: Final Report*, by amending section 9 of the *Penalties and Sentences Act 1992* (PSA). The CCOLA Act includes a requirement that, in sentencing an adult offender for manslaughter of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor (the new PSA provision).

The PSA does not apply to the sentencing of children. Rather, children must be sentenced according to the requirements of the YJ Act unless specifically stated otherwise. To align with the CCOLA Act, respond to the general findings of QSAC, and achieve greater recognition of the defencelessness and vulnerability of child victims in sentencing, the Bill amends the YJ

Act to extend the application of the new PSA provision to child offenders sentenced under the YJ Act.

A number of safeguards remain to protect the interests of a child charged with manslaughter of another child under 12 years. Firstly, the amendment does not override the Charter of youth justice principles including that detention is a last resort and for the least time justified. It also will operate alongside the sentencing principles in section 150 of the YJ Act and the requirement in section 208 that all other available sentences must first be considered. The amendment does not override the existing provision in section 176 of the YJ Act that for a life offence, the court may order that the child be detained for a period of no more than 10 years, or a period up to the maximum of life only if the offence involves the commission of violence against a person and the court considers the offence to be particularly heinous having regard to all of the circumstances.

#### Public Guardian's community visitor program

The Bill makes a minor amendment to the *Public Guardian Act 2014*, to ensure that the Office of the Public Guardian's community visitor program, which is designed to protect the rights and interests of children and young people in care, may visit child accommodation services provided or funded by the Department of Youth Justice.

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

The proposed Bill is essential to remove legislative barriers that may be contributing to children being refused bail, breaching bail conditions or remaining in detention on remand for an extended period. There is no alternative way of achieving the reforms.

## **Estimated cost for government implementation**

The policy proposals for the priority legislative amendments will support and drive a number of reforms and initiatives already funded through previous allocations to the Department of Child Safety, Youth and Women and the Department of Youth Justice.

It is anticipated that there will be some implementation costs for the priority amendments associated with staff and sector training, information system updates, and operational policy and procedure updates. These costs will be met from within existing resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

### **Legislation has sufficient regard to the rights and liberties of individuals, including privacy and confidentiality (section 4(2) of the *Legislative Standards Act 1992*)**

#### Clause 30 — Information sharing framework

Clause 30 of the Bill introduces a new information sharing framework to enable 'prescribed entities' and 'service providers' to share information with each other for the purposes of

providing a coordinated response to the needs of children charged with offences. These provisions are a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, under section 4(2) of the *Legislative Standards Act 1992*.

This amendment is necessary to ensure that government entities and government and non-government service providers (including, for example, drug and alcohol workers, education specialists, mental health practitioners and case workers) are able to share information for the purposes of providing multi-disciplinary assistance to a young person. This will allow underlying issues that may contribute to a young person's offending to be addressed, referrals provided to other support services, and the young person's support needs appropriately addressed. It will also ensure that the court can be provided with a single, comprehensive advice about the young person's needs, and how they are being addressed, enabling it to consider all relevant information about the young person when making a decision. The overarching aim is to achieve the best possible outcomes for the young person.

Any departure from fundamental legislative principles in this regard is justified to meet the needs of vulnerable children who are involved in the youth justice system in a timely way and to try and avoid, as far as possible, them being held in detention.

The potential breach is mitigated by the Bill. The Bill includes limitations and safeguards that apply to the sharing of information without consent for the purpose of an arrangement established under new section 297F. These are:

- obtaining consent before sharing a person's private information is specifically identified as the best practice approach within the new principles for sharing information;
- information can only be shared for the specified purposes under the arrangement and to the extent that the holder reasonably believes that it may help the receiver do particular things, such as participating in case planning or delivering services, programs or support to a child who has been charged with an offence;
- the framework applies only to the entities identified as 'prescribed entities' and to service providers who fall within the relevant definition;
- the circumstances in which prescribed entities and service providers can share information for the purposes of the arrangement will be further limited by regulation;
- the new information sharing framework enables, but does not compel, the sharing of information for the purposes of the arrangement;
- the framework does not override certain provisions of other legislation that restrict the disclosure of highly sensitive information, for example, section 186 of the *Child Protection Act 1999* that protects the confidentiality of information about notifiers of harm or risks of harm to children;
- a privilege that a person may claim under another Act or law (including, for example, legal professional privilege) is not affected only because information may be or has been disclosed under the new framework; and
- penalties of up to two years imprisonment or 100 penalty units apply for the inappropriate use or disclosure of information (section 288 of the YJ Act).

New section 297G also represents a departure from the principle that that legislation should delegate legislative power in appropriate cases and to appropriate persons under section 4(4)(a) of the *Legislative Standards Act 1992*.

This amendment, which provides that the information sharing provisions operate subject to any limitations prescribed by regulation, is necessary to ensure that the circumstances in which information can be shared under the arrangement can be further limited if appropriate. This departure is also balanced by the safeguards discussed above.

Clause 43 — Police providing information about a child to a legal aid organisation

Clause 43 of the Bill amends section 421 of the *Police Powers and Responsibilities Act 2000* to require a police officer who wants to question a child who is in custody for an indictable offence to notify or attempt to notify a legal aid organisation service that the child is in custody, as soon as is reasonably practicable.

This is a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, in accordance with section 4(2) of the *Legislative Standards Act 1992*.

This amendment is necessary to ensure that a young person who is being questioned by police in relation to an indictable offence is provided with legal representation as soon as possible, which may assist in informing police decision making about appropriate diversion or charge options as well as the decision to detain a child in police custody. It will also enable arrangements to be put in place for timely applications for bail if a child is subsequently arrested and detained by police.

There are limitations and safeguards that will apply to the giving of the information. These are:

- the amendment is aimed at protecting and furthering the rights of the young person during their involvement with the youth justice system;
- police will only be able to provide information about the young person's arrest and whereabouts to a lawyer nominated by the child, or a legal service (a one way information flow); and
- a lawyer who acts for the young person will be subject to a fiduciary duty of confidentiality.

Clause 5 — Use of body-worn cameras, video and audio recordings in youth detention centres

Clause 5 of the Bill introduces a new section 263A into the YJ Act which will authorise the use of body worn cameras and the capture of audio recordings through CCTV technology in youth detention centres. The amendments provide that these practices are exempted from the recording of private conversations offence under the *Invasion of Privacy Act 1971*.

This is a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, in accordance with section 4(2) of the *Legislative Standards Act 1992*.

This amendment is necessary to provide greater protection and safety for young people, as well as increasing accountability for staff, within detention centres. The 2016 *Independent Review of Youth Detention* and the 2019 Queensland Ombudsman *The Brisbane Youth Detention Centre report* made recommendations that CCTV coverage in youth detention centres should be enhanced and that body worn cameras for staff should be implemented to better protect both staff and young people.

