

THIS PUBLIC BILL has this day been read a Third time and passed

*The Clerk of the Parliament.*

*Legislative Assembly Chamber,  
Brisbane, August 2019*



Queensland

**No.  
A BILL for**

**An Act to amend the Bail Act 1980, the Police Powers and Responsibilities Act 2000, the Public Guardian Act 2014, the Youth Justice Act 1992 and the Acts mentioned in schedule 1 for particular purposes**





Queensland

# Youth Justice and Other Legislation Amendment Bill 2019

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**2019**

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## **A Bill**

for

**An Act to amend the *Bail Act 1980*, the *Police Powers and Responsibilities Act 2000*, the *Public Guardian Act 2014*, the *Youth Justice Act 1992* and the Acts mentioned in schedule 1 for particular purposes**

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Youth Justice and Other Legislation Amendment Act 2019*.

### **2 Commencement**

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- (a) part 2, divisions 1 and 2;
- (b) part 5;
- (c) part 6;
- (d) schedule 1, part 1.

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

### **Division 1 Preliminary**

#### **3 Act amended**

This part amends the *Youth Justice Act 1992*.

*Note—*

See also the amendments in schedule 1, parts 1 and 2.



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## **Division 2                      Amendments commencing on    assent**

### **4                      Amendment of s 150 (Sentencing principles)**

Section 150—

*insert—*

- (3) In determining the appropriate sentence for a child convicted of the manslaughter of a child under 12 years, a court must treat the victim's defencelessness and vulnerability, having regard to the victim's age, as an aggravating factor.

### **5                      Insertion of new ss 263A and 263B**

After section 263—

*insert—*

#### **263A Recordings in detention centres and use of body-worn cameras**

- (1) The chief executive may, for carrying out the chief executive's responsibilities under section 263(1), record images or sounds in a detention centre.
- (2) Without limiting subsection (1), the chief executive may authorise a detention centre employee to use a body-worn camera to record images or sounds while the employee is acting in the performance of the employee's duties.
- (3) However, the chief executive or a detention centre employee must not record a communication between a child detained in a detention centre and any of the following persons—
  - (a) the child's lawyer;

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- (b) an officer of a law enforcement agency within the meaning of the *Corrective Services Act 2006*;
  - (c) the ombudsman;
  - (d) a community visitor (child);
  - (e) a child advocacy officer;
  - (f) the public guardian under the *Public Guardian Act 2014*.
- (4) Also, the chief executive or a detention centre employee must not record a telephone conversation between a child detained in a detention centre and someone else.
- (5) Subsections (3) and (4) do not apply to the extent—
- (a) the communication or telephone conversation is recorded by a detention centre employee using a body-worn camera; and
  - (b) the use is inadvertent, unexpected or incidental to use while acting in the performance of the employee's duties.
- (6) Use of a body-worn camera by a detention centre employee is lawful if the use is authorised by the chief executive and is in compliance with this section.
- (7) To remove any doubt, it is declared that subsections (1), (2) and (6) are provisions authorising the use by the chief executive, or a detention centre employee, of a listening device for the *Invasion of Privacy Act 1971*, section 43(2)(d).
- (8) In this section—
- listening device*** see the *Invasion of Privacy Act 1971*, section 4.

**telephone conversation** includes a conversation held using any technology that allows reasonably contemporaneous and continuous communication between 2 or more persons.

**use**, of a body-worn camera by a detention centre employee, includes use that—

- (a) is inadvertent or unexpected; or
- (b) is incidental to use while acting in the performance of the employee's duties.

### **263B Requirements for chief executive in relation to recordings and use of body-worn cameras**

- (1) The chief executive must make guidelines about—
  - (a) the recording of images and sounds in detention centres under section 263A; and
  - (b) the use of body-worn cameras by detention centre employees under section 263A.
- (2) Also, the chief executive must ensure that the following persons are advised that sounds and images may be recorded under section 263A—
  - (a) a child detained in a detention centre;
  - (b) a detention centre employee;
  - (c) a visitor to a detention centre.

## **5A Insertion of new s 313A**

After section 313—

*insert—*

### **313A Review of particular matters**

- (1) The Minister must review the operation of sections 263A and 263B to the extent the sections relate to the use of body-worn cameras by

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detention centre employees.

- (2) In carrying out the review, the Minister must consider the effect of the use of body-worn cameras by detention centre employees on the privacy of children detained in detention centres.
- (3) The review must be completed as soon as practicable after the day that is 2 years after the commencement.

## 6 Insertion of new pt 11, div 18

Part 11—

*insert—*

### **Division 18 Transitional provisions for Youth Justice and Other Legislation Amendment Act 2019**

#### **Subdivision 1 Preliminary**

##### **396 Definition for division**

In this division—

*amending Act* means the *Youth Justice and Other Legislation Amendment Act 2019*.

#### **Subdivision 2 Provision for amendments commencing on assent**

##### **397 Application of s 150**

Section 150, as amended by the amending Act, applies in relation to the sentencing of a child for

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an offence after the commencement even if the offence or conviction happened before the commencement.

## **7 Amendment of sch 1 (Charter of youth justice principles)**

(1) Schedule 1, item 7—

*insert—*

- (c) the proceeding should be finalised as soon as practicable.

