



Queensland

Criminal Law Amendment Bill (No. 2) 2012



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2012

A Bill

for

An Act to amend the *Bail Act 1980*, the *Corrective Services Act 2006*, the *Criminal Code*, the *Drug Court Act 2000*, the *Drugs Misuse Act 1986*, the *Justices Act 1886*, the *Penalties and Sentences Act 1992*, the *Police Powers and Responsibilities Act 2000*, the *Residential Tenancies and Rooming Accommodation Act 2008*, the *Summary Offences Act 2005*, the *Victims of Crime Assistance Act 2009* and the *Youth Justice Act 1992* for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Criminal Law Amendment Act (No. 2) 2012*. 4
5

Clause 2 Commencement 6

(1) The following provisions commence on a day to be fixed by proclamation— 7
8

(a) parts 2, 9 and 13; 9

(b) section 42 other than to the extent that it inserts the definitions *corrective services facility* and *drug trafficking offence*; 10
11
12

(c) sections 45, 47, 49 to 54, 56 and 62. 13

(2) The following provisions commence on 1 July 2013— 14

(a) sections 10, 14, 17 and 64; 15

(b) parts 7 and 10. 16

Part 2 Amendment of Bail Act 1980 17

Clause 3 Act amended 18

This part amends the *Bail Act 1980*. 19

Clause 4	Amendment of s 11 (Conditions of release on bail)	1
	Section 11(9)—	2
	<i>omit, insert—</i>	3
	‘(9) Without limiting a court’s power to impose a condition on bail under another provision of this section, a Magistrates Court may impose on the bail a condition that the defendant participate in a rehabilitation, treatment or other intervention program or course, after having regard to—	4
		5
		6
		7
		8
	(a) the nature of the offence; and	9
	(b) the circumstances of the defendant, including any benefit the defendant may derive by participating in the program or course; and	10
		11
		12
	(c) the public interest.’.	13
Clause 5	Amendment of s 29 (Offence to breach conditions of bail)	14
	Section 29(2)(c)—	15
	<i>omit.</i>	16
Part 3	Amendment of Corrective Services Act 2006	17
		18
Clause 6	Act amended	19
	This part amends the <i>Corrective Services Act 2006</i> .	20
Clause 7	Insertion of new s 182A	21
	After section 182—	22
	<i>insert—</i>	23

[s 8]

‘182A Parole eligibility date for prisoner serving term of imprisonment for drug trafficking offence	1 2
‘(1) This section applies to a prisoner who is serving a term of imprisonment for a drug trafficking offence.	3 4
‘(2) The prisoner’s parole eligibility date is the day after the day on which the prisoner has served 80% of the prisoner’s term of imprisonment for the drug trafficking offence.	5 6 7
‘(3) However, if a later parole eligibility date is fixed for the period of imprisonment under the <i>Penalties and Sentences Act 1992</i> , part 9, division 3, the prisoner’s parole eligibility date is the later date fixed under that division.	8 9 10 11
‘(4) This section is subject to section 185.’.	12
Clause 8 Amendment of s 185 (Parole eligibility date for prisoner serving terms of imprisonment in particular circumstances)	13 14 15
(1) Section 185(1), after ‘182,’— <i>insert—</i> ‘182A,’.	16 17 18
(2) Section 185(3), entries for rules 1 and 2, after ‘182,’— <i>insert—</i> ‘182A,’.	19 20 21
Clause 9 Amendment of s 194 (Types of parole orders granted by parole board)	22 23
Section 194(5), definition <i>eligible prisoner</i> , paragraph (b), ‘182,’— <i>omit, insert—</i> ‘181A, 182, 182A,’.	24 25 26 27

Clause 10	Amendment of s 209 (Automatic cancellation of order by further imprisonment)	1 2
	(1) Section 209(3)(b)(iii)— <i>omit.</i>	3 4
	(2) Section 209(3)(b)(iv)— <i>renumber</i> as section 209(3)(b)(iii).	5 6
Clause 11	Insertion of new ch 7A, pt 7	7
	Chapter 7A— <i>insert</i> —	8 9
‘Part 7	Transitional provision for Criminal Law Amendment Act (No. 2) 2012	10 11 12
‘490C	Application of amendment Act	13
	‘Section 182A applies only to a prisoner who is serving a term of imprisonment for a drug trafficking offence committed after the commencement of that section.’.	14 15 16
Clause 12	Amendment of sch 4 (Dictionary)	17
	Schedule 4— <i>insert</i> —	18 19
	‘drug trafficking offence means—	20
	(a) an offence against the <i>Drugs Misuse Act 1986</i> , section 5; or	21 22
	(b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a).’.	23 24 25

[s 13]

Part 4 **Amendment of Criminal Code** 1

Clause 13	Code amended	2
	This part amends the Criminal Code.	3
Clause 14	Amendment of s 227C (Persons who are not criminally responsible for offences against ss 227A and 227B)	4
	(1) Section 227C(3), definition <i>supervision order</i> , paragraph (d)—	5
	<i>omit.</i>	6
	(2) Section 227C(3), definition <i>supervision order</i> , paragraph (e)—	7
	<i>renumber</i> as paragraph (d).	8
Clause 15	Amendment of s 469 (Wilful damage)	9
	(1) Section 469, punishment in special cases, item 9(1), ‘5 years’—	10
	<i>omit, insert—</i>	11
	‘7 years’.	12
	(2) Section 469, punishment in special cases, item 9(2)—	13
	<i>omit.</i>	14
	(3) Section 469, punishment in special cases, item 9(3)—	15
	<i>renumber</i> as item 9(2).	16
	(4) Section 469, punishment in special cases, item 9, at the end of the item—	17
	<i>insert—</i>	18
	‘ <i>Note—</i>	19
	1 For the requirement for the court to make a graffiti removal order see the <i>Penalties and Sentences Act 1992</i> , part 5A and the <i>Youth Justice Act 1992</i> , part 7, division 7A.	20
		21
		22
		23
		24
		25
		26
		27

- 2 For the discretion of the court to order the forfeiture of a thing used 1
to record, store or transmit an image of, or related to, the 2
commission of the offence see section 469AA. 3

Clause 16 Insertion of new s 469AA 4

After section 469— 5

insert— 6

**‘469AA Forfeiture of thing used to record, store or transmit
image of graffiti** 7
8

‘(1) This section applies if— 9

- (a) a person is convicted, whether on indictment or 10
summarily, of an offence against section 469 that is 11
punishable under section 469, item 9; and 12
- (b) the person was an adult at the time of the commission of 13
the offence; and 14
- (c) the court is satisfied that a thing owned or possessed by 15
the person was used to record, store or transmit an 16
image of, or related to, the commission of the offence. 17

Example of a thing used to record, store or transmit an image— 18

a camera, mobile phone or computer 19

‘(2) When the court is imposing a sentence on the person for the 20
offence, the court may order the thing be forfeited to the State. 21

‘(3) Subsection (2) applies whether the thing to be forfeited has 22
been seized or is in its owner’s possession. 23

‘(4) The court may also make any order that it considers 24
appropriate to enforce the forfeiture. 25

‘(5) This section does not limit the court’s powers under the 26
Penalties and Sentences Act 1992, the *Criminal Proceeds*
Confiscation Act 2002 or another law. 27
28

‘(6) When forfeited to the State, the thing becomes the State’s 29
property and may be dealt with as directed by the chief 30
executive.’. 31

[s 17]

Clause 17	Amendment of s 552H (Maximum penalty for indictable offences dealt with summarily)	1
		2
	Section 552H(1)—	3
	<i>omit, insert—</i>	4
	‘(1) A person is liable on summary conviction under section 552A, 552B or 552BA to a maximum penalty of—	5
		6
	(a) if the Magistrates Court is constituted by a magistrate—100 penalty units or 3 years imprisonment;	7
	or	8
		9
	(b) if the Magistrates Court is constituted by justices under section 552C(1)(b)—100 penalty units or 6 months imprisonment.’.	10
		11
		12

Part 5	Amendment of Drug Court Act 2000	13
		14

Clause 18	Act amended	15
	This part amends the <i>Drug Court Act 2000</i> .	16

Clause 19	Amendment of s 12A (Application of pt 3A)	17
	Section 12A—	18
	<i>insert—</i>	19
	‘ <i>Note—</i>	20
	See section 12B(1A) for the ending of referrals for indicative assessment under this part.’.	21
		22