Any potential breach is mitigated by limitations and safeguards that will apply to the use of

CCTV and body worn cameras. These are:

- appropriate warnings and signage will be displayed in youth detention centres about where and when the technology will be in use (see new section 263B);
- comprehensive training, guidelines and procedures for staff to detail the correct collection, use, retention and disposal requirements for captured recordings (see new section 263B);
- penalties of up to two years imprisonment or 100 penalty units apply for the inappropriate use or disclosure of information (section 288 of the YJ Act); and
- protecting prescribed communications between a child and a relevant oversight, legal representative, advocate, or law enforcement agency from deliberate recording.

## Consultation

The review of the Act commenced with consultation in March 2019 to identify any legislative barriers that may contribute to children being refused bail, breaching bail conditions or remaining in detention on remand for an extended period. The Department of Child Safety, Youth and Women presented policy proposals to legal stakeholders, youth justice practitioners, and government agencies.

In May and June 2019, the department also consulted with stakeholders on a draft Bill.

The stakeholders consulted included:

- Legal stakeholders: the Queensland Law Society, the Bar Association of Queensland, Legal Aid Queensland, Youth Advocacy Centre, Aboriginal and Torres Strait Islander Legal Service, Sisters Inside, YFS Legal and South West Brisbane Community Legal Centre and the Office of the Director of Public Prosecutions;
- Oversight bodies: the Anti-Discrimination Commission Queensland, the Queensland Ombudsman, the Crime and Corruption Commission, the Queensland Family and Child Commission and the Office of the Information Commissioner;
- Key members of the judiciary: including the Chief Magistrate, Deputy Chief Magistrate, Chief Judge and the President of the Childrens Court of Queensland;
- Government stakeholders: the Department of the Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney-General, Queensland Police Service (QPS), Queensland Health, Department of Education, Department of Housing and Public Works, Queensland Corrective Services, Department of Communities, Disability Services and Seniors, Department of Youth Justice and the Department of Aboriginal and Torres Strait Islander Partnerships.

## Consistency with legislation of other jurisdictions

### Matters to be finalised in a timely manner

Key aspects of amendments in the Bill aimed at ensuring matters for children are finalised in a timely manner are consistent with legislation in other jurisdictions.

In Western Australia, one of the principles underlying the operation of the *Young Offenders Act 1994* is that a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time. Similarly, in the Australian Capital Territory, the *Children and Young People Act 2008* provides that delay in decision-



making processes under the Act should be avoided because it is likely to prejudice a young person's wellbeing.

In New South Wales, the *Children (Criminal Proceedings) Act 1987* provides that if criminal proceedings are to be commenced against a child who is in custody, the child shall be brought before the Children's Court as soon as practicable. In Victoria, the *Children, Youth and Families Act 2005* provides that a child who is taken into custody and not released must be brought before the court, or a bail justice, no more than 24 hours after being taken into custody.

These provisions, and the amendments made by the Bill to require children (particularly those in custody) to be treated as a priority, recognise the special vulnerabilities and needs of young people involved in the youth justice system and the detrimental impact that delays may have on a young person.

The amendments included in the Bill to provide more discretion around pre-sentence reports and to ensure that they do not unduly contribute to delays, are broadly reflected in New South Wales' *Crimes (Sentencing Procedure) Act 1999* and Tasmania's *Youth Justice Act 1997*. In both jurisdictions, the court has some discretion relating to the nature and extent of the report ordered.

#### More appropriate grants of bail

The changes made by the Bill to ensure more appropriate grants of bail are made for children are broadly consistent with legislation in other jurisdictions. For example, the application of the principle of 'detention as a last resort' to children on remand is also present in Tasmania's *Youth Justice Act 1997* and the Australian Capital Territory's *Bail Act 1992*.

In Victoria, the *Children, Youth and Families Act 2005* and the *Bail Act 1977* provide that bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation. A similar provision is proposed by the Youth Justice and Related Legislation Amendment Bill 2019 (NT).

Legislation in both Western Australia (the *Bail Act 1982*) and Victoria (the *Bail Act 1977*) clarifies that the starting point in bail decision-making is a presumption in favour of release (with or without bail).

New section 48AD of the YJ Act has been modelled on Victoria's *Bail Act 1977* and the Northern Territory's Youth Justice and Related Legislation Amendment Bill 2019. Both require a bail decision-maker to consider additional factors. In Victoria, bail decision-makers must consider the need to strengthen and preserve the relationship between the child and the child's family, guardians or carers and the desirability of allowing the living arrangements of the child to continue without interruption or disturbance. The Northern Territory Bill allows the youth's prior exposure to, experience of and reaction to trauma and cognitive capacity, health and developmental needs to also be considered. The child-specific criteria in these jurisdictions, and in the Bill, reflect the complex needs and circumstances of many young people who are involved in the youth justice system, and ensures that they can be taken into account by decision-makers.

#### Appropriate bail conditions

The Bill makes amendments to guide decision-makers, by providing relevant considerations of the youth and their circumstances that must inform the decision on what conditions can be imposed. This approach aims to strike an effective balance between prescriptiveness and decision-maker discretion so that conditions are consistently appropriate, not onerous and reflect the circumstances of the individual.

Bail legislation in all Australian jurisdictions empowers bail decision makers to impose conditions on the granting of bail. In most jurisdictions, the legislative reason for imposing bail conditions is to ensure that an accused person appears in court as required and does not commit an offence; endanger the safety or welfare of any person; or interfere with a witness or otherwise obstruct justice while on bail. Some jurisdictions, including Western Australia, Tasmania, the Australian Capital Territory, and Victoria, include specific considerations for decision makers when determining bail conditions for children.

The Northern Territory Government has introduced the Youth Justice and Related Legislation Amendment Bill 2019, which also proposes to implement specific considerations in relation to the imposition of bail conditions for young people. The amendments are in response to recommendations from the Final Report of the NT Royal Commission. These recommendations are supported by literature and research which states that specific considerations for children are beneficial because they can address the circumstances of children that are necessarily different to adults. For example, taking into account a child's age, maturity and ability to comply with bail conditions may better inform bail condition decisions for children.

Australian jurisdictions vary significantly in the degree of legislative prescriptiveness regarding when and what bail conditions can be imposed. Generally, all jurisdictions require any conditions imposed on a grant of bail to not be more onerous than the decision-maker considers necessary in all the circumstances. In both Western Australia's *Bail Act 1982* and South Australia's *Bail Act 1985*, considerable detail is provided regarding the imposition of conditions. In particular, South Australia's *Bail Act 1985* stipulates that certain conditions must be imposed in relation to charges of particular offences in every instance. Alternatively, Victoria's *Bail Act 1977* provides greater scope for decision makers to exercise discretion, but provides examples of conditions that may be imposed. New South Wales' *Bail Act 2013* provides broad categories of conditions that can be imposed, such as conduct requirements, without being specific.

## Notes on provisions

### Part 1 – Preliminary

*Clause 1* provides that the short title of the Act is the *Youth Justice and Other Legislation Amendment Act 2019*.

*Clause 2* provides for the commencement of provisions within the Bill. It is stated that the Bill is to commence on a day to be fixed by proclamation except for part 2, divisions 1 and 2, part 5, part 6 and schedule 1, part 1, which are to commence on assent.