(2) Schedule 1—

*insert—*

7A The youth justice system should give priority to proceedings for children remanded in custody.

(3) Schedule 1, item 8—

*insert—*

- (d) dealt with in a way that recognises the child's need for guidance and assistance because children tend to be dependent and immature.

(4) Schedule 1, item 16—

*omit, insert—*

16 A child should be dealt with under this Act in a way that allows the child—

- (a) to be reintegrated into the community; and
- (b) to continue the child's education, training or employment without interruption or disturbance, if practicable; and
- (c) to continue to reside in the child's home, if practicable.

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(5) Schedule 1, item 17, after ‘arrest’—

*insert—*

, remand

(6) Schedule 1, items 7A to 20—

*renumber* as schedule 1, items 8 to 21.

## **8 Amendment of sch 4 (Dictionary)**

Schedule 4—

*insert—*

*body-worn camera* see the *Police Powers and Responsibilities Act 2000*, section 609A(5).

## **Division 3 Amendments commencing by proclamation**

### **9 Amendment of s 47 (Bail Act 1980 applies)**

Section 47(1)—

*insert—*

*Note—*

Particular provisions of the *Bail Act 1980* do not apply in relation to children. See, for example, sections 7, 11, 16 and 16A of that Act.

### **10 Replacement of s 48 (Decisions about bail and related matters)**

Section 48—

*omit, insert—*

#### **48 Releasing children in custody in connection with a charge of an offence**

(1) This section applies if 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.

- (2) The court or police officer must decide to release the child.

*Note—*

Under the youth justice principles, it is a principle of this Act that a child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances.

- (3) However, the court or police officer must decide to keep the child in custody if required under this or another Act to do so.

*Notes—*

- 1 See, for example, sections 48AE and 48A for when a child must not be released from custody.
- 2 See also the *Bail Act 1980*, section 13 for when only particular courts may grant a person bail.

- (4) Also, the court or police officer may decide to keep the child in custody if satisfied that, if the child is released, there is an unacceptable risk that—

- (a) the child will not surrender into custody in accordance with a condition imposed on the release or a grant of bail to the child; or
- (b) the child will do any of the following while on release—
  - (i) commit an offence;
  - (ii) endanger the safety or welfare of a person;
  - (iii) interfere with a witness or otherwise obstruct the course of justice, whether for the child or another person.

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*Notes—*

- 1 For the matters to be considered in deciding whether there is an unacceptable risk of a matter mentioned in this subsection, see section 48AA.
  - 2 For when a child may be released from custody despite an unacceptable risk, see section 48AD.
- (5) Subsection (6) applies if—
- (a) the child is before a court; and
  - (b) the court has information indicating there may be an unacceptable risk of a matter mentioned in subsection (4), but does not have enough information to properly consider the matter.
- (6) The court may remand the child in custody while further information about the matter is obtained.
- (7) In this section—
- keep the child in custody* includes, for a court, remand the child in custody.

#### **48AA Matters to be considered in making particular decisions about release and bail**

- (1) This section applies if a court or police officer is making any of the following decisions in relation to a child in custody in connection with a charge of an offence (the *alleged offence*)—
  - (a) whether there is an unacceptable risk of a matter mentioned in section 48(4);
  - (b) for section 52A(2)—whether there is a risk of a matter mentioned in section 48(4)(b);
  - (c) whether to release the child without bail or grant bail to the child.
- (2) The court or police officer must have regard to the following matters of which the court or police officer is aware—



- (a) any promotion by the child of terrorism;
- (b) any association the child has or has had with a terrorist organisation, or with a person who has promoted terrorism, that the court or police officer is satisfied was entered into by the child for the purpose of supporting the organisation or person—
  - (i) in the carrying out of a terrorist act; or
  - (ii) in promoting terrorism.

*Note—*

See also section 48AB.

- (3) Also, if the decision is being made by a court, the court must have regard to the sentence order or other order likely to be made for the child if found guilty.
- (4) In deciding whether there is a risk or unacceptable risk that the child will, if released, commit another offence while on release, the court or police officer must also consider—
  - (a) the nature and seriousness of the other offence; and
  - (b) the likely impact of the other offence on a victim of the offence or the community.
- (5) In making a decision mentioned in subsection (1), the court or police officer may have regard to any of the following matters of which the court or police officer is aware—
  - (a) the nature and seriousness of the alleged offence;
  - (b) the child's criminal history and other relevant history, associations, home environment, employment and background;
  - (c) the history of a previous grant of bail to the child;

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- (d) the strength of the evidence against the child relating to the alleged offence;
  - (e) the child's age, maturity level, cognitive ability and developmental needs;
  - (f) if the child is an Aboriginal person or Torres Strait Islander—a submission made by a representative of the community justice group in the child's community, including, for example, a submission about—
    - (i) the child's connection with the child's community, family or kin; or
    - (ii) cultural considerations; or
    - (iii) considerations relating to programs and services established for offenders in which the community justice group participates;
- Note—*
- See also section 48AC.
- (g) any other relevant matter.
- (6) In deciding whether there is an unacceptable risk of a matter mentioned in section 48(4)(b), the court or police officer may—
- (a) consider whether a condition could, under section 52A, be imposed on a grant of bail to the child; and
  - (b) have regard to the effect on the risk of imposing the condition.
- (7) The court or police officer must not decide it is satisfied there is a risk or unacceptable risk of a matter mentioned in section 48(4) only because 1 or both of the following apply—
- (a) the child will not have accommodation, or adequate accommodation, on release from custody;

- (b) the child has no apparent family support.
- (8) In this section—
- terrorist organisation* see the Criminal Code (Cwlth), section 102.1(1).