Clause 20	Amendment of s 12B (Referral for indicative assessment)	23
	(1) Section 12B—	24
	<i>insert—</i>	25

-
- ‘(1A) However, a magistrate must not decide to refer a person for an indicative assessment on or after the relevant day.’. 1
2
- (2) Section 12B(4)— 3
insert— 4
‘*Note—* 5
See section 12E for how a drug court magistrate must deal with the proceeding after an indicative assessment report has been submitted.’. 6
7
- (3) Section 12B(6)— 8
omit. 9

Clause 21 Insertion of new s 12E 10

Part 3— 11
insert— 12

‘12E Dealing with proceedings after submission of indicative assessment report 13
14

- ‘(1) If an indicative assessment report about a person is given to a drug court magistrate on or after the relevant day, the magistrate must exercise the jurisdiction of a Magistrates Court and deal with the person according to law. 15
16
17
18
- ‘(2) A drug court magistrate may take account of the indicative assessment report when sentencing the person for the offence.’. 19
20
21

Clause 22 Amendment of s 13 (Application of pt 4) 22

Section 13— 23
insert— 24
‘*Note—* 25
See section 16C for the ending of referrals for assessment under this part.’. 26
27

[s 23]

Clause 23	Amendment of s 15 (Deciding whether to refer for assessment)	1
	Section 15—	2
	<i>insert—</i>	3
	<i>insert—</i>	4
	‘(3) However, a magistrate must not make a decision about whether the person appears to be an eligible person, or to refer the person for assessment on or after the relevant day.’.	5
		6
		7
Clause 24	Amendment of s 16 (Referral for assessment)	8
	Section 16(5)—	9
	<i>insert—</i>	10
	<i>insert—</i>	11
	‘Note—	12
	See section 16C for how a drug court magistrate must deal with the proceeding if an assessment report or a pre-sentence report is submitted on or after the relevant day.’.	13
		14
Clause 25	Amendment of s16A (Assessment report)	15
	Section 16A(4)—	16
	<i>insert—</i>	17
	<i>insert—</i>	18
	‘Note—	19
	See section 16C for how a drug court magistrate must deal with the proceeding if an assessment report or a pre-sentence report is submitted on or after the relevant day.’.	20
		21
Clause 26	Insertion of new s 16C	22
	Part 4—	23
	<i>insert—</i>	24
‘16C	Dealing with proceedings after submission of assessment report and pre-sentence report	25
		26
	‘(1) If an assessment report or a pre-sentence report about a person is given to a drug court magistrate on or after the relevant day,	27
		28

the magistrate must exercise the jurisdiction of a Magistrates Court and deal with the person according to law. 1
2

‘(2) A drug court magistrate may take account of the assessment report and the pre-sentence report when sentencing the person for the offence.’. 3
4
5

Clause 27 Amendment of s 17 (Application of pt 5) 6

Section 17(2)— 7

omit, insert— 8

‘(2) However, if the person appears before the drug court magistrate on or after the relevant day— 9
10

(a) division 2, other than section 26(2), does not apply to the person; and 11
12

(b) the magistrate must exercise the jurisdiction of a Magistrates Court and deal with the person according to law.’. 13
14
15

**Clause 28 Amendment of s 29 (Dealing with offenders if no intensive drug rehabilitation order made) 16
17**

Section 29, ‘decides not to’— 18

omit, insert— 19

‘does not’. 20

**Clause 29 Amendment of s 33 (Amending intensive drug rehabilitation orders) 21
22**

Section 33— 23

insert— 24

‘(1A) Also, if a drug court magistrate must conduct a court review in relation to an offender, the magistrate must amend the requirements of the offender’s intensive drug rehabilitation order or rehabilitation program if the magistrate is satisfied on 25
26
27
28

[s 30]

the balance of probabilities the offender can, before 30 June 1
2013— 2

(a) comply with the amended intensive drug rehabilitation 3
order and complete the amended rehabilitation program; 4
and 5

(b) be sentenced under section 36. 6

‘(1B) However, a drug court magistrate need not amend the 7
requirements of an intensive drug rehabilitation order or 8
rehabilitation program if the magistrate is satisfied on the 9
balance of probabilities the offender can, before 30 June 10
2013— 11

(a) comply with the intensive drug rehabilitation order and 12
complete the rehabilitation program; and 13

(b) be sentenced under section 36. 14

‘(4) In this section— 15

court review means a review by a drug court requiring the 16
attendance of an offender who is subject to an intensive drug 17
rehabilitation order.’. 18

Clause 30 Amendment of s 34 (Terminating rehabilitation programs) 19

(1) Section 34(1)— 20

insert— 21

‘(f) a warrant is issued for the offender’s arrest under section 22
40(1)(a).’ 23

(2) Section 34— 24

insert— 25

‘(1A) Also, a drug court magistrate must terminate a rehabilitation 26
program decided for an offender if the magistrate is satisfied 27
on the balance of probabilities there are not reasonable 28
prospects the offender can, before 30 June 2013— 29

(a) comply with the intensive drug rehabilitation order or 30
complete the rehabilitation program; and 31

	(b) be sentenced under section 36.’.	1
	(3) Section 34(3)(c), ‘Supreme Court’—	2
	<i>omit, insert—</i>	3
	‘District Court’.	4
Clause 31	Omission of s 35A (Inclusion of new rehabilitation program)	5
		6
	Section 35A—	7
	<i>omit.</i>	8
Clause 32	Amendment of s 36 (Final sentence to be decided on completion or termination of rehabilitation program)	9
		10
	Section 36(1)(b) and (2)—	11
	<i>omit, insert—</i>	12
	‘(b) if the offence for which the offender’s intensive drug rehabilitation order was made was not a prescribed drug offence—for any reason.	13
		14
		15
	‘(2) The magistrate must, before 30 June 2013—	16
	(a) reconsider the offender’s initial sentence; and	17
	(b) vacate the intensive drug rehabilitation order; and	18
	(c) impose a final sentence.’.	19
Clause 33	Amendment of s 40 (Arrest warrants)	20
	Section 40(4)—	21
	<i>omit, insert—</i>	22
	‘(4) If the warrant is issued under subsection (1)(a), the drug court magistrate may remand the offender in custody to appear before a drug court magistrate if the drug court magistrate decides to—	23
		24
		25
		26
	(a) reserve making a decision about terminating the offender’s rehabilitation program; or	27
		28

[s 34]

(b) terminate the offender’s rehabilitation program under section 34. 1
2

‘(4A) If the warrant is issued under subsection (1)(b) and the offence for which the offender’s intensive drug rehabilitation order was made was not a prescribed drug offence, the drug court magistrate may remand the offender in custody to appear before a drug court magistrate to be sentenced under section 36 before 30 June 2013.’. 3
4
5
6
7
8

Clause 34 Insertion of new s 40A 9

After section 40— 10

insert— 11

‘40A Dealing with offender after arrest but no final sentence decided before 30 June 2013 12
13

‘(1) This section applies if an offender is arrested on the authority of a warrant issued under section 40 and brought before a drug court magistrate after the relevant day but can not be sentenced under section 36 before 30 June 2013. 14
15
16
17

‘(2) The drug court magistrate must— 18

(a) revoke the conviction recorded for the offence; and 19

(b) vacate the offender’s intensive drug rehabilitation order; and 20
21

(c) deal with the offender according to law. 22

‘(3) The magistrate— 23

(a) may remand the offender in custody to appear before a magistrate; or 24
25

(b) may release the offender on bail to appear before a magistrate; or 26
27

(c) if the offence in relation to which the intensive drug rehabilitation order for the offender was made is a prescribed drug offence, the magistrate must, under the *Justices Act 1886*, section 113, commit the offender to the District Court for sentence. 28
29
30
31
32

-
- ‘(4) Subsection (3)(c) applies even though the magistrate has not addressed the defendant as required under the *Justices Act 1886*, section 104(2). 1
2
3
- ‘(5) To remove any doubt, it is declared that— 4
- (a) the *Bail Act 1980* applies to an offender who is arrested on the authority of a warrant issued under section 40 and to whom subsection (1) applies; and 5
6
7
- (b) in applying the *Penalties and Sentences Act 1992*, section 159A, to a sentence for a term of imprisonment imposed on an offender under this section, time spent in custody, other than under section 32(1)(f), is taken to be imprisonment already served under the sentence.’. 8
9
10
11
12