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

*Clause 3* provides that part 2 amends the YJ Act. Reference is also made to amendments that are made to the YJ Act by the Bill in schedule 1, parts 1 and 2.

*Clause 4* inserts a new aggravating factor into the sentencing principles of section 150. To align with amendments recommended by the Queensland Sentencing Advisory Council to section 9 of the *Penalties and Sentences Act 1992*, the Bill includes a new requirement that, in sentencing a child offender for the manslaughter of another child aged under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor. This achieves greater recognition of the defencelessness and vulnerability of child victims in sentencing.

*Clause 5* inserts new sections 263A (Recordings in detention centres and use of body-worn cameras) and 263B (Requirements for chief executive in relation to recordings and use of body-worn cameras) in part 8 (Detention administration).

New section 263A authorises the chief executive to record images or sounds in youth detention centres. The primary objective of recording images and sounds is to ensure the safe custody and wellbeing of children detained in detention centres.

Subsection (2) explicitly authorises the use of body-worn cameras by detention centre staff in performance of their duties.

Subsection (3) aims to maintain the privacy and confidentiality of communications between a child detained in a detention centre and the child's lawyer, an officer of a law enforcement agency (as that term is defined in the *Corrective Service Act 2006*), the ombudsman, a community visitor (child), a child advocacy officer or the public guardian. This reflects the nature and content of the communications that a child detainee is likely to have with those parties and the need for them to remain private so that the parties can effectively carry out their respective roles.

Subsection (4) excludes the chief executive or a detention centre employee from recording a telephone conversation between a child detainee and someone else. This is to ensure that children's private telephone conversations are not recorded. However, telephone conversations remain subject to being monitored by detention centre staff under the *Youth Justice Regulation 2016*.

Subsection (5) provides exceptions to recordings of the type described in subsections (3) and (4). It is provided that any inadvertent, unexpected or incidental recording of communications under subsection (3) or telephone conversations under subsection (4) through the use of a body-worn camera will not be unlawful. This exception supports the fact that a staff member, upon activating a body-worn camera, is unable to completely control what the camera may inadvertently, unexpectedly or incidentally record. For example, a young person within a detention centre may

engage in self-isolation and refuse to remove themselves from their accommodation room. An Office of the Public Guardian community visitor may visit that young person in their accommodation room (most likely by standing at the door and conversing). An incident could then develop nearby the young person's room and a staff member may activate their body-worn camera to record the incident and inadvertently capture the conversation between the community visitor and the young person.

Subsection (6) clarifies that use of a body-worn camera by a detention centre employee is only lawful if it is authorised by the chief executive and complies with the limitations in the section.

Subsection (7) is a declaratory provision confirming that the recording of images or sounds under subsections (1), (2) and (6) constitute an exemption to the offence of using a listening device under section 43(2)(d) of the *Invasion of Privacy Act 1971*.

Subsection (8) defines the terms *listening device*, *telephone conversation* and *use* for the purposes of the section. The definition of *use* provides clarification that inadvertent, unexpected or incidental use of a body-worn camera remains lawful. For example, a staff member may inadvertently activate a body-worn camera resulting in a private conversation being accidentally recorded. Similarly, a staff member may be engaging with a particular detainee or staff member, and unexpectedly record images or sounds relating to an incident involving another detainee or staff member in close proximity. Furthermore, the recording of images or sounds of a member of the public may occur incidentally while a youth detention centre staff member is performing duties outside the premises of a detention centre facility, such as conducting a high risk escort or transfer of a detainee.

New section 263B sets out requirements of the chief executive in relation to recordings of images and sounds by surveillance technology and body-worn cameras. To increase safeguards for children and maintain the privacy and confidentiality of persons who appear on captured audio or video footage, the chief executive is required under subsection (1) to make guidelines detailing the appropriate method of recording, using, storing and disposing of recordings. Under subsection (2), the chief executive is also to ensure that detainees, centre staff and visitors are adequately advised that images and sounds are recorded at the youth detention centre, for example by implementing staff induction processes and appropriate signage within and around the centres.

*Clause 6* inserts transitional provisions for the Bill in new part 11, division 18. New section 396 provides that the amending Act means the *Youth Justice and Other Legislation Amendment Act 2019*.

New section 397 provides for the application of the new sentencing principle in section 150 inserted by clause 16 of this Bill, which is to commence on assent. The new sentencing principle in section 150 of the YJ Act is intended to operate in the same manner as section 9(9B) of the *Penalties and Sentences Act 1992* (PSA) only to sentencing post-commencement (whether or not the offence or conviction occurred before or after commencement). This approach is consistent with the Court of Appeal decision of *R v Hutchinson 2018 [QCA] 29* which held that the approach to the exercise of the sentencing discretion that is affected by the insertion of the aggravating factor in subsection 9(10A) of the PSA was a procedural amendment and therefore the common law presumption against retrospective operation did not apply.

*Clause 7* amends the Charter of youth justice principles in Schedule 1 of the YJ Act. Principle 7 is amended to include that if a proceeding is started against a child for an offence, the proceeding should be finalised as soon as practicable. A new principle 7A is also inserted, which requires 'priority' to be given by the youth justice system to proceedings of children remanded in custody.

Principle 8 is amended to provide that a child who commits an offence, should, in addition to being held accountable for the offence, given the opportunity to develop in responsible, beneficial and socially acceptable ways and dealt with in a way that strengthens the child's family, be dealt with in a way that recognises the child's need for guidance and assistance because of their dependency and immaturity.

Principle 16, which provides that a child should be dealt with under the YJ Act in a way that allows the child to be reintegrated into the community, is amended to provide that children should also be dealt with under the YJ Act in a way that allows the child to continue their education, training or employment without interruption or disturbance, if practicable, and continue to reside in their home, if practicable. These principles recognise the importance of these factors in the rehabilitation of young people who become involved in the youth justice system.

Principle 17 is amended to include 'remand', to clarify that the principle of detention as a last resort also applies to bail decision-making. The amendments to principles 7 and 17 ensure that matters in the youth justice system are dealt with quickly, priority is given to children who remain on remand and reinforce that children should only be on remand as a last resort and for the least time that is justified in the circumstances.

Subsection (6) renumbers the principles to reflect the changes above.

*Clause 8* inserts a definition of body-worn camera into Schedule 4 (Dictionary) for the purposes of new sections 263A and 263B. The definition is the same as that contained in the PPRA, section 609A(5). A body-worn camera is restricted to a device that is worn on clothing or otherwise secured on a person and is designed to record images, or images and sounds. This definition allows a body-worn camera to be worn in several ways by a youth detention centre staff member. For example, a body-worn camera could be attached to a staff member's shirt or vest. However, the definition does not authorise the use of a body-worn camera where the staff member is not present.

*Clause 9* amends section 47 (Bail Act 1980 applies) by inserting a note to ensure that it is clear that sections 7, 11, 16 and 16A of the Bail Act do not apply to children.