#### **48AB Promotion of terrorism and references to terrorist acts**

- (1) For section 48AA(2), a person or organisation promotes terrorism if the person or organisation—
  - (a) carries out an activity to support the carrying out of a terrorist act; or
  - (b) makes a statement in support of the carrying out of a terrorist act; or
  - (c) carries out an activity, or makes a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.
- (2) To remove any doubt, it is declared that a reference in section 48AA(2) or subsection (1) to a terrorist act—
  - (a) includes a terrorist act that has not happened; and
  - (b) is not limited to a specific terrorist act.

#### **48AC Representatives of community justice groups must advise of particular matters**

- (1) This section applies if a representative of a community justice group in a child's community makes a submission to a court or police officer for section 48AA(5)(f).
- (2) The representative must, if requested by the court or police officer, advise the court or police officer

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whether—

- (a) a member of the community justice group is related to the child or the victim of the offence with which the child has been charged; or
- (b) 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.

#### **48AD When children may be released from custody despite unacceptable risk**

- (1) This section applies if—
  - (a) 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; and
  - (b) the court or police officer is not required under this or another Act to keep the child in custody; and
  - (c) the court or police officer is satisfied there is an unacceptable risk of a matter mentioned in section 48(4).
- (2) The court or police officer may decide to release the child if satisfied the child's release is not inconsistent with ensuring community safety and is otherwise appropriate having regard to any of the following matters—
  - (a) principle 18 of the youth justice principles;
  - (b) the desirability of strengthening and preserving the relationship between the child and the child's parents and family;
  - (c) the desirability of not interrupting or disturbing the child's living arrangements, education, training or employment;

- (d) the desirability of minimising adverse impacts on the child's reputation that may arise from being kept in custody;
- (e) the child's exposure to, experience of and reaction to trauma;
- (f) the child's age, maturity level, cognitive ability and developmental needs;
- (g) the child's health, including the child's need for medical assessment or medical treatment;
- (h) for a child with a disability—the disability and the child's need for services and supports in relation to the disability;
- (i) if the child is an Aboriginal person or Torres Strait Islander—the desirability of maintaining the child's connection with the child's community, family and kin;
- (j) if the child is under 14 years—the particular desirability of releasing children under 14 years from custody due to their vulnerability and community expectations that children under 14 years are entitled to special care and protection.

*Note—*

For the conditions that may be imposed on a grant of bail to a child under this section, see sections 52 and 52A.

- (3) In this section—

*keep the child in custody* includes, for a court, remand the child in custody.

**48AE Releasing children whose safety is endangered because of offence**

- (1) This section applies in relation to a child in custody in connection with a charge of an offence.

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- (2) A court or police officer must not release the child from custody if satisfied—
  - (a) the child’s safety would be endangered if the child were released; and
  - (b) the factors endangering the child’s safety arise from the circumstances of the offence; and
  - (c) in the circumstances, there is no reasonably practicable way of ensuring the child’s safety other than by keeping the child in custody.
- (3) A court or police officer must not decide it is satisfied of the matters mentioned in subsection (2) only because—
  - (a) the child will not have accommodation, or adequate accommodation, on release from custody; or
  - (b) the child has no apparent family support.

**11 Amendment of s 48A (Releasing children found guilty of terrorism offences or subject to Commonwealth control orders)**

Section 48A(5), ‘section 48(8) or (10)’—

*omit, insert—*

section 48(4) or 48AE

**12 Insertion of new s 48B**

After section 48A—

*insert—*

**48B Reasons for decisions to keep or remand children in custody**

- (1) If a court makes an order keeping or remanding a child in custody in connection with a charge of an

offence, the order must state the reasons for the decision.

- (2) If a police officer decides to keep a child in custody in connection with a charge of an offence, the police officer must make a record of the reasons for the decision.
- (3) The keeping or remanding of a child in custody is not unlawful merely because a court or police officer does not comply with subsection (1) or (2).
- (4) Subsection (1) is subject to the *Bail Act 1980*, section 12.

### **13 Replacement of s 49 (Arrested child must be brought promptly before the Childrens Court)**

Section 49—

*omit, insert—*

#### **49 When arrested children must be brought before Childrens Court**

- (1) This section applies if a child is arrested on a charge of an offence and is in custody in connection with the charge.
- (2) The child must be brought before the Childrens Court to be dealt with according to law—
  - (a) as soon as practicable and within 24 hours after the arrest; or
  - (b) if it is not practicable to constitute the court within 24 hours after the arrest—as soon as practicable on the next day the court can practicably be constituted.
- (2A) However, if the child is being detained under the *Police Powers and Responsibilities Act 2000*, chapter 15, part 2, the child must be brought before the Childrens Court to be dealt with according to law—

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- (a) as soon as practicable and within 24 hours after the child's detention under that part ends; or
  - (b) if it is not practicable to constitute the court within 24 hours after the child's detention under that part ends—as soon as practicable on the next day the court can practicably be constituted.
- (3) This section does not apply if the child is being dealt with in a way mentioned in the *Police Powers and Responsibilities Act 2000*, section 393(2)(c) or (d) or (3)(b).