- Clause 35 Insertion of new s 45** 13
Part 6— 14
insert— 15
- ‘45 Expiry of Act** 16
‘This Act expires on 30 June 2013.’. 17

- Clause 36 Amendment of schedule (Dictionary)** 18
Schedule— 19
insert— 20
‘*relevant day* means the day section 12E commences.’. 21

Part 6 Amendment of Drugs Misuse Act 1986 22
23

- Clause 37 Act amended** 24
This part amends the *Drugs Misuse Act 1986*. 25

[s 38]

Clause 38	Amendment of s 6 (Supplying dangerous drugs)	1
(1)	Section 6(1), penalty—	2
	<i>omit, insert—</i>	3
	‘Maximum penalty—	4
(a)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987</i> , schedule 1 and the offence is one of aggravated supply under subsection (2)(a)—life imprisonment; or	5 6 7 8
(b)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987</i> , schedule 1 and the offence is one of aggravated supply under subsection (2)(aa), (b), (c), (d) or (e)—25 years imprisonment; or	9 10 11 12
(c)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987</i> , schedule 1 and paragraphs (a) and (b) do not apply—20 years imprisonment; or	13 14 15
(d)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987</i> , schedule 2 and the offence is one of aggravated supply under subsection (2)(a)—25 years imprisonment; or	16 17 18 19
(e)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987</i> , schedule 2 and the offence is one of aggravated supply under subsection (2)(aa), (b), (c), (d) or (e)—20 years imprisonment; or	20 21 22 23
(f)	if the dangerous drug is a thing specified in the <i>Drugs Misuse Regulation 1987</i> , schedule 2 and paragraphs (d) and (e) do not apply—15 years imprisonment.’	24 25 26
(2)	Section 6(2)(a)—	27
	<i>omit, insert—</i>	28
	‘(a) the person to whom the thing is supplied is a minor under 16 years; or	29 30
	(aa) the person to whom the thing is supplied is a minor who is 16 years or more; or’.	31 32

Part 7	Amendment of Justices Act 1886	1
		2
Clause 39	Act Amended	3
	This part amends the <i>Justices Act 1886</i> .	4
Clause 40	Amendment of s 154 (Copies of record)	5
	Section 154—	6
	<i>insert—</i>	7
	‘(6) In this section—	8
	<i>exhibit</i> includes a document that—	9
	(a) was given to a drug court under the repealed <i>Drug Court Act 2000</i> ; and	10
		11
	(b) is about an offender who had appeared before a magistrate who was allocated the functions of a drug court magistrate under section 10 of that Act.’	12
		13
		14
Part 8	Amendment of Penalties and Sentences Act 1992	15
		16
Clause 41	Act amended	17
	This part amends the <i>Penalties and Sentences Act 1992</i> .	18
Clause 42	Amendment of s 4 (Definitions)	19
	(1) Section 4—	20
	<i>insert—</i>	21
	‘ <i>corrective services facility</i> see the <i>Corrective Services Act 2006</i> , schedule 4.	22
		23

[s 42]

- drug trafficking offence*** means— 1
- (a) an offence against the *Drugs Misuse Act 1986*, section 2
5; or 3
 - (b) an offence of counselling or procuring the commission 4
of, or attempting or conspiring to commit, an offence 5
mentioned in paragraph (a). 6
- graffiti offence*** means— 7
- (a) an offence against the Criminal Code, section 469 that is 8
punishable under section 469, item 9; or 9
 - (b) an offence against the *Summary Offences Act 2005*, 10
section 17(1). 11
- graffiti removal order*** means a graffiti removal order in force 12
under part 5A. 13
- graffiti removal service*** means— 14
- (a) the removal of graffiti; or 15
 - (b) work related or incidental to the work mentioned in 16
paragraph (a); or 17
 - (c) other work related to or incidental to the clean up of 18
public places whether or not it relates to the removal of 19
graffiti. 20
- remove***, in relation to graffiti, includes the following— 21
- (a) repair; 22
 - (b) conceal; 23
 - (c) cover; 24
 - (d) attempt to remove. 25
- Example*— 26
- painting over graffiti 27
- unpaid service*** means— 28
- (a) community service required to be performed under a 29
community service order; or 30

(b) graffiti removal service required to be performed under a graffiti removal order. 1
2

unperformed graffiti removal service, for an offender, means graffiti removal service that the offender— 3
4

(a) is required to perform under a graffiti removal order; and 5
6

(b) has not performed. 7

unperformed unpaid service, for an offender, means unpaid service that the offender— 8
9

(a) is required to perform under a community service order or a graffiti removal order; and 10
11

(b) has not performed.’. 12

(2) Section 4, definition *community based order*, after ‘community service order’— 13
14

insert— 15

‘, graffiti removal order’. 16

Clause 43 Amendment of s 9 (Sentencing guidelines) 17

(1) Section 9(8), first occurring— 18
renumber as section 9(7B). 19

(2) Section 9(10), definition *corrective services facility*— 20
omit. 21

Clause 44 Amendment of s 99 (Termination of probation order) 22

Section 99(1) and (2)— 23

omit, insert— 24

‘A probation order is terminated— 25

(a) at the end of its period; or 26

(b) if the offender is sentenced or further sentenced for the offence for which the order was made; or 27
28

[s 45]

(c) if the order is revoked under section 120(1).’ 1

Clause 45 Amendment of s 107 (Multiple offences) 2

(1) Section 107— 3

insert— 4

‘(4A) A court may make— 5

(a) 1 or more community service orders for an offender who
is subject to an existing graffiti removal order; or 6
7

(b) 1 or more community service orders for an offender who
is subject to an existing graffiti removal order and an
existing community service order. 8
9
10

‘(4B) The number of hours of unperformed unpaid service and the
number of hours of community service ordered to be served
under the orders made under subsection (4A)(a) or (b) must
not, when added together, total more than 240.’ 11
12
13
14

(2) Section 107(5)— 15

omit, insert— 16

‘(5) Subject to subsections (2), (4) and (4B) all unpaid service to
which this section applies is to be performed cumulatively
unless the court orders otherwise.’ 17
18
19

**Clause 46 Amendment of s 108 (Termination of community service
order) 20
21**

Section 108(1) and (2)— 22

omit, insert— 23

‘A community service order is terminated— 24

(a) when the offender performs community service in
accordance with the requirements of the order for the
number of hours stated in the order; or 25
26
27

(b) if the offender is sentenced or further sentenced for the
offence for which the order was made; or 28
29

(c) if the order is revoked under section 120(1).’ 30

Clause 47	Insertion of new pt 5A	1	
	After section 110—	2	
	<i>insert—</i>	3	
	‘Part 5A	Graffiti removal orders	4
	‘110A Making of an order	5	
	‘(1) This section applies if a court convicts an offender of a graffiti offence, whether on indictment or summarily.	6 7	
	‘(2) The court must make a graffiti removal order for the offender, whether or not it records a conviction, unless the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.	8 9 10 11 12	
	‘(3) The order may be made in addition to any other order the court may make under this or another Act.	13 14	
	‘(4) Subsection (2) is subject to sections 121(3), 125(7) and 126(6A).	15 16	
	‘110B Effect of order	17	
	‘The effect of the order is that the offender is required to perform unpaid graffiti removal service for the number of hours stated in the order.	18 19 20	
	‘110C General requirements of graffiti removal order	21	
	‘(1) The graffiti removal order must contain requirements that the offender—	22 23	
	(a) must not commit another offence during the period of the order; and	24 25	
	(b) must report to an authorised corrective services officer at the place, and within the time, stated in the order; and	26 27	
	(c) must report to, and receive visits from, an authorised corrective services officer as directed by the officer; and	28 29	

[s 47]

- (d) must perform in a satisfactory way graffiti removal service directed by an authorised corrective services officer—
- (i) for the number of hours stated in the order; and
- (ii) at the times directed by the officer; and
- (e) must notify an authorised corrective services officer of every change of the offender’s place of residence or employment within 2 business days after the change happens; and
- (f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer; and
- (g) must comply with every reasonable direction of an authorised corrective services officer.
- ‘(2) The total number of hours stated in the order—
- (a) must not be more than 40; and
- (b) subject to subsection (3), must be performed within 1 year from the making of the order or another time allowed by the court.
- ‘(3) If, during the period mentioned in subsection (2)(b), the offender is detained in custody on remand or is serving a term of imprisonment in a corrective services facility—
- (a) the graffiti removal order is suspended for the period the offender is detained or imprisoned; and
- (b) the period mentioned in subsection (2)(b) is extended by the period the offender is detained or imprisoned.
- ‘(4) A direction given under subsection (1)(d)(ii) applies to all graffiti removal orders made for the offender by the same court on the same day.
- ‘(5) In this section—
- another offence* does not include an offence against section 123(1).