*Clause 10* replaces existing section 48 (Decisions about bail and related matters) with a new framework for courts and police to apply when deciding about release and bail for children held in custody in connection with the charge of an offence. The new framework is designed to promote appropriate grants of bail to children while ensuring decision makers can exercise discretion to maintain community safety.

Subsection (1) of the new section 48 provides that the section (Releasing children from custody in connection with charge of an offence) applies when a court or police officer is deciding whether to release a child in custody in connection with a charge of an offence or keep the child in custody. Subsection (2) states the court or police officer must decide to release a child. This provides a clear presumption in favour of release that is applicable in all circumstances.

However, under subsection (3), the presumption is subject to a requirement under the YJ Act or another Act to keep the child in custody. The presumption can also be rebutted if the court or police officer is satisfied under subsection (4) that there is an unacceptable risk that the child would not surrender into custody, or would commit an offence, endanger the safety or welfare of a person or interfere with a witness or otherwise obstruct the course of justice, whether for the child or another person, if released. A note is inserted to inform courts and officers that new section 48AA provides the matters to be considered in deciding whether there is an unacceptable risk of one of the matters outlined above. A further note references section 48AD, which relates to when a child may be released from custody despite an unacceptable risk.

Under subsections (5) and (6), a court may remand a child in custody while further information is obtained to better inform the court's decision of whether there is an unacceptable risk of a matter mentioned in subsection (4). This is a change from the current framework, which provides that the court must remand a child in custody in such instances. More discretion is now provided to courts to determine the most appropriate course of action. This acknowledges that there may be other ways for the court to obtain the information it requires to make a decision that do not involve adjourning the matter and remanding the child in custody. For example, it may be appropriate to adjourn the court and release the child into the custody of their parent while the information is being obtained, or to immediately obtain the information directly from the child's legal representative.

New section 48AA provides matters that are to be considered by a court and police officer in making decisions about release and bail for children. The section is applicable when a court or police officer is making a decision about whether there is an unacceptable risk that the child would not surrender into custody, or would commit an offence, endanger the safety or welfare of a person or interfere with a witness or otherwise obstruct the course of justice, whether for the child or another person, if released, or whether to release the child without bail or grant bail to the child. This section also applies when the court is determining whether there is a risk of one of the matters identified in 48(4)(b), for the purpose of considering conditions under section 52A(2).

Subsection (2) provides matters the court or officer must consider in relation to terrorism that were inserted by the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2019*.

Subsection (3) provides that if a bail decision is being made by the court, the court must have regard to the sentence order or other that is likely to be made for the child if they are found guilty of the offence. This is because if a young person has been charged with an offence that does not carry the possibility of detention as a sentence or is not likely to be sentenced to a period of detention if they are convicted of the offence, it is less justifiable to remand the young person in custody in relation to that offence prior to sentencing. However, it would not be appropriate for police officers to be deciding what sentence might be made for the child as this is the purview of the courts.

Subsection (4) provides factors that are relevant in relation to determining whether there is a risk or an unacceptable risk of a child committing an offence if they were released from custody. Under subsection (4), a court or police officer must consider the nature and seriousness of the other offence and its likely impact on a victim or the community. These factors are provided to ensure that in instances where there is a high risk of a child committing an offence if released, but the nature of the offence is minor or trivial, the risk is low and the child should be released. Similarly, if the offence the child might commit is victimless or has little to no impact on a victim or the community, the child should be released because community safety would not be jeopardised by the child's release.

The use of the word 'risk' in subsections (4) and (7) does not lower the threshold for determining whether a child should be kept in custody. There must still be an 'unacceptable risk' of a matter to reverse the presumption in favour of release. The use of the word 'risk' in addition to 'unacceptable risk' in new section 48AA is to support the ability of a court or police officer to take into account whether the imposition of a condition on a grant of bail under new section 52A could address an 'unacceptable risk' of a matter in section 48(4).

Subsection (5) provides a comprehensive list of matters that a court or police officer may have regard to when making a decision in subsection (1). A number of these factors are included as considerations in current section 48. Consideration of the child's character, which was previously included, has been deliberately omitted, as it not necessarily related to any risk of reoffending or other possible matters under section 48(4). Factors that are likely to remain relevant include the

nature and seriousness of the alleged offence, the child's criminal history, and the history of previous grants of bail to the child, and the child's age, maturity level, cognitive ability and developmental needs. It is not intended that a child who is alleged to have committed only a minor or trivial offence pose an unacceptable risk and be remanded in detention. It is not desirable for young children, or children to be remanded in detention. Under section 48AA(5)(g), a court or police officer may also have regard to any other relevant matter. Section 48AA(6) clarifies that the court or police officer may consider whether any conditions could be imposed under section 52A and have regard to the effect that the conditions may have on the risk. For example, it may be that an appropriate bail condition can be imposed under new section 52A to mitigate the identified risk so that it no longer meets the threshold of 'unacceptable'.

Subsection (7) provides that a court or police officer cannot be satisfied that there is a risk or an unacceptable risk of a matter mentioned in section 48(4) on the sole basis that the child will not have adequate accommodation when released, or no family support, or both. This is to avoid situations where a child is remanded only because it would provide them with accommodation. The consequences of even a short period of remand for children may be significantly detrimental and must be avoided even when it appears to the court or police officer that a child does not have any other adequate accommodation or lacks family support.

New section 48AB retains the existing provisions in the YJ Act about a child promoting terrorism. These provisions were inserted by the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2019* and clarify that a person or organisation has promoted terrorism if the person or organisation has carried out an activity to support the carrying out of a terrorist act; or made a statement in support of the carrying out of a terrorist act; or carried out an activity, or made a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.

New section 48AC retains the existing provisions of the YJ Act about when a community justice group must advise of particular matters if it makes a submission in relation to a bail decision. For example, a representative of a community justice group must advise if there are circumstances that give rise to a conflict of interest between a member of the community justice group and the child or victim of the offence.

New section 48AD introduces a new concept that a child may still be released from custody, even if a court or police officer finds there is an unacceptable risk of a matter in section 48(4), if the court or police officer is satisfied the child's release is not inconsistent with ensuring community safety. This provision is intended to be applied when a police officer or court has made an assessment that there is an unacceptable risk that the child in question would not surrender into custody, or would commit an offence, endanger the safety or welfare of a person or interfere with a witness or otherwise obstruct the course of justice, whether for the child or another person, if released. The court or police officer should then consider whether releasing the child would not be inconsistent with the need to ensure community safety, and would otherwise be appropriate, having regard to the child-focussed factors in subsection (2)(a) to (j). This will allow the court or police officer to take into consideration other special needs of the child that support release – for example, the need for a child with a disability to be able to access disability service, or the trauma experienced by a child in the past, which may make it more detrimental for that child to be in a detention environment. Also, it is not desirable for young children to be remanded in detention. In these circumstances, the court may release the child, and if appropriate, impose relevant bail conditions to manage the identified risk. This provision gives support to the principle of 'detention as a last resort' and recognises the issues that many children who become involved in the youth justice system face, and the positive impact that education, employment and family connection can have

on those children. The note to this section references section 52A, for the conditions that may be imposed on a grant of bail to a child released under section 48AD.