**14 Amendment of s 50 (Dealing with a child if court can not be promptly constituted)**

- (1) Section 50, heading, from 'a child'—

*omit, insert—*

**children not brought before Childrens Court  
in accordance with s 49**

- (2) Section 50(1)(c)—

*omit, insert—*

(c) section 49 applies in relation to the child, but the child has not been brought before the Childrens Court in accordance with that section.

- (3) Section 50(4)(a), 'section 48'—

*omit, insert—*

sections 48, 48AD and 48AE

- (4) Section 50(5) and (6)—

*omit.*



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**15 Amendment of s 52 (Conditions of release on bail)**

- (1) Section 52, heading, after ‘bail’—

*insert—*

**—generally**

- (2) Section 52(4) to (6)—

*omit.*

**16 Insertion of new ss 52A and 52B**

After section 52—

*insert—*

**52A Other conditions of release on bail**

- (1) This section applies if a court or police officer decides to grant bail to a child mentioned in section 52(1) and the child is being released from custody.
- (2) The court or police officer may impose another condition on the grant of bail, other than a condition about appearing before a court or surrendering into custody, only if the court or police officer is satisfied—
- (a) there is a risk of a matter mentioned in section 48(4)(b); and

*Note—*

For the matters to be considered in deciding whether there is a risk of a matter mentioned in section 48(4)(b), see section 48AA.

- (b) the condition is necessary to mitigate the risk; and
- (c) the condition does not, having regard to the following matters of which the court or police officer is aware, involve undue management or supervision of the child—

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- (i) the child's age, maturity level, cognitive ability and developmental needs;
  - (ii) the child's health, including the child's need for medical assessment or medical treatment;
  - (iii) for a child with a disability—the disability and the child's need for services and supports in relation to the disability;
  - (iv) the child's home environment;
  - (v) the child's ability to comply with the condition.
- (3) A condition imposed under subsection (2)—
- (a) must state the period the condition has effect (the *stated period*); and
  - (b) stops having effect at the end of the stated period.
- (4) In deciding the stated period for a condition, the court or police officer must—
- (a) consider the matters mentioned in subsection (2)(c); and
  - (b) ensure the stated period is no longer than is necessary to mitigate the risk mentioned in subsection (2)(a).
- (5) The court or police officer must not impose on a grant of bail to the child a condition that the child must wear a tracking device while released on bail.
- (6) If the child is not an Australian citizen or a permanent resident, the court or police officer must consider imposing a condition under subsection (2) requiring the child to surrender the child's current passport.

- (7) Subsection (2) does not limit the power of a court to impose conditions on a grant of bail under section 151(9).
- (8) In this section—
- Australian citizen* see the *Australian Citizenship Act 2007* (Cwlth), section 4.
- permanent resident* see the *Bail Act 1980*, section 11(10).

### **52B Reasons for decisions to impose particular conditions**

- (1) If a court imposes a condition on the grant of bail to a child under section 52A, the order granting bail must state how the condition is intended to mitigate the risk mentioned in section 52A(2)(a).
- (2) If a police officer imposes a condition on the grant of bail to a child under section 52A, the police officer must make a record of how the condition is intended to mitigate the risk mentioned in section 52A(2)(a).

## **17 Amendment of s 59 (Childrens Court judge may grant bail)**

Section 59(3)—

*omit, insert—*

- (3) Despite the *Bail Act 1980*, section 13(1), a Childrens Court judge may grant bail to a child in relation to whom that section applies.

## **18 Insertion of new s 59A**

After section 59—

*insert—*

### **59A Police officers must consider alternatives to arrest for contraventions of bail conditions**

- (1) This section applies if—
  - (a) a police officer reasonably suspects a child has contravened or is contravening a condition imposed on a grant of bail to the child; and
  - (b) the contravention is not an offence.
- (2) This section also applies if a police officer reasonably suspects a child is likely to contravene a condition imposed on a grant of bail to the child.
- (3) Before arresting the child under the *Police Powers and Responsibilities Act 2000*, section 367(3)(a)(i) in relation to the contravention or likely contravention, a police officer must first consider whether, in all the circumstances, it would be more appropriate to do 1 of the following—
  - (a) to take no action;
  - (b) to warn the child of the action a police officer may take under paragraph (c) or the *Police Powers and Responsibilities Act 2000*, section 367(3) in relation to a contravention of a condition imposed on the grant of bail;
  - (c) if the contravention or likely contravention is in relation to a condition other than a condition for the child's appearance before a court—to make an application under the *Bail Act 1980* to vary or revoke the bail.
- (4) For subsection (3), the circumstances the police officer must consider include the following—
  - (a) the seriousness of the contravention or likely contravention;

- (b) whether the child has a reasonable excuse for the contravention or likely contravention;
  - (c) the child's particular circumstances of which the police officer is aware;
  - (d) other relevant circumstances of which the police officer is aware.
- (5) If a police officer considers that, in all the circumstances, it would be more appropriate to act as mentioned in subsection (3)(a), (b) or (c), then a police officer must do so.
- (6) In this section—  
*reasonably suspects* means suspects on grounds that are reasonable in the circumstances.

