

# **Youth Justice and Other Legislation Amendment Bill 2016**

## **Explanatory Notes**

### **FOR**

## **Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP**

### **Title of the Bill**

Youth Justice and Other Legislation Amendment Bill 2016

### **Objectives of the Amendments**

The amendments will ensure effective operation of Clause 15 of the Youth Justice and Other Legislation Amendment Bill 2016 (the Bill) (which inserts a new section 24A into the *Youth Justice Act 1992*) and give effect to minor consequential changes arising from the Bill's planned cognate debate with the Youth Justice and Other Legislation Amendment Bill 2015 (the 2015 Bill) and recent passage of the *Director of Child Protection Litigation Act 2016*.

### **Achievement of the Objectives**

New section 24A of the *Youth Justice Act 1992* provides for a court to dismiss a charge and refer a young person to a restorative justice process if satisfied that the offence should have been referred by police.

The amendments, which are technical in nature, will clarify practices and processes to be followed by the Queensland Police Service and Queensland Courts when administering a section 24A referral.

### **Alternative Ways of Achieving Policy Objectives**

There are no alternative ways of achieving the objectives of the amendments.

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

Any implementation costs to give effect to the amendments will be met from within existing agency resources.

## **Consistency with Fundamental Legislative Principles**

The new amendments do not breach any fundamental legislative principles.

## **Consultation**

Consultation was not necessary because the amendments do not alter the policy intent of the Bill.

## **NOTES ON PROVISIONS**

*Amendment 1* inserts new clause 1A to provide that this Act commences on 1 July 2016, immediately after the commencement of the *Youth Justice and Other Legislation Amendment Act (No. 1) 2016*.

This item is consequential of the Bill being debated in cognate with the Youth Justice and Other Legislation Amendment Bill 2015 (the 2015 Bill).

*Amendment 2* to Clause 5 inserts new subsections 20(1)(ga) and 20(1)(gb) to the *Childrens Court Act 1992* (CC Act) to ensure that (ga) the public guardian under the *Public Guardian Act 2014* or (gb) if the proceeding is a child protection proceeding under the *Child Protection Act 1999*, the chief executive (child safety), are able to attend closed Childrens Court proceedings for child protection order applications.

This consequential amendment is required due to passage of the *Director of Child Protection Litigation Act 2016* in advance of the Bill's commencement.

*Amendment 3* to Clause 5 inserts a definition for chief executive (child safety).

*Amendment 4* inserts a new part into the Bill with the heading 'Part 3A Amendment of *Police Powers and Responsibilities Act 2000*' (PPR Act) and new clauses 8A, 8B and 8C to preserve evidence until a child discharges their obligations under a section 24A referral and there is no chance of the matter returning to court for further consideration.

New clause 8A provides that this part amends the PPR Act.

New clause 8B amends section 474 of the PPR Act (destruction of identifying particulars).

Section 474 of the PPR Act states that, if a person is found not guilty of certain offences or is not further proceeded against for those offences, any identifying particulars (for example, finger prints) taken in relation to the offence must be destroyed within a reasonable time in the presence of a justice. When a charge is dismissed by a court and a section 24A referral is made, application of section 474 of the PPR Act would result in evidence being destroyed.

New subclause 8B(1) inserts subsection 474(4A) which provides that, if (a) the person is a child and (b) the *Youth Justices Act 1992* applies for proceeding against the child for the identifying particulars offence and (c) the child pleads guilty before the court and (d) the court dismisses the charge and refers the offence to the chief executive (communities) for a restorative justice process under the *Youth Justice Act 1992*, section 24A, the requirement to destroy the identifying particulars under subsection (1) does not apply until the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral.

New subclause 8B(2) inserts subsection 474(5) which provides that ‘restorative justice agreement’ and ‘restorative justice process’ are defined in the *Youth Justice Act 1992*, schedule 4.

New clause 8C amends section 695 of the PPR Act (Application for order in relation to seized things).

Section 695(3) of the PPR Act states that, if a proceeding is discontinued without any order being made, an application for the Queensland Police Service to retain possession of a seized thing (i.e. evidence) must be made within 30 days, otherwise the seized thing must be returned to the owner or otherwise dealt with.

When a charge is dismissed by a court and a section 24A referral is made, application of section 695 of the PPR Act would result in police having, on every occasion, to make application to a court for an order in relation to seized things to preserve evidence that may be required if proceedings against the young person are recommenced.