‘110D Graffiti removal order to be explained	1
‘(1) Before making the graffiti removal order, the court must explain, or cause to be explained, to the offender—	2 3
(a) the purpose and effect of the order; and	4
(b) what may follow if the offender contravenes the requirements of the order; and	5 6
(c) that the order may be amended or revoked, on application of the offender, an authorised corrective services officer or the director of public prosecutions, if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.	7 8 9 10 11 12
‘(2) The explanation must be made in language or in a way likely to be readily understood by the offender.	13 14
‘110E Multiple orders for single graffiti offence	15
‘(1) This section applies if—	16
(a) an offender is before a court for sentence after being convicted of a single graffiti offence; and	17 18
(b) in relation to the offence, the court makes a graffiti removal order and also makes 1 or both of the following orders—	19 20 21
(i) a community service order;	22
(ii) a probation order.	23
‘(2) The court—	24
(a) must make separate orders; and	25
(b) must not impose an order as a requirement of another order.	26 27
‘(3) If the court makes both a graffiti removal order and a community service order, the total number of hours of unpaid service ordered must not be more than 240.	28 29 30

[s 47]

‘(4) If the offender for whom the orders are made contravenes a requirement of any of the orders and is dealt with for the original offence in relation to the order, the other orders are discharged.

‘110F Multiple orders for multiple offences

‘(1) Subsections (2) and (3) apply if an offender is convicted of 2 or more graffiti offences, whether or not the offender is also convicted of 1 or more other offences that are not graffiti offences.

‘(2) The court—

(a) must make at least 1 graffiti removal order for the offender; and

(b) may make either or both of the following—

(i) more than 1 graffiti removal order for the offender;

(ii) 1 or more community service orders for the offender.

‘(3) If the court makes more than 1 graffiti removal order, the number of hours of graffiti removal service ordered must not, when added together, total more than 40.

‘(4) Subsection (5) applies if an offender is convicted of a graffiti offence and 1 or more other offences that are not graffiti offences.

‘(5) The court may, in addition to a graffiti removal order, make 1 or more community service orders for the offender.

‘(6) If, under subsection (2) or (5), the court makes 1 or more graffiti removal orders and also makes 1 or more community service orders, the total number of hours of unpaid service ordered must not be more than 240.

‘110G Successive orders

‘(1) Subsection (2) applies if an offender is—

(a) convicted of a graffiti offence; and

-
- (b) subject to 1 or more existing graffiti removal orders. 1
- ‘(2) Subject to subsection (3), the number of hours of unperformed 2
graffiti removal service and the number of hours of graffiti 3
removal service ordered to be served for the graffiti offence 4
must not, when added together, total more than 40. 5
- ‘(3) If the number of hours of unperformed graffiti removal 6
service is 40, the graffiti removal service ordered to be served 7
for the graffiti offence must be performed concurrently with 8
the unperformed graffiti removal service. 9
- ‘(4) Subsection (5) applies if an offender is— 10
- (a) convicted of a graffiti offence; and 11
- (b) subject to either of the following— 12
- (i) 1 or more existing community service orders; 13
- (ii) 1 or more existing graffiti removal orders and 1 or 14
more existing community service orders. 15
- ‘(5) Subject to subsection (6), the number of hours of unperformed 16
unpaid service and the number of hours of graffiti removal 17
service ordered to be served for the graffiti offence must not, 18
when added together, total more than 240. 19
- ‘(6) If the number of hours of unperformed unpaid service is 240, 20
the graffiti removal service ordered to be served for the graffiti 21
offence— 22
- (a) must be performed concurrently with any unperformed 23
graffiti removal service to the extent that the number of 24
hours of graffiti removal service ordered to be served for 25
the graffiti offence is, when added to the number of 26
hours of unperformed graffiti removal service, more 27
than 40; or 28
- (b) to the extent that paragraph (a) does not apply—must, 29
when it is performed by the offender, be taken to be 30
both— 31
- (i) community service performed under 1 or more of 32
the existing community service orders; and 33

[s 47]

- (ii) graffiti removal service performed under the graffiti removal order made by the court for the offence. 1
2
3
- ‘(7) For subsection (6)(b), the chief executive must— 4
 - (a) subject to any order of the court, identify the existing community service order, or orders, in relation to which the graffiti removal service is taken to have been performed; and 5
6
7
8
 - (b) notify the offender in writing of the matter mentioned in paragraph (a). 9
10

- ‘110H Unpaid service to be performed cumulatively 11**
 - ‘All unpaid service to which the following sections apply is to be performed cumulatively unless the court orders otherwise— 12
13
14
 - (a) section 110E, subject to subsection (3) of that section; 15
 - (b) section 110F, subject to subsections (3) and (6) of that section; 16
17
 - (c) section 110G, subject to subsections (2), (3), (5) and (6) of that section. 18
19

- ‘110I Termination of graffiti removal order 20**
 - A graffiti removal order is terminated— 21
 - (a) when the offender performs graffiti removal service in accordance with the requirements of the order for the number of hours stated in the order; or 22
23
24
 - (b) if the offender is sentenced or further sentenced for the offence for which the order was made; or 25
26
 - (c) if the order is revoked under section 120A.’ 27

Clause 48	Amendment of s 119 (Termination of intensive correction order)	1
		2
	Section 119(1) and (2)—	3
	<i>omit, insert—</i>	4
	‘An intensive correction order is terminated—	5
	(a) at the end of its period; or	6
	(b) if the offender is sentenced or further sentenced for the offence for which the order was made; or	7
	(c) if the order is revoked under section 120(1); or	8
	(d) if the offender is committed to prison under section 127(1).’.	9
		10
		11
Clause 49	Amendment of s 120 (Amendment and revocation of community based order)	12
		13
	(1) Section 120, heading—	14
	<i>omit, insert—</i>	15
‘120	Amendment and revocation of community based order other than graffiti removal order	16
		17
	(2) Section 120(1), after ‘community based order’—	18
	<i>insert—</i>	19
	‘other than a graffiti removal order’.	20
Clause 50	Insertion of new s 120A	21
		22
	After section 120—	23
	<i>insert—</i>	24
‘120A	Amendment and revocation of graffiti removal order	25
		26
	‘(1) The court that made a graffiti removal order may, on application under this division, amend or revoke the order if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.	27
		28
		29

[s 51]

‘(2) If a court other than the court that imposed the graffiti removal order amends or revokes the order, the first court must notify the original court of the amendment or revocation.’. 1
2
3
4

Clause 51 Amendment of s 121 (Offender may be re-sentenced on revocation of order) 5
6

Section 121— 7

insert— 8

‘(3) If the community based order mentioned in subsection (1) is a graffiti removal order, the court need not, but may, when re-sentencing the offender for the graffiti offence for which the order was made, make another graffiti removal order.’. 9
10
11
12

Clause 52 Amendment of s 125 (Powers of Magistrates Court that convicts offender of offence against s 123(1)) 13
14

(1) Section 125(2)— 15

insert— 16

‘(ba) an order to increase the number of hours for which the offender is required by the order to perform graffiti removal service;’. 17
18
19

(2) Section 125(2)(c), after ‘community service’— 20

insert— 21

‘or graffiti removal service’. 22

(3) Section 125— 23

insert— 24

‘(7) If the offence mentioned in subsection (1) relates to a graffiti removal order, the court, in taking action under subsection (4)(a), need not, but may, make another graffiti removal order.’. 25
26
27
28