New section 48AE retains the existing provisions that apply in relation a child whose safety is endangered in connection with a charge of an offence. However, the new section clarifies that a court or police officer must not decide it is satisfied of the matters mentioned in subsection (2) only because the child will not have adequate accommodation on release from custody or the child has no apparent family support. This change gives effect to the intent behind amendments made to section 48 in 2009 by the *Juvenile Justice and Other Acts Amendment Act 2009* (the 2009 Amendment Act) which amended then section 46(7), to make a connection between the endangerment of the safety of the child and the alleged offence. It is clear from the Explanatory Notes and Second Reading Speech for the 2009 Amendment Act that the aim was to ensure that young people would not be refused bail under this section simply for welfare reasons, such as a lack of accommodation, however, this practice has continued. The amendment aims to remedy this issue.

*Clause 11* makes consequential amendments to subsection (5) of existing section 48A (Releasing children found guilty of terrorism offences or subject to Commonwealth control orders) to reflect changes made to section 48. Section 48A was inserted by the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2019* and applies to children who are in custody in connection with a charge of an offence if the child has previously been found guilty of a terrorism offence or is or has been the subject of a Commonwealth control order. These children may only be released on bail in exceptional circumstances, despite any other provision of the YJ Act or the Bail Act. Subsection (5) provides that this section does not affect the operation of section 48(8) or (10). The Bill renumbers these subsections as 48(4) and 48AE respectively, and amends 48A(5) to reflect this renumbering. This retains the original intent behind section 48A(5). The Explanatory Notes for the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2019* clarify that ‘New section 48A does not affect the operation of sections 48(8) (unacceptable risk) or (10) (safety considerations). If a court decides that exceptional circumstances exist to justify releasing the child, the court must then apply section 48.’

*Clause 12* inserts new section 48B (Reasons for decisions to keep or remand children in custody). Subsection (1) requires a court that makes an order remanding a child in custody in connection with the charge of an offence, to state the reasons for that decision. Subsection (2) similarly provides that where a police officer makes a decision to keep a child in custody in connection with a charge of an offence, the police officer make a record of the reasons for the decision. Under subsection (3) keeping or remanding a child in custody is not unlawful merely because a court or police officer has not complied with the requirement to provide reasons for the decision. This will increase transparency and may help to ensure that children are only remanded in custody in accordance with section 48.

*Clause 13* replaces existing section 49 with a new section detailing when an arrested child must be brought before a Childrens Court. New section 49 requires a child who is arrested for an offence, or for breach of a bail condition, and is in custody in connection with the charge to be brought before the Childrens Court as soon as practicable and within 24 hours after arrest. If it is not practicable for the court to be constituted within 24 hours of the arrest, then the child must be brought before the court as soon as practicable on the next day the court can practicably be constituted. The new section also removes two existing exceptions to the existing requirement in section 49 that are contained in section 393 of the *Police Powers and Responsibilities Act 2000* where a child is in watch house custody and where a child is being detained for an indictable offence, as in both circumstances it is extremely important for the child to be brought before the court as soon as possible.



*Clause 14* is a consequential amendment to section 50 to reflect the changes made to sections 48 and 49.

*Clause 15* amends the heading of section 52 (Conditions of release on bail) by inserting ‘— generally’ after ‘bail’. The clause also omits current subsections (4) to (6) to reflect the amendments being made by new section 52A.

*Clause 16* inserts new sections 52A (Other conditions of release on bail) and 52B (Reasons for decisions to impose particular conditions). The new sections, along with amended section 52, form an updated framework that is intended to apply exclusively when imposing conditions on grants of bail to young people.

Subsection (1) of new section 52A provides that the section is applicable if a court or police officer has decided to grant bail to a child in section 52(1).

Subsection (2) provides that the court or police officer may impose a condition on the grant of bail, other than a condition about appearing before a court or surrendering into custody, in circumstances where a risk has been identified that the child, if released, will commit an offence; endanger the safety or welfare of a person; or interfere with a witness or otherwise obstruct the course of justice. Subsection (2)(b) also provides that a condition must be necessary to mitigate the identified risk in subsection (2)(a). A clear link is established by these two subsections between the imposition of bail conditions and the risks those conditions must address. The link is designed to eliminate irrelevant or onerous conditions being attached to grants of bail that do not address the identified risks.

Where a court or police officer has already identified risks when considering the matters in new section 48AA, new section 52A does not require the decision maker to again consider whether there is a risk or unacceptable risk under new section 48AA before imposing a bail condition. The provisions retain a holistic decision making process where a court or police officer may consider whether there is an unacceptable risk and appropriate bail conditions at the same time.

Subsection (2)(c) provides a condition must not involve undue management or supervision of the child having regard to the following matters, of which the court or officer is aware: the child’s age, maturity level, cognitive ability and developmental needs, the child’s health, including the child’s need for medical assessment or medical treatment; for a child with a disability – the disability and the child’s need for services and supports in relation to the disability; the child’s home environment; and the child’s ability to comply with the condition. Existing section 52 provides that any conditions imposed on a grant of bail must not be more onerous than a court or police officer considered necessary in all the circumstances. The clause amends this criteria to state that conditions must not involve undue management or supervision of a child because bail conditions should not be onerous or disciplinary in nature, especially considering a child has not been convicted of committing an offence. Instead, bail conditions must address the risks of a child, if released, committing an offence, endangering anyone’s safety or welfare or obstructing justice. Subsections (2)(c) includes specific matters to ensure courts and police officers consider the particular circumstances of the child, including the child’s ability to comply with a condition. This is intended to ensure that conditions are appropriately tailored to mitigate the actual risks for the child and the community while the child is released on bail.

Subsections (3) and (4) insert a new requirement for a court or police officer to state how long a condition is to remain in effect following its imposition. This is designed to ensure that conditions do not continue for extended periods, in particular in instances of unexpected delays in the finalisation of a child’s matter or when a legal representative is unable to apply to the court for a variation of conditions. A court or police officer is required to state the period the condition has

effect and the condition stops having effect at the end of that period. The court or police officer, in deciding the period the condition is to have effect, must consider the matters listed in subsection (2)(c) and must also ensure that the stated period is no longer than is necessary to mitigate the risk the condition is being imposed to address. For example, if a condition of a child's bail involves significant restrictions on their movement, it is expected that such a condition would only be imposed for a short time in order to mitigate the risk it was imposed to address.

Subsection (5) clarifies that a bail condition requiring the use of an electronic tracking device must not be imposed on a child. This is to resolve the legal ambiguity about whether section 11(9B) of the Bail Act applies to children, and to reflect the position that the imposition of a condition of this nature on a child may be ineffective, harmful and an impediment to the successful rehabilitation of the child.