## 19 Amendment of s 150 (Sentencing principles)

Section 150(1)(g)(i), from 'relationship'—  
*omit, insert—*

connection with the child's community, family or kin; or

## 20 Amendment of s 151 (Pre-sentence report)

(1) Section 151—

*insert—*

(1A) Before making the order, the court must consider whether a pre-sentence report is the most efficient and effective way to obtain information relevant to the sentencing of the child.

(1B) However, subsection (2) does not apply if the court considers it may be required, under section 203 or 207, to make the order.

(2) Section 151(2), 'subsection (9)'—

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*omit, insert—*

subsection (10)

(3) Section 151—

*insert—*

(3A) Also, the court may ask that the pre-sentence report be given to the court within a stated period that is reasonable, having regard to the likely complexity of the report.

(4) Section 151(6), after ‘report’—

*insert—*

, other than a condition that the child must wear a tracking device while on release

(5) Section 151(7) to (9)—

*omit, insert—*

(7) If an order is made under subsection (1), the chief executive must—

- (a) give the court a written pre-sentence report in relation to the child; or
- (b) give the court further written material to be considered with another pre-sentence report given to the court for another sentencing of the child.

(8) However, subsection (10)(b) applies only if the other sentencing of the child happens or happened not more than 6 months before the sentencing to which the order relates.

(9) The pre-sentence report or further material must be given to the court—

- (a) within the period stated by the court under subsection (6); or
- (b) if no period has been stated by the court—as soon as practicable after the order is made.

- (10) If the chief executive gives the court further material under this section—
- (a) the chief executive is taken to have complied with the order; and
  - (b) the further material together with the other pre-sentence report are taken to be a pre-sentence report for this part.
- (6) Section 151(1A) to (10)—  
*renumber* as section 151(2) to (13).

**21 Amendment of s 193 (Probation orders—requirements)**

Section 193(4)—

*insert—*

- (c) must not require the child to wear a tracking device.

**22 Amendment of s 204 (Intensive supervision order—requirements)**

Section 204(4)—

*insert—*

- (c) must not require the child to wear a tracking device.

**23 Amendment of s 221 (Conditional release order—requirements)**

Section 221(4)—

*insert—*

- (c) must not require the child to wear a tracking device.

[s 24]

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**24 Amendment of s 228 (Chief executive's supervised release order)**

Section 228—

*insert—*

- (6) A supervised release order must not require, or be subject to a condition, that the child must wear a tracking device.

**25 Amendment of s 228A (Supervised release orders for children with links to terrorism)**

Section 228A—

*insert—*

- (5) Subsection (2) is subject to section 228(6).

**26 Amendment of s 269 (Leave of absence)**

- (1) Section 269—

*insert—*

- (3A) The leave must not be subject to a condition that the child must wear a tracking device.

- (2) Section 269(3A) to (5)—

*renumber* as section 269(4) to (6).

**27 Replacement of pt 9, hdg (Confidentiality)**

Part 9, heading—

*omit, insert—*

**Part 9**

**Provisions about  
disclosure of  
information**



---

**28 Amendment of s 285 (When does someone gain information through involvement in the administration of this Act)**

(1) Section 285(1)—

*insert—*

(ha) a person who is, or who is employed or engaged by, a prescribed entity or service provider;

(2) Section 285(1)(ha) and (i)—

*renumber* as section 285(1)(i) and (j).

(3) Section 285(3)—

*insert—*

*prescribed entity* see section 297D.

*service provider* see section 297D.

**29 Amendment of s 289 (Recording, use or disclosure for authorised purpose)**

(1) Section 289(c)(i), ‘section 48(3)(e)’—

*omit, insert—*

section 48AA(5)(f)

(2) Section 289(h), after ‘under’—

*insert—*

this or

**30 Insertion of new pt 9, div 2A**

Part 9—

*insert—*

**Division 2A Information sharing and services coordination for**

## **children charged with offences**

### **297B Purpose**

- (1) The purpose of this division is to enable a coordinated response to the needs of children charged with offences.
- (2) The purpose is to be achieved by providing for an arrangement to be established under which—
  - (a) services provided to the children by particular entities are coordinated; and
  - (b) confidential information relating to the children may be shared between particular entities, while protecting the confidentiality of the information.

### **297C Principle for sharing information**

- (1) As well as the youth justice principles, it is a principle underlying this division that, whenever possible and practical, a person's consent should be obtained before disclosing confidential information relating to the person to someone else.
- (2) However, this section does not prevent information relating to a person from being disclosed to someone else under this division if the person's consent is not obtained before the disclosure.

### **297D Definitions for division**

In this division—

*child charged with an offence* see section 297E.