Clause 53	Amendment of s 126 (Powers of Supreme Court or District Court to deal with offender)	1 2
	Section 126—	3
	<i>insert—</i>	4
	‘(6A) If the community based order mentioned in subsection (1) is a graffiti removal order, the court, in taking action under subsection (4), need not, but may, make another graffiti removal order.’.	5 6 7 8
Clause 54	Amendment of s 130 (Discharge of multiple community based orders where contravention taken into account)	9 10
	Section 130—	11
	<i>insert—</i>	12
	‘ <i>Note—</i>	13
	An offence against section 123(1) is an excluded offence under section 189 if the community based order to which the offence relates is a graffiti removal order.’.	14 15 16
Clause 55	Amendment of s 134 (Requirements of order have effect despite appeal)	17 18
	Section 134(2)—	19
	<i>omit.</i>	20
Clause 56	Amendment of s 135 (Directions under community based order)	21 22
	Section 135(3), (4) and (5), ‘community service’—	23
	<i>omit, insert—</i>	24
	‘unpaid service’.	25
Clause 57	Amendment of s 160A (Application of ss 160B–160D)	26
	Section 160A(5)(a), after ‘182(2)(a) or (b)’—	27
	<i>insert—</i>	28

[s 58]

‘, 182A(2)’.

1

Clause 58	Amendment of s 160C (Sentence of more than 3 years and not a serious violent offence or sexual offence)	2 3
	Section 160C, heading—	4
	<i>omit, insert—</i>	5
‘160C	Sentence of more than 3 years and not a serious violent offence, sexual offence or drug trafficking offence’.	6 7
Clause 59	Amendment of s 160D (Sentence for a serious violent offence or sexual offence)	8 9
	(1) Section 160D, heading—	10
	<i>omit, insert—</i>	11
‘160D	Sentence for a serious violent offence, sexual offence or drug trafficking offence’.	12 13
	(2) Section 160D(1), ‘or a sexual offence’—	14
	<i>omit, insert—</i>	15
	‘, a sexual offence or a drug trafficking offence’.	16
Clause 60	Amendment of s 160E (Automatic cancellation of parole release or eligibility dates)	17 18
	Section 160E(1)(b)(i) and (2)(b)(i), ‘or a sexual offence’—	19
	<i>omit, insert—</i>	20
	‘, a sexual offence or a drug trafficking offence’.	21
Clause 61	Amendment of s 172D (Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003)	22 23 24
	Section 172D, note, ‘section 9(8)’—	25
	<i>omit, insert—</i>	26
	‘section 9(7B)’.	27

Clause 62	Amendment of s 189 (Outstanding offences may be taken into account in imposing sentence)	1 2
	(1) Section 189(1)(b)(i), after ‘other offences’—	3
	<i>insert—</i>	4
	‘, that are not excluded offences,’.	5
	(2) Section 189—	6
	<i>insert—</i>	7
	‘(12) In this section—	8
	<i>excluded offence</i> means an offence against section 123(1) if the community based order to which the offence relates is a graffiti removal order.’.	9 10 11
Clause 63	Amendment of s 217 (Transitional provision for Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010)	12 13 14
	Section 217(1) and (2), ‘section 9(8)’—	15
	<i>omit, insert—</i>	16
	‘section 9(7B)’.	17
Clause 64	Insertion of new pt 14, div 6	18
	Part 14—	19
	<i>insert—</i>	20
	‘Division 6 Transitional provisions for expiry of Drug Court Act 2000	21 22
	‘227 Definitions for div 6	23
	‘In this division—	24
	<i>Drug Court Act</i> means the <i>Drug Court Act 2000</i> as in force before its expiry.	25 26
	<i>intensive drug rehabilitation order</i> means an order made under the Drug Court Act, section 19.	27 28

[s 64]

‘228	Application of div 6	1
	‘This division applies from 1 July 2013.	2
‘229	Continuation of warrants	3
	‘(1) This section applies to a warrant issued under the Drug Court Act, section 40, for an offender before 30 June 2013—	4
	(a) but not enforced; or	5
	(b) enforced but not returned before a drug court magistrate before that day.	6
	‘(2) The warrant is taken to be a warrant—	7
	(a) issued by a magistrate; and	8
	(b) that authorises any police officer to arrest the offender and bring the offender before a magistrate.	9
‘230	Dealing with offences after enforcement of warrant	10
	‘(1) This section applies if—	11
	(a) an offender is arrested on a warrant mentioned in section 229; and	12
	(b) the offender is brought before a magistrate.	13
	‘(2) The magistrate must—	14
	(a) revoke the conviction recorded for the offence; and	15
	(b) vacate the offender’s intensive drug rehabilitation order; and	16
	(c) deal with the offender according to law.	17
	‘(3) Also, if the offence in relation to which the intensive drug rehabilitation order for the offender was made is a prescribed drug offence under the Drug Court Act, the magistrate must, under the <i>Justices Act 1886</i> , section 113, commit the offender to the District Court for sentence.	18
		19
		20
		21
		22
		23
		24
		25
		26
		27

-
- ‘(4) Subsection (3) applies even though the magistrate has not addressed the defendant as required under the *Justices Act 1886*, section 104(2). 1
2
3
- ‘(5) To remove any doubt, it is declared that— 4
- (a) the *Bail Act 1980* applies to the offender; and 5
- (b) the offender has pleaded guilty to the offence under the Drug Court Act, section 19(c). 6
7

‘231 Sentencing an offender after enforcement of warrant 8

- ‘(1) This section applies if a magistrate sentences an offender to whom— 9
10
- (a) section 230 applies; or 11
- (b) the Drug Court Act, section 40A(3)(a) or (b) applies. 12
- ‘(2) In sentencing the offender, the magistrate must have regard to the initial sentence contained in the offender’s intensive drug rehabilitation order. 13
14
15
- ‘(3) To remove any doubt, it is declared that, in applying section 159A to a sentence for a term of imprisonment imposed on an offender under this section, time spent in custody under the Drug Court Act, other than under section 32(1)(f) of that Act, is taken to be imprisonment already served under the sentence.’. 16
17
18
19
20
21

Clause 65 Amendment of sch 1 (Serious violent offences) 22

- (1) Schedule 1, under the heading ‘Drugs Misuse Act 1986’, item 1— 23
24
omit. 25
- (2) Schedule 1, under the heading ‘Drugs Misuse Act 1986’, items 2 and 3— 26
27
renumber as items 1 and 2. 28

[s 66]

Part 9 **Amendment of Police Powers and Responsibilities Act 2000** 1
2

Clause 66 Act amended 3

This part amends the *Police Powers and Responsibilities Act 2000*. 4
5

Clause 67 Insertion of new s 379A 6

After section 379— 7

insert— 8

‘379A Additional case when arrest for graffiti offence may be discontinued 9
10

‘(1) This section applies if— 11

(a) a child is arrested for, or is being questioned by a police officer about, a graffiti offence; and 12
13

(b) during an electronically recorded interview, the child admits having committed the offence; and 14
15

(c) the child had attained at least the age of 12 years at the time of the offence. 16
17

‘(2) A police officer may, at any time before the child appears before a court to answer a charge of the graffiti offence, offer the child the opportunity to attend a graffiti removal program. 18
19
20

‘(3) When making the offer, the police officer must give an oral or written explanation of the consequences of agreeing to attend a graffiti removal program to— 21
22
23

(a) the child; and 24

(b) if a support person is present when the offer is made—the support person. 25
26

‘(4) If the child agrees, the child must sign an agreement to attend and complete a graffiti removal program. 27
28

‘(5) The agreement must include a provision authorising the provider of the graffiti removal program to disclose to the 29
30

