Youth Justice and Other Legislation Amendment Bill 2019

Explanatory Notes

For amendments to be moved during consideration in detail by
The Honourable Di Farmer MP
Minister for Child Safety, Youth and Women and
Minister for the Prevention of Domestic and Family Violence

Short title

Youth Justice and Other Legislation Amendment Bill 2019 (the Bill)

Policy objectives and the reasons for them

A number of minor, technical and clarifying amendments to the Bill are proposed to:

- insert a new provision to implement suggestions made by the Queensland Human Rights Commissioner and Queensland Privacy Commissioner that there should be a statutory review of the body-worn camera related provisions in the Bill;
- address concerns that the wording of proposed amendments to section 49 of the *Youth Justice Act 1992* (YJ Act) may result in a lack of clarity when read with existing provisions in the *Police Powers and Responsibilities Act 2000* (PPRA) that enable police to detain a person for specific periods for questioning in relation to an indictable offence; and
- clarify that pre-sentence reports and further materials continue to be required to be provided in written form.

Achievement of policy objectives

The amendments will ensure that:

- the provisions to be inserted into the YJ Act to authorise the use of body-worn cameras in youth detention centres are required to be reviewed as soon as practicable two years after the commencement of the provisions;
- the interaction between the new requirement in section 49 of the YJ Act for children who are arrested and in police custody to be brought before the Childrens Court within 24 hours and provisions of the PPRA authorising police to detain a person for specific periods for the purpose of questioning prior to charge is clear;
- pre-sentence reports and further material provided to a court under amended section 151 of the YJ Act for the purposes of sentencing a child continue to be required to be in a written format.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

There are no additional costs for government associated with implementing the amendments to the Bill.

Consistency with fundamental legislative principles

The amendments to the Bill are consistent with fundamental legislative principles.

Consultation

No consultation has been undertaken in relation to the proposed amendments to the Bill with stakeholders outside of government. This is because the amendments are minor and technical in nature and consistent with the policy intent of the Bill.

Notes on provisions

Amendment 1 inserts a new clause 5A into the Bill. Clause 5A inserts new section 313A into the YJ Act.

Subsection 313A(1) requires the Minister to review the operation of new sections 263A and 263B to the extent the sections relate to the use of body-worn cameras by detention centre employees.

Subsection 313A(2) provides that in carrying out the review, the Minister must consider the effect of body-worn cameras by detention centre employees on the privacy of children detained in youth detention centres.

Subsection 313A(3) provides that the review of the provisions must be completed as soon as practicable after the day that is two years after commencement.

This amendment represents a legislative safeguard and will assist to address privacy concerns that may arise during the implementation of the provisions.

Amendment 2 inserts a new section 49(2A) to clarify the interaction between section 49 of the YJ Act and Chapter 15 of the PPRA.

Section 49(1) of the YJ Act currently 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. Under section 49(2), this does not apply if the child is being dealt with in a way mentioned in section 393(2)(b) of the PPRA. Section 393(2)(b) provides that a police officer's duty to take a person before the court following arrest does not apply if the person is being detained under chapter 15 of the PPRA for an indictable offence (indictable offence exception).

Chapter 15 of the PPRA sets out police powers and responsibilities relating to investigations and questioning for indictable offences. Under section 403 of the PPRA, a police officer may detain a person for a reasonable time to investigate or question the person about an indictable offence. However, the person must not be detained under chapter 15 for more than eight hours,

unless the detention period is extended under section 406 of the PPRA by a Magistrate or Justice of the Peace.

Clause 13 of the Bill amends section 49 of the YJ Act to require a child who is arrested and in custody to be brought before the Childrens Court as soon as practicable and within 24 hours after the arrest. Clause 13 also removes the indictable offence exception.

To resolve any lack of clarity about the interaction between section 49 of the YJ Act and chapter 15 of the PPRA, amendment 2 inserts a new subsection (2A) into section 49 of the YJ Act.

New subsection 2A(a) clarifies that a child who is detained by police under chapter 15, part 2 of the PPRA for questioning and investigation in relation to an indictable offence, must be brought before the Childrens Court as soon as practicable and within 24 hours after the child's detention under that part of the PPRA ends.

This effectively reinstates the indictable offence exception, but clarifies that the exception only applies for the period of time in which police are authorised under chapter 15 to detain a child to investigate or question the child about an indictable offence.

New subsection 2A(b) clarifies that if it is not practicable to constitute the court within 24 hours after the child's detention under chapter 15 of the PPRA ends, the child must be brought before the court as soon as practicable on the next day that the court can practicably be constituted.

Accordingly, the 24 hour period may commence up to eight hours after the child is arrested (if the child is detained under section 403(2) of the PPRA), or later, if the detention period is extended by a Magistrate or Justice of the Peace (as authorised by section 406 of the PPRA).

Section 49 will not apply to a child who is arrested by police, in relation to either an indictable or non-indictable offence, and released (with or without charge) within 24 hours of arrest. Similarly, section 49 will not apply if a police officer elects to instead take diversionary measures instead of charging the child with the offence – for example, if the child is cautioned or offered the opportunity to participate in a drug diversion assessment program or graffiti removal program under section 11 of the YJ Act.

Amendment 3 amends clause 20 of the Bill to explicitly require pre-sentence reports to be provided to the court in a written format.

Section 151 of the YJ Act sets out the current requirements for pre-sentence reports. Section 151(7) provides that the chief executive must cause a pre-sentence report to be prepared in documentary form.

During drafting, the requirement for pre-sentence reports to be in documentary form under current section 151(7) was inadvertently omitted. For accountability, transparency and accuracy, and to facilitate proper record keeping, pre-sentence reports continue to be required to be provided to the court in writing.

Amendment 3 re-inserts the current requirement under section 151(7) for pre-sentence reports to be in documentary form, but uses the term "written", to better align with other Queensland legislation.

Amendment 4 requires that further material provided to the court under new section 151(10)(b) of the YJ Act must also be provided in a written format. This is to ensure that accurate records can be kept and further material is subject to appropriate quality control processes.

Clause 20 of the Bill also inserts new sections 151(1A) and (1B) into the YJ Act to require the court to consider whether a pre-sentence report is the most efficient and effective way to obtain information relevant to the sentencing of a child, other than when a pre-sentence report is expressly required. If a pre-sentence report is not the most efficient and effective way to obtain information, the court could receive information in a way other than in writing.