*non-government entity* means an entity that is not

---

a State or Commonwealth department or agency.

***prescribed entity*** means—

- (a) the chief executive of a department that is mainly responsible for any of the following matters—
  - (i) Aboriginal and Torres Strait Islander services;
  - (ii) child protection services;
  - (iii) community services;
  - (iv) court services;
  - (v) disability services;
  - (vi) education;
  - (vii) housing services;
  - (viii) public health services;
  - (ix) youth justice services; or
- (b) the chief executive of another department that provides services to children; or
- (c) the commissioner of the police service; or
- (d) the chief executive officer of Mater Misericordiae Ltd (ACN 096 708 922); or
- (e) a health service chief executive under the *Hospital and Health Boards Act 2011*; or
- (f) the chief executive officer of the National Disability Insurance Agency; or
- (g) the principal of an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*; or
- (h) the public guardian under the *Public Guardian Act 2014*; or
- (i) another entity prescribed by regulation.

***service provider*** means—

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- (a) Legal Aid Queensland established under the *Legal Aid Queensland Act 1997*; or
- (b) a non-government entity that provides a service to children.

*Examples of a service that may be provided to children—*

- counselling
- disability services
- education or training services
- health services
- housing and homelessness services
- legal services

### **297E References to a *child charged with an offence***

For this division, a reference to a ***child charged with an offence*** includes a reference to a child who—

- (a) was charged with an offence; and
- (b) is receiving, or is the subject of, a service provided for the purpose of—
  - (i) dealing with the child under this Act for the offence; or

*Example—*

an assessment prepared for sentencing the child for the offence

- (ii) helping rehabilitate the child.

*Example—*

counselling and rehabilitation programs provided for the purpose of meeting particular needs of the child relevant to the child's offending behaviour

### **297F Establishment of arrangements**

A chief executive of a department who is a

prescribed entity may establish an arrangement to enable prescribed entities and service providers to—

- (a) coordinate the provision of services (including assessments and referrals) to meet the needs of children charged with offences; and
- (b) provide information that may be used by courts in making bail or sentencing decisions for children; and
- (c) share relevant information with each other for the purpose of the matters mentioned in paragraphs (a) and (b).

### **297G Disclosing, recording or using information for particular purposes**

- (1) This section applies to a prescribed entity or service provider (each the *holder*) that holds confidential information relating to a child charged with an offence.
- (2) The holder may, under an arrangement established under section 297F, disclose the information to another prescribed entity or service provider (each the *recipient*) if the holder reasonably believes the information may help the recipient to—
  - (a) participate in case planning for the child; or
  - (b) assess the child's needs; or
  - (c) ensure a court is able to take into account the child's needs; or
  - (d) provide appropriate referrals for the child; or
  - (e) deliver services, programs or support for the child; or

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- (f) address the child's health needs or disability needs so far as they are relevant to the child's previous, or possible future, offending behaviour.
- (3) The holder may, under an arrangement established under section 297F, record or use the information for a purpose stated in subsection (2)(a) to (f).
- (4) Subsections (2) and (3) apply subject to any limitations prescribed by regulation about how, or the circumstances in which, a prescribed entity or service provider may disclose, record or use confidential information under this section.

#### **297H Interaction with other laws**

- (1) This division does not limit a power or obligation under another Act or law to disclose information.
- (2) This division applies subject to the following provisions—
  - (a) the *Child Protection Act 1999*, section 186;
  - (b) the Criminal Code, section 590AX;
  - (c) the *Director of Public Prosecutions Act 1984*, section 24A;
  - (d) the *Evidence Act 1977*, sections 21AZB, 21AZC and 93AA;
  - (e) the *Legal Aid Queensland Act 1997*, sections 75 and 82.
- (3) Subject to subsection (2), this division applies to information despite any other law that would otherwise prohibit or restrict the giving of the information.
- (4) However, if a person may claim privilege in relation to information under another Act or law, the privilege is not affected only because the

information may be, or is, disclosed under this division.

- (5) To remove any doubt, it is declared that nothing in this division requires an entity to disclose information.

*Example—*

A person may decide to withhold information that may be disclosed under this division because the information is subject to legal professional privilege.

### **31 Insertion of new pt 11, div 18, sdiv 3**

Part 11, division 18, as inserted by this Act—

*insert—*

#### **Subdivision 3 Provisions for amendments commencing by proclamation**

##### **398 Decisions about release made on or after commencement**

- (1) Sections 48 to 48B and 52 to 52B, as amended or inserted by the amending Act, apply in relation to a decision made by a court or police officer on or after the commencement about whether to grant bail to a child or otherwise release the child from custody.
- (2) For subsection (1), it is irrelevant whether the offence in relation to which the decision is made happened, or the proceeding for the offence was started, before or after the commencement.

##### **399 Dealing with children arrested before commencement**

- (1) Former sections 49 and 50 continue to apply in relation to a child arrested on a charge of an

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offence before the commencement as if the amending Act had not been enacted.