New clause 8C inserts subsections 695(6), (7) and (8). Subsection 695(6) provides that, subsection (7) applies if (a) a proceeding started in relation to the thing seized is a proceeding against a child for an offence and (b) the child pleads guilty before the court and (c) the court dismisses the charge and refers the offence to the chief executive (communities) for a restorative justice process under the *Youth Justice Act 1992*, section 24A.

Subsection 695(7) provides that, for subsection (3)(a), the discontinuation of the proceeding is taken to happen on the day the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral.

Subsection 695(8) provides that ‘restorative justice agreement’ and ‘restorative justice process’ are defined in the *Youth Justice Act 1992*, schedule 4.

*Amendment 5* to Clause 15 inserts new subsection 24A(1A) into the *Youth Justice Act 1992* (YJ Act).

Section 24A empowers a court, upon application by the child, to dismiss a charge and refer a young person to a restorative justice process if satisfied that the offence should have been referred by police.

New subsection 24A(1A) provides that, in deciding the application, the Childrens Court may have regard to (a) any cautions administered to the child for any offence and (b) whether any previous restorative justice agreements have been made by the child.

Inclusion of this provision will make available information that may assist a court to understand why a proceeding has been commenced by the arresting police officer, rather than referring the child to a restorative justice process. This provision will also ensure that in dealing with a specific matter, a court does not inadvertently continue to seek a 24A referral if cautioning and restorative justice options have already been considered and been unsuccessful.

*Amendment 6* to Clause 15 replaces ‘starting’ with ‘restarting’ in subsection 24A(3).

Subsection 24A(3) provides that the dismissal of charges does not prevent a police officer starting a proceeding against the child for the offence. To provide clarity to practitioners applying the section, ‘restarting’ is used to make clear that the matter, if returned to court following an unsuccessful referral, is a continuation of the original charge and not a new and different charge.

*Amendment 7* to Clause 15 inserts new subsection 24A(5).

Subsection 24A(5) provides that, if the court decides to (a) make an order of dismissal under the *Justices Act 1886*, section 149 and give the child a certificate of the dismissal or (b) give the child a certificate of dismissal under the *Criminal Code*, section 700, the court must not give the child the certificate until the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral.

Under section 149 of the *Justices Act 1886* and section 700 of the *Criminal Code Act 1899*, a justice who dismisses a complaint may make an order of dismissal and give the defendant a certificate which, upon production and without further proof, is a bar to any subsequent complaint being made for the same matter against the same person.

New section 24A provides for a court to dismiss a charge and refer a young person to a restorative justice process. Mechanisms exist in the Bill which allow for the young person to be further dealt with by police or a court if they fail to engage appropriately in the restorative justice process or fail to comply with their obligations under a restorative justice agreement.

Despite those mechanisms overriding a certificate of dismissal, this amendment which provides that a certificate must not be issued until the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral, maintains the integrity of a certificate and would avoid persons from unintentionally questioning or confusing the validity of any certificate.

*Amendment 8* to Clause 16 inserts new section 41 which provides that, if a child discharges his or her obligations under a restorative justice agreement made as a consequence of a restorative justice process, the chief executive must notify the referring authority for the process accordingly. This provision ensures effective

communication of completion so that evidence can be appropriately dealt with and a certificate of dismissal issued if ordered.

*Amendment 9* to Clause 17 consequentially renumbers section 74 as a result of changes made by the 2015 Bill.

*Amendment 10* to Clause 17 consequentially changes a reference in section 74 consequent on amendment 9.

*Amendment 11* to Clause 27 consequentially changes a reference in section 245 as a result of changes made by the 2015 Bill.

*Amendment 12* to Clause 35 consequentially renumbers Part 11 Division 12 as a result of changes made by the 2015 Bill.

*Amendment 13* to Clause 35 consequentially renumbers section 368 as a result of changes made by the 2015 Bill.

*Amendment 14* to Clause 36 consequentially removes reference to 'boot camp (vehicle offences) order' and 'boot camp' from the schedule 4 dictionary as a result of changes made by the 2015 Bill.

*Amendment 15* to the Long title adds *Police Powers and Responsibilities Act 2000* to the list of Acts amended by this Bill.