-
- commissioner and the chief executive (youth justice services) 1
information about— 2
- (a) the child’s attendance at, and completion of, the 3
program; or 4
- (b) if the child failed to attend or complete the 5
program—the child’s failure to attend or complete the 6
program. 7
- ‘(6) The police officer must— 8
- (a) give the child a written requirement to attend and 9
complete a graffiti removal program in accordance with 10
the agreement; and 11
- (b) inform the child that failure to comply with the 12
requirement is an offence against section 791. 13
- ‘(7) Also, the police officer must give the chief executive (youth 14
justice services), or a person or organisation nominated by 15
that chief executive for this section, a copy of the agreement. 16
- ‘(8) On the signing of the agreement, any thing used in the 17
commission of the graffiti offence is forfeited to the State. 18
- ‘(9) It is the duty of a police officer to release an arrested child at 19
the earliest reasonable opportunity if the police officer is 20
satisfied subsections (4) and (6) have been complied with. 21
- ‘(10) In this section— 22
- chief executive (youth justice services)* means the chief 23
executive of the department within which the *Youth Justice* 24
Act 1992 is administered. 25
- graffiti removal program* means a program for removing 26
graffiti conducted with the approval of the chief executive 27
(youth justice services).’ 28

- Clause 68** **Amendment of s 381 (Limit on rearrest)** 29
- Section 381— 30
- insert—* 31

[s 69]

‘(2) Subsection (1) does not prevent a person being rearrested for a graffiti offence.’. 1
2

Clause 69 Amendment of sch 6 (Dictionary) 3

Schedule 6— 4

insert— 5

‘*graffiti offence* means an offence against the Criminal Code, section 469 that is punishable under section 469, item 9.’. 6
7

**Part 10 Amendment of Residential Tenancies and Rooming Accommodation Act 2008 8
9
10**

Clause 70 Act amended 11

This part amends the *Residential Tenancies and Rooming Accommodation Act 2008*. 12
13

Clause 71 Omission of s 42 (Intensive drug rehabilitation order) 14

Section 42— 15

omit. 16

**Part 11 Amendment of Summary Offences Act 2005 17
18**

Clause 72 Act amended 19

This part amends the *Summary Offences Act 2005*. 20

Clause 73	Amendment of s 47 (Forfeiture)	1
	Section 47, heading—	2
	<i>omit, insert—</i>	3
‘47	Forfeiture of thing to which offence relates’.	4
Clause 74	Insertion of new s 47A	5
	After section 47—	6
	<i>insert—</i>	7
‘47A	Forfeiture of thing used to record, store or transmit image of graffiti	8
		9
‘(1)	This section applies if—	10
	(a) a person is convicted of an offence of possessing a graffiti instrument against section 17; and	11 12
	(b) the person was an adult at the time of the commission of the offence; and	13 14
	(c) the court is satisfied that a thing owned or possessed by the person was used to record, store or transmit an image of, or related to, the graffiti in relation to which the graffiti instrument was used, reasonably suspected of being used, or reasonably suspected of being about to be used.	15 16 17 18 19 20
	<i>Example of a thing used to record, store or transmit an image—</i>	21
	a camera, mobile phone or computer	22
‘(2)	When the court is imposing a sentence on the person for the offence, the court may order the thing be forfeited to the State.	23 24
‘(3)	Subsection (2) applies whether the thing to be forfeited has been seized or is in its owner’s possession.	25 26
‘(4)	The court may also make any order that it considers appropriate to enforce the forfeiture.	27 28
‘(5)	This section does not limit the court’s powers under the <i>Penalties and Sentences Act 1992</i> , the <i>Criminal Proceeds Confiscation Act 2002</i> or another law.	29 30 31

[s 75]

‘(6) When forfeited to the State, the thing becomes the State’s property and may be dealt with as directed by the chief executive.’. 1
2
3

Part 12 **Amendment of Victims of** 4
Crime Assistance Act 2009 5

Clause 75 **Act amended** 6
This part amends the *Victims of Crime Assistance Act 2009*. 7

Clause 76 **Amendment of s 15 (Giving details of impact of crime on** 8
victim during sentencing) 9

(1) Section 15(3), note, paragraph (b), ‘*Juvenile Justice Act* 10
1992’— 11
omit, insert— 12
‘Youth Justice Act 1992’. 13

(2) Section 15(8), ‘The sentencing court’— 14
omit, insert— 15
‘Subject to section 15A, the sentencing court’. 16

(3) Section 15(8), example, ‘*Examples of how*’— 17
omit, insert— 18
‘Example of how’. 19

(4) Section 15(8), example, second dot point— 20
omit. 21

Clause 77 **Insertion of new ss 15A and 15B** 22
After section 15— 23
insert— 24

‘15A	Reading aloud of victim impact statement during sentencing	1 2
‘(1)	This section applies if a person has prepared a victim impact statement under section 15(5).	3 4
‘(2)	The prosecutor for the offence may request, orally or in writing, that all or part of the victim impact statement be read aloud before the court by—	5 6 7
	(a) if the person mentioned in subsection (1) wishes to read aloud the victim impact statement—the person; or	8 9
	(b) if the person mentioned in subsection (1) wishes the prosecutor to read aloud the victim impact statement—the prosecutor.	10 11 12
‘(3)	If a request is made under subsection (2), the court must allow the person specified in the request to read the whole of the victim impact statement, or a part of the victim impact statement identified in the request, aloud before the court unless the court considers that, having regard to all relevant circumstances, it is inappropriate to do so.	13 14 15 16 17 18
‘(4)	To avoid any doubt—	19
	(a) the purpose of the reading aloud of the victim impact statement before the court is to provide a therapeutic benefit to the person mentioned in subsection (1); and	20 21 22
	(b) it is not necessary for a person, reading aloud the victim impact statement before the court under this section, to do so under oath or affirmation.	23 24 25
‘15B	Special arrangements for reading aloud of victim impact statement during sentencing	26 27
‘(1)	This section applies if a person who is to read aloud a victim impact statement under section 15A (the <i>reader</i>) is the person who prepared the victim impact statement under section 15(5).	28 29 30 31
‘(2)	The sentencing court may, on its own initiative or on the application of the prosecutor for the offence, direct that any of the following arrangements be made for the reading aloud of	32 33 34

[s 78]

- the victim impact statement that the court considers, having regard to all relevant circumstances, are appropriate—
- (a) that, while the reader is reading aloud the victim impact statement before the court, the offender be obscured from the view of the reader;
 - (b) that, while the reader is reading aloud the victim impact statement before the court, all persons other than those specified by the court be excluded from the courtroom;
 - (c) that a person approved by the court be present while the reader is reading aloud the victim impact statement in order to provide emotional support to the reader;
 - (d) if there is an audiovisual link within the court precincts—that the reader read aloud the victim impact statement outside the courtroom and the reading be transmitted to the courtroom by means of the audiovisual link.
- ‘(3) The person mentioned in subsection (2)(c) must be permitted to be in close proximity to the reader, and within the reader’s sight, while the reader is reading aloud the victim impact statement.
- ‘(4) The place outside the courtroom, from which the reader reads aloud the victim impact statement under subsection (2)(d), is deemed to be part of the sentencing court.
- ‘(5) It is not necessary that the place outside the courtroom, at which the reader reads aloud the victim impact statement under subsection (2)(d), be within the court precincts.
- ‘(6) The court may, on its own initiative or on the application of the prosecutor, vary or revoke a direction made under subsection (2).’.

Clause 78	Amendment of sch 3 (Dictionary)	30
	Schedule 3—	31
	<i>insert—</i>	32
	<i>‘prosecutor</i> , for an offence, means—	33

[s 81]

Clause 81	Amendment of s 37 (Form and content of conference agreement)	1 2
(1)	Section 37(7) to (11)— <i>renumber</i> as section 37(9) to (13).	3 4
(2)	Section 37— <i>insert</i> —	5 6
‘(7)	If the offence committed by the child is a graffiti offence, an agreement signed by the chief executive must provide for the child to be subject to a program similar to one a child is subject to under a graffiti removal order.	7 8 9 10
‘(8)	However, subsection (7) does not apply if a victim of the offence participating in the conference requests that the agreement deal with the offence in another way mentioned in subsection (4).’.	11 12 13 14
(3)	Section 37(13), as renumbered, ‘subsection (10)’— <i>omit, insert</i> — ‘subsection (12)’.	15 16 17
Clause 82	Amendment of s 41 (If chief executive signs agreement for program)	18 19
(1)	Section 41(1), ‘or a probation order’— <i>omit, insert</i> — ‘, a probation order or a graffiti removal order’.	20 21 22
(2)	Section 41(2)— <i>omit, insert</i> —	23 24
‘(2)	The chief executive—	25
(a)	for a program similar to one a child is subject to under a graffiti removal order—must arrange the program and monitor the child’s participation; and	26 27 28
(b)	for a program similar to one a child is subject to under a community service order or a probation order—may	29 30

arrange the program and monitor the child's
participation.’. 1
2

Clause 83 Insertion of new s 176A 3

(1) After section 176— 4

insert— 5

‘176A Sentence orders—graffiti offences 6

‘(1) This section applies if— 7

(a) a child is found guilty of a graffiti offence before a
court; and 8
9

(b) the child had attained at least the age of 12 years at the
time of the offence. 10
11