- (2) However, if a police officer is making a decision under former section 50(2) on or after the commencement—
  - (a) a reference in former section 50(2)(b) to section 52 is taken to be a reference to sections 52 and 52A as amended or inserted by the amending Act; and
  - (b) a reference in former section 50(4)(a) to section 48 is taken to be a reference to sections 48, 48AD and 48AE as inserted by the amending Act.
- (3) In this section—

*former*, in relation to a provision of this Act, means as in force from time to time before the commencement.

#### **400 Application of s 59A**

Section 59A does not apply in relation to a contravention of a condition imposed on a grant of bail to a child if the contravention happened before the commencement.

#### **401 Existing bail conditions about tracking devices**

- (1) This section applies if a grant of bail to a child that is in effect on the commencement is subject to a condition that the child must wear a tracking device while released on bail.
- (2) The condition stops having effect on the earlier of the following—
  - (a) the day that is 28 days after the commencement;



- (b) when the grant of bail is revoked or varied by a court, or otherwise stops having effect, under the *Bail Act 1980*.

## 32 Amendment of sch 4 (Dictionary)

Schedule 4—

*insert—*

*child charged with an offence*, for part 9, division 2A, see section 297E.

*National Disability Insurance Agency* means the Agency under the *National Disability Insurance Scheme Act 2013* (Cwlth).

*non-government entity*, for part 9, division 2A, see section 297D.

*prescribed entity*, for part 9, division 2A, see section 297D.

*service provider*, for part 9, division 2A, see section 297D.

*tracking device* see the *Bail Act 1980*, section 11(10).

## Part 3 Amendment of Bail Act 1980

### 33 Act amended

This part amends the *Bail Act 1980*.

*Note—*

See also the amendments in schedule 1, part 2.

### 34 Amendment of s 7 (Power of police officer to grant bail)

(1) Section 7(1)—

*insert—*

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---

(d) the person is an adult.

(2) Section 7(9)—

*omit.*

(3) Section 7(10)—

*renumber* as section 7(9).

### **35 Amendment of s 11 (Conditions of release on bail)**

Section 11, before subsection (1)—

*insert—*

(1AA) This section applies in relation to a person who is an adult.

### **36 Amendment of s 13 (When only particular courts may grant bail)**

Section 13(1), from ‘conviction,’—

*omit, insert—*

conviction—

(a) for an adult—the sentencing court must decide which of the following sentences to impose on the person—

(i) imprisonment for life, which can not be mitigated or varied under the Criminal Code or any other law;

(ii) an indefinite sentence under the *Penalties and Sentences Act 1992*, part 10; or

(b) for a child—the sentencing court would have to decide which of the sentences mentioned in paragraph (a) to impose on the person if the person were an adult.

*Note—*

See also the *Youth Justice Act 1992*, section 59 for when a Childrens Court judge, within the meaning of that Act, may grant bail to a child despite this subsection.

**37 Amendment of s 16 (Refusal of bail generally)**

- (1) Section 16, before subsection (1)—

*insert—*

(1AA) This section applies in relation to a defendant who is an adult.

- (2) Section 16(1) and (1A), ‘a defendant’—

*omit, insert—*

the defendant

- (3) Section 16(5)—

*omit.*

- (4) Section 16(6) and (7)—

*renumber* as section 16(5) and (6).

**38 Insertion of new s 48**

After section 47—

*insert—*

**48 Transitional provision for Youth Justice and Other Legislation Amendment Act 2019**

- (1) Sections 11 and 13, as amended by the *Youth Justice and Other Legislation Amendment Act 2019*, apply in relation to the release of a person on bail on or after the commencement.
- (2) For subsection (1), it is irrelevant whether the offence in relation to which the person is released on bail happened, or the proceeding for the offence was started, before or after the

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commencement.

## **Part 4**

# **Amendment of Police Powers and Responsibilities Act 2000**

### **39 Act amended**

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

*Note—*

See also the amendments in schedule 1, part 1.

### **40 Amendment of s 367 (Arrest of person granted bail)**

(1) Section 367(3)(a)(i)—

*insert—*

*Note—*

For the matters a police officer must consider before arresting a child under this subparagraph, see the *Youth Justice Act 1992*, section 59A.

(2) Section 367(5)—

*omit, insert—*

(5) Subsection (4) does not apply in relation to the arrest of a child under subsection (3)(a)(i) or (iv) or (c).

### **41 Amendment of s 384 (Notice to appear form)**

(1) Section 384(2)—

*omit, insert—*

(2) The stated place for the person's appearance before the court must be—

- 
- (a) for a child—a place where the court sits that a police officer is satisfied is the most convenient for the child to access, unless the time for appearing before the court at that place would not comply with subsection (3)(b)(i); and
- (b) a place where the court will be sitting at the stated time.
- (2) Section 384(3), from ‘time stated’ to ‘before a’—  
*omit, insert—*  
stated time for the person’s appearance before the
- (3) Section 384—  
*insert—*
- (4) Subsection (2) is subject to a provision of another Act that requires a proceeding for the offence to be started, heard or determined at a particular place.

**42 Amendment of s 392 (Parent and chief executive to be advised of arrest or service of notice to appear)**

- (1) Section 392, heading, ‘chief executive’—  
*omit, insert—*  
**particular chief executives**
- (2) Section 392(3)(a), from ‘unless’—  
*omit, insert—*  
unless no parent of the child can be contacted after making all reasonable inquiries; and
- (3) Section 392—  
*insert—*
- (3A) If no parent of the child can be contacted after making all reasonable inquiries, a police officer must make a record of the inquiries made.