Subsection (6) provides that if a child is not an Australian citizen or a permanent resident, the court or police officer must consider imposing a bail condition requiring the child to surrender the child's current passport. This subsection replicates section 11(4AA) of the Bail Act. Section 11 of the Bail Act has been amended to clarify that it does not apply to children as the new framework in the YJ Act is intended to provide the only legislative authority for decision makers to impose bail conditions on grants of bail to a child. New subsection (6) ensures that police and courts must still consider imposing a condition requiring passport surrender in appropriate circumstances. The imposition of such a condition must adhere with the new requirements in subsection (2).

Subsection (7) is declaratory in nature to ensure that conditions that are able to be imposed under section 151(8) relating to pre-sentence reports are not subject to the restrictions of new section 52A(2).

New section 52B (Reasons for decisions to impose particular conditions) is separated into the requirement for courts and the requirement for police officers to provide justifications for imposing conditions on grants of bail. Subsection (1) is in relation to courts and requires a court to explain how an imposed condition mitigates the risk regarding whether the child may commit an offence; endanger the safety or welfare of a person; or otherwise obstruct the course of justice for any matter while released on bail. Subsection (2) provides the same requirement on a police officer to make a record of how imposed conditions mitigate the risks. These requirements are similar to existing section 52(5)(b) that require a court to provide written reasons for imposing particular conditions and are intended to ensure that onerous, irrelevant or disciplinary conditions are not attached to grants of bail by requiring decision makers to justify how a condition addresses the risk that was identified for the particular child.

*Clause 17* amends section 59 (Childrens Court judge may grant bail) to clarify that despite section 13(1) of the Bail Act that provides only the Supreme Court or a judge of the Supreme Court may grant bail to a persons charged with certain serious criminal offences, a Childrens Court judge may grant bail if the defendant is a child charged with the same offences.

*Clause 18* inserts new section 59A (Police officers must consider alternatives to arrest for contraventions of bail conditions). The new section provides a child-focused, discretion-based framework that provides police with flexibility to respond to children in connection with breaches of bail conditions. The flexibility and discretion given to police by the section is intended to reduce instances of children being unnecessarily arrested or served with a notice to appear and brought before a court for trivial or unavoidable breaches of conditions. The section applies if a police officer reasonably suspects a child has contravened or is contravening a condition imposed on a grant of bail which does not constitute an offence. If the child has committed an offence, the relevant existing provisions in the PPRA regarding arrest apply. Subsection (2) provides that the

section is also applicable where a police officer reasonably suspects a child is likely to contravene a condition of their bail.

New subsection (3) provides that before arresting a child under section 367 of the PPRA for the contravention or likely contravention of a bail condition, an officer must first consider whether it would be more appropriate to take no action, give the child a warning in relation to the contravention, or make an application under the Bail Act to revoke or vary the child's grant of bail. A list of relevant circumstances for an officer to consider when determining which option is most appropriate is provided. These circumstances, such as the seriousness of the contravention or likely contravention and whether the child has a reasonable excuse, are designed to assist police officers to determine the appropriate response that is reasonable and proportionate with the circumstances of the contravention or likely contravention.

Subsection (5) provides that if a police officer considers that in the circumstances, it is more appropriate to take one of the actions above, then the police officer must do so. Subsection (6) provides for the meaning of *reasonably suspects* to further guide officers in the threshold that must be met for the purposes of making a determination under new section 59A.

*Clause 19* amends the sentencing principles in section 150 to replace the word 'relationship' with 'connection to the child's community, family or kin' to use more modern and appropriate language for Aboriginal and/or Torres Strait Islander peoples.

*Clause 20* amends section 151 (Pre-sentence report) to insert a new subsection (1A) that directs the court to consider whether ordering a pre-sentence report is the most efficient and effective way to obtain information relevant to the sentencing of the child before making the order. However, (1A) does not apply if the court considers that it may be required to order the pre-sentence report under sections 203 or 207. Section 203 requires a pre-sentence report to be ordered and considered prior to making an intensive supervision order while section 207 provides that the court must order a pre-sentence report in circumstances where the court is considering detention as a penalty for a child. Consequential renumbering is made by subsection (2) of the clause.

Subsection (3) inserts a new subsection (3A) which allows the court to ask that the pre-sentence report be provided to it within a stated timeframe. This timeframe must be reasonable, having regard to the likely complexity of the report. This recognises that some pre-sentence reports may take different amounts of time to prepare. If a report requires a number of assessments of a child to be undertaken, for example, this would take some time. Subsection (4) provides that conditions imposed on a child who is released from custody while a pre-sentence report is being prepared are not to include a condition requiring the child to wear an electronic tracking device.

Subsection (5) omits current section 151(7) – (9) which contains the requirement for the chief executive to provide a pre-sentence report, and replaces them with new section 151(7) - (10), which imposes a requirement for the chief executive to provide either a pre-sentence report, or further material to be considered with an existing pre-sentence report given to the court for another sentencing of the child, in the previous six months. This is designed to reduce delays associated with obtaining a new pre-sentence report, in circumstances where the court would already have access to some relevant information because it is contained in the earlier report. It will mean that any new information can be more quickly provided to the court for consideration, reducing the period of time in which the child in question might be remanded in custody while the report is prepared. Subsection (6) renumbers the subsections in section 151 to reflect the above changes.

*Clause 21* amends section 193 (Probation orders—requirements) which allows a court to impose conditions on a probation order against a child. The amendment clarifies that these conditions must

not include a requirement for the child to wear a tracking device. This reflects the position discussed above, that is, conditions of this nature are not appropriate for children.

*Clause 22* amends section 204 (Intensive supervision order—requirements) to provide that an intensive supervision order must not include a condition requiring a child to wear a tracking device.

*Clause 23* amends section 221 (Conditional release order—requirements) to provide that a conditional release order must not include a condition requiring a child to wear a tracking device.

*Clause 24* amends section 228 (Chief executive’s supervised release order) to provide that a chief executive’s supervised release order must not include a condition requiring a child to wear a tracking device.

*Clause 25* amends section 228A (Supervised release orders for children with links to terrorism) to provide that a supervised release order for a child with links to terrorism is subject to section 228(6) and therefore must not include a condition requiring a child to wear a tracking device.

*Clause 26* amends section 269 (Leave of absence) to provide that a leave of absence from a youth detention centre must not be subject to a condition requiring a child to wear a tracking device.

*Clause 27* replaces the current heading of part 9 (Confidentiality) with a new heading, ‘Provisions about disclosure of information’ to reflect the changes discussed below to incorporate a new information sharing framework in the YJ Act.

*Clause 28* amends section 285 (When does someone gain information through involvement in the administration of this Act) to provide additional persons who also ‘gain information through involvement in the administration of the Act’. The amendment includes a person who is, or who is employed or engaged by, a prescribed entity or service provider. Those terms are defined in new section 297D. This will ensure that entities who obtain information through the new information sharing framework are subject to the confidentiality obligations in the YJ Act.