‘(2) Without limiting section 175, the court must make a graffiti
removal order for the child. 12
13

‘(3) Subject to sections 194A and 249(3), the graffiti removal
order must order the child to perform graffiti removal service
for a period no longer than— 14
15
16

(a) if the child has not attained the age of 13 years at the
time of sentence—5 hours; or 17
18

(b) if the child has attained the age of 13 years, but not the
age of 15 years, at the time of sentence—10 hours; or 19
20

(c) if the child has attained the age of 15 years at the time of
sentence—20 hours.’. 21
22

**Clause 84 Amendment of s 177 (More than 1 type of order may be
made for a single offence)** 23
24

Section 177, ‘180’— 25

omit, insert— 26

‘180A’. 27

[s 85]

Clause 85	Insertion of new s 178A	1
	After section 178—	2
	<i>insert—</i>	3
	‘178A Combination of graffiti removal order and probation and community service orders	4
		5
	‘(1) This section applies if a court makes, for a single graffiti offence (the <i>original offence</i>), a graffiti removal order and also one or both of the following orders—	6
		7
		8
	(a) a probation order;	9
	(b) a community service order.	10
	‘(2) The court—	11
	(a) must make separate orders; and	12
	(b) must not impose one of the orders as a requirement of the other.	13
		14
	‘(3) If the child contravenes one of the orders, other than the graffiti removal order, after the orders are made and is resentenced for the original offence—	15
		16
		17
	(a) the orders, other than the graffiti removal order, are discharged; and	18
		19
	(b) the court may, if it considers it appropriate, discharge the graffiti removal order.	20
		21
	‘(4) If the child contravenes the graffiti removal order after the orders are made and is resentenced for the original offence, all of the orders are discharged.’.	22
		23
		24
Clause 86	Amendment of s 180 (Combination of detention order and other orders)	25
		26
	Section 180, heading—	27
	<i>omit, insert—</i>	28
	‘180 Combination of detention order and probation order’.	29

Clause 87	Insertion of new s 180A	1
	After section 180—	2
	<i>insert—</i>	3
	‘180A Combination of detention order and graffiti removal order	4
	‘(1) This section applies if a court makes—	5
	(a) a detention order and a graffiti removal order for—	6
	(i) a single graffiti offence; or	7
	(ii) multiple offences of which one is a graffiti offence;	8
	or	9
	(b) a detention order for a child subject to 1 or more existing	10
	graffiti removal orders.	11
	‘(2) The graffiti removal order—	12
	(a) if subsection (1)(a) applies—starts when the child is	13
	released from detention under the detention order; or	14
	(b) if subsection (1)(b) applies—is suspended until the child	15
	is released from detention under the detention order.	16
	‘(3) Any period that, under section 194B(3) or 194D, applies to	17
	the graffiti removal order—	18
	(a) if subsection (1)(a) applies—starts when the child is	19
	released from detention under the detention order; or	20
	(b) if subsection (1)(b) applies—is extended by the period	21
	the child is detained under the detention order.’	22
Clause 88	Amendment of s 183 (Recording of conviction)	23
	Section 183(3), after ‘176’—	24
	<i>insert—</i>	25
	‘or 176A’.	26
Clause 89	Insertion of new pt 7, div 7A	27
	Part 7, after division 7—	28

[s 89]

<i>insert—</i>	1
‘Division 7A Graffiti removal orders	2
‘194A Preconditions to making of graffiti removal order	3
‘(1) A court must make a graffiti removal order against a child found guilty by a court of a graffiti offence unless the court is satisfied that, because of the child’s physical or mental capacity, the child is not capable of complying with the order.	4 5 6 7
‘(2) A court must, when deciding the number of hours of graffiti removal service to order under a graffiti removal order, take into account the age, maturity and abilities of the child against whom the order will be made.	8 9 10 11
‘194B Requirements to be set out in graffiti removal order	12
‘(1) A graffiti removal order must contain requirements—	13
(a) that the child report in person to the chief executive within 1 business day after the order is made or any longer period that is specified in the order; and	14 15 16
(b) that the child perform in a satisfactory way graffiti removal service, directed by the chief executive, for the number of hours specified in the order; and	17 18 19
(c) that the child, while performing graffiti removal service, comply with every reasonable direction of the chief executive; and	20 21 22
(d) that the child or a parent of the child inform the chief executive of every change in the child’s place of residence within 2 business days of the change; and	23 24 25
(e) that the child abstain from violation of the law during the period of the order; and	26 27
(f) that the child not leave, or stay out of, Queensland during the period of the order without the prior approval of the chief executive.	28 29 30

-
- ‘(2) An order may contain a requirement that the child must
comply with outside the State. 1
2
- Example—* 3
- An order may require the child to perform graffiti removal service at a
place outside the State. 4
5
- ‘(3) The order may contain a requirement that the child must
perform the graffiti removal service within a period starting
on the date of the order that is less than 1 year. 6
7
8
- Note—* 9
- If a requirement is not imposed under this subsection, the period of 1
year mentioned in section 194D(a) will apply. 10
11
- ‘(4) Before imposing a requirement under subsection (3), a court
must consider what is a reasonable period for the child to
perform the graffiti removal in all the circumstances of the
case. 12
13
14
15

‘194C Obligation of chief executive 16

‘The chief executive, in giving directions to a child in relation
to the child’s performance of graffiti removal service, is— 17
18

- (a) to avoid, if practicable, conflicts with the religious and
cultural beliefs and practices of the child or the child’s
parent; and 19
20
21
- (b) to avoid, if practicable, interference with the child’s
attendance at a place of employment or a school or other
educational or training establishment; and 22
23
24
- (c) to take all steps necessary to ensure that the child, if
practicable, is kept apart from any adult under sentence
for an offence. 25
26
27

**‘194D Graffiti removal service to be performed within limited
period** 28
29

‘Subject to section 180A, a child against whom a graffiti
removal order is made must perform the number of hours of
graffiti removal service specified in the order— 30
31
32

[s 89]

- (a) within the period of 1 year starting on the date of the order or, if the order states a lesser period, the lesser period; or
- (b) within any extended period that a court may order under section 245 or 247; or
- (c) within any extended period allowed by order of the proper officer of the court under section 252.

‘194E Multiple offences dealt with together

- ‘(1) A court—
 - (a) if a child is found guilty of 2 or more graffiti offences in the same proceeding—
 - (i) must make at least 1 graffiti removal order against the child; and
 - (ii) may make more than 1 graffiti removal order against the child; and
 - (b) if a child is found guilty of 2 or more offences in the same proceeding, one of which is a graffiti offence—must make a graffiti removal order against the child.
- ‘(2) This section does not limit section 176A.