[s 43]

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- (4) Section 392(4), ‘Subsections (1) and (2)’—

*omit, insert—*

Subsections (1), (2) and (4)

- (5) Section 392(6), definition *parent*—

*omit, insert—*

***parent***—

- (a) means a parent within the meaning of the *Youth Justice Act 1992*, schedule 4; and
- (b) includes a person who is apparently a parent of a child.

- (6) Section 392(3A) to (6)—

*renumber* as section 392(4) to (7).

### **43 Amendment of s 421 (Questioning of children)**

- (1) Section 421—

*insert—*

(1A) Unless the police officer is aware the child has arranged for a lawyer to be present during questioning, or has spoken, under subsection (3)(a), to a lawyer acting for the child, the police officer must—

- (a) inform the child that a representative of a legal aid organisation will be notified that the child is in custody for the offence; and
- (b) as soon as reasonably practicable and before questioning starts, notify or attempt to notify a representative of the legal aid organisation that the child is in custody for the offence.

- (2) Section 421(1A) to (4)—

*renumber* as section 421(2) to (5).

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**44 Insertion of new ch 24, pt 17**

Chapter 24—

*insert—*

**Part 17 Transitional provisions  
for Youth Justice and  
Other Legislation  
Amendment Act 2019**

**881 Definitions for part**

In this part—

*amending Act* means the *Youth Justice and Other Legislation Amendment Act 2019*.

*former*, in relation to a provision of this Act, means as in force from time to time before the commencement of the provision in which the term is used.

**882 Contraventions of bail conditions before commencement**

- (1) This section applies in relation to a contravention of a condition of an undertaking on which a person was granted bail if the contravention happened before the commencement.
- (2) Former section 367 continues to apply in relation to the contravention as if the amending Act had not been enacted.
- (3) In this section—  
*undertaking* see the *Bail Act 1980*, section 6.

**883 Children arrested or served with notices to appear before commencement**

Former section 392 continues to apply in relation

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---

to a child who was arrested, or served with a notice to appear, before the commencement as if the amending Act had not been enacted.

**45 Amendment of sch 6 (Dictionary)**

Schedule 6, definition *legal aid organisation*—  
*omit, insert*—

***legal aid organisation*** means—

- (a) in relation to an Aboriginal person, or Torres Strait Islander, who is not a child—an organisation, prescribed by regulation, that provides legal assistance to Aboriginal persons and Torres Strait Islanders; or
- (b) otherwise—an organisation, prescribed by regulation, that provides legal assistance to persons.

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

**46 Act amended**

This part amends the *Public Guardian Act 2014*.

**47 Amendment of s 51 (Definitions for ch 4)**

Section 51, definition *prescribed department*—  
*insert*—

- (f) the youth justice department.



## **Part 6**                      **Other amendments**

### **48**      **Acts amended**

Schedule 1 amends the Acts it mentions.

## **Schedule 1      Other amendments**

section 48

### **Part 1                      Amendments commencing on assent**

#### **Family Responsibilities Commission Act 2008**

**1            Section 43(1)(b), ‘299A or’—**

*omit.*

#### **Police Powers and Responsibilities Act 2000**

**1            Section 365(3), note, after ‘arrest’—**

*insert—*

, remand

**2            Section 394(4), note—**

*omit, insert—*

*Note—*

See also the *Youth Justice Act 1992*, section 50.

## Youth Justice Act 1992

**1 Section 13(1)(a), note, after ‘arrest’—**

*insert—*

, remand

**2 Section 263(5), ‘15, 19 and 20’—**

*omit, insert—*

16, 20 and 21

## **Part 2 Amendments commencing by proclamation**

### **Bail Act 1980**

**1 Section 11AA(1), after ‘this Act’—**

*insert—*

or the *Youth Justice Act 1992*

**2 Section 11AA(1), after ‘section 11(2)’—**

*insert—*

, or a condition under the *Youth Justice Act 1992*, section 52A,

**3 Section 14A(1), note 2 and (1A), note, from ‘sections 48’—**

*omit, insert—*

part 5 for the releasing of a child in custody in connection with a charge of an offence.

**4 Sections 19B(7) and 19C(6), ‘sections 48 and 48A’—**

*omit, insert—*

sections 48, 48AD, 48AE and 48A

**5 Section 20(3)(b)(i) and (3A)(b)(i), ‘section 52’—**

*omit, insert—*

section 52 or 52A

**6 Section 20(10), definition *passport surrender condition*,  
after ‘section 11(2)’—**

*insert—*

, or a condition under the *Youth Justice Act 1992*,  
section 52A,

## **Evidence Act 1977**

**1 Section 132C(5), definition *allegation of fact*, paragraph  
(b), ‘section 150(3)’—**

*omit, insert—*

section 150(4A)

## **Youth Justice Act 1992**

**1 Section 301A(1)(b)(i), ‘section 48(3)(e)’—**

*omit, insert—*

section 48AA(5)(f)

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