*Clause 29* amends section 289 (Recording, use or disclosure for authorised purposes) to reflect the changes made to section 48 of the Act and to clarify that information may be recorded, used or disclosed as expressly authorised under the YJ Act, or another Act.

*Clause 30* inserts new part 9, division 2A (Information sharing and services coordination for children charged with offences). This amendment creates a new information sharing framework within the YJ Act, to ensure that government entities and government and non-government service providers (including, for example, drug and alcohol workers, education specialists, mental health practitioners and case workers) are able to share confidential information for the purposes of providing multi-disciplinary assistance to a young person. This will be considered an ‘authorised purpose’ under section 289 of the YJ Act, and therefore will not offend against section 288, which prohibits recording, use or intentional disclosure of confidential information, other than under division 1 of part 9 of the YJ Act.

Section 297B provides that the purpose of new division 2A is to enable a coordinated response to the needs of children charged with offences. This is to be achieved by providing for an arrangement to be established under which services provided to the children by particular entities are coordinated, and information relating to the children may be shared between those entities, while protecting the confidentiality of the information.

Section 297C(1) includes a principle that is intended to underlie the sharing of information under the new framework – that is, whenever possible and practical, a person’s consent should be

obtained before disclosing confidential information relating to the person to someone else. This principle will apply to the information sharing framework in addition to the principles in the Charter of youth justice principles. Subsection (2) clarifies that the section does not prevent information relating to a person from being disclosed under division 2A if consent is not obtained. This recognises that while it is always preferable to obtain consent, in many circumstances it will not be practical or possible, and the relevant information should still be shared in order to achieve the best outcomes for a child in the youth justice system.

Section 297D provides the definitions for new division 2A. This includes definitions of *non-government entity*, *prescribed entity*, and *service provider*. This section also provides a reference to section 279E, in relation to the definition of *child charged with an offence*.

Section 297E clarifies that the references throughout the division to a *child charged with an offence* includes children who have been charged with offences and are receiving services provided for the purpose of dealing with the child under the YJ Act (for example, an assessment prepared for sentencing the child) or helping to rehabilitate the child (for example, counselling and rehabilitation programs provided for the purpose of meeting particular needs of the child relevant to the child's offending behaviour). This definition is intended to ensure that information can be shared not only before and while the young person's matter is before the court, but also for case management of the young person post sentence, for the purpose of rehabilitation and addressing causes of offending.

Under section 297F, the chief executive of a department who is prescribed entity may establish an arrangement to enable prescribed entities and service providers to coordinate services to meet the needs of children charged with offences, provide information to the court to assist in bail and sentencing decisions for children and share relevant information for these purposes. This section recognises that over time, relevant arrangements may be initiated and coordinated by various areas of government involved in the provision of services to children and young people.

Section 297G is the provision that allows information sharing. Subsection (2) provides that a prescribed entity or service provider that holds information about a child who has been charged with an offence (who is a holder), may disclose it under an arrangement established under section 297F, to another prescribed entity or service provider (who is a recipient), if the holder reasonably believes that it will help the recipient to take one of the actions listed in (a) – (f). These actions are directly linked to meeting the various needs of a child who has been charged with an offence and include, for example, participating in case planning for the child, assessing the child's needs and delivering services, programs and support to the child. Subsection (3) clarifies that the information may also be recorded or used for these purposes. Subsection (4) aims to further protect the privacy of young people and their families by providing that the power to disclose, use or record information under subsections (2) and (3) may be limited by regulation.

Section 297H clarifies division 2A's interaction with other laws. It stipulates that division 2A does not limit a power or obligation under another Act or law to give information. Subsection (3) clarifies that subject to the provisions specified in subsection (2), part 2A applies to information despite any other law that would otherwise prohibit or restrict the giving of the information. This means that laws other than those identified in subsection (2), which may restrict information sharing, will not apply to information shared under division 2A. Subsection (4) confirms that a privilege that a person may claim under another Act or law in relation to information is not affected only because the information may be, or is, disclosed under this division. To remove any doubt, subsection (5) declares that nothing in Division 2A requires an entity to disclose information. By way of example, a person may decide to withhold information that may be disclosed under division 2A because the information is subject to legal professional privilege.

*Clause 31* inserts new part 11, division 18, subdivision 3 (Provisions for amendments commencing by proclamation). New section 398 provides that amendments made by this Bill to sections 48 to 48B and 52 to 52B apply to a decision made by a court or police officer on or after the commencement of this Bill about whether to grant bail to a child or otherwise release the child from custody regardless of whether the offence in relation to which the decision is made happened, or the proceeding for the offence was started, before or after the date of commencement set by proclamation. This means that even if a child committed an offence before commencement of the provision, a decision-maker would need to apply the new framework if the decision is being made after commencement.

New section 399 clarifies that children arrested before the date set by proclamation for commencement of the sections that amend sections 49 and 50 are subject to existing sections 49 and 50 as if the amendments had not been made. However, it is provided that if a police officer is making a decision under existing section 50(2), the reference to section 52 is a reference to the amended section 52 and new 52A as amended by this Bill. Similarly, the reference in section 50(4)(a) to section 48 is a reference to sections 48, 48AD and 48AE as amended or inserted by this Bill. This means that if a child is arrested before the date set by proclamation for commencement of the provisions, existing sections 49 and 50 apply to the arrest but if the officer is granting bail to the child on or after the commencement date, the new requirements in amended section 52 and 52A apply to the determination of bail conditions to that grant of bail. Likewise, if the arrest of a child occurs before the commencement, existing sections 49 and 50 apply but if the officer is making the decision whether to grant bail to the child on or after the commencement date, the decision will be subject to the new decision making framework in amended section 48 and new sections 48AD and 48AE as amended and inserted by this Bill.

New section 400 relates to the application of new section 59A and clarifies that it does not apply to a contravention of bail by a child that occurred before the date set by proclamation for commencement of new section 59A.

New section 401 applies if a grant of bail to a child that is in effect on commencement is subject to a condition that the child must wear a tracking device. Under subsection (2), the tracking device condition stops having effect on the earlier of either the day that is 28 days after commencement, or when the grant of bail is revoked or varied by a court, or otherwise stops having effect, under the Bail Act.

*Clause 32* amends Schedule 4 (Dictionary) by inserting definitions of *child charged with an offence*, *National Disability Insurance Agency*, *non-government entity*, *prescribed entity* and *service provider* for the purposes of part 9, division 2A (Information sharing and services coordination for children charged with offences). A definition of *tracking device* is also inserted to clarify the meaning of that term for the purposes of the YJ Act.

### **Part 3 – Amendment of Bail Act 1980**

*Clause 33* provides that part 3 amends the Bail Act. Reference is also made to amendments that are made to the Bail Act by the Bill in schedule 1, part 2.

*Clause 34* amends section 7 (Power of police officer to grant bail) to clarify that that it does not apply to children. A new subsection (1)(d) is inserted and subsection (9) is omitted. Consequential renumbering is made by the clause.