‘194F Limitation on number of hours of graffiti removal service for multiple graffiti offences

- ‘(1) This section applies if—
 - (a) a court makes 1 or more graffiti removal orders against a child found guilty of 2 or more graffiti offences, whether or not the child is also found guilty of any other offence; and
 - (b) the child is not subject to an existing graffiti removal order.
- ‘(2) The total number of hours of graffiti removal service specified in the order, or orders, must not be more than the maximum

appropriate to the child allowed by section 176A(3) for 1
graffiti offence. 2

‘194G Limitation on number of hours of unpaid service 3

- ‘(1) This section applies if— 4
- (a) a court makes 1 or more graffiti removal orders and 1 or 5
more community service orders against a child found 6
guilty of 1 or more graffiti offences, whether or not the 7
child is also found guilty of any other offence; and 8
 - (b) the child is not subject to an existing graffiti removal 9
order or an existing community service order. 10
- ‘(2) The total number of hours of unpaid service specified in the 11
orders must not be more than the maximum number of hours 12
of community service, appropriate to the child, allowed by 13
section 175(1)(e) for 1 offence. 14

**‘194H Limitation on number of hours of graffiti removal service 15
when there is unperformed graffiti removal service 16**

- ‘(1) This section applies if— 17
- (a) a court makes 1 or more graffiti removal orders against a 18
child found guilty of 1 or more graffiti offences, whether 19
or not the child is also found guilty of any other offence; 20
and 21
 - (b) the child is subject to 1 or more existing graffiti removal 22
orders. 23
- ‘(2) Subject to subsection (3), the number of hours of unperformed 24
graffiti removal service and the number of hours of graffiti 25
removal service ordered for the graffiti offence, or offences, 26
mentioned in subsection (1)(a) must not, when added together, 27
total more than the maximum number of hours of graffiti 28
removal service, appropriate to the child, allowed by section 29
176A(3) for 1 graffiti offence. 30
- ‘(3) If the number of hours of unperformed graffiti removal 31
service equals the maximum number of hours of graffiti 32

[s 89]

removal service, appropriate to the child, allowed by section 1
176A(3) for 1 graffiti offence, the graffiti removal service 2
ordered to be served for the graffiti offence, or offences, 3
mentioned in subsection (1)(a) must be performed 4
concurrently with the unperformed graffiti removal service. 5

**‘194I Limitation on number of hours of graffiti removal service 6
when there is unperformed unpaid service 7**

- ‘(1) This section applies if— 8
- (a) a court makes 1 or more graffiti removal orders against a 9
child found guilty of 1 or more graffiti offences, whether 10
or not the child is also found guilty of any other offence; 11
and 12
 - (b) the child is subject to either of the following— 13
 - (i) 1 or more existing community service orders; 14
 - (ii) 1 or more existing graffiti removal orders and 1 or 15
more existing community service orders. 16
- ‘(2) Subject to subsection (3), the number of hours of unperformed 17
unpaid service and the number of hours of graffiti removal 18
service ordered for the graffiti offence, or offences, mentioned 19
in subsection (1)(a) must not, when added together, total more 20
than the maximum number of hours of community service, 21
appropriate to the child, allowed by section 175(1)(e) for 1
offence. 22
23
- ‘(3) If the number of hours of unperformed unpaid service equals 24
the maximum number of hours of community service, 25
appropriate to the child, allowed by section 175(1)(e) for 1
offence, then the graffiti removal service ordered to be served 26
for the graffiti offence, or offences, mentioned in subsection 27
(1)(a)— 28
29
- (a) must be performed concurrently with any unperformed 30
graffiti removal service to the extent that the number of 31
hours of graffiti removal service ordered to be served for 32
the graffiti offence, or offences, mentioned in subsection 33
(1)(a) is, when added to the number of hours of 34

unperformed graffiti removal service, more than the maximum number of hours of graffiti removal service, appropriate to the child, allowed by section 176A(3) for 1 graffiti offence; or	1 2 3 4
(b) to the extent that paragraph (a) does not apply—must, when it is performed by the child, be taken to be both—	5 6
(i) community service performed under 1 or more of the existing community service orders; and	7 8
(ii) graffiti removal service performed under the graffiti removal order made by the court for the offence.	9 10 11
‘(4) For subsection (3)(b), the chief executive must—	12
(a) subject to any order of the court, identify the existing community service order, or orders, in relation to which the graffiti removal service is taken to have been performed; and	13 14 15 16
(b) notify the child in writing of the matter mentioned in paragraph (a).	17 18
‘194J Unpaid service to be performed cumulatively	19
‘All unpaid service to which the following sections apply is to be performed cumulatively unless the court orders otherwise—	20 21 22
(a) section 194F, subject to subsection (2) of that section;	23
(b) section 194G, subject to subsection (2) of that section;	24
(c) section 194H, subject to subsections (2) and (3) of that section;	25 26
(d) section 194I, subject to subsections (2) and (3) of that section.	27 28
‘194K Cumulative effect of child and adult orders	29
‘(1) This section applies if a person is subject to 1 or more of the following orders—	30 31

[s 90]

- (a) a graffiti removal order under this Act; 1
 - (b) a community service order under this Act; 2
 - (c) a graffiti removal order under the *Penalties and Sentences Act 1992*; 3
4
 - (d) a community service order under the *Penalties and Sentences Act 1992*. 5
6
- ‘(2) To the extent that the total number of hours of service to 7
which the person is subject under all of the orders is more than 8
the maximum number of hours of unpaid service applicable to 9
the person under this division or division 8 or under the 10
Penalties and Sentences Act 1992, part 5 or 5A, the order or 11
orders made by the court is or are of no effect. 12
- ‘(3) The hours of service in each order to which the person is 13
subject are cumulative on the hours in each other order to 14
which the person is subject, unless the court that makes the 15
order directs otherwise. 16

‘194L Ending of graffiti removal order 17

- ‘A graffiti removal order made against a child remains in 18
effect until— 19
- (a) the child has performed graffiti removal service in 20
accordance with the requirements specified under 21
section 194B(1)(b) and (c) for the number of hours 22
specified in the order; or 23
 - (b) the order is discharged under section 245 or 247; or 24
 - (c) the expiry of the period within which the graffiti 25
removal service is required to be performed under 26
section 194D; 27
- whichever first happens.’. 28

**Clause 90 Amendment of s 245 (Court’s power on breach of order 29
other than conditional release order) 30**

- (1) After section 245(1)(a)— 31

<i>insert—</i>	1
‘(aa) for a graffiti removal order—	2
(i) increase the number of graffiti removal service hours but not so that the total number of hours is more than the number allowed under section 176A(3) or sections 194F to 194I; or	3 4 5 6
(ii) extend the period within which the graffiti removal service must be performed, but not so that the extended period ends more than 1 year after the court acts under this section; or’.	7 8 9 10
(2) Section 245(3), after ‘subsection (1)(a)’—	11
<i>insert—</i>	12
‘, (aa)’.	13

Clause 91	Amendment of s 249 (Matters relevant to making further order)	14 15
	Section 249—	16
	<i>insert—</i>	17
	‘(3) If the community based order is a graffiti removal order, the court need not, when resentencing the child for the graffiti offence for which the order was made, make another graffiti removal order.’.	18 19 20 21

Clause 92	Amendment of s 252 (Variations by consent)	22
	Section 252(5)—	23
	<i>insert—</i>	24
	‘(ca) for a graffiti removal order—an amendment that—	25
	(i) increases the number of graffiti removal service hours; or	26 27
	(ii) lessens the period within which the graffiti removal service is required to be performed;’.	28 29

[s 93]

Clause 93	Amendment of sch 4 (Dictionary)	1
(1)	Schedule 4—	2
	<i>insert—</i>	3
	<i>graffiti offence</i> means an offence against the Criminal Code, section 469 that is punishable under section 469, item 9.	4 5
	<i>graffiti removal order</i> means a graffiti removal order in force under part 7, division 7A.	6 7
	<i>graffiti removal program</i> see the <i>Police Powers and Responsibilities Act 2000</i> , section 379A(10).	8 9
	<i>graffiti removal service</i> means—	10
	(a) the removal of graffiti; or	11
	(b) work related or incidental to the work mentioned in paragraph (a); or	12 13
	(c) other work related to or incidental to the clean up of public places whether or not it relates to the removal of graffiti.	14 15 16
	<i>remove</i> , in relation to graffiti, includes the following—	17
	(a) repair;	18
	(b) conceal;	19
	(c) cover;	20
	(d) attempt to remove.	21
	<i>Example—</i>	22
	painting over graffiti	23
	<i>unpaid service</i> means the following—	24
	(a) community service required to be performed under a community service order;	25 26
	(b) graffiti removal service required to be performed under a graffiti removal order.	27 28
	<i>unperformed graffiti removal service</i> , for a child, means graffiti removal service that the child—	29 30

- (a) is required to perform under a graffiti removal order;
and
- (b) has not performed.
- unperformed unpaid service*, for a child, means unpaid service that the child—
- (a) is required to perform under a community service order or a graffiti removal order; and
- (b) has not performed.’
- (2) Schedule 4, definition *community based order*, after ‘probation order’—
- insert—*
- ‘, graffiti removal order’.