*Clause 35* amends section 11 (Conditions of release on bail) by inserting a new subsection (1AA) before current subsection (1). This makes it clear the provision is no longer applicable to children.

It is intended that section 52 (Conditions of release on bail) in the YJ Act, as amended by this Bill, is the sole legislative authority for imposing conditions on grants of bail to children.

*Clause 36* amends section 13 (When only particular courts may grant bail) to provide that notwithstanding that only the Supreme Court or a Supreme Court judge may grant bail to a person who has been charged with certain serious offences, a Childrens Court judge may also grant bail if the defendant is a child.

*Clause 37* clarifies that section 16 (Refusal of bail generally) does not apply to children. New subsection (1AA) is inserted before current subsection (1) and provides upfront that the section applies in relation to a defendant who is an adult. Current subsection (5) is also removed. Consequential renumbering of the section is made by the clause.

*Clause 38* inserts new section 48 that provides transitional arrangements for the implementation of clause 35 and 36 of the Bill. The provision clarifies that the amendments made by the Bill to sections 11 and 13 of the Bail Act apply from the date of commencement which is to be set by proclamation. This means that section 11 does not apply to children and that a Childrens Court judge has power to grant bail to a defendant charged with certain serious offences who is a child from the date set by proclamation for clauses 35 and 36.

Subsection (2) of the clause makes it clear that amended section 11 applies to a person released on bail from the commencement date regardless of when the offence in relation to which the person is released occurred. Similarly, amended section 13 applies from the date of commencement regardless of when the proceeding for the offence was started.

## **Part 4 – Amendment of Police Powers and Responsibilities Act 2000**

*Clause 39* provides that part 4 amends the PPRA. Reference is also made to amendments that are made to the PPRA by the Bill in schedule 1, part 1.

*Clause 40* inserts a note into section 367 (Arrest of person granted bail) under subsection (3)(a)(i) to ensure police officers use new section 59A inserted by the Bill into the YJ Act prior to arresting a child on bail in relation to a breach or likely breach of a bail condition.

Subsection (2) of the clause omits subsection (5) and inserts a new subsection that provides subsection (4) does not apply in relation to the arrest of a child under subsection (3)(a)(i) or (iv) or (c) to maintain operability of the section.

*Clause 41* amends section 384 (Notice to appear form) to provide that a notice to appear for a child should require the child to appear at the court that a police officer is satisfied is most convenient for the child to attend, having regard to the child's circumstances. This is unless it would delay the ability of the child to appear before the court as soon as practicable after service of the notice to appear, which is the most important consideration. This responds to concerns that some children may fail to appear, or alternatively evade payment of public transport fares, when required to attend a court that may be located some distance from the child's normal residence. Under new subsection (4), this is subject to a provision of another Act that requires a proceeding to be started, heard or determined at a particular place.

*Clause 42* amends the heading of section 392 (Parent and chief executive to be advised of arrest or service of notice to appear) to insert 'particular chief executives'. Subsections (2) and (3) of the clause make amendments that aim to strengthen current requirements for a police officer who arrests or serves a notice to appear on a child, to advise a parent of the child unless a parent cannot be contacted after reasonable inquiries. The amendment requires all reasonable inquiries to be made

by the police to promptly contact a parent of the child. To increase accountability and transparency, the current operational requirement for police to keep a record of contact made with the parent of a child is reflected in a new legislative requirement for police to keep a record of contact inquiries made when a parent has not been contacted. Subsections (4) and (6) make consequential renumbering. Subsection (5) extends the definition of *parent* in section 392 to also include the broader definition in the YJ Act. This means that a parent, for the purpose of this section, means a parent or guardian of a child, a person who has lawful custody of a child other than because of the child's detention for an offence or pending a proceeding for an offence, a person who has the day-to-day care and control of a child or a person who is apparently a parent of a child.

*Clause 43* amends section 421 of the PPRA. Currently, section 421 provides that a police officer must not question a child in relation to an alleged indictable offence, unless the police officer has, before questioning, allowed the child to speak privately to a support person (if practicable) and during questioning, ensured the support person is present. Under section 29 of the YJ Act, a statement made by a child in the absence of a support person will generally not be admissible as evidence. The amendment to section 421 of the PPRA inserts a new subsection (1A), requiring a police officer questioning a child in relation to an alleged indictable offence to notify or attempt to notify a representative of a legal aid organisation, as soon as reasonably practicable and before questioning starts. Under new subsection (1A), if a child has spoken to a lawyer acting for the child under section 421(2) as their chosen 'support person', or arranged for a lawyer to be present during questioning under that subsection, the police officer is not required to also notify or attempt a legal aid organisation. This amendment will not prohibit police from questioning a child if a legal aid organisation has not been contacted. A failure by police to contact a legal aid organisation in accordance with new subsection (1A) also will not render information obtained during questioning of a child inadmissible under section 29 of the YJ Act. This amendment instead recognises that ensuring a child has the benefit of legal representation as soon as possible may both assist in informing police decision making about appropriate diversion or charge options, and if the child is detained in custody, allow bail applications to be made more promptly. Subsection (2) makes consequential renumbering.

*Clause 44* inserts new chapter 24, part 17 that provides for transitional arrangements for implementation of the Bill. New section 881 provides definitions for the new part and states that *amending Act* means this Bill and *former* refers to a provision of the PPRA that was in force before amendments were made to the provision by this Bill. New section 882 clarifies that any contravention of a bail condition before commencement of the Bill is subject to existing section 367 as if this Bill had not been enacted. This means, for example, that if a child contravenes a bail condition prior to commencement of the Bill, a police officer will not be subject to the new response requirements in section 59A of the YJ Act if they are making a decision about how to respond after commencement.

New section 883 clarifies that children arrested or served with notices to appear before commencement of the Bill are subject to existing chapter 14, part 6 of the PPRA as if this Bill had not been enacted.

*Clause 45* amends Schedule 6 (Dictionary) to provide that a *legal aid organisation* also includes an organisation prescribed by regulation, that provides legal assistance to persons.

## **Part 5 – Amendment of Public Guardian Act 2014**

*Clause 46* provides that part 5 amends the *Public Guardian Act 2014* (PG Act).



*Clause 47* amends the definition of *prescribed department* in section 51 of the PG Act so that it also includes the youth justice department. This is to ensure that there is no gap in oversight and safeguards for young people who may reside at a child accommodation service provided, or funded by, the Department of Youth Justice. The amendment legislatively authorises the Office of the Public Guardian's community visitor program (child) or child advocacy officers, to visit these facilities and carry out their powers and functions as per the PG Act.

## **Part 6 – Other amendments**

*Clause 48* provides that Schedule 1 (Other amendments) amends the Acts it mentions.

### **Schedule 1 – Other amendments**

Schedule 1, part 1 makes minor and consequential amendments to the *Family Responsibilities Commission Act 2008*, the PPRA and the YJ Act that are to commence on assent. Part 2 makes minor and consequential amendments to the Bail Act, the *Evidence Act 1977* and the YJ Act that are to commence on a date set by proclamation.